IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.589 OF 2016
WITH
COMPANY APPLICATION NO.114 OF 2017
IN
COMPANY PETITION NO.589 OF 2016

Tudor India Private Limited ….Petitioner

Vs.

PAE Limited ….Respondent

Mr. Udit Mediratta i/b. Trilegal for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 20th MARCH, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – PAE Limited (the Company) under the provisions of Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Petitioner had supplied automotive batteries and other items as per the purchase orders placed by the company on 19th September, 2014 and 31st October, 2014. The supply was made during November, 2014 to December, 2014. Petitioner also raised several invoices totaling to Rs.1,32,86,234/-. As per the purchase order issued by the company, the payment was to be made to petitioner by way of 60 days post dated cheques. It is petitioner's case that after the batteries were supplied, the company did not issue any post dated cheques. Despite repeated reminders,

no payments came forth or even the post dated cheques were issued.

3 The company by an email dated 7th January, 2015 informed petitioner that the invoice details have already been forwarded to the corporate office for preparing the post dated cheques and the same was under process and as soon as it was received, the same will be dispatched to petitioner immediately. At the same time, the company tried to link the previous issue relating to supply of batteries made by petitioner in which warranty claims were pending.

4 The counsel for petitioner states that if the payment was not required to be made for batteries supplied, which is the subject matter of this petition, the company would not have agreed to forward the post dated cheques.

5 On record is an affidavit of one Suresh Suryavanshi affirmed on 18th November, 2016 confirming service of the petition upon the company. As no affidavit in reply has been filed, the averments in the petition are not controverted.

6 I have also considered the petition and the documents annexed to the petition and also heard the counsel for petitioner. From the email, which is at Exhibit 'L' to the petition, a *prima facie* case is made out that the company is indebted to petitioner and the company has not discharged its debt.

7 Therefore, the following order is passed :

ORDER

(i) The company petition is admitted and made returnable on 14th June, 2018;

(ii) Petitioner is directed to advertise the petition within four weeks in two local newspapers, viz. 'Free Press Journal' (in English) and 'Navshakti' (in Marathi) and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non- compliance with this direction or with the Companies (Court) Rules, 1959;

(iii) Petitioner shall also deposit an amount of Rs.15,000/-with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to petitioner;

(iv) A copy of this order shall forthwith be served on the company by hand delivery, email, courier and by Registered Post AD by the Advocate for petitioner.

8 The counsel for petitioner is not pressing for the company application at this stage and seeks leave to withdraw the application to take out a fresh application at a later stage, if advised.

9 Therefore, company application stands dismissed as withdrawn with the liberty as sought.

(K.R. SHRIRAM, J.)