

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

COMPANY PETITION NO. 668 OF 2016

Mahavir Steel Industries Limited	.. Petitioner
Vs.	
Bharat Electrical Contractors and Manufacturers Pvt. Ltd.	.. Respondent

Mr. Angshuman Chaliha i/b Universal Legal for petitioner.

Mr. Chetan Agarwal a/w. Mr. Pranav Dhake for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 13TH MARCH 2018**

P.C.

1. Petitioner is seeking winding up of the company Bharat Electrical Contractors and Manufacturers Pvt. Ltd. (the company) on the ground that the company is indebted to petitioner and is unable to discharge its debt.

2. It is the case of petitioner that they supplied, based on verbal purchase order received from the company, structural steel items as mentioned in paragraph 5(ii) of the petition. It is the case of petitioner that the goods supplied were valued at Rs.13,37,186/-. The company is not disputing the fact that the goods were supplied and invoices were raised. But according to the company, the entire amount has been paid as per the statement of payments and all the disbursement details annexed at Annexure 'A' to the affidavit in reply. It is not in dispute that they had

received payment but according to petitioner, company has paid only Rs.6 lakhs and the company has adjusted Rs.6 Lakhs paid towards interest which left the entire principal sum of Rs.13,37,186/- payable. Shri Chaliha for petitioner states that invoices expressly provide for 90 days credit and if not paid on the due date, delayed payment charges @ Rs. 35 per ton, per day will be levied from the due date.

3. Shri Agarwal appearing for company submits that petitioner's outstanding with interest was about Rs.23,62,763/- and the entire amount has been paid as per the statement at Annexure 'A' to the affidavit in reply. In the payment column of the said statement, there are two payments of Rs.10,25,577/- each made on 17th December 2014 and on 10th July 2015. In the remark column, it appears to be payment against bills. Shri Agarwal submits that in the bill of exchange that was given with the invoices, which are the subject matter of this petition, the company had made a mistake by referring two bill numbers, viz., Bill Nos.506 and 977 whereas company should have mentioned Bill Nos.459 and 460. The company has also annexed bank statements issued by State Bank of India to confirm payment of these two amounts mentioned in Annexure 'A'. In the affidavit in rejoinder, in response to paragraph 3 of the affidavit in reply, petitioner has simply stated respondent be put to test to establish that letter of credit to the tune of Rs.10,559,923/- was paid towards said invoices which are

the subject matter of the petition. The least I would have expected from petitioner was to produce its bank statements for the period which petitioner in their rejoinder has stated payment has been made to show how payments, as stated in Annexure 'A' to reply, was not made. No such bank statement is produced.

3. In my view, as this raises disputed questions of fact which have to be only decided by a Civil Court and I cannot gather myself to come to a conclusion that there is an admitted debt that is payable.

4. In these circumstances, company petition dismissed.

(K.R. SHRIRAM, J.)