

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

**APPEAL NO. 339 OF 2017
IN
COMPANY PETITION NO. 734 OF 2015**

Santec Faabricators India Pvt Ltd. Appellant

Vs.

RNA Corp. Pvt. Ltd. Respondent

Mr. Jithin Palakkal i/b Sumi Soman for appellant
Mr. Rohan Rajadhyaksha a/w Ms. Chaitrika Patki i/b Vidhi Partners
for respondent.

**CORAM : NARESH H. PATIL AND
NITIN W. SAMBRE, JJ.**

DATE : JANUARY 19, 2018.

P.C. (PER: NITIN W. SAMBRE, J.)

Present appeal is directed against the order passed by the learned Single Judge in Company Petition no. 734 of 2015 preferred by the appellant herein pursuant to the provisions of section 433 (e), 434 r/w section 439 of the Companies Act, 1956 praying winding up of the respondent/company.

2 The learned Single Judge vide its impugned order dated 10/07/2017 was pleased to dismiss the company petition as such this

appeal.

3 Heard respective counsel. It is the case of the petitioner that 9 work orders were issued in favour of the petitioner for carrying out certain civil works such as GRC, HVAC, plumbing, electrical, civil and interior works, glass, aluminum, fabrication etc. these work orders were issued on various dates in between 09/09/2011 to 29/12/2012. As a consequence, the petitioner executed the work pursuant to the above work orders for total amount of Rs. 6,58,94,004/-.

4 Out of the aforesaid amount which according to the appellant is due and receivable from respondent, amount of Rs. 4,36,32,417/- was paid to the appellant leaving balance of Rs. 1,89,66,887/-.

5 It is thereafter claimed that the said amount since was due from September 2013, there were certain exchange of e-mails/notices whereby amount was demanded by the appellant from the respondent/company.

6 Appellant having noticed that the respondents are not paying the amount as demanded, issued statutory notice pursuant to the provisions of section 434 of the Companies Act dated 08/12/2014. As

the respondent/company failed to honour the said notice by making payment of balance amount, it is claimed by the petitioner that same has prompted them to file Company Petition no. 734 of 2015 for winding of Respondent-Company.

7 In the said company petition, in response to the aforesaid claim, the appellant has come out with a prayer for ordering winding up of Respondent-Company as according to them, the amount outstanding is not disputed including that of execution of the work orders and certain Additional work in compliance with such work orders.

8 The claim was disputed by the respondent/company before the Company Court and the learned Company Judge having considered rival submissions was pleased to dismiss the Company Petition.

9 The learned counsel for the appellant while inviting attention of this Court to the various communications sent through e-mails and other notices would urge that it could be born out of record that the respondent has admitted the outstanding payment of Rs. 1,89,66,887/-. He would then urge that the respondent has not even bothered to reply to the statutory notice dated 08/12/2014 which amounts to Admission of Debt. It is also urged that the respondent

company has abandoned the project as it is not solvent enough to pay the debts of the appellant, as such the order of winding up ought to have been ordered by the learned Single Judge. The learned counsel for the appellant would also invite the attention of this Court to the contents of various work orders, documents depicting the execution of the work so as to prevail upon this Court to form an opinion that there are no disputed questions of fact and as such the order of the learned Single Judge is sought to be set aside with further prayer for ordering winding up of the Respondent company.

10 *Per contra*, the learned counsel for the respondent would urge that the respondent/company is more than one hundred thousand crore worth. In view of its capital and financial status in Balance Sheet it is urged that it is solvent enough to discharge the debt. According to him, however, there is a dispute between the appellant and respondent as the appellant has not executed the work particularly qualitative, resulting into the loss to the respondent/company. So as to substantiate his claim he would try to invite the attention of this Court to certain documents to demonstrate that there exist disputed question of facts. According to him, the liability as claimed by the appellant is not admitted and submits that the appellant has every right to take recourse to alternate mode for

settling the dispute through competent forum.

11 Considered rival submissions. The learned Single Judge while dealing with the claim put forth by the appellant and respondents has inferred from the record that respondent company is solvent enough to pay the dues if any of the appellant company. It is also noted by the learned Single Judge that appellant company has failed to adhere to the terms and conditions of contract and the work orders. Quality of the work executed by the Appellant is inferior and substandard containing defects.

12 The learned Single Judge then refers to certain conditions of the work order and has proceeded to dismiss the petition.

13 If submissions of the rival parties are appreciated in the backdrop of observations made by the learned Single Judge, it is worth observing that the net worth of the respondent company appears to be sufficient enough to infer that the respondent/company is solvent enough to discharge outstanding liability.

14 Apart from above, from the perusal of the documents and exchange of communications has rightly prompted the learned Single

Judge so also this Court to infer that there exist disputed question of facts *qua* monetary liability as is claimed by the appellant herein. The respondent/company has in fact informed the appellant about the defects in execution of the work and such defects were failed to have been rectified by the appellant.

15 Apart from above, this Court is required to take judicial note of the fact that appellant has already initiated another proceedings in the form of Civil Suit for recovery of the dues from the respondent before Competent Forum.

16 In the wake of above, we hardly notice any perversity or illegality in the view expressed by the learned Single Judge while dismissing the Company Petition.

17 As a consequence, the appeal lacks merits, dismissed.

18 The proceedings initiated by the appellant be decided by the competent forum without being influenced by the observations made herein above.

[NITIN W. SAMBRE, J.]

[NARESH H. PATIL, J.]