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

COMPANY PETITION NO.1262 OF 2015

Shree Rajasthan Syntex Ltd.)….Petitioner
V/s.
Subh Tex (India) Ltd.)....Respondent

Ms.Dhwani Mehta i/by DM Law Chambers for petitioner.
Mr.Darryl Paul Barretto for respondent.
[Mr.Vinnay Poddar-director of respondent present].

CORAM : K.R.SHRIRAM,J
DATE : 19.4.2018

P.C.:-

1 Petitioner has approached this court to wind up Subh Text (India) Ltd. alleging that the company is indebted to petitioner, unable to discharge its debts and commercially insolvent.

2 It is the case of petitioner that sometime in July-2012 the company had approached petitioner for the purpose of purchasing yarns. Accordingly, petitioner supplied yarns as reflected in 16 invoices. According to petitioner the invoices provided that the invoice amount has to be paid upon presentation of the invoice and in case of non payment, upto 90 days interest @ 24% p.a. will be charged and beyond 90 days interest @ 27% p.a. will be payable. According to petitioner 6 of the invoices have been paid albeit late

and therefore, interest on those invoices together with principal and interest on the remaining invoices is payable. According to petitioner sum of Rs.15,03,061/- towards principal, Rs.3,88,369/- towards interest, making a total of Rs.18,94,430/- as on the date of petition was payable. It is also stated that the company had issued cheques towards principal amount of Rs.15,03,061/- which cheques were dishonoured on presentation due to insufficient funds. It is also stated that for 14 out of the 16 invoices, the company had also issued `C' forms as required under the Central Sales Tax Act and therefore, the company has confirmed receipt of the goods reflecting 14 invoices.

3 Mr.Baretto for the company stated that the company does admit having received all the goods as covered under 16 invoices but they have a defence as to why the entire amount is not payable.

4 It is the case of petitioner in the petition that as payments did not came forth, petitioner caused a notice under Sections 433, 434 of the Companies Act 1956 and in the reply dated 3.5.2015 the company has raised frivolous and baseless contentions. Counsel states that the statement in the reply to the statutory notice, that too 2 years after the goods were supplied that the quality of yarns supplied was

defective, resulting in the fabric manufactured getting defective and due to that, fabric could not be sold, was an after thought.

5 When the petition was taken up for admission, the company did not remain present and the petition came to be admitted and notice published in 2 newspapers, Maharashtra Government Gazette and also under Rule 28 of the Companies (court) Rules 1959.

6 In the affidavit in reply the stand taken by the company is that soon after goods were supplied, by an e-mail dated 22.5.2013 (the cheques were dated 15th & 17th April 2013 and cheques got dishonoured on or about 21st or 22nd May 2013), the company sent an email to petitioner stating that they have approximately 7 tons pack with them and the petitioners were requested to take back the goods and give credit and for the balance amount the company will make the payments. There is also an email dated 5.6.2013 from the company to petitioner which reads as under :-

> "Return goods
> Subhtexindia@gmail.com Wed,Jun 5, 2013 at 4:17 PM
> <subhtexindia@gmail.com>
> Reply-To : subhtexindia@gmail.com
> To : Piyush Srs ,piyush@srsl.in>
>
> Piyushji
> As per our talks we had informed u that we have pack and loose yarn to be returned and adjusted against our

outstanding.
Accordingly u had agreed for it and visited our plant to verify the yarn and were satisfied.
We are now waiting for instructions for despatch
Pl do the needful and issue credit notes
Rgds

Vinay Poddar
Sent on my BlackBerry R from Vodafone"

7 There is also an email dated 12.6.2013 recording the minutes of the meeting held in the company's office between Company's representatives and petitioner's representatives. Of course, petitioner has denied that anything was discussed or agreed as stated in the minutes prepared by the company. The fact however, is that the meeting has not been denied. It should also be noted that in all the correspondences annexed to the affidavit in reply which pertain to the year 2013, the company admits its liability but only to the extent of Rs.8,96,615/- because according to the company some of the goods were defective and it was open to petitioner to take back those goods. Mr.Barretto states that even today goods are available with the company and petitioner is welcome to take back those goods so that the company at least will be saved some precious space in Mumbai.

8 Ms.Mehta for petitioner states that none of the goods were

defective and highlights an emails from the company calling upon petitioner to take back alleged defective goods and agreeing to pay Rs.8,96,615/- started only after the cheques were dishonoured. Ms.Mehta also states that though in the reply to the statutory notice and in the affidavit in reply to the petition, the company has stated that they issued stop payment instructions, the dishonoured memos issued by the bank state that the "funds were insufficient". There is no rejoinder to the affidavit in reply.

9 Heard the counsel and considered the petition with the documents annexed to the petition and the affidavit in reply. The fact is the petitioner was duty bound to disclose all the communications which have come through the affidavit in reply along with the petition. There is no affidavit in rejoinder as well. Moreover, the communications annexed to the affidavit in reply are in my view, contemporaneous communications. Whether the complaints regarding defective goods and offering to return the materials began only after the cheques were dishonoured or earlier itself, is something for which the evidence will have to be led and cannot be summarily decided. It is also not disputed even in the email that there was a meeting in the company's premises. Whether the grievance of the company about the defective goods and return of material was

discussed is also something which has to be proved only by leading evidence.

10 Considering the facts and circumstances of the case, I cannot conclude that the defence raised by the company is moonshine or unsustainable or after thoughts.

11 Petition therefore stands dismissed.

12 Mr.Barretto states on instructions that the company will deposit sum of Rs.10,00,000/- with the Prothonotary & Senior Master, High Court, Bombay, out of which petitioner, should they wish, may apply within 3 weeks of the amount being deposited, to withdraw Rs.8,96,615/-. If within 3 weeks period the petitioner does not apply for withdrawal of the amount then Prothonotary & Senior Master be directed to invest the entire amount of Rs.10,00,000/- in fixed deposit with a Nationalized bank and petitioner may commence arbitration either as per the terms and conditions in the invoice or even in Mumbai to which company is agreeable. Mr.Vinnay Poddar- director of the company is present in Court and he also concurs with and confirms what Mr.Barretto has informed the Court as recorded hereinabove.

13 In the circumstances, the company is directed to deposit sum of Rs.10,00,000/- with the Prothonotary & Senior Master, High Court, Bombay under advise to petitioner's advocate. Within 2 weeks of receiving the advise about the deposit of the amount, petitioner is at liberty to apply to the Prothonotary & Senior Master for withdrawal of the amount of Rs.8,96,165/-. If such an application for withdrawal is made, Prothonotary & Senior Master will pay over the said amount and invest the balance in fixed deposit with a nationalized bank. If the application for withdrawal is not received within a period of 2 weeks, Prothonotary & Senior Master to invest the entire amount of Rs.10,00,000/- in a fixed deposit with a nationalized bank. Both these investments, whichever is applicable, shall be made initially for a period of one year, to be renewed year to year unless otherwise directed by this court.

Petition accordingly disposed.

14 Since the petition has been advertised, petitioner to advertise the dismissal of this petition in `Free Press Journal' and `Navshakti' within 2 weeks from today. The format will be as per the format prescribed by the office of the Company Registrar.

(K.R.SHRIRAM,J)

KJ