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

COMPANY PETITION NO. 325 OF 2015

M/s. Infiniti Corporation .. Petitioner
Vs.
M/s. Nilesh Electricals Pvt. Ltd. .. Respondent

Mr. Abhimanyu Mhapankar i/b Yogesh P. Gandhi for petitioner.

Mr. Siddharth L. Kamble for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 11TH JANUARY 2018

P.C.

1 The petition has been filed for winding up of respondent company M/s. Nilesh Electricals Pvt. Ltd. on the ground that the company is indebted to petitioner, unable to pay its debts and is commercially insolvent. Pursuant to a purchase order placed by the Respondent on 21 November 2011 for a total sum of Rs.5,46,649.95, petitioner supplied flexible cables of specifications noted in the purchase order. The goods have been duly received and accepted from time to time without any dispute as to quality, quantity or price. Petitioner has placed on record the relevant delivery challans, all of which have been signed on behalf of the recipient, and also tax invoices in respect of the goods sold and delivered. Respondent has issued cheques in payment of these goods of diverse amounts between 27 September 2012 and 6 November 2012 aggregating

to Rs.5,68,912/-. All these cheques have been dishonoured upon presentation for payment. A statutory notice was issued by petitioner on 10th November 2014 to which there is no response from the Respondent.

3 When the petition was taken up for admission on 16th August, 2016 various submissions were made on behalf of respondent-company briefly stating :(a) Respondent company never received any of the goods allegedly supplied by petitioner and petitioner has created bogus and false documents for the purposes of present petition; (b) The cheques issued were only to show their bonafides that payment will be made.; and (c) The goods were to be supplied within four days but were not supplied and hence respondent had to place an order for the same material on another dealer. These are the same defences also raised today. This Court, at the time of admission of the petition, had considered the submissions made by respondent's counsel and concluded that the defences raised by respondent company are not bona-fide and it is moonshine or nominal and have no merits whatsoever.

4 It would be useful to reproduce paragraphs 1 to 6 of the order passed on 16th August 2016 which read as under :-

> *1 Heard learned Counsel for the parties. By this company petition, the Petitioner seeks winding up of the Respondent company. The claim in the petition is for the price of goods sold and delivered.*

2 Pursuant to a purchase order placed by the Respondent on 21 November 2011 for a total sum of Rs.5,46,649.95, the Petitioner supplied flexible cables of specifications noted in the purchase order. The goods have been duly received and accepted from time to time without any dispute as to quality, quantity or price. The Petitioner has placed on record the relevant delivery challans, all of which have been signed on behalf of the recipient, and also tax invoices in respect of the goods sold and delivered. The Respondent has issued cheques in payment of these goods of diverse amounts between 27 September 2012 and 6 November 2012 aggregating to Rs.5,68,912/-. All these cheques have been dishonoured upon presentation for payment. A statutory notice issued by the Petitioner has elicited no response from the Respondent. On these facts, the Petitioner claims that the Respondent is unable to pay its debts. The total amount due to the Petitioner in respect of the nine subject invoices aggregates to Rs.6,31,033/-.

3 The Respondent's defence is that, firstly, the statutory notice is not served at a proper address. It is not disputed by the Respondent that the registered office of the company was situated at the address given in the cause title, at which place the statutory notice was sought to be served. It is, however, submitted by the Respondent that the registered office has been sold by the Respondent in the year 2012 and that the Respondent was carrying on business thereafter from Room No.8, Ambedkar Nagar No.2 at Vidyavihar in Mumbai. He claims to have informed the Registrar of Companies about this change of address. There is no document placed on record, however, to show that the registered office was changed in the records of Registrar of Companies from the address disclosed in the cause title to any other address. In fact, the website of the Ministry of Corporate Affairs shows the same registered address of the company as of March 2016. In any event, the statutory notice is even addressed to the Respondent at its new address, namely, Room No.8, Ambedkar Nagar No.2 at Vidyavihar in Mumbai. Strangely, the defence taken by the Respondent as to the notice addressed at this address is that the demand notice must be served only at the registered office of the company and not at any other address. The court is at a loss to understand the defence.

4 It is next contended by the Respondent that the Petitioner failed to deliver the goods within four days and as a result, the Respondent had to place an order for the same material on another dealer. The Respondent denies having received the material from the Petitioner and submits that the Petitioner has created bogus and false *documents for the purposes of the present petition. The defence can only be described as lacking in bona fides and moonshine or nominal. If the Respondent did not receive any goods, there was absolutely no reason for the Respondent to issue cheques aggregating to Rs.5,68,912/-. The explanation concerning the cheques, orally tendered by learned Counsel for the Respondent, is that the cheques were given as blank cheques at the time of placing of the purchase order. This is a matter which ought to have been pleaded in the defence and cannot be urged across the bar on the basis of ipse dixit of counsel. Interestingly, nevertheless, what is pleaded in the reply is that the Respondent had given "two postdated cheqeus total amounting to Rs.5,46,649.95" along with the purchase order. There is no reason why, in the first place, cheques of a date nearly one year after the placement of the purchase order should have been issued. Besides, there are four cheques in all, two cheques of 6 November 2012 aggregating to a sum of Rs.5,46,650/-and not "Rs.5,46,649.95". There is no explanation why the other cheques, respectively, for Rs.11,628/ and Rs.10,634/, were issued to the Petitioner. The defence is that the goods were not received. The purchase order, the relevant delivery challans and invoices, and the cheques issued for diverse amounts aggregating substantially to the value of the goods sold and delivered completely falsify such a case, which is urged for the first time in reply to the winding up petition. As for the defence that the goods were not received within days, the same is merely required to be stated to be rejected. The purchase order does not indicate any particular period within which the goods were to be delivered. Even if one were to take into consideration a reasonable period for the purpose, there is no warrant for presuming or suggesting that such reasonable period was of four days. In sum, the defence indicated by the Respondent clearly is not bona fide. It is merely nominal and moonshine and has no merit whatsoever.*

5 Learned Counsel for the Petitioner has referred to two orders passed by this court earlier for winding up of the Respondent company. Only after these winding up orders were passed, it appears, the debts were discharged and the respective petitions settled.

6 In the premises, there is no bona fide defence raising any real contest to the claim of the Petitioning Creditor. I did ask learned Counsel appearing for the Respondent if his client would be willing to pay the Petitioner's claim over a period of time by instalments. Learned Counsel indicated his inability to make any such offer.

4 When the petition was listed for final hearing on 4/5th January 2018, this Court did ask the counsel for respondent as to whether they are inclined to settle the matter, the counsel requested the matter be stood over to enable him to take instructions. Today, the counsel Shri Kamble stated that respondent-company cannot settle and further stated that the company is not carrying on any business because nobody is willing to supply to the company in view of the order passed on 16th August 2016.

5 I am satisfied that the defences raised by the company lack in bona fides are moonshine, nominal and without any merit. If I have to accept the submissions of the company that the goods were never supplied at all, I fail to understand why the company handed over postdated cheques along with the purchase order even if we presume that it was the condition put by petitioner and without meeting it supply would not have been made. It is also respondent's case that the supply was to be made within four days, though the purchase order does not indicate any particular period within which the goods were to be delivered. If within four days, the goods were not delivered, there is no reason of respondent's handing over cheques along with the purchase order. If the goods were not supplied within the time reasonably expected, respondent would have immediately written to petitioner about the non-delivery of goods with instructions not to encash

the cheques or to return the cheques. There is nothing on record to indicate that respondent company has done this. Shri Kamble states that they informed the bank to stop payment. In my view, that would also be a dishonest stand with an intention, despite having received the material, not to pay petitioner. Therefore, if I have to accept the submissions of Shri Kamble, there should be something on record to indicate the stand of respondent company that petitioner did not supply the materials and therefore was not entitled to any payment and the cheques ought to have been returned. Besides, the post-dated cheques that were handed over along with purchase orders, there are other cheques for Rs.11,628/- and Rs.10,634/- issued by petitioner. There is no explanation as to why these cheques have been handed over.

6 There is an affidavit of one Jaimin N. Gandhi affirmed on 23rd December 2016 confirming advertising the petition in Free Press Journal and Navshakti on 3rd September 2016 and in the Maharashtra Government Gazette for the period September 22-28, 2016 at Sr.No. M-16189. There is a service report of company department dated 17th/21st October 2016 in which it is stated that notice under Rule 28 of the Companies (Court) Rules, 1959, has been duly served upon respondent-company on 8th September 2016.

7 In the circumstances, the defences raised cannot be accepted. It is not even the company's case that the company is solvent. In fact Shri Kamble, as noted earlier, stated that the company is not doing any business and nobody is willing to supply. All these factors put together, makes me to come to a conclusion that respondent-company is unable to discharge its debts, is commercially insolvent and requires to be wound up. Petition allowed in terms of prayer clauses (a) which read as under :-

> *"(a) That M/s.Nilesh Electricals Pvt. Ltd. (The Company) be directed & ordered to be wound up under the directions of this Hon'ble Court under the provisions of Company Act of 1956 & Official Liquidator be appointed & the Liquidator of the Respondent Company shall have such power to take of all the assets, properties & records of the Company with all powers U/Sec. 475 of the Companies Act of 1956 to be exercised under section 458 of the said Act, without sanction or intervention of this Hon'ble Court save and except in case of the sale of immovable properties of the respondent Company."*

8 Petitioner's advocate to forward an authenticated copy of this order to official liquidator who shall take further steps without waiting for any notification.

9 Company petition accordingly disposed.

(K.R. SHRIRAM, J.)