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

**COMPANY PETITION NO.44 OF 2016**

Anmol Computech Private Limited )....Petitioner
V/s.
Saraf Corporation India Private Limited )....Respondent

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Mr.Prathamesh Kamat a/w Mr.T.N.Tripathi i/by T.N.Tripathi and Co. for petitioner.
Mr.Manan Jaiswal and Mr.Aditya Manjrekar i/by MLS Vani and Associates for respondent.

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**CORAM : K.R.SHRIRAM,J**
**DATE : 29.1.2018**

**P.C.:-**

1 The petition is filed to wind up the respondent company Saraf Corporation India Private Limited on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 It is the case of petitioner that they had given to a company a sum of Rs.50,00,000/- as loan to be repaid with interest @ 18% p.a. with monthly rests. It is the case of petitioner that as on date of filing the petition the company was to pay to petitioner a sum of Rs.58,67,945/-.

3 It is alleged in the petition that in or about December-

2014, one Deepak Durgaprasad Saraf, managing director of the company approached petitioner to give financial accommodation to meet its urgent business requirements. The company also agreed to deliver cheque for repayment of the said loan. On or about 12.12.2014 petitioner gave company a sum of Rs.50 lakhs and then in return, company gave a cheque dated 13.12.2014 for Rs.50 lakhs. The company presented the cheque on 23.2.2015, more than 2 months after the cheque was issued and the cheque was dishonoured due to payment being stopped by the drawer. Petitioner caused a notice dated 14.10.2015 issued to the company and lodged this petition on 30.11.2015.

4 After the petition was lodged, petitioner received a reply dated 1.12.2015 to the statutory notice. In the reply, company's stand was that as per the request of one Chandrashekhar Jagawat who was statutory auditor and Chartered Accountant of petitioner, company sold garments worth of Rs.50,05,840/- which included Vat of Rs.5,840/- as per the invoice dated 31.3.2015 to petitioner. It is the case of the company that the amount of Rs.50,00,000/- was paid as advance towards supply of these garments and they gave a cheque of Rs.50,00,000/- as security as parties were not known to each other closely. It is the case of the company that since goods have been

supplied, question of paying any amount to petitioner does not arise.

5 In the affidavit in reply further points have also been raised in as much as the company has stated that they even paid sales tax on the goods sold amounting to Rs.2,43,934.64/-. Sales tax returns filed by the company is annexed to the affidavit in reply. The invoice raised on the petitioner is also annexed to the reply. The figures do tally. It does appear that sales tax in the sum of Rs.2,43,934.64 has been paid by the company for the goods allegedly sold by the company to petitioner. There is also payment challan annexed to the reply proving payment of sales tax. I have considered all these documents together and they do fall in place. Moreover, copy of the balance sheet as on 31.3.2015 is also annexed to the affidavit in reply. Counsel for respondent company tendered a certified copy of the balance sheet filed by petitioner that he obtained from the office of the Registrar of Companies for financial year ending 31.3.2015.

6 Mr.Jaiswal for the company pointed out that in the column for short term loan and advances, the amount for the period ending 31.3.2014 is shown as Rs.57,16,690/- and for the year ending 31.3.2015 is shown as Rs.7,90,974/-. Mr.Jaiswal submitted that if amount of Rs.50 lakhs is still outstanding as on 31.3.2015 as stated by

counsel for petitioner, certainly balance sheet would have shown at least Rs.57,90,974/- and not Rs.7,90,974/-. Mr.Kamat for petitioner submitted that there were contradictions between affidavit in reply and the reply to the statutory notice. Mr.Kamat stated that the contradictory allegations are reflected in paragraph-16 of the affidavit in rejoinder.

I have considered the alleged contradictions and in my view, they are absolutely minor and I cannot even call them contradiction. It is just like new point is raised in the affidavit in reply.

7 Mr.Kamat also relied upon confirmation of accounts signed by the company on 1.4.2015 in which closing balance is shown as Rs.50 lakhs. Mr.Kamat argued that if company could have signed confirmation of account on 1.4.2015, certainly the stand of respondent-company that they sold goods for Rs.50,05,840/- including Vat to petitioner on 31.3.2015 cannot be correct.

The confirmation of account has been signed by the company on 1.4.2015 but it is for the period 1.4.2014 to 10.2.2015. It should be noted that the confirmation of account has been prepared by company and sent to petitioner for signature. If dates were incorrect, I would have expected petitioner to point out to the company that the confirmation should be for the period 1.4.2014 to 31.3.2015. It should be noted that the cheque which the company had given on 13.12.2014 was deposited by petitioner on 23.2.2015 and on 24.2.2015, bank has dishonoured the cheque because payment has been stopped by drawer.

8 Considering the facts and circumstances of the case, I cannot say that the defence raised by the company is moonshine or bogus. Arguable case has been made out and there are disputed question of facts. It is settled law when disputed question of facts are involved, court should not pass order winding up a company.

Petition dismissed with no order as to costs.

**(K.R.SHRIRAM,J)**