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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 06.12.2018

+ CO.PET. 395/2014 and CA No. 587/2016

M/S SHANKAR STEEL SUPPLIER

..... Petitioner

Through Mr.Dhruv Madan, Mr.Anirudh
Sharma and Mr.Ansh Kukreja, Advs.

versus

M/S RAMPUR ENGINEERING
COMPANY LIMITED

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed under Sections 433(e) and (f), 434 and 439 of the Companies Act, 1956 seeking winding up of the respondent Company.
2. The case of the petitioner is that it is a reputed firm in the field of iron and steel. The petitioner is a dealer of structure steel, carbon steel, alloy steel and hot roll product, etc. The petitioner supplied goods as per the instructions of the respondent Company. It is also pleaded that the petitioner firm filed its return before the VAT authorities depicting the sales and purchases. The petitioner has a running account with the respondent. In March 2012, an amount of Rs.54,28,124/- stood pending from the respondent Company which got reduced to Rs.42,78,124/- in March 2013. On 13.02.2014, the respondent Company made part payment of

Rs.7,20,000/-. It is pleaded that an amount of Rs.35,58,124/- still remains payable. A legal notice was sent on 24.02.2014. As there was no response, the present winding up petitioner has been filed.

3. The respondent filed their reply. In their reply, they have denied the ledger account of the petitioner. It has further been stated that the alleged debt on which the petitioner is seeking winding up of the respondent company pertains to two invoices being Ex. 564 and Ex.573 dated 04.03.2011 and 09.03.2011 respectively which were in respect of defective goods which were returned to the petitioner. It is stated that the goods so supplied by the said invoices were defective as not being of the approved quality and the petitioner has taken no steps to replace the said defective goods. It has been stressed that there is no admitted debt or liability.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has relied on the running ledger account of the petitioner to state that as per the said account, the aforesaid amount of Rs.35,58,124/- remains due and payable. He has firstly tried to submit that the averments made in the winding up petition have not been categorically denied in the reply that has been filed. Hence, he pleads that the amount is admitted. He has secondly stated that a perusal of the VAT Form filed by the respondent would show that they have taken the VAT dues of the entire goods supplied but are claiming non-receipt of the some of the goods. He submits that the respondent have taken the entire VAT paid by the petitioner into consideration while filing their returns which is a clear indication that they have accepted the running account filed by the petitioner and its dues. Thirdly, it is stated that the two invoices which are said to be disputed by the respondent being Exs.564 and 573 are for a total sum of

Rs.29 lakhs (approximately) whereas the outstanding dues are of Rs.35.58 lakhs. Hence even assuming the respondent are correct, an amount of Rs.7 lakhs (approximately) still remains due and payable to the petitioner.

6. The first plea of the petitioner that the submissions of the petitioner in the winding up petition have gone unrebutted in the reply is not correct. A perusal of the reply would show that the respondent has denied the Statement of Accounts/alleged dues as claimed by the petitioner. In fact apart from various other paras in paragraph 6(b) of the reply it is categorically denied that the petitioner has supplied material for five years on running account basis.

7. That apart, basically the petitioner is claiming that under the books of accounts certain amounts remain due and payable to the petitioner. In terms of section 34 of the Evidence Act it would be for the petitioner to establish the debt by proving the books of accounts. While dealing with section 34 of the Evidence Act the Supreme Court in *Ishwar Dass Jain (dead) Thr.LRs vs. Sohan Lal (Dead) By Lrs.*, AIR 2000 SC 426 has held as follows:-

“24. Now under Section 34 of the Evidence Act, entries in "account books" regularly kept in the course of business are admissible though they by themselves cannot create any liability. Section 34 reads as follows:

Section 34: Entries in books of account when relevant-
Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

It will be noticed that sanctity is attached in the law of evidence to books of account if the books are indeed "account books i.e. in original and if they show, on their face, that they are kept in the "regular course of business", Such sanctity, in our opinion,

cannot attach to private extracts of alleged account books where the original accounts are not filed into Court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page-numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business.”

8. Hence, it would be for the petitioner to prove his books of accounts before he can claim the payments from the respondents.

9. The next plea raised by the petitioner related to the VAT amount which is said to have been claimed by the respondent. I have perused the return filed. Learned counsel for the petitioner has taken me through the Form VAT 07A which is filed by the respondent Company for the period 01.04.2011 to 30.06.2011 which shows that an amount of Rs.4,78,944/- has been paid by the petitioner-Shankar Steel Supplier. For the same period, the same figure of Rs.4,78,944/- is shown in the VAT returns of the petitioner.

10. In my opinion, this pertains to a very small period of three months. It is not for this Court to sit and serve through the evidence and record a finding of fact as to whether the amount is due and payable. The books of accounts/ running account of the petitioner would have to be proved to show that the said amounts are due and payable to the petitioner. It is also a matter of fact that the two invoices being Ex.564 dated 04.03.2011 for Rs. 11,36,603/- and Ex.573 dated 09.03.2011 for Rs.17,69,989/- show that these goods were returned in view of the entries made in the transport receipts. Hence, no clear finding can be drawn that the debt is due and payable to the

petitioner.

11. It is settled legal position that it is not the function of the company court to enter into an adjudication of disputed facts which should have been the subject matter of the Civil Suit.

12. Reference in this context may be had to the judgement of the Supreme Court in *IBA Health (I) Pvt. Ltd. vs. Info-Drive Systems Sdn.Bhd., (2010) (4) CompLJ 481 (SC)* where the Supreme Court held as follows:-

“17. The question that arises for consideration is that when there is a substantial dispute as to liability, can a creditor prefer an application for winding-up for discharge of that liability? In such a situation, is there not a duty on the Company Court to examine whether the company has a genuine dispute to the claimed debt? A dispute would be substantial and genuine if it is bona fide and not spurious, speculative, illusory or misconceived. The Company Court, at that stage, is not expected to hold a full trial of the matter. It must decide whether the grounds appear to be substantial. The grounds of dispute, of course, must not consist of some ingenious mask invented to deprive a creditor of a just and honest entitlement and must not be a mere wrangle. It is settled law that if the creditor's debt is bona fide disputed on substantial grounds, the court should dismiss the petition and leave the creditor first to establish his claim in an action, lest there is danger of abuse of winding-up procedure. The Company Court always retains the discretion, but a party to a dispute should not be allowed to use the threat of winding-up petition as a means of forcing the company to pay a bona fide disputed debt.”

13. The respondent has raised disputes that are *bona fide*. Clearly, the contentions which are now being raised by the petitioner are the issues which ought to have raised before the Civil Court. There is no merit in the

present petition. Needless to add that any observations made herein will not in any manner prejudice the rights of the parties.

14. It would be for the petitioner to approach the appropriate civil court for adjudication of its claim for any period spent while adjudication of the present winding up petition was pending, the petitioner can claim condonation of delay as per law, if required.

15. The petition stands dismissed. Pending applications, if any, also stand dismissed.

JAYANT NATH, J

DECEMBER 06, 2018/rb/n
corrected and released on 20.12.2018.



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