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

\+ **CO.APP. 13/2019**

SHANKAR STEEL SUPPLIER ..... Appellant

Through: Mr.Siddharth Acharya, Advocate.

versus

RAMPUR ENGINEERING COMPANY LIMITED ..... Respondent

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE ASHA MENON

<u>O R D E R</u>

% **29.05.2019**

<u>CM APPL. 26622/2019 (exemption)</u>

1. Allowed, subject to all just exceptions.

<u>CM APPL. 26620/2019 (delay)</u>

2. For the reasons explained in the application, the delay in filing the appeal is condoned and the application is allowed.

<u>CO.APP. 13/2019 and CM APPL. 26621/2019</u>

3. This is an appeal against a judgment dated 6th December 2018 passed the learned Company Judge dismissing the Appellant's Company Petition No.395 of 2014 seeking the winding up of the Respondent under Sections 433(e) and (f), 434 and 439 of the Companies Act, 1956.

4. The case of the Appellant was that the Respondent-company which undertook the supply of steel scraps, had a running account with the

Appellant. In March 2013, an amount of Rs.42,78,124/- stood pending which was to be paid by the Respondent. As of 13th February 2014, the Respondent made a part payment of Rs.7,20,000/- which then left a sum of Rs.35,58,124/- for recovery pending. Thereafter, the Appellant sent a legal notice dated 24th February 2014 to the Respondent to complete the remaining payment. When there was no response to the same, the winding up petition under the Companies Act, 1956 was filed.

5. Before the learned Single Judge, the Appellant had relied on a running ledger account for substantiating its plea that the above amount was payable by the Respondent. The learned Single Judge found that far from admitting the claims made by the Appellant, the Respondent denied the Statement of accounts and even went to the extent of denying that the Appellant had supplied material to it for 5 years on running account basis. It was noted that under Section 34 of the Indian Evidence Act, 1872 it would be for the Petitioner to establish the debt by proving the books of accounts.

6. Having analysed the documents placed on record including the invoices Ex. Nos. 564 and 573 relied upon by the Appellant to prove debt owed to it by the Respondent, the learned Single Judge on facts found that the issues raised by the Appellant ought to have been raised by it before the Civil Court since the claim itself was in question.

7. Having heard learned counsel for the Appellant, this Court is not persuaded to take a different view from that of the learned Company Judge. Learned counsel for the Appellant referred to certain replies received by the

Appellant pursuant to applications by him to the Commercial Tax Department, Rajasthan under the Right to Information Act, 2005 concerning the transactions involving the Respondent. Those by no means constitute any acknowledgment of the debt purportedly owed by the Respondent to the Appellant. There is nothing to show that there is an admission of the debt by the Respondent.

8. The appeal is accordingly dismissed. The pending application is also dismissed.

S. MURALIDHAR, J.

ASHA MENON, J.

MAY 29, 2019
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