

\$~CP-16

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

+ CO.PET. 394/2014

KMA ELECTRICALS (P)LTD Petitioner
Through Mr.Shiv Khorana, Adv.

versus

NITYA ELCTRO CONTROLS PVT LTD. Respondent

Through Mr.Rajesh Banati and Mr.Ankit
Banati, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **20.03.2019**

1. This petition is filed under sections 433, 434 and 439 of the Companies Act, 1956 (*hereinafter referred to as the 'Act'*) seeking winding up of the respondent company.
2. The case of the petitioner is that the petitioner has been supplying electrical items to the respondent. The last order was placed by bill No.0599. The respondent has only made part payment.
3. On 10.10.2013 winding up notice was issued. Second winding up notice was also issued on 02.04.2014.
4. I have heard the learned counsel for the petitioner. He states that all the supplies as made had been accepted by the respondent and the respondent company even had delivered the C-Form of all the supplies. He also relies upon the statement of account to state that the claim of the petitioner is within the period of limitation. The last entry of the statement of account is of January, 2013 and hence states that the petition is within the period of limitation.

5. The respondent however denies the said dues. He firstly submits that there is no mutual open and current account existing between the parties. He secondly submits that the statement of account filed by the petitioner is false. He relies upon of his own statement of account which shows nil payment payable by the respondent company. Regarding C-Form he submits that they belongs to 2008 and do not in any manner pertain to the dues claimed.

6. I may only note that the entire basis of the claim is that the parties having maintained a mutual open and current account and a sum of Rs.6,50,911.95 is due and payable by the respondent company as per the account. The respondent denies this account. He has filed his own statement of account showing nil balance.

7. It is not for the company court to start adjudicating the validity and authenticity of the accounts filed by the respective parties. The remedy for this would not lie in a winding up petition.

8. There is no merit in the present petition. The petition is dismissed. All pending applications, if any, is also dismissed. Liberty is granted to the petitioner to take steps to recover his alleged dues by filing appropriate proceedings before a civil court. In case, such a proceeding is filed, the said court shall not be bound by the observations made hereinabove.

JAYANT NATH, J.

MARCH 20, 2019/v