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

% **Date of decision: 2nd May, 2024**

+ **CO.PET. 218/2016 & CO. APPL. 923/2016, CO. APPL. 444/2024**

ADOR WELDING LTD. & ANR Petitioner
Through: **Ms. Jahanvi Worah, Adv.**

versus

BANSAL WELD PVT. LTD. Respondent
Through: **Mr.Madhav Goel and Mr. Avik Sarkar, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The instant company petition has been instituted under Sections 433 (e) and 434 of the Companies Act, 1956 seeking winding up of the respondent company and is predicated on the non-payment of an outstanding amount of Rs. 31,34,970/- which is claimed to be payable and due.

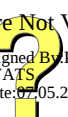
2. Briefly stated, it is the case of the petitioner that the respondent company placed various orders with the petitioner for supply of welding equipment and such equipment was duly received by the respondent company without any demur or protest as to the quantity, quality or price thereof. Pursuant to the said orders for supply of welding equipment, the petitioner raised various invoices for a sum totalling Rs. 31,34,970/- which was to be paid by the respondent company. However, despite repeated reminders, the respondent



company failed to make good the payment for the due amount, and consequently, the petitioner was constrained to serve a legal notice dated 05.10.2015, calling upon the respondent company to discharge its liability. Since there was no response to the said legal notice, nor was the amount repaid by the respondent, the present petition for winding up was instituted.

3. A reply dated 07.03.2017 has been filed on behalf of the respondent company whereby the amount said to be outstanding and payable, as claimed by the petitioner, has been denied. It has been stated therein that the present petition entails disputed questions of fact which can only be adjudicated after the parties have led evidence, and that as such they form triable issues which cannot be determined in a winding up petition. Additionally, it is submitted that the respondent called upon the petitioner to not raise any invoices for the goods concerned, as the same were of an inferior quality and that the petitioner had approached a client of the respondent company for the supply of certain equipment, without the knowledge of the respondent company in an attempt to poach the clients of the respondent company, It has further been submitted that the respondent company has at no point admitted any liability or debt payable to the petitioner.

4. Having heard the learned counsels for the parties as also on a perusal of the record, at the outset, I find that the contentions raised by the parties constitute triable issues. It is a settled position of law that the Company Court cannot enter into an adjudication of disputed facts, wherein a finding on facts is to be recorded as regards whether the amount stated is due and payable, and such a case would be the





subject matter of a civil suit.

5. In the face of the aforesaid proposition of law, learned counsel for the petitioner invited reference to decision in **M/s. Shankar Steel Supplier v. M/s. Rampur Engineering Company Limited**¹ and it is prayed that they may be permitted to withdraw the present petition with liberty to institute proceedings before the appropriate commercial court for adjudication of their claims in accordance with law. It is further requested that the petitioner be accorded the benefit of Section 14 of the Limitation Act, 1963².

6. In the cited case of **M/s. Shanker Steel Supplier (supra)**, the Co-ordinate Bench of this Court also found that winding up petition was raising certain contentious and triable issues and in the said

¹ CO. PET. 395 of 2014 decided on 06.12.2018

² **14. Exclusion of time of proceeding bona fide in court without jurisdiction.**—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.



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context it was held as under:-

"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 (1) Pvt. Ltd. vs. Info-Drive Systems Sdn.Bhd., (2010) (4) CompL 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.

7. Therefore, in view of the foregoing discussion, the present



petition is dismissed, and pending applications, if any, are disposed of. The petitioner is granted liberty to institute proceedings before the appropriate Commercial Court and the petitioner may seek condonation of delay, in accordance with law, for the period of time which has passed while the adjudication of these winding up proceedings was pending.

8. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J.

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