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

% **Date of decision: 7<sup>th</sup> May, 2024**

+ CO.PET. 303/2014 & CO.APPL. 1084/2017

M/S NEWAGE SCAFFOLDINGS PVT. LTD..... Petitioner

Through: Mr. R.K.Sahni and Ms.Pooja  
Handa, Advocates.

versus

M/S PARAMOUNT INFRAVENTURE PVT. LTD. & ORS.

..... Respondents

Through: Mr. Akhil Krishan Maggu,  
Advocate for R-5.

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**DHARMESH SHARMA, J. (ORAL)**

1. This company petition has been preferred seeking winding up of the respondent company – M/s. Paramount Infraventure Pvt. Ltd., as provided for under Section 433(e) of the Companies Act, 1956<sup>1</sup> read with Sections 434 and 439 of the Act and is predicated on the non-payment of an outstanding amount Rs. 16,86,548/- along with due interest.

2. Briefly stated, it is the case of the petitioner that the respondent company placed an order for certain construction equipment and steel scaffoldings by way of written purchase orders dated 11.04.2012, and such goods were duly supplied by the petitioner to the respondent company at the required site on 24.04.2012. Thereafter, the petitioner raised certain bills/invoices dated 20.04.2012 and 26.04.2012 against said purchase orders for an amount of Rs. 17,67,099/- and it was

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<sup>1</sup> The Act



agreed that in case of failure to make such payment within 25-30 days of the supply of goods, the respondent company would be liable to pay interest @ 18% per annum. Despite repeated reminders, the respondent company failed to discharge its liability, and consequently, the petitioner issued a demand letter to the respondent company dated 14.01.2014. Since the respondent company did not reply to the said demand letter, the petitioner was constrained to serve a statutory legal notice dated 23.01.2014, calling upon the respondent company to discharge its liability. However, the respondent company did not make payment of the outstanding amount, and therefore, the present winding up proceedings were instituted. It is relevant to note that the legal notice dated 23.01.2014 sent by the petitioner was replied to vide letter dated 10.02.2014 sent through Counsel, wherein it is stated that although part payments were made, on finding out that the petitioner was inflating the invoices raised and that they had in a malafide manner, supplied excess materials, the respondent company was constrained to stop making further payments.

3. A reply dated 25.07.2015 has been filed on behalf of the respondent company and *inter alia* it is stated that there is no debt as covered under Sections 433 and 434 of the Act, that is payable to the petitioner. It is further stated that the account for supply of equipment and payments thereon is a running account between the parties by way of which orders totalling to a sum of over Rs. 58 Lacs have been placed. In contravention to the case of the petitioner, it is submitted on behalf of the respondent that the petitioner has been routinely overcharging the respondent company and in fact, the petitioner is





14 of the Limitation Act, 1963<sup>2</sup>, and the delay in filing a suit before the appropriate Commercial Court be condoned accordingly.

6. Reference may be invited to the decision of a Co-ordinate Bench of this Court in CO.PET. 395/2014 titled *M/s. Shankar Steel Supplier v. M/s. Rampur Engineering Company Limited*, wherein it was held that the issues in contention ought to have been raised before the Civil Court, and it was held therein 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-*

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<sup>2</sup> **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.



*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 company petition is dismissed as withdrawn, 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 been spent during the pendency of these winding up proceedings.

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

**DHARMESH SHARMA, J.**

**May 07, 2024/<sub>sp</sub>**