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

% Date of decision: 09th May, 2024

+ CO.PET. 920/2015, CO.APPL. 3642/2015, CO.APPL.
445/2018

AMIT ARORA

..... Petitioner

Through: Mr. Abhinav Chauhan,
Advocate.

versus

MMR INFRASTRUCTURE DEVELOPERS PVT LTD

..... Respondent

Through: Mr. Atul Kumar and Mr.
S.K.Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This company petition has been instituted under Sections 433(e), 434(1)(A) and 439 of the Companies Act, 1956¹ seeking winding up of the respondent company – M/s. MMR Infrastructure Developers Pvt. Ltd., on the ground of non-payment of dues amounting to Rs. 9,01,949.50/- along with applicable taxes and interest.

2. Briefly stated, the petitioner is an Architect by profession who was engaged by the respondent company for the purpose of rendering consultancy to them in respect of an upcoming project of the respondent company at Bulandshahar, Uttar Pradesh. Pursuant to the

¹ The Act



same, the parties entered into an agreement dated 04.02.2013 in the form of a time-bound contract for a period of 15 months, and it was agreed that the petitioner would receive a sum of Rs. 30,50,000/- plus taxes, as consideration in the form of a Professional Fees paid towards the services rendered by him to the respondent company. It is stated on behalf of the petitioner that the respondent company made only part payment to the tune of Rs. 21,48,750/- and that on the last payment of Rs. 5,00,000/- paid by way of two cheques, no service tax was paid by the respondent company.

3. It is the case of the petitioner that despite repeated reminders, the respondent company did not discharge its liability, and therefore, the petitioner was constrained to serve a statutory legal notice dated 22.10.2014, calling upon the respondent company to repay the outstanding amount due to the petitioner. The respondent company replied to the said statutory notice vide a reply letter dated 10.11.2014 through its counsel. It is stated on behalf of the petitioner that the contentions raised in the said reply were frivolous and concocted merely as an afterthought, and despite the demand notice, the respondent company failed/neglected to make payment of the outstanding amount due to the petitioner, and thus, the present petition was instituted.

4. The respondent company filed its reply to the present company petition on 12.05.2016, wherein it is stated that there exists no outstanding liability of the respondent company to the petitioner, and as such the petitioner does not qualify as a 'Creditor' or contributory as provided for under Section 439 of the Act. Further, it is stated that



at no point of time has the respondent company admitted or acknowledged any “debt due” to the petitioner and that the winding up process, as envisaged under the Act, cannot be instituted as a means of recovery of a “disputed debt”. It has been submitted on behalf of the respondent company that the petitioner has an alternate and efficacious remedy and can institute appropriate proceedings before a civil court in case he wishes to recover the amount allegedly due and liable to be paid by the respondent company. Alternatively, it has also been stated in the reply of the respondent company that the services rendered by the petitioner were deficient and that said services were not rendered as per the scope of work prescribed in the agreement dated 04.02. 2013 or to the satisfaction of the respondent company.

5. I have heard the learned Counsels for the parties and have carefully perused the record of the present matter.

6. At the outset, it prima-facie appears that the issues raised by the learned counsel on behalf of the respondent company regarding deficiencies in the services rendered by the petitioner appears to be bona-fide and not illusory and the same are triable issues which cannot be decided without recording of evidence. Needless to state the Company Court is not expected to hold a full-fledged trial over such matters and it would be apposite that such matter be entertained and be adjudicated upon by the competent civil court. In essence the disputed questions of law and facts cannot be adjudicated by this Court. Face with such situation, learned counsel for the petitioner urged that he may be accorded the benefit of Section 14 of the Limitation Act, 1963.



7. In this regard, reference can be made to decision of a Co-ordinate Bench of this Court in a similar company petition bearing CO.PET. 395/2014 titled *M/s. Shankar Steel Supplier v. M/s. Rampur Engineering Company Limited*, where in almost similar facts and circumstances it was observed 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-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.

8. In light of the aforementioned decision, as also the predicament persisting in the present case, the present company petition is dismissed, and pending applications, if any, are disposed of. The petitioner is granted liberty to institute appropriate proceedings before the Commercial Court, if so desired.
9. The petitioner shall be at liberty to seek condonation of delay in terms of Section 14 of the Limitation Act, 1963, for the period of time which has been spent in pursuing his claim in the present winding up proceedings.
10. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.
11. The present petition is disposed of accordingly.

DHARMESH SHARMA, J.

MAY 09, 2024

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