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COMP-12-2010

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 22nd OF JUNE, 2026COMPANY PETITION No. 12 of 2010*MAHAVIR ENTERPRISES**Versus**M/S GWALIOR SUGAR COMPANY LTD.*

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Appearance:

Shri Alok Kumar Sharma - Advocate for the petitioner.

Dr. Jitendra Singh Kushwah - Advocate for the respondent.

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ORDER

1. As per the report of the Mediator, conciliation between the parties is not possible, therefore, matter has been placed before this Court by the Mediator.

2. Since conciliation is not possible between the parties, arguments of the petition are heard finally with the consent of the parties.

3. The present company petition has been filed under Section 433(e), 434(1)(a) & 439(1)(d) of the Companies Act seeking winding up of respondent company.

4. The petitioner- Mahavir Enterprises is a proprietorship concern (hereinafter referred to as 'Firm') engaged in the business of SS Tubes, Boiler Quality Steel Tubes, Brass Tubes, 70/30 Alloy, Gun Metal Ingot, Brass, Copper, SS Rods, Bus Bars etc and its office is situated in Mumbai.

5. The respondent- M/s Gwalior Sugar Company Ltd. is a company



registered under Companies Act and its registered office is situated at Dabra, District Gwalior (M.P.) (hereinafter referred to as "Company").

6. The present petition has been filed by the firm alleging that the Company placed orders for the supply of Steam Pipes, MS Saft Band, MS Pipes, and SS Tubes of various dimensions on 24-08-2006 and 30-08-2006 (Annexure P/1). The firm confirmed the order and also communicated the rates of the goods to the Company vide communication dated 01-09-2006 (Annexure P/2). The firm thereafter accepted the order and supplied the demanded goods to the Company vide Dispatch Invoice No.172 dated 19-09-2006, Invoice No.180 dated 12-10-2006, Invoice No.192 dated 13-11-2006, and Invoice No.193 dated 17-11-2006.

7. It is further alleged that the Company confirmed receipt of the goods vide letter dated 15-06-2007 (Annexure P/7) and assured the firm that the bills will be passed shortly. However, the Company made only part payment for the goods. The firm requested the Company to make payment of the remaining amount; however, the same was not paid. The firm sent reminders to the Company on 05-04-2008 (Annexure P/5), 16-05-2008, 22-05-2008, 26-06-2008, 21-07-2008 and 27-07-2008, collectively filed as Annexure P/6. The firm has stated that the goods were accepted by the Company without any complaint; however, it did not make full payment. The firm thereafter sent a demand notice to the Company on 26-07-2008 (Annexure P/7), asking it to make payment of the remaining amount, failing which appropriate legal proceedings would be initiated. The Company, however, still did not make payment of the entire amount.



8. The firm has stated in the petition that it is a creditor and the Company is a debtor within the meaning of the Companies Act, and the Company is liable to make payment of Rs.9,10,360.64. Having failed to pay the amount, the Company is liable to be wound up under the aforesaid provisions.

9. With the aforesaid pleadings the firm has prayed for following reliefs:

"(i) direct that the respondent company namely M/s Gwalior Sugar Company Ltd: be wound up under the direction of this Hon'ble Court.

(ii) to appoint Liquidator attached to this Hon'ble court as Official Liquidator to wind up the respondent company M/s Gwalior Sugar Company Ltd. under the supervision of this Hon'ble court.

(iii) issue all other necessary directions as may be required including the direction that the advertisement of the petition may be made in accordance with law

(iv) award the cost of the present proceedings in favour of the petitioner and against the respondent.

(v) pass such other and further orders and/or directions which this Hon'ble Court may deem fit and just in the facts and circumstances of the case in favour of the petitioner and against the respondent company."



10. The Company has filed its reply denying the claim of the firm. The factum of having received the invoices is accepted, however, it is alleged that the invoices raised by the firm were not as per the rates agreed between the parties. It is stated that the Company made payment after correcting the bills. As per the submissions made in the return, the Company has, in fact, made excess payment to the firm, which has been accepted by the firm without any objection. The Company, therefore, asserts that there is no default on its part and that the claim raised by the firm is false. It is, therefore, submitted that prayer for winding up of the Company is not accepted.

11. It is also stated in the return that the Company sent a letter dated 30-08-2008 (Annexure R/4) asking the firm to send its representative to reconcile and settle the bills. However, nobody came from the firm, and the firm remained silent for a long time. The Company alleges that the excess amount of Rs.1,76,129/- has been paid to the firm.

12. Learned counsel for the parties made arguments as per their respective pleadings noted hereinabove.

13. Arguments heard and record perused.

14. The winding up of the company under Sections 433(e), 434(1)(a), and 439(1)(d) of the Companies Act is permissible when the amount claimed is found to be due to the respondent. However, if there is a bona fide dispute with regard to the liability of the respondent to pay the amount and adjudication of the claim involves disputed questions of fact, the petition for winding up under the aforementioned provisions is not maintainable.

15. The Apex Court considering the aforesaid aspect in the case of



IBA Health (India) Pvt. Ltd. Vs. Info-Drive Systems SDN. BHD reported in (2010)10 SCC 553 wherein in para 20 & 23 the Court held as under:

"20. 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.

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23. The principles laid down in the abovementioned cases indicate that if the debt is bona fide disputed, there cannot be



"neglect to pay" within the meaning of Section 433(1)(a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts is not substantiated and non-payment of the amount of such a bona fide disputed debt cannot be termed as "neglect to pay" so as to incur the liability under Section 433(e) read with Section 434(1)(a) of the Companies Act, 1956."

16. Keeping in view the aforesaid legal position, if the facts of the present case are seen, then it is gathered that there is serious dispute regarding the rate of goods supplied by the firm to the Company. Further, the company has filed statement of its account which, as per its stand, shows excess payment made to the firm. The company also asked the firm to send its representative to reconcile and settle the bills. However, no steps were taken by the firm in this regard. The above-mentioned facts in the return have not been disputed by the firm by filing any rejoinder.

17. Considering the aforesaid, the dispute raised by the company with regard to its liability to make payment to the firm appears to be bona fide and, therefore, it is not permissible to direct winding up of the Company. Instead, the parties to this petition are required to get their claims settled by initiating appropriate proceedings before appropriate forum.

18. In view of the above, the direction for winding up of the respondent Company cannot be issued in the present petition. The petition accordingly fails and is hereby **dismissed**. However, the firm as well as the



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Company are at liberty to initiate appropriate proceedings for realization of their respective claims before the appropriate forum.

**(ASHISH SHROTI)
JUDGE**

Anil*