

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (HCW) 72/HDB/2017
U/s 433, 434 and 439 of the Companies Act, 1956

In the matter of:

M/s. Berger Paints India Private Limited,
Registered office at Berger House,
129 Park Street,
Kolkata 700017

... Petitioner

Versus

M/s. Transtroy (India) Limited,
Registered office at: D.No : 8-14- 28,
Tobacco Colony,
Guntur,
Andhra Pradesh- 522001

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

...Respondent



Judgement delivered on: 14.07.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanla, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present

Counsels for Petitioner : Mr. G. Bhupesh
Counsels for Respondents : Mr. Ch. Srinivasa Rao

Per: Rajeswara Rao Vittanala

Judgement

1. The present Company petition bearing CP(HCW) 72/HDB/2017(CPSR 8111 of 16) was filed by M/s. Berger Paints India Private Limited(the petitioner) against M/s Transtroy (India) Limited initially before the Hon'ble High Court of Judicature, at Hyderabad, for the State of Telangana

and the State of Andhra Pradesh under Section 433, 434 and 439 of Companies Act, 1956 by inter-alia seeking directions to wind up M/s Transtroy (India) Limited (respondent company) , appoint Official Liquidator etc.

2. In pursuance of notification dated 15th December, 2016 issued by Union of India, the Hon'ble High court was pleased to transfer the case files to this Tribunal vide its order dated 2.1.2017. And thus, the case is taken on record of this Tribunal and deciding it.
3. M/s Berger Paints India Private Limited, the petitioner herein, is a company incorporated under the provisions of the Indian Companies Act, 1913 having its registered office at Berger House, 129 Park Street, Kolkata 700017. The Petitioner is a manufacturer of various kinds of paints, including paints used in making roads. The respondent has been purchasing various paints and related products from the Petitioner on agreed terms pursuant to purchase orders placed by the Respondent on the petitioner from time to time for the Respondent's projects at various sites. And M/s. Transtroy (India) Limited, the respondent herein, is also a Company incorporated under the provisions of Companies Act, 1956 having its Registered office at: D.No: 8-14- 28, Tobacco Colony, Guntur, Andhra Pradesh, 522001.
4. It is stated that the respondent is indebted to the Petitioner for a sum of Rs. 1,13,67,755.05/- (Rupees One Crore Thirteen Lakhs Sixty Seven Thousand Seven Hundred and Fifty Five and Five paise only.) together with further interest at the rate of 18% per annum from 1st September, 2016, till date of realisation. The respondent, from time to time has admitted its liabilities but failed and neglected to make payment of the admitted outstanding dues. Since the Respondent has failed and neglected to pay its dues, the petitioner was constrained



to issue a statutory notice dated 12.05.2016 under Section 434 of the Companies Act, 1956 upon the Respondent at its Registered Office and other offices.

5. The Respondent has failed and neglected to pay the aforesaid admitted dues of the Petitioner despite the fact that the said dues are admitted by the Respondent. A period of 21 days has elapsed from the date of the receipt of the said notice by the respondent but the Respondent has not made any payments. In the premises there arises the statutory presumption under Section 434 of the Companies Act, 1956 the inability on the part of the Respondent to pay its dues to the Petitioner. No part of the claim of the Petitioner is barred by the laws of limitation.



6 Heard Shri G. Bhupesh for petitioner and Sri Ch. Srinivasa Rao for the respondent and have perused all the documents filed in their support.

7. Both the counsels have filed a joint memo dated 14.07.2017 by stating that the issue was amicably settled and brought down the terms of settlement to writing vide Agreement dated 11.07.2017. Therefore, they have submitted that petitioner may be permitted to withdraw Company petition with a liberty to the petitioner to pursue Corporate Insolvency Resolution Process against respondent under IBC, 2016 or other legal actions as available to them as and when need arises.
8. We have perused the agreement dated 11th July, 2017 made between the petitioner and respondent and the original claim of the petitioner was finally settled for a sum of Rs. 72,63,619 and instalment dates for payment are also clearly mentioned in the agreement. Hence, it would be just and proper to permit the petitioner to withdraw the petition as prayed for. The memo dated 14.07.2017 is taken on record.

9. In view of the above facts and circumstances of case, the Company petition bearing CP (HCW) 72/HDB/2017 (CP (SR) No. 8111 of 2017) is disposed of as withdrawn by reserving right to petitioner to take appropriate legal proceedings in case, the respondent failed to adhere to the said agreement dated 11th July. 2017.



v Sd/-
Ravikumar Duraisamy
Member (T)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

Sd/-
Rajeswara Rao Vittanala
Member (J)

Order received by the
Registry on 10/8/17

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER. CP(HCW) 72/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT. 14-7-2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 10-8-2017