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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**  
**(CHHATTISGARH)**

**ORIGINAL JURISDICTION**

**COMPANY PETITION NO. 2 /2010**

**IN THE MATTER OF:**      The Companies Act 1956

**AND**

**IN THE MATTER OF**      An application under section  
433, 434 and 439 of the said  
Act.

**AND**

**IN THE MATTER OF:**      Smt. Sarika Agarwal  
W/o Manoj Agarwal, aged about  
39 years, resident of Kadambari  
Nagar Society through Power of  
Attorney Sri Rajesh Agarwal  
S/o Sheo Charan Agarwal, aged  
about 44 years, resident of  
Kadambari Nagar, Durg (C.G.)

**PETITIONER CREDITOR**

**IN THE MATTER OF:**      Bhilai Cement Company (P.) Ltd.  
a company incorporated under  
the provisions of the Companies  
Act, 1956 having its registered  
office at 62-63 Industrial Growth  
Centre, Borai, Post Office  
Rasmada, District Durg  
(Chhattisgarh) within the  
jurisdiction aforesaid.

**RESPONDENT COMPANY**

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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR BILASPUR**  
**(CHHATTISGARH)**

Single Bench



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HIGH COURT OF CHHATTISGARH : BILASPUR

COMPANY PETITION NO. 01 OF 2010

PETITIONER

Pradeep Kumar Agarwal

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.

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COMPANY PETITION NO. 02 OF 2010

PETITIONER

Smt. Sarika Agarwal

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.

COMPANY PETITION NO. 03 OF 2010

PETITIONER

Sri Rajesh Agarwal

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.

COMPANY PETITION NO. 04 OF 2010

PETITIONER

Smt. Nisha Agarwal

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.

COMPANY PETITION NO. 05 OF 2010

PETITIONER

Smt. Pushpa Devi Tibrewal

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.

COMPANY PETITION NO. 07 OF 2010

PETITIONER

Rajendra Singh Airen

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.  
And

COMPANY PETITION NO. 08 OF 2010

PETITIONER

Smt. Madhu Agarwal

Versus

RESPONDENT

Bhilai Cement Company (P) Ltd.

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri R.R. Soni & Shri Jitendra Gupta, Advocates for the  
petitioners.

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ORDER

(Passed on this 31<sup>st</sup> day of July, 2012)

1. Company Petitions No. 1, 2, 3, 4, 5, 7 and 8 of 2010 involve the same facts and question of law and, as such, they are being considered and decided by this common order.
2. By these petitions, filed under the provisions of Sections 433, 434 and 439 of the Companies Act, 1956, (*for short "the Act, 1956"*) the petitioners are seeking a direction to wind up the respondent Company namely; Bhilai Cement Company Private Ltd. and the official liquidator be directed to take charge of books, assets and properties of the respondent company, forthwith.
3. The case of the petitioners, in short, is that the respondent company is indebted to the petitioners in the sum of Rs. 270250/-, Rs. 216200/-, Rs. 216200/-, Rs. 162150/-, Rs. 540097/-, Rs. 512385/- and Rs. 216200/-, respectively, on interest at the rate of 24% per annum. According to the petitioners, due to losses incurred by the respondent Company the interest payable on the said amount was not paid since 1<sup>st</sup> April, 1999. In fact, the respondent company in its profit and loss Account and Balance Sheet has shown the aforesaid details of the amount of the petitioners. However, on account of change of the management the names of the petitioners were deleted in an illegal manner from the Balance Sheet of the Company for the financial year ended on 31<sup>st</sup> March, 2007.

4. According to the petitioners, by letter dated 29.12.2006 the respondent company handed over cheques to the petitioners payable at IDBI Bank. On presentation of the said cheques before the bank for payment, the same were dishonoured with a remark "Stop Payment". The reasons for stop payment of the cheques are best known to the respondent company.
5. On perusal of the facts, it is found that the petitioners have demanded for payment of the amount as aforesaid, by legal notice dated 18.05.2007 (Annexure D to Comp. Pet. No. 01/2010), 23.07.2007 (Annexure D to Comp. Pet. No. 02/2010), 27.06.2007 (Annexure D to Comp. Pet. No. 03/2010), 23.07.2007 (Annexure D to Comp. Pet. No. 04/2010), 29.03.2007 (Annexure D to 05/2010), 24.02.2007 (Annexure D to Comp. Pet. No. 07/2010) and 23.07.2007 (Annexure D to Comp. Pet. No. 08/2010), under the provisions of Section 138 of the Negotiable Instrument Act, 1881.
6. In response to the said legal notices, the advocate of the respondent company has denied the relationship between the petitioners and the respondent vide reply dated 01.06.2007 (Annexure E to Comp. Pet. No. 01/2010), 08.08.2007 (Annexure E to Comp. Pet. No. 02/2010), 06.07.2007 (Annexure E to Comp. Pet. No. 03/2010), 08.08.2007 (Annexure E to Comp. Pet. No. 04/2010) and 08.08.2007 (Annexure E to Comp. Pet. No. 08/2010). In respect of company petitions No.5/2010 & 7/2010, no reply is on record. It was further stated that the banker of the respondent company *i.e.* IDBI was directed to stop payment of such cheques, which were issued to the petitioners.
7. Thus, the question which arises in these petitions, is asto whether in the above stated facts which are, in narrow compass, a petition

for winding up under the provisions of Sections 433, 434 and 439 of the Act, 1956 is maintainable. For dishonour of the cheques, a petition under the provisions of Sections 433, 434, 439 of the Act, 1956 is not maintainable before the Company Court, as there is a separate Act viz. the Negotiable Instrument Act, 1881 (for short 'the Act, 1881'), which provides for imposition of punishment for stopping the clearance of the cheque and also for recovery of the amount.

8. It is informed at the Bar that cases have already been filed before the criminal Court for appropriate punishment under the provisions of the Act, 1881. Thus, dishonour of cheques cannot be a ground for directing winding up of the respondent company.
9. The respondent Company has denied the relationship as well as the amount, which, according to the petitioners, is due and payable to the petitioners, in its response to the notice, as aforesaid.
10. A petition for winding up of a company may be filed under Section 433 (e) of the Act, 1956 if the company is unable to pay its debts in the instant cases. Section 434 (1) (a) provides that if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding Rs.1.00 lac then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.

11. A legal notice under the provisions of Section 132 of the Act, 1881 has been sent, which is not a requirement for seeking winding up of a company under the provisions of the Act, 1956.
12. The relationship and amount, which, according to the petitioners, is due and payable to the petitioners, is also disputed by the respondent company.
13. The Supreme Court in *IBA Health (India) Private Limited v. Info-Drive Systems SDN. BHD.*<sup>1</sup>, held as under :

“21. In this connection, reference may be made to the judgment of this Court in *Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami and another*, in which this Court held that : (Comp Cas p. 463)

‘It is well settled that ‘a winding-up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding-up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the court....’

22. The above mentioned decision was later followed by this Court in *Madhusudan Gordhandas and Co. v. Madhu Woollen Industries Pvt. Ltd.* The principles laid down in the abovementioned judgment have again been reiterated by this Court in *Mediquip Systems (P) Ltd. v. Proxima Medical Systems (GMBH)*, wherein this Court held that the defence raised by the appellant company was a substantial one and not mere moonshine and had to be finally adjudicated upon on the merits before the appropriate forum. The above mentioned judgments were later followed by this Court in *Vijay Industries v. NATL Technologies Ltd.*

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

<sup>1</sup> (2010) 10 SCC 553

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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."

In *IBA Health (India) Private Limited* (supra), the Supreme Court further held as under :

"35. We have referred to the above aspects at some length to impress upon the Company Courts to be more vigilant so that its medium would not be misused. A Company Court, therefore, should act with circumspection, care and caution and examine as to whether an attempt is made to pressurize the company to pay a debt which is substantially disputed. A Company Court, therefore, should be guarded from such vexatious abuse of the process and cannot function as a debt collecting agency and should not permit a party to unreasonably set the law in motion, especially when the aggrieved party has a remedy elsewhere."

14. The petitioners have not made out a case for entertaining these petitions for winding up of the respondent Company under the above-stated provisions when the petitioners have remedy elsewhere.
15. Resultantly, all these company petitions are dismissed.

Amit/  
Gowri

Sd/-  
**Satish K. Agnihotri**  
Judge