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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 347 OF 2014

M/s Viiking Technology LLC	...Petitioner
VS	
M/s Verchaska Infotech Pvt. Ltd.	...Respondent.
.....	
Mr Omprakash Parihar for the Petitioner	
Mr Abhineet Sharma for the Respondent.	
.....	

**CORAM : S.C. GUPTA, J.
OCTOBER 19, 2015**

P.C. :

The Company Petition seeks winding up of the Respondent company on the ground of its inability to pay its debts. The Respondent is engaged in the business of providing software services. By a Letter of Intent, the Petitioner engaged services of the Respondent for providing on-line software for their travel portal. The Letter of Intent ("LOI") is placed on record. According to this Letter of Intent, the total application cost was about Rs.52.33 lacs. It is the Petitioner's case that in pursuance of this LOI, two invoices were raised by the Respondent. The Petitioner paid a sum of about Rs.47.54 lacs to the Respondent for the work to be carried out under LOI. It is the Petitioner's case that the Respondent never carried out these works and, in the premises, the Petitioner is entitled to recover the entire amount of Rs.47.54 lacs paid by the Petitioner to the Respondent. The Petitioner has issued a statutory demand notice which is not replied to by the Respondent. In its reply to the Petition, the Respondent submits that the Respondent worked on deliverables envisaged in the LOI but was facing challenges in completing its scope of work and other additional deliverables as the Petitioner was going through massive management changes time and again. The Respondent submits that the Respondent was also facing various bugs whilst providing services which were regularly removed by extra efforts of the Respondent. The Respondent also refers to the correspondence between parties whereunder the Petitioner requested the Respondent to relieve them of the final

tranche of 35 % of the LOI amount due to their financial constraints. It is the case of the Respondent that whilst the programming work was underway, on 26 October 2013, the Petitioner expressed displeasure over the Respondent's work and gave two options to the Respondent, namely, to either perform the work in a given time frame or refund the invoice amounts to the Petitioner. The Respondent claims that the Respondent thereupon intimated a reasonable time frame to the Petitioner for completion of the work. Instead of accepting this time line, the Petitioner terminated the order and called for refund. The Respondent, in the premises, submits that there was no deficiency in providing services to the Petitioner but that the work could not be completed due to various difficulties created by the Petitioner. These are all matters of dispute which needs to go to trial. The Petitioner's claim essentially is a claim of damages for non-performance of services contracted for. Such a claim, in absence of any admission of liability on the part of the Respondent company, cannot be made the foundation of a winding up petition. Accordingly, there is no merit in the Petition. The Petition is dismissed. There shall be no order as to costs. It is, however, clarified that all observations made in this order are only for the limited purpose of assessing whether or not there are disputes between parties and do not, in any way, reflect on the merits of the respective cases of the parties.

(S.C.GUPTA J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.