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

COMPANY PETITION NO. 274 OF 2013

SLC Assurance ...Petitioner
vs
Reliance Life Insurance Co. Ltd. ...Respondent.

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Mr D Banerjee a/w Disha Karambar Mulgaonkar for the Petitioner
Dr Birendra Saraf, Ms Bhavna Singh, Mr Paresh Patkar i/b Mulla & Mulla for the Respondent.

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CORAM : S.C. GUPTE, J.

SEPTEMBER 07, 2015

P.C. :

The Petition seeks winding up of the Respondent company on the ground of inability to pay debts. The Petitioner claims to be a promotional agent and vendor of the Respondent for sale of insurance policies. It is the case of the Petitioner that under a contract between parties, the Respondent was to pay commission to the Petitioner at an agreed rate of not below 32.96 % of the premium received towards the insurance policies sold by the Petitioner on behalf of the Respondent. It is the case of the Petitioner that a total premium of about Rs.7.93 crores was deposited by the Petitioner towards sale of insurance policies, on which commission at the rate of 32.96 % works out to about Rs.2.61 crores. It is submitted by the Petitioner that out of this premium, a sum of about Rs.1.74 crores was paid by the Respondent to the Petitioner, leaving a balance of Rs.87.34 lacs. The Petitioner claims to have issued a statutory demand notice, which was neither replied to nor complied with by the Respondent.

2 The entire edifice of the Petitioner's case is built upon an agreement between parties to pay commission at the rate of 32.96% of the premium received by the Respondent for the policies sold by the Petitioner. Nothing is

placed on record by the Petitioner to show such agreement. It is the case of both Petitioner and the Respondent that there was a written agreement executed between parties in respect of the Petitioner's appointment as a promotional agent and vendor of the Respondent. The Petitioner has not produced any agreement. The Respondent has produced an agreement executed on 13 February 2010 between the parties. This agreement provides for fees payable by the Respondent to the Petitioner as a service provider at the rate provided in annexure "A" thereto. Annexure "A" provides rates of Rs.100 each for dissemination of text per policy and for lead generation to the Petitioner, respectively. It is the case of the Respondent that the Petitioner did not sell 14,120 policies worth Rs.7.93 crores as claimed by the Petitioner, but only 13,766 policies, out of which 60 policies were cancelled. As a result, the total premium received by the Respondent for 13,706 policies was Rs.7.70 crores and not Rs.7.93 crores as alleged by the Petitioner. The Respondent denies that any overriding commission, as claimed by the Petitioner, was either payable to the Petitioner or was due and owing by the Respondent to the Petitioner.

3 Whether or not overriding commission was payable by the Respondent to the Petitioner and if so at what rate, are matters to be proved by the Petitioner in an appropriately instituted suit. These are matters of dispute which call for leading of evidence. So also, the questions as to what was the exact number of policies sold by the Petitioner on behalf of the Respondent and what was the total premium received for sale of the policies are questions of fact which call for leading of evidence.

4 It is also the case of the Respondent that the Petitioner's claim is barred by the law of limitation. In this behalf, it is submitted by the Petitioner that having regard to the payment made by the Respondent in July 2010, the Petition presented on 4 April 2013 is well within time. The Petitioner's claim in respect of commission, if any, arises on sale of a policy and receipt of premium for such policy by the Respondent. The policies have obviously been sold, even on the Petitioner's own showing, between November 2009 and July 2010. The cause of action for payment of premium would arise on sale of each individual policy and

receipt of premium on account thereof by the Respondent. In these facts, whether or not the part payment made by the Respondent to the Petitioner in July 2010 extends the period of limitation in respect of individual claims of past, again, is a matter of dispute, on which evidence needs to be led.

4 In that view of the matter, the Petitioner's alleged debt is bona-fide disputed by the Respondent company. A company petition for winding up of the Respondent will not lie on such a claim. The Petition is, accordingly, dismissed. There shall be no order as to costs.

(S.C.GUPTE J.)