IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 804 OF 2014

M/s.Ezeego One Travel and Tours Ltd. …Petitioner
vs.
One Stop Shop Retail Pvt.Ltd. ....Respondent

Mr.Gautam Ankhad i/b. Mr.Hemant V. Kenjalkar for Petitioner.
Mr.Vijay U. Singh for Respondent.

CORAM : S.C. GUPTE, J.

24 JUNE 2015

P.C. :

The company petition seeks winding up of the Respondent company on the ground of its inability to pay. The debt due from the Respondent is claimed on the basis of an agreement dated 14 December 2012 (effective from 1 April 2012). The total debt claimed to be due and payable is of a sum of Rs.9.64 crores.

2 It is the Petitioner's case that the Petitioner had appointed the Respondent as an agent for booking air tickets through the Petitioner or its affiliates on an exclusive identification code (ID) on a commission basis. The Respondent agreed to pay for all tickets booked on this ID in accordance with the agreement. It is the Petitioner's case that as of 1 April 2013, the Respondent owed a total sum of about Rs.7.21 crores to the Petitioner on account of ticket sales. In the premises, with effect from 13 May 2013, the Petitioner discontinued the credit facility granted to the Respondent. The Respondent was allowed to do ticketing business only against deposit of advance money, i.e. on a cash and carry basis. It is submitted that the Respondent not only admitted the amounts claimed as due and payable by the Respondent to the Petitioner from time to time, but also admitted a consolidated statement of dues of a total sum of Rs.7.60 crores as of 17 December 2012 and executed a demand promissory note

in favour of the Petitioner. It is submitted that after several reminders and follow-up emails, the Respondent by its email dated 8 February 2013 promised to pay 30% of the total outstanding by March 2013. There was failure on the part of the Respondent to make this payment. The Petitioner, in the premises, issued a statutory demand notice dated 21 November 2013 calling upon the Respondent to pay an amount of Rs.9.64 cores to the Petitioner. The Respondent failed to make any payment. The Petitioner, in the premises, filed the present petition. The petition was admitted by this Court on 19 March 2015 after recording a *prima facie* satisfaction that the amount claimed by the Petitioner was due and payable by the Respondent and it was unable to pay its debt. The petition was thereafter duly advertised. A notice was issued to the company under Rule 28 of the Companies Court Rules, 1959. The petition has now come up for final hearing.

3 After the petition was admitted by this Court, the Respondent filed a reply to the petition. In the reply, it is submitted by the Respondent that the amount claimed by the Petitioner, as due and payable from the Respondent, is contested by the Respondent on merits. It is submitted that the Petitioner has not given credit of certain sums towards cancelled tickets and refunds, as also TDS for the years 2011-2012 and 2012-2013. It is further submitted that an amount of about Rs.5.60 crores was due and payable as commission to the Respondent on the total business done with the Petitioner. It is submitted that according to the Respondent's ledger account, as on 31 March 2014, the Respondent was liable to pay only a sum of Rs.24.29 lakhs to the Petitioner. (The Respondent has offered to pay this amount.) A copy of the ledger account is produced by the Respondent along with its reply.

4 The record of the case, which is placed before the Court by the Petitioner and with which no issues have been joined by the Respondent, indicates the following :

(a) As far back as on 1 August 2012, there was a clear admission of liability by the Respondent of a sum of Rs.6.5 crores due and payable as on 15 July 2012 by it to the Petitioner;

(b) On 27 September 2012, the Respondent through its director and authorised representative signed a statement admitting a total liability of Rs.9.84 crores with a promise to pay;

(c) On 1 November 2012, the Respondent's director and authorised representative addressed a communication to the Petitioner offering to clear outstandings of over Rs.7 crores by 30 November 2012;

(d) As of 17 December 2012, the Respondent executed a consideration receipt and demand promissory note for a sum of Rs.7.45 crores. (This promissory note is said to be executed in blank by the Respondent.)

(e) On 8 February, 2013, an email was addressed to the Petitioner by the Respondent's director, who is a deponent of the Respondent's reply to the petition, once again admitting the liability and offering to clear the outstandings before June 2013 with minimum 30% payment to be cleared by March 2013 and offering to start business with the Petitioner on a cash and carry basis.

(f) As late as on 3 October 2013, there is an offer to pay the outstanding amount within 16 months and parallelly doing business on a cash and carry basis.

(g) On 7 November 2013, five cheques of Rs.10 lakhs each were issued by the Respondent to the Petitioner, all of which were dishonoured for insufficiency of funds.

(h) This was the position as of the date of the statutory demand notice (21 November 2013). The Petitioner has claimed a total amount of Rs.7.45 crores as of the date of the statutory notice together with further interest.

5 The facts narrated above make out a clear case of an uncontested liability of a large sum running into crores of rupees as of the date of the statutory demand notice. The defences, which are now raised in the petition, are raised for the first time in reply to the statutory notice. The gist of the defences is that the Petitioner has failed to give credit of diverse sums on account of cancelled tickets, refunds, TDS as well as commission payable to the Respondent on the total business; and according to the ledger account of the Petitioner maintained by the Respondent, a closing balance of merely Rs.24.29 lakhs is due and payable by the Respondent to the Petitioner. The alleged ledger account produced by the Respondent it its affidavit in reply clearly shows that as on 1 April 2013, there was a sum of about Rs.7.21 crores due and payable by the Respondent to the Petitioner. The further entries in the ledger account reflect the cash and carry business effected between the parties against advance payments made by the Respondent towards purchase of tickets. This is consistent with the case brought out on record that from about May 2013, the business relationship between the parties was continued on a cash and carry basis. Thus, against advance payments, tickets have been issued and accordingly, debit and credit entries are to be found in the ledger account till we come to the date of 31 July 2013. Between 31 July 2013 and 27 September 2013, various journal entries seem to have been passed by the Respondent, presumably unilaterally, adjusting huge sums towards Purchase Return – Air Travel (Rs.5.09 lakhs, Rs.14.79 lakhs and Rs.32.83 lakhs), TDS receivable (Rs.64.90 lakhs and Rs.12.85 lakhs) and commission payable (Rs.5.60 crores). By means of passing of these journal entries, the entire credit balance in favour of the Petitioner has been wiped off, leaving the closing credit balance of about Rs.24.29 lakhs. Not only is there no explanation for these debit entries and particularly, for the huge debit entry of Rs.5.60 crores towards commission allegedly receivable by the Respondent from the Petitioner, these entries fly in the face of the admitted correspondence between the parties, which is noted above. After admitting of a credit balance of Rs.7.21 crores in favour of the Petitioner as of 1 April 2013, the Respondent seems to have wiped off the same around the time of the issuance of the statutory notice by unilaterally passing several unexplained journal entries. Besides, as noted above, the journal entries are clearly inconsistent with

voluminous correspondence from the Respondent to the Petitioner, under which, not only is the liability admitted, but several assurances have been made towards discharge of these liabilities.

6 In the premises, there is no bona fide defence offered to the huge debt of the Petitioner of over Rs.7.45 crores payable by the Respondent. The defence offered is clearly nominal and moonshine, and does not inspire any confidence.

7 It is obvious that the company is unable to pay its debts. There is no defence to the company petition. The company appears to be commercially insolvent.

8 The company petition is, accordingly, allowed and the Respondent company is ordered to be wound up. The Official Liquidator is appointed as a Liquidator of the Respondent company and directed to take charge of the records and assets of the company.

(S.C. Gupte, J.)