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

COMPANY PETITION NO. 34 OF 2014

Rewas Ports Ltd. ...Petitioner
vs
Theressa Realties Pvt. Ltd. ...Respondent.

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Mr Pramod N Patil for the Petitioner
Mr Cyrus Ardeshir i/b Kanga & Co. for the Respondent.

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CORAM : S.C. GUPTE, J.

OCTOBER 05, 2015

P.C. :

The Company Petition seeks winding up of the Respondent company on the ground of inability to pay its debts. The debt alleged in the Petition as due from the Respondent to the Petitioner is of a sum of Rs.1.51 crores.

2 The agreement between the parties, out of which this debt is said to arise, envisaged the Respondent to purchase several parcels of land and then transfer the entire company together with the land taken at its cost value to the Petitioner. The aggregation of this land by the Respondent, in the first place, was to be financed by the Petitioner. To that end, with its letter dated 11 April 2008, the Petitioner handed over a cheque of Rs.3.92 crores to the Respondent as a loan to facilitate aggregation of land, which admeasured about 49.77 acres described in an annuxure to the letter and which was to be transferred in the name of the Respondent company. The letter envisages the Respondent's aggregating the land and making a clear and marketable title to it with original registered documents like conveyance, power of attorney, possession letter etc. and also providing a power of attorney in favour of the Petitioner's nominee. A detailed MOU was to be singed in due course between the parties to capture all

the terms and conditions with respect to the transaction between the parties. There is no MOU on record. What the Petitioner submits in its petition is that, in pursuance of this arrangement, an aggregate land admeasuring 13.36 acres was duly purchased by the Respondent and made over to the Petitioner. It is the Petitioner's case that for the balance area, the Respondent could not procure any conveyance from the vendors or make out a clear and marketable title. It is the Petitioner's grievance that a total consideration of about Rs.2.40 Crores is adjustable towards the transaction in respect of 13.36 acres, leaving a balance of about Rs.1.51 crores. It is submitted that the Respondent not having aggregated the corresponding land and made out a clear and marketable title in the land to enable transfer of this land to the Petitioner or its nominees, the Respondent company is not entitled to retain the balance amount of Rs.1.51 Crores but is bound and liable to refund and repay the said amount to the Petitioner. On that basis, a statutory demand notice was sent by the Petitioner to the Respondent, failure to comply with which has given rise to this petition.

3 In its reply to the statutory demand notice, the Respondent accepts the case of the Petitioner that a cheque of Rs.3.92 Crores was handed over by the Petitioner to the Respondent as a loan to facilitate purchase of aggregate land 49.77 acres. It is also admitted that out of this 49.77 acres of land, the transactions in respect of 13.36 acres of land were concluded for a total consideration of about Rs.2.40 Crores. It is, however, the case of the Respondent that in regard to the balance land admeasuring 36.41 acres, part payments have been made in regard to the same to the respective farmers, reference to whom was made in the annexures to the writing of 11 April 2008. It is the case of the Respondent that once this land is cleared and is free from all encumberances in accordance with the arrangement between parties, the Petitioner would have to pay the balance amount to the Respondent to complete the transaction and only thereafter could the said land be transferred to the Petitioner's name. In the premises, the Respondent placed two options before the Petitioner: (1) to indicate as to whether the former should go ahead to complete the incomplete transactions for which the Petitioner would have to pay more than the agreed consideration amount, since the farmers, with whom the

deal was finalized four years back, were not willing to abide by the original consideration or (2) to allow the Respondent to proceed to resolve the disputes with the farmers, such resolution entailing requirements of funds. The Respondent also indicated that in the event the Petitioner did not wish to proceed further, the Respondent would be forced to call upon all farmers to return the money to the Respondent, which would cause not only inconvenience but could also be time consuming. The Respondent, in the premises, sought advice of the Petitioner as to the line of action to be followed in the matter. Admittedly, there is no reply to this communication from the Respondent to the Petitioner.

4 In its reply to the Petition, it is the case of the Respondent that in pursuance of the arrangement between parties, in addition to the acquisition of land with clear title for 13.36 acres, further land of 7.36 acres was already agreed to be acquired from the farmers by the Respondent and that an amount of about Rs.1.36 acres was paid to the farmers towards such acquisition. It is also the case of the Respondent that for a further land of about 2.78 acres, an adhoc amount of about Rs.42.71 lacs was paid to the farmers towards acquisition. It is submitted by the Respondent that the Respondent has, in the premises, ended up paying the farmers more than what was collected from the Petitioner towards acquisition of land. It is submitted that whilst the Respondent did manage to complete the transactions and obtain a clear and marketable title in respect of 13.36 acres land, the Respondent engaged advocates to take appropriate steps for clearing the title of the balance land. Such clearance of title involved taking of steps to set aside an order dated 7 December 2006, whereby the concerned land owners were restrained from creating third party rights in respect of the land owned by them. The Respondent has referred to its attempts to get a clear title in respect of the balance land. The Respondent has submitted that whilst these efforts were on, the Petitioner issued the statutory demand notice to the Respondent. The Respondent, in response, sought specific instructions from the Petitioner concerning clearing of the disputes pending in respect of the lands as noted above. It is also submitted that in order to enable the Petitioner to execute tripartite agreements between land owners and the Respondent, all original documents in respect of land admeasuring 20.62 acres, that is to say, 13.36

acres of land for which the transactions were included and 7.26 acres for which agreements for sale were executed with the farmers, were forwarded to the Petitioner. It is submitted that the parties could execute tripartite agreements only in respect of 13.36 acres out of this 20.62 acres. It is submitted that the Petitioner was no longer interested in pursuing the development of land at Rewas and was, therefore, not inclined to conclude the incomplete transactions for purchase of land and was now asking for refund of the amount paid by it towards such purchase. It is submitted that, in the premises, the Petitioner was refusing to issue clear instructions which the Respondent had sought from the Petitioner, as noted above.

5 These pleadings and documents annexed therewith clearly show that there are disputes between parties concerning the suit transaction. The Respondent's stand particularly appears to be that the Respondent was merely an aggregater of the land for the Petitioner and that the Respondent had duly expended the monies received from the Petitioner towards such aggregation but that due to pending disputes between parties including the vendors of the lands, the parties could not complete the entire transaction but could only transact 13.36 acres out of a total of 49.77 acres of land. In the premises, non payment of Rs.1.51 Crores by the Respondent to the Petitioner clearly appears to be the result of bona fide disputes between parties and not as a result of its inability to pay debts. The case does not fall within the deeming provision of Section 434 of the Companies Act, 1956.

6 In the premises, the Petition is dismissed. There shall be no order as to costs.

(S.C.GUPTE J.)