IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.662 OF 2013

Oasis Shipping Pvt. Ltd. ...Petitioner.
vs.
Pranav Agro Industries Ltd. ...Respondent.

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Mr. Sandeep Parekh, a/w. Ms. Ujjwala Deshmukh, i/b. Deven Dwarkadas and Partners, for the Petitioner.

Mr. Sitesh Sharma, a/w. S.K. Mali, for the Respondent.

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CORAM: S.C. GUPTE, J.

DATE : 26 OCTOBER, 2015.

P. C. :

. The petition seeks winding up of the Respondent Company on the ground of its deemed inability to pay debts within the meaning of Sections 433 and 434 of the Companies Act, 1956. The debt is said to arise out of lease of cargo containers by the Petitioner, acting as agent of TS Lines, who are carriers of goods by sea. It is the case of the Petitioner that certain consignments, which are witnessed by bills of lading, were shipped by the Respondent Company or its agents in the leased containers but that due to some disputes between the Respondent and the buyer of the goods in Dubai, the consignment could not be delivered and was called back by the Respondent to Nhava Sheva Port, Mumbai. TS Lines, accordingly, shipped back the containers to Nhava Sheva Port, Mumbai. The containers arrived at Nhava Sheva Port, Mumbai on 27 March 2013. The reshipping consignment bills of lading in relation to these goods have been produced with the petition. It is the case of the Petitioner that on 21 March 2013, the Respondent requested the Petitioner to move the subject containers (100 in nos.) from Nhava Sheva Port to Continental CFS at Nhava Sheva and agreed to indemnify against any extra charges incurred for movement in response to the above request. It is the Petitioner's case that, subsequent to the Petitioner moving the containers to the CFS, the Respondent took delivery of the consignment and out of 100 containers returned only 18 to the Petitioner and the balance 82 containers were detained at the CFS for non-clearance of the CFS dues for a substantial period. It is submitted that, in accordance with the indemnity bond executed on 26 March 2013, the Respondent, as importer/ consignee, was liable for container detention after the free days mentioned therein from the date of arrival of the laden import container/s till the date empty container/s was/were returned back to inland depot/nominated area/empty storage yard. The detention charges are specified in the indemnity bond. The present claim is in respect of these detention charges, which were indemnified by the Respondent to the extent of Rs.2,75,000/- per twenty feet container and Rs.5,44,000/- per forty feet container.

2. The first notice addressed in this behalf, which is reproduced in the petition, appears to be the statutory notice itself. The notice puts the total claim at about Rs.1.78 crores. In its reply to the statutory notice, the Respondent has claimed that the Respondent had undertaken to return the empty containers to the nominated empty container yard which was to be specifically nominated by the Petitioner. It is submitted that, as per the communications of the Respondent, the containers were

available and free for delivery since 20 May 2013 at the Continental CFS. It is submitted that the Petitioner never designated or nominated any storage yard for return of the containers nor did the Petitioner claim the delivery of the containers despite the containers being available for delivery since 20 May 2013. Secondly, it is submitted that besides the free period of 21 days, there was to be a 50% waiver on the detention charges. Upon this being pointed out in the reply, the Petitioner in its rejoinder has claimed that even after allowing 21 free days and granting 50 percent waiver of charges, the Respondent is due to pay a large amount towards detention charges and also return 82 empty containers to the Petitioner.

3. As indicated in the correspondence between the parties and their respective pleadings, there are clearly disputes between the parties concerning the debt allegedly owed by the Respondent to the Petitioner. Firstly, whether the Petitioner was bound to nominate a storage yard or space for return of the containers and whether it failed to nominate such storage yard/space, is a matter of dispute. Secondly, it is also a matter of dispute as to whether by indicating that the containers were available for delivery with effect from 20 May 2013, the Respondent had fulfilled its obligations under the contract between the parties. Thirdly, whether over and above the free period of 21 days, 50% detention charges were to be waived by the Petitioner and, accordingly, the entire claim, which is made the basis of the statutory demand notice and which forms part of the petition, needs to be reworked, is also a matter of dispute.

4. On these facts, the deeming fiction of Section 434 of the Act cannot be said to have come into play. The Respondent's non-payment of

the debt claimed by the Petitioner cannot be said to be due to its inability to pay the debt. The Respondent's case that there are disputes concerning the debt, due to which the Respondent has withheld the payment, appears to be bona fide and the matter needs leading of evidence before the debt is adjudicated.

5. In that view of the matter, there is no merit in the petition. The petition is dismissed. It is clarified that the observations made above are in the context of the present Company Petition and only with a view to see if there are disputes between the parties concerning the debt, on which the petition is founded, and that these observations shall not come in the way of any adjudication on merits.

(S. C. GUPTE, J.)