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

COMPANY PETITION NO. 748 OF 2014

Aamex India Pvt. Ltd. ...Petitioner
vs
Maxx Mobilink Pvt. Ltd. ...Respondent

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Mr P. Ranjan i/b Halai & Co. for the Petitioner
Mr Atul Singh a/w Mr Ratnaveer Singh i/b AVU Legal for the Respondent.

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CORAM : B. P. COLABAWALLA J.

JUNE 06, 2016

P.C. :

This Company Petition has been filed seeking to wind up the Respondent company Maxx Mobilink Pvt. Ltd. on the ground that the Respondent company is unable to pay its debts. It is the case of the Petitioner that the Respondent company is indebted to the Petitioner in the sum of Rs.37.53 Lacs which is inclusive of interest at the rate of 18 %. The principal amount claimed in the Petition is approximately Rs.25 Lacs. The claim made in the Petition is under two agreements dated 2 June, 2011 and 18 April, 2012. The first agreement is styled as a "**Local Distribution Agreement**" and the second as a "**Service Agreement**". It is not in dispute before me that the first agreement, namely, the Local Distribution Agreement does not contain an arbitration clause, whereas the Service Agreement contains an arbitration clause, which has been invoked by the Petitioner and the Arbitrator has already been appointed by this Court vide its order dated 7 October, 2015. According to the Petitioner, the Respondent Company has admitted and acknowledged its liability by signing the balance confirmation dated 8 April, 2013 for the principal sum. The Company Petition is primarily based on this balance confirmation letter. According to the learned counsel for the Petitioner, the alleged disputes that have been raised by the Respondent Company are after the date of statutory notice as well as balance confirmation letter. He, therefore, submitted that no cognizance ought to be taken of the said disputes as they are raised only to somehow defend the present Company Petition.

2 On the other hand, learned advocate appearing for the Respondent Company brought to my notice that the so called balance confirmation letter is no confirmation in law as the Respondent Company has not confirmed the balance but in fact categorically stated that they will have to check and confirm the outstanding. In this regard, learned counsel brought to my attention the balance confirmation on page 53 of the paper book which categorically states **"we shall check and confirm"**. Additionally, learned counsel

appearing on behalf of the Respondent company submitted that the same stand has been taken by the Respondent Company even in the reply to the statutory notice, as well as other correspondence entered into between parties thereto. He submitted that there is enough correspondence between parties to establish that there is a genuine dispute as to the claim of the Petitioner and this is not a fit case to wind up the Respondent company. He also submitted that to show his client's bona-fides, even if the first agreement, namely, the "**Local Distribution Agreement"** (dated 2 June, 2011)**,** does not contain an arbitration clause, even the disputes under the said agreement can be referred to arbitration and the Petitioner is at liberty to make all claims even under that agreement before the Arbitrator already appointed by this Court on 7 October, 2015. For all the aforesaid reasons, he submitted that the Company Petition ought to be dismissed.

3 I have heard learned counsel at length and perused the papers and proceedings in the Company Petition. In the facts of the present case, there is no admitted liability on behalf of the Respondent Company. The Petitioner seeks to rely upon the balance confirmation letter dated 8 April, 2013 to bolster its case that at least an amount of Rs.25 Lacs is due and payable by the Respondent

Company to the Petitioner. I am unable to agree with this submission for the simple reason that the balance confirmation itself states that the Respondent company shall check and confirm the balance outstanding. This being the case, I am unable to hold the said balance confirmation letter as an admission of liability on behalf of the Respondent company. On going through the correspondence between parties, I find that there is a dispute between parties as to what amount is payable by the Respondent Company to the Petitioner. This dispute can only be resolved after evidence is led by both the parties. In this summary proceeding, therefore, I am not inclined to exercise my equitable jurisdiction and admit the Company Petition on the factual matrix before me.

4 In this view of the matter, since there are disputed questions of fact, the Company Petition is dismissed. However, it is clarified that as per the statement of the learned counsel appearing for the Respondent Company, by consent of parties, the disputes arising out of and in relation to the agreement dated 2 June, 2011 are referred to arbitration. The Petitioner shall be at liberty to raise all claims even arising out of the agreement dated 2 June, 2011 (Local Distribution Agreement) which shall be arbitrable before the Arbitrator appointed by this Court on 7 October, 2015.

5 With the aforesaid clarification, the Company Petition is dismissed. Needless to clarify that no observations made herein shall influence the Arbitrator and he shall decide the disputes between parties on its own merits and in accordance with law uninfluenced by this order.

(B. P. COLABAWALLA J.)