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

COMPANY PETITION NO.516 OF 2014

Digicable Network (I) Private Limited ….Petitioner

V/s.

M/s.Sai Prasad Media Private Limited ....Respondent

WITH

COMPANY APPLICATION NO.814 OF 2015
IN
COMPANY PETITION NO.516 OF 2014

M/s.Sai Prasad Media Pvt. Ltd. ….Petitioner

V/s.

M/s.Digicable Network (I) Pvt. Ltd. ….Respondent

Mr.Ramesh Pandey for the petitioner.

Mr.M.K.Tanna for the respondent.

CORAM : K.R.SHRIRAM,J
DATE : 9.2.2016

P.C.:-

1 By this petition the petitioner is seeking winding up of the respondent-company M/s.Sai Prasad Media Pvt. Ltd. on the ground that the company is unable to pay its debts, is commercially insolvent and therefore, it is a fit case for winding up.

2 The petitioner, it is averred, is an established cable operator/multi system operator and is engaged in the business of supply, distribution/redistribution of pay channels and free to air

channels of different broadcasters to various customers including the households through its distributors and also run its own cable channels. According to the petitioner the company is engaged in managing television channel "News Express".

3 It is also stated in the petition that the company, in order to expand the reach of and the business of television channel News Express, entered into two individual Channel Placement Agreements dated 16.7.2012 and 9.8.2012 with the petitioner for carrying the said News Express channel in digital mode for all India region as well as in analog mode for central region (Madhya Pradesh & Chhattisgarh) respectively. According to the petitioner by and under the Channel Placement Agreement dated 16.7.2012 for all India region in digital mode, the company had agreed to pay to the petitioner an amount of Rs.2,50,00,000/- plus taxes as applicable for the period 16.7.2012 to 15.7.2013. It is also stated that under the Channel Placement Agreement dated 9.8.2012 for central region in analog mode, the company had agreed to pay to the petitioner Rs.2,30,00,000 plus taxes as applicable for the period 9.8.2012 to 8.8.2013.

4 The company was to pay these amounts in quarterly installments in advance upon receipt of invoices from the petitioner. The company paid for the first quarter but failed and neglected to pay

the remaining 3 installments. It is the case of the petitioner that sum of Rs.2,73,39,659/- is due and payable by the company. It is averred in the petition that the company through their various e-mails dated 1.4.2013, 4,5,2013, 3.6.2013, 5.6.2013 & 12.6.2013 requested the company/ its director to make payment of overdue invoices pending against the company and settle the account but the company failed and neglected to do so. The petitioner therefore, sent a letter dated 14.6.2013 calling upon the company to make the outstanding payment. The Managing Director of the company by an email dated 22.8.2013 informed the petitioner that he does not look into distribution personally and he was responding only because the email was directly addressed to him and he has asked the concerned person to look into that. As the petitioner did not receive any further communication from the company, the petitioner through its Advocate issued a statutory notice dated 28.8.2013 calling upon the company to pay an amount of Rs.2,73,39,659/- together with interest @ 18% p.a. within 21 days from the date of receipt of the said notice. It is stated in the petition that the notice was received by the company but the company failed and neglected to respond to the same or make any payment as called upon therein. This petition therefore, came to be filed.

5 As nobody has appeared before this court, by an order

dated 30.3.2015 the petition came to be admitted and later advertised. The company took out a Company Application No.814 of 2015 for recalling the order of admission. The explanation given in the affidavit in support was that since the head of the concerned department looking after the matter was transferred, after the petition was served on the company and around the time the matter was to come up for admission, the reply was not filed and nobody attended to the court matter. This Court therefore, by its order dated 8.10.2015, recalled the order of admission dated 30.3.2015 while directing the company to pay sum of Rs.25,000/- as cost. The company has paid the cost. The petition therefore, has got listed again for admission.

6 In the affidavit in reply, the company has stated that there were disputes between the parties on the quality of transmission by the petitioner. The petitioner has also filed a petition before the Telecom Dispute Settlement and Appellate Tribunal, New Delhi on 27.9.2013 before the present petition was filed, which the company is contesting. It is also stated that the company had raised grievance about the quality of transmission and has annexed e-mails exchanged between the petitioner and the company. The e-mail dated 15.1.2013 which is at Exhibit-O to the affidavit in reply states that the company was going to deduct carriage money for the area

mentioned in the email due to transmission issues. Even in the e-mail dated 1.2.2016 the company has stated that they were going to deduct carriage money for the related area mentioned in the said email. In the email dated 26.2.2013 it is also mentioned that the News Express channel remains switch off due to major headend and details are mentioned therein. Therefore, the company has raised at the relevant time, disputes regarding the transmission and has taken a stand that they would have to even adjust the amount already paid. It is necessary to note that none of these messages are even referred to in the petition. It is not even averred in the petition that the company had raised certain issues. Therefore, I cannot conclude that the defences as raised are after thought. The Apex Court in [1]***IBA Health (India) Private Limited vs. Info-Drive Systems Sdn. Bhd.,*** has analyzed the provisions of the Companies Act relating to winding up of company and in paragraphs-20, 21, 22, 23 & 31 has observed as under :-

> "20. The question that arises for consideration is that when there is a substantial dispute as to liability, can a creditor prefer an application for winding up for discharge of that liability? In such a situation, is there not a duty on the Company Court to examine whether the company has a genuine dispute to the claimed debt? A dispute would be substantial and genuine if it is bona fide and not spurious, speculative, illusory or misconceived. The Company Court, at that stage, is not expected to hold a full trial of the matter. It must decide whether the grounds appear to be substantial. The grounds of dispute, of course, must not consist of some ingenious mask invented to deprive a creditor of a just and honest entitlement and must not be a mere wrangle. It is settled law that if the creditor's debt is bona fide disputed on substantial grounds, the court should dismiss the petition and leave the creditor first to establish his claim in an action, lest there is danger of abuse of winding up procedure. The Company Court always retains the discretion, but a party to a dispute should not be allowed to use the threat of winding up petition as a means

1 (2010) 10 SCC 553

of forcing the company to pay a bona fide disputed debt.

21. In this connection, reference may be made to the judgment of this Court in Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami and another, in which this Court held that :

"It is well-settled that 'a winding up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the court..."

22. The abovementioned decision was later followed by this Court in Madhusudan Gordhandas Co. v. Madhu Woollen Industries Pvt. Ltd. 1971) 3 SCC 632. The principles laid down in the above mentioned judgment have again been reiterated by this Court in Mediquip Systems (P) Ltd. v. Proxima Medical Systems (GMBH) (2005) 7 SCC 42, wherein this Court held that the defence raised by the appellant-company was a substantial one and not mere moonshine and had to be finally adjudicated upon on the merits before the appropriate forum. The above mentioned judgments were later followed by this Court in Vijay Industries v. NATL Technologies Ltd.

23. The principles laid down in the above mentioned cases indicate that if the debt is bona fide disputed, there cannot be "neglect to pay" within the meaning of Section 433 (1) (a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts is not substantiated and non-payment of the amount of such a bona fide disputed debt cannot be termed as "neglect to pay" so as to incur the liability under Section 433 (e) read with Section 434 (1) (a) of the Companies Act, 1956.

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31. Where the company has a bona fide dispute, the petitioner cannot be regarded as a creditor of the company for the purposes of winding up. "Bona fide dispute" implies the existence of a substantial ground for the dispute raised. Where the Company court is satisfied that a debt upon which a petition is founded is a hotly contested debt and also doubtful, the Company Court should not entertain such a petition. The Company court is expected to go into the causes of refusal by the company to pay before coming to that conclusion. The Company Court is expected to ascertain that the company's refusal is supported by a reasonable cause or a bona fide dispute in which the dispute can only be adjudicated by a trial in a civil court."

7 Bonafide dispute implies the existence of a substantial ground for the dispute raised. If there is a substantial dispute as to liability and such a dispute is genuine and bonafide, the company court should not entertain the petition for winding up. The company court cannot allow a party to a dispute to use the threat of winding up petition as a means to the company to pay bonafide dues. The petitioner states that there are amounts payable. The respondent-company has at the relevant time, and immediately after the invoices raised, raised dispute regarding quality of transmission. These disputes are also pending before the TDSAT for determination.

8 In the circumstances, in my view, the petition is not maintainable and is hereby dismissed.

9 In view of the above, Civil Application No.814 of 2015 does not survive and is accordingly disposed.

(K.R.SHRIRAM,J)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.

KJ