

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.536 OF 2015
IN
COMPANY PETITION NO.320 OF 2013**

HDFC Bank Limited

..... Appellant.

V/s

Rohan Dyes and Intermediates Limited Respondent.

Mr. Virag Tulzapurkar, Senior Counsel alongwith Mr. Zubin Behramkamdin with Mrs. Ferzana Behramkamdin, Ms. Shlesha Sheth i/b FZB & Associates for the Appellant.

Mr. Rohan Cama alongwith Mr. T.N. Tripathi & Ms. Sapana Rachure i/b T.N. Tripathi & Co. for the Respondent.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

Order reserved on : 01/02/2016

Order pronounced on : 04/02/2016

P.C.:- (Per V.M. Kanade, J.)

1. Appellant/original Petitioner has filed this appeal challenging the order passed by the learned Single Judge dated 7th September, 2015. By the said order, the learned Single Judge was pleased to dismiss the Petition filed by the Appellant for winding up of the Respondent – Company.

2. We have heard the Counsel for Appellant and

Respondent at length.

3. Mr. Virag Tulzapurkar, the learned Senior Counsel appearing on behalf of the Appellant submitted that the finding given by the learned Single Judge on two issues is factually incorrect. He invited our attention to the impugned order. He submitted that the Company Petition has been dismissed firstly on the ground that the Respondent has raised disputes regarding their liability since inception that is immediately after the first demand for payment was made under the deal confirmation of 26-06-2008. He submitted that, at the same time, the learned Single Judge has not relied on the two letters which had been issued on behalf of the Respondent - Company wherein they had communicated their inability to pay the said amount on account of global slow down in the market, cash constraints and prior business commitments. He submitted that the learned Single Judge has not considered the two letters viz letter dated 20-5-2009 and the subsequent letter 22-07-2009 addressed by the Respondent-Company to the Appellant. He submitted that the learned Single Judge has observed that the letter dated 20-05-2009 was not addressed by any authorized signatories of the Respondent. He submitted that perusal of the said letters viz letter dated 20-5-2009 and the letter dated 22-07-2009 clearly indicate that these letters were signed by the authorized signatories

of the Respondent – Company. He then submitted that the learned Single Judge has further erred in observing that the authorized signatories alone could transact in foreign exchange and execute the documents, including confirmation in respect thereof. He invited our attention to the authorization given to two persons viz Radheshyam Agarwal and Rohan Agarwal by a Resolution which was passed by the Company. He submitted that the confirmation which is referred to in the said Resolution does not include the confirmation in respect of acceptance of liability. He therefore submitted that, even otherwise, the said observation made by the learned Single Judge is factually incorrect. He then submitted that the learned Single Judge has further wrongly observed that the first demand was raised by the Appellant/Petitioner on 27/06/2012. He submitted that this observation is also factually incorrect. He submitted that the first demand for payment was made under the deal confirmation of 26-06-2008. He submitted that the payment under the agreement was to be made at the end of the period mentioned in the agreement. He submitted that the finding given by the learned Single Judge in para 5 of the order is based on wrong premise. He further submitted that the learned Single Judge has not considered whether the disputes raised by the Respondent were bonafide. He has taken us through the initial agreement between the parties, correspondence and the

relevant provisions of the Reserve Bank of India Act. He submitted that the impugned order may be set aside and the Company Petition may be admitted.

4. On the other hand, the learned Counsel appearing on behalf of the Respondent supported the finding given by the learned Single Judge. He, however, submitted that the learned Single Judge has not considered the other submissions of the Respondent. He submitted that the Company Petition was not maintainable on the inability to make payment of claim based on damages. He submitted that the present claim of the Appellant was principally based on damages claimed by the Appellant from the Respondent. He submitted that it is a settled position in law that Company Petition is liable to be dismissed if the amount is claimed by way of damages.

5. Mr. Virag Tulzapurkar, the learned Senior Counsel appearing on behalf of the Appellant, however, submitted that the claim of the Appellant was not based on damages but was a claim arising out of non-payment of money which had arisen as a result of breach of terms and conditions of the contract.

6. After having heard both the parties, we are of the view that, prima facie, it does appear that some of the findings

given by the learned Single Judge appear to be factually incorrect and the learned Single Judge has, therefore, in our view, wrongly come to the conclusion that the disputes raised by the Respondent were bonafide disputes and that they had been raised since inception. Secondly, the learned Single Judge has also not taken into consideration the other submissions of the Respondent on the maintainability of the Company Petition.

7. Taking an over all view of the matter, in our view, the impugned order will have to be set aside and the matter will have to be remanded. Accordingly, by setting aside the impugned order, we remand the matter for hearing afresh. The learned Single Judge shall decide the Company Petition on merits and in accordance with law after considering all submissions of the Petitioner and the Respondent. We request the learned Single Judge to decide the Petition as expeditiously as possible. The learned Single Judge shall not be influenced by any observation made by this Court in this order.

8. Appeal is accordingly allowed in the aforesaid terms and disposed of.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)