

*** THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

+ COMPANY PETITION No. 3 OF 2014

% 21.09.2016

Reliance Nippan Lite Asset Management Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at H. Block, 1st Floor, Dhirubhai Ambani Knowledge City, Koparkhairne, Navi Mumbai-400710 Maharashtra and corporate office at One INdiabulls Centre, Tower One, 12th floor, Jupiter Mills Compound, 841, Senpaati Bapat Marg, Elphinstone Road, Mumbai 400 013, Rep. by Mr.Anshul Vyas, Assistant Vice President.

... Petitioner

Vs.

\$ Turbomachinery Engineering Industries Ltd., a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at, 309 IDA Bachupalli, Ballaram Road, Miyapur, Hyderabad, Andhra Pradesh-500 072.

... Respondent

! Counsel for the petitioner : Sri R.Raghunandan and
Ms.Shireen Sethna Baria

Counsel for the Respondent : Sri V.Harrish Kumar

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> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION No. 3 OF 2014

ORDER:

This company petition is filed alleging that the respondent Company has failed in keeping up its obligation to repay the debt due to the petitioner company.

2. Petitioner Company is engaged in the business of providing services in asset management, portfolio management and investment advisory. The Respondent Company is indebted to the petitioner to a tune of Rs.18,19,00277/- being the outstanding amount payable by the Respondent Company to the petitioner under the Equity Financing Term Sheet dated 27.12.2006 and the Memorandum of Understanding dated 25.07.2012 and in spite of the petitioner's repeated requests, the respondent Company failed and neglected to pay the said amount. Pursuant to the Memorandum of Understanding the respondent company is bound and liable to pay the outstanding amount to the petitioner company, for which the respondent company has inspite of receipt of statutory notice failed to pay the same.

Pursuant to the Equity Financing Term sheet dated 27.12.2006, petitioner as the Investor subscribed to 8,59,004 equity shares of Rs.10/- each at the premium of Rs.102.99 per share of Rs.10/- of Turbo machinery Engineering Industries Limited (TEIL) i.e., the Respondent Company and paid to the Respondent Company a sum of Rs.9,70,58,862/-. Petitioner was issued a share Certificate dated

10.01.2007 in respect of 8,59,004 equity shares of Rs.10/- each. Petitioner after the expiry of the period of three years, as contemplated in the Equity Financing Term Sheet dated 27.12.2006, and after giving a reasonable time to the Respondent Company, addressed letter dated 20.12.2011 to the Respondent Company and the Promoter calling upon them to comply with their assurance and purchase from the petitioner the shares at a price which should provide an IRR of 15% per annum. The Respondent Company was also called upon to initiate process to facilitate the purchase of the said shares within a period of 15 days from the date of the letter. The respondent company addressed a letter dated 06.01.2012 to the petitioner informing that its Managing Director will come and meet in person to discuss the matter. Thereafter another Memorandum of Understanding dated 25.07.2012 was executed between the petitioner, the respondent Company and the Promoter. The respondent Company agreed to buy back the Investor Shareholding from the petitioner. Accordingly, the respondent Company purchased shares in the month of August, 2012 of 42,546; in September, 2012 of 42,546; in October, 2012 of 127,638; in December, 2012 of 85,092 and 2,95,822; in March 2,63,360 for a total consideration of Rs.201,900,300.20/- and thereafter did not fulfill the obligation undertaken under the term sheet. After mutual negotiations an MOU dated 25.07.2012 was entered into between the parties under which the buy back shares was agreed to be completed by 31.03.2013 as under the MOU in relation to the respondent company, the Managing Director of the respondent Company was added as a promoter. Under

the MOU the respondent Company as well as the promoter had undertaken to fulfill the obligations and discharge obligations of the term sheet dated 27.12.2006 in addition to the terms as modified by the Memorandum of Understanding dated 25.07.2012. On account of non fulfillment of the terms of the agreement, the respondent company became indebted to the petitioner company for a sum of Rs.18,19,00,275.92 along with the interest @ 21% per anum under clause 11 of the Memorandum of Understanding. Hence, the petitioner invoked the jurisdiction of this Court seeking winding up of the respondent company.

3. The respondent company filed a counter affidavit taking a stand that there is no debt due to the petitioner company and the petitioner became a shareholder of the respondent company pursuant to the allotment of shares in terms of the term sheet dated 27.12.2006. The exit option which was set out in the MOU agreement term sheet dated 25.07.2012 can be fulfilled only when the conditions mandated under Section 77A of the Companies Act, 1956 and Private Limited Company And Unregistered Public Limited Company Buy Back Of Security Rules, 1999 (for short, "the Rules") are fulfilled. Inasmuch as there being no amounts available satisfying the conditions under Section 77A of the Act with the respondent company, the agreement could not be fulfilled and this aspect of the matter was brought to the notice of the petitioner company by letter dated 15.08.2012. Till such time as the respondent company accepts the shares in fulfillment of the buy back obligations, there is no due by the respondent company to the petitioner company.

In the absence of any debt due, the invocation of provisions of Section 433 of the Act seeking winding up of the respondent company does not arise, the company petition is not maintainable and is liable to be dismissed.

4. Sri R.Raghunandan, learned senior counsel appearing for Ms.Shireen Sethna Baria, learned counsel for the petitioner-Company, by placing reliance on the Clauses 7, 8, 9, and 13 of the MOU dated 25.07.2012, submits that the company had taken upon itself the obligation to discharge the buy back obligation and in the event of non-fulfillment of the terms of the term sheet apart from payment of interest @ 21%, the respondent company also had accepted joint and several liability to pay the outstanding and the buyback price along with the liquidated damages to the investor towards the purchase or buyback of the outstanding investor shareholding.

5. Sri Harrish Kumar, learned counsel appearing on behalf of the respondent, apart from emphasizing on the aspect that there being no debt, would also submit that the dispute of this nature cannot be settled in exercise of the powers of this court under Section 433(e) of the Companies Act. He would also draw the attention of this court to the dispute resolution mechanism, which was agreed to in terms of the term sheet dated 27.12.2006.

6. Having considered the respective submissions, the primary question required to be considered by this court is as to whether there is any debt due by the respondent company to the petitioner company and whether the term sheet dated 27.12.2006, as modified by the

Memorandum of Understanding dated 25.07.2012, would create a binding obligation on the respondent company to pay the amounts claimed by the petitioner treating it as a debt.

7. The facts are not in dispute. The obligation entered into by the respondent company in terms of the equity financing term sheet dated 27.12.2006 is to buy back the shares of the respondent company within a time frame. The buy back of the shares of the company is governed by Section 77A of the Rules. It is not necessary for this court to set out either the provision or the rules in the facts of the present case. Inasmuch as there is no dispute or it is not even the contention of the petitioner that necessary requirements as mandated in the Act are fulfilled. As the buyback of shares being governed by the statutory provisions, if the buyback had to be carried out, the same would be in violation of the statute. At any rate the company petition is not filed for enforcement of the obligations, which the respondent company had undertaken as specified under the term sheet. Clause 13 of the MOU reads as under:

“It is further agreed by the Promoter and the issuer Company that in the event of occurrence of an Event of Default, the Promoter and the Issuer Company shall be jointly and severally liable to pay the outstanding purchase consideration and the buyback price respectively, along with the liquidated damages, to the investor towards the purchase or buyback of the outstanding investor shareholding, till the time the same is duly and completely paid over to the Investor.”

8. A reading of Clause XIII does not by itself create any debt in favour of the petitioner by the respondent Company. This court accepts

the submission made by the learned counsel for the respondent that as the process of buy back is completed and the respondent company is willing to buy back the shares, there would be no amount due and payable to the petitioner company. In a way Clause 13 is only an insurance clause, which the petitioner could extract from the respondent probably realizing that enforcing the obligation of buy back may not be possible. The Memorandum of Understanding was entered into between the petitioner and the respondent companies wherein the promoter also was roped into to fulfill the obligations undertaken on behalf of the petitioner company. It is also evident from the letter dated 15.08.2012 of the respondent company to the petitioner wherein a decision was conveyed that either promoter or their associate Company would keep up the promise made under the agreement.

9. In the fact situation, this Court has no hesitation to come to a conclusion that there being no debt, which is the principle requisite for invoking the jurisdiction of this court, the company petition is not maintainable. Though various peripheral arguments are advanced on behalf of the petitioner and the respondent Companies, considering the scope of the company petition and the fact that there is yet another forum, as agreed to, for settlement of disputes, the above issues are not being dealt with in the present order.

The Company Petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

September 21, 2016
LMV

