IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.343 OF 2017
IN
COMPANY PETITION NO.762 OF 2015

Aarya Equity India Pvt Ltd. **..Appellant**
Vs.
Micro Capitals Pvt Ltd. **..Respondent**

Mr. J. S. Kini a/w Mr. Suresh Dubey for the Appellant
Mr. Nirman Sharma a/w Mr. Rahul Jain i/b Alpha Chambers for the Respondent

CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 22nd NOVEMBER, 2017

P.C.

1 The above Appeal takes exception to the order dated 9-12-2016 passed by a Learned Single Judge of this Court, by which order, the above Company Petition was admitted and the directions as contained in the operative part came to be issued. The said directions are inter alia the Petition to be advertised in two local newspapers and the deposit of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards the publication charges. The parties would be referred to as per their nomenclature in the Company Petition.

2 The above Company Petition has been filed seeking winding up of the Appellant i.e the Respondent in the Company Petition on the ground of its

inability to pay its debts. The said debts have arisen out of the short term loan made available to the Respondent by the Petitioner between the period 8-8-2014 and 12-12-2014. The Petitioner is a non banking financial institution engaged in the business of providing loans to the corporates. The Petitioner had produced its ledger account for the period 8-8-2014 and 12-12-2014 which shows that a total amount of Rs.6.58 crores were advanced by the Petitioner to the Respondent in several installments. The ledger account further shows that against the said advance there are credit entries which show that a total of Rs.4.25 crores has been refunded by the Respondent. Hence the ledger account shows a sum of Rs.2.33 crores as due and payable by the Respondent to the Petitioner towards the said advance. The Respondent has in its reply to the Petition produced statement of account in respect of the Petitioner. The said occasion fully matches with the ledger account of the bank statement produced by the Petitioner with the Petition. The statement of account produced by the Respondent with the reply shows that there is a balance of Rs.2.33 crores due and payable by the Respondent to the Petitioner.

3 The record discloses that the Petitioner had initially issued a demand letter to the Respondent dated 24-12-2014 claiming the said amount of Rs.2.33 crores. In reply to the said letter the Respondent took the stand that the amount of Rs.2.33 crores claimed as outstanding by the Petitioner has been adjusted against the amount payable to one Flux Trades Solutions

(amount of Rs.1,84,54,096.35/-) and one Kiran Shamji Sindhal (amount of Rs.48,09,969.52/-) However to the statutory notice issued by the Petitioner, the Respondent has taken a stand that the amount was adjusted towards the payment for purchase of shares by a particular group consisting of six entities amongst which were the said Flux Trades Solutions and Kiran Shamji Shah. The said case has been reiterated by the Respondent in the reply to the Company Petition. In the context of the reply to the demand notice dated 24-12-2014 and the reply to the statutory notice as also the stand taken in the affidavit in reply to the above Company Petition, the Learned Single Judge found the said stand of the Respondent at variance with the record. The Learned Single Judge also did not deem it appropriate to accept the case of the Respondent that the said sum of Rs.2.33 crores has been adjusted against the payments to be made to the six entities. The Learned Single Judge has reached the said conclusion on the basis that no single entry by itself or even the entries collectively as of the particular dates on which debits and credits are found in the Respondent's own statement of account, match with the statement of sale and purchase of shares maintained in respect of the six entities named above. The Learned Single Judge also observed that no writings in that behalf giving any instructions for adjusting any payment towards any purchase of share has been placed on record by the Respondent. The Learned Single Judge therefore observed that it is impossible to believe that a transaction of this nature involving crores of rupees is carried out on mere oral instructions. The Learned Single Judge has also observed and recorded in paragraph 6 that the Respondent at the highest is ready and willing to pay a sum of Rs.25 lacs which according to the Respondent is due to the Petitioner.

4 The Learned Counsel appearing for the Appellant original Respondent would seek to reiterate the submissions which were urged before the Learned Single Judge. The Learned Counsel would also draw our attention to the Suit filed by the Respondent against the Petitioner wherein a declaration is sought that the Petitioner is entitled to only a sum of Rs.25 lacs. It was therefore the submission of the Learned Counsel that the Company Petition in view of the dispute between the parties is not maintainable.

5 Upon this the Learned Counsel for the Respondent drew our attention to the ledger account of the Petitioner as well as one produced by the Respondent wherein the amount of Rs.2.33 crores is shown as balance to the credit of the Petitioner. The Learned Counsel also drew our attention to the email which was in response to the demand letter issued by the Petitioner dated 27-12-2014.

6 In our view, having regard to the facts which have come on record especially the ledger accounts produced by the Petitioner as well as the

Respondent which are matching in so far as the said Rs.2.33 crores is concerned and the defence of the Respondent not being found credible by the Learned Single Judge, no fault can be found with the impugned order. We are also informed that the Petition has already been advertised in terms of the order admitting the above Company Petition. In that view of the matter, no case for interference is made out, the above Appeal is accordingly dismissed.

[SARANG V KOTWAL, J] **[R.M.SAVANT, J]**