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

COMPANY PETITION NO. 381 OF 2015

Thomas Cook (India) Ltd. ..Petitioner
Vs
Magna Steyr India Pvt.Ltd ..Respondent.

Ms. Sneha Phene with Mr.Rohit Gupta, Ms. Anamika i/b has Advocates for Petitioner.
Mr. Gautam Ankhad with Ms. Nidhi Singh i/b Legasis Partners for Respondent.

CORAM: A.S. GADKARI, J.

DATE: 26 JULY 2017.

P.C.:

1] The present petition under Sections 433(e), 434 read with 439 of the Companies Act, 1956 is for winding up of the respondent-Company namely Magna Steyr India Pvt.Ltd.

2] It is the case of the petitioner that, the petitioner had provided its services for representatives/employees of the respondent-Company like managing bookings/ authorizations, hotel bookings, tickets etc. in accordance with terms and conditions of the agreement dated 15.1.2009.

That the respondent made payment for the services provided by the petitioner upto June 2010, however, did not pay the outstanding amount of Rs.18,64,374/- which includes interest @ 12% per annum. As the respondent did not pay outstanding dues to the petitioner, it issued a statutory notice dated 21.4.2014. The respondent received it and by its reply dated 7.5.2014, disputed the liability and informed the petitioner that it has not submitted necessary corresponding documents in support of its claim and therefore respondent is unable to make payment to the petitioner. In the said reply, the respondent has expressed its willingness to make payment provided the petitioner produces the necessary and relevant documents to the satisfaction of the respondent for taking payment.

3] As the respondent did not make payment, the petitioner filed the present petition on 17.3.2015 seeking winding up of the respondent-company. The petition is accepted on 13.4.2015 and in pursuance of issuance of notice of acceptance, the respondent has caused its appearance and also filed reply.

4] Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. Perused the petition and the reply filed by the respondent.

5] The record clearly indicates that by letter dated 6.6.2013 the respondent has admitted its liability but with a covenant that as the petitioner failed to produce any contemporaneous documents in support of its claim, the respondent was unable to make the payment. The respondent expressed its willingness to make payment provided petitioner produces supporting documents. In this regard it would be appropriate to reproduce the Clauses 1,2 and 5 of the Standard Terms and Conditions of the Agreement dated 15.1.2009 which reads as under:

> **“1.** TCIL shall provide the Services only on receipt of a written request by the CLIENTs authorized representative. TCIL shall not be obligated to provide the services in the absence of any such written request.
>
> **2.** TCIL shall arrange to hand over the tickets, ticket documents etc at the office of the CLIENT and to the person who has sent a written request.
>
> **5.** If the CLIENT does not revert to TCIL within fifteen days of the receipt of the invoices, then the same will be deemed to have been accepted by the CLIENT”.

A bare perusal of the aforestated clauses would clearly indicate that the petitioner was obliged to provide necessary documents in support of its claim to the respondent to enable them to make payment for the services provided by the petitioner. The record further indicates that the respondent has made payment to the petitioner upto June 2010 and the period of dispute is only from July 2010 to March 2011. It is the case of the respondent that some of its employees by taking undue advantage of the vagueness in the clauses of the agreement, exploited the situation thereby causing loss to the respondent-company. The respondent therefore called upon the petitioner to provide them the said documents for making payment to the petitioner. It is the specific defence of the respondent that the petitioner has failed and neglected to provide such documents which it had agreed and now pressurizing the respondent under the garb of winding up petition.

6] It is the settled position of law as enumerated in the case of IBA Health (India) Private Limited Vs. Info-Drive Systems SDN.BHD [(2010) 10 SCC 553], wherein the Supreme Court held that, if debt is bonafide disputed on substantial grounds, petition for winding up cannot be entertained. According to me the defence or dispute so raised by the respondent is bonafide and substantial and the same is not spurious, speculative, illusory or misconceived. The dispute so raised by the respondent is substantial dispute which gives rise for triable issues.

7] In view of the above, I see no merits in the present petition. The petition is accordingly dismissed.

(A.S. GADKARI, J.)