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

COMPANY PETITION NO.816 OF 2015

C.P. Chandraseker	...Petitioner
V/s.	
KEC International Ltd.	...Respondent

Mr.Kumar Tolani i/b Mr.Virendra Kanojia for the Petitioner.

Mr.Gautam Ankhad with Ms.Nidhi Singh i/b Legasis Partners for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 25TH APRIL, 2017.

P.C. :-

1. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.
2. On 2nd May, 2012, the respondent had appointed the petitioner as Chief Manager – Projects with effect from 2nd May, 2012 pursuant to an application made by the petitioner on various terms and conditions recorded in the said letter of appointment dated 2nd May, 2012.
3. On 8th April, 2012, the petitioner tendered his resignation. It is the case of the petitioner that the said resignation was accepted

by the respondent on 6th May, 2014.

4. On 17th June, 2014, the respondent forwarded a statement to the petitioner showing the amount paid to the petitioner and also showing net amount payable as US \$ 18,310.

5. The petitioner responded to the statement of account by a letter dated 14th September, 2014 and disputed the case of the respondent that the said amount of US \$ 18,901 was in full and final settlement of the claim of the petitioner.

6. The petitioner thereafter issued a statutory notice through his advocate on 16th October, 2014, calling upon the respondent to pay a sum of Rs.5,59,320/-, compensation of US \$ 28,608 and Rs.5.00 crores towards damages for causing irreparable harm and prejudice to the petitioner. The respondent responded to the said notice by its advocate's letter dated 7th November, 2014 and denied the allegations in the said notice. The respondent also referred to the criminal complaint filed by the respondent against the petitioner with the Police Station, Vikhroli. The respondent denied the said claim in toto for various reasons alleged in the said reply to the statutory notice.

7. The petitioner replied to the said letter through his advocate's letter dated 10th December, 2014 and denied the allegations made therein.

8. Learned counsel for the petitioner invited my attention to the terms and conditions of the letter of appointment dated 2nd May, 2012. It is submitted by the learned counsel that under clause 7 of the letter of appointment, the respondent had agreed to pay the performance bonus to the petitioner subject to the performance against pre-determined targets for the company which bonus was agreed at US \$ 7800. It is submitted that the petitioner was entitled to the performance bonus under the said clause for the period 1st April, 2013 to 31st March, 2014 though he had resigned on 8th April, 2014. He submits that the respondent has not disputed the performance of the petitioner during the said period.

9. The next submission of the learned counsel for the petitioner is that the respondent itself has admitted in the statement of accounts along with the letter dated 17th June, 2014 that the petitioner was entitled to the differential amount of US \$ 130 payable according to the said statement. The third submission of the learned counsel is that the respondent has not reimbursed the petitioner in the sum US \$ 700 towards reimbursement of food and travelling expenses incurred by the petitioner.

10. Mr. Ankhad, learned counsel for the respondent on the other hand invited my attention to various averments made in the affidavit in reply and would submit that the petitioner has tendered his

resignation, which was accepted by the respondent. Insofar as the claim in respect of performance bonus is concerned, my attention is invited to various allegations made by the respondent in the affidavit in reply to the company petition alleging various deficiencies in the work carried out by the petitioner. He submits that because of various objectionable activities of the petitioner, the respondent was required to file a criminal complaint against the petitioner. He submits that the claim for performance bonus was rejected by the respondent in the said statement of account submitted on 17th June, 2014 on the ground that the same was not permissible as per HR. He submits that the petitioner was thereafter paid the entire amount of US \$ 18,901 as against US \$ 18309 as shown in the said statement of account. It is submitted by the learned counsel for the respondent that the petitioner has accepted the said amount and thereafter issued a statutory notice.

11. Insofar as the second submission of the learned counsel for the petitioner that according to the statement also, the respondent was liable to pay a differential amount of US \$ 130 is concerned, he submits that much more than what was been payable by the respondent has been paid by the respondent to the petitioner.

12. Insofar as the third submission that the respondent has not made any reimbursement in respect of the food and travelling

expenses is concerned, learned counsel submits that no such amount was liable to be reimbursed to the petitioner under any provision of the letter of appointment.

13. Learned counsel for the respondent invited my attention to various averments made in the affidavit in reply to show that the respondent company is a profit making company and has large number of employees and submits that the respondent is not unable to pay its debts.

14. Learned counsel for the petitioner in rejoinder submits that the respondent was forced to tender his resignation. He submits that it is not the case of the respondent that the performance of the petitioner was not upto the mark and or on that ground the respondent had withheld any amount by a letter dated 14th September, 2014. It is submitted that even if the respondent company is profit making company but if the respondent has failed to reimburse the claim of the petitioner, the respondent is unable to pay its debts and thus this company petition deserves to be admitted.

15. Insofar as the first submission of the petitioner in respect of the performance bonus is concerned, clause 7 of the terms and conditions of the appointment letter indicates that the respondent was liable to pay performance bonus as per the companies performance bonus scheme which was subject to the annual performance bonus

and subject to the performance against pre-determined targets of the company and the petitioner. The respondent has made various allegations about the service provided by the petitioner in the affidavit in reply. The petitioner could not produce any proof about his alleged superior performance during the course of employment. Be that as it may, these disputed questions of fact cannot be gone into by this Court in this company petition.

16. Insofar as the submission in respect of the differential amount of US \$ 130 is concerned, a perusal of the record indicates that the respondent has paid more than the amount reflected in the said statement forwarded to the petitioner along with a letter dated 17th June, 2014.

17. Insofar as the claim for reimbursement towards food and travelling expenses alleged to have been incurred by the petitioner is concerned, upon raising a query by this Court, the learned counsel for the petitioner is not able to show any provisions in the terms and conditions of the appointment letter dated 2nd May, 2012 in support of the said claim. He submits that the respondent cannot reimburse the expenses incurred by the petitioner. Since the terms and conditions of the appointment letter dated 2nd May, 2012 does not indicate any provision for reimbursement of any such expenses alleged to have been incurred for food and travelling expenses, such claim was rightly

not entertained by the respondent.

18. In view of the aforesaid reasons, in my view the defence raised by the respondent cannot be considered as moonshine or frivolous. Since the defence raised by the respondent is *bonafide*, this company petition cannot be entertained by this Court. The company petition is accordingly devoid of merits and is dismissed. No order as to costs.

19. It is made clear that the observations made by this Court in this order are for the purpose of deciding this company petition.

(R.D. DHANUKA, J.)