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

COMPANY APPLICATION NO.377 OF 2015
IN
COMPANY PETITION NO.317 OF 2015

M/s.K. Consultants .. Applicant

In the matter between
M/s.K. Consultants .. Petitioner
Vs.
Aftek Limited .. Respondent

Ms.Ambreen Saheed i/by M/s.MDP & Partners for the applicant/ petitioner.
Mr.S.G. Bhandary i/by M/s.Bhandary & Bhandary for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 11th January 2017

P.C. :

. By this company application, the applicant/original petitioner seeks appointment of the official liquidator and seeks various other interim reliefs against the respondent-company.

2. Learned counsel appearing for the applicant invited my attention to the order passed by this Court on 21st December 2015 thereby admitting the Company Petition No.317 of 2015 ex parte. She submits that most of the assets are already in possession of the secured creditors and thus the interim reliefs as sought by the applicant shall be granted by this Court in this company application.

3. Mr.Bhandary, learned counsel appearing for the respondent, on the other hand, submits that the respondent could not remain present

before this Court when the said order dated 21st December 2015 came to be passed due to unavoidable circumstances. He invited my attention to the agreement dated 30th July 2013 executed between the applicant and the respondent i.e. “Agreement for Professional Services & Consultancy Relating To Assistance in One Time Settlement.” He led emphasis on clause 1 read with clause 4.1 of the said agreement and would submit that under the said agreement, the applicant had accepted to get one time settlement with the bank so far as the claim of the bank against the respondent-company is concerned, for a maximum amount of Rs.20 crores. He submits that under clause 4.1 of the agreement, the respondent had agreed to pay a lumpsum fees of Rs.one crore including the service tax on providing one time settlement sanction letter by the bank which would be less than the sum of Rs.20 crores. He submits that the bank had sanctioned the settlement which was admittedly more than Rs.20 crores and thus no amount was payable by the respondent to the applicant in terms of clause 1 read with clause 4.1 of the agreement.

4. Learned counsel for the applicant in rejoinder submits that since the liability of the respondent-company towards the said bank was much more than Rs.20 crores when the said agreement was entered into between the respondent and the applicant, the applicant could not settle the dues for a maximum amount of Rs.20 crores. She submits that in any event, the respondent-company has appreciated the services rendered by the applicant in getting the one time settlement between the bank for an amount of Rs.23 crores and is liable to pay the agreed amount under the said agreement dated 30th July 2013. She submits that the terms and conditions of the said agreement were verbally extended between the parties. It is submitted that the respondent had orally agreed to pay fees of

Rs.one crore even if the bank would have settled the dispute with the respondent for the amount above Rs.20 crores. This submission of the learned counsel for the applicant is disputed by the learned counsel for the respondent.

5. A perusal of the agreement dated 30th July 2013 entered into between the parties prima facie indicates that the applicant had agreed to get the claim of the bank against the respondent settled for a maximum amount of Rs.20 crores. Clause 4.1 of the agreement clearly provides that in respect of the mandate mentioned in paragraph 1 of the said agreement dated 30th July 2013, the respondent will pay a lumpsum amount of Rs.one crore including the service tax to the applicant on providing one time settlement sanction letter by the bank for a maxmum amount of Rs.20 crores. There is no dispute that the settlement arrived at between the respondent and the bank in respect of the liability of the respondent was much more than Rs.20 crores. In my prima facie view, the respondent was thus not liable to make payment mentioned in clause 1 of the agreement.

6. In so far as the contention of the applicant that the terms and conditions were varied by oral agreement is concerned, in my view, this submission of the applicant is sufficient to reject this application for interim relief as prayed by the applicant for appointment of the official liquidator and for other reliefs. In my prima facie view, the company petition itself was not maintainable on these facts.

7. Company application is dismissed. No order as to costs.

8. A perusal of the order dated 21st December 2015 indicates that these facts were not brought to the notice of this Court when the said petition came to be admitted. The order dated 21st December 2015 is accordingly recalled. The respondent-company has already filed an affidavit-in-reply to the company petition.

9. Place the company petition on board for 'Admission' on 23rd January 2017.

R.D. DHANUKA, J.