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

**COMPANY APPLICATION (L) NO. 332 OF 2017
IN
COMPANY PETITION NO. 289 OF 2016**

Reliable Spaces Pvt.Ltd.

..Applicant.

In the matter of:

Evonik India Pvt. Ltd.

Vs

Reliable Spaces Pvt. Ltd.

Mr. Navroz Seervai, Senior Advocate with Vishesh Kalra and Anish K. Singh i/b Vidhi Partners for Petitioner/Orig.Respondent.

Mr. Gaurav Joshi, Senior Advocate with Mr. Shyam Kapadia, Ms. Jigisha Vadodaria i/b Negandhi Shah & Himayatullah for Respondent/Orig. Petitioner.

CORAM: A.S. GADKARI, J.

DATE: 26 JULY 2017.

P.C.:

1] This is an application for recalling of Order dated 5th July 2017 passed by this Court admitting Company Petition No.289 of 2016.

2] Heard Mr. Seervai, the learned Senior Counsel for the applicant /original respondent and Shri Joshi, the learned Senior Counsel for the original petitioner at the length.

3] The Company Petition No.289 of 2016 was admitted on 5th July 2017 on the ground that despite service, respondent did not appear in the matter and also on merits.

4] In the affidavit-in-support of the present application, the applicant has stated that, Shri Surendra Chauhan, Senior Vice President, Sales and Marketing of the respondent-company was pursuing the matter with the Advocate of the Company and it is due to mis-communication between the applicant and its Advocate, the applicant/respondent could not diligently pursue the petition before this Court. The grounds for recalling of Order dated 5th July 2017 have been mentioned in para-14 of the said affidavit-in-support of the present application.

5] Mr. Joshi, the learned Senior Counsel appearing for the respondent/original petitioner vehemently opposed the application and submitted that in view of Order 9 of Rule 13 of the Code of Civil Procedure the applicant has failed to make out any sufficient cause for not appearing when the petition was called for hearing on 5th July 2017 and therefore the reasons stated in para-14 of the affidavit-in-support of the present application are not bonafide and the applicant has failed to make out any sufficient cause for setting aside and/or recalling exparte order dated

5th July 2017, admitting the petition. He further submitted that the petition was served upon the respondent on 16.7.2017 and despite the said fact, the respondent has chosen not to appear in the matter at the time of hearing for admission. He submitted that, if this Court is inclined to set aside the said Order, the applicant may be directed to deposit amount involved in the petition i.e. Rs.1,92,01,100/- in the Registry of this Court and the petition thereafter be heard.

6] After taking into consideration the facts mentioned in the affidavit-in-support of the present application, it clearly appears that the applicant has made out sufficient cause for setting aside the exparte order dated 5th July 2017. However, I am inclined to allow the present application subject to payment of costs of Rs.1 lakh for not appearing in the petition on the date of hearing despite service.

7] Accordingly, the application is allowed in terms of prayer clause (a) subject to payment of costs of Rs.1 lakh to be paid to the High Court Legal Services Committee within 2 weeks from today. The payment of costs is condition precedent for recalling of Order dated 5th July 2017.

(A.S. GADKARI, J.)