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

COMPANY PETITION NO.807 OF 2014

M/s.JBF Industries Ltd.	...Petitioner
V/s.	
M/s.BHS Housing Pvt. Ltd.	...Respondent

Mr.Satyakumar Shettigar for the Petitioner.
Mr.Ashok Pande for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 13TH APRIL, 2017.

P.C. :-

1. By this petition filed under sections 433, 434 and 439 of the Companies Act, 1956, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.

2. It is the case of the petitioner that the respondent company had represented to the petitioner that the respondent being the owner of land bearing CTS nos.23-A,26-A and 27 of village Povai, Taluka Kurla in Mumbai suburban district admeasuring 60,000 sq. mtrs. and wanted to develop the same by entering into a development agreement. The petitioner was informed that the respondent company would be entitled to the salable area of over 1,25,000 sq. ft.

in the buildings which were proposed to be developed on the larger property. The petitioner accordingly agreed to make investment of Rs.19,99,00,000/- towards purchase of 24,867 sq. ft. of the salable area. The parties entered into a Memorandum of Understanding dated 3rd December, 2010. under the said Memorandum of Understanding, the respondent agreed a return of 36% p.a. on the said amount of Rs.19,99,00,000/- for a period of three years. It is the case of the petitioner that the respondent however, only made part payment to the petitioner. The petitioner issued various notices from time to time to the respondent for making payment. On 8th May, 2014, the petitioner issued a statutory notice upon the respondent which was duly served upon the respondent. Neither there was any payment nor any response to the said statutory notice. The respondent however, made further payment of Rs.50,00,000/- on 12th May, 2014 to the petitioner.

3. By a detailed order passed on 9th August, 2016 by this Court observed that it is a clear case that huge amounts are outstanding from the respondent. There is no real dispute with reference to the amounts that are due and payable to the petitioner and accordingly admitted the petition.

4. During the pendency of this petition, the respondent made a statement before this Court on 30th March, 2016 that the respondent

was trying to arrange for the funds to pay the principal amount of Rs.15,00,00,000/- to the petitioner and was hopeful that they would be able to come with complete proposal for repayment of the said amount within a period of two weeks from the date of the said order. The respondent however, neither made any proposal for settlement nor made payment of the said amount.

5. Learned counsel for the petitioner invited my attention to various annexures to the petition and the order passed by this Court on 9th August, 2016 and the earlier orders passed by this Court in this company petition and would submit that the respondent had admitted its liability and has failed to pay the admitted dues to the petitioner. Though a statement was made before this Court that the respondent would arrange to make payments of Rs.15,00,00,000/-, the respondent did not make any payment. According to the petitioner, the respondent is liable to pay a sum of Rs.59,58,56,297/- as on 30th June, 2014 and further interest thereon from 1st July, 2014 till payment.

6. Mr.Pande, learned counsel for the respondent on the other hand submits that though the respondent had agreed to make arrangement of Rs.15,00,00,000/- and to settle the disputes amicably, neither such payment could be made nor any proposal for settlement could be made. He submits that the respondent had made

commitment but could not comply with for the reasons beyond the control of the respondent and thus the payment could not be made to the petitioner. Learned counsel did not make any other submission for consideration of this Court.

7. A perusal of the record clearly indicates that the respondent has admitted the receipt of the amount invested by the petitioner and has failed to pay substantial amount. There was no response to the statutory notice issued by the petitioner. The respondent only made part payment of Rs.50,00,000/- after receipt of the statutory notice and some payment by the respondent after filing of this company petition. In my view, the defence raised by the respondent in the affidavit in reply is moonshine and is not *bonafide*.

8. For the reasons recorded by this Court in the order dated 9th August, 2016 and for the reasons recorded aforesaid, I am of the view that the respondent is unable to pay its debts and is commercially insolvent.

9. I therefore, pass the following order :-

a). The company petition is made absolute in terms of prayer clauses (a) and (b). No order as to costs.

10. The Official Liquidator to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)