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

COMPANY PETITION NO.978 OF 2015

Bizworld International Investment
Securities Company Pvt. Ltd. ... **Petitioner**
V/s.
Mathuresh Infrapro Pvt. Ltd. ... **Respondent**

Mr.Rahul Narichania, Senior Advocate with Mr. Pramesh Kamat i/by Mr. M.K.Tanna for the Petitioner.
Mr.Mayur Khandeparkar i/by M/s Kishore Thakordas and Co. for the Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : NOVEMBER 14, 2017.

P.C. :

1. The Petitioner has filed this Petition alleging that the Respondent-Mathuresh Infrapro Private Limited (Company) is unable to pay its debt, is commercially insolvent and requires to be wound up.

2. Admittedly, Petitioner had lent a sum of Rs. 6,05,00,000/- to Respondent. In the Petition the amount is mentioned as Rs.8,05,00,000/-, but when Respondent disputed the same in the affidavit-in-reply, in rejoinder, Petitioner agreed that the principal

amount originally lent was Rs.6,05,00,000/-. It is also alleged that this amount of Rs.6,05,00,000/- was to be repaid with interest at 9% p.a.. According to Petitioner, interest payable was on compoundable basis, whereas it is Respondent's case that simple interest was payable at 9% p.a.. Admittedly, substantial amounts have been paid and certainly amount far in excess of the principal amount of Rs.6,05,00,000/- and huge amount of interest has been paid. According to Mr. Narichania, it was to be paid on the basis of interest on interest and according to Mr. Khandeparkar it is paid at simple rate of interest at 9%p.a.. According to Petitioner, since interest was to be added and converted into principal and interest on interest was payable, Respondent still owe a sum in excess of Rs.1,00,00,000/- to Petitioner.

3. Counsel for Petitioner took this Court through various documents including the balance-sheet of Respondent and confirmation of accounts signed by both the parties as on 31st March, 2014. It does indicate as on that day amounts were payable to Petitioner. According to Respondent, by March, 2015 Respondent has paid off its entire liability to the Petitioner and

nothing was due and payable.

4. The Petitioner caused a notice, as required under the Companies Act, 1956, sent through their Advocate on 20th May, 2015 demanding a sum of Rs.98,73,565/- being the principal balance accrued amount alongwith the interest accrued thereon till 15th May, 2015 Respondent replied vide their Advocate's letter dated 9th June, 2015, in which Respondent has denied that any amount was due and payable by Respondent to Petitioner and according to Respondent, the accounts have been closed. Mr. Narichania submitted that in the reply to the statutory notice Respondent has not taken a stand that simple interest at 9% p.a. was only payable and not compound interest. I must point out that no where in the statutory notice the Petitioner has alleged that compound rate of interest was agreed to be paid. According to Mr. Narichania, Petitioner had given a working as to how they had arrived at the interest amount and therefore, it was for Respondent to deny that and state only simple interest was payable and not compound interest. I cannot agree with Mr. Narichania because if the Petitioner had alleged that compound

rate of interest 9% p.a. was payable, Respondent could have denied, but when the statutory notice does not indicate that compound rate of interest was agreed to be paid, the question of Respondent denying that compound rate of interest was payable does not arise.

5. It is also to be noted that defence taken in the affidavit-in-reply to the Petition is similar to the defence taken in the reply to the statutory notice.

6. Mr.Narichania submitted that it is a pure question of calculation and from Respondent's conduct wherein they have paid compound rate of interest in the past, Court can come to conclusion that the defence being taken is moonshine and after thought. Mr. Narichania also submitted that the Apex Court **in IBA Health (India)(P)Ltd. Vs. Info-Drive Systems Sdn. Bhd.**[1],has held that even if a company is solvent, if the debt is undisputedly owing, then it should be paid. If the company refused to pay without good reason, it should not be able to avoid a statutory

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demand, by proving, at the statutory demand stage that it is solvent.

7. The key words in this Judgment are that if the debt is undisputedly owing amount. It is the case of the Petitioner that rate of interest payable was 9% p.a. to be compounded or to be added to the principal. It is the case of the Respondent that the amount payable was on simple interest basis. There is no written agreement either and both parties are relying on oral agreement. In my view, both parties will have to lead evidence to support their case. I cannot therefore, come to conclusion that there is a debt and Respondent undisputedly owes that amount to Petitioner.

8. In the circumstances, as disputed question of facts are involved, I do not wish to exercise the discretion to admit this Petition. Petition accordingly dismissed.

(K.R.SHRIRAM, J.)

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