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

APPEAL (L) NO.311 OF 2017
IN
COMPANY PETITION NO.787 OF 2015

M/s Precision Cars India Private Limited .... Appellant

IN THE MATTER BETWEEN :

Barclays Bank PLC …. Petitioner
versus
M/s Precision Cars India Private Limited ... Respondent

…....

- Mr.Rishabh Shah a/w Shirin Shaikh, Mr.Abbas Mandwiwala, i/b. Mr.Raval Shah, Advocate for the Appellant.
- Mr.Chetan Kapadia a/w Mr.Parikshit Desai i/b. Hiren Mehta, Advocate for the Respondent.

CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 30th OCTOBER, 2017.

P.C. :

1. The above Appeal arises out of the order dated 12/07/2017 passed by a learned Single Judge of this Court in the above Company Petition No.787/15. By the said order the Company Petition was admitted. A direction was issued to the Petitioner to advertise the Company Petition in two local

newspapers, as also in the Maharashtra Government Gazette. The Petitioner was also directed to deposit an amount of Rs.10,000/- with the learned Prothonotary and Senior Master towards the publication charges.

2. The Respondent herein is the Original Petitioner and is a banking company who has extended various financial facilities to the Appellant herein under different heads and at the time of filing of the Petition the financial facilities extended were to the tune of Rs.50 Crores. The Appellant herein has executed a Demand Promissory Note dated 12/06/2012 to the said extent. The contract between the parties contemplates maintaining a running account by the Respondent i.e. the Original Petitioner and the entitlement of the Respondent to levy interest on the delayed payment. The Above petition has been filed invoking section 433(e) and 434 of the Companies Act, 1956 on the ground that the Appellant is not in a position to clear of its debts. The Petition is founded on the fact that the amount due and payable by the Appellant is the amount of Rs.61,08,23,141.04 ps., which includes interest upto 31/10/2014.

3. The Appellant herein after receipt of the notice in the above Company Petition has filed its affidavit-in-reply dated 22/03/2017. The learned Single Judge has considered the material on record which included the letters dated 30/07/2012 and 21/01/2013 by which letters, the Appellant has in fact assured the Respondent i.e. the Original Petitioner that even though there is a delay, the Appellant would clear its dues. The learned Single Judge on the said basis has recorded that the Appellant has admitted its financial liability by the said letters and has sought time from the Petitioner to repay the same. The learned Judge has also found the defence taken by the Appellant that the Respondent could have invoked the Stand By Letters of Credit (SBLCs), which were to the extent 105% of the credit facilities within the stipulated period lacking in bonafides and spurious. The learned Single Judge resultantly has admitted the Company Petition and has issued the directions, which have been adverted in the earlier part of this order.

4. The learned counsel Mr.Kapadia, appearing for the

Respondent i.e. the original Petitioner, pointed out that the directions as contained in clause (ii) and (iii) have been complied with by the Petitioner i.e. the Respondent herein and that the advertisement have been issued in the two local newspaper as directed by clause (ii) of the said order. It was therefore the submission of the learned counsel that, since the directions, as contained in the impugned order, have been complied with, the above Appeal challenging the impugned order has turned infructuous. Though the directions, as contained in the impugned order, have been complied with, we proceeded to consider the above Appeal on merits.

5. It was the submission of the learned counsel for the Petitioner Mr.Shah that, the sub-dealers of the Appellant having issued the Stand By Letters of Credit (SBLCs) in favour of the Respondent Bank, it was the duty of the Respondent to invoke the said SBLCs and having not done so, it was not open for the Respondent Bank to contend that the amount of Rs.61,08, 23,141.04 ps. are due from the Appellant. It was the submission of the learned counsel that the said fact has effect of there being

a bonafide dispute between the parties, as regards the entitlement of the Respondent Bank to the said amount of Rs.61,08,23,141.04 ps. This was the main thrust of the submissions of the learned counsel for the Petitioner.

6. Per contra the learned counsel appearing for the Respondent Bank Mr.Kapadia would seek to draw this Court's attention to the correspondence that ensued between the parties by way of emails, which according to the learned counsel ex-facie disclose the acceptance of the financial liability by the Appellant. It was the submission of learned counsel that on the basis of the consideration of the said correspondence the learned Single Judge has recorded the finding that the defence taken by the Appellant was not bonafide and was spurious.

7. We have considered the rival contentions. As indicated above, the foundation of the case of the Appellant as urged by the learned counsel was based on the SBLCs, which were executed in favour of the Respondent Bank by the sub-dealers of the Appellant. In our view, the correspondence which ensued

between the parties, disproves the case of the Appellant that having not invoked the SBLCs, the Respondent Bank could not have filed the above Company Petition for winding up of the Appellant. In our view, merely because the SBLCs were executed in favour of the Respondent bank, by the sub-dealers of the Appellant, the same would not absolve the Appellant of its liabilities, which in fact it has accepted. In our view, the learned Single Judge was justified in recording the finding that the defence taken by the Appellant was not bonafide and spurious. It is well settled that if the defence taken by the Respondent to a Company Petition is found to be frivolous and moonshine, apart from lacking bonafides and spurious, then appropriate orders are required to be passed in the Company Petition including the directions of the kind which are issued by the impugned order. In our view, therefore the impugned order passed by the learned Single Judge, does not merit any interference in the Appellate jurisdiction. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.) **(R. M. SAVANT, J.)**