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

COMPANY PETITION NO.1164 OF 2015

TATA Consultancy Services Limited ..Petitioner
Vs
Enpee Credit And Capital (India) Pvt.Ltd. ..Respondent.

Ms. Fereshte Sethna a/w Ms. Shreema Doshi & Ms. Kameela Diler i/b DMD Associates for Petitioner.
Mr. Vikram Nankani with Mr. Khokhawala and Ms. Taniya D'Souza i/b Nankani & Associates for Respondent.

CORAM: A.S. GADKARI, J.

DATE: 03 AUGUST 2017.

P.C.:

1] The present petition under Sections 433(e), 434 read with 439 of the Companies Act, 1956 is for winding up of the respondent-Company namely Enpee Credit And Capital (India) Pvt.Ltd.

2] Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. Perused the petition and the reply filed by the respondent.

3] It is the case of the petitioner that, the petitioner being licencee entered into a Leave and Licence agreement dated 4th July 2012 with the respondent being licensor. In the said agreement certain terms and conditions including licence fees have been specified and agreed between the parties. In pursuance of the said agreement, the petitioner kept an amount of Rs.4,25,28,915/- (Four Crore Twenty Five Lakhs Twenty Eight Thousand Nine Hundred Fifteen only) with the respondent as deposit. As per the agreement, petitioner was entitled to keep its lien over the suit property, as after issuance of notice of termination dated 8.8.2013, the respondent did not immediately return the deposit to the petitioner. That the respondent returned the principal amount of Rs.4,25,28,915/- to the petitioner on 24.3.2015 and petitioner thereafter handed over vacant possession of the premises within one week to the respondent. That as the respondent did not pay the amount of deposit within stipulated period, as per agreement, petitioner was entitled to levy interest @ 1% per month for every month of default and according to the petitioner, the period of such default is from 10.2.2014 to 24.3.2015 and therefore the petitioner has claimed an amount of Rs.62,11,770.49 towards interest till 31.3.2015. It is the further case of the petitioner that after receipt of principal amount, the amount of interest has been appropriated by the petitioner under the caption of interest and the respondent is liable to pay Rs.62,11,770.49 as outstanding principal amount of deposit to the petitioner. The petitioner therefore issued a statutory notice dated 27.5.2015. The respondent received it and by its reply dated 1.6.2015 disputed the factum of appropriation of the amount towards interest by the petitioner after repayment of the entire principal amount of Rs.4,25,28,915/-. The respondent has also raised the dispute with respect to the condition of the premises at the time of delivery of its possession. The respondent has also raised dispute about the claim of the petitioner and denied the liability to pay the debts and has taken a specific stand that the respondent has paid the entire principal amount to the petitioner.

4] As the respondent did not make payment, the petitioner filed the present petition on 7.9.2015 seeking winding up of the respondent-company. The petition is accepted on 1.12.2015 and in pursuance of the directions of the Company Registrar, the petitioner served a notice of acceptance upon the respondent. After receipt of notice, the respondent has caused its appearance and filed affidavit-in-reply dated 17.6.2017.

5] The record clearly indicates that the respondent has paid the principal amount of Rs.4,25,28,915/-. It clearly appears that the agreement dated 4.7.2012 entered into between the parties is absolutely silent on the aspect of appropriation of the principal amount firstly towards interest as per Section 59 of the Contract Act. The agreement only provides that in case of default by respondent, the petitioner is entitled to charge interest @ 1% per month for every month of default.

As stated earlier, in pursuance of the said agreement, the petitioner is not entitled to appropriate the amount, firstly towards the interest and then towards the principal amount. The record clearly indicates that the respondent has paid the entire principal amount to the petitioner on 24.3.2015 i.e. prior to receipt of the present statutory notice dated 27.5.2015 and what allegedly remained is the quantum of interest to be paid to the petitioner which the respondent is seriously disputing. It prima facie appears that the dispute so raised by the respondent is a substantial dispute as to the liability to pay the alleged interest to the petitioner which according to me also gives rise to triable issues

6] It is the settled position of law, as enumerated by the Supreme Court in the case of *IBA Health (India) Private Limited Vs. Info-Drive Systems SDN.BHD [(2010) 10 SCC 553],* wherein it has been held that, the Company Court always retains the discretion, but a party to a dispute should not be allowed to use the threat of winding-up petition as a means of forcing the company to pay a bonafide disputed debt. According to me the defence or dispute so raised by the respondent is bonafide and substantial.

7] As stated earlier, the respondent has paid the entire principal amount to the petitioner and according to me alleged partial amount of about Rs.62,11,770/- is only due and payable. The record indicates that the respondent has repaid the deposit amount prior to issuance of statutory notice dated 27.5.2017 (Exh."O" page-108). Thus, it clearly shows that the respondent is commercially solvent to pay the debts of the petitioner and it is not possible for this Court to hold that the respondent is unable to pay the debt of the petitioner

8] In view of the above, I find no merits in the present petition. The petition is accordingly dismissed.

(A.S. GADKARI, J.)