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

COMPANY PETITION NO.1309 OF 2015

Selot Marketing Private Ltd.

..Petitioner

Vs

Hover Automotive India Pvt. Ltd.

..Respondent.

Ms. Divya Bahl a/w Ms. P. Bahl i/b Law Offices of Divya Bahl for
Petitioner.

Mr. Amey Gokhale a/w Mr. Vaibhav Singh i/b Shardul Amarchand
Mangaldas & Co for Respondent.

CORAM: A.S. GADKARI, J.

DATE: 29 JUNE 2017.

P.C.:

1] The present petition under Sections 433(e) and 434 of the
Companies Act, 1956 is for winding up of the respondent-Company
namely Hover Automotive India Pvt. Ltd.

2] The petitioner-Company is owner of the premises situated at
502, Grande Palladium, 175 CST Road, Kalina, Santacruz (East), Mumbai-
400098 (for short 'Premises'). It is the case of the petitioner that it acceded
to the request of M/s Nissan Motor India Pvt. Ltd. to permit the
respondent-Company to occupy the said premises, subject to execution of a

a new leave and licence agreement between the petitioner and the respondent and on 'without prejudice' basis the petitioner agreed to accept monthly payment towards licence fees/compensation at the rate of Rs.32,84,667/- per month That from 1.10.2012, the respondent was put into possession of the premises on 'without prejudice' basis. The petitioner without prejudice to its rights started receiving Rs.32,84,667/- as licence fees towards said premises from the respondent. That the leave and licence agreement was not executed by the respondent and therefore petitioner requested Nissan Motor India Ltd. to use its good offices with respondent to ensure the execution of the said agreement. It is further case of the petitioner that, the respondent was in occupation of the premises upto October 2014. That for the period from March 2014 to August 2014 the petitioner received leave and licence fees on 8.10.2014 and therefore the petitioner was entitled to charge interest on the principal amount which according to the petitioner is amounting to Rs.17,01,682/-. That the petitioner is also entitled for rent/licence fees of the said premises for the month of September 2014 and two weeks of October 2014 along with interest accrued on the said amount aggregating to Rs.69,98,978/-. The petitioner has also claimed security charges and additional rent/licence fees

for the period from 14.10.2014 to 20.10.2014. Thus, the petitioner has claimed a total amount of Rs.1,02,66,201/-(One Crore Two Lakhs Sixty Six Thousand Two Hundred One). The statement of particulars of claim is annexed at page No.180 to the petition.

3] The record indicates that by a letter dated 1.10.2014 the respondent has admitted its liability, however, the respondent failed and neglected to make payment of the said amount to the petitioner. The petitioner therefore issued two statutory notices dated 5.10.2015 and 10.10.2015 respectively. That the said notices were returned to the petitioner with postal remark “unclaimed”. The petitioner has also sent the said notice by email at the Corporate Office of the respondent and according to the petitioner the said notice has been duly served upon the respondent. That despite the service of the notice, the respondent neither complied with nor replied it.

4] The petitioner therefore filed the present petition on 3.11.2015 which came to be accepted on 12.1.2016 and in pursuance of the directions issued by the Company Registrar, the petitioner has served the notice of acceptance upon the respondent. After receipt of the said notice, the respondent has caused its appearance and filed affidavit-in-reply dated

5.4.2017.

5] It is the case of the respondent that the letter dated 1.10.2014 addressed by it, wherein the respondent has admitted its claim was in fact obtained under duress and the said letter was not issued by the respondent under its free will and therefore the respondent is not accepting the liability. In reply the respondent has denied the liability of making any payment to the petitioner. It is submitted that the respondent is disputing the liability of debt as claimed by the petitioner.

6] I have perused the petition and the reply filed by the respondent and documents annexed to it. It Prima facie appears that the defence raised by the respondent, that the letter dated 1.10.2014 was obtained by the petitioner under duress, appears to be a sham defence. The defence taken by the respondent appears to have been adopted only with a view to shrug off the bonafide and legitimate claim of the petitioner. It further appears that the reply filed by the respondent, is only for the sake of convenience which mainly proceeds on simple denials and is moonshine.

Facing with these difficulties, the learned Counsel for the respondent on instructions submitted that the respondent Company is

solvent enough to pay the debts of the petitioner. He submitted that the respondent is seriously disputing about the dues mentioned in item nos.2 and 3 of the particulars of the claim. He on instructions submitted that, without prejudice to respondent's rights and contentions which are to be raised before the appropriate forum or Court of competent jurisdiction, his client, out of the total claim of Rs.1,02,66,201/-(One Crore Two Lakhs Sixty Six Thousand Two Hundred One), is ready and willing to deposit Rs.82 lakhs in the Registry of this Court. He requests that he may be allowed to deposit the said amount of Rs.82 lakhs in two installments i.e. first installment of Rs.20 lakhs within three weeks from today and remaining second installment of Rs.62 lakhs within two weeks thereafter. He submitted that his client by these two installments, will deposit a total sum of Rs.82 lakhs within five weeks from today. The said statement is accepted.

7] In view of the statement made by the learned Counsel for the respondent-Company, prima facie, it appears that the respondent is solvent enough to pay the debts of the petitioner. In view thereof, I am inclined to relegate petitioner to the remedy of suit in the Court of competent jurisdiction for recovery of the amount.

If the respondent-Company deposits the sum of Rs.82 lakhs in this Court within the aforesaid stipulated period from today, the petition shall stand dismissed and the petitioning-creditor will be required to establish its claim in a suit to be filed. The petitioning creditor shall file such a suit within a period of six weeks thereafter. The amount so deposited by the respondent-company in the Registry of this Court shall be transferred to the Registry of the concerned Court where the suit is filed.

8] If the respondent-Company fails to deposit even first installment of Rs.20 lakhs within the stipulated period in the Registry of this Court, the petition shall stand automatically admitted without further reference to this Court.

In such case, the petitioner is hereby directed to comply with following directions:

[i] The Petitioner is directed to advertise the extract of the petition in two local newspapers viz. 'Free Press Journal' (in English) and 'Nav Shakti' (in Marathi) and also in the Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-

compliance with this direction or with the Companies (Court) Rules, 1959.

[ii] The petitioner shall also deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within a period of three weeks from the date of this Order, with intimation to the Company Registrar, failing which the Petition shall stand dismissed for non-prosecution without further reference to the Court.

[iii] Notice under Rule 28 of the Companies (Court) Rules, 1959 shall stand waived by the respondent.

9] The petition is disposed off in the aforesaid terms.

(A.S. GADKARI, J.)