IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CP 212 of 2015 (O&M)

Date of Decision: May 23, 2017

HDFC Bank Ltd.

…..Petitioner

Vs.

M/s Kwality Rice Mills (P) Ltd.

…..Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Amit Rishi, Advocate for the petitioner.

None for the respondent.

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M.M.S. BEDI, J.

The petitioner is a banking company which seeks the winding up of the respondent Company, M/s Kwality Rice Mills (Pvt.) Ltd. by filing the present petition under Sections 433, 434 and 439 of the Companies Act, 1956, for short 'the Act', on the ground that the respondent Company had taken a loan of Rs.8 lacs for purchase of one motor vehicle, namely, Ford Ecosports Titanium under the agreement for Auto loan through its Managing Director on April 23, 2014. 17 cheques of Rs.17500/- each issued by the respondent Company worth Rs.2,97,500/- having been dishonoured in contravention to the terms of the loan agreement. The respondent Company became liable to the extent of Rs.7,79,124.83/-as on October 8, 2015.

Despite the legal notice dated October 14, 2015 under Sections 433 (e) and 433 (1) (a) of the Act having been sent to the respondent, no reply/ amount was paid. Affidavit of service dated April 28, 2016 of the petition was filed by the counsel for the petitioner. The affidavit of service has got an over-writing on the date which has not been initialed. Irrespective of the fact presuming that the respondent Company has been served, it is not out of place to observe here that vide order dated January 22, 2016, a notice was issued by the Company Judge requiring the respondent to show cause as to why the petition be not admitted. Respondent Company again remain unrepresented as such this Court had no alternative expect to take up the matter ex-parte.

With the assistance of counsel for the petitioner, I have gone through the agreement of Auto loan annexure P-2. The loan amount is secured by the assurance of the guarantor. The agreement contains a clause that in case of event of default, the creditor will be entitled to take possession and removed the vehicle and sell the same. The parties had also agreed that in case of any dispute arisen under the agreement, the mater could be taken up by DRTs established under the Recovery of Debts. Due to Banks and Financial Institutions Act, 1993 and that the dispute shall be referred to the Arbitrator appointed by the Bank and the award passed by the Arbitrator shall be final.

Without adverting to any of the alternative remedies available to the petitioner, the present petition for winding up of the respondent Company has been filed.

In **Pardeshiya Industrial and Investment Corporation of UP Limited and another Vs. North India Petrochemicals Limited**, (1994) 3 SCC 348, it is well settled that it is beyond dispute that the machinery for winding-up will not be allowed to be utilized merely as a means for realizing its debts due from a company. **In Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Rishnaswami, (ACK)** (1965) 35 Court Cases 456 SC, this Court quoted with approval the following passage from Buckley on the Companies Acts, (13th Edn., p. 45 1):

> "It is well-settled that 'a winding-up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatised as a scandalous abuse of the process of the Court'."

I have examined the facts and circumstances of the present case regarding the claim of the petitioner and I am of the opinion that there being an arbitration clause, alternative remedies provided for the recovery of debt. So far as the jurisdiction of this Court while entertaining and deciding the Company petition is concerned, it is limited and the circumstances do not warrant to enter into the disputed question of fact regarding the detailed evidence and investigation especially when the claims are based upon alleged breach of terms of agreement. The petitioner Company has not been able to satisfy this Court that its claim can be termed as an admitted debt or the debt which is apparently recoverable from the respondent Company. The claim of the petitioner being genuine and bonafide is also debatable.

In view of said circumstances, I do not find any ground to admit the petition.

The petition is dismissed without prejudice to the legal rights of the petitioner under the hire-purchase agreement executed by the petitioner with the respondent.

May 23, 2017 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.