

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

COMPANY PETITION NO.274 OF 2016

The Government of the State of Israel
(Through the Consul General of Israel)

....Petitioner

Vs.

Earnest Business Services Private Limited

....Respondent

Ms. Shruti Maniar a/w. Ms. Simantini Mohite I/b. Solomon and Co. for petitioner.

Mr. Sharan Jagtiani a/w. Mr. Mutahhar Khan and Ms. Eram Quraishi I/b. Kartikeya and Associates for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 2nd JULY 2018

P.C.:

1 This petition is for winding up of respondent company - Earnest Business Services Private Limited (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 The underlying dispute is an agreement to provide business center facilities and agreement for support services, both dated 2nd March 2010. Under these agreements, petitioner was occupying the business center area provided by the company. As per the agreements, petitioner had given an interest free refundable security deposit of Rs.64,80,000/- plus Rs.52,20,000/- totaling to Rs.1,17,00,000/-. These amounts were to be returned upon completion of the term of the agreements or upon earlier termination. It is petitioner's case that the agreements came to an end and

the company has not returned this amount of Rs.1,17,00,000/-. It should also be noted that the term of the agreement was extended. The short point is, it is petitioner's case that this amount of Rs.1,17,00,000/-, which is an admitted amount, has not been returned and hence the company is unable to discharge its debts, is commercially insolvent and should be wound up.

3 Both the agreements provided for arbitration and on an application filed by petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act), this Court was pleased to appoint an Arbitrator by its order dated 14th September 2016. No order was passed under Section 9 but the Learned Arbitrator was directed to consider the petition under Section 9 as a petition under Section 17 of the Arbitration Act. The application under Section 17 has been heard by the Arbitrator and by an order dated 20th December 2016 read with order dated 15th September 2016, the Arbitrator has secured petitioner's claim to the extent of Rs.1,17,00,000/-. This amount of Rs.1,17,00,000/- is invested in Corporate Deposit with one Frank Merchant Bankers, a group entity of respondent company. Petitioner has not challenged the Arbitrator's order and the interim order has attained finality. The arbitral proceedings have also progressed thereafter, evidence has been recorded and the matter is placed for final arguments today.

4 Therefore, since petitioner's claim has been secured, petitioner is satisfied with the security and not having challenged the orders passed under Section 17 of the Arbitration Act, I am unable to gather myself to come to a conclusion that the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

5 Therefore, petition dismissed. It is clarified that this Court has not made any observation on the merits of the claim in the petition.

(K.R. SHRIRAM, J.)