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

COMPANY PETITION NO.772 OF 2016

M/s.Mayur Chemicals)....Petitioner
V/s.
USV Pvt. Ltd.)....Respondent

Mr.Joran Diwan i/by Veritas Legal for petitioner.
Dr.Birendra Saraf a/w Mr.Vishnu Peri i/by Dhru & Co. for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 24.4.2018

P.C.:-

1 Petitioner has approached this court alleging that the Company-USV Pvt. Ltd. (the company) is indebted to petitioner, unable to discharge its debts and hence requires to be wound up.

2 Petitioner, the company and a 3rd party Sino Intertrade Limited had entered into an agreement dated 4.4.2013 under which petitioner was expected to render services mentioned therein. The terms of the agreement was from 1.4.2012 to 31.3.2013. For the services rendered, petitioner was entitled to a service charge as mentioned in Annexure-A to the agreement.

3 The reason why the three parties came together in this

agreement is because the company is engaged in the business of manufacturing and marketing of pharmaceutical and medicinal products and preparations, patent drugs, and proprietary articles of all kinds whether basic or derived in all forms and petitioner is engaged in the business of trading. Sino Intertrade Limited is the Overseas representative of petitioner and is based at China. The agreement was extended on 26.7.2013 for the period 1.4.2013 to 31.3.2014 and again extended on 10.7.2014 upto 31.3.2015. Rest of the terms and conditions were more or less kept unchanged.

4 It is the case of petitioner that petitioner carried out its services required under the agreement diligently and there were 18 shipments which were sourced by the company through petitioner for which service charge as per the agreement was due and payable. According to petitioner, the amount payable for these 18 shipments for which petitioner has raised 4 invoices, was Rs.1,94,43,432/- plus interest. It is the case of petitioner that even though the agreement came to an end on 31.3.2015, as per the oral understanding between the parties the agreement was continued even after 31.3.2015. Petitioner relied upon an email dated 23.4.2015 at Exh.I to the petition. According to petitioner therefore, all the amounts stated in the invoices are payable.

5 Dr.Saraf for the company in response, stated that according to the company's record, only sum of Rs.11,47,260/- was payable. Dr.Saraf further submitted that whether the arrangement was continued after 31.3.2015 is something for which evidence is required to be led and when there are disputed questions of fact, petition should not be entertained. At the same time, Dr.Saraf, without prejudice to defendant's rights and contentions that they are also entitled to counter claim, is ready and willing to deposit sum of Rs.60,00,000/- with the Prothonotary & Senior Master, High Court, Bombay and petitioner may file a suit for recovery of the amount. Dr.Saraf states that this amount of Rs.60,00,000/- being deposited to show the company's bonafide and solvency. Dr.Saraf explains how he has arrived the figure of Rs.60,00,000/- as under :-

(i) The contract for which petitioner has raised a Debit Note dated 30.10.2015 bearing No.DCDA/15-16/004 for Rs.1,06,75,735/- did not materialize and therefore, no commission or service charge as mentioned in the debit note was payable. The remaining 3 invoices totaling to about Rs.90,00,000/-, the company is depositing with the Prothonotary & Senior Master, High Court, Bombay, 2/3rd of the amount of Rs.90,00,000/-.

6 Having heard the counsel and having considered the petition, affidavit in reply, rejoinder and the documents annexed thereto, I am inclined to accept the submissions of Dr.Saraf for the company.

7 In the circumstances, following order is passed :-

(a) Respondent shall deposit sum of Rs.60,00,000/- with the Prothonotary & Senior Master, High Court, Bombay, without prejudice to its rights and contentions. This amount to be deposited within two weeks as stated by Dr.Saraf. ;

(b) Petitioner may file a suit for recovery of the amounts claimed against the company ;

(c) Respondent may if advised, even file counter claim. In short, rights and contentions of both the parties are kept open ;

(d) The amount deposited by the company shall be credited to the suit to be filed by petitioner and shall be dealt with subject to the final outcome of the suit ;

(e) If plaintiff does not file a suit within six weeks from today, the company is at liberty to apply to this court for return of the amount of Rs.60,00,000/- together with accrued interest if any ;

(f) Prothonotary and Senior Master to invest the amount of Rs.60,00,000/- in a fixed deposit initially for a period of one year in a nationalized bank, to be renewed for year to year unless otherwise directed ;

(g) For completion of record, the registry to accept the sur-rejoinder to be filed by the company.

(h) Petition disposed accordingly.

(K.R.SHRIRAM,J)

KJ