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

REVIEW PETITION (L) NO.10 OF 2018
IN
COMPANY PETITION NO.678 OF 2016

BLA Power Private Limited ….Petitioner

Vs.

M/s. Gannon Dunkerly and Co. Ltd. ….Respondent

Mr. S.U. Kamdar, senior advocate a/w. Mr. Pankaj Sawant, senior advocate a/w. Mr. Shailesh Poria and Ms. Ambareen Mujawar I/b. Economic Laws Practice for petitioner.
Mr. G.S. Godbole a/w. Mr. Dibyojyoti Banerji I/b. Ms. Sapana Rachure for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 8th OCTOBER 2018

P.C.:

1 This review petition is filed seeking review of the order of admission passed on 20th August 2018. It is pertinent to mention that this order was impugned in an appeal being appeal (lodging) no.415 of 2018. That appeal was withdrawn and pursuant to liberty granted by the Appeal Court, review petitioner has filed this review petition. There is a delay of about 10 days. Though there is no application to condone the delay, I would still condone the delay and hear this review petition.

2 Though lot of things have been said in the grounds for review, the point that was canvassed concern two sheets of paper which are at Exhibit "C" to the review petition. According to petitioner, these two sheets form part of a document which is called "Abstract of quantity and cost for

unit no.1”. It is petitioner's case that the abstract of quantity and cost for unit no.1 mentions, admittedly, two sheets as enclosed to the said abstract and these two sheets are the enclosures. According to review petitioner, if only these two sheets were produced by respondent (original petitioner), the Court would not have come to the conclusions that it arrived at, in the order dated 20th August 2018. It is petitioner's case that these two sheets of paper list the defective work done by respondent and hence whether any amount is payable to respondent is a disputed question of fact. It will be useful to reproduce the hand written portion on the abstract of quantity and cost for unit no.1 :

> “....................
>
> *Note : Please consider Quality remarks as per enclosed sheet no.1 & 2 and may be deducted some nominal Amount regarding the same.*
>
> *Bill checked & OK*
>
> *Sd/-*
> *(SUSHIL SRIVASTAVA)*
> *27-10-2013*
>
> *For GDCL* *only quantity certified (For BLA)*
> *Sd/-* *Sd/-* *Sd/-*
> *(G.L. Wadkal)* *(Vinod Tamrakar)*

3 The sheets on which reliance is placed in the review petition have been signed only by two employees of review petitioner. The hand written endorsements are also by employees of review petitioner. The statements now produced in the review petition are dated 28th October 2013

whereas the abstract of quantity and cost for unit no.1 has been signed on 27th October 2013.

4 Mr. Kamdar during the submissions stated that the abstract as well as these two sheets were prepared on the same day and perhaps those sheets have been signed on the later date. I do not find any such averment in the review petition. Per contra, original petitioner in reply to the review petition has stated that they never received these two statements relied upon by review petitioner. Therefore, I cannot accept that these two sheets, on which this review petition is based, form part of the abstract of quantity and cost for unit no.1. On this ground alone the petition ought to be dismissed.

5 In any event, the abstract of quantity and cost for unit no.1 states " Bill checked and ok" - "deducted some nominal amount". Therefore, the employees of review petitioner have found the bill to be ok but only want some nominal amount to be deducted. The nominal amount cannot be the entire outstanding. Moreover, even if I accept what respondent company states for a moment, this relates to only unit no.1, whereas there are outstanding payable to unit no.2 as well. Mr. Kamdar was unable to explain what this nominal amount could be. Mr. Godbole pointed out that at Exhibit "C" to the affidavit in reply to the petition, at page 143, there is a debit note statement during shutdown of August 2013 and others regarding civil

related work and that totals to about Rs.12 lakhs. Mr. Godbole states that even if the Court accepts the document at page 143 to the original petition as correct, still the nominal amount to be deducted cannot exceed Rs.12 lakhs, whereas the outstanding is about Rs.6.5 Crores.

6 Moreover, even if these two sheets of paper had been brought to the notice of this Court at the time of passing the order dated 20th August 2018, still it would have made no difference because petitioner had sent six communications as mentioned in paragraph 6 of the order dated 20th August 2018 to which the company did not respond. Even in the statutory notice these six correspondences are mentioned and in the reply, there is no denial of having received the same. Mr. Kamdar pointed out that the defects were identified in the email dated 29th July 2013 and reiterated in email dated 16th November 2015. I will agree with Mr. Godbole that the email of 16th November 2015 is nothing but a copy, cut and paste of email dated 29th July 2013 because both the emails begin as under :

> *"As discussed, Please arrange to do the Following pending wok/defected work for unit-1 during Shutdown of 1st to 15 Aug-13."*

If those defects were continuing, this sentence would not have found a mention in the email of 16th November 2015 and in any event, I would have expected review petitioner to atleast respond to the six communications and inform respondent that no amount was payable. Further there are payments to be made for unit no.2 and the amount to be deducted for unit no.1 is only nominal. What is the nominal amount mentioned in the statement can be ascertained from the emails annexed to the affidavit in reply to the petition. On 19th August 2013 review petitioner allegedly informed respondent about certain defects that they found. On 4th December 2013 review petitioner forwarded an expenditure summary sheet for work done by other party during the shutdown and chargable to respondent. That amount can be found in the debit note statement at page 143 which is an enclosure to the email dated 4th December 2013. Mr. Kamdar confirms that that was the annexure to the said email. This also shows that the nominal value can be only approximately Rs.12 lakhs. Mr. Kamdar states that items mentioned at page 143 does not cover all the items mentioned in the two sheets introduced in the review petition. As observed earlier, I am not inclined to accept these two sheets formed part of the abstract of quantity and cost for unit no.1.

7 Atleast in the review petition, I would have expected review petitioner to indicate what the costs would have been since according to them these are defects which have not been corrected since 2013. The fact that review petitioner have chosen not to mention the figures, my feeling is that it cannot exceed the amounts mentioned at page 143. Mr. Kamdar states that this will be about Rs.9 Crores as stated in reply to the statutory notice. A bald statement like that does not help review petitioner.

8 The other grounds mentioned in paragraph 11, 12 and 13 are already covered in the admission order and those cannot be grounds for review.

9 I have also perused the balance sheet for the year ending 31st March 2018, copy whereof is annexed to the review petition. The reserves and surplus was negative as on 31st March 2017 in the sum of (-) Rs.54,49,65,540/- and as on 31st March 2018 it is (-) Rs.1,03,09,78,776/-. The current liabilities are to the extent of Rs.7,65,72,58,175/-. The total revenue is only Rs.73,65,55,826/-. The loss before tax is (-) Rs.48,60,13,236/-. It appears that even the shareholders' funds, viz., share capital has got eroded. The share capital was Rs.1,41,14,74,960/- which, as on 31st March 2017, had reduced to Rs.86,65,09,420/-. This, as on 31st March 2018, has further eroded to Rs.38,04,96,184/-. There is erosion even of share capital. The earning per share (EPS) on face value of Rs.10/- each was (-) Rs.5.51/- as on 31st March 2017 and on 31st March 2018 it is further reduced to (-) Rs.4.37/-.

10 I asked Mr. Kamdar as to how much the company is ready to deposit. Mr. Kamdar stated that the financial position of the company is very bad and the maximum it can deposit is about Rs.50 lakhs. All these indicate that the company is commercially insolvent and requires to be wound up. In any event, having considered the review petition and heard the counsel, for

reasons mentioned above, petition stands dismissed with costs in the sum of Rs.1 lakh to be paid to respondent (original petitioner) within two weeks from today.

11 In view of the above, time to advertise the petition extended by two weeks from today. The returnable date is extended to 26th November 2018. Mr. Kamdar waives notice under Rule 28 of the Companies (Court) Rules, 1959 once again.

(K.R. SHRIRAM, J.)

Gauri Amit Gaekwad

Digitally signed by Gauri Amit Gaekwad
Date: 2018.10.12 11:09:00 +0530