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Percept H. Private Limited ...Appellant
vs.
M/s.Kumar Urban Development
Pvt.Ltd. ...Respondent

CORAM : A.S.OKA, &
M.S.SONAK, JJ.
DATE : AUGUST 20, 2018

1 Heard the learned counsel for the appellant. The appellant filed a Company Petition for winding up of the respondent-company on the ground that the respondent is unable to pay debts and is commercially insolvent. The learned Single Judge declined to exercise his discretion. He declined to admit the Company Petition for winding up by holding that ex-facie, the alleged debt is barred by limitation. The learned Single Judge in paragraph 2 of the impugned order observed thus:

"2. Petitioner as it appears from the petition had entered into an Agreement dated 30th March 2011 whereby petitioner was appointed as advertising agency for a period

of six months with effect from 1st April 2011. Petitioner in the course of its services, it is stated, raised 7 invoices, last of which is dated 9th June 2011. As per the Agreement and as per the invoice, amounts were paid within 30 days of the invoice. Therefore, even the last of the invoice should have been paid by 9th July 2011. In paragraph 7(i), it is stated that "respondent has by their email dated 22nd September 2011 confirmed that they are liable to pay an amount of Rs.14,33,900/- as per the books of accounts of respondent" and copy of email is annexed at Exhibit 'D' to the petition."

2 In paragraph 3, the learned Judge has recorded an observation that Exhibit-B does not say that the respondent confirmed its liability to pay a sum of Rs.14,33,900/-. The learned Judge further observed that even assuming that the said contention of the appellant is correct, his Company Petition was lodged on 29th June 2015 and as the alleged confirmation was of 22nd September 2011, the claim was ex-facie barred.

3 The submission of the learned counsel for the appellant is that the impugned order has been passed when the counsel appointed by the appellant was absent. He submitted that the e-mail dated 20th November 2014 amounts to acknowledgment of debt by the respondent-company. He submitted that the

conditions incorporated in the said e-mail are not in terms of the contract between the parties. He would, therefore, urge that the finding of the learned Single Judge that the debt was ex-facie barred is incorrect.

4 We have considered the submissions. We have already noted what is observed by the learned Single Judge in paragraphs 2 and 3 of the impugned order. The submission made in this appeal is based on the e-mail sent by the respondent to the appellant. The said e-mail dated 20th November 2014 reads thus:

"We wish to inform you that we are open to amicably settle the matter at the earliest. Our only requirement is an indemnity from you valid for a period of 10 years against any claim on the LOGO or any injunction from use thereof. Subject to the same and withdrawal of allegations and claims on each other. We propose to pay Percept, the Principal amount of Rs.14,33,900/-. The final settlement will be worked out around this."

5 On plain reading of the said e-mail, by no stretch of imagination, it can be said that what is stated therein amounts to acknowledgment of the liability to pay debt in the sum of Rs.14,33,900/-. At highest it can be said that it is an offer given by the respondents to settle the dispute amicably. It is difficult to find fault with the findings of

the learned Single Judge. He has rightly exercised the descretion by dismissing the Company Petition. Accordingly, we find no merit in the Appeal and the same is dismissed.

6 We however make it clear that the observations made by the learned Single Judge in the impugned order as well as the observations made by us are for limited purpose of considering the question of entertaining the petition for winding up filed by the appellant. These observations shall not be construed as the final adjudication made on the issue whether the claim of the appellant is barred by law of limitation. If any suit is filed by the appellant, the same will be decided on its own merits.

(M.S.SONAK,J.)

(A.S.OKA,J.)