***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS.JUSTICE J. UMA DEVI

+O.S.A. No.9 OF 2018

%Date:30.10.2018

Between:

Kotak Mahindra Bank Limited,
Bandra, Mumbai, Rep. by its Authorized
Signatory Mr. Charu Dutt Khona

... Appellant

v.

$ Mylan Laboratories Limited,
(formerly known as Matrix Laboratories Limited),
Jubilee Hills, Hyderabad.

.. Respondent

! For Appellant : Sri R. Raghunandan Rao

^ For Respondent : Sri S. Ravi, Senior Counsel for Shareen Sethna Baria

< Gist :

> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

O.S.A. No.9 of 2018

JUDGMENT: ***(Per V. Ramasubramanian, J)***

This appeal arises out of the dismissal of a company petition for winding up, filed by the Bank.

2. Heard Mr. R. Raghunandan Rao, learned Senior Counsel appearing for the appellant and Ms.Shareen Sethan Baria, takes notice for the respondent and Mr. S. Ravi, learned Senior Counsel represents her.

3. The appellant herein filed a petition for winding up of the respondent Company on the ground that the respondent Company has been unable to pay his debts to the tune of Rs.6,61,25,606/-. The liability of the respondent to the appellant, was projected by the appellant in their company petition in the following manner.

4. It appears that a company, by name, Mission Vivacare Limited, had originally availed financial facility from Yes Bank and later they switched over to the appellant Bank. The appellant Bank offered invoice discounting facility to Mission Vivacare Limited. Mission Vivacare Limited appears to have supplied goods to the respondent and the understanding between the appellant, Mission Vivacare Limited and the respondent was that the payments due from the respondent to Mission Vivacare Limited, for future supplies, would be made directly to the appellant Bank.

5. But, when the appellant Bank made a claim, the respondent took a stand that Mission Vivacare Limited owed money to them and that therefore, the amounts payable by the respondent to Mission Vivacare Limited had been set off against their claim. In fact, the respondent claimed that after setting off the money payable by them to Mission Vivacare Limited, the other party still owed money to the respondent.

6. Holding that the appellant Bank had already initiated proceedings for recovery of money from the respondent before the Debts Recovery Tribunal (DRT) and also finding that the defence set up by the respondent was a plausible defence, the learned Single Judge dismissed the petition for winding up. Aggrieved by the said order, the appellant is before us.

7. Assailing the order of the learned Single Judge, Mr. R. Raghunandan Rao, learned Senior Counsel, contended that it was only on the basis of an agreement reached on 28.02.2012 between the appellant, respondent and Mission Vivacare Limited that the Bank offered financial facilities to Mission Vivacare Limited and that therefore, the respondent who did not project a claim for money as against the Mission Vivacare Limited at that point of time, had merely set up a moonshine defence in the proceedings.

8. The learned Senior Counsel drew our attention to the letter dated 28.02.2012 issued by Mission Vivacare Limited to the respondent and the correspondence exchanged on the same date between the appellant Bank and Mission Vivacare Limited on the one

hand with the respondent on the other hand. The learned Senior Counsel also drew our attention to the exchange of E-mails that took place in June and July 2012, where no mention was made about the claim of the respondent on Mission Vivacare Limited.

9. We have carefully considered the above submissions.

10. From the joint letter dated 28.02.2012 issued by the appellant Bank and the Mission Vivacare Limited to the respondent and the acknowledgment made by the respondent on the said letter, all that could be inferred is that the respondent agreed to honour the commitments of Mission Vivacare Limited to the appellant. The contract between the appellant and the Mission Vivacare Limited, was not born on account of any representation from the respondent about their liabilities to Mission Vivacare Limited. In other words, it was not as though a tripartite agreement came into existence on 28.02.2012. The contents of the joint letter dated 28.02.2012 sent by the appellant and Mission Vivacare Limited to the respondent reads as follows:

> "We, Kotak Mahindar Bank Limited ("KMBL") and we, Mission Vivacare Ltd. Wish to inform you as under:
>
> 1. Mission Vivacare Ltd. Has availed of financial facilities from KBML and has undertaken that effective today the amounts payable to it by you, for future supplies of goods ("the Receivables") shall be made to KMBL.
>
> 1. Please therefore, make the payment of the receivables (including advances, if any) by way of Cheque/RTGS/NEFT favoring KMBL A/c. Mission Vivacare Ltd – 7111146320".
>
> 2. Please do not change the above payment methodology until Mission Vivacare Ltd., submits a written consent from KMBL to you.

> 3. This will not be construed as a guarantee from Mylan Laboratories Limited for the credit facilities availed by Mission Vivacare Ltd.
>
> You are requested to sign on the counterfoil as a token of your acceptance of the terms stated in this letter."

11. The acknowledgment made by the respondent in the counterfoil of the said joint letter reads as follows:

> "We accept the contents of the joint letter (and its Annexure) above.
>
> No changes will be accepted from Mission Vivacare Ltd without the written consent of Kotak Mahindra Bank Limited."

12. From the above, it is clear that what was done by the respondent was only to acknowledge the contract that has come into existence between the appellant and the other party. It is only in cases where the Bank had agreed to provide discounting facilities to a party, on the basis of a representation or undertaking given by another party that the other party can be accused of misrepresentation and trying to wriggle out of the obligations arising under the contract. This is not one of those cases.

13. There are two things that stare at the face of the appellant in this case. The first is that Mission Vivacare Limited has already gone into liquidation and the respondent, apart from setting of the payments due by them to Mission Vivacare Limited, has also made a further claim on the official liquidator attached to the High Court of Bombay in Company Petition No.52 of 2015. The respondent has made a claim on the official liquidator to the tune of Rs.5,36,44,284/-. This is after adjusting the amounts payable by the petitioner to Mission Vivacare Limited.

14. The second thing that stares at the face of the appellant is the application filed by the appellant Bank against Mission Vivacare Limited in O.A. No.617 of 2015 now renumbered as O.A. No.1475 of 2016 before DRT-II, Mumbai for recovery of money.

15. Therefore, the learned Judge was right in thinking that the respondent had a valid defence to the claim of the appellant and consequently dismissing the petition for winding up. We find no reason to interfere with the said order. Therefore, the appeal is dismissed.

16. We make it clear that the adjudication by the Debts Recovery Tribunal in the original application filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, shall be independent of any observations contained herein and the Tribunal shall not be carried away by the observations about the contractual deals.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

October 30, 2018

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