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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision:* 04.09.2018**

+ CO.PET. 317/2014

SANHEDRIN CONSULTANTS PRIVATE LIMITED..... Petitioner

Through Mr.Arun Srivastava, Adv.

Versus

OIL STATES INDUSTRIES (INDIA) PVT. LTD..... Respondent

Through Mr.Rakesh Khanna, Sr. Adv. with
Mr.Yogender Nath Bhardwaj,
Ms.Vipra Bhardwaj, Ms.Drishti
Rathore and Ms. Ramya Khanna,
Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, (ORAL)

1. This petition is filed under Sections 433, 434 and 439 of the Companies Act, 1956 for winding up to the respondent Company. The case of the petitioner is that the petitioner was appointed by the respondent as a Consultant on 23.05.2013 to liaise with the concerned departments/sections of the Central Bank of India. On 20.08.2013, the petitioner raised an invoice for an amount of Rs.23,98,886/-. On 29.08.2013, vide Share Purchase Agreement dated 29.08.2013, the management of the respondent Company changed and the present management who was at that time in a joint venture bought over the entire shares of the respondent Company. The present entity took over the erstwhile company i.e. G&T Oilfield and Offshore Services

Pvt. Ltd. and the company was renamed as Oil States Industries (India) Pvt. Ltd. The petitioner claims that the said payment is not being released by the respondent. A statutory notice was sent to the respondent on 24.01.2014. Hence, this petition.

2. I have heard learned counsel for the parties.

3. Learned counsel for the petitioner relies upon the entry of liability of debt in the Share Purchase Agreement entered into by the respondent with the old management of the respondent to contend that there is an admission of the dues of the petitioner.

4. Learned senior counsel for the respondent has pointed out that there was no work done by the petitioner which would warrant payment of the invoice. It has been pointed out that the communication between the parties would show that the respondent has always disputed that the petitioner has not done any work which would warrant payment of the said invoice. He submits that just few days before the present management took over the respondent company, the letter of appointment dated 23.05.2013 was issued to the petitioner and an invoice was raised 9 days before the Share Purchase Agreement. He submits that there is no bona fide in the claim of the petitioner.

5. I may see the documents in question first. The letter of appointment of the petitioner dated 23.05.2013 regarding consideration states as follows:

“1. The Consultant will liaise with the concerned Departments/Sections of Central Bank of India (Bank) on our behalf and shall ensure that the referenced Working Capital Facility of GTOSI is managed suitably its closure on the making of the payment of the outstandings payable to the Bank both in terms of the Cash Credit Account as well as the Bank Guarantees issued by the Bank on behalf of Company including the release,

in a time bound manner, of the Corporate Guarantees issued by the two joint venture partners, in a time bound manner. After the closure of the referenced Working Capital Facility you would also be responsible for obtaining a No Dues Certificate from the Bank as well as filing of necessary documents/Forms with the Registrar of Companies (ROC) towards release of all the charges created by the Bank on the Assets of the Company unless directed otherwise.

xxx

Fees

In terms of the Scope of Services specified above, a Professional Fee of Rs.23,98,886.00 (Rupees Twenty Three Lakhs Ninety Eight Thousand Eight Hundred Eighty Six only) inclusive of Services Tax @ 12.36% shall be paid on the conclusion of the assignment or if terminated midway by the Company, on the termination of the assignment or the satisfaction or closure of the Working Capital Facility, whatever be the case.”

6. Hence, in terms of the aforesaid appointment, the petitioner was to liaise with the concerned departments of Central Bank of India with reference to the working capital facility, etc. The payment was to be made on conclusion of the assignment or termination of the assignment or closure of the working capital facility.

7. The Schedule to the Share Purchase Agreement which has been relied upon by the learned counsel for the petitioner reads as follows:-

**“Particulars Amount INR as on 28.08.2013 Address
Email/Contact**

Sanhedrin Consultants Pvt. Ltd. (retained with endorsement of Mr.BOBMY NELSON, for managing the Working Capital Facility with the Central Bank of India including its closure

Should Oil States Choose to continue with the Facility or seek for its Management Team to have closure effected, the lump sum fee amount of Rs.2,398,886.00 would be payable to the Consultant. Office no. 11, Tirupati Plaza, Seat No. 1, Shakarpur, New Delhi - 92 Mr. Saurabh Agarwal Tel(0654977723) E-mail: casaurabhagrawal@yahoo.com.

G&T Oilfield And Offshore Services Pvt. Ltd.

Sd/- Vimal Maken

Authorised Signatory

For G & T Oil States industries Pvt. Ltd.

Sd/- illegible

Authorised Signatory

8. This Share Purchase Agreement as noted above is dated 29.08.2013, namely, executed 9 days after the invoice had been raised by the petitioner.

9. I may note that on 11.11.2013 in response to a letter written by the petitioner dated 29.10.2013, the respondent had pointed out that there is no documentary evidence to show that the services were provided by the petitioner. Relevant paras of the communication reads as follows:-

“1. Unnumbered paragraph 2 of the letter states that “We have done all that was required of us for smooth management of the Working Capital Facility...”. Please substantiate with documentary evidence, the services provided by you, by placing on record the minutes of the meetings held by you good selves with officials of Central Bank of India (CBI) and /or any letters exchanges with CBI and /or e-mails exchanged by yourself, etc.

2. You have mentioned in the letter that you have been repeatedly pursuing payment of your bill whereas as per our records this is the first communication that we have received from you on this subject.

3. Considering that neither the Cash Credit nor the Guarantee Accounts with CBI have yet been concluded nor has there been any communication from us to you in this regard, please clarify

the premature generation of your invoice dated 20th August, 2013.”

10. The petitioner responded to the above communication of the respondent on 22.11.2013. Some of the salient submissions made to show that the work was done in paras 2 and 3 read as follows:-

“2.Ever since the said appointment, we sincerely, honestly and diligently worked on the said job, despite the fact that a formal letter dated 30th August, 2013 was issued by your predecessors, thereby asking us to commence the process at our end for securing closure of the existing working capital facility and related activities. This is not the case that after the receipt of the said letter dated 30th August, 2013, the job was done within a period of ten days, as we had been appointed vide letter dated 23rd May, 2013 and were working on the said assignment and in the process had various meetings with the officials of the Bank but also with various officials of your predecessor including with Mr. Rajiv Savara-Chairman and Mr. Vimal Maakan-Head Finance & Accounts etc and the said officials were duly and properly briefed from time to time about the work done by us, in the Company's interest.

3. It is only on the basis of the feedback given to your predecessors that the Company had made various correspondences with the bank and was successful in getting the work done. We had been in regular touch with G&TOil States Industries Private Limited, your predecessors and with the said officials/executives and it is only during the continuing of this process that the entire shareholding of the Company was acquired by Oil States Industries (Asia) Pte Limited and ultimately we were advised in writing that the said payment towards our professional fees will be paid directly to us by the reconstituted entity, on taking over the entire shareholding in the Company as well as the control of affairs of the Company, its assets and liabilities as well.”

11. I cannot help concluding that there is no clarity about the work done

by the petitioner pursuant to its appointment dated 23.05.2013. There is complete ambiguity as to what exactly is the work which was done by the petitioner. It is on record that the respondent has been dealing with Central Bank of India much prior to the letter of appointment dated 23.05.2013. The credit facility which was existing with Central Bank of India was also sanctioned prior to 23.05.2013. Learned counsel for the petitioner has not been able to explain as to what exactly is the nature of work performed by the petitioner which would warrant payment of fees of Rs.23 lakhs.

12. Learned senior counsel for the respondent has also taken me through the statement of accounts of State Bank of India which shows that the account was actually closed on 25.02.2014.

13. The Supreme Court in ***IBA Health (India) Pvt. Ltd. vs. Info-Drive Systems SDB. BHD., (2010) 10 SCC 553*** held as follows:-

“20. The question that arises for consideration is that when there is a substantial dispute as to liability, can a creditor prefer an application for winding-up for discharge of that liability? In such a situation, is there not a duty on the Company Court to examine whether the company has a genuine dispute to the claimed debt? A dispute would be substantial and genuine if it is bona fide and not spurious, speculative, illusory or misconceived. The Company Court, at that stage, is not expected to hold a full trial of the matter. It must decide whether the grounds appear to be substantial. The grounds of dispute, of course, must not consist of some ingenious mask invented to deprive a creditor of a just and honest entitlement and must not be a mere wrangle. It is settled law that if the creditor's debt is bona fide disputed on substantial grounds, the court should dismiss the petition and leave the creditor first to establish his claim in an action, lest there is danger of abuse of winding-up procedure. The Company Court always retains the discretion, but a party to a dispute should not be allowed to use the threat of winding-up petition as a means of forcing the company to pay a bona fide disputed debt.

21. In this connection, reference may be made to the judgment of this Court in *Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami* [(1965) 35 Comp Cas 456 (SC)] in which this Court held that:

“It is well settled that ‘a winding-up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding-up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatised as a scandalous abuse of the process of the court.....”

14. The work done by the petitioner which would explain the payment of fees of Rs.23,98,886/- is not clear. The invoice is raised just before the present Management stepped in. Keeping in view the above facts, in my opinion, the debt has been bonafidely disputed by the respondent. It is not possible to permit the petitioner to continue further with the present winding up petition. It would be for the petitioner to take steps before an appropriate civil court, in case it so desires. In the eventuality, the petitioner chooses to initiate proceedings before a civil court, observations made by this court would not in any manner prejudice the petitioner in such proceedings.

15. The petitioner would also be at liberty to make submission before the civil court on the issue of limitation under Section 14 of the Limitation Act. If such a request is made, the civil court would deal with the same as per law.

16. The present petition is dismissed with the above observations.

JAYANT NATH, J

SEPTEMBER 04, 2018/rb