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

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Date of decision: 14.08.2018

+ CO.PET. 18/2015

RAHUL WADHWANI Petitioner
Through Mr.Ashish Dholakia, Ms.Mehak
Khurana, Mr.Gautam Bajaj adn Mr.Roshan
Chawla, Advs.

versus

PLANMAN CONSULTING (I) PRIVATE LIMITED..... Respondent
Through Mr.Arun Bhardwaj, Sr.Adv. with
Mr.Paranjay Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This present petition is filed under sections 433(e) & (f), 434 and 439 of the Companies Act, 1956 for winding up of the respondent company. The case of the petitioner is that the petitioner has been associated with the Indian Institute of Planning and Management ('IIPM') Group of Companies in various capacities since 2009. The petitioner was a senior level managerial personnel and undertook various assignments and offered support to different companies of the group as identified and instructed by the Promoter of the group Mr. Arindam Chaudhuri. On 1.7.2010 the petitioner was retained by the respondent company as a Consultant and was rendering advisory and consultancy services for the management of the respondent company. Under the terms of engagement, remuneration of

Rs.4,75,000/-per month was to be paid to the petitioner. After deduction of T.D.S. and 3% contribution to Great Indian Dream Foundation the net consultancy fees payable to the petitioner was Rs.4,13,250/-. It is pleaded that from September 2012 onwards the respondent company stopped making payment to the petitioner except part payment of an amount of Rs.1,25,000/- in July 2013 in respect of professional fees. In fact it is further pleaded that the respondent company has stopped paying most employees and professionals in view of the financial crunch that the IIPM Group of Companies was facing. Consequently, the petitioner decided to terminate his employment with the respondent company. The basic grievance of the petitioner is that his dues from September 2012 to September 2013 @ Rs.4,50,000/- per month have not been paid.

2. I have heard learned counsel for the parties. Learned counsel for the petitioner has relied upon various documents to point out that the petitioner continued to be engaged in the work of the respondent for the said period, namely, September 2012 to September 2013. Reliance is placed on Form 26AS to show the agreed charges payable to the petitioner. Reliance is also placed on some blackberry messages exchanged with Mr. Arindam Chaudhuri to show that payments remains payable to the petitioner. Reliance is also placed on some e-mails that have been exchanged between the parties. Learned counsel has also relied upon the statutory notice dated 14.5.2014 and the reply sent by the respondents dated 20.6.2014. It has been pleaded that in the said reply the respondents have not denied the fact that the salary for the period September 2012 to September 2013 has not been made and submits that only vague and unsubstantiated pleas claiming that the petitioner is liable to pay Rs.100,00,000/- to the respondent is being

made.

3. Learned senior counsel for the respondent has reiterated that the petitioner stopped working in August 2012 and there is not an iota of evidence to show that the petitioner continued to work thereafter. He submits that all payments have been duly made to the petitioner which were liable to be paid.

4. It is no doubt true that in the reply dated 20.6.2014 that was sent to the legal notice the plea that has been taken by the respondent appears to be quite make belief. It is claimed that the petitioner is liable to pay Rs.100,00,000/- by way of damages and losses resulting from the breach of contract and violation of the terms and conditions of the contract by the petitioner. Other than that nothing else has been placed on record.

5. However, it was put to learned counsel for the petitioner as to firstly what was the nature of work being done by the petitioner. Learned counsel is not sure as to the nature of work done by the petitioner. It was also put to learned counsel for the petitioner that in a period of one year if a Consultant had done work i.e. September 2012 to September 2013 he would have left a trail of all the work he had done. In the present case other than isolated 3-4 emails there is nothing on record to show what work the petitioner has done. I may refer to these emails which have been attached to the rejoinder. There is one email which is dated 19.9.2013 which is sent to the petitioner stating “Dear Sir for your signatures (two copies)” Similarly, there is another email dated 9.5.2013 written by Mr.Rahul Murzaria. There are number of such emails. These do not in any manner prima facie show that the petitioner was gainfully employed in the period in question, namely, September 2012 to September 2013.

6. What follows is that there is no written contract between the parties to show that the petitioner was employed or engaged as a Consultant for the period in question. Prima facie, there is no meaningful document available to show any regular work being done by the petitioner.

7. Reference in this context may be had to the judgement of the Supreme Court in *IBA Health (I) Pvt. Ltd. vs. Info-Drive Systems Sdn.Bhd., (2010) (4) CompLJ 481 (SC)* where the Supreme Court held as follows:-

“17. 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.”

8. In my opinion, it would be for the petitioner to prove all these aspects in an appropriate Civil Court. The respondents have raised a bona fide dispute. However, in case the petitioner chooses to approach the civil court

observations made herein would not in any manner bind the parties in such civil dispute that may be initiated.

9. Petition is accordingly dismissed. All pending applications, if any, stand disposed of.

JAYANT NATH, J

AUGUST 14, 2018

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