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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	10.01.2022
Pronounced on	:	11.01.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

O.S.A.Nos. 1 to 3 of 2022
and
C.M.P.Nos. 98,88,90,94 and 95 of 2022

SpiceJet Limited
Having registered office at
Kamaraj Domestic Terminal,
Chennai Airport,
Chennai - 600 027,
Tamil Nadu

.. Appellant in all OSAs

Vs

Credit Suisse AG
A Stock Corporation
registered under the Laws of Switzerland,
Carrying on business at
8001, Zurich, Switzerland,
Rep. By its Power of Attorney Agent
Mr.Robert Pavery

.. Respondent in all OSAs

Appeals preferred under Section 483 of the Companies Act and Clause 15 of Letters Patent read with Order 36 Rule 1 of OS Rules against the judgment and order dated 06 December 2021, as amended vide orders dated 15 December 2021 and 23 December 2021 in Company Petition No. 363 of 2015, C.A.No.888 of 2015 and C.A.No.55 of 2020 respectively.

For Appellant : Mr.V.Ramakrishnan,
(in all OSAs) Senior Advocate
assisted by
Mr.Ashok Menon
Mr.Varun K. Chopra
Mr.Abhinav Sharma
Mr.Sathya Ganesh



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For Respondent
(in all OSAs) : Mr.Rahul Balaji
with
Mr.Vishnu Mohan
Mr.Aditya Bhat
Mr.Rajendra Barot
Ms.Priyanka Shetty
Mr.Ayush Chaddha
Ms.K.Janani Shankar

COMMON JUDGMENT

(Per : PARESH UPADHYAY, J.)

1. These appeals are filed by the respondent of the Company Petition No.363 of 2015, challenging the order of Company Court, ordering :-

- (i) admission of the winding up petition, which is filed invoking Sections 433 (e) and (f) of the Companies Act, 1956, and
- (ii) appointment of the Official Liquidator, High Court of Madras as Provisional Liquidator.

Since, in the first order of the Company Court dated 06.12.2021, there are few corrections vide orders dated 15.12.2021 and 23.12.2021, there are three orders before us, but the substance thereof is as noted above. The challenge in these three appeals is to those three orders, ventilating various grievances including about disposal / pendency of some interim application(s) in the Company Petition.

2.1 Mr. V.Ramakrishnan, learned Senior Advocate for the appellant Company has addressed the Court at length. It is noted that he has extensively taken this Court through the paper books, running into few hundred pages. He has also relied on number of authorities, which are quoted here below.

2.2 It is noted that various submissions are made on behalf of the appellant, as raised as grounds of appeal(s) as mentioned in the memo of appeals, the substance thereof is that, what the petitioner claims, can at the best be said to be due and not the debt. Further, there is serious dispute about that amount being payable by the appellant to SR Technics and further that, the said dispute is bonafide and also a substantial one. It is therefore submitted that the winding up petition ought not to have been admitted by the Company Court.



2.3 The bone contention on behalf of the appellant is two fold. Firstly that the documents relied by the petitioner Credit Suisse, Switzerland are not stamped and therefore the Courts in India will not take cognisance thereof and secondly, the S.R.Technics did not have valid license from the Director General of Civil Aviation (DGCA) and therefore it could not have legally maintained the Aircrafts / Engines of the appellant Company and consequently no amount could be said to be payable by the appellant to it and thereby there is bonafide dispute with regard to the said payment.

2.4 Over and above this, number of submissions are made which are less relevant for the purpose of deciding the point at issue as noted in para 5. It is also noted that on behalf of the appellant arguments were advanced on 05.01.2022 and 10.01.2022 for hours. Attention of the Court was invited to hundreds of pages in different paper books, dealing with which would result in deciding some of the points to be tried in Company Petition itself, which would be not in the interest of any party, more particularly the appellant (for some of the reasons noted herein after) and in any case, it would neither be required nor even open to this Court at this stage, keeping in view the point at issue before the Court at this stage.

2.5 It is noted that on behalf of the appellant reliance is placed on the following decisions (as per Volume dated 05.01.2022) :-

- (i) M/s.Madhusudan Gordhandas & Co. v Madhu Woollen Industries (P) Limited reported in (1971) 3 SCC 632
- (ii) IBA Health (India) Private Limited v Info Drive Systems Sdn. Bhd. reported in (2010) 10 SCC 553
- (iii) B.Sunitha v State of Telangana and Another reported in (2018) 1 SCC 638
- (iv) Pasl Wind Solutions Private Limited v GE Power Conversion India Private Limited reported in (2021) 7 SCC 1
- (v) Jupudi Kesava Rao v Pulavarathi Venkata Subbarao and Others reported in (1971) 1 SCC 545
- (vi) Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram and Other Charities and Others v Bhaskar Raju and Brothers and Others reported in (2020) 4 SCC 612
- (vii) Bipin Shantilal Panchal v State of Gujarat and Another reported in (2001) 3 SCC 1
- (viii) N.N.Global Mercantile Private Limited Vs. Indo Unit Flame Limited and Others reported in (2021) 4 SCC 379



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- (ix) Michael Hart v M/s.Ninestars Information Technologies Ltd rep. By its Managing Director Mr.Gopal Krishnan reported in (2013) 3 LW 879
- (x) M/s.Jayanth Pharma Chem v M/s.Kekule Pharma Ltd reported in 2013 SCC Online AP 20
- (xi) M/s.Baba Finance Corporation v Mohd. Nayeem and Another reported in 1996 SCC Online AP 1339
- (xii) Dabholkar Enterprises (Partnership Firm) v Padma Alloy Castings Private Limited reported in 1994 SCC Online Bom 324
- (xiii) M/s.Nehru Place Hotels Limited v M/s.Bhushan Limited reported in 2011 SCC Online Del 3342
- (xiv) Sri Vijayalakshmi Art Productions rep. By its Partners C.Venkataraju, G.Sivaraju and Smt.C.Ramalakshmi v Vijaya Productions (P) Limited, Vadapalani, Madras - 26 reported in 1995 SCC Online Mad 498
- (xv) In the matter of M/s Rushabh Precision Bearings Ltd, M/s.Marine Container Services (India) Private Limited reported in 1999 SCC Online Bom 263
- (xvi) Tata Iron and Steel Co v Micro-Forged (India) Limited reported in 2000 SCC Online Guj 394
- (xvii) Wimco Ltd v Sidvink Properties P Ltd reported in MANU/DE/0191/1994
- (xviii) Regazzoni v K.C.Sethia (1994) Ltd reported in 1958 AC 301

2.6 It is noted that, on behalf of the appellant reliance was also placed on the following decisions (as per Volume dated 10.01.2022) :-

- (i) Sukaj Kam Khur Ana v Hari Rattan reported in 1972 SCC Online Del.304
- (ii) Antwerpse Diamant Bank N.V. v Kamaland Co., 2006 SCC Online Bom 1286
- (iii) Ms/.Kamal and Co., v Antwerpse Diamant Bank N.V. (Appeal No.409 of 2006) dated 15.04.2010 (Bombay HC)
- (iv) Nallacaruppen Chetty v Nanayakkara reported in 27 New Law Reports 225
- (v) Wolstenholme International Limited v Twin Stars Industrial Corporation reported in (2002) 5 Mh.L.J. 121
- (vi) M/s Classic Diamonds (India) Limited v ICICI Bank Limited reported in 2016 SCC Online Bom 15573



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- (vii) Hanuman v Fattu reported in 1960 7RW 466 (Raj)
- (viii) Star Textiles and Industries Ltd v Olive Tea Plantations Private Limited reported in 2007 SCC Online Cal 875
- (ix) Kailash Prasad Mishra v Medwin Laboratory (P) Ltd reported in 1985 SCC Online MP 194 : (1988) 63 Com Cases 810

2.7 On behalf of the appellant it is submitted that these appeals be entertained and the order of the Company Court, ordering admission of the company petition praying for winding up of the Company be set aside. Consequently, appointment of Provisional Liquidator be also set aside. It is submitted that in view of the errors in the impugned orders, the matter may be remanded back to the Company Court.

3.1 On the other hand, Mr. Rahul Balaji learned advocate for the respondent (original petitioner) has vehemently opposed these appeals. The substance of his argument is that the order passed by the Company Court ordering admission of the winding up petition under Section 433 (e) and (f) of the Act and appointment of the Official Liquidator, High Court, Madras as Provisional Liquidator can not be said to be erroneous in any manner and no interference be made by this Court. It is submitted that these appeals be dismissed. It is noted that, learned advocate for the respondent has also addressed the Court at length, to reply to the submissions on behalf of the appellant which were at great length as noted above.

3.2 It is noted that, on behalf of the respondent reliance was also placed on the following decisions :-

- (i) American Express Bank Ltd v Calcutta Steel Co. & Ors. reported in (1993) 2 SCC 199
- (ii) CP Equipments Ltd v Sangeetha Tubewell Corporation reported in 1989 1 LW 320 (Mad)
- (iii) Michael Hart v Ninestars Information Technologies Ltd reported in 2013 - 3 LW 879
- (iv) M/s. Classic Diamonds (India) Limited v ICICI Bank Limited reported in 2016 SCC Online Bom 15573
- (v) Vijay Industries v NATL Technologies Limited reported in (2009) 3 SCC 527
- (vi) Wolstenholme International Limited v Twin Stars Industrial Corporation reported in 2001 SCC OnLine Bom 194
- (vii) Kanhaiyalal v Dulichand reported in 1969 SCC OnLine Raj 147
- (viii) Bhanwar Lal v Firm Mangalji Chhoteylal Barn reported in 1981 SCC OnLine Raj 13



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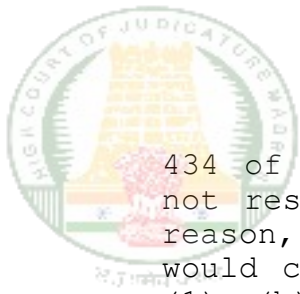
- (ix) V.R.Sonai v Chinniah Konar reported in 1968 SCC OnLine Mad 109
- (x) R.Kannusamy v V.V.K.Samy & Co., Singapore reported in 1988 SCC OnLine Mad 159
- (xi) Banyan Tree Growth Capital L.L.C. v Axiom Cordages Limited and ors reported in 2020 SCC OnLine Bom 781
- (xii) Dr.Chiranjilal (D) by Lrs v Hari Das (D) by Lrs reported in (2005) 10 SCC 746.
- (xiii) Ponnusami Chettiar v Kailasam Chettiar reported in (1947) 60 LW 442
- (xiv) Nokia India Pvt Ltd v State of Chattisgarh reported in (2019) SCC OnLine SC 1451
- (xv) SRM Exploration Pvt Ltd v N&S&N Consultants, SRO reported in 2012 (129) DRJ 113 (DB)
- (xvi) Vijay Karia v Prysmian Cavi E Sistemi SRL reported in (2020) 11 SCC 1
- (xvii) Samarendra Nath Sinha v Krishna Kumar Nag reported in (1967) 2 SCR 18
- (xviii) Director of Industries and Commerce v P.N.Kumar reported in 2008 SCC OnLine Mad 871
- (xix) C.Hariprasad v Amalgamated Commercial Traders Pvt Ltd reported in 1971 SCC OnLine Mad 188

4. Though learned advocates for the contesting parties have addressed the Court at length by referring to the paper books which run into hundreds of pages and have also relied on number of authorities, only those arguments are considered while recording this order, which are relevant to decide the point at issue, which arise for consideration in these appeals, which is noted as under.

5. The point at issue before this Court in these appeals is, whether there is any error in the order of Company Court :- (i) ordering admission of the winding up petition (under Section 433 (e) and (f) of the Companies Act, 1956) and (ii) appointing Provisional Liquidator, which may call for any interference in these appeals.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

6.1 According to the petitioner (the respondent in the appeal), the respondent Company (the appellant in the appeal) is indebted to it for more than 24 million USD. The petitioner had given notice to the Company, as required under Sections 433 and



434 of the Act on 21.01.2015, which was duly served, which was not responded. On these points, there is no dispute. For this reason, the deeming fiction under Section 434 (1) (a) of the Act would come in play and in view of the provision of Section 439 (1) (b) of the Act, the petitioner, whose status is of a creditor, would be entitled to move this Court for winding up of the Company, which it has done.

6.2 In spite of the above, admission of the winding up petition is not automatic. If the debt is bonafidely disputed and the defence is a substantial one, the Court will not wind up the company. Therefore, before admitting such a petition, it needs to be ascertained by the Company Court, what defence the Company has taken and whether the said defence can be said to be bonafide.

6.3 The Company Court has, on the basis of the material on record, arrived at satisfaction that, the defence which the respondent Company has taken can not be said to be bonafide.

7. We have independently examined this aspect. For this purpose, we have taken into consideration the following documents, which are on record.

7.1 The Company Petition which is dated 07.07.2015, with annexures thereto.

7.2 The counter statement on behalf of the Company dated 21.07.2016.

7.3 The rejoinder of the petitioner dated 07.09.2016 and the annexures to those pleadings.

7.4 The annexures to the above three, with specific reference to the following:-

7.4.1 Engine Maintenance Agreement between SR Technics and the Appellant dated 24 November 2011.

7.4.2 Amendment No.2 to the Agreement between SR Technics and the Appellant dated 24 August 2012.

7.4.3 Supplementary Agreement for deferred payment between SR Technics and the Appellant dated 24 August 2012.

7.4.4 Frame agreement between SR Technics and the Respondent dated 26 September 2012.

7.4.5 Transaction agreement between SR Technics and the Respondent dated 26 September 2012.



7.4.6 Invoice raised by SR Technics on the Appellant Company for USD 4,134,733.75 bearing reference no. M90204840 dated 30 July 2013.

7.4.7 Bill of Exchange issued in Zurich for USD 4,134,733.75 drawn on the Appellant payable at Yes Bank, New Delhi on January 26, 2014 dated 31 July 2013.

7.4.8 Certificate of Acceptance executed between the Appellant and SR Technics in relation to invoice no. M90204840 of USD 4,134,733.75 dated 31 July 2013.

7.4.9 Winding up notice under Sections 433 and 434 of the Companies Act 1956 issued by the Respondent dated 21 January 2015 and

7.4.10 Arbitration Award issued by ICC dated 20 November 2017.

7.5 Of the above ten documents, the document at serial No. 3 i.e., as noted at para 7.4.3 'Supplementary Agreement for deferred payment between SR Technics and the Appellant dated 24 August 2012', inter-alia provides for Deferred Payment Scheme for the invoices (vide para 2) and Bill of Exchange (vide para 3.4) with specific reference to the petitioner of the Company Petition, in para 7 thereof. The petitioner - the present respondent is therefore needs to be accepted as a named endorsee as accepted by the present appellant.

7.6 On consideration of the above material, we find that the appellant Spice Jet Limited (Company) availed the facility of engine maintenance from S.R.Technics (Engine Maintenance Organization) Switzerland from 24.11.2011. The said agreement was for ten years. The said S.R.Technics raised invoices at different time for the said maintenance. Those invoices were duly accepted by the appellant. Amount claimed therein was to be paid by the appellant Company to the said S.R.Technics, within stipulated time. The appellant wanted deferment thereof. To take care of that deferment period, it availed the service of the Credit Suisse, Switzerland. Before this, the appellant Company gave Certificate of Acceptance of the invoices raised by S.R.Technics and also signed Bill(s) of Exchange, qua the invoices in question. It is duly endorsed by the Banker of the appellant Company as well. On the basis of these documents, Credit Suisse, Switzerland made payment to S.R.Technics on behalf of the appellant Spice Jet with specific reference to 'Supplementary Agreement for deferred payment between S.R.Technics and the Appellant dated 24 August 2012', as referred above. It is that amount, which the appellant owes to



Credit Suisse, Switzerland, the non-payment of which has led to filing of and admission of the winding up petition as ordered by learned Single Judge. From record it transpires that the said due needs to be accepted as admitted dues.

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8. The defence raised by the Company is two fold. Firstly that the documents relied by the petitioner Credit Suisse, Switzerland are not stamped and therefore the Courts in India will not take cognisance thereof and secondly, the S.R.Technics did not have valid license from the Director General of Civil Aviation (DGCA) and therefore it could not have legally maintained the Aircrafts / Engines of the appellant Company and consequently no amount could be said to be payable by the appellant to it and thereby there is bonafide dispute with regard to the said payment.

9. So far the first point that the documents relied by the petitioner Credit Suisse, Switzerland are not stamped and therefore the Courts in India will not take cognisance thereof is concerned, we find that it needs to be noted that the Company Court has taken note of the decision of the Division Bench of this Court, so also that of the Bombay High Court which takes the view that, at the time of admission of the winding up petition, the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence can not be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected.

10. So far the second limb of argument that the S.R.Technics did not have valid license from the Director General of Civil Aviation (DGCA) and therefore it could not have legally maintained the Aircrafts / Engines of the appellant Company and consequently no amount could be said to be payable by the appellant to it and thereby there is bonafide dispute with regard to the said payment, is concerned, we find that this argument needs to be rejected outrightly. It is the case of the appellant Company and a show is made that, had it known this earlier, it would not have availed the service from SR Technics. For this purpose, reference is also made to the communication dated 20 February 2020 by the Office of the Director General of Civil Aviation, Government of India to the appellant Company. Record shows that the appellant Company blows hot and cold together to suit its convenience. At this stage, reference needs



to be made to the stand which the appellant Company had taken before years in the International Arbitration proceedings, as noted in the document noted at 7.4.10. Para 44 thereof reads as under:-

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"44. Further the Respondent (read the appellant herein - SpiceJet) claims that the Claimant (read SR Technics) failed to obtain DGCA approval for the scope of its services under the Agreement, despite having made representations to this effect to the Respondent and that this has exposed the Respondent to the risk of its operating licence being cancelled, as well as exposing the Respondent to risk in respect of its insurance policies and the aircraft leases."

11. For the above reasons, both the defences raised by the appellant are rejected. At least, they are not accepted as bonafide defence. The admission of the petition therefore need not be interfered with. The stand of the appellant as quoted above would also justify admission of the petition under Section 433 (f) of the Act as well.

12. So far grievance against appointment of Provisional Liquidator is concerned, the prayer in that regard was already there in main petition, so also in one of the miscellaneous petitions. That prayer is granted by the Company Court, while admitting the petition. The same is after taking into consideration the contest on record on behalf of the respondent of the petition - the present appellant. In the facts of the case, that also does not call for any interference. It is noted that the winding up petition which was filed in the year 2015 could be taken up for admission only in the year 2021. Though no observation for / or against any of the parties in this regard is made, the fact remains that the said pendency has not helped the petitioner in any manner. The appellant claims to be one of the largest passenger carrier in the civil aviation industry of our Country, which by its own stand has carried hundreds of thousands of passengers for all these years without maintenance of its Air Crafts and engines from any service provider with valid license from DGCA. The admission of petition under Section 433 (f) of the Act may become more relevant in this background.

13. As noted in para 4 above, though learned Senior Advocate for the appellant has relied on number of authorities, which are noted above, according to us, in the facts and the findings which are noted above, none of the said authorities would help the appellant. Further, none of the said authorities



would make the order of the Company Court, admitting winding up petition and appointment of Official Liquidator as Provisional Liquidator, unsustainable. Those authorities do not need any discussion beyond this. These appeals need to be dismissed. No interference is required in the impugned orders, however since the time limit prescribed in the impugned orders may require some modification because of the time lag of about two weeks by this time, only that modification may be required, which may be done after hearing the parties, for that limited purpose.

14. For the reasons recorded above, these appeals are dismissed. No costs. Consequently, connected C.M.Ps would not survive and are disposed of accordingly.

15.1 After the pronouncement of this order, learned Senior Advocate for the appellant has requested that the stay granted by the Company Court be extended for some time. While making this request, learned Senior Advocate for the appellant has also stated that the condition of stay of the impugned order of the Company Court, as stipulated by the Company Court itself, is complied with by the appellant by submitting bank guarantee of an amount equivalent to 5 million USD.

15.2 Since we have not entertained these appeals, there is nothing to be stayed so far this order is concerned. However with a view to see that challenge if any to this order remains meaningful to the appellant, the stay granted by the Company Court which is in force till today shall stand extended till 28.01.2022.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

ssm
To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

+6ccs to Mr.R.Parthasarathy, Advocate, S.R.No.2355,2280,2281
+5ccs to Mr.Ashok Menon, Advocate, S.R.No.2192

O.S.A.No.1 to 3 of 2022

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