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

Date of decision: 29th August, 2023

+ **CO.PET. 149/2012 and CO.APPL. 3508/2015**

GULSHAN RAI

..... Petitioner

Through: Mr. Bhupendra Tyagi, Advocate.

versus

HOTEL QUEEN ROAD PVT LTD

..... Respondent

Through: Mr. Sandeep Mittal, Advocate (M: 9810005698).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner - Mr. Gulshan Rai seeking winding up of the Respondent Company - M/s Hotel Queen Road Private Limited.
3. The case of the Petitioner is that a sum of Rs.1,10,00,000/- was obtained by the Respondent Company as share application money and shares were to be allotted. The amount of Rs.1,10,00,000/- was paid by cheque payment to the Company. However, the shares were not allotted in favour of the Petitioner and despite a notice dated 24th January, 2011 being issued by the Petitioner for re-payment of the sum of Rs.1,48,25,000/-, no reply was received. Hence, the present winding up petition has been filed by the Petitioner.
4. Mr. Mittal, ld. Counsel appearing for the Respondent submits that the Petitioner has already filed Civil Suit for recovery being **CS 57969/2016**



titled ***Gulshan Rai v. Hotel Queen Road Pvt. Ltd.*** which is pending before the APJ-01 Patiala House Court and is listed for framing of issues on 7th November, 2023.

5. Ld. Counsel for the Petitioner submits that the Respondent ought to be directed to deposit the amount before the Civil Court.

6. The legal position has been settled and repeatedly reiterated by the Supreme Court. In ***IBA Health (India) Pvt. Ltd. v. Info-Drive Systems SDN, (2010) 10 SCC 553***, it has been reaffirmed that if there is a substantial dispute as to a liability, a winding up petition would not be maintainable and the threat of winding up cannot be used to force a Company to pay a bonafide dispute. Relevant portion of the said judgment are set out below:

“Substantial dispute – As to liability

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*¹ in which this Court held that: (Comp Cas p. 463)

“ 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 stigmatized as a scandalous abuse of the process of the court...’ ”

22. The abovementioned decision was later followed by this Court in *Madhusudan Gordhandas and Co. v. Madhu Woolen Industries (P) Ltd.*² The principles laid down in the abovementioned judgment have again been reiterated by this Court in *Mediquip systems (P) Ltd. v. Proxima Medical System GmbH*³ wherein this Court held that the defence raised by the appellant Company was a substantial one and not mere moonshine and had to be finally adjudicated upon on the merits before the appropriate forum. The abovementioned judgments were later followed by this Court in *Vijay Industries v. NATL Technologies Ltd.*⁴

23. The principles laid down in the abovementioned cases indicate that if the debt is bona fide disputed, there cannot be “neglect to pay” within the meaning of section 43(1)(a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts is not substantiated and non-payment of the amount of such a bona fide disputed debt cannot be termed as “neglect to pay” so as to incur the liability under Section 433(e) read with Section 434(1)(a) of the Companies Act, 1956.”

7. The liability being disputed and a civil suit having been filed by the



Petitioner against the Respondent, in the opinion of this Court, no winding up petition is liable to be entertained. The Petitioner is free to pursue its remedies in accordance with law. In addition, the Petitioner is also permitted to move an appropriate application if he wishes to seek any deposit in accordance with law.

8. Accordingly, this petition along with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 29, 2023

mr/kt