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

Date of decision: 29th August, 2023

\+ **CO.PET. 296/2012 and CO.APPL. 1192/2012, CO.APPL. 1193/2012, CO.APPL. 1187/2013**

M/S ACME RESOURCES LTD ..... Petitioner
Through:

versus

HOTEL ROYAL PLAZA & ORS ..... Respondents
Through: Mr. Sandeep Mittal, Advocate (M: 9810005698).

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGEMENT

1. This hearing has been done through hybrid mode.

2. This is a petition filed by the Petitioner - M/s Acme Resources Ltd. seeking winding up of Respondent Company - M/s. Hotel Royal Plaza formerly known as Ramada Hotel (Hotel Indraprastha) which is a unit of Hotel Queen Road Private Limited. Respondent No. 3- 7 i.e Mr. Ashok Kumar Mittal, Mr. Vikram Mittal, Mr. Jagdish Kumar, Mr. O.D. Sharma and Mr. S.P. Talwar are the directors of the Respondent Company.

3. The case of the Petitioner is that it had advanced a loan of Rs.5,30,00,000/- to the Respondent Company. For the repayment of the same, certain cheques were issued by the Respondents. Some of the cheques were honoured on presentation and were encashed. However, a part of the payment has not been made by the Respondent. Hence, as per the Petitioner, the Respondent Company deserves to be wound up.

4. Mr. Mittal, ld. Counsel for the Respondents has apprised the Court that the Petitioner has already filed a civil suit - ***CS(COMM) 167/2016*** titled ***M/s Acme Resources Ltd. v. Hotel Royal Plaza & Ors.*** wherein a sum of Rs.1.53 crore is lying deposited with the Registrar General of this Court. Issues have also been framed in the suit on 22nd August, 2022, in terms of the order passed by the Hon'ble Supreme Court on 25th January, 2017 titled ***Ashok Mittal v. State (Govt. of NCT of Delhi) & Ors***. The said order reads:

> *"Mr. C.A. Sundaram, learned senior counsel states that a sum of Rs.5,30,00000/- (Rupees five crores and thirty lakhs only) will be deposited by the petitioner with the Registrar General of the Delhi High Court in the 2 pending suit viz. C.S.(Comm.) No. 167 of 2016 between the parties within a period of four weeks from today. On such deposit being made the criminal proceedings will remain stayed. The pending suit(s) may be expedited. The parties are at liberty to mention before the concerned Court.*
>
> *The deposit will abide by further orders of the High Court in the pending suits.*
>
> *It will be open to the Registrar General of the Delhi High Court to keep the afore-mentioned amount in an appropriate fixed deposit.*
>
> *The special leave petition is disposed of accordingly."*

5. 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) Led. 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."

6. 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. In addition, a substantial portion of the amount has already been deposited. The Petitioner is free to pursue its remedies in accordance with law.

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

PRATHIBA M. SINGH
JUDGE

AUGUST 29, 2023
mr/kt