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

Date of decision: 29th August, 2023

+ **CO.PET. 255/2010 and CO.APPL. 1090/2010**

M/S J.J. INTERNATIONAL PVT LTD Petitioner

Through: Mr. Bhupendra Tyagi, Advocate.

versus

M/S RAMADA HOTEL & ORS. Respondent

Through: Ms. Isha Singh, Advocate (M:
7575866777).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner - M/s J.J. International Private Limited seeking winding up of Respondent Company - Ramada Hotel, a unit of Hotel Queen Road Private Limited along with its directors, Shri Ram Purshottam Mittal, Mr. Vikram Mittal, Mr. Ashok Kumar Mittal, Mr. Jagdish Kumar, Mr. O.D. Sharma and Mr. S.P. Talwar.
3. The case of the Petitioner is that it had entered into an agreement dated 17th September, 2007 with the Respondent Company for supply of various goods and items. Pursuant to the said agreement, a running account was maintained between the parties and a substantial sum of Rs.2.75 crores was to be paid.
4. Mr. Bhupendra Tyagi, Id. Counsel appearing for the Petitioner submits that the amount was not disputed by the Respondent Company. However, due to a change of management, disputes arose between the



parties.

5. Ms. Isha Singh, Id. Counsel appearing for the Respondent Company submits that the Respondent Company is run by the son-in-law of Mr. R.P. Mital and the liability itself is disputed as the hotel was not functional during the said period.

6. Ms. Isha Singh, Id. Counsel, on the other hand, submits that a civil suit - ***CS(OS)2974/2012 titled M/S J.J International Pvt. Ltd. v. Hotel Royal Plaza & Ors.*** has been filed before the Delhi High Court, wherein the Petitioner is seeking recovery of the same amount. Vide order dated 29th April, 2019, issues have been framed in the said suit. The Court has perused the order framing issues in the said suit.

7. 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.”

8. 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.

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

PRATHIBA M. SINGH
JUDGE

AUGUST 29, 2023

mr/kt