

(31)

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 13/07/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL
SHRI S.VIJAYARAGHAVAN (TECHNICAL MEMBER)

APPLICATION NUMBER :
PETITION NUMBER : TCP/423/ (IB)/2017
NAME OF THE PETITIONER(S) : CUSTODIAL SERVICES INDIA
NAME OF THE RESPONDENT(S) : METAFILMS INDIA PVT LTD
UNDER SECTION : 433 (e)(f)

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

1. Karthik Subbaraj
Elizabeth Subbaraj

Counsel for Respondent



ORDER


Counsel for the Petitioner present. Counsel for the Respondent also present. Counsel for the Petitioner leads us to the documents i.e. the loan agreement dated 31.7.1997 wherein it has clearly been provided that the amount repayable at the end of 7 years was to be Rs.8,68,51,970/- (Rupees eight crores and sixty eight lakhs and fifty one thousand nine hundred and seventy only). It has been submitted by the Counsel for the Petitioner that the loan has been advanced in the year 1997 itself, which was due during 2004, and thereafter, a reference was made before BIFR under the provisions of Sick Industrial Companies Act (SICA) in the year 2003 and the Petition came to be filed for winding up in 2014. Though, the Petition is for winding up of the Respondent company at just and equitable grounds, but the main cause is that the loan that has been advanced by the Petitioner vide agreement dated 31.7.1997, which the Corporate Debtor defaulted to repay.

2. The Counsel for the Respondent submitted that the arbitration proceeding is pending before Hon'ble Chief Justice of High Court of Madras wherein the execution of the loan agreement dated 31.7.1997 is seriously disputed. As seen from the Order of Hon'ble Chief Justice dated 15.12.2016 passed in **M/s. Custodial Services (India) Private Ltd. Vs. M/s. Metafilms (India) Ltd.**, it has been mentioned under para No.2 that in view of serious contest as to determine the issue of legality, validity and the existence of the arbitration agreement itself, it was agreed that, to have an appropriate adjudication, it would be necessary for both the parties to give oral evidence. The arbitration agreement (loan agreement and amendment agreement pertaining to arbitration).


3. The objection that has been raised by the Counsel for the Respondent has been rebutted by the Counsel for the Petitioner and referred to the ruling of Hon'ble Apex Court in **Mediquip Systems Pvt. Ltd. Vs. Proxima Medicals System GMBH**, dated 17.03.2005, but the same is not applicable to the facts and circumstances contained in the Petition under adjudication. The second ruling referred is given by the Hon'ble Apex Court in **Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd.**, dated 13.7.1999, wherein it has been laid down that the relief for winding up cannot be granted by the Arbitral Tribunal which is the exclusive domain of the Company Court/NCLT.

4. If looked to the facts and circumstances which have been mentioned as ground for the winding up of the Respondent company, it is crystal clear that the ground is only the non-payment of the loan advanced to the Respondent company. However, in order to make it other than the said ground, the Petitioner has elaborated the other ground for winding up of the company. As seen, the matter is *sub-judice* before Hon'ble High Court of Madras and the stage is for adducing the evidence by the parties in relation to the documents, i.e. loan agreements dated 31.7.1997 and 21.8.1997. Therefore, in the circumstance,

we adjourn the matter *sine die* and give the opportunity to the Petitioner to mention this matter after a decision is given by the Hon'ble High Court in the matter filed under Section 11 of the Arbitration and Conciliation Act, 1996. Accordingly, the matter is adjourned. Order pronounced in open court.


(S. Vijayaraghavan)
Member (Technical)

PAM


(Ch. Md. Sharief Tariq)
Member (Judicial)