IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODG) NO. 27 OF 2018
IN
COMPANY PETITION NO.923 OF 2015
with
Notice of Motion (Lodg) No.37 of 2018

Vandana Global Limited, A Company incorporated and registered under the Companies Act,1956 and having its office at The Capital, Office No.903 B-Wing, 9th Floor, Plot No.C-70, Bandra Kurla Complex East, Mumbai-400051 ...Appellant

Versus

IL & FS Financial Services Limited., a Company incorporated and registered under the Companies Act,1956 and having its registered office at the IL & PS financial Centre, 3rd floor, Plot C-22,Block, Bandra--Kurla Complex, Bandra East, Mumbai-400051 ...Respondent

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Mr.Fredeen Devitre, Senior Advocate with Mr.Sachin Mandlik, Mr.Pranav Sampat, Mr.Zacarias Joseph, Ms.Anushka Merchant i/b. Khaitan & Co., for the Appellant.

Mr.Dinyar Madon, Senior Advocate with Dr.Birendra Saraf, Mr.Vivek Dwivedi, Mr.Sachin Chandarana i/b. Manilal Kher Ambalal & Co., for Respondent No.1.

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CORAM : NARESH H. PATIL AND G.S.KULKARNI, JJ.

RESERVED ON: MARCH 1, 2018.

PRONOUNCED ON: MARCH 12, 2018

ORAL JUDGMENT:(Per G.S.Kulkarni, J.)

1. This appeal arises against the order dated 5 January 2018 passed by the learned Single Judge in Company Petition No.923 of

2015 whereby the learned Judge has admitted the respondent's Company Petition filed under Sections 433(e), 434 read with 439 of the Companies Act,1956 and has further directed that the winding up petition be advertised in two local newspapers.

FACTS:

2. The appellant's associate company namely Vandana Udhyog Limited had approached the respondent a non-banking financial institution for financial assistance of Rs.100/- crores. An offer letter dated 16 October 2011 was issued by the respondent enclosing the terms and conditions for the said term loan facility being Rupee Term Loan facility. The usage of the term loan was to part fund for infusion of equity into the power project namely “Vandana Vidhyut Ltd. (VVL)” floated by the promoters / promoters group and associate companies of the borrower Vandana Udhyog Ltd., for setting up a 540 mega watt power project at Village Salora, Katghora, District Korba and Chhattisgarh. Some of the relevant terms and conditions on which the parties have addressed the Court reads thus:-

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"Principle Terms & Conditions for Rupee Term Loan facility of upto Rs.1000 mn to Vandana Group.

1	**Borrower**	**Vandana Udhyog Ltd.**
7	Tenor	36 Months from date of first disbursement
8	Put/Call Option	The Lender & Borrower will have Put/Call option at the end of 12/24 months with a prior written notice of 45 days.
.. .	…	… …. ...
13	Repayment	In 4 equal quarterly installment at the end of 27th, 30th, 33rd and 36th month from the date of first disbursement
14	Security	The facility shall be secured by:
		(a) Pledge of fully paid up, de-materialised, unencumbered, freely transferable equity shares of Vandana Vidhyut Ltd (VVL), which shall provide a cover of 2.50x, subject to the minimum pledge of 26% of the entire paid up equity of VVL throughout the currency of the Facility; (b) Corporate Guarantee of Viconic Vyapar Pvt.Ltd. (c) Personal Guarantee of Mr.Vinod Agrawal, Subhash Agrawal, Mr.Ashok Agrawal, Mr.Gopal Prasad Agrawal, Mr.Prahlad Agrawal and Mr.Vijit Kumar Agrawal (d) PDCs for Principal & Interest (e) Demand Promissory Note (DPN) Note: Equity valuation with respect to the pledge of VVL shares to be undertaken on DCF/other methodology acceptable to IFIN. Present indicative valuation is in the range of Rs.,8000-8,500 mn which will be mutually confirmed prior to disbursement. The valuation shall be reviewed on annual basis based on the financials of VVL & progress in the implementation of the Project and top up be provided for any shortfall so as to maintain minimum stipulated cover of 2.50x subject to minimum pledge of 26%. First such review shall be carried out in October 2012.
15	Put Option	On the Put/Call dates, maturity and trigger of any event of default (EoD) IFIN shall have the unconditional right to sell the RTL, through transfer/assignment to Vandana Global Ltd. (VGL) and Vandana Ispat Limited (VIL) and realize all the outstanding dues under the Loan Agreement. The unconditional commitment of VGL and VIL to buy the RTL on the exercise of above right by IFIN will be backed by their respective Board Resolution, in compliance with Sec.295 of the Companies Act.

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20	Security Review	The security package shall be reviewed on an annual basis based on project progress of each SPV
	Other Rights	(a) Drag along Rights - In the event of default and consequent enforcement of security, IFIN shall have the right to sell the shares in VVL pledged to it to any third party and drag the promoters to offer such number of shares as may be required by the third party, to complete the strategic sale at the same terms and conditions so that of the sale of the IFIN's stake.
		(b) Tag Along rights: In the event of default and consequent enforcement of security, IFIN shall have standard tag along rights wherein if the promoters of VVL decide to offload a certain stake in VVL to a new buyer, except the transfers within the group, the Investors shall also have a right to offer its shares on the same price and other terms and conditions.
		(c) Negative Covenant: The Promoters will undertake that the following matters with respect to VVL/Borrowers shall require the prior approval of IFIN: * Any new business initiative which VVL/the Borrower wishes to undertake other than those approved in the Business Plan; * Any change in the capital structure, shareholding pattern or management control of VVL/the Borrowers.
		* Mergers, amalgamations and acquisitions, de-merger, re-organization and disposition of assets (including both acquisition and disposal) of VVL/the Borrowers;
		* Any change of the existing Statutory Auditors of VVL/the Borrowers.
		…….

3. Consequent to the said offer letter, the parties entered into three agreements namely (i) 'Loan Agreement' dated 6 January 2012 entered between the borrower – Vandana Udhyog Limited and the respondent; (ii) a 'Pledge Agreement' dated 6 January 2012 entered between the borrower- Vandana Udyog Limited and its associate company-Viconic Vyappar Private Ltd. who are stated to be

pledger no.1 and pledger no.2 and the respondent and (iii) the "Option Agreement" dated 6 January 2012 between the respondent on the first part and the appellant-Vandana Global Limited on the second part, Vandana Ispat Limited on the third part and fourthly Vandana Udhyog Limited – the borrower.

4. Under the option agreement dated 6 January 2012, the borrower-Vandana Udhyog Ltd., the appellant and another associate company – Vandana Ispat Limited, had irrevocably undertaken to the respondent, that in the event of a default under the loan agreement the appellant had a discretion to issue "Put Notice", and upon issue of such Put Notice, the borrower-Vandana Udyog Ltd., the appellant and Vandana Ispat Ltd. shall without demur and protest make payment of 'exercise price' to the petitioner and accept by way of an assignment from the petitioner the facility alongwith all rights and liabilities thereunder.

5. Consequent to the execution of all the agreements as noted above, the respondent had disbursed financial assistance of Rs.100 crores in favour of the borrower-Vandana Udyog Limited

between 24 January 2012 to 17 January 2013 which was utilized by the borrower. The borrower also made payment of interest till 30 June 2013 and thereafter there were defaults in such payment. On account of the defaults, correspondence ensued between the parties. The respondent by various letters called upon the borrower-Vandana Udyog Ltd. to make good the defaults and clear the outstanding dues. Ultimately a legal notice dated 12 February 2014 was issued by the respondent which also recorded about the enforcement of securities by taking such steps/actions under the facility agreement, pledge agreement and other documents executed in favour of the respondent to secure financial facility advanced by the respondent. The borrower-Vandana Udhyog Limited by its letter dated 18 February 2014 while admitting the loan, however expressed difficulties of non payment of the amount due and payable.

6. The respondent thereafter invoked the "Option Agreement" and issued a "Put Notice" dated 21 February 2014 calling upon the appellant and the associate company -Vandana Ispat Limited (VIL) to make payment of Rs.111,88,14,652/- being the "exercise price" on the date of issuance of "Put Notice". The appellant

responded to the said "Put Notice" disputing the invoking of the option agreement by the respondent. Thereafter, on account of the persistent default by the borrower-Vandana Udhyog Ltd., the petitioner also sold the pledged shares of Viconic Vyapaari Pvt.Ltd. which were sold in the period ranging from 3 April 2014 to 6 October 2014 at the rate of Rs.23/- to Rs.23.23 pers share and gave a credit of the realized amount to the borrower Vandana Udyog Limited.

7. As substantial debts remained due and payable, a statutory notice dated 13 September 2014 under Section 433 and 434 of the Companies Act was issued by the respondent to the borrower-Vandana Udhyog Ltd.. This was replied by the borrower-Vandana Udhyog Ltd. who admitted the loan facility as granted by the respondent, however denied its liability under the option agreement on various grounds. As the debt remained outstanding and was not being repaid, the respondent filed in this Court a winding up petition being Company Petition No.782 of 2014 against the appellant. A reply affidavit came to be filed in the said petition by the appellant whereby it was admitted by the appellant that the appellant was "only a guarantor" to the claim as made by the respondent against the

borrower-Vandana Udhyog Ltd., under the 'option agreement' dated 6 January 2012. The opposition to the petition was on the ground that the amount as mentioned in the statutory notice dated 13 September 2014 differed from the amount mentioned in the 'Put Notice' dated 21 February 2014. On 25 February 2014 the said company petition was withdrawn by the respondent with a liberty to file a fresh petition after serving fresh statutory notice.

8. The appellant thereafter by its letter dated 4 March 2015 purportedly terminated the “option agreement”. The termination was disputed by the respondent by its letter dated 14 May 2015. The respondent issued a fresh demand notice dated 11 May 2015 to the borrower-Vandana Udhyog Limited. The respondent once again exercising its right under “option agreement” issued a “put notice” dated 15 May 2015 calling upon the appellant to make payment of an amount of Rs.121,92,14,334/- being the exercise price as per the 'Option Agreement'. This notice was not honoured, hence a statutory notice dated 18 May 2015 was issued by the respondent on the registered office of the appellant calling upon the appellant to make payment of the said amount. As the appellant did not make payment

of the outstanding debt despite receipt of the statutory notice, Company Petition No.923 of 2015 subject matter of the present proceedings, came to be filed in which the impugned order is passed.

9. The learned Single Judge examining the materials placed on record has come to a conclusion that the appellant was in default and is not honouring its liability to pay the outstanding dues by the borrower-Vandana Udhyog Ltd. under the loan/financial facility as made available by the respondent. It was observed that even on receipt of the 'option notice' and the statutory notice the appellant did not make payment of the 'exercise price' as mentioned in the notices. It was also observed that the borrower-Vandana Udhyog Ltd. had filed proceedings before the National Company Law Tribunal, Mumbai Bench, in which the borrower had mentioned (in Annexure 15) that it had received financial facilities from the respondent and the appellant had executed a guarantee to the said borrowing. In considering the “option agreement” dated 6 January 2012, it was held that it was the respondent's right to sell and assign the facility to the appellant and its associate – Vandana Ispat Ltd. (VIL) on terms and conditions as contained in the option agreement and demand payment of “exercise

price". The learned Single Judge also rejected the contention of the appellant that after sale of the part of the shares which were pledged by Viconic Vyapar Pvt.Ltd. under the pledge agreement, the "Put option notice" could not have been issued by the respondent to the appellant. Learned Single Judge observed, that in fact, the appellant in the reply affidavit filed in the earlier Company petition, in unequivocal terms had admitted that the appellant was a guarantor under the option agreement dated 6 January 2012 to the amounts payable to the respondent by the borrower-Vandana Udhyog Ltd.. It is observed that however in paragraph 3(E) of the reply to the present Company petition, the appellant was taking a different stand that the option agreement is not a guarantee document, and the appellant is not a guarantor to the financial facility availed by the borrower-Vandana Udhyog Ltd. The learned Single Judge held that considering the clear consequence which was arising under the option agreement the appellant would become liable for the debt of the borrower. The learned Single Judge accordingly has passed the impugned order admitting the company petition and directing it to be advertised.

10. Learned Counsel for the appellant in assailing the

impugned order submits that the learned Single Judge is in an error in recording a finding that the "Option agreement" dated 6 January 2012 is in fact an agreement of guarantee, interalia executed by the appellant in favour of the respondent. It is contended that the "put option" is an independent separate arrangement and in no manner it can be termed as guarantee on the part of the appellant to pay the debts of the borrower-Vandana Udhyog Ltd. It is submitted that by the impugned order in exercise of summary jurisdiction, the learned Single Judge has in fact enforced the "option agreement". It is next submitted that the claim of the respondent based on the "option agreement" is not enforceable in law as the "option agreement" was terminated by the appellant on 4 March 2015, which was not challenged by the respondent. It is submitted that a claim under the terminated "option agreement" could not have been made in the company petition. It is next submitted that the interpretation of the learned Single Judge on Article IV "termination clause" under the "option agreement", cannot be accepted that the agreement can be terminated only on the happening of the two events as provided in the said clause i.e.; firstly on due repayment of the outstanding amount under the facility by the borrower-Vandana Udhyog Ltd. to the

respondent and secondly on the receipt of 'exercise price' by the respondent from the appellant and Vandana Ispat Limited in terms of Article 2.1 of the said agreement. The contention as urged on behalf of the appellant is that the termination clause (Article IV) would not deprive the appellant from the right to terminate the agreement which is available under the general law, and thus, the appellant's termination of the said agreement dated 4 March 2015 cannot be rendered inconsequential. In other words, the contention of the appellant is that the "Put option" as exercised by the respondent would not survive in view of termination of the said agreement by the appellant and the winding up petition was not the appropriate remedy for the respondent in such a situation. It is submitted that the learned Single Judge has thus misinterpreted the "option agreement". Learned Senior Counsel for the appellant next submits that the learned Single Judge ought not to have observed that the appellant in the reply affidavit filed in Company Petition No.782 of 2014 had admitted that it was a guarantor in respect of the financial facility as extended to the borrower-Vandana Udhyog Ltd., as this statement was made inadvertently which was clarified in the affidavit filed in the present company petition.

11. On the other hand, learned Counsel for the respondent would submit that this is a clear case where the appellant had admitted its liability to discharge the debt of the borrower-Vandana Udhyog Limited as evident from the reply affidavit filed in the earlier company petition wherein the appellant has clearly admitted that the appellant was a guarantor to the said financial facility. It is submitted that the nomenclature of the agreements may be anything, ultimately it is required to be seen as to what was the intention of the parties. It is submitted that if the option agreement when carefully seen, in its various clauses clearly reflects nothing but a guarantee on the part of the appellant alongwith Vandana Ispat Ltd. guaranteeing the loan availed by the borrower-Vandana Udhyog Ltd. It is thus submitted that the option agreement is thus an unambiguous guarantee. Our attention is drawn to Article II of the "option agreement" dated 6 January 2012, namely the "Put Option" clause, under which the appellant and Vandana Ispat Limited (VIL) have irrevocably and absolutely agreed and undertook that in the event of occurrence of a default under the 'facility agreement' between the respondent and the borrower-Vandana Udhyog Ltd., the respondent may at its discretion

issue a “Put Notice” and upon receipt of “Put Notice”, the appellant and Vandana Ispat Ltd. (VIL), shall without demur and protest make payment of the 'exercise price' to the respondent and accept by way of assignment from the respondent the facility alongwith all rights and liabilities thereunder. It is thus submitted that the language of Article II of the 'option agreement' being clear and unambiguous, it is in fact an agreement of guarantee. Learned Counsel for the respondent submits that moreover the appellant itself has accepted this interpretation. Supporting this submission, our attention is drawn to page 272 of the appellant's compilation namely the admission as made in paragraph 7 of the appellant's reply affidavit filed in the earlier company petition wherein the appellant has stated that “*the appellant is only a guarantor to the alleged claim made by the respondent against Vandana Udhyog Ltd.*” Our attention is thereafter drawn to page 256 of the compilation of the appellant where the borrower-Vandana Udhyog Ltd. setting out the details of the guarantee given in relation to the debts of the company, has indicated name of the respondent as financial creditor to whom the guarantee has been given by the appellant-Vandana Global Limited. It is also brought to our notice that Mr.Ashok Kumar Jain who is one of the Director of the appellant-company is also the

Director of the borrower-Vandana Udhyog Ltd. In support of this submission our attention is also drawn to Sections 140 and 141 of the Indian Contract Act,1872 which deals with the rights of surety on payment or performance and surety's right to benefit of creditors security respectively. It is thus submitted that no interference is called for in the impugned order. In support of the submission that the intention of the parties is required to be gathered from the agreements as executed between the parties, learned Counsel for the respondent has placed reliance on the decision of the Supreme Court in the case "***Tamboli Ramanlal Motilal (Dead) by LRs. Vs. Ghanchi Chimanlal Keshavlal (Dead) by LRs. And Anr.***"[1]

12. We have heard the learned Counsel for the parties and with their assistance, we have perused the documents on record as also the impugned order.

13. There are three principal submissions as urged on behalf of the appellant in challenging the impugned order passed by the learned Single Judge. The first submission is that the option

1 1993 Supp(1) SCC 295

agreement was not available to be invoked against the appellant as the same was terminated by the appellant on 4 March 2015. The "option agreement" being terminated was not enforceable in law. As a consequence of termination of the option agreement no dues are payable under the option agreement. Further the adjudication of the validity and purport of the option agreement cannot be a subject matter of summary proceedings of a winding up petition but ought to be agitated in a civil suit. The second submission is that the learned Single Judge has erred in coming to a conclusion that there is no right available under the general law, for the appellant to terminate the option agreement and that the option agreement could not have been terminated only in two circumstances as provided by the termination clause – Article IV (supra). The third submission is that even assuming that the option agreement was subsisting, the same could not have been construed as an "agreement of guarantee" by the learned Single Judge. The option agreement had created reciprocal obligations as also there was no amount payable by the appellant *per se* under the option agreement. The interpretation of option agreement is, therefore, contrary to the express terms of the said agreement.

14. We are not persuaded to accept any of the submissions as urged on behalf of the appellant. Taking the third submission first, we may state that it is not in dispute that the principal terms and conditions of the financial assistance as provided by the respondent to the borrower-Vandana Udhyog Ltd. stipulates "Put Option" which provides that on the Put/Call dates, maturity and trigger of any event of default, the respondent shall have an unconditional right to sell the RTL through transfer/assignment, to the appellant-Vandana Global Ltd. (VGL) and Vandana Ispat Limited (VIL) and realize all the outstanding dues under the loan agreement. It further provides of the unconditional commitment of the appellant and Vandana Ispat Limited (VIL) to buy the RTL on the exercise of the above right by the respondent which will be backed by their respective Board Resolution, in compliance of Section 295 of the Companies Act. Accordingly, the respondent had entered into the "Option Agreement" dated 6 January 2012 with the appellant and Vandana Ispat Limited and the borrower-Vandana Udhyog Ltd. Clause 2 of the said agreement clearly provides that it is a condition for the respondent agreeing to grant financial facility that the appellant and Vandana Ispat Ltd. (VIL), provide the respondent with an unconditional and irrevocable option to sell and

assign the facility to the appellant and VIL alongwith associated rights thereunder in the event default occurs under the said facility agreement. Clause 2 reads as under:-

> "It is a condition for IFIN agreeing to grant the Facility that VGL and VIL provide IFIN with an unconditional and irrevocable option to sell and assign the Facility to VGL and VIL alongwith the associated rights thereunder in the event in Event of Default occurs under the Facility Agreement.

15. 'Article I' being the interpretation clause, the "Put Option" is defined to mean the right but not the obligation of the respondent to sell and assign the facility to the appellant and VIL on the terms and conditions contained in the said agreement and demand payment of "Exercise Price". The Exercise Price is defined to mean the aggregate amount of all debts and monetary liabilities of the borrower-Vandana Udhyog Ltd. to the respondent which are owed, incurred and outstanding as principal, together with interest, charges, costs, expenses and all other monies payable by the borrower alongwith the penalty, if any, under the facility agreement and any other documents in relation to the facility, upon the occurrence of an event of default, under the facility agreement. Article II provides for "Put Option" and as the controversy revolves around the"Put Option" it would be relevant to extract the same, which reads thus:-

> " **ARTICLE II**
> **PUT OPTION**
> VGL and VIL hereby irrevocably, absolutely and unconditionally agree with and undertakes to IFIN that in the event of the occurrence of an Event of Default under the Facility Agreement IFIN may, at its discretion, issue the Put Notice; and upon the receipt of the Put Notice VGL and VIL shall, without demur or protest, make payment of the Exercise Price to IFIN and accept by way of assignment from IFIN the Facility alongwith all rights and liabilities thereunder." (emphasis supplied)

16. Adverting to the principle of law as laid down in "***Tamboli Ramanlal Motilal (Dead) by LRs. Vs. Ghanchi Chimanlal Keshavlal (Dead) by LRs. And Anr."***(supra) in regard to interpretation of the agreements and to ascertain the intention of the parties, we may observe that a plain reading of Article II "the Put Option" (supra) would clearly indicate that it is nothing but a guarantee of the appellant to the respondent, without demur or protest to make payment of the "exercise price". To appreciate as to what is the meaning of the term "guarantee" it would be useful to refer to Black's Law Dictionary, Eighth Edition which defines 'guarantee' as under:-

> "Guarantee (gar-an-tee), n. 1. The assurance that a contract or legal act will be duly carried out.2. GUARANTY (1)
>
> "In practice, guarantee, n., is the usual term, seen often, for example, in the context of consumer warranties or other assurances of quality or performance, Guaranty, in contrast, is now used primarily in financial and banking contexts in the sense "a promise to answer for the debt of another.". Guaranty is now rarely seen in nonlegal writing, whether in

> G.B. Or in the U.S." Brayan A. Garner, *A Dictionary of Modern Legal Usage 394(2nd ed. 1995)*.
>
> *3.* Something given or existing as security, such as to fulfil a future engagement or a condition subsequent. [Cases: Guaranty – 29] 4. One to whom a guaranty is made. - Also spelled *guaranty.*
>
> ***Guarantee, vb*** 1. To assume a suretyship obligation; to agree to answer for a debt or default. 2.To promise that a contract or legal act will be duly carried out. 3. To give security to." (emphasis supplied)

17. In the above context from the bare reading of Article II, it is clear that the appellant as also Vandana Ispat Ltd. had irrevocably, absolutely and unconditionally agreed and had undertaken to the respondent that in the event of occurrence of a default under the facility agreement, the respondent may at its discretion issue "Put Notice" and upon receipt of the Put Notice, the appellant and Vandana Ispat Ltd., shall without demur or protest make payment of "Exercise Price" to the respondent and accept by way of assignment from the respondent the facility alongwith all rights and liabilities thereunder. The very wording of Article II is suggestive of a guarantee on the part of the appellant to the respondent. The legal position can be clearly noted from Section 126 of the Contract Act which defines a contract of guarantee to mean a contract to perform the promise, or discharge the liability, of a third person in case of his default. It is well settled that a

contract of guarantee involves principally three parties namely the creditor, the surety and the principal debtor, where liability may be actual or prospective. Thus necessarily the ingredients of a contract of guarantee are clearly present in the option agreement which are reflected from the unambiguous nature of Article II the “Put Option” whereby the appellant has irrevocably, absolutely and unconditionally without demur or protest agreed to make payment of the exercise price to the respondent. If this be the case, then considering the provisions of Section 126 of the Contract Act, it is imperative to accept the 'option agreement' as a 'contract of guarantee'. There can be no other interpretation. Thus, we are of the considered opinion, the learned Single Judge is correct in observing that the 'option agreement' is required to be considered as a guarantee.

18. Now coming to the contention as urged on behalf of the appellant that the option agreement was terminated on 4 March 2015 and the same could not have been invoked. This contention also cannot be accepted, firstly because the parties have bound themselves by providing Article IV 'the termination clause', which provides that the option agreement will be terminated only on the happening of two

events, firstly on due repayment of all outstanding amounts under the facility by the borrower to the respondent and secondly on receipt of 'exercise price' by the respondent from the appellant and Vandana Ispat Ltd. (VIL) It would be desirable to note that the contents of Article IV which reads thus:-

> "This Agreement will terminate on the happening of the following events:
>
> a) On the repayment of all outstanding amounts under the Facility by the Borrower to IFIN, or
>
> b) on the receipt of the Exercise Price by IFIN from VGL and VIL in terms of Article 2.1."

Once having agreed to the above conditions of termination, it was not open to the appellant to contend that the appellant's liability had ceased to exist in view of a purported termination of the option agreement and that civil proceedings were required to be filed by the respondent to seek specific performance of the said agreement. In our opinion, by agreeing to Article IV (termination clause) and accepting that the agreement will be terminated only on the happening of said two events, it can certainly be said that the appellant had waived the right if any, to terminate the contract. The submission as urged on behalf of the appellant that by

their letter dated 4 March 2015 the option agreement was terminated, if is accepted, then the consequence is that Article IV (Termination Clause) of the option agreement itself would be rendered nugatory and meaningless. The whole intention of the parties to incorporate the termination clause as contained in Article IV is to bind the parties only in the stipulated and agreed mode of termination and in no other form or method. In fact what is pertinent is that the parties had categorically avoided to enter any other form of termination when they agreed to incorporate Article IV. Thus, the appellant's contention that in view of termination letter dated 4 March 2015 the "Put Option" could not have been exercised by the respondent is wholly untenable. The appellant's contention of the validity of the option agreement being considered by the learned Single Judge in the summary proceedings of a winding up petition, hence is wholly unfounded.

19. Before parting, we may also note that by the impugned order the winding up petition of the respondent has been admitted and was directed to be advertised. It is not in dispute that the winding up petition has already been advertised and to that extent the impugned order is already implemented. As regards the final hearing

of winding up petition, as informed to us, the learned Single Judge has placed the winding up petition for final hearing on 16 March, 2018.

20. In view of the above discussions and the only points of argument being considered and dealt by us in the foregoing paragraphs, we are of the clear opinion that no ground is made out to interfere in the impugned order. The appeal lacks merit. It is accordingly rejected with costs.

21. In view of disposal of the appeal, pending Notice of Motion (Lodg) No.37 of 2018 does not survive. It is accordingly disposed of.

(G.S.KULKARNI, J.) **(NARESH H. PATIL, J.)**

22. After pronouncement of the judgment, learned Counsel for the appellant prayed for stay to the operation of the judgment. Learned Counsel for the respondent submits that there was no stay operating in the appeal. Hence, the prayer for stay stands rejected.

(G.S.KULKARNI, J.) **(NARESH H. PATIL, J.)**

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