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

**+ CO.PET. 360/2008 & CO. APPL.1378/2008**

**MEHTA ENTERTAINMENT INC.** ..... Petitioner  
Through: Mr. V.P. Singh, Senior Advocate  
with Mr. S.K. Agarwal, Advocate.

**Versus**

**YASHI MULTIMEDIA PVT. LTD.** ....Respondent  
Through: Mr. Girdhar Govind, Advocate with  
Ms. Gopashree, Advocate.

% Reserved on : 24<sup>th</sup> April, 2012.  
Date of Decision: 21<sup>st</sup> May, 2012

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

## **J U D G M E N T**

### **MANMOHAN, J :**

1. Present winding up petition has been filed under Section 433(e) read with Sections 434 and 439 of the Companies Act, 1956 (hereinafter referred to as 'the Act') stating that the respondent is unable to pay its debts allegedly amounting to US\$ 300,000 equivalent to Rs. 1,47,72,000/-.

2. The facts as stated in the present petition are that the petitioner

is a sole proprietorship firm, based in the United States of America, owned by Mr. Deepak Mehta.

3. It is stated in the petition that respondent company's duly authorised representative Mr. Farhath Hussain was approached by the petitioner to arrange stage shows in United States in which Mr. Vivek Oberoi, the film star was willing to participate between 24<sup>th</sup> August, 2003 and 30<sup>th</sup> September, 2003. In support of its case the petitioner has annexed the respondent's letter dated 29<sup>th</sup> January, 2003 allegedly authorising Mr. Farhath Hussain to not only enter into contracts on behalf of the respondent company but also to accept monies in its account. In the petition, the petitioner has also relied upon another letter dated 29<sup>th</sup> January, 2003 issued by Mr. Vivek Oberoi authorising the respondent company to deal on his behalf for anything and everything including receipt of payment.

4. It is further stated in the petition that in pursuance to the above authority, on 1<sup>st</sup> February, 2003, Mr. Farhath Hussain for and on behalf of the respondent company had entered into a contract with the petitioner for stage shows in San Francisco in 2003.

5. It is stated in the petition that in pursuance to the request of

Mr. Farhath Hussain, Mr. Manu Mehta, the brother of Mr. Deepak Mehta immediately transferred through Wire Transfer service US\$ 300,000 in the account of the respondent being the consideration for the proposed stage shows in which Mr. Vivek Oberoi was to participate.

6. In the petition, it is contended that as Mr. Vivek Oberoi did not participate in the said stage shows, the respondent was duty bound to refund the advance received by it along with compensation on account of huge losses suffered by the petitioner. It is further stated that as despite exchange of number of e-mails respondent did not repay the advance received by it, petitioner sent a legal notice dated 18<sup>th</sup> January, 2006 and as there was no response to the same, petitioner filed the present winding up petition.

7. Mr. V.P. Singh, learned senior counsel for petitioner submitted that the respondent was an admitted creditor of the petitioner. In this connection, Mr. Singh drew attention of this Court to the emails exchanged between Mr. Mahesh Oberoi on behalf Mr. Suresh Oberoi, Director, of the respondent company and Mr. Kevin

H. Lewis at pages 19 to 24 of the paper book. He contended that in the aforesaid e-mails, respondent company had admitted receipt of US\$300,000 from the petitioner, but instead of offering full refund in cash, had offered to repay the petitioner partially in cash and the balance through services performed i.e. future shows to be performed by Mr. Vivek Oberoi. In particular, Mr. V.P. Singh relied upon the following e-mails to show the admission of debt to the tune of US\$ 300,000 by the respondent-company:

*“From : klewis@howardrice.com  
To : uberois@aol.com; deepak@mehtaentertainment.com  
Sent : Mon, 16 Apr 2007 3:34 PM  
Subject: Representation From Farhath Hussain*

*Mr. Uberoi,*

*Attached is the signed representation from Farhath Hussain that you have requested. Please make arrangements to wire the \$340,000 U.S. to my client Deepak Mehta. Let me know who should receive the wire instructions. Thanks*

*Kevin Lewis”*

*“From : uberois@aol.com <uberois@aol.com>  
To : Kevin H. Lewis  
Sent : Mon Apr 16 15:25:34 2007  
Subject: Re: Representation From Farhath Hussain*

*I thought the amount was \$300K and alternate arrangements were made by Mr. Mehta. While we accept this scanned letter from Mr. Hussain, can you please request him to send the*

*original notarized to Yashi Multi Media? Thank you. Best regards, Mahesh Uberoi.”*

(emphasis supplied)

8. On the other hand, Mr. Girdhar Govind, learned counsel for respondent submitted that the present winding petition at the instance of the petitioner was not maintainable as according to the petitioner itself monies had been advanced to the respondent by Mr. Manu Mehta and not by the petitioner firm.

9. Mr. Girdhar Govind also submitted that there was no privity of contract between the petitioner and respondent inasmuch as Mr. Farhath Hussain was neither an employee nor authorised representative or agent of the respondent. He emphatically denied that Mr. Farhath Hussain was authorised by the respondent to enter into any contract with the petitioner. In support of his submissions, Mr. Govind relied on petitioner’s own letter dated 7<sup>th</sup> January, 2006 wherein petitioner has stated, “.....Since Mr. Hussain cannot wait any longer as he is launching his shows and is signing contracts with various promoters. It will not be possible for him to add Vivek at a later stage.....”

10. On merits, Mr. Govind stated that despite availability of Mr. Vivek Oberoi, stage shows as planned could not be held as Mr. Farhath Hussain did not get confirmation from other actors. He also stated that the claim made by the petitioner was barred by limitation.

11. Mr. Govind stated that the respondent was always willing to refund the advance of US\$300,000 received by the respondent provided Mr. Farhath Hussain issued a duly notarised discharge/No Objection certificate. He lastly pointed out that a recovery suit between the parties was already pending.

12. In rejoinder, Mr. V.P. Singh, learned senior counsel for petitioner emphatically reiterated that Mr. Farhath Hussain was the agent of respondent and thus the respondent was bound by his actions.

13. He further stated that on 27<sup>th</sup> April, 2007, Mr. Farhath Hussain had issued a duly notarised release letter directing the respondent to refund the aforesaid amount to the petitioner in its entirety.

14. Mr. Singh also denied that there was no privity of contract

between the petitioner and respondent. He stated that though initially the contractual amount had been remitted by the petitioner's brother, but on his request, the said amount had been refunded by the petitioner. Thus according to him, the present petition was maintainable.

15. Having heard the parties and on a perusal of the paper book, this Court is of the opinion that it must first inquire as to whether Mr. Farhath Hussain was an authorised representative/agent of the respondent. For deciding this issue, the Court has to examine the full import of the two letters both dated 29<sup>th</sup> January, 2003 which were relied upon by the petitioner. The said two letters are reproduced hereinbelow:-

*“Jan 29<sup>th</sup>, 2003*

*To Whomsoever It May Concern*

*This is to confirm that Mr. Vivek Oberoi will be willing to participate in the shows organized by Mr. Farhath Hussain. We further authorize Mr. Farhath Hussain & his partners/promoters to remit the contract amount of the above mentioned shows in our a/c no.910668118, Citibank, Mumbai, India.*

*Please note that this letter authorizes Mr. Farhath Hussain to remit the contract amount into the above mentioned*

account for only the shows held by M/s. Cine Entertainment Promoters Ltd. held between 24<sup>th</sup> August to 30<sup>th</sup> September 2003.

Thanking you,

Yours faithfully  
For Yashi Multimedia  
Sd/-  
Suresh Oberoi”

“Jan 29<sup>th</sup> 2003

Mr. Farhath Hussain  
Cine Entertainment Promoters Ltd.  
31, Longwood Gardens,  
Ilford Essex,  
IG5 OEB (UK)

Sub: Shows from 22<sup>nd</sup> August to 30<sup>th</sup> September 2003

Dear Sir,

This is to inform that I have authorized M/s. Yashi Multimedia Pvt. Ltd. to deal on my behalf for anything & everything regarding the above mentioned shows including dates and receiving payments.

Thanking you,  
Yours faithfully,  
Sd/-  
Vivek Oberoi”

(emphasis supplied)

16. It is apparent from the above letters that respondent company had only confirmed that Mr. Vivek Oberoi would be participating in the shows organized by Mr. Farhath Hussain and held by M/s. Cine

Entertainment Promoters Ltd. The aforesaid correspondence prima facie discloses that there was a principal to principal agreement between Mr. Farhath Hussain and the respondent.

17. Even Mr. Farhath Hussain's letter dated 01<sup>st</sup> February, 2003 which according to the petitioner constitutes a contract between the petitioner and the respondent is sketchy and does not state that Mr. Farhath Hussain was acting as an agent of the respondent. The said letter is reproduced hereinbelow:-

*“FARHATH HUSSAIN  
31 – Longwood Gardens,  
Ilford, Essex IG5 OEB  
United Kingdom*

*To,  
Mr. Deepak Mehta,  
Mehta Brothers Entertainments,  
San Francisco,*

*Date : Feb 1, 2003*

*Re: Vivek Show for San Francisco in Sept 03.*

*Dear Deepak,*

*Please transfer \$300,000.00 (Dollars Three Hundred Thousand) to YASHI MULTIMEDIA PVT. LTD. for the above mentioned show.*

*I am also faxing to you the confirmation letter of Vivek Oberoi, Yashi Multimedia Pvt. Ltd., and the bank details.*

*Thanking you,  
Yours Sincerely,  
Sd/-  
Farhath Hussain”*

18. Consequently, the exact understanding amongst the petitioner, respondent and Mr. Farhath Hussain can only be known when Mr. Farhath Hussain is either a party to the adjudicatory proceedings or deposes as a witness.

19. Further, though the receipt of US\$ 300,000 is admitted by the respondent, but its stand has been that it will refund the same to the petitioner provided Mr. Farhath Hussain is agreeable to the same and gives a full and final discharge to the respondent. Even the authenticity of the alleged notarized release letter placed on record by the petitioner along with its rejoinder is not admitted by the respondent. The last e-mail written by the petitioner's counsel and the respondent is reproduced hereinbelow:-

*“From : Kevin H. Lewis  
To : uberois@aol.com  
Sent : Thu, 24 May 2007 2:06 pm  
Subject: RE.*

*Mahesh, thank you for your e-mail. I do not know why YMM has not sent you the notarized letter that you have requested. We have asked Mr. Hussain to do so, and Deepak will call him today and request it again. From my perspective, there is no dispute that he has signed the letter and we have a faxed copy of it, and so I don't believe that issue should hold up resolving this matter. If there is some question in your mind about the authenticity of this letter,*

feel, free to contact Mr. Hussain directly. In any event, we will continue pushing him to send this letter.

*I have spoken to Deepak about your proposal below and we are encouraged that we can find a solution to this issue that will work for all parties. We will continue discussing the details of your proposal amongst ourselves and third parties who are also interested in shows with Mr. Oberoi. One question. Does your proposal require that Deepak agree to take on 10 shows, or would 5 be sufficient?"*

*In the meantime, Deepak informs me that he has an understanding with Mr. Oberoi that he will be paid the \$36,000 by May 27th. Payment of this amount in good faith will go a long way towards reaching an ultimate resolution and we look forward to receiving it. In the meantime, I will continue working with Deepak on your proposal and will respond soon.*

*'From : uberois@aol.com [mailto:uberois@aol.com]  
Sent : Friday, May 25, 2007 7:15 AM  
To : Kevin H. Lewis  
Subject: Re:*

*I have the money I can pay Deepak anytime. However, I need a simple agreement signed. Mr. Hussain has disappeared and is not responding to our calls. His friends in India feel some else may be corresponding on his behalf. We need to be careful. Pl help by getting the original notarized. Money is there and will be paid. 5 shows is sufficient if that is all what Deepak wants to do. However, we can all have a win win situation if we have more shows. Thanks."*

(emphasis supplied)

20. Consequently, the authenticity of the alleged/release letter

needs to be proved by the petitioner.

21. From the aforesaid discussion, it is apparent that there are issues which require to be adjudicated in the presence of Mr. Farhath Hussain. The defence set out by the respondent in the reply to the winding up proceedings cannot be said to be a moonshine or sham. The Madras High Court in ***B. Viswanathan vs. Seshasayee Paper and Boards Ltd. (1992) 73 Comp.Cas 136 (Mad)*** has held as under:-

*".....It is also well-settled that, in a summary proceeding like winding up, a detailed investigation and adjudication of the dispute should be avoided. This principle has been laid down in the case of *G. Loganayaki v. Moolangudi Chit Funds P. Ltd.*[1979] 49 Comp Cas 544 (Mad) as extracted above....."*

(emphasis supplied)

22. Moreover, the Supreme Court in ***M/s. IBA Health (I) P. Ltd. vs. M/s. Info-Drive Systems SDN. BHD. (2010) 10 SCC 553*** has held that *"the Company Court is expected to ascertain that the company's refusal is supported by a reasonable cause or a bona fide dispute in which the dispute can only be adjudicated by a trial in a civil court."* (See 'para 31').

23. Consequently, the present petition and pending application are

dismissed with liberty to the petitioner to raise its claim if not earlier raised in the already pending civil suit between the parties.

**MANMOHAN, J.**

**MAY 21, 2012**

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