

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 951 OF 2014

Mr. Sanjeev Gupta ... Petitioner

Versus

M/s. Lotus Allied Mediamatics Private Limited ... Respondent

Mr. Manoj Agre i/b. G.B. Kedia for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 18TH MARCH, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Lotus Allied Mediamatics Private Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, they are in the business of display of advertisements on hoardings in various parts of Mumbai and Maharashtra. Pursuant to the order and written confirmation letter executed by the Company, the Petitioner displayed advertisements as required by the Company at various places in Mumbai. The Petitioner thereafter submitted to the Company his bills, work completion letter and photographs confirming the said display.

3. According to the Petitioner, in part discharge of its liability the

Company paid an amount of Rs.85,39,459/- to the Petitioner leaving a balance amount of Rs.65,90,053/-.

4. The Petitioner issued a notice dated 29th January, 2014 to the Company, calling upon the Company to pay an amount of Rs.65,90,053/- to the Petitioner along with interest @ 21% per annum for the delayed period. After receipt of the said notice by the Company, the Directors of the Company Mr. Arun Kumar Sharma and Mr.Ashutosh Rai approached the Petitioner and assured him that the Company will clear his outstanding dues by August, 2014 since the Company was facing financial difficulties. However, the Company failed and neglected to make the balance payment of Rs.65,90,053/- along with interest as claimed even in August, 2014. The Petitioner therefore through his Advocate issued statutory notice dated 19th September, 2014 to the Company. The Company received the statutory notice but failed and neglected to respond to the same.

5. The Petitioner therefore filed the present Petition seeking winding up of the Company on the ground that the Company is unable to pay its debts. A copy of the Petition was received by the Company on 24th December, 2014. Thereafter, the Advocate for the Company by its letter dated 5th January, 2015 addressed to the Advocate for the Petitioner requested the Company to forward a copy of the above Petition at the

earliest. The Advocate for the Petitioner under cover of his letter dated 7th January, 2015 after recording that the Company Petition is already served on the Company, once again forwarded a photo copy of the Petition along with the exhibits to the Advocate for the Company. By the said letter, the Advocate for the Petitioner also informed the Advocate for the Company that the next date of hearing is fixed on 12th January, 2014 and requested the Company to file its Affidavit in Reply and serve an advance copy to the Advocate for the Petitioner. However, the Company failed and neglected to file its Affidavit in Reply.

6. On 13th February, 2015 the Petition was taken up for Admission when at the request of the learned Advocate for the Company further time of one week was granted to the Company to file its reply. On 20th February, 2015 when the matter was called out for Admission, the Company not only filed its Affidavit in Reply but the Advocate appearing for the Company informed the Court that he had not even filed his appearance in the above Company Petition. The question therefore of granting any further time to the Company did not arise and the above Company Petition was admitted and directed to be advertised. Notice under Rule 28 of the Companies (Court) Rules, 1959 to the Company was waived. Paragraph 7 of the said order dated 20th February, 2015 is relevant and reproduced hereunder :

“7.From the aforestated facts, I am prima facie satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has not replied to the statutory notice. A copy of the Petition was served on the Company on 24th December, 2014 and once again on 9th January, 2015 at the request of Mr. A.S. Pande, Advocate. However, the said Advocate Mr. Pandey has not filed his vakalatnama in the matter and has also not filed the Affidavit in Reply. In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. I am therefore prima facie satisfied that the Company is unable to pay its debts and the Company Petition deserves to be admitted and advertised. Hence, the following order”

7. Pursuant to the said order dated 20th February, 2015, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. Affidavit proving

publication dated 9th March, 2015 is on record. Even at this stage, no Affidavit opposing the Petition has been filed by the Company. All the contentions of the Petitioner in the Petition have therefore remained uncontroverted and there is no reason why the allegations / submissions made by the Petitioner in the Company Petition should not be accepted.

8. For the reasons set out in the order dated 20th February, 2015 and herein, I am satisfied that the Company is unable to pay its debts and deserves to be wound up. The above Company Petition is, therefore, allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

“(a) that the Company M/s. Lotus Allied Mediamatics Private Limited be wound up by and under the order and directions and supervision of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) That the Official Liquidator, High Court, Bombay be appointed Liquidator of the Company, its entire assets, properties, affairs and records of the Company, lying of the Registered Office of the Respondent Company at A / 204, 2nd Floor, Boomerang, Chandivali Farm Road, Andheri (East), Mumbai – 400 072 with all powers under the Companies Act, 1956 ”.

9. The Official Liquidator to forthwith act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court without waiting for any further notification from this Court or from any other authority.

10. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)