

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO.661 OF 2015
IN
COMPANY PETITION NO.210 OF 2012**

Premier Brands Pvt. Ltd. ... Applicant/
Original Respondent

In the matter between :

Total Sports & Entertainment Pvt. Ltd. ... Petitioner
Versus
Premier Brands Pvt. Ltd. ... Respondent

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Mr. Raman Gandhi a/w Mr. Amar Soman i/b R.M. Partners for
Applicant/Original Respondent.

Mr. Aditya Shiralkar a/w Hemang Raithatha, Mr. Jayesh Mestry and Mr.
Shantanu Kalekar i/b RMG Law Associates for Respondent/Original
Petitioner.

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CORAM : S.C.GUPTE, J.

DATE : 24 NOVEMBER 2016.

P.C. :

. Heard learned Counsel for the parties.

2 This application is for recall and setting aside of two orders of this Court, that is to say, the order dated 17 January 2013, by which the present Company Petition was admitted by this Court and the order dated 14 November 2014, by which the petition was finally allowed and the Applicant (original Respondent) was ordered to be wound up. The Application is on the footing that the petition was not served by the

Respondent-company and the Applicant did not have adequate notice of hearing of the petition. It is submitted that the packet of service sought to be served at the registered office of the Respondent-company has admittedly come back with the remark "left". It is submitted that the Applicant has already instituted a suit before the High Court at Delhi for a declaration of nullity of the contract executed between the parties, out of which the Petitioner's debt in the present petition arises. It is also submitted that a part of the Petitioner's debt, i.e. the sum of Rs.19,99,600/-, has already been paid by the Applicant to the Respondent (original Petitioner) after filing of the petition. It is submitted that the Applicant has substantial defence to offer to the winding up petition. Learned Counsel relies on several judgments of different Courts in support of his submission that the presumption of deemed service is rebuttable and submits that in the present case, considering the drastic consequences of the orders of the Court which are sought to be recalled, the Court may not base its orders solely on the case of deemed service.

3 On the other hand, it is submitted by learned Counsel for the Respondent (original Petitioner) that service of any notice of the petition at the registered address of the Company, even if it is returned as 'unclaimed', is good service. He relies on the judgment of a learned Single Judge of our Court in the case of **Deepak Machineries Pvt. Ltd. Vs. Ispat Industries Limited**.¹ Learned Counsel also submits that there have been other proceedings between the parties including a criminal quashing petition filed before Punjab & Haryana High Court on 16 September 2013, after the admission order but before the final winding

¹ 2005(2) Bom. C.R. 94

up order. It is contended that the Applicant not only knew of the winding up petition, but even submitted before Punjab & Haryana High Court that considering the discharge of a part of the Petitioner's liability by the Applicant herein, it was just and appropriate that the Respondent should withdraw the winding up petition pending before this Court. It is also contended that even the present Company Application indicates that the Applicant was aware of filing of the present Company Petition.

4 It is true that the notice issued to the Company at its registered address must be deemed to be delivered even if it is returned 'unclaimed'. The Supreme Court in case of **K. Bhaskaran Vs. Sankaran Vidhyan Balan**² has held that just as notice at the correct address of the addressee refused by the addressee is presumed to be served on him, a notice returned as unclaimed also similarly raises a presumption under Section 27 of the General Clauses Act that the notice is duly served on the addressee. But the question is, whether, in the peculiar facts of the present case, the final winding up order bringing about a civil death of a running company passed ex parte and on the basis of a deemed service of the petition should be sustained. In the present case, there is already a pending suit, which is being contested between the parties. There is an arbitration reference pending between the Respondent Company and Commonwealth Games Committee, involving a large claim. Though there is a presumption in law concerning the deemed notice, interests of justice require that the final winding up order passed in the petition, is recalled and set aside in the peculiar facts and circumstances of the case narrated above and the petition is restored to file at the stage of hearing and final disposal. The

² 1999 Supp (3) SCR 271

Petitioner can in the meantime be adequately compensated with an order of costs.

5 In the premises, the following order is passed :

- (i) The final winding up order passed in the petition on 14 November 2014 is recalled and set aside and the petition is restored on board, to be heard for final hearing;
- (ii) In the facts of the case, the Official Liquidator already appointed in the matter and who is incharge of the liquidation proceedings, shall continue to operate for the time being as a provisional liquidator;
- (iii) It is clarified that the arbitration reference pending before Mr. Justice D.P. Wadhwa, Retired Judge, Supreme Court between the Applicant and Commonwealth Games Committee shall be prosecuted by the Directors of the Applicant-company and the presence of the Official Liquidator as a provisional liquidator at the proceedings is dispensed with;
- (iv) The petition to come up for final hearing on 20 December 2016;
- (v) Reply to the Company Petition to be filed by the Applicant within a period of two weeks from today. Rejoinder, if any, within one week thereafter;
- (vi) Company Application is disposed of in the above terms;

- (vii) The Applicant (Original Respondent) shall pay costs of the present application quantified as Rs.1,00,000/- (Rs. One Lac Only) to the Respondent (Original Petitioner).

(S.C.GUPTE, J.)