IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

C.P.No.164 of 2015
Comp.A.Nos.391 and 392 of 2015

INEGA Model Management Private Limited,
No.35, Pali Village, 16th Road,
Bandra West, Mumbai - 400 050
rep. by its Authorised Signatory,
Mr.Pankaj Arora .... Petitioner

...Vs....

GNT Media Private Limited,
New No.14, Old No.18,
Dr.Thirumurthy Nagar,
1st Street, Nungambakkam,
Chennai - 600 034. .... Respondent

Petition filed under Sections 433 (e) and (f) read with Sections 434 and 439 of the Companies Act, 1956, for winding up of the respondent company.

For Petitioner : Ms.P.Meghana Nair.

ORDER

Company Petition No.164 of 2015 has been filed by INEGA Model Management Private Limited, Mumbai, under Section 433 (e) and (f) 434 (i)(a) and 439 (i) and (b) of the Act, for winding up of M/s.GNT Media Private Limited, Chennai.

2. Facts leading to the filing of the Company Petition are that the respondent has approached M/s.INEGA Model Management Private Limited, Mumbai / petitioner, for arranging various models for shooting, for the respondent's magazine, 'Wedding Wows' on five different dates. Petitioner raised invoices as hereunder:-

Date of Shooting	*Date of Invoice*	*Invoice Number*	*Amount (In Rs.)*
31st October, 2012	31st October, 2012	immpl/mum/2487	67416
2nd October, 2012	25th December, 2012	immpl/mum/2583	56180
17th January, 2013	17th January, 2012	immpl/mum/2653	50562
18th April, 2013	23rd April, 2013	immpl/mum/3047	56180
27th May, 2013	3rd June, 2013	immpl/mum/3117	56180

3. The respondent has issued cheques and the same were dishonoured for want of funds and the details are hereunder:-

Date of Instrument	*Instrument No.*	*Amount (in Rs.)*
26th April, 2013	015438, HDFC Bank	67416
04th May, 2013	015439, HDFC Bank	56180
27th May, 2013	015460, HDFC Bank	100000

4. Thereafter, part payments were made by the respondent. Details are as follows:

Date of Instrument	*Instrument No.*	*Amount (in Rs.)*
22nd August, 2013	000016, HDFC Bank	67416
11th September, 2013	000017, HDFC Bank	56180

5. According to M/s.INEGA Model Management Private Limited, Mumbai, out of the total amount of Rs.2,86,518/- as on 27.05.2013, the petitioner has received only Rs.1,23,596/-. A sum of Rs.1,62,922/- was due. Adding interest to the amount payable, a statutory notice dated 25.10.2014 was issued in terms of Sections 433 and 434 of the Companies Act, 1956, calling upon the respondent to make payment of Rs.2,02,023/- with interest, at the rate of 18% from 27.05.2013. As on the date of filing of the company petition, a sum of Rs.2,11,799/- was due.

6. In the abovesaid circumstances, M/s.INEGA Model Management Private Limited, Mumbai / petitioner has sought for an order directing M/s.GNT Media Private Limited, Chennai / respondent to be wound up under the provisions of the Companies Act and for cost of the petition. Along with the petition, balance sheet of the respondent company has been filed.

7. Merely because certain cheques issued by the respondent have been dishonoured for want of funds, that does not mean, that the respondent company has to be wound up. Perusal of the balance sheet does not indicate that the company deserves to be wound up for non-payment of lesser amount of Rs.2,11,799/- allegedly due, from 27.05.2013 nor the respondent could be termed as commercially insolvent warranting appointment of a Provisional Liquidator under the provisions of the Companies Act, 1956.

8. In ***Pradeshiya Industrial & Investment Corporation of U.P.***, ***Vs. North India Petrochemicals Ltd.***, reported in **1994 (3) SCC 348,** the Hon'ble Supreme Court held as follows:

> *"An order under Section 433 (2) is discretional. There must be a debt due and the company must be unable to pay the same. The debt under this section must be a determined or a definite sum of money payable immediately or at a future date. The inability referred to in the Section is "unable to pay its dues"?. In Section 433 (e), it should be taken in the Commercial sense and that, it is unable to meet current demands. It is "plainly and commercially insolvent that is to say, that its assets are such, and its existing liabilities are such, as to make it reasonably certain as to make the Court feel satisfied*

that the existing and probable assets would be insufficient to meet the existing liabilities".

9. In ***IBA Health (I) P Limited Vs. M/s.Info Drive Systems Sdn.Bhd.,*** reported in **2010 (10) SCC 553**, at paragraph Nos.33 to 35, the Hon'ble Supreme Court held as follows:

"Malicious Proceedings for winding up

33. .....A party to the dispute should not be allowed to use the threat of winding up petition as a means of enforcing the company to pay a bona fide disputed debt. A Company Court cannot be reduced as a debt collecting agency or as a means of bringing improper pressure on the company to pay a bona fide disputed debt. Of late, we have seen several instances, where the jurisdiction of the Company Court is being abused by filing winding up petitions to pressurize the companies to pay the debts which are substantially disputed and the Courts are very casual in issuing notices and ordering publication in the newspapers which may attract adverse publicity. Remember, an action may lie in appropriate Court in respect of the injury to reputation caused by maliciously and unreasonably commencing liquidation proceedings against a company and later dismissed when a proper defence is made out on substantial grounds. A creditor's winding up petition *implies insolvency and is likely to damage the company's creditworthiness or its financial standing with its creditors or customers and even among the public.*

Public policy considerations

34. A creditor's winding up petition, in certain situations, implies insolvency or financial position with other creditors, banking institutions, customers and so on. Publication in the Newspaper of the filing of winding up petition may damage the creditworthiness or financial standing of the company and which may also have other economic and social ramifications. Competitors will be all the more happy and the sale of its products may go down in the market and it may also trigger a series of cross-defaults, and may further push the company into a state of acute insolvency much more than what it was when the petition was filed. The Company Court, at times, has not only to look into the interest of the creditors, but also the interests of public at large.

35. We have referred to the above aspects at some length to impress upon the Company Courts to be more vigilant so that its medium would not be misused. A Company Court, therefore, should act with circumspection, care and caution and examine as to whether an attempt is made to pressurize the company to pay a debt which is substantially disputed. A Company Court, therefore, should be guarded from such vexatious abuse of the process and cannot function as a Debt

> Collecting Agency and should not permit a party to unreasonably set the law in motion, especially when the aggrieved party has a remedy elsewhere."

10. In view of the above discussion and decision, the Petitioner has not made out a prima facie case to substantiate the prayer sought for in C.P.No.164 of 2015. Hence, Company Petition No.164 of 2015, is dismissed. Connected Miscellaneous Petitions are closed.

04.03.2016

Index : Yes/No
Internet : Yes/No
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S.MANIKUMAR, J,

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