IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (LODING) NO.375 OF 2017
IN
COMPANY PETITION NO.490 OF 2016

Outlook Publishing (India) Pvt. Ltd.	**: Appellant. (Orig. Respondent)**
versus	
Print House (India) Pvt. Ltd.	**: Respondent. (Orig. Petitioner)**

ALONG WITH
NOTICE OF MOTION (LODGING) NO.2014 OF 2017
IN
APPEAL (LODING) NO.375 OF 2017
IN
COMPANY PETITION NO.490 OF 2016

Outlook Publishing India Pvt.Ltd. : Applicant.

In the matter between

Outlook Publishing (India) Pvt. Ltd.	**: Appellant. (Orig. Respondent)**
versus	
Print House (India) Pvt. Ltd.	**: Respondent. (Orig. Petitioner)**

Mr. Anup Bhambhani, Senior Advocate, i/by Mr. S V Marne for the Appellant/Applicant.
Mr. Simil Purohit a/w Mr. Kalpesh Joshi a/w Nisha Shah, Arvind Srivastava, Shakesh P for the Respondent.

CORAM : R. M. SAVANT & SARANG V KOTWAL, JJ.
DATE : 30th October 2017

P.C.

1 The above Appeal challenges the order dated 07/08/2017 passed by a learned Single Judge of this Court (A. K. Menon, J). By the said order the

learned Single Judge has issued directions which are contained in the operative part of the said order which read thus :-

> "(i) The company to deposit a sum of Rs.50 lakhs in this Court within a period of 12 weeks from today i.e. on or before 30th October, 2017. If the amount is so deposited the same shall be invested by the Prothonotary and Senior Master in a nationalised bank initially for a period of one year and to be renewed thereafter for further period of one year each.
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> (ii) In the event deposit is made and if a suit is filed by the Petitioner, the amounts so deposited will be transferred to the suit account and thereafter the company petition will stand dismissed.
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> (iii) If the company fails to deposit the amount on or before 30th October, 2017 the petition shall stand admitted, returnable within six weeks from the date of default and be advertised in two local newspapers i.e. Free Press Journal (in English) and Navshakti (in Marathi) and in the Maharashtra Government Gazette.
>
> (iv) The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within two weeks from the date of default, with intimation to the Company Registrar failing which the Petition shall stand dismissed for non-prosecution."

2 The Appellant herein is the original Respondent whereas the Respondent herein is the original Petitioner in the above Company Petition. The parties would be referred to as per their nomenclature in the above Appeal. The Respondent is engaged in printing business. The Appellant herein is engaged in the business of publishing magazines and had engaged the Respondent herein for carrying out the printing work. It was the case of the

Respondent that it had undertaken printing job for the Appellant to the tune of Rs.2,51,75,595/- upto March 2015 out of which a sum of Rs.1,51,34,601.52 was paid leaving behind outstanding amount of Rs.1,00,40,994.44/-. It is the case of the Respondent in the above Company Petition that the Appellant had defaulted in paying the balance, as a result of which the Respondent filed the above Company Petition for winding up of the Appellant under Sections 433, 434 and 439 of the Companies Act, 1956.

To the said Company Petition the Appellant herein filed a reply and raised contentions which are mentioned in the said Affidavit-in-Reply and the principal contention raised was that there was a dispute as regards the entitlement of the Respondent to the amount mentioned in the Company Petition.

The learned Single Judge by the impugned order has issued the directions which have been reproduced herein above.

3 On behalf of the Appellant the filing of the above Company Petition for winding up is being questioned on the ground that there is a bonafide dispute between the parties as regards the entitlement of the Respondent to the amount claimed by it. It was the submission of the learned Senior Counsel Shri Anup Bhambhani, appearing on behalf of the Appellant

that the Company Petition cannot be used as a mechanism to recover amounts from a party under the threat of a winding up Petition. Reliance was sought to be placed on the judgment of the Apex Court reported in ***(2010) 10 SCC 553*** in the matter of ***IBA Health (India) Private Limited v/s. Info-Drive Systems SDN. BHD***. It was the submission of the learned Senior Counsel that the learned Judge has unnecessarily laid emphasis on the deposit of the TDS made by the Appellant under Section 194(C) of the Income Tax Act. It was the submission of the learned Senior Counsel that the said deposit made by the Appellant cannot be construed as acceptance of the liability by the Appellant. In support of the said contention reliance was sought to be placed on the judgment of this Court reported in ***(2008) 143 Company Cases 122 (Bombay)*** in the matter of ***N. N. Valechha v/s. I. G. Petrochemicals Ltd.*** To contend that the amount deposited as TDS has no connection with the amount claimed by the Respondent. It was the submission of the learned Senior Counsel based on the correspondence ensued between the parties by e-mails that there is a bonafide dispute between the parties arising out of the quality of printing and therefore the entitlement of the Respondent to recover any amount from the Appellant is in question. It was lastly contended by the learned Senior Counsel that the Respondent is also not sure as to the amount to which it is entitled to as the amount varies between the amount mentioned in the statutory notice and the amount mentioned in the correspondence that ensued between the parties as also the Company Petition.

4 Per contra, it was the submission of the learned counsel Shri Simil Purohit appearing for the Respondent that the dispute as regards the quality of the printing was raised for the first time in the reply to the statutory notice as otherwise in the correspondence which ensued between the parties there is not even a whisper as regards the quality of the printing done by the Respondent. It was the submission of the learned counsel that the defence now sought to be taken by the Appellant that non-payment on account of the non-receipt of the amount from the other parties was never taken in the correspondence which ensued between the parties. It was the submission of the learned counsel for the Respondent that the reliance placed on the judgment of the Apex Court in ***IBA Health (India) Private Limited's*** case (supra) is misconceived as the Apex Court in paragraph 24 of the said judgment has in terms observed that if the company refuses to pay on no genuine and substantial grounds, it should not be able to avoid the statutory demand and the law should be allowed to proceed and if demand is not met and an application for liquidation is filed under Section 439 in reliance of the presumption under Section 434(1)(a) that the company is unable to pay it debts, the law should take its own course and the company of course will have an opportunity on the liquidation application to rebut that presumption. It was also the submission of the learned counsel that the Appellant has deducted TDS in respect of each of the invoices which are mentioned in the tabulated sheet annexed to the Company Petition and

implicit in the said fact is the acceptable of the liability by the Appellant Company. The learned counsel for the Respondent therefore submitted that the impugned order passed by the learned Single Judge is not required to be interfered with by this Court.

4 Having heard the learned counsel for the parties, We have considered the rival contentions. In so far as the claim amount is concerned, it is required to be noted that though in the statutory notice the amount claimed was mentioned as Rs.1,00,40,994.44. The said fact has been clarified by the advocate for the Respondent in his rejoinder dated 31/08/2015 which is in reply to the reply to the statutory notice wherein after deducting the amount of Rs.33,27,029/-, the balance amount remaining is Rs.67,13,965.44 and it is mentioned in the said rejoinder that the demand made on the Appellant should be read as of Rs.67,13,965.44. Hence there is no variance in the amount mentioned in the statutory notice and the amount which has been claimed.

In so far as the deduction of TDS by the Appellant is concerned, in our view, the deduction of TDS in respect of the amount payable under each of the invoices is a pointer to the acceptance of the liability by the Appellant and therefore the learned Single Judge was right in laying emphasis on the fact of TDS being deducted by the Appellant which is to the tune of Rs.92,459/-. It is required to be noted that the said amount has been deposited in the

Government Treasury on 28/04/2017. It is therefore not possible to accept the contention urged on behalf of the Appellant that the said amount cannot be construed as any indication of acceptance of liability by the Appellant. In our view, the judgment of the Single Judge of this Court in ***N. N. Valechha's*** case (supra) does not in any way further the case of the Appellant.

5 In so far as the e-mails, on which much emphasis was sought to be laid down by the learned Senior Counsel for the Appellant, are concerned, in our view, the e-mails in fact militate against the case of the Appellant inasmuch as in the said e-mails the Appellant has virtually accepted its liability and In an apologetic tenor has stated that payment could not be made as per plan, but payment would be made regularly and the outstanding would be reduced (See e-mail dated 06/03/2014 page 60). There is no mention of any dispute which is sought to be raised by the Appellant in respect of the quality of printing work done by the Respondent, which dispute has been raised, as indicated above, for the first time in the reply to the statutory notice.

6 In our view, the learned Single Judge was right in holding that the benefit of doubt would have to be given to the Appellant and therefore directed the Appellant to deposit Rs.50 Lakhs in this Court which is amount is to be transferred to the suit account on the Respondent filing a suit in the concerned Court. Hence no case for interference with the impugned order is

made out. The above Appeal is accordingly dismissed. However, the time to make the deposit of Rs.50 Lakhs is extended by 3 weeks from date.

7 In view of the dismissal of the above Appeal, Notice of Motion (Lodging) No.2014 of 2017 filed by the Applicant/Appellant for staying the impugned order does not survive and the same to accordingly stand disposed of as such.

[SARANG V KOTWAL, J] **[R.M.SAVANT, J]**