

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

COMPANY PETITION NO.1304 OF 2015

Trail Blazer Media Pvt. Ltd.)....Petitioner
V/s.

P.Y.Films Pvt. Ltd.)....Respondent

Mr.Pramit K.Mishra for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 12.12.2017

P.C.:-

1 Petitioner is seeking winding up of respondent-company P.Y.Films Pvt. Ltd. alleging that respondent is unable to pay its debts, it is commercially insolvent and requires to be wound up.

2 Petitioner carries on business as an advertising agency. Pursuant to a letter of appointment dated 19.11.2012, petitioner was appointed as an exclusive print advertising agency for a film by name “Cigaretter Ki Tarah” being produced by respondent. Pursuant to the appointment, petitioner released various advertisements in various newspapers and magazines in different cities and raised various invoices. The total of invoices raised by petitioner was for a sum of Rs.38,16,273/-. Admittedly, respondent has paid sum of Rs.15,68,000/-. Copies of the invoices are also annexed to the

affidavit in rejoinder. It is also admitted that petitioner had also agreed to give rebate of Rs.3,73,481/-. After adjusting payment of Rs.15,68,000 and the rebate of Rs.3,73,481, the total amount which was due and payable by the company as on 28.12.2012 was Rs.18,74,792/-. Subsequently, respondent paid a further sum of Rs.3,00,000/- and that left balance of Rs.15,74,792/- as due and payable on 12.12.2013.

3 It is the case of petitioner that subsequently respondent issued another cheque of Rs.3,51,000/- on or about 3.9.2013 from the account of related company of respondent as part payment but the cheque was dishonoured on presentation. Respondent has, in the affidavit in reply, denied that they had issued any such cheque of any associated company.

4 As no payments were forthcoming, petitioner caused a notice dated 1.7.2015 issued by their advocate under Section 433 read with Section 434 of Companies Act 1956. Respondent did not reply to the said notice. Petitioner thereafter filed this petition.

5 In the affidavit in reply of one Swapnil Subhash Pawar affirmed on 23.6.2016, for the first time, respondent has taken

various defences which could be summarized as under :-

- (a) Petitioner has not provided the services ;
- (b) Petition has been filed at the behest of one Mr.Bhoop Singh Yadav who was the lead actor in the film and the said Mr.Bhoop Singh Yadav was one of the director in respondent-company ;
- (c) Respondent has made all legitimate payments for services received from petitioner i.e., Rs.18,68,000/- ;
- (d) Respondent-company is not aware that they have issued any letter dated 19.11.2012 and petitioner had accepted the offer ;
- (e) Petitioner was negligent in providing the services as required by respondent which has resulted in huge loss to respondent and respondent reserved his right to file suit for damages and complaint for negligence and deficiency in services against petitioner ;
- (f) Amount of Rs.3,00,000/- that was paid later though petitioner was not entitled to, was made only to amicably resolve the issue.

6 It has to be noted that no reply to the statutory notice was given by respondent. It has also to be noted that the statutory notice is

dated 1.7.2015 and the affidavit in reply to the petition is dated 23.6.2016, one year after the statutory notice was issued.

7 In my view, considering the defences raised, the defences are moonshine, bogus and after thought.

8 The affidavit in reply is also full of contradictions. In one place it is stated that petitioner did not render any services and later it was stated that the letter dated 19.11.2012 was never issued and respondent was not aware that petitioner had accepted the offer appointing them as their advertising agency, whereas, in other places respondent has admitted that it has made payment of Rs.18,68,000/- to petitioner. If what respondent states that they were not aware of issuance of any letter appointing petitioner as advertising agency and petitioner having accepted the said offer and petitioner has not rendered any services is correct, then respondent would not have paid the amount of s.18,68,000/-

So far as the defence that petition is filed at the instance of one Bhoop Singh Yadav, it is merely a bald statement made in the affidavit in reply with no evidence or basis whatsoever.

So far as the defence that respondent has paid petitioner in full and petitioner was negligent in providing services as required by

respondent and it has resulted in huge loss to petitioner, the least one would have expected from respondent is to address a communication to petitioner in that regard or atleast reply to the statutory notice denying any amounts were payable or raised a grievance about negligence of petitioner. Respondent has chosen to do none of that.

9 This would also apply to the stand of respondent that they had paid sum of Rs.3,00,000/- as alleged in paragraph-11 of the petition only to resolve the dispute. I would extend this observation of mine even to the denial of respondent that they never issued cheque of Rs.3,51,000/- through their related or connected company.

10 There is clearly a debt of Rs.15,74,792/- if one factors in the rebate of Rs.3,73,481/- due and payable by respondent to petitioner.

11 It is settled law that where no response to a statutory notice has been made, the court may pass a winding up order on the basis that amount claimed has not been denied by the company and there is a presumption of inability to pay by the company. Where no response has been made to the statutory notice, the respondent-company runs a risk of winding up petition being admitted for hearing

at the threshold stage itself. Admission of the petition at its first hearing is possible because, by virtue of section 434 of the Companies Act 1956 a presumption of the indebtedness can be legitimately drawn by the court where no reply to the statutory notice is forthcoming.

12 I am therefore, satisfied that the company is unable to pay its debts and the company deserves to be wound up. In the circumstances, in my view, the petition requires to be admitted and the following order is passed :-

ORDER

- (i) The Company Petition is admitted and made returnable on 5.3.2018 ;
- (ii) Petitioner is directed to advertise the petition in two local newspapers, viz. 'Free Press Journal' (in English) and 'Nav-Shakti' (in Marathi) and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959 ;
- (iii) Petitioner shall also deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication

charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to petitioner ;

(iv) A copy of this order shall forthwith be served on the Company by hand delivery and by Registered Post AD by the Advocate for petitioner.

(K.R.SHRIRAM,J)