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

COMPANY PETITION NO.167 OF 2016

M/s. Parshwa Padmavati Associates ….Petitioner

Vs.

M/s. Newlook Retails Private Limited ….Respondent

Mr. Sureshkumar J. Panicker i/b. Panicker and Associates for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 20th APRIL, 2018

P.C.:

1 This petition is for winding up of respondent company - M/s. Newlook Retails Private Limited (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 30th January, 2018 when the petition was taken up for admission, this Court was pleased to pass the following order :

> *1. The petition is for an order seeking winding up of the company M/s. Newlook Retails Pvt. Ltd. on the ground that the company is indebted to petitioner, is unable to pay its debt and is commercially insolvent.*
>
> *2. Petitioner and the company entered into a Franchisee Agreement dated 4th September 2010. The agreement was valid for a period of five years. As per the requirement under the agreement, petitioner gave a deposit of Rs. 10,00,000/- which was to be returned at the end of the agreement. The company was to pay interest @ 1.5 % per annum on this Rs. 10,00,000/- during the period of the agreement. The agreement also provided that petitioner was entitled to commission of 2% on the total sales which was done in the store of petitioner. The company paid interest @ 1.5% per annum on the amount of Rs.10,00,000/- for the period 17th September 2010 to 21st August 2012 and also issued TDS certificates. The company also paid sales commission on different amounts aggregating to an amount of Rs.1,45,217/- during the period 24th June 2011 to 7th August 2012.*

Thereafter, no payments were made either towards interest or towards commission.

3. In addition to the above agreement, the company had also entered into a lease agreement with petitioner in respect of a premises belonging to petitioner. The lease agreement was dated 19th October 2010 and valid for a period of five years with respect to a Gala admeasuring 900 sq.ft. Situated at Shopping Complex, Disha Sanskruti Silk City, Paithan Road, Ithkheda, Aurangabad 431 005 and the lease rent payable was Rs. 10,000/- per month. Under the lease agreement, the outgoing towards municipal taxes, electricity etc. was to be paid by the company. The company, however, did not pay any taxes and the taxes payable by company was Rs.1,94,480/- for the period 2010-11 upto 2015-2016. The company also had to pay telephone bills which it did not pay.

4. As no payments came forth and the amounts payable as on 30th June 2013 was about Rs.24,91,906/-, petitioner caused a notice to be issued through their advocates. Thereafter a statutory notice dated 14th November 2015 was issued. To the statutory notice, company, through its advocates, sent a reply dated 4th January 2016, copy whereof is at Exh.'I' to the petition. Though there is a general denial to the demand made in the statutory notice, the company had informed the petitioner that there are various litigations in which the company is indulged and even their bank accounts are also frozen. The company has, however, not denied specifically the amounts payable to petitioner.

5. The attempt of petitioner to serve a copy of the petition upon the company has failed because the packet that was sent has come back with the endorsement 'left'. On record, there is an affidavit of one Dilip G. Parekh affirmed on 6th June 2016. Thereafter, on 3rd July 2016, petitioner, was permitted to serve respondent by way of substituted service by giving notice at the registered address of respondent company with the help of bailiff and also to publish the notice of the petition in two newspapers, viz., Free Press Journal and Navshakti. Based on the Court's directions, petitioner once again tried to serve the petition upon the company and there is an affidavit on record of one Dilip G.Parekh affirmed on 26th July 2017. Mr.Panicker for petitioner has tendered an extract of Company Master Data, which he says was taken today from the Ministry of Corporate Affairs website in which the registered address shown is the same address to which petition has been sent, which was returned undelivered with the endorsement 'left'. The extract is taken on record and marked 'X' for identification. Therefore, the petition is deemed to have been served on the company. No affidavit in reply is filed. Therefore, averments in the petition remains uncontroverted.

6. Considering the petition and the documents annexed thereto, I am prima facie satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.
xxxxxxxxxxxxxxxxx

3 On record is an affidavit of one Dilip Parikh affirmed on 12th April, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 14th February, 2018. In the affidavit, it is stated that a copy of the order dated 30th January, 2018 that was sent by courier and registered A.D. post to the registered office address of the company, as reflected in the MCA website, came back undelivered with the endorsement "Left. Shifted."

4 The counsel for petitioner tenders a copy of the advertisement of the petition in the Maharashtra Government Gazette for the period 12-18 April, 2018 at serial no.M-187. The same is taken on record and marked "X" for identification. The Company Department has filed a service report dated 1st March, 2018 stating that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 came back undelivered with the endorsement "Party is not residing at the given address". Mr. Panicker, counsel for petitioner tenders an extract from the MCA website which he states was taken on 18th April, 2018 which indicates the registered address to be the same to which notice under Rule 28 was dispatched. The extract is taken on record and marked "X-1" for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been effectively served.

5 There is no affidavit in reply opposing the petition. Therefore, none of the averments in the petition are controverted. Having considered the petition, the documents annexed to the petition and heard Mr. Panicker,

counsel for petitioner, I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

6 Therefore, petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

> (a) that the said Company namely M/s. Newlook Retails Private Limited be wound up by and under the orders and directions of this Hon'ble Court;
>
> (b) That Official Liquidator attached to this Hon'ble Court be appointed as Liquidator of the assets and properties of the said Company including its affairs, business, documents, vouchers etc. with all powers under the provisions of the Companies Act, 1956.

7 Company petition accordingly stands disposed.

8 Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification

(K.R. SHRIRAM, J.)