

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

APPEAL (L) NO.58 OF 2018
WITH
CONTEMPT PETITION NO.15 OF 2015
WITH
NOTICE OF MOTION (L) NO.228 OF 2018

Indage Restaurants and Leisure Limited	...Appellant
<i>In the matter between</i>	
Indage Restaurants and Leisure Limited (Formerly known as Champagne Vineyards Limited)	...Applicant/ Ori. Respondent
V/s.	
Jain Irrigation Systems Limited and Another	...Respondent/ Ori. Petitioner

Mr. Mayur Khandeparkar a/w. Ms. Chaitrika Patki I/b. Vidhi Partners, for the Appellant.
Mr. Rajiv Shah a/w. Ms. Shruti Maniar and Ms. Simantini Mohite I/b. M/s. Solomon and Co., for Respondent No. 1.
Mr. L.T. Satilkar a/w. Mr. Prashant Kamble, for Respondent No. 2.

**CORAM : A. S. OKA &
M. S. SONAK, JJ.**

DATE : OCTOBER 30, 2018

ORAL JUDGMENT *(Per A.S. Oka, J.)*

. Admit. Advocate for first Respondent waives service.
Notice to the second Respondent is dispensed with. Forthwith taken up for final hearing.

2. There are two orders subject matter of challenge this Appeal. The first is dated 23rd January, 2017 passed by the learned

Company Judge by which the Petition for winding up of the Appellant Company filed by the Respondent was admitted. The second impugned order is dated 14th December, 2017 by which the Appellant Company was ordered to be wound up. We may note here that there was no reply filed by the Appellant, either before admission or after admission of the Company Petition.

3. The learned counsel appearing for the Appellant invited our attention to the impugned order dated 23rd January, 2017 and in particular paragraph 3, wherein reliance is placed on the letter dated 12th June, 2011 as well as an un-dated letter and it is observed that the Appellant admitted the liability in the sum of Rs. 22,87,072/-. It is observed that neither to the statutory notice nor to the Petition any reply was filed by the Appellant. He also invited our attention to other impugned order dated 14th December, 2017 which relies upon the same admission which is recorded in paragraph 3 of the order dated 23rd January, 2017.

4. He also invited our attention to the cause title of the Company Petition filed by the Respondent and the so called admissions which are relied upon in the impugned orders. He submitted that the letters on which the learned single Judge has relied upon (12th June, 2011 and un-dated letter) are not

addressed by the Appellant but by the Company by the name Indage Vineyards Private Limited. He submitted that the Company Petition erroneously proceeds on the footing that the Appellant was formerly known as Champagne Vineyards Limited. He, therefore, submits that the impugned orders are erroneous. He also invited our attention to the orders passed by the Company Court approving scheme of arrangement under which entire Agriculture and Viticulture business undertaking of Champagne Vineyards Limited was transferred to Indage Vineyards Private Limited.

5. The learned counsel appearing for the Respondents submitted that even otherwise there was material available on record to show that the liability is admitted by the Appellant. He submitted that the Appellant should not be allowed to take benefit of inadvertent errors.

6. We have given careful consideration to the submissions.

7. Paragraph No. 3 of the first impugned order dated 23rd January, 2017 reads thus:

“It is the case of the petitioner that since the respondent did not release the payment against the pending invoices, the petitioner issued a notice on 1st July, 2010. Vide letter dated 12th June, 2011, the respondent admitted the liability in the sum of Rs.22,87,072/-. The petitioner thereafter exchanged various letters and reminders to the respondent. The last such letter was addressed on 24th December, 2013. The respondent vide its undated letter, admitted a sum of

Rs.22,87,072/-. Since the respondent did not pay the said amount, the petitioner issued a statutory notice on 13th June, 2014. The said notice was served on the respondent on 16th June, 2014. Neither there was any reply in response to the said statutory notice nor any payment. The petitioner thus has filed this company petition.”

(Emphasis supplied)

8. In the Company Petition, the Respondent has relied upon the letter dated 1st July, 2010 (Exhibit “H” to the Company Petition) and un dated letter (Exhibit “L” to the Company Petition). The said letters were addressed not by the Appellant (Respondent in the Company Petition) but by Indage Vineyards Private Limited in which there is an admission of liability. In the statutory notice as well as in the Company Petition, the Respondent has been described as Indage Restaurants & Leisure Limited (The Appellant herein) which was formerly known as Champagne Vineyards Limited. The name of the Company Indage Vineyards Private Limited does not figure in the Petition as well as in the statutory notice on the basis of which the Company Petition for winding up was filed. The impugned orders are based on the said letters written by Indage Vineyards Private Limited. After service of notice, the Appellant did not appear and did not file reply. The second impugned order dated 14th December, 2017 shows that the learned Company Judge again relied upon aforesaid paragraph of the order

dated 23rd January, 2017. Thus both the orders are based on alleged admission by the Appellant. The letters annexed to the Company Petition do not appear to be admission on the part of the present Appellant.

9. As the impugned orders are based on the letters which are not addressed by the Appellant, in our view, by setting aside the impugned orders, the Company Petition will have to be remitted to the learned Company Judge so that an opportunity can be given to the Appellant to file a reply.

10. Accordingly, we pass the following order:

(1) The impugned orders dated 23rd January, 2017 and 14th December, 2017 are hereby quashed and set aside and the Company Petition No. 15 of 2015 is restored to the file to the learned Company Judge;

(2) It will be open for the Appellant to file a reply to the Company Petition within the period of four weeks from the date on which the judgment and order is uploaded;

(3) We direct the Registry to place the Company Petition before the learned Company Judge on 17th December, 2018 for directions so that necessary schedule can be fixed by the learned Company Judge.

- (4) All contentions and merits are kept open.
- (5) The Appeal is partly allowed on above terms.
- (6) No order as to costs.

(M. S. SONAK, J.)

(A. S. OKA, J.)