

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

COMPANY PETITION NO.382 OF 2015

Real Time Interactive Media Pvt. Ltd.Petitioner

Vs.

Metro Mumbai Infradeveloper Pvt. Ltd.Respondent

Mr. Astad Randeria a/w. Ms. Anagha Mhatre i/b. Khimani and Associates
for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 12th JANUARY, 2018

PC.:

1 This petition is filed for winding up of respondent company – Metro Mumbai Infradeveloper Pvt. Ltd. on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 Petitioner is engaged in the business of publishing and managing advertisements on BEST TV LED screens in the BEST buses (BEST TV) running in Mumbai. Petitioner was the sole agent of BEST in respect of airing such advertisements on BEST TV. By an Agreement dated 2nd October, 2011 entered into between petitioner and respondent company, company engaged the services of petitioner for the purpose of displaying advertisements on BEST TV in 1300 Non AC buses and 250 AC buses for a period of 3 months from 7th October, 2011 till 7th January, 2012 for a consideration of Rs.15 lakhs plus taxes. In accordance with the

Agreement, petitioner displayed the advertisements on BEST TV and raised three invoices in the months of November, 2011, December, 2011 and January, 2012, each in the sum of Rs.5,16,665/-.

3 The company issued two separate cheques of Rs.5 lakhs each dated 10th January, 2012 and 15th February, 2012 towards part payment. Both these cheques were dishonoured on presentation. Thereafter, the company paid a sum of Rs.2,99,000/- and further issued four post dated cheques for a total amount of Rs.7 lakhs towards part payment of its total outstanding liability. Thereafter, company issued further four cheques dated 22nd March, 2012, 27th March, 2012, 9th April, 2012 and 16th April, 2012 for a total amount of Rs.2,01,000/- towards further part payment of its outstanding liability. As some of the cheques were dishonoured, petitioner called upon the company once again to make the payments. Respondent company through their Advocate's letter dated 16th April, 2012 requested petitioner to return the post dated cheques and further assured that the entire outstanding would be paid within three months from 16th April, 2012.

4 There are various correspondence from the company. To cut the matter short, the company paid in installments a total amount of Rs.5 lakhs and as on 16th April, 2012 after adjusting this Rs.5 lakhs from the total invoice of Rs.15,49,995/- there was a balance outstanding of

Rs.10,49,995/-. It should be noted that the invoices raised also mentioned that interest will be charged if not paid on or before the due date. In the Agreement, it is mentioned that the credit period offered was 45 days from the date of bills. As no payments came forth, petitioner caused statutory notice dated 27th May, 2014 to be issued to respondent company. It is stated in the petition that the company has not replied to the statutory notice issued under the provisions of Companies Act, 1956.

5 On record there is an affidavit of one Pradeep Kargutkar affirmed on 27th September, 2016 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) and also in the Maharashtra Government Gazette. There is a service report dated 31st August, 2016 filed by the Company Department stating that the notice sent under Rule 28 of the Companies Court (Rules), 1959 has been returned with the endorsement “left”. Mr. Randeria, counsel for petitioner states that the recent MCA website extract indicates the status of the company as “Strike Off”. At the same time, Mr. Randeria also points out that the registered address shown in the Company Master Data is the same address to which notice under Rule 28 has been sent and that is the same address which reflected even in the cause title to which statutory notice was also sent. As notice under Rule 28 has been sent to the registered address, which appears in the Company Master Data, I am inclined to

accept the notice under Rule 28 has been effectively served.

6 The next question to be considered is whether the company, which is struck off the register, can be wound up. Mr. Randeria tenders Public Notice dated 5th May, 2017, which is taken on record and marked 'X' for identification, issued by Registrar of Companies, Mumbai, giving a list of companies which have been struck off under Section 248 (1) of the Companies Act, 2013. The company - Metro Mumbai Infradeveloper Pvt. Ltd. is at serial no.36006 of the statement annexed to the said Public Notice.

7 Section 248 (1), Section 248 (5) and Section 248 (8) and Section 250 of the Companies Act, 2013 are relevant and the same read as under :

248. Power of Registrar to remove name of company from register of companies

(1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation;

(b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation;

or

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and

requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2)

(3)

(4)

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6)

(7)

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

250. Effect of company notified as dissolved

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

8 Though it is not clear the reason why the company's name was struck off, Section 248 (1) empowers the Registrar to remove the name of company from the register of Companies but before he does that he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. At the expiry of the time mentioned in the notice, the

Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. At the same time, nothing in Section 248 shall affect the power of the Court to wind up a company the name of which has been struck off from the register of companies. The effect of company notified as dissolved is that the company shall on and from the date mentioned in the notice under sub-section (5) of Section 248 cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. Therefore, it is clear that just because the name of the company is struck off the register under Section 248 of the Companies Act, 2013, that will not come in the way of the Court to pass an order winding up of company. Similar provisions are also available in Companies Act, 1956 being Section 560 and Section 560 (5) which reads as under :-

560. Power of Registrar to strike defunct company off register.

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on- business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has

been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiry of the time mentioned in the notice referred to in sub- section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved: Provided that-

(a) the liability, if any, of every director, the managing agent, secretaries and treasurers, manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub- section shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6)

(7)

(8)

(9)

9 Therefore, even under the Companies Act, 1956, if the Registrar of Companies was to strike off the name of the company from the register, that would not affect the power of the Court to wind up the

company the name of which has been struck off the register.

10 In the circumstances, there is no bar in winding up the company. It should be noted that the company has not filed any affidavit in reply opposing the petition. Therefore, the averments in the petition are not controverted. Even to the statutory notice, no reply has been filed. 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 allowed. 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.

11 In the circumstances, having heard Mr. Randeria, counsel for petitioner and having considered the petition alongwith the documents annexed to the petition, I am satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

(a) that the Respondent Company, viz., Metro Mumbai

Infradeveloper Pvt. Ltd. having its registered office at 635, 6th Floor, Laxmi Plaza, Laxmi Industrial Estate, Mumbai – 400 053, be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) that the Official Liquidator be appointed as Liquidator of Respondent Company to take charge of the assets, books of accounts and properties of Respondent Company with all powers under the provisions of the Companies Act, 1956.

13 Official Liquidator to take steps immediately without waiting for notification.

14 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)