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

COMPANY PETITION NO.547 OF 2015

NITIDO Design ….Petitioner
Vs.
Zandra Life Sciences Private Limited ....Respondent

Mr. M. Agrawal i/b. Charles J De Souza for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 12th JANUARY, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company - Zandra Life Sciences Private Limited on the ground that respondent is unable to pay its debts and is commercially insolvent.

2 Respondent had awarded work of designing and executing interiors for the office of respondent at Mulund. Petitioner, as per the petition, had estimated the costs, to be incurred by the company for the said project to be approximately Rs.58,03,954/-. By an email dated 14th February, 2014, petitioner forwarded bill of quantities (BOQ). The BOQ specified that the estimated project cost was only an estimate and subject to variation. It was also further specified that the taxes as applicable will be extra.

3 Admittedly, petitioner executed the project to the satisfaction of respondent company because in the affidavit in reply they have not

raised any ground that the project was incomplete or it was not completed to the satisfaction of respondent company. Respondent made various part payments during the period between February, 2014 and October, 2014. It is also alleged in the petition that respondent agreed for increase in the project cost of 10% to 15%. After completing the work, petitioner handed over possession of the premises to respondent on 12th June, 2014. As on the date of handing over possession a sum of Rs.24,50,228.92 remained due and payable by respondent to petitioner. On 14th May, 2014, respondent made a further payment of Rs.10,47,543/-. On 19th June, 2014, respondent in response to email dated 18th June, 2014 from petitioner seeking further payment, has denied on various ground as to why no further payment was due and payable. On 18th June, 2014 a sum of Rs.6,49,297/- was due and payable. If one considers the two invoices, copies whereof could be found at Exhibit "J" and "K" to the petition, this balance amount matches the tax component in the two invoices.

4 To the statutory notice sent there was no reply. When the petition was admitted on 6th February, 2017 nobody appeared for respondent. After the petition was admitted, respondent affirmed an affidavit in reply of one Vijay Katkar dated 25th October, 2016. Respondent, however, did not file the same in the registry or even served the copy of the reply. On 22nd December, 2017 when the petition was taken up for final

hearing, respondent's counsel mentioned about the affidavit in reply. Petitioner was given an opportunity to file a rejoinder. On record are also affidavits of publication filed by petitioner confirming advertising the petition in Free Press Journal, Navshakti and Maharashtra Government Gazette. There is a service report of the Company Department stating that notice under Rule 28 of the Companies (Court) Rules, 1959 has been served upon the company. Today, however, nobody is present for respondent company.

5 I have heard Mr. Agrawal and also considered affidavit in reply, rejoinder, the pleadings and the documents annexed to the petition. It is the case of petitioner that the quality of work and the fact that work has been done has not been denied by respondent company. The entire defence of respondent company, if one considers the affidavit in reply, is that (a) petitioner was given budget by way of BOQ and petitioner exceeded that budget, (b) petitioner delayed the project and therefore, respondent had to continue in another address and pay Rs.1,40,000/- towards rent, (c) the owner of petitioner flew away to Australia which caused delay and his Manager spoiled the entire flooring due to which flooring had to be done twice and some additional cost had to be incurred and (d) BOQ included IT product and services which included Yale Safe which petitioner did not supply and respondent company had to procure it from outside.

6 Mr. Agrawal, counsel for petitioner states that all these defences are afterthoughts and raised for the first time in the affidavit in reply.

7 It should be noted that immediately after the possession was handed over on 12th June, 2014 and petitioner had sent an email dated 18th June, 2014, respondent had on 19th June, 2014 raised the same objections that it has raised in the affidavit in reply. Therefore, I cannot accept the submission of counsel for petitioner that the defences raised in the affidavit in reply are afterthoughts. It may be true that respondent would not have objected to petitioner overshooting the budget at the time of execution of the contract. It should be noted that in the email dated 19th June, 2014 respondent has mentioned "As informed to your earlier, we are not in your business, we know only our budgets, if you had completed the work within our budget this situation would have never arised. We had to negotiate with you at the end, because you had gone overboard with the budgets. The market rates that were shown to you were clearly an indication why the budgets had gone high. Hence the negotiations at the end. Put yourself in our shoes, we are a start up and we have worked really hard to build a base for ourselves, our resources are limited and we had set up a budget of 40 lacs for this project after hearing from 4-5 interior designers, which was increased to 50 lacs, which has been really hard for

us to manage".

8 In the circumstances, I cannot come to a conclusion that the defences raised by respondent company are moonshine or bogus or afterthoughts. It certainly also raised disputed questions of fact. I am not able to gather myself to come to a conclusion that respondent company is indebted to petitioner, unable to discharge its debts, is commercially insolvent and requires to be wound up.

9 Therefore, petition stands dismissed with no order as to costs.

10 Respondent to publish the dismissal of this petition in two newspapers, viz., Free Press Journal (in English) and Navshakti (in Marathi) as per the format prescribed by the Company Department. A copy of this order to be forwarded by the registry to respondent and its advocate.

(K.R. SHRIRAM, J.)