

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

COMPANY PETITION NO.426 OF 2015

Sanjeev Gupta)....Petitioner
V/s.

M/s.Realm Digital Media Solutions Pvt. Ltd.)....Respondent

Mr.Girish B.Kedia for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 1.2.2018**

P.C.:-

1 The petition is filed for winding up of respondent company- Realm Digital Media Solutions Pvt. Ltd. on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 When the petition is taken up for admission on 31.1.2017, the following order was passed :-

“Learned counsel for the petitioner states that the respondent is served. Affidavit of service is already filed. None appeared for the respondent. No affidavit in reply is filed.

2. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay debts.

3. It is the case of the petitioner that pursuant to the release orders placed by the respondent for display of the

advertisement and hoarding platinum, the petitioner agreed to display advertisements on hoarding on behalf of the respondent. The petitioner issued five invoices upon the respondent for payment of the said work done for display of advertisement of hoardings on behalf of the respondent.

4. Out of the said five invoices, the respondent made payment in respect of one invoice in the sum of Rs.2,85,000/- and did not make any payment in respect of the other four invoices totalling to Rs.2,94,715/-.

5. The petitioner through its advocate issued statutory notices on the respondent on 17th September 2013, 19th November 2013 and 2nd February 2015 calling upon the respondent to pay the amount due to the petitioner in the sum of Rs.2,94,715/- with interest at the rate of 21% per annum. Though each of the statutory notices were received by the respondent, neither there was any reply from the respondent to the notices nor there was any payment.

6. According to the petitioner as on the date of filing of the petition, the petitioner has to recover a sum of Rs.4,03,022/- which is inclusive of interest of Rs.1,08,307/- from the respondent. The petitioner also claims further interest at the rate of 21% p.a. on the principal amount.

7. A perusal of the record indicates that the invoices were served upon the respondent. The respondent only made payment in respect of one of the invoice. Petitioner has also annexed ledger account of the respondent in the books of the petitioner for the period 1st April,2012 to 15th March,2015 showing the debit balance of Rs.2,94,715/-. There is no reply to the statutory notices. No payment is made by the respondent in response to the statutory notices. I am, therefore of the view that the respondent is commercially insolvent and is unable to pay its debts.

on 31.3.2017 confirming advertisement of petition in 'Free Press Journal' in English and 'Navshakti' in Marathi, both Mumbai edition on 3.3.2017 and an affidavit affirmed on 30.1.2018 confirming advertising the petition in Maharashtra Government Gazette for the period 11-17 January 2018 at serial no.17285. The company department has placed on record a report dated 17.2.2017 stating that the notice issued under Rule 28 of the Companies (Court) Rules 1959 has come back undelivered with the endorsement "left". Mr.Kedia appearing for petitioner tenders extract from the Company Master Data taken today from the MCA Website in which the registered address is shown to be the same address to which notice under Rule 28 was dispatched. The said extract is taken on record and marked 'X' for identification. Therefore, notice is deemed to have been served.

4 No affidavit in reply has been filed and therefore, the averments in the petition are not controverted. No reply to the statutory notice either. It is well 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.

5 I have also perused the petition and the documents annexed thereto. As recorded by this court at the time of admission, I am also satisfied that the company is unable to discharge its debts, commercially insolvent and requires to be wound up. Therefore, petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that the Company M/s.Realm Digital Media Solutions Private Limited, be wound up by and under the Order and directions and supervision of this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator, High Court, Bombay be appointed Liquidator of the Company, its entire assets, properties, affairs and records of the Company, lying of the Registered Office of the Respondent Company at 502, Advent Atria, Chincholi Bunder Road, Opp. Kingston Complex, Malad (West), Mumbai 400 064, with all powers under the Companies Act, 1956.”

6 The Advocate for petitioner shall furnish a copy of this order, duly authenticated by the Associate of this court with the office of Official Liquidator. The Official Liquidator shall forthwith act

thereupon without waiting for any Notification appointing him as liquidator.

7 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to adjustment for any charges payable, by way of cheque drawn in favour of advocate for petitioner.

(K.R.SHRIRAM,J)