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

COMPANY PETITION NO.631 OF 2015

Remedy Vinimay Private Limited ….Petitioner

Vs.

Indarts Exports Private Limited ....Respondent

Ms. Faiza Dhanani i/b. M/s. Dhruve Liladhar and Co. for petitioner.
Mr. Gaurav Parkar a/w. Mr. Deepraj Shetye i/b. L.H. Hingu and Co. 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 - Indarts Exports Private Limited on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 Petitioner had lent a sum of Rs.40,00,000/- to respondent company as and by way of short term loan which was repayable on or before 31st March, 2013 or on demand when made by petitioner. The amount was to be repaid with interest at 12% p.a. Respondent company paid interest on the loan amount upto December,2012. For the period 1st January, 2013 and 31st March, 2014 no interest was paid. Even the principal amount has not been repaid. For the period January, 2013 to March, 2013 respondent deducted TDS but did not pay the interest. There is on record confirmation of amounts signed by respondent for the period

1st April, 2013 to 31st March, 2014 admitting the balance amount of Rs.40,00,000/- towards principal and a sum of Rs.4,33,184/- towards interest. The balance sheet filed for the year ending 31st March, 2014 by respondent company shows accumulated loss of Rs.19 crores.

3 At the time of admission of the petition, on 6th February 2017 this Court was pleased to pass the following order :

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> *3. In the month of July, 2011, the petitioner lent and advanced an amount of Rs.40,00,000/- to the respondent company as and by way of short term loan which was repayable by the respondent on or before 31st March, 2013 or on demand when made by the petitioner. The respondent was liable to pay interest at the rate of 12% p.a. on the said loan amount. The respondent had paid interest to the petitioner on the said loan amount upto December, 2012.*
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> *4. Insofar as interest for the period between 1st January, 2013 and 31st March, 2014 is concerned, the petitioner raised various debit notes upon the respondent, but the respondent failed to pay interest. The respondent has deducted income tax at source for the interest amount payable for the quarter January to March, 2013. The respondent company however, failed to pay the interest amount of Rs.1,06,520/- for the period between January to March, 2013. Leaned counsel for the petitioner invited my attention to the confirmation of accounts signed by the respondent for the period 1st April, 2013 to 31st March, 2014 admitting the balance amount of Rs.40,00,000/- towards the principal and balance amount of interest of Rs.4,33,184/- in favour of the petitioner. The respondent however, did not make any payment. The last balance sheet filed with the Registrar of Companies was on 27th September, 2013.*
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> *5. The petitioner issued a statutory notice upon the respondent on 11th June, 2014. In response to the said statutory notice, the respondent's advocates gave a vague reply and informed the petitioner that the advocates were taking instructions and would revert back to the petitioner. The petitioner thus filed this petition for winding up of the respondent company.*
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> *6. Learned counsel for the petitioner invited my attention to the allegations made by the respondent in the affidavit in reply. In paragraph 22 of the affidavit in reply, it is admitted that the company is facing cash flow mis-match for the past two years due to multiple factors beyond their control and for various reasons. The accumulated*

loss of the respondent is Rs.19.00 crore as reflected in the balance sheet as on 31st March, 2014. Learned counsel for the petitioner submits that there is vague denial of the claims made by the petitioner.

7. A perusal of the documents annexed to the petition clearly indicates that the respondent has admitted its liability of Rs.40,00,000/- insofar as the principal amount is concerned and has also admitted the liability of interest as well on 31st March, 2014. No payment is made by the respondent after confirmation and acknowledgement of the said liability. The reply to the said statutory notice is totally vague.

8. A perusal of the affidavit in reply filed by the respondent indicates that the financial condition of the respondent is very bad admittedly. The respondent has suffered heavy losses. According to the respondent itself, the accumulated loss is of Rs.19.00 crore as on 31st March, 2014. The denial of the claim for the first time in the affidavit in reply is contrary to the acknowledgement of liability in the statement of accounts signed by the respondent. In my view, the defence thus raised by the respondent in the affidavit in reply is moonshine and cannot be accepted.

9. In my view, the respondent is unable to pay its debts and is commercially insolvent.

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4 On 4th January, 2018 Mr. Parkar, counsel for respondent stated that the company is inclined to settle the matter and requested the matter be stood over by one week. On 11th January, 2018 as nobody appeared for petitioner, the matter was stood over to today. Today, when the petition was called out, Mr. Parkar, counsel for respondent stated that the company can pay Rs.20 lakhs in full and final settlement but he has no instructions as to how and when the company will make the payment of Rs.20 lakhs. This itself shows that the company is insolvent because it cannot even pay the admitted amount. There is nothing on record to indicate any improvement in the financial condition of the company post admission of the petition on

6th February, 2017. At the time of admission of the petition, this Court has expressed view that the company is unable to pay it debts and is commercially insolvent.

5 Ms. Dhanani, counsel for petitioner tenders affidavit of one Ravindra Bhiku Rikame affirmed on 5th January, 2018 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 23rd February, 2017 and also in the Maharashtra Government Gazette in the Issue dated 2nd/8th March, 2017 at serial no.M-16355. So far as notice under Rule 28 of the Companies (Court) Rules, 1959 is concerned, Company Department has placed on record report dated 7th March, 2017 stating that the packet has been returned with the endorsement “not known”. Ms. Dhanani also tenders extract of Company Master Data maintained by the Ministry of Corporate Affairs taken out on 4th January, 2018 in which the registered address shown continues to be the same address to which notice under Rule 28 was served by the Company Department. The printout is taken on record and marked 'X' for identification. Mr. Parkar, counsel for respondent, as an officer of this Court, having considered the document confirms that the address is the same.

I would, therefore, proceed on the basis that notice under Rule 28 has been effectively served. Respondent company has not filed any affidavit in reply opposing the petition. Therefore, the averments in the petition are uncontroverted

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6 I have heard Ms. Dhanani and also considered the pleadings and the documents annexed to the petition. I am also satisfied that respondent is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

> (a) that Indarts Exports Private Limited be ordered to be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956;
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> (b) that the Official Liquidator, High Court, Bombay be appointed as Liquidator of the said company with all powers under the Companies Act, 1956.

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

9 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)