

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

COMPANY PETITION NO.436 OF 2016

Shivang Realty LLP
V/s.

)....Petitioner

D'Divine Shelters Pvt. Ltd.

)....Respondent

Ms.Neeta Solanki i/by Kunal Bhanage for petitioner.

Dr.Abhinav Chandrachud a/w Mr.C.J.Doveson i/by Poonam Utekar
for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 15.6.2018

P.C.:-

1 The petition is filed for winding up of respondent company-D'Divine Shelters Pvt. Ltd. (the said company) on the grounds that the company is unable to discharge its debts.

2 It will be useful to reproduce the order dated 29.4.2014 and the same reads as under :-

“The petition is under Section 9 of the Arbitration and Conciliation Act, 1996, for appointment of Court Receiver and grant of injunction in respect of immovable property described in Exh.A to the petition. Disputes between the parties arose from an M.O.U. Between the parties dated 13.08.2013. Under the M.O.U., a sum of Rs.1 crore was deposited by the petitioner with the Respondent. The Respondent agrees and undertakes to refund the said amount of Rs.1 crore (without interest) within a period of one year from today. In view of the undertaking given by the Respondent through its counsel and in the presence of Mr.Nirav Gandhi, Director of the

Respondent, which is accepted by the Court, the learned Counsel for the petitioner seeks leave to withdraw the petition with liberty to take out a fresh petition/proceeding in the event of default.

2. The petition is accordingly dismissed as withdrawn with liberty as prayed. All contentions of the parties in respect of the disputes are kept open. It is agreed between the parties that in the event of the payment of Rs.1 crore (without interest) being made, the parties shall draw up appropriate documents for cancellation of the M.O.U.”

3 Thereafter on 3.5.2018 and 4.5.2018 the following orders came to be passed :-

On 3.5.2018 :-

“1 Mr. Doveson, counsel for respondent, on instructions from Mr. Nirav Gandhi, director of respondent company, who is present in Court undertakes to pay the amount of Rs.1 Crore plus further sum of Rs.25 lakhs as compensation/interest in five installments. Mr. Doveson states that a sum of Rs.25 lakhs per month will be paid in these five installments with effect from 21st May, 2018 so that the entire amount of Rs.1,25,00,000/will be paid by 21st September, 2018. Mr. Doveson further states that notwithstanding whether petitioner accepts the suggestion, the company will withdraw its appeal being appeal lodging no.227 of 2018. Mr. Doveson states that tomorrow, i.e., 4th May, 2018, itself they will withdraw the appeal.

2 Ms. Uppal, counsel for petitioner states that she cannot agree or disagree to the offer made by Mr. Doveson and she will put across the offer as recorded in this order to petitioner for instructions.

3 Stand over to 4th May, 2018 for directions”.

On 4.5.2018 :-

“Ms.Solanki for petitioner states that the offer given by the company, as recorded in the order dated 3rd May 2018, is not acceptable. Ms, Solanki also states that if the Company is inclined to pay a sum of Rs.1.50 lakhs in three installments, then petitioner may consider settling the petition. Shri Doveson appearing for the company states that the Director of the company is not present in Court today.

Therefore, stand over to 7th June 2018 for filing consent terms, on which date, if the consent terms are not filed, parties will go on with the petition”.

In the order dated 4.5.2018 the figure of “Rs.1.50 lakhs” should be read as “Rs.1.50 crores”.

4 Today, Dr.Chandrachud appearing for respondent conceded that the company has no defence but his instructions are that if petitioner is willing to accept sum of Rs.1 crore in full and final settlement, company will make payment in 4 monthly installments but if petitioner is insisting Rs.1.50 crores then the same will be paid in 10 monthly equal installments.

5 Ms.Solanki in response, stated that Rs.1.50 crores has to be paid in 3 installments because the amount of Rs.1 crore was payable, as per the order dated 29.4.2014, within a period of one year from

that date. Ms.Solanki submitted that more than 4 years have passed since then and not a penny has been paid. Ms.Solanki stated that if company is not agreeable to the last without prejudice offer of petitioner to pay Rs.1.50 crores within 3 months, the company should be wound up.

6 In view of the above, it is rather obvious that :-

- (a) There is an acknowledged debt ;
- (b) The company is unable to pay its debts ;
- (c) The company is commercially insolvent

Therefore, in my view, petitioner is justified in seeking winding up of the company.

7 Petitioner has filed an affidavit of one Kamlesh Mehta affirmed on 27.3.2018 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 20.3.2018 and affidavit of one Amit Ravindra Katkar affirmed on 27.4.2018 confirming advertising the petition in Maharashtra Government Gazette for the period 12-18th April 2018 at serial no.M-189. Notice under Rule 28 was waived as recorded in the order dated 6.3.2018. Therefore, there is no impediment for hearing and disposal of the petition.

8 Therefore, petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) That Respondent company M/s.D'Divine Shelters Private Limited be ordered and directed to be wound up by and under the direction of this Hon'ble Court under the provisions of the Companies Act ;

(b) That the Official Liquidator be appointed as Liquidator of the Respondent company with all powers under the provisions of the Companies Act, 1956 including the powers and authority to take charge and possession of the properties and assets of the Respondent Company and to deal with and/or dispose off the same in accordance with law.”

9 The advocate of petitioner shall within 2 weeks furnish a copy of this order, duly authenticated by the Associate of this court to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

10 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to any deductions if any.

11 Notwithstanding the above, in view of the statement made by counsel for the company, as recorded above, the company is given

an opportunity to pay amount of Rs.1.50 crores or deposit with the Prothonotary & Senior Master, High Court, Bombay, this amount in 3 monthly installments of Rs.50,00,000/- each, the first installment to be paid on or before 13.7.2018, the 2nd installment will be paid by 10.8.2018 and the 3rd installment will be paid by 7.9.2018. All the installments should be made by Pay Order. If the 1st installment of Rs.50,00,000/- is paid on or before 13.7.2018, petition be listed for further directions on 16.7.2018. If 1st installment is not paid, the order of winding up of the company as recorded above will get triggerred and Official Liquidator will take further steps.

12 Petition stands disposed accordingly. Provisional Liquidator to continue.

(K.R.SHRIRAM,J)