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

COMPANY PETITION NO.560 OF 2015

Saatchi and Saatchi Health Limited ....Petitioner

Vs.

Birla Global Corporate Limited ....Respondent

Mr. Akash Rebello a/w. Ms. Aditi Phatak and Ms. Sanaea Umrigar I/b. Udwadia and Udeshi for petitioner.
Ms. Chaitrika Patki I/b. Vidhii Partners for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 17th SEPTEMBER 2018

P.C.:

1 This petition is for winding up of respondent company - Birla Global Corporate Limited (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Petitioner has approached this Court as an unpaid vendor for services rendered to the company. Petition is filed by Saatchi and Saatchi Health Limited. Petitioner relies upon an Agreement dated 1st May 2011 whereby petitioner agreed to provide advertising services and was appointed as advertising agents and consultants for advertising, publicity and promotion of certain brands of the company on the terms and conditions set out in the agreement. Under the agreement, petitioner was to be paid a retainership fee of Rs.2 lakhs per month exclusive of service tax and other taxes. Petitioner was appointed for a period of one year beginning

1st May 2011. Petitioner was to raise an invoice on the 25th of every month and this amount was to be paid within 30 days from the date on which bills are received by the client, viz., the company.

3 It is petitioner's case that the four invoices, copies whereof are at Exhibit B,C,D and E to the petition, totaling to Rs.8,86,520/-, have not been paid by the company despite acknowledging its debt and admitting its liability and therefore, the company is unable to pay its debts and requires to be wound up. Petitioner relies heavily on a communication dated 3rd September 2012 addressed by one Saatchi and Saatchi Focus (a division of Saatchi and Saatchi Private Limited) to which is annexed a statement of outstanding, wherein it is recorded that the Yash Birla Group, to which the company belongs to, owes about Rs.48,44,074/- which includes Rs.8,86,520/- and the Yash Birla Group has agreed to settle petitioner's claim by paying a sum of Rs.30 lakhs in full and final settlement. Mr. Rebello, counsel for petitioner states that as no payments came forth, statutory notice dated 26th June 2013, copy whereof is at Exhibit H to the petition, was served upon the company to which there is no reply. Mr. Rebello states that 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.

4 The gist of the defences raised by the company are as under :

(a) No contract executed between petitioner and respondent;

(b) No alleged invoices ever received by respondent;

(c) Alleged admission letter relied upon by petitioner not held in the name of petitioner/the present company petition is filed by a non-existent entity;

(d) The company petition not maintainable for want of appropriate authority;

(e) Discrepancies in the amounts claimed at allegedly various stages by petitioner without any substantiation for claiming the same; and

(f) Alleged statutory notice dated 26th June 2013 not served upon the registered office of respondent.

(a) No contract executed between petitioner and respondent -

The contract on which petitioner relies upon is between Saatchi and Saatchi Health (a division of Saatchi and Saatchi Pvt. Ltd.) and respondent company – Birla Global Corporate Limited. The agency defined therein is not petitioner, Saatchi and Saatchi Health Limited. There is nothing in the petition explaining the difference or connection or relationship between petitioner and Saatchi and Saatchi Pvt. Ltd. Therefore, I am unable to dismiss this defence of the company as baseless.

(b) No alleged invoices ever received by respondent -

Copy of the invoices annexed to the petition does not indicate that these were served upon the company. Even if I take this as an unsubstantiated defence because the annexures to Exhibit F does refer to these four invoices and there is no protest from the company stating that those invoices have not been raised, still I find the invoices to be raised by Saatchi and Saatchi Focus/Saatchi and Saatchi Private Limited and not by petitioner. As per the agreement, it says agency bills shall be paid by the client upon the agency raising bills for the retainership by 25th of the month for the same month and such bills for agency fees to be paid within 30 days from the date on which the bills are received by the client. The copies of the bills relied upon by petitioner are not copies of invoices raised by petitioner (Saatchi and Saatchi Health Limited). Again there is no explanation in the petition for this gap. Therefore, this defence of the company also cannot be dismissed as moonshine.

(c) Alleged admission letter relied upon by petitioner not held in the name of petitioner/the present company petition is filed by a non-existent entity -

This document is the one, copy whereof is at Exhibit F to the petition. That document also is from Saatchi and Saatchi Focus (a division of Saatchi and Saatchi Private Limited) and not from petitioner (Saatchi and Saatchi Health Limited).

Mr. Rebello states that the letter was sent to the Yash Birla Group and referred to outstanding by various companies of the group to petitioner's group and therefore, the name was not specific. I would have expected petitioner to make these statements on oath in the petition and not across the bar. Therefore, the company has a point in this defence also.

(d) The company petition not maintainable for want of appropriate authority and (e) Discrepancies in the amounts claimed at allegedly various stages by petitioner without any substantiation for claiming the same -

Ms. Patki, counsel for respondent company is not pressing these points.

(f) Alleged statutory notice dated 26th June 2013 not served upon the registered office of respondent -

This is the point that was really pressed. The statement was made that the notice was not served upon the registered office of the company. On the directions of the Court, respondent company filed various affidavits and additional affidavits were also filed by petitioner and the conclusion that this Court arrived at after verifying all affidavits is that notice has been sent at the registered office of the company and the company has been trying to do a name change to hoodwink the creditors. At the same time, it has to be noticed that the statutory notice dated 26th June 2013 is sent on behalf of Saatchi and Saatchi Health Limited (a division of Saatchi and Saatchi Private Limited). A division cannot be a separate legal entity. How does Saatchi and Saatchi Health Limited become a division of

Saatchi and Saatchi Private Limited is not explained anywhere in the petition. In the agreement, which is on the stationery of Saatchi and Saatchi Health, at the bottom, it is stated Saatchi and Saatchi Health (a division of Saatchi and Saatchi Private Limited). No where does it say that it is Saatchi and Saatchi Health Limited and certainly, Saatchi and Saatchi Health Limited cannot be a division of Saatchi and Saatchi Private Limited. To this extent, the statutory notice is certainly defective.

5 Mr. Rebello states that the company has lost it substratum. In my view, there is not much substance in what Mr. Rebello states because if one considers the copies of the balance sheets annexed, though the company has been making losses, the losses have been coming down. There is also, in one of the balance sheet, report of the Chartered Accountant that there are no defaults committed to any of the banks or other lenders. Therefore, I am unable to come to a conclusion that the company has lost it substratum.

6 In the circumstances, I am unable to dismiss the defences raised by the company as moonshine and bogus. Perhaps the money is really owed to petitioner but petitioner should have come out with better drafted petition supported with better drafted statutory notice. I must hasten to add I have not come to a finding that money is owed by company to anyone, petitioner or its group entities.

7 Therefore, petition dismissed.

8 After admission, the petition has been advertised. Petitioner to advertise about the dismissal of the petition in Free Press Journal and Navshakti as per the format prescribed by the office of the Company Registrar and file a compliance affidavit within two weeks from today under advise to advocates for respondent company.

(K.R. SHRIRAM, J.)