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

COMPANY PETITION NO.762 OF 2014

Aanchal Collection Limited ….Petitioner

Vs.

Gili India Limited ….Respondent

Mr. Thomas James I/b. Auris Legal for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 10th SEPTEMBER 2018

P.C.:

1 This petition is for winding up of respondent company - Gili India 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 On 12th June 2018 while admitting the petition, the following order came to be passed :

> *1. Petition is filed for winding up of the respondent company Gili India Limited (the company) on the grounds that the company is unable to pay its debts.*
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> *2. Sometime in January 2012 the company approached petitioner for onwards sale through the company's outlet at Guwahati, Chandigarh and Bangalore and the arrangement suggested was to open a shopinshop on the terms as mutually agreed between the parties. The arrangement between petitioner and the company was recorded in the agreement dated 10.3.2012 and the location was Guwahati. As per the agreement, petitioner sent the merchandise to the Guwahati store of the company and the sale was started on 11.4.2012. The merchandise was sold under the memo of "SENSES". The sale proceeds in cash has been collected by the company. Under the agreement, the company was to deposit sale proceeds in petitioner's designated bank account but did not deposit the same. The company on petitioners' repeated request for payment, suggested that petitioner raises invoices on the company because the*

company was facing some technical problems with respect to accounting of such cash collection. The company agreed to make payment against the invoices raised by petitioner. Accordingly petitioner started raising fresh set of sale invoices in the procedure and forms suggested by the company for the merchandise that petitioner supplied. Still payments did not come forth.

3. According to petitioner, the value of the merchandise that was supplied by petitioner to the company amounting to Rs.13,67,152/- against which the company has paid only sum of Rs.7,00,000/-. According to petitioner, for the period 1.4.2012 to 31.8.2012 the company has to pay petitioner sum of Rs.1,93,174/-.

4. For the locations at Chandigarh and Bangalore also petitioner had supplied merchandise. Even for Guwahati, supplies were made post 31.8.2012. As on 6.9.2012, the total merchandise supplied for which payments have to be made by the company amounting to Rs.1,65,12,769/-. As despite repeated reminders, company did not make these payments, petitioner caused a statutory notice to be issued through its advocate on 24.4.2014. Mr.Anekar for the petitioner states that after the petition was filed, the company replied to the statutory notice, copy whereof is at Exh.F to the affidavit in reply. The defence taken by the company which is the defence taken in reply to the petition also is that as per the agreement, the goods or merchandise were supplied by petitioner on sale or return basis. Therefore as the merchandise supplied by petitioner were still lying unsold in the company's store, petitioner was obliged to take back those unsold merchandise. According to the company despite repeated requests, petitioner was not providing requisite road permit to enable the company to return the goods. Therefore, no amount was payable to petitioner. There are no communications annexed to the affidavit in reply corroborating what is stated in the reply to the Show Cause Notice. In the affidavit in rejoinder, in fact, petitioner has stated that no road permit is required to enable the company to return the goods.

5. On 20.2.2018 the counsel for the company stated that if petitioner wants to take back the materials and also reconcile the accounts, the company will be able to sit across and do the needful but as the company was being investigated by CBI along with other Jewellers, the reconciliation can be done after two weeks. Petition was stood over to 27.2.2018 for filing consent minutes of order. The company belongs to the infamous group of Neerav Modi and Mehul Choksi who are being investigated for fraud against the banking sectors and these two persons are absconding.

6. On 27.2.2018, the company's counsel informed the court that despite repeated emails to the company for instructions, there was no response. Mr.Dubey counsel for the company stated that the company is the same company which is involved in the Punjab & National Bank scam and the main person of the company is one Mehul Choksi. Mr.Dubey stated that in view of the adverse publicity the company was getting, he did not wish to continue in the matter and in any event, he was not receiving any *instructions. At the request of Mr.Dubey, he was discharged from the matter. Mr.Dubey and Registry were directed to forward a copy of the order dated 27.2.2018 to the company as in the order it was noted "On the next date if respondent is not represented, respondent is put to notice that the petition may get admitted". On the next date i.e., 19.3.2018, Mr.Dubey filed an affidavit of one Santosh Jaual affirmed on 7.3.2018 confirming service of the order dated 27.2.2018 upon the company. On record is a copy of the letter dated 7.3.2018 from the Company Registrar to the company forwarding a copy of the order dated 27.2.2018. Nobody is present for the company.*

7. Be that as it may, having perused the petition, the affidavit in reply, the rejoinder, the documents annexed, the pleadings and after hearing Mr.Anekar, I am satisfied that petitioner has made out a prima facie case that the company is unable to pay its debts and the company deserves to be wound up.

8. In the circumstances, in my view, the petition requires to be admitted and the following order is passed :

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3 On record is an affidavit of one Sachin Main affirmed on 1st September 2018 confirming advertising the petition in Free Press Journal and Navshakti on 18th August 2018. There is another affidavit of Sachin Main affirmed on 6th September 2018 confirming paying the fees for publication in the Maharashtra Government Gazette.

4 Mr. James, counsel for petitioner states that the Gazette publication is not yet out and undertakes to file the same before 29th September 2018. Undertaking accepted. In the order of admission, it is also stated that any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute noncompliance with this direction or with the Companies (Court) Rules,

1959.

5 In the affidavit of Sachin Main affirmed on 6th September 2018 it is also stated that copy of order dated 12th June 2018 sent to the company by registered post AD and by courier has come back undelivered with the endorsement “left/unclaimed/party shifted”.

6 The Company Department has placed a service report dated 7th July 2018 stating that the notice sent under Rule 28 of the Companies (Court) Rules 1959 came back undelivered with the endorsement “left”. Mr. James is unable to state whether the company's registered office address has changed or it is still the same even today. This is despite the fact that the office has issued notice for every advocate to come with all details when a petition is listed for final hearing. An Associate of this Court on the directions of this Court to avoid the matter getting adjourned, once again took a print out of the extract of the company master data from the website of Ministry of Corporate Affairs, copy whereof is taken on record and marked “X” for identification, in which the address is the same to which notice under Rule 28 has been sent and returned with the endorsement “left”. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

7 There is no further affidavit filed after the petition was admitted. I have perused the petition and also heard Mr. James and find

that the defences taken by the company are nothing but afterthoughts. There is no correspondence on record to elaborate what is stated in the affidavit in reply. Therefore, in my view, the company is indebted to petitioner, is unable to discharge its debts, commercially insolvent and requires to be wound up.

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

> *(a) That the said Respondent Company Gili India Limited a company duly incorporated under the Companies Act, 1956 and having its registered office at Office No.6, B Wing, 1st Floor, Laxmi Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, be wound up under the direction and supervision of this Hon'ble Court under the provisions of Companies Act, 1956;*
>
> *(b) That the Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as Liquidator/Provisional Liquidator of the Respondent Company to take charge of all the assets and affairs of the said Respondent Company including all its assets, business, affairs, books of accounts, papers, vouchers and all other documents with all powers under the provisions of the Companies Act, 1956 and to conduct its affairs in due course of winding up and distribute its assets in accordance with law.*

9 Official Liquidator, within two weeks, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

10 Upon receipt of the authenticated copy from petitioner's advocate, Official Liquidator shall forthwith cause notice to all concerned Directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All Directors of respondent company, now in liquidation, are hereby directed to file their respective statement of affairs as required under Section 454 of the Companies Act 1956, failing which Official Liquidator shall proceed further and lodge criminal complaint against the erring Directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

11 Company petition accordingly stands disposed.

12 Mr. James states that petitioner's advocate will give a donation of Rs.10,000/- to Kerala Chief Minister's Distress Relief Fund and this amount will be paid within one week from today. Statement accepted. Account details are as under :

Name of Donee : Chief Minister's Distress Relief Fund
Account Number : 67319948232
Bank : State Bank of India
Branch : City Branch, Thiruvananthapuram
IFSC : SBIN0070028
PAN : AAAGD0584M
Account Type : Savings
Swift Code : SBININBBT08K

(K.R. SHRIRAM, J.)