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

COMPANY PETITION NO.879 OF 2015

Lake Point Builders Private Limited ….Petitioner

Vs.

Archdeep Interior Infra Private Limited ....Respondent

Mr. Jayesh Mestry for petitioner.
None 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 – Archdeep Interior Infra Private Limited on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 On 20th March, 2017 when the petition was taken up for admission, this Court was pleased to pass the following order :

> *xxxxxxxxxxxxx*
>
> *3. By this petition, the petitioner seeks winding up of the respondent company under the provisions of the Companies Act, 1956 on the ground that the respondent is unable to pay its debts.*
>
> *4. The dispute arose between the parties was referred to the arbitration of Shri Mustafa Doctor, Senior Advocate by this court by an order dated 14th October,2014. The parties thereafter filed consent terms before the learned arbitrator. The parties agreed for measurement of the work done. The parties filed further consent terms before the learned arbitrator which were accepted by the learned arbitrator and made arbitral award by taking the consent terms on record on 20th November,2014.*
>
> *5. Learned counsel for the petitioner invited my attention to the said consent terms and would submit that the respondent had admitted the liability of Rs.47 lacs and had agreed to pay the said amount in*

five installments i.e. four installments of Rs.10 lacs each and last installment of Rs.7 lacs. He submits that except the 1st installment of Rs.10 lacs, the remaining installments are not paid by the respondent.

6. The respondent had also agreed to produce the documentary proof evidencing the payment of VAT and service tax. The respondent had deposited two post dated cheques of Rs.5,96,000/- and towards outstanding VAT and other bearing no.040629 dated 15th December,2014 for a sum of Rs.10,09,000/- towards the outstanding service tax.

7. Learned counsel for the petitioner invited my attention to various correspondence exchanged between the parties by e-mail i.e. dated 29th November 2014, 15th December 2014, 9th January 2015, 27th January 2015, 5th March 2015. He submits that the respondent had requested from time to time to the petitioner not to deposit various cheques and had agreed to make the balance amount by RTGS. He submits that since the respondent subsequently agreed that the petitioner can deposit two cheques issued by the respondent under the consent terms filed before the learned arbitrator, the petitioner deposited those two cheques which were dishonoured on presentation with remarks 'funds insufficient' and/or 'payment stopped by the drawer'.

8. Learned counsel for the petitioner invited my attention to the statutory notice dated 14th May, 2015 calling upon the respondent to pay Rs.42,96,000/- with interest @ 18% per annum. He also invited my attention to the reply dated 3rd June, 2015 addressed by the respondent through his advocate. In the said reply, the respondent has disputed the payment in respect of the VAT liability on the ground that the respondent had already furnished the requisite proof of payment. He submits that the stand taken by the respondent for the first time in the said reply is contrary to various letters addressed by the respondent by e-mail to the petitioner from time to time. He invited my attention to the revised return filed by the respondent in Form VAT 120 for the year 2014 and would submit that the respondent had filed return showing nil payment of the VAT for the concerned VAT. He submits that the petitioner made further enquiry with the concerned tax authority of Government of Karnataka to find out the current status of the respondent company insofar as the payment of VAT is concerned. He submits that upon taking such enquiry, the petitioner came to know that the respondent is shown as blacklisted in the records of Government of Karnataka.

9. A perusal of the record indicates that the parties have filed two consent terms before the learned arbitrator. The respondent has admitted the liability in the sum of Rs.47,00,000/- before the learned arbitrator and had agreed to pay the said amount in five installments. Out of the five installments, the respondent has made payment only in respect of one installment and failed to pay the balance amount.

10. Insofar as dispute in respect of the VAT liability is concerned, the respondent did not produce any proof of payment alleged to have been made by the respondent. The return filed by the respondent with the concerned authority shows nil payment in respect of the VAT. The concerned tax authority has already blacklisted the respondent.

11. Various letters sent by the respondent from time to time to the petitioner also further indicates that the respondent had requested the petitioner not to deposit the cheques issued in favour of the petitioner and had assured the payment by RTGS. The respondent failed and neglected to pay the balance amount. In my view, the stand taken by the respondent in reply to the statutory notice is contrary to the consent terms filed by the parties before the learned arbitrator and also the correspondence addressed by the respondent to the petitioner whereby the respondent has admitted the liability and had assured the petitioner to pay the dues of the petitioner. The cheques issued by the respondent were dishonoured with the remarks 'funds insufficient' and/or 'payment stopped by the drawer'.

12. In my view the defence raised in the reply to the statutory notice is not bonafide and is moonshine.

13. A perusal of the record indicates that the respondent has committed default in making payment of admitted dues. In my view, the respondent is unable to pay its debt and is commercially insolvent. I, therefore pass the following order :-

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3 Petitioner has placed on record an affidavit of one Mahesh Gotad affirmed on 13th April, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 7th April, 2017 and also in the Maharashtra Government Gazette for the period 13th-19th April, 2017 at serial no.M-1708. Company Department has filed a service report dated 12th April, 2017 stating that notice under Rule 28 of the Companies Court (Rules), 1959 was sent but the same came back with the endorsement “left”. Mr. Mestry, counsel for petitioner tenders extract of Company Master Data taken out today, maintained by the Ministry of Corporate Affairs, in which the registered address shown is the same as

written in the envelope sent by the Company Department forwarding notice under Rule 28. The printout is taken on record and marked 'X' for identification. I am, therefore, to accept that notice under Rule 28 has been effectively served. There is no affidavit in reply opposing the petition has been filed by respondent company. Therefore, the averments in the petition are not controverted.

4 This Court while admitting the petition has observed “A perusal of the record indicates that respondent has committed default in making payment of admitted dues. In my view, respondent is unable to pay its debt and is commercially insolvent”. I have heard Mr. Mestry and also considered the pleadings and the documents annexed to the petition. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

> (a) That the Respondent Company - Archdeep Interior Infra Private Limited be wound up by and under the directions of this Hon'ble Court;
>
> (b) That the Official Liquidator of this Hon'ble Court or any other fit and proper person as this Court deems fit, be appointed as Liquidator of Respondent Company known as Archdeep Interior Infra Private Limited with all powers to take charge of the assets and affairs, books of accounts, records, papers, documents, vouchers, etc. of Respondent Company and to conduct its affairs in the course of winding up and to distribute the assets in

accordance with law.

6 The Prothonotary and Senior Master to return the amount of Rs.10,000/- deposited by petitioner after adjusting charges, if any payable.

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

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)