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

COMPANY PETITION NO.910 OF 2015

Dhanraj Meghraj Rajpal ....Petitioner
Vs.
M/s. Saaga Infra Projects Pvt. Ltd. ....Respondent

Ms. Chaula Solanki i/b. H H Nagi and Associates for petitioner.
Ms. K. Padmashri i/b. Kulkarni and Associates for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 25th JANUARY, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Saaga Infra Projects Pvt. Ltd. (the company) on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 It is the case of petitioner that petitioner have, pursuant to Memorandum of Understanding (MOU) dated 25th August, 2012 executed with respondent, given a sum of Rs.3 Crores to the company. As stated in MOU, the amount of Rs.3 Crores was to be repaid with interest at 15% p.a. and the interest was payable in advance for every three months from the date of the MOU. The company handed over to petitioner post dated cheques for Rs.3 Crores with an undertaking that the same will be honoured on presentation. It was also agreed that if there was default in the interest payment, petitioner could call back the amount of Rs.3 Crores finance to the company. Allotment letters were also given for certain flats as

collateral security with an undertaking that those will not be sold to any third party until the entire amount of Rs.3 Crores with interest is repaid. It is stated that the company paid about Rs.45 Lakhs towards interest but failed and neglected to pay the balance interest or the principal amount of Rs.3 Crores. As the payments were not made, petitioner deposited three post dated cheques that the company had given and all the three cheques were dishonoured on presentation with the endorsement "account closed". Petitioner also commenced proceedings under Section 138 of the Negotiable Instruments Act which are still pending.

3 As no payments were made, petitioner caused statutory notice to be issued through their advocate's notice dated 24th April, 2015 to which there was no reply. Hence the petition came to be filed.

4 Before the petition was taken up for admission, the company had filed an affidavit in reply. In the reply, the company has admitted that it owes an amount of Rs.3 Crores plus interest to petitioner. The company has also stated that it had issued promissory notes and allotment letter of 14 flats in the proposed building as collateral and mortgaged those flats to petitioner for security purpose. The company has also stated that the projects are stuck due to various MHADA policies and the company is in no position to make any payment. It is also sated that the person Mr. Uday Suresh Surve, the Director of the company, who has affirmed the affidavit in reply, has been arrested and is in judicial custody. It is also stated that the

company is in no position to make the payments. All these facts were before the Court when petition was taken up for admission and the Court observed that the company is unable to pay debt of petitioner and is commercially insolvent.

5 Ms. Padmashri, counsel for respondent company reiterates that the company is in no position to make the payment and also the Director – Mr. Surve is still behind bars. Ms. Solanki, counsel for petitioner states that in these circumstances and all the more reason, the company is commercially insolvent and deserves to be wound up so that Liquidator can take charge of the assets, otherwise the assets will dissipate. Ms. Solanki tenders an affidavit of one Ankush Ramchandra Pandit affirmed on 24th January, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 9th August, 2017. In the said affidavit, Ankush Ramchandra Pandit has stated that gazette notification has been issued. The Company Department has filed a service report dated 23rd August, 2017 stating that notice under Rule 28 of the Companies (Court) Rules, 1959 has been returned with the endorsement "unclaimed". Ms. Padmashri, counsel for respondent states that the notice was not claimed because Mr. Surve is behind bars.

6 Therefore, I would proceed on the basis that notice under Rule 28 has been effectively served. Ms. Solanki, counsel for petitioner states that affidavit of Ankush Ramchandra Pandit affirmed on 24th January, 2018

contains the acknowledgement details of the amount paid to Maharashtra Government Press for publishing the notice in Maharashtra Government Gazette. Ms. Solanki further states that she will file, within two weeks from today, further affidavit annexing a copy of the gazette notification. In the circumstances, there is no impediment in proceed further with the hearing of the petition.

7 Admittedly, amounts are due and payable by the company to petitioner. Admittedly, the company is in no position to make payments. Ms. Padmashri, counsel for respondent company states that the company is in no position to make the payments today and also the Director of the company, who was managing the company, is behind bars. Ms. Padmashri states that some time be granted. Ms. Padmashri states that Mr. Surve has been behind bars since October, 2015 and has been granted bail in many matters but he is still behind bars because he is unable to comply with the bail conditions. Ms. Padmashri, however, hopes that he will meet with the bail conditions and will be released very soon. In my view, that is still a speculation. The situation as it appears is even if Mr. Surve comes out on bail, the company will not be in any position to discharge its debts. Any delay may result in the assets of the company getting dissipated.

8 I have heard Ms. Solanki, counsel for petitioner and also considered the petition and the documents annexed to the petition. I am also satisfied that the company is unable to discharge its debts, is

commercially insolvent and requires to be wound up. I see no reason as to why the petition should not be allowed.

9 In the circumstances, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

> *(a) That respondent company namely M/s. Saaga Infra Projects Pvt. Ltd. be wound up by and under the order and direction of this Hon'ble Court under the provisions of the Companies Act, 1956;*
>
> *(b) That Official Liquidator, High Court, Bombay be appointed as Liquidator of M/s. Saaga Infra Projects Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956 to take charge of the assets of the company and conduct it affairs in the course of winding up.*

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

11 Company petition accordingly stands disposed.

12 It is made clear that if the affidavit annexing gazette notification is not filed within two weeks from today, the order winding up the company passed above will stand recalled without further reference to this Court.

(K.R. SHRIRAM, J.)