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

COMPANY PETITION NO. 400 OF 2016

M/s. DDB Mudra Max Pvt. Ltd.
(Previously known as
Mudra Max Private Limited .. Petitioner
Vs.
M/s. Disha Direct Marketing Services
Pvt. Ltd. .. Respondent

Mr.Hasmukh Ravaria i/b Juris Link for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 26TH APRIL 2018

P.C.

1. The petition is filed for winding up of the company-Disha Direct Marketing Services Pvt. Ltd.(the company) on the ground that the company is unable to discharge its debts.

2. On 8th August 2017, when the petition was taken up for admission, the following order came to be passed :-

> *"1 By this petition, the petitioner seeks an order of winding up of the respondent company and for an appointment of Official Liquidator of the respondent company due to the non-payment of admitted liability. The petitioner is engaged in the business of advertising and publicity. The respondent was its client and carrying on business of direct marketing of real estate. It is petitioner's contention that under an agreement dated 27th May, 2013 the petitioner agreed to act as the Agency On Record for the respondent and provide services in mass media advertising at the request of the respondent.*
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> *2. The learned counsel for the petitioner submitted that pursuant*

to the execution of the agreement, the petitioner has carried out all the instructions of the respondent company as far as placing of advertisements are concerned, after which relevant invoices for media charges were raised in accordance with clause (5) of the Agreement Exhibit C. He has invited my attention to Exhibit D which sets out a list of various invoices that had been raised since 1st July, 2013 and various part-payments received. The last of these part-payments is seen to be made vide cheque dated 28th February, 2015. In addition to the statement of invoices, the petitioner has also annexed the individual invoices described as press space bills. These invoices mention the name of the respondent and the particulars of the publication in which the relevant advertisement was carried, the rates and the total amount of the bill. The invoices specify that interest at Rs.18% p.a. will be charged if the bills are not paid by the due date.

3. Having failed to pay these amounts of the invoices, the petitioners entered into a correspondence with the respondent. On 23rd December, 2013 the respondents vide email informed the petitioner that the service tax department had issued instructions of attachment of bank accounts. Apologies were offered but the amounts due were not paid. Accordingly, a meeting was held on 25th July, 2014. Minutes of these meetings are reproduced at Exhibit J whereby the parties appeared to have arrived at consensus on the amount to be paid which was about 1.63 crores. Thereafter it appears that some cheques for part-payment were issued and which were honoured and on 27th March, 2015 the respondent company handed over two post dated cheques of Rs.5 lakhs each. These were dated 31st March, 2015. The respondent has confirmed that the balance outstanding was Rs.1,39,22,564.70. However, it is the case of the petitioner that the cheques were dishonoured when presented for payment.

4. In the circumstances, a statutory notice came to be issued on 9th April, 2015 demanding the aforesaid sum of Rs.1,49,22,564.70. The respondent admitted that they have facing financial constraints due to global economic slowdown and suggested that parties should freeze the amount payable. As a result, rejoinder dated 3rd June, 2015 addressed to the respondent and its Managing Director and CEO demanded the undisputed sum of Rs.1,49,22,564.70. In the said rejoinder which is dated 24th June, 2015 (Exhibit Q) the company denied all claims. Thus, the company is failed and neglected to pay an admitted sum of money. The company has despite waiving notice on behalf of the company on 24th July, 2017 their advocates have not entered appearance and have not filed any affidavit-in-reply. The contents of the petition are therefore uncontroverted.

> *5. Prima facie, it appears that the respondent is in severe financial distress, the presumption of deemed insolvency must be given effect to and from the companies response it is evident that it is appears to be unable to pay their debts in the usual course of business. ………………….”*

3. On record is an affidavit of one Komal Shah affirmed on 21st September 2017 confirming advertising the petition in two local newspapers, viz., Free Press Journal and Navshakti on 5th September 2017. There is one more affidavit of one Komal Shah affirmed on 21st September 2017 showing advertising the petition in Maharashtra Government Gazette for the period September 14-20, 2017 at Sr.No.M-17187. The service report dated 18th September 2017 states that notice sent under Rule 28 of the Companies (Court) Rules, 1959 has come back with the endorsement '*Undelivered*'.

4. Though an Advocate had appeared and given an undertaking on behalf of the company on 24th July 2017 to file reply, no reply has been filed. Therefore, none of the averments in the petition are controverted.

5. I have perused the petition, the documents annexed thereto and also heard the counsel for petitioner. *Prima-facie,* I am satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and hence requires to be wound up. In these

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

> *"(a) Pass orders to the effect that the Respondent Company, i.e., M/s. Disha Direct Marketing Services Private Limited, having its office at 303, Orion Business Park, Next to Wonder Mall, Ghodbunder Road, Thane (W)-400 610, be wound up by and under the order and directions of this Hon'ble Court, as per the provisions of the Companies Act, 1956.*
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> *(b) The Official Liquidator attached to this Hon'ble High Court or some other fit and proper person be appointed as liquidator of M/s. Disha Direct Marketing Services Private Limited with all powers under the Companies Act, 1956 to take charge of all the assets of the company and to distribute and liquidate its assets to discharge the liability of the Respondent in accordance with law."*

6. Petitioner's advocate to forward an authenticated copy of this order, within two weeks, to the official liquidator who shall take immediate steps without waiting for any notification.

7. The company petition accordingly disposed.

8. A copy of this order also be forwarded to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)