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

**COMPANY PETITION NO.1218 OF 2015**

M/s. Planetcast Media Services Limited ….Petitioner

Vs.

M/s. Sai Prasad Media Private Limited ….Respondent

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Mr. Manoj R. Khatri a/w. Mr. Arnab Ghosh and Ms. Alvia Crasta for petitioner.
None for respondent

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**CORAM : K.R.SHRIRAM, J.**
**DATE : 3rd MAY, 2018**

**P.C.:**

1 This petition is for winding up of respondent company - M/s. Sai Prasad Media Private 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 22nd January, 2018 while admitting the petition, the Court was pleased to pass the following order :

> *1. Petitioner is seeking winding up of respondent company M/s. Sai Prasad Media Private Limited (the company) on the grounds that the company is indebted to petitioner, unable to discharge its debts, is commercially insolvent and requires to be wound up.*
>
> *2. Petitioner is engaged in the business of providing Satcom services, Digital Satellite News Gathering (DSNG), Bandwidth Services and DSNG Vehicle Rental services. Respondent company is in the business of media, entertainment and sports broadcasting.*
>
> *3. Petitioner and the company entered into two contracts, viz., Service Contract and Vehicle Rental Agreement both dated 19th March, 2012, whereby petitioner agreed to provide to the company DSNG Bandwidth services and vehicular rental services. As required under the two contracts, the company also deposited an amount of Rs.12 lakhs as security deposit with petitioner. In accordance with the contracts, petitioner raised five invoices, dated 1st August, 2014, 1st*

*September, 2014, 1st October, 2014, 1st November, 2014 and 1st December, 2014 for a total amount of Rs.50,30,640/-. Petitioner also issued a credit note for Rs.6,81,570/- against the fifth invoice dated 1st December, 2014. After adjusting the credit amount of Rs.6,81,570/- and the security deposit of Rs.12 lakhs, there remained an outstanding of Rs.31,49,070/- payable by the company to petitioner.*

*4. Despite repeated reminders, the company failed and neglected to pay. Infact by an email dated 31st October, 2014, it is stated in the petition, respondent informed petitioner that they will clear the dues on or before 7th November, 2014. The counsel for petitioner states that no payment was received and therefore, a statutory notice dated 26th March, 2015 was issued as required under the provisions of the Companies Act, 1956 claiming the amount of Rs.31,49,070/together with interest thereon at 18% p.a. though the contract provided for interest at 2% per month. There is no reply to the statutory notice.*

*5. Mr. Khatri, counsel for petitioner states that there are two affidavits of service filed by one Vinod Gosavi, one dated 3rd February, 2016 and the other dated 22nd August, 2017. In both the affidavits, it is stated that copy of the petition, when it was served, was returned by the postal authorities with the endorsement "office is sealed, returned to the sender". Mr. Khatri states that he has checked the master company data of the MCA website even after the second packet came back and the address given in the MCA website as registered office is the same address to which the packets were sent. Mr. Khatri states that the second service was attempted to because petitioner's name underwent change after the petition was filed and the earlier service was made. In view of the statement made, I am proceeding on the basis that petition has been served upon the company.*

*6. Having perused the documents annexed to the petition and also considering the averments made in the petition, I am satisfied that the company owes money as claimed in the petition. Since no affidavit in reply has been filed, the averments in the petition are not controverted. Even to the statutory notice, there is no reply given. 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, respondent company runs a risk of winding up petition being admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, 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.*

*7. In the circumstances, the petition requires to be admitted because I am of the prima facie view that the company is indebted to petitioner, which debt has not been discharged and company is commercially insolvent. Therefore, the following order is passed :*

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3 The company has not filed any affidavit in reply opposing the petition. Therefore, none of the averments in the petition are controverted. There is no reply even to the statutory notice. 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 Petitioner has placed on record an affidavit of one Kumar Kothari affirmed on 26th April, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 23rd February, 2018 and also in the Maharashtra Government Gazette for the period 1st - 7th March, 2018 at serial no.M-17351. The Company Department has placed on record a service report dated 8th February, 2018 stating that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 has been returned undelivered with the endorsement “This office sealed, return to sender”. Petitioner has also filed an affidavit of one Vinod Gosavi affirmed on 3rd May, 2018 stating that the

copy of the order of admission sent to the company came back undelivered with the endorsement "Insufficient address" and the notice that was sent by hand delivery could not be delivered because the office was sealed.

5 Mr. Khatri, counsel for petitioner states and rightly so, that the address was complete as mentioned in the Ministry of Corporate Affairs (MCA) website and the postal authorities have made a mistake to state "insufficient address". Mr. Khatri also tenders an extract of the Company Master Data from the MCA website, which Mr. Khatri states was taken on 20th April, 2018 in which the registered address shown is the same address to which all the notices have been sent. The extract is taken on record and marked "X" for identification. Therefore, I would proceed on the basis that notice under Rule 28 has also been served upon the company.

6 I have considered the petition, the documents annexed thereto and also heard Mr. Khatri, counsel for petitioner. 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.

7 In the circumstances, company petition is allowed in terms of prayer clause – (a) which reads as under :

> *(a) Your Lordships may kindly be pleased to admit and allow the present petition and further pleased to order respondent to be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956.*

8 Official Liquidator to take steps immediately 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.

9 Company petition accordingly stands disposed.

**(K.R. SHRIRAM, J.)**