

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

COMPANY PETITION NO. 38 OF 2016

Rajesh Valchand Shah	.. Petitioner
Vs.	
Jagran Entertainment Media Pvt. Ltd.	.. Respondent

Mr.Sriraj Menon I/b MJ Juris for petitioner.

Ms.Vidhya Mangavde for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 1ST AUGUST 2018

P.C.

1 After the petition was filed on 19th December 2017, a statement was made on behalf of the company that the balance amount of Rs.20,41,603/- will be paid within three weeks to petitioner. It was made clear that the statement was accepted as an undertaking to the Court. The company was also put to notice that if the amounts are not paid, the company petition will stand admitted and advertised.

2 On 15th January 2018, petitioner informed the Court that not a penny has been paid by the company. The company's advocate stated that he has no instructions whether the amounts in accordance with the order dated 19th December 2017 has been paid or not. Petition, therefore, came to be admitted and directions to advertise was passed. Notice under Rule 28 of the Companies (Courts) Rules, 1959 was waived.

3 On 19th April 2018, the counsel for the company stated that the amount payable by the company was Rs.35 lakhs whereas the counsel for petitioner stated that the amount payable was in excess of Rs.40 lakhs. The Advocate for company stated that she was holding 5 cheques all dated 3rd May 2018 to 28th May 2018, which she shall hand over to the advocate for petitioner who can deposit those cheques on the dates mentioned therein and her instructions are that the cheques will be honoured on presentation. The counsel for petitioner expressed his own doubts about the cheques being honoured but without prejudice to petitioner's rights and contentions, accepted the cheques. An opportunity to the company to escape being wound up was granted. The advocate for the company also stated that a Pay order of Rs.10,00,000/- will be handed over on 3rd May 2018.

4 On 4th May 2018, a Director of the company was present in Court and was identified by the Advocate. The director of the Company Shri Anshuman Gupta handed over four cheques to petitioner's advocate who in turn, handed over those cheques to the counsel for petitioner. Those four cheques were for Rs.4 lakhs, Rs.6,41,945/-, Rs. 8 Lakhs and Rs.10 Lakhs dated 25th May 2018, 9th June 2018, 23rd June 2018 and 14th July 2018, respectively. Shri Anshuman Gupta personally undertook to this Court for

himself, for the other directors of the company and for the company that those cheques will be honoured. It was also stated by Shri Gupta that if any of those cheques are not honoured, the company can be ordered to be wound up without reference to the Court since the petition has already been advertised in two newspapers as well as in the Maharashtra Government Gazette and notice under Rule 28 was waived. It was also recorded that to the extent of the amount not paid, can be executed as a decree against Shri Anshuman Gupta and also against the company. Shri Gupta further undertook to pay license fees for the month of May 2018 of Rs.2,25,043/- by 8th May 2018 by way of Pay Order drawn in favour of petitioner.

5 Installments, as due upto 4th May 2018, were paid. On 15th June 2018, the company gave a further undertaking that they will pay the license fees payable on the due date without default. The counsel for the company stated that the license fee of June 2018 has not been paid, it will be paid within one week and also the license fees that will fall due on 10th July 2018 will also be paid on the due date.

In compliance with the order dated 4th May 2018, Shri Sanjiv Mohan Gupta and Shri Anshuman Gupta have also filed separate affidavits, both affirmed on 8th May 2018, both affirmed on 7th May 2018, giving an

undertaking to this Court that all cheques will be honoured upon presentation and if they are not honoured, they will be personally liable for the same including for execution of decree against them in their personal capacity to the extent of such dishonoured cheques and other consequential liabilities.

6 On 4th July 2018, it was brought to the notice of the Court that the cheque which was due on 23rd June 2018 for Rs.8 lakhs, as recorded in the order dated 4th May 2018, was dishonoured due to insufficient funds. The advocate, on instructions, from another director of the Company Mr.Sanjiv Mohan Gupta, who is the father of Shri Anshuman Gupta, who had given undertaking on 4th May 2018, personally undertook to this Court once again that the amount of Rs.8 lakhs for which the cheque got dishonoured, will be paid on or before 14th July 2018 when the fourth cheque for Rs.10 lakhs was due for payment and this statement was accepted as a further undertaking on behalf of the company and its directors. Respondent and Shri Sanjiv Mohan Gupta were put to notice that if the amounts are not paid or the cheques got dishonoured, it will be viewed as a very serious breach of undertakings given to this Court and no excuse will be entertained. Shri Sanjiv Mohan Gupta was also cautioned that the Court will issue contempt notice against him, respondent-company and all other directors of the company if the cheques got dishonoured. The advocate for

the company, on instructions, assured the Court that the undertakings will be honoured.

7 On 20th July 2018, when it came to light that the company had once again breached and had not paid any money to petitioner, the counsel for the company, on instructions from Shri Sanjiv Mohan Gupta, who was present in Court, stated that the entire liability as per the order dated 4th July 2018 plus license fess for July 2018 will be paid by 31st July 2018 and to show his clients bonafies, Shri Sanjiv Mohan Gupta will pay a sum of Rs.5 lakhs on or before 24th July 2018. On 26th July 2018, it was informed to the Court that the amount of Rs.5 lakhs has been paid by way of demand draft and the counsel for respondent informed the Court that a further sum of Rs.,10,45,045/- by demand draft/pay order will be paid by 31st July 2018.

8 Today Ms. Mangavde for respondent states that the company is unable to make this payment.

9 Therefore, as recorded above, the company and its directors have been giving repeated undertakings to this Court and committing breach. Way-back in May 2018, as recorded in the order of 4th May 2018, it was stated that if the amounts are not paid, the company will stand wound up

without further reference to the Court. As on date, an amount of Rs.,10,45,045/- is still due and payable.

10 As noted in the order of 4th May 2018 and in the subsequent orders and the order passed today, petitioner is at liberty to execute the order dated 4th May 2018 as a decree against Shri Sanjeev Mohan Gupta and against Shri Ansuman Mohan Gupta personally and also against the company.

11 On record is an affidavit of one Shivaji Dashrath Magare, affirmed on 16th April 2018 confirming advertising the petition in Free Press Journal and Navshakti on 15th March 2018 and in the Maharashtra Government Gazette for the period April 5 to 11, 2018 at Sr.No.17396. Notice under Rule 28 has been waived.

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

“(a) that the Company be wound up by the order of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) that the Official Liquidator, High Court, Bombay, be appointed as the Liquidator of the Respondent Company with all powers under the provisions of Companies Act 1956 and to take charge of the Company and to conduct its affairs in the course of its winding up and to distribute its assets in accordance with law.”

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

14 Upon receipt of the authenticated copy from petitioner's advocate, the 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 statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the 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.

15 The company petition accordingly disposed.

16 The registry shall also issue show cause notice to the company as well as the three directors, viz., S/Shri Sanjiv Mohan Gupta, Anand Bhagwanji Chaturvedi and Anshuman Gupta explaining as to why they should not held guilty of contempt of Court for repeated breach of undertakings given to this Court.

17 Show cause notice be made returnable on 7th September 2018 on which date, all the three directors shall remain present in Court.

(K.R. SHRIRAM, J.)

Shraddha
Kamlesh
Talekar

Digitally signed by
Shraddha Kamlesh
Talekar

Date: 2018.08.04
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