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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision*: 26.04.2018**

\+ CO.PET. 441/2016 & CA 1893/2016

PROFESSIONAL AUDIO VIDEO PTE. LTD. ..... Petitioner
Through Mr.Manoj Kumar Garg & Mr.Siddharth Patra, Adv.

versus

M-3 MEDIA PRIVATE LIMITED ..... Respondent
Through Mr.Rajat Bhardwaj, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This petition is filed under sections 433 (e), 434(1)(a) and 439(1)(b) of the Companies Act, 1956 (*hereinafter referred to as the 'Act'*) seeking winding up of the respondent company.

2. It has been pleaded in the petition that the respondent approached the petitioner for supplying of video and broadcasting equipment with top-notch quality. Accordingly, the petitioner agreed to consign the various audio and video broadcasting and sundry equipments through Air Cargo had then delivered at respondent registered office at 7-C, Doctor's Lane, Gole Market, New Delhi. Against the said transactions, the petitioner sent various invoices/bills which are stated in para 8.5 of the petition. In all, eight invoices/bills have been sent for a total of 369,090.45 USD starting from invoices dated 13.08.2008 to 02.10.2008. Thereafter, the statutory demand notice was sent on 28.11.2015. Hence, the present winding up petition.

3. I may note that on 14.07.2017 it was stated by the learned counsel for the respondent that the Managing Director of the respondent company is in judicial custody since 31.01.2016, hence time was sought to file the reply. The same was the position on 11.12.2017. This court on 11.12.2017 granted final opportunity to the respondent to file the reply. The reply is still not filed.

4. The learned counsel for the respondent made only one submission, namely, that the debts for which the present winding up has been filed are barred by limitation. He relies upon the judgment of the Division Bench of this court in ***Interactive Media & Communication Solution Pvt. Ltd. v. Go Airlines Ltd.,199 (2013) DLT 267***.

5. A perusal of the petition would show that the entire dues which are being claimed are based on the invoices of 2008. The present winding up petition has been initiated some times in May, 2016. On the face of it, the limitation period for filing a suit for recovery of dues has lapsed in view of the fact that the present petition has been filed almost 7 years after raising the invoices.

6. The limitation period would be three years. Article 14 of the Limitation Act reads as follows:-

14.	For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years	The date of the delivery of the goods.

7. This court in ***Interactive Media & Communication Solution Pvt. Ltd. v. Go Airlines Ltd.***(supra), held as follows:

"4. What is stated in the said paragraphs is that no period of limitation has been prescribed under the Limitation Act for filing of a winding up petition. However, Section 433(e) stipulates that a winding up petition is maintainable when a company is unable to pay the debt which is due and payable. We have already interpreted Section 434(1)(a), which incorporates the deeming provision. The debt should be one which is legally recoverable and is not barred under the law of limitation. In Niyogi Offset Printing Press Limited (supra), in paragraph 27, it was accordingly held as under:

> "27. The claim of the petitioner for recovery of the amount has become barred by time. If the petitioner files a suit for recovery of the said amount, the suit will be dismissed as barred by time. If the claim of the petitioner to recover the amount has become barred by time, it will not be appropriate to initiate the process of winding up of the respondent company. Under Section 433(e) of the Companies Act, 1956 the machinery for winding up can not be allowed to be utilized merely as a means for realizing debts due from a company which is also barred by time. Consequently there are no grounds to initiate the winding up proceedings against the respondent company. The petition, therefore, is without merit is liable to be dismissed. The petition, therefore, is dismissed."

8. Reference may also be had to the judgment of the Division Bench of this court in the ***Fourseasns Marketing Pvt. Ltd. v. The Indure Ltd***., Co.A.12/2005, decided on 22.11.2007, where the court held as follows:

> "13. Therefore, in our considered opinion, the learned Single Judge was justified in holding that the aforesaid claim of the appellant was barred by limitation as the said claim was raised beyond the period of three years of the time specified in terms of the agreement. The winding up petition was filed on 21st March, 2001, whereas payment became due in July, 1997 and part payment was made on 10th July, 1997."

9. The alleged claim by the petitioner is barred by limitation on the face of record. I see no reason to allow the present petition. The same is accordingly dismissed. All the pending applications, if any, are also dismissed.

JAYANT NATH, J.

APRIL 26, 2018/v