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

COMPANY PETITION NO.459 OF 2016

India Infoline Finance Limited ....Petitioner

Vs.

Business India Publication Ltd. ....Respondent

WITH

COMPANY PETITION NO.460 OF 2016

Mr. Vaibhav Charalwar i/b. Mr. Mahesh Mahale for petitioner (in both petitions.
Mr. R. Venkataraman, director of petitioner present.
Mr. Bharat Merchant i/b. Thakordas Madgavkar for respondent.
Mr. Ravi Agrawal, director of respondent present.

CORAM : K.R.SHRIRAM, J.
DATE : 3rd SEPTEMBER 2019

P.C.:

<u>COMPANY PETITION NO.459 OF 2016</u>

1 Parties have entered into consent terms dated 27th August 2019. The consent terms signed by the whole time director of petitioner alongwith other person, the director of respondent – Ravi Agrawal and their respective advocates is taken on record and marked “X” for identification. Both counsel state that the signatories to the consent terms are present in Court and identify them.

2 Order in terms of the consent terms. All statements accepted as undertakings to this Court. Undertaking of respondent and its directors to strictly and meticulously comply with the undertakings and assurances recorded in the consent terms is accepted. Mr. Ashok Advani, who was the promoter of respondent states that he has been disqualified as director of

respondent company but he still is in-charge of the day to day management of the company with the directors of the company. Mr. Advani personally undertakes and assures that he will ensure that the undertakings as recorded in the consent terms and statements and assurances as recorded in the consent terms will be strictly and meticulously complied with. Statement accepted with a caution to Mr. Advani that this is the third undertaking that he is giving to the Court and any breach will be viewed very strictly.

3 For ease of reference, the consent terms is scanned and reproduced hereinbelow :

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V/s
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CONSENT TERMS BETWEEN THE PETITIONER AND THE RESPONDENT

1. The present Company Petition No. 459 of 2016 is filed by the Petitioner under Section 433(e) and 434 of the Companies Act, 1956 against Business India Publication Ltd. ("the Borrower") as the Respondent had neglected to make payment of a sum of Rs.17,58,79,231/- (Rupees Seventeen crores fifty eight lakhs seventy nine thousand two hundred thirty one only) claimed by the Petitioner as on 22nd March 2016 along with interest and other contractual charges with effect from 23rd March 2016. Similarly, Company Petition No. 460 of 2016 is filed against Business India Holdings Pvt. Ltd. ("the Guarantor")

2. In both the Company Petitions the liability of the Respondents is admitted in clear and express terms. Even in the orders passed on 10th August 2016 and 5th October 2016 respectively in Company Petition No. 459 of 2016, it is recorded that the amount claimed in the Petition is a debt owed to the Petitioner which the Respondent ("the Borrower") failed to discharge. Vide order dated 5th October 2016 the

Hon'ble Court was pleased to appoint Official Liquidator as the Provisional Liquidator of all the assets, properties and bank accounts and other assets of the Respondent ("the Borrower") and the Liquidator was directed to take charge of the same. On 27th October 2016 on an application made by the Respondent ("the Borrower"), the Official Liquidator was directed not to take possession as Provisional Liquidator till the next date.

3. The Respondent in Company Petition No. 459 of 2016 ("the Borrower") and the Respondent in Company Petition No. 460 of 2016 ("the Guarantor") have jointly and severally agreed and undertaken to repay the dues of the Petitioner under the facilities granted by the Petitioner to the Respondents as set out in both the Company Petitions. The Respondents in Company Petition No. 459 of 2016 ("the Borrower") has in clear and express terms admitted the amount due and payable by the Respondents to the Petitioner. The Respondent in Company Petition No. 460 of 2016 is the Guarantor who has unconditionally and irrevocably guaranteed the amount due and payable by the Respondents to the Petitioner and admitted amounts due and payable to the Petitioner.

4. In the meantime, the Respondents under both the petitions had approached the Petitioner with an offer to settle the entire dues of the Petitioner whereby the Respondents had in clear and unequivocal terms admitted the total amount of Rs.17,58,79,231/- (Rupees Seventeen crores fifty eight lakhs seventy nine thousand two hundred thirty one only) due and payable by the Respondents of both the

petitions to the Petitioner ("Total amount"). Consequently, consent terms dated 04.01.2017 came to be executed between the parties and the Company petitions were disposed on the basis of the said consent terms.

5. That the respondents of the company petitions however, committed breach of the consent terms by neglecting to pay the amount stipulated thereunder, whereupon the petitioner approached the Hon'ble Bombay High Court for revival of the aforesaid Company petitions by way of moving Company Application (L) No. 474 of 2018 in Company Petition No. 460 of 2016 and Company Application (L) No. 475 of 2018 in Company Petition No. 459 of 2016. Thereafter, the Hon'ble Bombay High Court was pleased to allow the Company Applications filed by the Petitioners *vide* orders dated 21.08.2018.

6. That while the petitioner had been complying with the directions contained in the respective orders, the Respondents of both the company petitions had again approached the Petitioner with a request to settle the account by way of proposal dated 03.09.2018. Based on the aforesaid request, consent terms were executed afresh and the same were adduced before the Hon'ble Bombay High Court whereupon order dated 10.09.2018 came to be passed in terms of the consent terms while granting the petitioner a liberty to approach the Court in case of Default.

7. That the Respondents of both the company petitions yet again committed a breach of their undertakings recorded vide the order

dated 10.09.2018 and the Petitioner's had consequentially approached the Hon'ble Court for revival of the Company petitions and the same was allowed vide order dated 24.07.2019.

8. The Respondent under the company petition No. 459 of 2016 being Business India Publication Limited has again approached the petitioner with a proposal to settle the outstanding claims and the Petitioner based upon the proposal of the Respondent has obtained approval from its requisite authorities and it is agreed by and between the parties that the following shall constitute as a settlement between the parties:

   a. The Respondent shall assign and transfer its trademark of 'Inside Outside'(Trademark) in favour of the Petitioner and the valuation of the said trademark is agreed to be as Rs. 2,00,00,000/- (Rupees Two Crore Only).

   b. The Respondent hereby assures, confirms and states that Respondent shall transfer assign and convey absolute ownership and clear title on the Trademark of Inside Outside and further states that same is free from all sort of encumbrances and charge.

   c. Respondent assures, confirms and state that no third party consent or assent is required for the transfer, assign or sale of Trade mark to Petitioner. Further if any consent or assent is required for transfer, assign , convey and sale, Respondent shall ensure that consent/ assent is accorded from the third party/ authorities at its own cost for making transfer, convey, assign and sale of Trademark in favour of Petitioner. In case any sort of dispute and or claim is raised by any third party in respect of the said Trademark Respondent shall ensure that such dispute or claim is settled within 15 days and all the expenses, cost and damages if any shall be borne by Respondent. Respondent further assures that any loss or damages is caused to Petitioner, same shall be compensated immediately.

d. After assignment of the trademark, the Respondent may seek the license to use the trademark for a period of 36 months against the payment of Rs. 30,00,000/- (Rupees Thirty Lacs Only) per annum to the Petitioner payable at quarterly intervals. Separate documentation will be executed in this regard upon the request being made by the Respondent.

e. Upon punctual and regular payment being made by the Respondent in terms of the penultimate clause and to the satisfaction of Petitioner, the Respondent will have an option to buy-back the trademark within the expiry of 36 months from the date of licence agreement against the consideration of Rs. 6,00,00,000/- (Rupees Six Crores Only).

9. In addition to the aforesaid, the Respondent agree and undertake to publish Petitioner's advertisements (as per the rate chart agreed between the Parties) in the form and manner acceptable to the Petitioner in Respondent's publications on monthly basis from the date of execution of these Consent Terms for the period of 03 (three) years.

10 The Respondents unconditionally and irrevocably further agree and undertake to this Hon'ble Court as under:

a) The Respondents unconditionally undertake to do all deeds and execute all such documents which may be required to give effect to assignment of trademark within 90 days of execution of these consent terms and all expenses/costs/fees/charges in this regard shall be borne by the Respondents alone.

b) No omission or commission of any act shall be made by the respondents which would cause any impediments in assignment of the trademarks and/or giving effect to the presents of these consent terms.

c) The Respondents shall abide by the terms and conditions of the documents executed to give effect to the consent terms.

d) The Board of Directors of the Respondent have approved these consent terms and a copy of board Resolution has been passed in that regard.

11 Upon compliance of all the aforesaid covenants of these consent terms by the Respondent in the manner stipulated hereinabove, the Petitioner shall not have any claim against the Respondent in respect of the facilities availed by the Respondent from the Petitioner which form part of the present Petition No. 459 of 2016.

12 Additionally, the following will constitute event of default:

(a) The Respondent fail to or otherwise are unable to assign the trademarks as specified in Clause 8 and Clause 10 (a) hereinabove for any other reason whatsoever.

(b) The Respondent commit breach or are otherwise unable to comply with any of the terms, conditions, covenants, obligations, and undertakings herein for any reason whatsoever.

(c) Any resolution is passed by the Respondent for winding up itself and/or submit to liquidation proceedings.

(d) Any proceeding is adopted by the Respondent with or without notice to the Petitioner in respect of the Facility in question.

(e) The Respondent refusing to advertise Petitioner's Business in its publications in the mode and manner requested by the Petitioner.

13. It is agreed, confirmed and declared between the parties to Company petition of 459 of 2016 that in case of default and or non-compliance for clause no 8 and 10 mentioned hereinabove by the Respondents the settlement arrived at between the parties shall stand terminated and the following consequences shall follow and the Respondents shall not object to the same :

(a) The Company Petition shall revive, stand admitted and be made returnable after six weeks from the date of such default;

(b) The original due amount along with contracted interest and security interest as per the facility agreement shall revive.

(c) Service of the Petition under Rule 28 of the Companies (Court) Rules, 1959 shall be deemed to have been waived;

(d) The Petition shall be advertised in two local newspapers, namely, (i) Free Press Journal (in English), Navshakti (in Marathi) as also in the Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice

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shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Company (Court) Rules, 1959;

(e) The Petitioner shall deposit Rs.20,000/- towards publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, within two weeks from the date of admission. Or within such further time as this Hon'ble court may specify. After the advertisements are issued, the balance, if any, shall be refunded to the Petitioner;

(f) The Provisional Liquidator of the Respondents with all powers under the Companies Act, 1956 including the power to take charge of all the assets, properties, stock in trade, books of account and bank account of the Respondent without any intimation.

14. It is agreed by and between the parties that the above Consent Terms and consequences provided thereunder shall not in any manner affect the rights of the Petitioner to file proceedings for recovery under the law time being in force., against the Respondents and other connected parties thereto. The Respondents agree, undertake and confirm to this Hon'ble Court that they shall not challenge the said proceedings adopted by the Petitioner for recovery, before any Court, Forum or Tribunal in any manner whatsoever.

15. The present Consent Terms have been signed by the authorized representatives of the Petitioner and the Respondent Company. Each of the parties hereto have signed the present Consent Terms based on

their own will and prudent commercial wisdom without any force and/or coercion and/or undue influence in this regard.

16. Both the Company Petitions shall stand disposed off as per these Consent Terms.

Dated this 27th day of August, 2019.

R. Venkataraman
R. VENKATARAMAN
DIRECTOR
For India Infoline Finance Ltd.

Petitioner in Company Petition No. 459 of 2016

Advocates for the Petitioner

For Business India Publication Ltd.
(Ravi Agarwal Director)

Respondent in Company Petition No. 459 of 2016

Advocates for the Respondent

4 Mr. Charalwar states that the petition has not been advertised after it was admitted and therefore, petition can be disposed in terms of the consent terms.

5 Petition disposed in terms of the consent terms.

6 Mr. Merchant states that as directed by this Court, respondent is giving a donation of Rs.50,000/- to Tata Memorial Hospital by way of pay

order issued by Bank of India and this pay order will be deposited with Tata Memorial Hospital during the course of today and proof of payment will be provided to petitioner's advocates and also filed in the registry by tomorrow, i.e., 4th September 2019.

7 Mr. Merchant states that the show cause notice issued to respondent and its directors be discharged. That can be considered only when respondent explains the reason why they had committed breach of the undertakings given to the Court. Mr. Merchant states that during the course of today, an affidavit will be filed.

8 Stand over to 4th September 2019 for directions.

9 All to act on authenticated copy of this order.

<u>COMPANY PETITION NO.460 OF 2016</u>

10 In view of the above order, Mr. Charalwar seeks leave to withdraw the petition and states that this petition has not been advertised.

11 Petition dismissed as withdrawn.

(K.R. SHRIRAM, J.)