IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.02.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.(Comm. Div.)No.21 of 2022

The Mathrubhumi Printing and Publishing Company Limited,
Represented by its Authorized representative / signatory,
Mr.V.Balaji, Deputy Chief Manager,
New No.71, (Old No.42), New Decor Towers,
3rd Floor, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ... Plaintiff

Vs.

1.Adgear Media Private Limited,
Rep. by its Managing Director,
6E, Gee Gee Emerald,
No:151, Village Road, Seetha Nagar,
Nungambakkam, Chennai - 600 034.

2.S.Krishnan,
Chairman,
Adgear Media Private Limited,
6E, Gee Gee Emerald,
No:151, Village Road, Seetha Nagar,
Nungambakkam, Chennai - 600 034.

3. S.Nagarajan,
Managing Director,
Adgear Media Private Limited,
6E, Gee Gee Emerald,
No:151, Village Road, Seetha Nagar,
Nungambakkam, Chennai - 600 034. ... Defendants

PRAYER: Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908 and Section 7 Commercial Courts Act, 2015 to direct the defendants to pay to the plaintiff the sum of Rs.1,55,00,268/- together with interest at 18% per annum on the principal amount of Rs.90,30,583/- and for costs of the suit.

For Plaintiff : Ms.Deepa Harigovind

For Defendants : Set *Ex-parte*

JUDGMENT

The suit has been filed against the defendants for recovery of a sum of Rs.1,55,00,268/- together with interest at the rate of 18% p.a. on the principal amount of Rs.90,30,583/- from the date of plaint till the date of realization.

2. The plaintiff is in the business of printing and publishing newspapers, periodicals, F.M. Radio station, Mathrubhumi News Channel, Kappa T.V., Digital business, etc., The defendants had approached the plaintiff and placed orders for the publication of advertisements in their newspaper (All Edition / F.M. Radio / TV News Channel). In respect of the

publication of advertisements effected by the plaintiff at the request of the defendants, the plaintiff raised the following invoices on the defendants and they have been marked as Exhibits during the course of trial before the learned Additional Master - III:

A) Print Media:

Sl. No.	*Description*	*Date*	*Amount*	*Release Order No.*	*Client*	*Ex. No.*
1.	61099063	06.08.2017	14,18,405.60	AG/KOC/071	SONY	P2 Series
2.	61103283	13.08.2017	8,64,546.90	AG/KOC/073	SONY	
3.	61104599	15.08.2017	8,64,546.90	AG/KOC/091	SONY	
4.	61105258	17.08.2017	14,18,405.60	AG/KOC/074	SONY	
5.	61106651	19.08.2017	6,47,347.20	AG/KOC/075	SONY	
6.	61107660	20.08.2017	7,34,864.90	AG/KOC/076	SONY	
7.	61110368	26.08.2017	8,64,546.90	AG/KOC/077	SONY	
8.	61118341	08.09.2017	9,311.02	0136	EDUCATION MIRROR	
9.	61127356	23.09.2017	38,984.39	AG/KOC/154	COCHIN PORT TRUST	
10.	61129521	26.09.2017	49,980.00	AG/KOC/155	FACT	
11.	61130956	29.09.2017	10,859.96	11191	OBITUARY-M.R.RAGHAV	
12.	61134214	04.10.2017	39,983.98	AG/KOC/165	FACT	
13.	61134422	30.09.2017	8,64,547.00	AG/KOC/079	SONY	
14.	61136458	30.09.2017	8,64,547.00	AG/KOC/078	SONY	
15.	61142701	18.10.2017	24,365.24	AG/KOC/175	COCHIN PORT TRUST	
16.	61143833	21.10.2017	49,980.00	AG/KOC/178	FACT	
17.	61143834	21.10.2017	49,980.00	AG/KOC/177	FACT	
18.	61146398	25.10.2017	6,961.50	SG/KOC/180	COCHIN PORT TRUST	

Sl. No.	*Description*	*Date*	*Amount*	*Release Order No.*	*Client*	*Ex. No.*
TOTAL			88,22,164.09			

B) Club FM Radi:

Sl. No.	*Description*	*Date*	*Amount*	*Client*	*Ex.No.*
1.	617-00015-0000	31.08.2017	327,951.20	SONY INDIA PVT LTD - CHN	P2 Series
2.	617-00015-0001	30.09.2017	218,633.66	SONY INDIA PVT LTD - CHN	
3.	4949-00002-000	31.10.2017	30,090.00	METRENDS SHOES & BAGS-KNR1	
TOTAL			5,76,674.86		

C) Mathrubhumi TV News Channel:

Sl. No.	*Description*	*Date*	*Amount*	*Client*	*Ex.No.*
1.	N-10009	31.12.2017	619,243.00	IVO TRADERS (MALANO)	P2 Series
2.	N-10237	31.01.2018	266,886.00	IVO TRADERS (MALANO)	
TOTAL			8,86,129.00		

Gross Total Payable = Rs.1,02,84,967.95p

3. The first defendant has also issued two cheques in favour of the plaintiff towards part payment for the value of the invoices raised by the

plaintiff. One cheque is dated 15.12.2017 bearing Cheque No.004845 for a sum of Rs.35,70,308/- and another cheque dated 04.12.2017 bearing Cheque No.004846 was also issued by the first defendant in favour of the plaintiff for a sum of Rs.35,70,308/-. Both the cheques have been returned dishonoured for insufficiency of funds and the plaintiff has also initiated criminal proceedings against the defendants in respect of the dishonoured cheques under Section 138 of the Negotiable Instruments Act before the concerned Criminal Court which is still pending adjudication.

4. Ex.P5 is the copy of the return memo dated 30.01.2018 disclosing that the cheques issued by the first defendant in favour of the plaintiff has been returned dishonoured for insufficiency of funds. Ex.P6 is the legal notice dated 27.02.2018 issued by the plaintiff to the defendants under Section 138 of the Negotiable Instruments Act. Ex.P7 is the acknowledgment card received from the defendants which is dated 28.02.2018 acknowledging the receipt of the legal notice dated 27.02.2018. The first defendant has also sent a letter dated 06.03.2019 to the plaintiff undertaking to pay the dues of the plaintiff which has been marked as Ex.P8. Ex.P9 is the copy of the letter from Indian Newspaper Society dated

30.10.2019.

5. Since the outstanding dues of the plaintiff was not paid by the defendants, the plaintiff sent a legal notice dated 09.09.2021 to the defendants calling upon the defendants to pay the outstanding dues of plaintiff together with interest. The legal notice dated 09.09.2021 sent by the plaintiff has been returned unserved on 13.09.2021. Ex.P11 is the original returned covers dated 13.09.2021. The plaintiff has also filed the certified copy of the statement of accounts pertaining to the outstanding dues payable by the first defendant which has been marked as Ex.P12.

6. The defendants have already been set *ex-parte*. The plaintiff's Deputy Chief Manager - Media Solutions by name Mr.V.Balaji was examined as a witness before the learned Additional Master - III on behalf of the plaintiff. Only through him, the aforementioned documents were marked as exhibits on the side of the plaintiff. As seen from Ex.P2 series, the plaintiff has raised several invoices on the first defendant in respect of the advertisements carried out in their newspaper (All Edition / F.M. Radio / TV News Channel) at the request of the first defendant. The plaintiff has

also stated in the plaint as well as in the proof affidavit filed by the plaintiff's witness that the plaintiff has explained to the defendants the terms and conditions relating to the contracts and their legitimate dues payable to the Government. According to the plaintiff, the defendants are very well aware of the terms and conditions for repayment of advertisement charges to the plaintiff.

7. The invoices raised by the plaintiff on the first defendant which have been marked as Ex.P2 series confirm that the total amount due and payable by the first defendant towards invoices is Rs.1,02,84,967.95. As per the terms and conditions of the respective invoices, the plaintiff is also entitled to charge interest at 18% per annum if the due amounts are not paid within one month of the receipt of the respective invoices.

8. The defendants had also issued two cheques. One dated 15.12.2017 and another dated 04.12.2017 which have been marked as Exs.P3 and P4 and the said cheques were also returned dishonoured on presentation for insufficiency of funds. The returned memo dated 30.01.2018 which has been marked as Ex.P5 also confirms that the two cheques were returned

dishonoured for insufficiency of funds. The plaintiff has also initiated criminal proceedings against the defendants under Section 138 of the Negotiable Instruments Act in respect of the dishonoured cheques. Prior to initiation of the same, the plaintiff has also issued statutory notice under Section 138 of the Negotiable Instruments Act dated 27.02.2018 on the defendants which has been marked as Ex.P6. The said statutory notice issued under Section 138 of the Negotiable Instruments Act has also been acknowledged by the defendants. The acknowledgment cards dated 28.02.2018 have been marked as Ex.P7. Thereafter, the first defendant has also undertaken to pay the outstanding dues of the plaintiff through his letter dated 06.03.2019 which has been marked as Ex.P8. Despite the undertaking, the first defendant has not settled the dues of the plaintiff. Thereafter, a legal notice has also been issued by the plaintiff to the defendants on 09.09.2021, calling upon the defendants to pay the outstanding dues of the plaintiff together with interest as per the terms and conditions of the respective invoices. The legal notice dated 09.09.2021,which has been marked as Ex.P10 has been returned unserved by the Postal authorities on 13.09.2021 and the returned covers have also been marked as Ex.P11. The statement of accounts has also been filed by the plaintiff which has been marked as Ex.P12 which confirms that a sum of Rs.1,55,00,268/- which is the suit claim is due and payable by the first defendant to the plaintiff.

9. The second and third defendants are Directors of the first defendant Company. However, the orders were placed for effecting advertisements on the plaintiff only by the first defendant Company which is a separate legal entity. The acknowledgment of the liability was also given only by the first defendant Company through its letter dated 06.03.2019 which has been marked as Ex.P8. Admittedly, no personal guarantee letters were issued by the second and third defendants though they may be Directors of the first defendant Company. Unless and until a personal guarantee has been given by the second and third defendants for the repayment of the dues by the first defendant Company, the question of making the second and third defendants also jointly and severally liable to pay the suit claim along with the first defendant will not arise.

10. In respect of the dishonoured cheques issued by the first defendant, the plaintiff has already initiated criminal action against all the

defendants and the said criminal proceeding is still pending before the concerned Criminal Court. Civil liability will arise only against the first defendant and not against the second and third defendants as the first defendant alone has placed orders with the plaintiff for effecting advertisements and as stated earlier, the second and third defendants though may be Directors of the first defendant Company have not personally guaranteed the payment of the outstanding dues by the first defendant to the plaintiff. The plaintiff has proved the case in so far as the first defendant is concerned. But, in so far as the second and third defendants are concerned, they cannot be made liable for the liability of the first defendant as they never stood as guarantors. The documents which have been marked as exhibits on the side of the plaintiff will clearly prove that the plaintiff is entitled for the suit claim as against the first defendant.

11. The terms and conditions of the invoices (Ex.P2 series) also enables the plaintiff to claim interest at the rate of 18% per annum in case the first defendant fails to repay the amounts within one month from the date of receipt of the invoices. Only in accordance with the terms and conditions of the invoices (Ex.P2 series) the plaintiff is claiming interest in

the present suit. Therefore, the suit claim for a sum of Rs.1,55,00,268/- together with interest at the rate of 18% per annum on the principal amount of Rs.90,30,583/- from the date of plaint till the date of realization has been proved by the plaintiff as against the first defendant alone, and accordingly, the suit is partly decreed by directing the first defendant to pay the plaintiff a sum of Rs.1,55,00,268/- together with interest at the rate of 18% per annum on the principal amount of Rs.90,30,583/- from the date of plaint till the date of realization. However, the suit as against the second and third defendants is dismissed. The first defendant is directed to pay the cost of the suit to the plaintiff.

05.02.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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List of Witness examined on the side of the Plaintiff:-

Mr.V.Balaji (PW1)

List of the Exhibits marked on the side of the Plaintiff:-

"Ex.P1 is the original board resolution of the plaintiff dated 27.09.2021 and copy of Aadhar Card of its Authorised Signatory Mr.V.Balaji. (Aadhar Card compared with Original)

Ex.P2 series of Original Invoices from the year 2017 to 2018 (18 Nos) and copies of invoices (28 Nos).

Ex.P3 is the copy of cheque No.004845 dated 15.12.2017.

Ex.P4 is the copy of cheque No.004846 dated 04.12.2017.

Ex.P5 is the copy of Return Memo dated 30.01.2018.

Ex.P6 is the office copy of the Legal Notice dated 27.02.2018.

Ex.P7 series of copy of acknowledgment cards dated 28.02.2018.

Ex.P8 is the original letter sent by 1 defendant to plaintiff dated 06.03.2019.

Ex.P9 is the copy of the letter from Indian Newspaper Society dated 30.05.2019.

Ex.P10 is the office copy of legal notice dated 09.09.2021 with postal receipts.

Ex.P11 series of original returned covers dated 13.09.2021 (3Nos).

Ex.P12 is the certified copy of statement of accounts of the defendant's accounts."

05.02.2024

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ABDUL QUDDHOSE. J.,

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