(2018) 10 DEL CK 0598

In the Delhi High Court

Case No : Company Petition No. 439 Of 2016

Images Consumer Media Pvt. Ltd — APPELLANT

Vs

Spa Luxuary Lifestyle Ltd — RESPONDENT

Date of Decision : 04-10-2018

Acts Referred:
Companies Act, 1956 — Section 433(e), 433(f), 434(1)(a), 439

Citation : (2018) 10 DEL CK 0598

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Kanti Mohan Rustagi, Shubho Jana, Arpit Arora, Mohd. Kamran, Saurabh Chaturvedi

Judgement

Jayant Nath, J

1. This petition is filed under Sections 433(e), (f), 434(1)(a) and 439 of the Companies Act, 1956 (hereinafter referred to as the â??Actâ??) seeking

winding up of the respondent Company.

2. It is the case of the petitioner that the parties entered into an arrangement whereby the petitioner had to publish advertisements of the products of

the respondents company in its publication named â??Livingetcâ? commencing from February, 2010 till March, 2011. It is stated that the petitioner

published full page colour ads of the products of the respondent company in the monthly issues of Livingetc and corresponding to each such month

sent a bill to the respondent for payment. A total amount of Rs.75000/- was paid by the respondent. However, a sum of Rs.2,50,000/-remained to be

unpaid. Reliance is placed on various emails exchanged between the parties including emails dated 14.06.2011, 05.01.2012, 07.03.2012 and 14.08.2014

and the necessary records of TDS deduction which shows that amount of

Rs.2,75,000/- remains payable out of which an amount of Rs.25000/- has

been paid. Hence, amount of Rs.2,50,000/-remains payable for the period in question.

3. I have heard the learned counsel for the parties.

4. The learned counsel for the respondent submits that main defence taken by them is the plea of limitation. He submits that the invoices in question

are for the period w.e.f. 2010- 2011 whereas the present winding up petition has been filed in May, 2016. He submits that the claims are totally barred

by limitation.

5. The petitioner has filed one more winding up petition, namely, Co.Pet. No.418/2016 against one of the sister concern of the respondent company,

namely, Horse Shoe Retail Holding Pvt. Ltd. The facts of that case and this case are virtually identical and same defence has been raised by the

respondent regarding the limitation.

6. This court has today admitted the said petition holding that the defence of the respondent is not bonafide. For the same reasons, the present petition

is also admitted.

7. Consequently, the petition is admitted and the Official Liquidator attached to this Court is appointed as the Provisional Liquidator. He is directed to

take over all the assets, books of accounts and records of the respondent-company forthwith. The citations be published in the Delhi editions of the

newspapers â??Statesmanâ?? (English) and â??Veer Arjunâ?? (Hindi), as well as in the Delhi Gazette, at least 14 days prior to the next date of

hearing. The cost of publication is to be borne by the petitioner who shall deposit a sum Rs.75,000/- with the Official Liquidator within 2 weeks,

subject to any further amounts that may be called for by the liquidator for this purpose, if required. The Official Liquidator shall also endeavour to

prepare a complete inventory of all the assets of the respondent-company when the same are taken over; and the premises in which they are kept

shall be sealed by him. At the same time, he may also seek the assistance of a valuer to value all assets to facilitate the process of winding up. It will

also be open to the Official Liquidator to seek police help in the discharge of his duties, if he considers it appropriate to do so. The Official Liquidator

to take all further steps that may be necessary in this regard to protect the premises and assets of the respondent-company.

8. In the interest of justice, I suspend the present order appointing the OL as the Provisional Liquidator for a period of four weeks to enable the

respondents to pay its debts to the petitioner. In case, necessary payments of Rs.2,50,000/- is made, the above order appointing the OL as the

provisional liquidator shall stand recalled.

9. List on 28.11.2018.

