

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

COMPANY PETITION NO.183 OF 2013

Kanayalal C. Makhija, Prop.

Of M/s. Haresh Agencies

... Petitioner

versus

M/s. Suvikas Alloys and Steel Pvt. Ltd.

... Respondent

Mr. Vinod Sharma, for Petitioner.

None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 8th APRIL, 2015

PC.

1. By this Company Petition, the Petitioner seeks winding up of M/s. Suvikas Alloys and Steel Pvt Ltd (“the Company”) under Sections 433(e), 434(1) (a) and (2) and 439 (1) (b) of the Companies Act, 1956 (“the Act”).

The Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Petitioner is a Proprietor of M/s. Haresh Agencies and is carrying on the business of authorized Dealer and Facilitator for Indian Oil Corporation Limited.

3. According to the Petitioner, he has sold and supplied HP Fuel furnace oil to the Company as per their demand under four Commercial Invoices described in paragraph 6 of the Petition and annexed and marked as Exhibit A, B, C and D to the Petition.

4. According the Petitioner, in part payment towards the discharge of the liability and towards the payment of the material sold, the Respondent Company issued their Cheque bearing Nos. (i) 502938 dated 05.10.2011 for Rs.4,19,449/- and (ii) 557988 dated 15.03.2012 for Rs.6,72,851/- both drawn on Punjab National Bank, situated at Shivaji Nagar, Thane (West) – 400604. The said cheques upon presentation by the Petitioner were dishonored with the remark “Exceeds Arrangements”.

5. According to the Petitioner, after the Dishonor of the two cheques, the Petitioner through his Advocate sent a notice dated 04.04.2012 under Section 138 r.w. 141 of the Negotiable and Instruments Act calling upon the Company and its Directors to make the payment towards the bounced cheques. However, though the Company and its Director received the said notices, they have failed and neglected to make the required payments.

6. According to the Petitioner, the Petitioner through their Advocate served the statutory Notice dated 10.11.2012 on the Company calling upon the Company to pay an amount of Rs.15,81,492/- with 24 percent interest per annum till payment. Despite receipt of the statutory notice, the Company neither responded to the same nor made any payment as called upon therein.

7. The Petitioner therefore filed the present Petition seeking winding up of the Company on the ground that the Company is unable to pay its debt.

The Petition was admitted by an order dated 24-06-2014. Paragraph Nos.7 and 8 of the said order are relevant and reproduced hereunder :

“7. The Petitioner has therefore filed the present Petition seeking winding up of the Company. It is submitted on behalf of the Petitioner that the Company has admitted its liability vide its undertaking for confirmation of late payment dated 15th December, 2011 signed by Mr. Jagdish Prasad Agarwal addressed to the Petitioner (Exhibit-M to the Petition). It is further submitted that the Company is liable to pay to the Petitioner an amount of Rs. Rs.20,27,981 as per the particulars of claim annexed and marked as Exhibit-N to the Petition. The Company has no bonafide defence. The company has failed to reply to the statutory notice and has not come forward to oppose the Petition despite the petition being served on it. It is therefore submitted that the company is unable to pay its debts and deserves to be wound up. It is submitted that the Petition be admitted and directed to be advertised.

8. From the aforesaid facts, it is established that a sum of Rs. 20,27,981/- is due and payable by the Company to the Petitioner as per the particulars of claim annexed and marked as Exhibit-N to the Petition. The company has not responded to the statutory notice as well as the above Petition. In view thereof, the allegations made by the Petitioner in the Company petition have remained uncontroverted and there is no reason why the allegations/submissions made by the Petitioner in the Company Petition should not be accepted. The Company is therefore

deemed to be unable to pay and discharge its debts and liabilities in the normal course of business. Hence the following order.....”

8. Pursuant to the said order dated 24-06-2014, the admission of the Company Petition has been advertised and an Affidavit proving publication dated 25-08-2014 is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959 is also served on the Company. The Company has not filed its Affidavit-in-Reply and has also not come forward to oppose the Petition. The allegations made in the Petition have remain uncontroverted and I see no reason why the same should not be accepted. In the circumstances, I am satisfied that the Company is unable to pay its debt, is commercially insolvent and deserves to be wound up. The Company Petition is therefore, allowed in terms of prayer clauses (a) (b), which are reproduced hereunder :

“(a) The Respondent Company M/s. Suvikas Alloys and Steel Pvt. Ltd., be wound up under the provisions of the Companies Act, 1956 by and under the orders and direction of this Hon'ble Court;

(b) that the Official Liquidator of this Hon'ble Court or some fit and proper person be appointed as the Liquidator of the Respondent Company with all necessary powers under the provisions of the Companies Act, 1956”;

9. The Official Liquidator shall forthwith act on a copy of this order without waiting for any Notification.
10. The Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)