

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 313 OF 2014

Maxwell Logistics Private Limited ... Petitioner

Versus

D.G. Infrastructure Private Limited ... Respondent

Ms. H.D. Kapadia i/b. Ms. Kalyani Parmar for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATE : 12TH JANUARY, 2015

PC.:

1. By the above Company Petition, the Petitioner seeks winding up of D.G. Infrastructure Private Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The above Company Petition is taken up for hearing and final disposal.
2. According to the Petitioner, the Company has from 10th April, 2010 to 31st January, 2011, utilized the transport services of the Petitioner for transport of their goods. The Company promised to pay the amount due to the Petitioner in installments at the rate of Rs. 2,00,000/- per month by its letter dated 19th April, 2012. However, the Company failed to keep up its commitment. The Petitioner thereafter addressed letters dated 3rd November, 2012, 11th January, 2013, 16th March, 2013, 28th March, 2013, 17th June, 2013 and 26th July, 2013, requesting the Company to

make payments.

3. Since the Company failed to make payments despite several requests, the Petitioner through its Advocates issued a statutory notice dated 16th August, 2013 to the Company, calling upon the Company to pay an amount of Rs. 28,50,618/- to the Petitioner within a period of seven days from the date of receipt of the said notice. The Company despite receipt of the said statutory notice failed to respond to the same. The Company through its Advocates once again issued a statutory notice dated 19th September, 2013, to the Company calling upon the Company to pay the said outstanding dues. The Company by its letter dated 30th September, 2013, addressed to the Advocate for the Petitioner inter alia contended that the invoices relied upon by the Petitioner do not have any acknowledgement of the goods received by the parties; many of the bills submitted are inflated and not as per the order placed; on several occasions the Company has received short and damaged material for which the Petitioner was informed but the Petitioner did not take necessary steps in the matter. The Company also called upon the Advocate for the Petitioner to submit all bills supported by order from the Petitioner; proof of delivery duly stamped and signed by the Company or its authorised representative; bill wise statement and date wise payment receipts. The Advocate for the Petitioner under cover of her letter dated

10th October, 2013, forwarded the documents required by the Company. The Company by its letter dated 14th December, 2013, alleged that the Advocate for the Petitioner was sending the same bunch of papers in which many consignment notes do not have confirmation of material received by the Petitioner and therefore the Petitioner should submit the documents to the Company at the earliest. The Petitioner through its Advocate's letter dated 25th December, 2013, addressed to the Company recorded that the letters written by the Company are only with a view to delay the payments due to the Petitioner. It was recorded on behalf of the Petitioner that the Company vide its letters dated 10th March, 2012, 19th April, 2012 and 19th May, 2012 clearly admitted transportation services rendered by the Petitioner as well as the outstanding dues payable by the Company to the Petitioner. It was pointed out that in fact in the said letters the Company has expressed its financial difficulties and agreed to release the payment by installments. The Advocate for the Petitioner therefore informed the Company that she has instructions to call upon the Company to pay a total sum of Rs. 28,50,168/- to the Petitioner within one week from the date of receipt of the said notice failing which the Petitioner shall proceed with the winding up proceedings against the Company. The said notice /letter dated 25th December, 2013, is received by the Company. However, the Company has not responded to the same.

4. The Petitioner therefore filed the present petition seeking winding up of the Company on the ground that the Company is unable to pay its debts. A copy of the Petition was served on the Company. However, the Company failed to file its affidavit in reply and has also failed to come forward to oppose the Petition.

5. The above Company Petition was admitted and directed to be advertised by an order of this Court dated 15th November, 2014. Paragraph 4 of the said order dated 15th November, 2014 is relevant and reproduced hereunder :

“4. From the aforestated facts it is clear that an amount of Rs. 28,50,168/- is due and payable by the Company to the Petitioner. The Company has through its emails sought time to make payments to the Petitioner. By an email dated 24th June, 2011, the Company has confirmed that the total outstanding due and payable to the Petitioner by the Company is Rs. 21.50 lacs. By the said email, the Company requested the Petitioner to cooperate with the Company keeping the long term business association in mind. Again on 19th April, 2012, the Managing Director of the Company has addressed a letter to the Petitioner recording that the outstanding

payment shall be paid by the Company to the Petitioner in monthly installments of Rs. 2 lacs per month with effect from May, 2012, onwards. The emails annexed to the Petition including the email dated 24th June, 2011 and letter dated 19th April, 2012, addressed by the Company to the Petitioner clearly establish that the defence sought to be raised by the Company after receipt of the statutory notices is untenable and baseless and a mere afterthought. The Company has despite having received a copy of the Petition not filed its affidavit in reply and has also not remained present by itself or through its Advocate when the above Petition was taken up for admission. In view thereof, all that is stated in the Petition has remained uncontroverted. I am therefore prima facie satisfied that the Company is unable to pay its debts and the Company Petition deserves to be admitted and advertised. Hence the following order.....”

6. Pursuant to the said order dated 15th November, 2014, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette, as can be seen from the

Affidavits proving publication dated 15th December, 2014 and 5th January, 2015. Notice under Rule 28 of the Companies (Court) Rules, 1959, has been served on the Company, as can be seen from the service report dated 3rd December, 2014 filed by the Section Officer, Company Department. Even at this stage, no Affidavit opposing the Petition has been filed by the Company. All the contentions of the Petitioner in the Petition have therefore remained uncontroverted and there is no reason why the allegations / submissions made by the Petitioner in the Company Petition should not be accepted..

7. For the reasons set out in the order dated 28th November, 2014 and herein, I am satisfied that the Company is unable to pay its debts and deserves to be wound up. The above Company Petition is, therefore, allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

“(a) That the above named Company, D.G. Infrastructure Private Ltd., be wound up by an order of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) That the Official Liquidator be appointed as Liquidator of the Company to take charge of the assets, books of accounts and properties of the Companies with

all powers under the provisions of the Companies Act, 1956”.

8. The Official Liquidator to forthwith act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court without waiting for any further notification from this Court or from any other authority.
9. The above Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)