

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 459 OF 2014

Mr.Rakesh N. Mehta

... Petitioner

Versus

M/s. Pinnacle Print Private Limited

... Respondent

Mr.P.H. Chande for the Petitioner.

Ms.Rohini Amin a/w. Mr. Nishant Sangle i/b. Mathew J. Nedumpara for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 20TH MARCH, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Pinnacle Print Private Limited (the Company) on the ground that the Company is unable to pay its debts. The Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Petitioner sold and supplied goods to the Company aggregating to Rs.5,07,050/-. Since the Company failed and neglected to make any payment to the Petitioner, the Petitioner through his Advocate issued a statutory notice dated 18th October, 2013 to the Company calling upon the Company to pay an amount of Rs.5,07,050/- with interest accrued thereon within a period of three weeks from the date of receipt of the statutory notice. The Company has

received the said notice. However, the Company failed to reply to the same or to make any payment as called upon therein.

3. The Petitioner therefore filed the present Petition on the ground that the Company is unable to pay its debts and deserves to be wound up. Though the above Petition was served on the Company in July, 2014, the Company failed to file its Affidavit in Reply.

4. The above Petition was admitted by an order dated 5th February, 2015 and the same was directed to be advertised. Paragraphs 4 and 5 of the said order are relevant and reproduced hereunder :

“4. From the aforestated facts, I am prima facie satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has not replied to the statutory notice. The Company has also not filed its Affidavit-in-Reply to oppose the Petition, which is served on the Company as far as back as in July, 2014.

5. The learned Advocate appearing for the Company has stated that the Affidavit-in-Reply to the Petition was not filed since there was recusal application filed by Mr. Mathew Nedumpara, Advocate requesting the Court to recuse from all the matters in which Mr. Nedumpara

appears. The said application was filed only in October, 2014 and is dismissed by a detailed order dated 23rd December, 2014. The learned Advocate appearing for the Company is unable to explain as to why the Affidavit-in-Reply is not filed between the period July, 2014 to September, 2014 or at least after the said recusal application was dismissed on 23rd December, 2014. In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. 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

5. Pursuant to the said order dated 5th February, 2015, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. Affidavit proving publication dated 25th February, 2015 is on record. The above Petition was taken up for hearing and final disposal on 5th March, 2015 when a

week's time was sought on account of the demise of the father of Advocate Mathew J. Nedumpara. On 18th March, 2015 Ms.Rohini Amin along with Mr.Nishant Sangle i/b. Mr.Mathew J. Nedumpara appeared and sought time to file Affidavit-in-Reply. The Petition was served on the Company in July, 2014. The Petition was admitted on 5th February, 2015. The Company which has not even replied to the statutory notice, therefore, had sufficient time both before and after the Admission of the above Petition to at least file its Affidavit in Reply. However, the Company failed and neglected to do so. Despite this conduct, an opportunity was given to the Company to file its reply on or before 20th March, 2015. However, on 20th March, 2015 the learned Advocate appearing for the Company sought an adjournment on the ground that one of the Director's of the Company is unwell. If a Director of the Company is unwell, any other Director or Official of the Company can file an Affidavit on behalf of the Company. I am therefore satisfied that the Company has no defence whatsoever to the claim of the Petitioner and has therefore not filed its Affidavit in Reply since July, 2014 but has sought adjournments on one ground or the other.

6. For the reasons set out in the order dated 5th February, 2015 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 Company viz. M/s. Pinnacle Print Private Limited be ordered and directed to be wound up under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator be appointed as the Liquidator of the Company with all powers under Section 457 of the Companies Act, including the powers and authority to take charge and possession of the property and assets of the company in accordance with law”.

7. 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.

8. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)