

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 573 OF 2014

Darshan Diary

... Petitioner

Versus

Vividh Hospitality Private Limited

... Respondent

Mr.Faran Khan i/b. Ms. Sheela K. Mistry for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATE : 18TH MARCH, 2015

PC.:

1. By the above Company Petition, the Petitioner seeks winding up of Vividh Hospitality Private Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The Company Petition is taken up for hearing and final disposal.
2. According to the Petitioner, they have supplied to the Company milk and milk products of various types from September 2012 onwards. However, the Company failed and neglected to pay an amount of Rs. 4,53,942/- as on 31st December, 2013 to the Petitioner. The Company issued a cheque bearing No. 242927 dated 2nd January, 2014 for Rs. 1,15,002/- drawn on Corporation Bank, Thane Branch, to the Petitioner towards outstanding bills for the year 2012. However, the said cheque was dishonoured and returned with the remark 'Account Closed'.

3. The Petitioner therefore through its Advocate issued a statutory notice dated 31st January, 2014 calling upon the Company to pay an amount of Rs. 4,53,942/- to the Petitioner within a period of three weeks from the date of receipt of the said notice. Despite receipt of the said statutory notice, the Company failed and neglected to respond to the same or to make any payment as called upon therein.

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 and sought to serve the same at the registered office address of the Company. However, the said packet containing a copy of the Petition was returned with the remark "Company is not there" as can be seen from the Affidavit proving service of the Petition dated 12th January, 2015.

5. The above Company Petition was admitted and directed to be advertised by an order of this Court dated 9th January, 2015. Paragraph 4 of the said order dated 9th January, 2015 is relevant and reproduced hereunder :

"5. From the aforestated facts, it prima facie appears that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Petition was sought to be served on the Company. However, the packet containing the copy of the Petition is returned

with the remark “Company is not there”. Since the Petition was sought to be served at the Registered Address of the Company, which address on that day was shown as the Registered Office of the Company in the record of the Registrar of Companies, the said Petition is deemed to have been served on the Company, though the same has been returned with the remark “Company is not there”. The Company has not come forward to oppose the Petition. 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

6. Pursuant to the said order dated 9th January, 2015, the admission of the above Petition is advertised in two local news papers as well as in the Maharashtra Government Gazette. An Affidavit proving publication dated 2nd March, 2015 is on record. Notice under Rule 28 of the

Companies (Court) Rules, 1959, has been served on the Company by Registered Post AD, as can be seen from the service report dated 30th January, 2015 filed by the Section Officer, Company Department. Even at this stage, none appear for the Company. 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 9th January, 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 Respondent Company Vividh Hospitality Private Limited having its Registered Office at 75 / 606, H.S. Rupawate Marg, Motilal Nagar 1, Near Siddharth Hospital, Goregaon (West), Mumbai – 400 104 be wound up by and under the supervision of this Hon'ble Court under the provisions of Sections 433 and 434 of the Companies Act, 1956 ;

(b) That the Official Liquidator be appointed as the

Liquidator of the Respondent Company to take charge of the assets, books of accounts and properties of the Respondent Company 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.)