

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

COMPANY PETITION NO.721 OF 2014

HNG Float Glass Limited	...	Petitioner
versus		
Aluplex India Pvt. Ltd.	...	Respondent

Mr. Sahil Mahajan, for Petitioner.
None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 5th FEBRUARY, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of the Respondent Aluplex India Private Limited (the Company) under Sections 433, 434 (e) & 439 of the Companies Act, 1956. The Petition is taken up for hearing and final disposal.

2. According to the Petitioner, as per the requests and orders from the Company, the Petitioner supplied various types of glass (the said products) to the Company from time to time. The said products were duly received by the Company without raising any dispute and objection. The particulars of invoices raised by the Petitioner on the Company aggregating to Rs. 4,20,875/- are set out in paragraph 7 of the Petition. The Company paid an amount of Rs. 95,898/- to the Petitioner leaving a balance of Rs. 3,24,977/-. The Company

also confirmed on 1st October, 2011 that an amount of Rs. 3,24,977/- is the balance payable by them to the Petitioner as shown in their books as on 30th September, 2011 (Exhibit D to the Petition). The Petitioner therefore through its Advocate issued a statutory notice dated 15th July, 2013 calling upon the Company to pay the said sum of Rs.4,88,442/- with interest at the rate of 18% per annum from the due date to 7th July, 2013 within a period of three weeks from the date of receipt of notice. The Company failed and neglected to respond to the statutory notice and also failed to make payment as called upon therein. 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.

3. By an order dated 5th January, 2015, the above Company Petition was admitted and directed to be advertised. Paragraph No.3 of the said order is relevant and reproduced hereunder :

“3. From the aforesaid 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 despite having received the statutory notice failed to respond to the same. The Company has also not filed its Affidavit in reply despite being served with a copy of the Petition as far back as on 29th November, 2014, as can be seen from the Affidavit of Service dated 18th December, 2014. The Company has not come forward to oppose the above 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.....”

4. In view of the said order, the Company Petition has been advertised and the Affidavit of publication is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959 is also served on the Company. Even at this stage, the Company has not filed its reply and has not come forward to oppose the Company Petition. In view thereof, all that is stated in the Petition has remained uncontroverted. For reasons set out in the order of Admission and herein, 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), and (b) which are reproduced hereunder :

“(a) the Company namely Aluplex India Private Limited be wound up by and under the orders and directions of this Hon'ble Court and under the provisions of the Companies Act, 1956

(b) this Hon'ble Court be pleased to appoint the Official Liquidator of this Hon'ble Court or some other fit and proper person as it deems fit as the Liquidator of the Company namely Aluplex India Private Limited with all powers and authorities under the Companies Act, 1956;

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

(S.J.KATHAWALLA, J.)