

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 166 OF 2014

Bell Finvest (India) Limited ... Petitioner

Versus

Shri Vinayak Milk Products Private Limited ... Respondent

Mr. Rupesh Sohoni for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 16TH JANUARY, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of Shri Vinayak Milk Products Private Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, at the request of the Company, the Petitioner had on 7th January, 2011 agreed to grant a business loan of Rs. 20 Lacs to the Company. The terms and conditions on which the said loan was granted to the Company have been confirmed by the Director of the Company by his letter, which is annexed and marked as Exhibit-C to the Petition.

3. The Company committed defaults in payment of the monthly installments. Finally due to persistent follow up from the Petitioner, the Company through its Director on 11th July, 2012 agreed to settle the entire

balance loan account and accordingly issued a cheque for Rs. 8,93,100/- in favour of the Petitioner. However, the said cheque when presented for payment was dishonoured and returned with the remark 'funds insufficient'.

4. The Petitioner therefore through its advocate issued a statutory notice dated 9th May, 2013 to the Company calling upon the Company to pay an amount of Rs. 12,52,784/- with interest thereon as claimed within a period of 21 days from the date of receipt of the said statutory notice. The said statutory notice is accepted at the registered address of the Company by 'Dwarka Milk'. The name of 'Dwarka Milk' also appears on the letterhead of the Company, as can be seen from Exhibit-E to the Petition. Though the statutory notice is not replied to by the Company, the Company has in its letter dated 14th August, 2012 (in reply to the Petitioner's notice dated 19th July, 2012 issued under section 138 of the Negotiable Instruments Act, 1881) inter alia admitted that the Company had paid the loan installments regularly only upto the month of November, 2011 and due to the unavoidable circumstances / financial problems has not paid loan installments on regular basis. However, the Company has alleged that the cheque issued by the Company was undated and was handed over to the Petitioner towards security and the same was misused by the Petitioner. By the said letter, the Company sought time to

pay the outstanding amount to the Petitioner and assured the Petitioner that the entire loan account shall be settled by 7th September, 2012.

5. Since the Company failed and neglected to make any payment as promised, the Petitioner filed the above Company Petition on the ground that the Company is unable to pay its debts and deserves to be wound up.

6. The above Company Petition was admitted by an order of this Court dated 17th November, 2014 and the same was directed to be advertised. However, at the stage of Admission of the above Petition, none appeared for the Respondent. Paragraph 6 of the said order dated 17th November, 2014 is relevant and reproduced hereunder :

“6. From the aforestated facts, it is prima facie established that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. Though the Company has not replied to the statutory notice, the Company has in its subsequent letter dated 14th August, 2012 admitted its liability to make payment under the said loan account and assured the Petitioner to settle the said loan account on or before 7th September, 2012. However, the Company has failed to keep up its promise. A copy of Petition was sought to be served at the registered address of the Company. However, as stated in the Affidavit dated 3rd April, 2014 proving service of the Petition, the registered address of the Company was found closed. The intimation sent to

the Company by Registered Post AD is also returned by the postal authority. 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”

7. Pursuant to the order dated 17th November, 2014, the admission of the above Company Petition has been advertised in two local news papers as well as in the Maharashtra Government Gazette as can be seen from the Affidavit proving publication dated 19th December, 2014, which is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959, which was sought to be served on the Company is returned with the remark 'the office is closed', as can be seen from the Service Report dated 15th January, 2015 filed by the Section Officer, Company Department. Since the Notice 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 Notice is deemed to have been served on the Company, though the same has been returned with the remark 'the office is closed'. 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.

8. For the reasons set out in the order dated 17th 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 SHRI VINAYAK MILK PRODUCTS PRIVATE LTD being the Respondent Company herein be wound up by and under the Order and directions and supervision of this Hon'ble Court under the relevant Provisions of the Companies Act, 1956.

(b) That the Official Liquidator, High Court, Bombay be appointed as Liquidator of the entire assets, properties, affairs, and records of the Respondent Company with all powers under the Companies Act, 1956”.

9. 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.

10. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)