

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 578 OF 2014

M/s. Jotun India Private Limited ... Petitioner

Versus

Aluplex India Private Limited ... Respondent

Mr. Anand Shitap i/b. Mr. Jamshed Ansari for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 5TH MARCH, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of Aluplex India 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, vide various emails and purchase orders, the Company placed orders on the Petitioner for supply of paints, varnishes etc., (the said goods) with the Petitioner. The Petitioner supplied the said goods to the Company worth Rs.8,63,979/- which was received by the Company without any dispute as to quality and quantity. Particulars of the invoices raised by the Petitioner on the Company are set out in paragraph 6 of the Petition. The Company made part payment of Rs. 15,691/- as against invoice No. VM 11005862 dated 19.10.2011, in

the sum of Rs. 83,387/, leaving a balance of Rs. 67,696/. After the said part payment the principal outstanding was Rs. 8,48,288/.

3. Since the Company failed and neglected to pay the balance outstandings to the Petitioner, the Petitioner through its Advocate issued a Statutory Notice dated 12-07-2013 calling upon the Company to pay an amount of Rs.8,48,288/- with interest thereon within three weeks from the date of receipt of the statutory notice. As set out in paragraphs 11 and 12 of the Petition, the Company thereafter made further part payments to the Petitioner leaving a balance of Rs. 7,16,288/- payable to the Petitioner.

4. Since the Company failed to pay any further amount, the Petitioner filed the present Petition seeking winding up of the Company on the ground that the Company is unable to pay its debt. The Company Petition was served on the Company on 15-09-2014 and an Affidavit of Service dated 23-09-2014 is on record. The Company failed to respond to the Petition.

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

“5. From the aforestated facts, I am prima facie satisfied that an amount of Rs.7,16,288/- along with

interest thereon as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company having received the statutory notice made certain part payments leaving a balance of Rs. 7,16,288/- plus interest. The Company despite service of the Company Petition, has failed to file its Affidavit-in-Reply and has also not come forward to oppose the Petition. 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 9th January, 2015, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. Affidavits proving publication dated 29th January, 2015 and 13th February, 2015 are 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, 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. The Company has not come forward to oppose the Petition.

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) Aluplex India Private Limited, having Registration number 11-034958 of 1985 and having CIN U51999MH1985PTC0958 be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator, High Court, Bombay or any other fit and proper person be appointed as Liquidator of all assets, properties, funds and affairs of Aluplex India Private Limited including but not limited to the immovable property bearing No. R-602, (office block) TTC Industrial Area, MIDC, Rabale, Navi

*Mumbai – 400 701 and TTC Industrial Area, MIDC,
Rabale, Navi Mumbai – 400 701 ”.*

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.)