

Petition.

3. According to the Petitioner, the Company had drawn 8 cheques of Rs. 2,50,000/- each dated 18th December, 2012, in favour of the Petitioner. The said cheques when deposited for payment were dishonoured and returned with the remark "funds insufficient". The dishonoured cheques along with the memos of dishonour are annexed and marked as Exhibits C to C-7 and D to D-7 respectively to the Petition. The Petitioner therefore through its Advocate issued a notice dated 12th January, 2013, to the Company calling upon the Company to pay the said amount of Rs. 19,60,811/- within a period of 15 days from the receipt of the said notice. The Company through its Advocates sent a reply dated 9th February, 2013, inter alia denying the claim of the Petitioner and alleged that on reconciliation of the accounts, a sum of Rs. 7,15,892/- was found as due and payable by the Petitioner to the Company. The allegations made by the Company in its reply letter dated 9th February, 2013 were denied and disputed by the Petitioner through its Advocate's letter dated 26th February, 2013.

4. The Petitioner thereafter through its Advocate issued a statutory notice dated 3rd July, 2013, to the Company once again calling upon the Company to pay the outstanding amount of Rs. 19,16,019/- along with the accrued interest thereon within a period of three weeks from the date of receipt of the

said notice. Despite receipt of the said notice, the Company did not respond to the same and also failed to make any payments as called upon therein. The Petitioner therefore filed the present Petition seeking winding up of the Company on the ground that it is unable to pay its debts and deserves to be wound up.

5. A copy of the Petition which was sought to be served at the Registered Address of the Company was returned by the postal authorities with the remark “not known”. In view thereof a copy of the Petition was dispatched to the Company at the residential address of the Company's Director Mr. G. Jagdish Goel which too was returned with the remark “not claimed”.

6. When the above Petition was taken up for admission on 17th November, 2014, this Court passed the following Order:

“The Advocate appearing for the Petitioner shall serve the notice by hand delivery to the Respondent Company at its registered office address informing that the above Company Petition was taken up for hearing, when none appeared for the Respondent Company. The Company Petition is now placed for Admission on 21st November, 2014, first on board and if the Respondent Company fails to appear before this Court through its Director or Advocate, the Court shall proceed with the hearing of Admission of the above Petition. Stand over to 21st November, 2014, first on Board.”

7. On 21-11-2014, the Court was informed by the Advocate for the Petitioner that pursuant to the order dated 17th November, 2014, an attempt was made by him to serve a copy of the Petition at the registered address of the Company. However, the registered address of the Company was sealed and a board has been put up by the Indian Overseas Bank which reads as follows :

“This property is in the possession of authorized officer of Indian Overseas Bank under SARFESI Act, 2002. Trespassers will be prosecuted. B/o Authorized Officer, Indian Overseas Bank.”

8. By a detailed order dated 21-11-2014, the above Company Petition was admitted and directed to be advertised. Paragraph 8 of the said order is relevant and reproduced hereunder :

“8. From the aforesaid facts it appears that an amount of Rs. 19,16,019/- is due and payable by the Company to the Petitioner. Though the Company has in one of its replies to the Advocate for the Petitioner alleged that no amount is due and payable by the Company to the Petitioner but in fact an amount of Rs. 7,15,892/- is due and payable by the Petitioner to the Company, the Company has not provided any details in support of its allegation. Thereafter the Company has failed and neglected to respond to the statutory notice or to make any

payments as called upon therein. The Registered Office of the Company is taken charge of and sealed by the Authorised Officer of the Indian Overseas Bank. A copy of the Petition sent to the residential address of the Director of the Company is also returned with the remark “unclaimed”. The Company has not filed its Affidavit- in- Reply to the Petition and has also not come forward to oppose the Petition. 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.....”.

9. Pursuant to the order of admission dated 21-11-2014, the Company Petition has been advertised in two local newspapers and Maharashtra Government Gazette and an Affidavit proving publication dated 13-12-2014 is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959, was sought to be served on the Company. However, the same has been returned with the remark “not known”. Since the said notice was sought to be served at the Registered Address of the Company as available with the Registrar of Companies, the service of notice under Rule 28 is implied, though the same is returned with the remark “not known”.

10. From the aforesaid facts, I am satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has failed and neglected to reply to the statutory notice or to make any payment as called upon therein. The office premises of the

Company has been taken charge of by the Authorized Officer of the Indian Overseas Bank. A copy of the Petition which was sent to the residential address of the Director of the Company was returned with the remark “unclaimed.” The Company has not filed its Affidavit-in-Reply, and has not come forward to oppose the Petition at this stage i.e. hearing and final disposal of the Petition. In view thereof, for the reasons set out in the order of admission dated 21-11-2014 and hereinabove, I am satisfied that the Company is unable to pay its debts, 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) that the Company viz. Jai Jyota Wali Steel Pvt. Ltd., 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;

11. The Official Liquidator shall forthwith act on a copy of this order without waiting for any Notification.

12. The Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)