

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 238 OF 2014

Huhtamaki PPL Limited ... Petitioner

Versus

M/s. Shilpa Beverages Private Limited ... Respondent

Mr. Bharat Punekar i/b. K.R. Belosay for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 26TH FEBRUARY, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Shilpa Beverages Private Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, pursuant to the purchase orders placed with the Petitioner by the Company, the Petitioner supplied printed labels on their mineral water bottles. The Company also accepted and also made certain part payments to the Petitioner.

3. According to the Petitioner, after receiving invoice No. 1313 dated 30th April, 2012 for Rs. 3,03,586.99/- and Invoice No. 1861 dated 16th May, 2012 for Rs. 1,70,795.10/- from the Petitioner, the Company issued three cheques dated 15th August, 2012, 15th August, 2012 and 10th August, 2012 for Rs. 1,60,254/-, Rs. 160,000/- and Rs. 1,60,000/-

respectively with a request that the Petitioner should present the same for encashment only on 10th October, 2012.

4. According to the Petitioner, upon deposit of the said three cheques on 10th October, 2012, all the said three cheques were dishonoured and returned with the remarks “insufficient funds”.

5. The Petitioner therefore through its Advocate issued a statutory notice dated 3rd November, 2012 to the Company calling upon the Company to pay an amount of Rs.4,80,254/- to the Petitioner within a period of 21 days from the date of receipt of the said statutory notice. The Company despite having received the statutory notice dated 3rd November, 2012 has failed and neglected to reply to the same and also failed to make any payment to the Petitioner as called upon therein.

6. 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.

7. By an order dated 15th January, 2015, the above Company Petition was admitted and was directed to be advertised. However, at the stage of Admission of the above Petition, none appeared for the Respondent. Paragraph 7 of the said order dated 15th January, 2015 is relevant and reproduced hereunder :

“7. From the aforestated facts, it prima facie

appears that the amount of Rs. 4,80,254/- is due and payable by the Company to the Petitioner. The Company has not replied to the statutory notice and has also not made any payment to the Petitioner as called upon therein. The Company has failed to file its Affidavit in Reply. 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”

8. Pursuant to the order dated 15th January, 2015, the admission of the above Company Petition has been advertised in two local news papers as well as in the Maharashtra Government Gazette and an Affidavit proving publication dated 26th February, 2015 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 'unclaimed', as can be seen from the Service Report dated 16th February, 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 'unclaimed'. 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.

9. For the reasons set out in the order dated 15th 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 Respondents viz. Shilpa Beverages Private Limited be wound up by and under the order and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed Liquidator of the Respondents viz. Shilpa Beverages Private Limited with all their assets, properties, funds, affairs, books of account, papers, vouchers and all other

documents with all powers under the provisions of the Companies Act, 1956 ".

10. 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.

11. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)