

The Petitioner therefore forwarded the ledger account of the Company maintained by him seeking confirmation of the Company. As can be seen from Exhibit-B to the Petition, the Director of the Company duly confirmed and acknowledged that an amount of Rs.1,44,28,708/- was due and payable by the Company to the Petitioner as on 31st March, 2014.

4. According to the Petitioner, the Company thereafter made certain part payments from time to time leaving a balance amount of Rs.33,28,708/-. The Company issued a further cheque of Rs. 5,51,749/-, which was dishonoured when presented for payment.

5. Since the Company failed and neglected to pay the balance dues of the Petitioner, the Petitioner through its Advocate issued a statutory notice to the Company calling upon the Company to pay an amount of Rs. 33,28,708/- to the Petitioner alongwith interest at the rate of 24% per annum within a period of 21 days from the date of receipt of the said statutory notice. The Company received the statutory notice and for the first time by its letter dated 7th October, 2013, alleged that there were disputes qua the quality of the goods and that the said fact was brought to the notice of the Petitioner from time to time. The Company denied that it is not in good financial condition and insisted that the Company is financially sound. The Advocate for the Petitioner by his letter dated 21st October, 2013 denied the allegations

made by the Advocate for the Company by his letter dated 7th October, 2013. The Petitioner thereafter filed the present Petition seeking winding up of the Company on the ground that it is unable to pay its debts and served a copy of the same on the Company. The Company failed to file its Affidavit-in-Reply or to come forward to oppose the Petition.

6. The Petitioner therefore, filed the above Petition seeking winding up of the Company on the ground that the Company is unable to pay its debts and deserves to be wound up.

7. By an order dated 15-11-2014, the above Company Petition was admitted and directed to be advertised. Para 6 of the said order is relevant and reproduced hereunder :

“6. From the aforestated facts, it appears that an amount of Rs. 33,28,708/- is due and payable by the Company to the Petitioner. The Company has confirmed the account maintained by the Petitioner, as can be seen from Exhibit-B to the Petition. The Company has prior to the receipt of the statutory notice not written a single letter complaining about the quality of the goods supplied by the Petitioner to the Company. The objection raised by the Company for the first time on 7th October, 2013 qua the quality of the goods appears to be a mere after thought. The Company has not come forward to oppose the Petition despite being served with a copy of the Petition. In view thereof, the allegations made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the allegations/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.....

7. Pursuant to the said order, the Company Petition has been advertised and the Affidavit of publication dated 14-12-2014 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. For the reasons stated 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) that the Respondent Company viz. M/s. Eckhardt Engineering Pvt. Ltd., A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, having registered office at 42, Room No.36, 2nd Floor, 1st Carpenter Street, C.P.Tank, Mumbai – 400 004, be ordered and directed to be wound up by and under the order and directions of this Hon'ble Court under Section 434 of the Companies Act;

(b) That the Official Liquidator, High Court, Bombay, or some other fit and proper person be appointed as the Liquidator of M/s. Eckhardt Engineering Pvt. Ltd., A PRIVATE LIMITED COMPANY, incorporated under the Companies Act, 1956, having registered office at 42, Room No.36, 2nd Floor, 1st Carpenter Street, C.P.Tank, Mumbai – 400 004, with all powers under the Companies Act, 1956;

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

(S.J.KATHAWALLA, J.)