

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 55 OF 2015

Citizen Industries Limited ... Petitioner

Versus

Unidos Engineering Solutions Private Limited ... Respondent

Mr.Charles D'souza for the Petitioner.
None for the Respondent.

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

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of Unidos Engineering Solutions Private Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Company has placed with the Petitioner an order for supply of Air Handling Units and Labour Services. The Petitioner has supplied the said goods / equipments and has raised five invoices on the Company aggregating to Rs.43,95,936/-. The Company made certain payments and thereafter repeatedly sought time from the Petitioner to make the balance payment. The Company has also issued cheques aggregating to Rs.30,48,716/-as set out in clause (1) of para 7 of the Petition. The Company thereafter informed the Petitioner

that the said cheques be deposited in the month of February since the Company was having financial difficulties. The Petitioner therefore waited upto February, 2014 as per the request of the Company. The cheques were thereafter deposited in February, 2014. However, the same were dishonoured and returned with the remark 'Insufficient Funds in account'. The Petitioner therefore through its Advocate issued a statutory notice dated 1st April, 2014 to the Company, calling upon the Company to pay an amount of Rs.33,14,980/- with interest accrued thereon @ 15% per annum within a period of 21 days from the date of receipt of the said notice. The said statutory notice was returned with the remark 'unclaimed'.

3. By an email dated 7th March, 2014 the Company informed the Petitioner that it has changed its address and is now located at R-348, MIDC, TTC Industrial Area, Behind Bhushan Hotel, Thane-Belapur Road, Rabale Naka, Navi Mumbai-400708. The statutory notice was thereafter issued on 28th April, 2014 at the new address provided by the Company. However, the said statutory notice dated 28th April, 2014 was also returned with the remark 'left'. The statutory notice was therefore sent to the Company through an email. The Company has not responded to the statutory notice.

4. 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. The packet containing a copy of the Petition was returned with the remark 'left'.

5. The above Petition was admitted by an order of this Court dated 20th February, 2015 and the same was directed to be advertised. Paragraph 5 of the said order dated 20th February, 2015 is relevant and reproduced hereunder :

“5. From the aforestated facts, I am prima facie satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The statutory notices sent at the registered office address of the Company as well as the new address provided by the Company are returned with the remarks 'unclaimed' and 'left'. The statutory notice was thereafter served by e-mail. The Petition too was sought to be served on the Company. However, the packet containing the copy of the Petition is returned with the remark “left”. Since the statutory notice and a copy of the Petition were 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 statutory notice and the Petition are deemed to have been served on the Company, though the same have been returned with the remarks "unclaimed" and "left". The Company has not filed its Affidavit in Reply and has also not come forward to oppose the Petition. 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 ”

6. Pursuant to the order dated 20th February, 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 the Affidavit proving publication dated 23rd March, 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 'Left addressee, return to Sender', as can be seen from the Service Report dated 7th March,

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 'Left addressee, return to Sender'. 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 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 20th February, 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 (i) and (ii), which are reproduced hereunder :

“(i) this Hon'ble Court be pleased to hold that the Company is liable to be wound up by and under the supervision, direction and orders of this Hon'ble Court in accordance with the provisions of the Act ;

(ii) this Hon'ble Court be pleased to appoint an Official Liquidator of the Company, with all powers under the provisions of the Act, to take charge of the affairs, assets and business of the Company and / or to conduct its affairs in the course of winding up”.

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.)