

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 500 OF 2013

Tija Agri Biotech & Engineering Private Limited ... Petitioner

Versus

Vergola India Limited ... Respondent

Mr. Jamshed Ansari 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. Vergola India 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, as per the purchase order placed by the Company with the Petitioner, the Petitioner has sold and delivered angles, channels, M.P Sheets to the Company under invoices aggregating to Rs. 10,89,753/-. The said invoices are annexed and marked as Exhibits-A to D to the Petition.

3. The Petitioner states that despite several reminders to the Company calling upon them to pay the outstanding dues to the Petitioner, the Company has failed and neglected to do so.

4. According to the Petitioner, in the above circumstances the Petitioner through their Advocate served the statutory notice dated 17th October, 2012 at the registered office address of the Company calling upon the Company to pay an amount of Rs.10,89,753/- with further interest at the rate of 24% per annum to the Petitioner from the respective due dates till payment and/or realization.

5. According to the Petitioner, the Company despite having received the statutory notice neither responded to the same nor made any payments to the Petitioner as called upon therein. The Petitioner, therefore, filed the present Petition and served a copy of the same on the Company on 10th April, 2014.

6. The above Company Petition was admitted and directed to be advertised by an order of this Court dated 8th July, 2014. Paragraphs 6 and 7 of the said order dated 8th July, 2014 are relevant and reproduced hereunder :

“6. The Learned Advocate for the Petitioner therefore submitted that as on 20th December, 2012 an amount of Rs. 13,36,557/- is due and payable by the Company to the Petitioner. However, the Company has neither responded to the statutory notice nor come forward to oppose the Petition. It is also submitted on behalf of the Petitioner that the Company is, therefore, commercially

insolvent and is unable to pay its debts or is deemed to be unable to pay its debts. The Company deserves to be wound up. The Company Petition be, therefore, admitted and directed to be advertised.

7. From the aforestated facts, I am prima facie satisfied that an amount of Rs. 13,36,557/- is due and payable by the Company to the Petitioner alongwith interest thereon as claimed by the Petitioner. The Company has neither replied to the statutory notice nor made any payment as called upon therein. The Company has not filed its Affidavit in Reply and has also not come forward to oppose the Petition. In view thereof, the allegations/submissions made by the Petitioner in the Petition have remained uncontroverted and there is no reason why the allegations/submissions made by the Petitioner in the Petition should not be accepted. The Company is therefore deemed to be unable to pay and discharge its debts and liabilities in the normal course of business. Hence, the following Order.....”

7. Pursuant to the said order dated 8th July, 2014, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. An Affidavit proving publication dated 14th November, 2014 is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959 is delivered on 29th September, 2014 to the Company, as can be seen from the service report dated 13th October,

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..

8. For the reasons set out in the order dated 8th July, 2014 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 M/s.Vergola India Limited having registration number 11-069817 of 1992 and having CIN L26930MH1992PLC069817 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 Liquidator of all assets, properties, funds and affairs of Vergola India Limited”.

9. 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.

10. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)