

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.507 OF 2002

MMTC Limited

....Petitioner

V/s.

Hanuman Vitamins Foods Ltd.

....Respondent

Mr.Rakesh Singh, Mr.Kunal Chheda i/by M.V.Kini & Co. for the
petitioner.

**CORAM : K.R.SHRIRAM,J
DATE : 1.3.2016**

P.C.:-

1 According to the petitioner the respondent has to pay the petitioner a sum of Rs.80,31,333/- as on 16.1.2002 and as the company has failed and neglected to pay the sum despite receiving the statutory notice the company requires to be wound up.

2 It is the case of the petitioner that based on a Memorandum of Understanding dated 14.9.1999 the petitioner had agreed to provide the company financial assistance by way of packing credit against the bank guarantee that the company agreed to furnish. Pursuant thereto, two separate agreements were entered into by and between the petitioner and the company on 27.9.1999 and 20.10.1999 setting out the various terms and conditions. Accordingly the petitioner has provided to the company financial assistance to the extent of Rs.104.75 lakhs on 30.9.1999 under the first agreement

dated 27.9.1999 and a sum of Rs.219 lakhs on 25.10.1999 under the 2nd agreement dated 20.10.1999. The said financial assistance was provided to the company for a limited period of 120 days as there was a concession in the interest rate. The company had express obligations to comply and perform their part of contractual obligations to effect the export of the goods/consignments in accordance with the Memorandum of Understanding.

3 As the company did not repay the petitioner, the petitioner encashed the bank guarantees and realize payment of Rs.2,30,00,000/- and Rs.1,60,30,210/- leaving a balance of Rs.6,51,228/- remaining unpaid as on 6.6.2000. As per the agreement, company was liable to pay service charges at 1% of the export value of the consignments and also liquidated damages of 2% of the export value. Despite sending a statutory notice, the company failed and neglected to pay.

4 In the reply to the statutory notice, the company has conceded their liability but has contended that the matter can be settled by arbitration.

5 On 19.12.2002 the petition came to be admitted.

6 Today there is no affidavit on record. The counsel for the petitioner states that when the petition came up for admission the company was represented through their lawyers but no affidavit was ever filed.

7 As regards the defence of arbitration, it is to be noted that the arbitration cannot come in the way of hearing of this petition. In ***Haryana Telecom Ltd. vs. Sterlite Industries (India) Ltd.***¹, the Apex Court concluded as under :-

“.....The claim in a petition for winding up is not for money. The petition filed under the Companies Act would be to the effect, in a matter like this, that the company has become commercially insolvent and, therefore, should be wound up. The power to order winding up of a company is contained under the Companies Act and is conferred on the court. An arbitrator, notwithstanding any agreement between the parties, would have no jurisdiction to order winding up of a company. The matter which is pending before the High Court in which the application was filed by the petitioner herein was relating to winding up of the company. That could obviously not be referred to the arbitration and, therefore, the High court, in our opinion was right in rejecting the application.

For the aforesaid reasons this petition is dismissed in limine.”

8 Therefore, it is quite obvious that the company is unable to pay its debts. The petition has been advertised in 'Free Press Journal' (English edition) on 29.3.2003 and in 'Navshakti' (Marathi edition) on 31.3.2003. It has also been published in the Maharashtra Govt. Gazette on 19.4.2003 and affidavit to this effect has been filed

1. 1999 (Vol.97), company cases 683

of one Savita Solomon affirmed on 14.2.2016. I have not found the original affidavit on record but have relied on the counsel for the petitioner.

9 The service report of the service of the notice under Rule 28 of the Companies (Rules) 1959 states that the packet has come back with the remark "left place, return to sender". The company has filed an affidavit of service of one Arun Puthran affirmed on 7.1.2016 read with affidavit dated 27.2.2016 in which it is stated that the packet that they sent to the company's registered address at Buldhana, Maharashtra, has been served and the acknowledgment card is annexed to the affidavit. The counsel has also tendered an extract of the website of the Ministry of Corporate Affairs regarding company's master details in which the address shown is the same as the address to which the service has been effected by the petitioner and as mentioned in the affidavit dated 7.1.2016. However, even at this stage, none appeared for the company to oppose the company petition. In view thereof, I am satisfied that the company is unable to pay its debts, is commercially insolvent and deserves to be wound up.

10 The company petition is therefore, allowed in terms of prayer clauses-(a) and (b) which reads as under :-

(a) That the said company i.e., Hanuman Vitamin

Foods Ltd., be wound up under the directions and orders of this Hon'ble Court as per the provisions of Companies Act 1956 ;

(b) That the Official Liquidator be appointed as Liquidator of the company i.e., Hanuman Vitamin Foods Ltd. with all powers under the provisions of the Companies Act 1956.

11 The official liquidator shall act on a copy of this order without waiting for any notification.

12 The company petition is accordingly disposed.

(K.R.SHRIRAM,J)