

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

COMPANY PETITION NO. 374 OF 2013

In the matter of Sections 433(e), 434 and
439(b) of the Companies Act, 1956.

And

In the matter of winding up of M/s.
SANSULA INTERNATIONAL BRANDS
LTD., a company incorporated under the
companies Act, 1956, having its
registered office at 95, Mittal Chambers
Nariman Point, Mumbai, Maharashtra,
India 400 021.

Marc De Grazia

... Petitioner

Mr.Bimal Rajasekhar for petitioner.

Ms.Debashree Mandpe i/b Rekha Rajagopal for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 8TH FEBRUARY, 2016

P.C.

1 At the outset, the counsel for the petitioner seeks leave to amend prayer clause (b) by deleting the word '*provisional*'.

Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.

2 The petitioner claims that an amount of € 36,397.94, equivalent to approximately Rs. 23,57,380/-, is due to it from the company. This amount has not, despite service of a statutory notice dated 2.02.2012, been paid to the petitioner.

3 The petitioner is a Company incorporated in Italy, from where it conducts its business of promoting, distributing, selling and exporting Italian wines. The petitioner exports these wines to several countries, including India.

4 The company, sometime in the year 2005, expressed interest in a particular label of wine that the petitioner was then distributing. Since 2006, the company ordered and imported Italian wines from the petitioner. As and when the orders were placed with the petitioner, supplies were made. Invoices were duly drawn against the corresponding purchase orders. For the supplies that were made upto January 2009, the company only made part payment of € 21,899/- of the aggregate amount of € 58,286.94. The balance amount of € 36,397.94 was not paid. The company never replied to the statutory notice. The company, however, filed an affidavit in reply to the petition wherein various defences were raised. Notwithstanding the affidavit in reply in denial, the petition was admitted and advertised as the Court came to an ex-facie conclusion that the defence raised by the company was neither *bona fide* nor substantial. Admittedly, the goods have been received but payment has not been made. After admission, no further reply has been filed.

5 The only defence that the counsel for the respondent-company has made today was that the admission of liability contained in an email dated 12.01.2011 written by one Sanjay Menon, was not on behalf of the company but was on behalf of a sole proprietary concern doing business in the same name as that of the company. The sole proprietor, I am told is, Mr.Sanjay Menon, who is a Director of the company and who addressed the email dated 12.01.2011. The email which is at Exh.'L' to the petition reads as under :

Oggetto : *Re : Domnico di Luccio*
Mittente : “Sanjay Menon (SANSULA)”
<sanjay@sansula.com>
Date : 12/01/11 10.42
A : marty<marty@marcdegrazia.com>

Dear Martina,

I am really sorry to hear about this but I understand that this can happen especially in these difficult times, so we were happy to continue to work with you. We still have the substantial outstanding with you that we are continuing to work on resolving. The matter is starting to turn around and we are also looking at receiving fresh funding into our business from outside.

Kind regards
Sanjay

Sanjay Menon
sanjay@sansula.com
+ 91 982 1010727

6 In fact, this defence was also taken when the petition was heard for

admission but despite that the Court admitted the petition holding that the defence raised was not *bona fide*. In the printout of the extract from MCA website of the company's details, filed with the petition, company's email ID is shown as sansula@sansula.com

The email dated 12.01.2011, which is at Exh.'L' to the petition, also shows the same domain ID as - “@sansula.com”. Therefore, it is not possible to accept that admission of liability was sent by the sole proprietary concern of Mr.Sanjay Menon and not on behalf of the company. Therefore, *ex-facie* this is not a defence that can be said to be either substantial or *bona fide*. The petitioner is a foreign entity and may not be fully aware of the exact full name of the company or that there is another sole proprietary concern with the same name.

7 It is not in dispute is that the proprietary concern of Sanjay Menon, which the counsel claims to be wholly distinct and lacking in any contractual or legal relationship with the company, also has its office at the same address as that of the company. At no point when the petitioner made its demands, even in reply to the statutory notice, has the company ever raised this defence. The company has not even replied to the statutory notice which also gives the presumption that the company is unable to pay its debt.

8 The petitioner has also filed an affidavit of one Ravindra Kumbhar,

affirmed on 18.06.2014 proving publication in Free Press Journal in English and Navshakti in Marathi. So also the publication in Maharashtra Government Gazette. The notice under Section 28 of the Companies (Court) Rules, 1959 has been waived, as recorded in the order dated 8.04.2014.

10 In view of the above, I am satisfied that the company is unable to pay its debt, is commercially insolvent and deserves to be wound up. The company petition, therefore, allowed in terms of prayer clauses (a) and (b) which read as under :

(a) Order for winding up of the respondent-company under the provisions of the Companies Act, 1956.

(b) Appoint the Official Liquidator of the said company with all powers under Section 448 of the Companies Act, 1956 to take charge of the assets, properties, stock in trade and books of accounts of the Company.

11 The official liquidator is directed to forthwith act on a copy of this order without waiting for any notification.

12 The company petition, accordingly, disposed.

(K.R. SHRIRAM, J.)