

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 417 OF 2014

Resons Investments Private Limited ...Petitioner

Vs.

Kaytee Cotsnyth Industries ltd. ...Respondent

....

Mr. B.B. Parekh, for the Petitioner.

None for the Respondent

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CORAM : B.P. COLABAWALLA, J.

DATED : AUGUST 03, 2016

P.C. :

. This Company Petition has been filed seeking to wind up the Respondent - Company Kaytee Cotsnyth Industries Ltd., on the ground that it is unable to pay its debts. It is the case of the Petitioner that the Respondent - Company is indebted to the Petitioner in the sum of Rs.1,50,000/- which has not been paid by the Respondent – Company, hence this petition.

2. The brief facts giving rise to the present controversy are that the Petitioner had given an interest free short term loan of Rs. 1,50,000/- on 11th November, 2013 to the Respondent - Company. Since, this loan was not repaid, a statutory notice was served upon

the Respondent - Company on 27th February, 2014, calling upon the Respondent - Company to pay its dues failing which winding up proceedings would be initiated. The record indicates that the said notice has been duly received by the Respondent - Company at its Registered Office. Since, there was no reply to the statutory notice, and neither were the requisitions contained therein complied with, the present Petition was filed. After the present petition was accepted, the same was duly served on the Respondent - Company.

3. The Respondent - Company appeared before this Court through advocates and sought to settle the disputes in present Company Petition by entering into consent terms dated 28th November, 2014, which *inter alia* stipulated that the Respondent - Company admits that a sum of Rs. 1,50,000 is payable to the Petitioner. The consent terms further provided that the Respondent - Company would pay this amount on or before 31st January, 2015, failing which, this Company Petition would stand admitted and the same would be advertised as directed in the consent terms. The consent terms further provided that in the event of admission of the Company Petition, the Respondent - Company waives service of notice under

Rule 28 of the Companies (Court) Rules, 1959.

4. It is an undisputed fact that, this amount of Rs. 1,50,000 was not paid by the Respondent - Company to the Petitioner. In this view of the matter, the Company Petition was admitted and advertised as set out in the said consent terms. The same is duly evidenced by the affidavit of publication dated 5th August, 2015.

5. After going through the papers and proceedings in the Company Petition as well as the orders passed earlier, I am satisfied that the Respondent - Company has admitted its liability to the Petitioner to the extent of Rs. 1,50,000 and has not made the aforesaid payment. This being the position, I am clearly of the view that the Respondent - Company is commercially insolvent and unable to pay its debts.

6. In this view of the matter, the Company Petition is allowed in terms of prayer clause (a) which reads as under:

“a) M/s. Kaytee Cotsnyth Industries Limited, be wound up under the superintendence of the Hon'ble Court and the Official Liquidator attached to the Hon'ble High Court of Judicature at Bombay be appointed Liquidator thereof with

usual powers under the provisions of the Companies Act with direction to take forthwith in its custody the assets and effects of the said Company.”

7. The official liquidator shall take charge of the assets and books of accounts of the Respondent - Company without waiting for any formal notification.

8. The Company Petition is disposed of in the aforesaid terms.

(B P. COLABAWALLA, J.)