

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.487 OF 2013**

M/s. Prime Lasers,

Prop. : Primepack Containers Pvt. Ltd.

.. Petitioner

Vs.

Cleanroom Modular Systems Pvt. Ltd.

(Formerly known as Clestra Modular Systems)

.. Respondent

Ms.Neha Prashant i/b ALMT Legal for petitioner.

CORAM : K.R.SHRIRAM, J.

DATE : 3RD FEBRUARY, 2016

P.C.

1 The petitioner has approached this Court praying that the company be wound up in view of the companies' inability to pay a debt of Rs.28,82,633/-.

2 The petitioner had agreed to supply to the company various materials as manufactured by the petitioner as per the requirements of the company in accordance with the terms and conditions annexed in the email dated 10.03.2012 read with email dated 13.03.2012. The payment terms agreed was that the company would issue post-dated cheques once in a month for all supplies made in that month and the post-dated cheques will have a credit limit of 60 days.

3 As agreed between the parties, the company began placing purchase

orders upon the petitioner and the petitioner supplied the materials as required. The company, however, did not make the payments and the amounts payable including interest kept increasing and on 23.10.2012, an amount of Rs.44.75 lakhs was paid by the company to the petitioner. On 26.10.2012, the company released a payment of Rs.4,97,664/-. On 10.11.2012, the company payable a further sum of Rs.5,21,013 leaving a balance of about Rs.35,00,000/-. Some more payment was released and as on 15.02.2013, the outstanding amount was Rs.28,82,633/-. As the company failed and neglected to pay this amount, the petitioner caused a notice under Section 433 and 434 of the Companies Act, 1956 issued to the company. The company did not even reply to the statutory notice. The petition, was therefore, filed and by an order dated 21.02.2014, the petition came to be admitted.

4 When the matter was listed on 21.01.2014, the respondent was represented by M/s.Bhave & Co. It is recorded in the order dated 21.12.2013, the matter was adjourned to 21.01.2014 for filing consent terms and the advocates for the respondent informed the Court that they have not been able to obtain instructions in the matter. After the petition was admitted, on 28.04.2015, the advocates of M/s. Bhave & Co. requested the Court to allow them to take discharge in the matter as they were not

receiving any instructions from the company. The Court granted their request and directed the office to issue notice under Section 28 of the Companies (Court) Rules, 1959. It was also directed that the notice be served by hand delivery on the company on or before 7.05.2015. The Court permitted the petitioner to serve notice on the respondent by substituted service as the office of the respondent at the address indicated in the petition was closed. The petitioner was permitted to serve notice on the respondent by substituted service by advertising petition and notice of the next date of hearing in two newspapers, viz., Free Press Journal in English and Navshakti in Marathi. The petitioner has filed two affidavits of service affirmed by one Santosh Sakham Khanwilkar dated 3.04.2014 and 21.08.2015, respectively. In the affidavit dated 3.04.2014, it is stated that the advertisement of petition was published in Free Press Journal in English and Navshakti in Marathi on 27.03.2004 and in the Maharashtra Government Gazette on 28.03.2014. In the affidavit dated 21.08.2015, it is stated that the notice was published in Free Press Journal in English and Navshakti in Marathi on 21.08.2015 pursuant to the order dated 15.06.2016, the Court permitting the petitioner to service notice by substituted service.

5 The respondent, however, has not filed any affidavit in reply. The averments contained in the petition, therefore, remained uncontroverted.

Even at this stage, nobody is appearing for the company to oppose the company petition. In view thereof, I am satisfied that the company is unable to pay its debt and is commercially insolvent and deserves to be wound up.

6 The company petition is, therefore, allowed in terms of prayer clause (a) and (b) which read as under :-

(a) That the Cleanroom Modular Systems Private Limited, (formerly known as Cleastra Modular Systems Pvt. Ltd.), a Private Limited Company registered under the provisions of Companies Act, 1956 and having its registered office at S.No.175, Village : Sanaswadi, Taluka-Shirur, Pune-412208 be wound up under the provisions of the Companies Act, 1956 and the assets of the respondent-company be equitably dealt with to discharge the debt owed to the petitioner.

(b) that the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as Liquidator of the Respondent Company with all necessary powers under the provisions of the Companies Act, 1956.

7 The official liquidator, who has been appointed as provisional liquidator, shall forthwith a copy of this order without waiting for any notification.

8 The company petition stands accordingly disposed.

(K.R. SHRIRAM, J.)