

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

COMPANY PETITION NO.150 OF 2014

Add Value Construction Pvt. Ltd.Petitioner

V/s.

Swarup Developers Pvt. Ltd.Respondent

Mr.Harsh Behary, Mr.Nakul Jain i/by Maniar Srivastava Associates
for the petitioner.

CORAM : K.R.SHRIRAM,J
DATE : 22.2.2016

P.C.:-

1 In or around February-2012 the company approached the petitioner and requested the petitioner to extend loan of Rs.7 crores and assured that entire amount will be repaid by 1st week of May-2012. Relying on this representation, the petitioner extended and gave the company amount of Rs.7 crores in 6 installments. By 1st week of May-2012 the company repaid Rs.2 crores with an assurance that the balance of Rs.5 crores will be paid in the 1st week of June-2012.

2 In Mid of May-2012 the company approached the petitioner once again and represented that they were expecting certain funds by 1st week of June-2012 and asked for return of the sum of Rs.2 crores already paid and in June-2012 the entire Rs.7 crores will be repaid. Relying on this representation, the company

returned the sum of Rs.2 crores.

3 The company however, did not pay the amount of Rs.7 crores as promised but between 31.5.2012 and 4.6.2012 paid sum of Rs.3,15,50,000/- out of the loan amount of Rs.7 crores. The counsel for the petitioner states that the interest agreed between the parties was 15% p.a.

4 For the balance of Rs.3,84,50,000/-, in September-2012 the company issued 2 cheques in favour of the petitioner for Rs.1,35,50,000/- drawn on Bank of India. Both the cheques when presented were dis-honoured with the endorsement "Funds insufficient". When it was brought to the notice of the company the company requested the petitioner to re-present the cheques. When the cheques were re-presented, again the cheques were dis-honoured this time with two endorsements viz. "funds insufficient" and "drawer's signature differed". When this was brought to the notice of the company the petitioner was requested to re-present the cheques after 1.12.2012 when again these cheques were dishonoured with endorsements "drawer signature differed and funds insufficient". The petitioner has commenced proceedings under Section 138 of the Negotiable Instruments Act which are pending.

5 Therefore, a sum of Rs.3,84,50,000/- plus accumulated interest thereon is payable by the company to the petitioner. As the company did not pay the amount, the petitioner got issued notice under Sections 433 & 434 of the Companies Act 1956 through their Advocates. The company has not replied to this notice. The petitioner also got the petition served upon the company which has come back with the endorsement "left". The petitioner has filed an affidavit of service of one Aakash Rajendra More affirmed on 11.8.2014 where it is also stated that the address to which the packet containing the notice and copy of company petition was sent, is the same address as mentioned in the ROC extract as the registered office.

6 The petition therefore, came to be admitted on 23.12.2015.

7 As directed by this court while admitting the petition the petitioner has attempted to serve a copy of the order by hand delivery as well as by RPAD. As the registered office of the company was closed, the forwarding letter and order copy could not be served. The packet that was sent by RPAD came back with the endorsement 'left'. An affidavit to this effect of one Dinesh Ayre affirmed on 22.2.2016 is on record.

8 Pursuant to the order of admission, the petition has been advertised in 'Free Press Journal' (in English) on 21.1.2016 and 'Navshakti' (in Marathi) also on 21.1.2016. The petitioner has also deposited the cost of advertisement with the Maharashtra Government Press. An affidavit of Deepak G.Pawar affirmed on 22.1.2016 is also filed.

9 The notice that was sent under Rule 28 by the registry has also been returned with the endorsement 'left'. The service report filed by the Section officer of the company department is also on record. The counsel for the petitioner has tendered an extract from the web-site of the Ministry of Corporate Affairs, Government of India, taken today i.e., 22.2.2016 where the address of the company is shown to be the same as in the cause title to the petition. The same is taken on record and marked 'X' for identification.

10 Even at this stage, none appears 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.

11 The company petition is therefore, allowed in terms of

prayer clause-(a) which is reproduced hereunder :-

(a) that the Company Sarup Developers Private Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 7th Floor, Akruti Orion, Shraddhanand Road, Vile Parle (East), Mumbai-400057, be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956 and Official Liquidator be appointed as Liquidators to take charge of the assets of the Company.

12 The Official Liquidator shall forthwith act on a copy of this order without waiting for any Notification. The company petition is accordingly disposed.

(K.R.SHRIRAM,J)

