

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

COMPANY PETITION NO.549 OF 2012

Sandeep Steels	.. Petitioner
Vs.	
Vijaya Housing Developers Pvt. Ltd.	.. Respondent

Mr.Siddharth Rajkumar Murarka for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 13TH JANUARY, 2016

P.C.

1 The petitioner is a registered partnership firm carry on business of supplying of various types of metal goods like iron, steel and other metal items. The respondent is in the business of construction.

2 Pursuant to the orders and requirements of the company from time to time, the petitioner sold and supplied to the company various quantities and grades of TMT Bars, G.I. Binding Wires, M.S. Round and other materials and raised three invoices. The total amount of invoices raised of Rs.6,26,611/- of which the company paid a sum of Rs.70,591/-. The balance amount of Rs.5,56,020/- was not paid. After repeated follow ups, the company issued a cheque for Rs.1 lakh towards part payment of the outstanding invoices. It is stated in the petition that the cheque was

dishonoured due to 'insufficient funds' and the petitioner commenced proceedings under Section 138 of the Negotiable Instruments Act, 1881.

3 As the company did not pay the balance amount, the petitioner caused a statutory notice under Section 433(e) and 434(i) of the Companies Act, 1956 issued through their advocate and called upon the company to pay to the petitioner the amount outstanding together with interest. Though the notice was received, the company did not reply.

4 Therefore, the petitioner filed this petition. The respondent, though served, did not appear or file any reply to the petition. Therefore, by an order dated 11.11.2011, the petition came to be admitted. The Court also directed advertisement of the petition.

5 The petitioner has filed an affidavit of service of one Jaywant Kamble affirmed on 8.01.2014 confirming that the notice has been published in Marathi newspaper 'Navshakti' and in English newspaper 'Free Press Journal' on 19.12.2013.

6 On record there is also a Service Report of the Section Officer, Company Department dated 23.01.2015 where it is submitted that the notice

issued under Rule 28 upon the Company which was sent by hand delivery was returned by the Hand Delivery Peon with remark “*said office is shifted*”. The petitioner has also filed an affidavit of one Prakash Bane, affirmed on 18.11.2014 confirming publication of the notice in the Maharashtra Gazette for the period 24 to 30.09.2015 at serial No.220.

7 The counsel for the petitioner has tendered a print out from the website of the Ministry of Corporate Affairs regarding the Company in which the address of the registered office continues to be same as mentioned in the cause title.

8 Even at this stage, nobody is appearing for the company to oppose the company petition. The counsel for the petitioner also tendered a copy of the decree issued by the Bombay City Civil Court, Borivali Division at Dindoshi dated 7.10.2014 in a Summary Suit No.2539 of 2012 for recovering value of the material supplied for which this petition also was filed. Even at the hearing of the Summary Suit, nobody appeared for the company.

9 In view of above, I am satisfied that the company is unable to pay its debts is commercially insolvent and deserves to be wound up. The company

petition, therefore allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder :

(a) that the Respondent Company namely Vijaya Housing Developers Pvt. Ltd., having its registered office at Flat Nos.3 and 4, Ground Floor, C-14, Piyush C.H.S.Ltd., Shanti Nagar, Sector-2, Mira Road (E), Thane-401 107, be wound up by and under the orders, direction and supervision of this Hon'ble Court.

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of Companies Act, 1956 to take charge of the Respondent Company and to conduct its affairs during the course of its winding up.

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

11 The petition accordingly stands disposed.

(K.R. SHRIRAM, J.)