IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.131 OF 2014

Phoenix Asset Reconstruction Co.Pvt. Ltd.)....Petitioner
V/s.
JVM Steel Pvt. Ltd.)....Respondent

Mr.Ashish Kamat a/w Mr.Nikhil Rajani i/by V.Deshpande and Co. for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 13.11.2017

P.C.:-

1 The Company Petition seeks winding up of the Respondent Company on the ground of inability to pay its debts. The particulars of claim annexed to the petition show that a total outstanding of Rs.18.90 lacs is owed by the Respondent to the Petitioner on account of a term loan facility. This term loan was originally granted by Barclays Bank to the Respondent in the sum of Rs.20,00,000/. The repayment of the loan was secured by a demand promissory note issued by the Respondent. There are postdated cheques issued for repayment of this term loan. These cheques have been dishonoured. By a deed of assignment dated 6 November 2012, the debt has been assigned by Barclays Bank to the Petitioner. The Petitioner has since issued a statutory notice of demand of 23 October 2013 claiming a sum of Rs.18.30 lacs. The statutory notice is neither complied with

nor replied to by the Respondent.

2. The Respondent has filed a reply to the petition taking up three defences. The first defence is of limitation. It is submitted that the last installment payable by the Respondent to the Petitioner was of 5 October 2009. It is submitted that the petition filed on 6 January 2014 is beyond time. Secondly, it is alleged that the Petitioner having already initiated legal proceedings in the form of an original application before the Debt Recovery Tribunal for the claim being the subject matter of the present petition, the petition ought not to be entertained. Thirdly, it is submitted that the Respondent is passing through rough times at present but is still a solvent Company.

3 While considering the petition at the time of admission, this court observed there is no merit in any of the defences raised by the Respondent. As far as the plea of limitation is concerned, the Petitioner has dealt with the same in para 25 of the petition. It is submitted amongst other things that the Respondent had an option to pay the loan amount as per the amortization schedule in 25 equated monthly installments and/or to pay the same at the last installment due and payable on 5 October 2010. The installment due for the period commencing from 5 October 2008 till 5 October 2009 stood

duly paid. For the installment due for the period 5 November 2009 to 5 October 2010, the Respondent had issued two cheques both dated 5 November 2010 for the sums of Rs.5,84,994/- each, thus admitting and acknowledging its liability to pay. Even otherwise, the Petitioner has already filed recovery proceedings in the nature of an original application before the Debt Recovery Tribunal within the period of limitation and the proceedings are pending before the Debt Recovery Tribunal. The plea that the Petitioner having filed an original application, the Company Petition need not be entertained, is merely required to be stated to be rejected. The remedy of a Petitioning Creditor under Sections 433 and 434 of the Companies Act,1956 is a separate remedy, which can be availed of in addition to a recovery proceeding in an ordinary court of law. Nothing is placed on record in support of the Company's case of a solvent company passing through transient liquidity problems. There is, thus, no merit in any of the defences. The defences are merely nominal and do not constitute a bona fide dispute concerning the Petitioner's debt or a defence to the winding up petition.

4 The court was therefore, pleased to admit the petition on 28.9.2015 and directed to advertise the petition in two local newspapers and in Maharashtra Govt. Gazette. The petition was

advertised in 2 local newspapers and Maharashtra Govt. Gazette as could be seen from the affidavit of service of Sunil Suryawanshi affirmed on 16.11.2016 and another affidavit of Sunil Suryawanshi affirmed on 18.11.2015.

5 So far as notice under Rule 28 of the Company Court Rules 1959 is concerned, the registry has filed a report stating that the packet sent to the address mentioned in the cause title viz. JVM Steel Pvt. Ltd. C-37, Highway Apartment, Plot No.23, Sion (E), Mumbai-400 022, has come back with the endorsement “left”.

6 Mr.Kamat appearing for petitioner tenders an extract of the Master data of the company from web site of Ministry of Corporate Affairs, taken on 13.11.2017 i.e., today. The same is taken on record and marked `X' for identification. From the Master data, the registered address is still shown as the address to which notice under Rule 28 was sent. Therefore, in my view, notice under Rule 28 sent by the registry has to be accepted as good service.

7 Mr.Kamat tenders affidavit of one Mahesh Girkar affirmed on 13.11.2017 in which it is stated that they had dispatched a letter giving notice to the company about today's listing but the letter sent

to the company came back with the endorsement “insufficient address” which is rather strange and the advocate who had then entered appearance for company has received the said letter dated 6.11.2017. Nobody is present for the company.

8 In the circumstances, I am satisfied that the company is unable to pay its debts, commercially insolvent and requires to be wound up.

9 Petition therefore, allowed in terms of prayer clauses-(a) and (b) and the same read as under :-

> *“(a) that the Respondent company viz. M/s.JVM Steel Pvt. Ltd., be ordered to be wound up by and under the directions of this Hon'ble Court ;*
>
> *(b) that the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the Respondent Company viz. JVM Steel Pvt. Ltd., with all powers under Section 457, 458 read with Sections 454, 455 and 456 of the Companies Act, 1956.”*

10 Official Liquidator shall forthwith act on a copy of this order without waiting for any notification.

11 Petition disposed accordingly.

(K.R.SHRIRAM,J)

KJ