

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

**APPEAL (L) NO.48 OF 2017
IN
COMPANY PETITION NO.73 OF 2012
WITH
NOTICE OF MOTION (L) NO.242 OF 2017
IN
APPEAL (L) NO.48 OF 2017**

M/s. Amazon Food & Beverages Pvt. Ltd. Appellant/
Applicant
versus

M/s. Coronation Agro Industries Ltd. ... Respondent
.....

- Mr.Saket Mone, i/b. Vidhi Partners, Advocate for the Appellant/Applicant.
- Mr.Pravin Patel, Advocate for the Respondent.
- Mr.L.T. Satelkar, for the Official Liquidator.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 21st NOVEMBER, 2017.**

P.C. :

1. The above Appeal takes exception to the order dated 27/11/2014 passed by a learned Single Judge of this Court (S.J. Kathawalla, J.) by the said order the above Company Petition was allowed in terms of prayer clause (a) and resultantly the

Respondent to the Company Petition i.e. the Appellant herein M/s Amazaon Food & Beverages Pvt. Ltd. was ordered to be wound up under the provisions of the Companies Act, 1956 and the Official Liquidator High Court Bombay, was appointed as a liquidator of the said company with all the powers under the Companies Act, 1956.

2. The principal ground on which the said order dated 27/11/2014 is challenged is, that there was non-compliance of the requirement of Rule 28 of the Company Rules. Inasmuch the notice under the said rule was not served upon the Respondent in the Company Petition, on its registered address. In so far as the said aspect is concerned, it is required to be noted that the Respondent had engaged C.B. Jain and Associates to carry out a search and submit the search report. The said C.B. Jain and Associates who are Practicing Company Secretaries, have accordingly submitted the search report dated 25/02/2016 in which report at page No.3 thereof it is mentioned that the registered address of the Respondent has changed from "8 Turf

Estate, Ground Floor, Shakti Mills Lane, Mahalaxmi, Mumbai – 400 013, Maharashtra” to “Indage House, 82 Dr. Annie Besant Road, Worli, Mumbai-400 018”.

3. Admittedly the notice u/s 28 post admission of the Company Petition, has not been served at the said registered address and has been sought to be served on the address at Prabhadevi, Mumbai. The learned counsel appearing on behalf of the Respondent sought to salvage the situation by contending that the statutory notice was also served at the said Prabhadevi address and relies upon the affidavit of service, which was filed in the Company Petition and which is a part of the compilation of the above Appeal. In so far as the service of the Company Petition post its admission is concerned, it is required to be noted that the affidavit has been filed by a Clerk working in the Company Department of the office of the Prothonotary and Senior Master, of this Court in which it has been stated that the postal packet addressed to the Respondent at the Prabhadevi address has come back with the remark “Left”. The

affidavit of service therefore concludes by stating that the said notice under Rule 28, has therefore not been served upon the Respondent on behalf of the Appellant.

4. On behalf of the Appellant reliance is sought to be placed on the judgment of a learned Single Judge of this Court in *Skol Breweries Ltd. Vs. Sanman Distributors Pvt. Ltd., reported in AIR 1999 Bom. 249*, wherein the learned Single Judge has held that the service of notice under Rule 28 at the registered address as provided by the said rule is mandatory. The learned Single Judge has referred to the Division Bench judgment of this Court in *Modern Dekor Painting Contracts Pvt. Ltd. Vs. Jenson and Nicholsan (India) Ltd., reported in 1985 Company Cases 255*, wherein the Division Bench has held that “the service of notice on the Company in a Petition for winding up after admission has to be in accordance with Rule 28 of the Company Court Rules.” The learned Single Judge having regard to the said Judgment of the Division Bench observed that the Division Bench has therefore in unequivocal terms held that

the compliance of the Company Rules i.e. Rule 27, 28 and 29 is mandatory and the non-compliance of the provision would result in the dismissal of the winding up Petition.

5. In the light of the fact that the compliance of Rule 28 is held to be mandatory by a Division Bench of this Court, in *Modern Dekor Painting Contracts Pvt. Ltd. Vs. Jenson and Nicholsan (India) Ltd.*, (supra) followed by the learned Single Judge and having regard to the fact that in the instant case it is an undisputed position that the service of the notice under Rule 28 at least post admission of the petition, is not effected at the registered address, which is appearing in the record of the Registrar of the Companies; the impugned order would have to be quashed and set aside and the matter would have to be relegated back to the learned Single Judge for a denovo consideration.

6. The Appeal is accordingly allowed. The impugned order dated 27/11/2004 passed by the learned Single Judge is set aside and the Company Petition is relegated back to the learned Single Judge for a Denovo consideration. The learned

Counsel appearing for the Appellant herein waives service of the notice under Rule 28 and states that the affidavit-in-reply shall be filed within two weeks from date.

7. In so far as the aspect of the statutory notice being not served on the Petitioner, is concerned this Court has not dealt with the said issue, as this Court did not deem it relevant for the purposes of deciding the instant Appeal. The said issue is kept open for being urged at the appropriate time at the hearing of the Company Petition.
8. The amount deposited by the Appellant in the above Appeal would now stand transferred and deposited in the account of the Company Petition.
9. In view of the disposal of the Appeal, the Notice of Motion (L) No.242/17 does not survive and to accordingly stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)