

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

COMPANY PETITION NO.727 OF 2014

Rohit Jayantilal Nagaria & Anr.)....Petitioners
V/s.

Green Earth Education Ltd.)
(Cin : U21000mh1992pnc067108))....Respondent

WITH

COMPANY PETITION NO.728 OF 2014

COMPANY PETITION NO.729 OF 2014

COMPANY PETITION NO.741 OF 2014

Ms.Komal Kandharkar for petitioners.
None for respondents.

**CORAM : K.R.SHRIRAM,J
DATE : 21.12.2017**

P.C.:-

1 When the petition was taken up for admission on
20.2.2017, the following order came to be passed :-

“Learned counsel appearing for the petitioner states that the respondents are served. None appeared for the respondent. No affidavit in reply is filed. The facts of all four matters are identical. Learned counsel appearing for the petitioner invited my attention to the facts in Company Petition No.727 of 2014 which is a lead matter.

2. By this petition, the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to pay its debts.

3. The petitioner had entered into a leave and licence agreement with the respondent on 1st August, 2009 by

which the respondent had taken Gala No.6, Gwing, Globe Complex, Village Owli, Tal. Bhiwandi, District Thane admeasuring about 11,090 sq.ft. of built up area and handed over possession of the said gala for their use, occupation and possession for five years commencing from 1st August,2009 to 31st July, 2014. The respondent made some part payment for some period towards licence fees to the petitioner and committed default in making payment of licence fees from February 2012.

4. The applicant accordingly issued a legal notice on 1st March,2012 terminating the leave and licence agreement dated 1st August, 2009 and called upon the respondent to pay the licence fees for the balance lock in period. The respondent however neither replied to the said notice nor made any payment. The petitioner issued another legal notice through its advocate on 3rd May,2013. It is the case of the petitioner that on 13th June,2013, after receipt of the notice dated 3rd May,2013 the respondent approached and handed over the keys of the Gala as well as the keys of the adjoining premises to the said maintenance contractor.

5. On 15th July,2013, the petitioner issued legal notice through its advocates calling upon the respondent to pay Rs.32,54,592/-. There was no response to the said notice. The statutory notice dated 24th October, 2015 was received by the respondent. However there was no response to the said statutory notice nor any payment is made. The petitioner has thus filed these four petitions.

6. The respondent had approached BIFR under the provisions of Sick Industrial Companies Act. In view of the pending enquiry before BIFR, these proceedings were adjourned sine-die by order dated 24th August,2015. The respondent was represented by Mr.Anand Kumar and Ms.D.Jehangir, advocate who had appeared for the respondent on few occasion before this court. A perusal of the proceedings shows that no Vakalatnama is filed by the respondent.

7. By Insolvency and Bankruptcy Code, 2016, BIFR as well as AAIFR are dissolved. The government had already issue a

notification on 23rd November, 2016 in this regard thereby repealing the SICA and dissolving BIFR and AAIFR. The proceedings filed by the respondent before BIFR and AAIFR have come to an end. The respondent has not informed the petitioner so far whether the respondent has filed any application before National Company Law Tribunal under the provisions. No affidavit in reply is filed. None appeared for the respondent before this court in January 2017. With the assistance of the learned counsel for the petitioner I have perused the averments made in the company petition. There was no response to the statutory notice or any of the other legal notice issued by the petitioner demanding payment of compensation. I am, therefore of the view that the respondent is unable to pay its debts and is commercially insolvent.

8. Learned counsel for the petitioner submits that total claim in these four petitions against the respondent is more than Rs.1 crore. She invited my attention to the particulars of claim annexed at Ex.F to the petition which indicates that the claim of the petitioner against the respondent is more than Rs.1 crore. She submits that considering the precarious financial condition of the respondent, the respondent had thus approached before BIFR which protection has come to an end. This court shall appoint Official Liquidator as provisional liquidator.

9. In my view the petitioner has made out a case for appointment of the Official Liquidator as provisional liquidator. I, therefore, pass the following order :-

(a) The company petition is admitted and shall be advertised in two local newspapers viz. (1) "Free Press Journal" (in English) and (2) "Navshakti" (in Marathi) and also in (3) "Maharashtra Government Gazette". Any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959.

(b) Company petition is made returnable on 17th April, 2017. The petitioner shall deposit a sum of Rs.10,000/- in Company Petition No. 727 of 2014 within two weeks towards publication charges with the Prothonotary and Senior Master under the intimation to the Company Registrar, failing which the company petition shall stand dismissed for non prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to the petitioner.

(c) It is made clear that since there are four company petitions filed against the same respondent, other three petitions are not required to be advertised.

(d) There shall be interim reliefs in terms of prayer clause (b).

(e) The Official Liquidator to act on the authenticated copy of this order.”

2 Respondent even after the order of 20.2.2017 was passed, has not entered appearance or filed any affidavit opposing the petition. Therefore, the averments contained in the petition are uncontroverted.

3 Petitioner has filed an affidavit of one Shashank More affirmed on 31.3.2017 confirming publication in two newspapers viz. 'Free Press Journal' and 'Navshakti' and also in the Maharashtra Government Gazette. The notice sent by the registry under Rule 28 of the Companies (Courts) Rules 1956 has been returned undelivered

with the endorsement "left addressee".

4 Ms.Kandharkar appearing for petitioner tenders an extract of the company master data from the portal maintained by the Ministry of Corporate Affairs (MCA) taken on 11.12.2017 in which the registered address shown is the same address to which company department has sent notice under Rule 28. Therefore, I would accept the notice under Rule 28 as delivered.

5 Ms.Kandharkar also tenders hand written report of minutes prepared for inspection by the representative of Official Liquidator on 6.12.2017. In the report it is stated that the liquidator's representative with the representative of petitioner and advocate for petitioner visited the address other than registered office as mentioned in the company master data and they found that some other enterprise by name Patricia Automobiles is present at the same address and not the company in liquidation. Ms.Kandharkar states that she has also forwarded a notice to the company at the e-mail ID given in the company master data informing about today's hearing and from her computer record it appears to have been delivered. Ms.Kandharkar undertakes to file an affidavit confirming the minutes prepared by representative of Official Liquidator and e-mail sent along

with a copy of the master data print out within a period of one week from today. Undertaking accepted.

6 As stated earlier, none of the averments have been controverted by the company. This court while admitting the petition, has not only expressed a view that the company is unable to pay its debts and is commercially insolvent but has also, in the facts and circumstances of the case, thought it fit to appoint Official Liquidator of this court as Provisional liquidator.

7 I have also considered the petition and the documents annexed thereto in support. I am also satisfied that the company is unable to pay its debts and is commercially insolvent.

8 in the circumstances petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that the company viz.Green Earth Education Limited may be wound up by an order and direction of this Hon'ble Court under the provisions of Companies Act, 1956 ;

(b) that Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as an Official Liquidator of Green Earth Education Ltd. with all the necessary powers under the provisions of Companies Act, 1956.”

9 Court Receiver to act on a copy of this order without waiting for notification.

10 Petition accordingly stands disposed.

COMPANY PETITION NO.728 OF 2014

COMPANY PETITION NO.729 OF 2014

And

COMPANY PETITION NO.741 OF 2014

1 In view of the order of winding up passed above in Company Petition No.727 of 2014, petitioners are at liberty to file with the Official Liquidator their affidavit of proof of debt and Official Liquidator will consider the same in accordance with law.

2 Liberty is granted to petitioners to apply for revival of these petitions if order passed in Company Petition No.727 of 2014 is recalled or set aside.

3 Petitions, accordingly, stand disposed.

(K.R.SHRIRAM,J)