

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

COMPANY PETITION NO.684 OF 2014

M/s. Aditya Polymers and Chemicals (I) Pvt. Ltd.Petitioner

Vs.

Innotech Polyfabriks LimitedRespondent

Mr. Sachin S. Punde for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 27th NOVEMBER, 2017**

PC.:

1 Cause list does not indicate the name of advocate for respondent. Respondent is unrepresented today. There is a chamber order passed by the Additional Registrar, Original Side, giving discharge to the advocate for respondent.

2 By the above company petition, petitioner seeks winding up of respondent – Innotech Polyfabriks Limited (the Company) under the Companies Act, 1956. The petition is taken up for admission.

3 According to petitioner, petitioner is the authorized agent/del-creder agent of Reliance Industries Limited. The said company approached petitioner for supply of various material of Reliance Industries Limited. As per the orders received from the company, petitioner supplied from time to time the material required by the company.

4 According to petitioner, despite several repeated requests and reminders, the company has not bothered to settle the outstanding amount of petitioner. As on 31st March, 2015 an amount of Rs.1,04,69,175/- became due and payable by the company to petitioner. Petitioner, therefore, through its Advocate issued a statutory notice dated 10th June, 2013 to the company, calling upon the company to pay an amount of Rs.1,04,69,175/- within a period of three weeks from the date of receipt of the said notice. The statutory notice was replied by the company. However, in the said reply, the company has not disputed the specific statement made in the statutory notice that petitioner has from time to time supplied the material to the company and an amount of Rs.1,04,69,175/- is due and payable by the company to petitioner. Instead in the said reply, it is stated on behalf of the company that there is no debtor-creditor relationship between the parties, the statutory notice is not as per proper format and time frame contemplated under the Companies Act, 1956 and therefore all that is stated in the statutory notice is denied.

5 Petitioner, therefore, filed the present petition seeking winding up of the company on the ground that the company is unable to pay its debts. A copy of the petition is served on the company on 3rd November, 2014 and the Advocate for the company filed her Vakalatnama on 24th November, 2014. However, till date the company has not filed its

affidavit in reply to the above petition. It is also pertinent to note that on 4th February, 2015 the Advocate for the company had sought time in the matter and therefore, the matter was adjourned for a period of 15 days. However, even today the learned Advocate appearing for the company is unable to make any submission in the matter. It is, therefore, submitted on behalf of petitioner that the petition be admitted and directed to be advertised.

6 When the petition came up for admission on 20th February, 2015, this Court was pleased to observe that it was prima facie satisfied that the amount as claimed by petitioner was due and payable by the company to petitioner. The company had not denied the facts set out in the statutory notice but had only stated that there was no debtor-creditor relationship between the parties and that the statutory notice was not in proper format. Though the company was served with a copy of the petition, no reply had been filed before the petition was admitted.

7 Subsequently, reply has been filed. In the affidavit in reply, the defence taken is that for the purpose of manufacturing of the Poly woven sacks, respondent company procured raw material from Reliance Industries Limited and never petitioner and therefore, petitioner has no right/locus standi to recover any amount from respondent and secondly, the present petition is not maintainable. Respondent has also annexed copies of their

filings with the Excise Department in support of their stand that materials were procured from Reliance Industries Limited and payment was to be made only to Reliance Industries Limited.

8 In the affidavit in rejoinder, petitioner has produced copy of the agreement between Reliance Industries Limited and petitioner. Petitioner has annexed copy of the agreement dated 1st July, 2004, in which it is expressly provided that “it shall be the responsibility of the Agent to obtain payment(s) from the customers on the due dates and remit the same immediately upon receipt thereof to RIL”. Petitioner has also annexed copies of invoices raised by RIL in which petitioner is shown as the Agent and buyer is shown as respondent. It is, therefore, clear from the agreement between petitioner and RIL and RIL invoices raised on respondent, in which petitioner is shown as an Agent, that the amounts as covered under the invoices were payable by respondent to petitioner. In the affidavit in rejoinder, it is also stated that respondent had placed various orders through petitioner and till 2010 the payment towards invoices by respondent was regular.

9 There is no affidavit filed denying the averments in the rejoinder. Today respondent is not present on call. I am, therefore, satisfied that the defences raised by respondent are nothing but moonshine and afterthoughts. Affidavit of service of one Devidas Shivaji Jagdale affirmed

on 25th March, 2015 confirming service in Free Press Journal and Navshakti is also on record. Notice in Maharashtra Government Gazette has also been published on 11th March, 2015, copy whereof is taken on record and marked 'X' for identification. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived.

10 In the circumstances, I am satisfied that the company is unable to pay its debts and is commercial insolvent and requires to be wound up. Therefore, petition is allowed in terms of prayer clauses – (a) and (b) which reads as under :

(a) That Innotech Polyfabriks Limited, be ordered to be wound up by and under the order and directions of this Hon'ble High Court;

(b) That the Official Liquidator of this Hon'ble High Court or some other fit and proper person be appointed as Liquidator of Innotech Polyfabriks Limited, with all power under the Companies Act, 1956.

11 Official Liquidator shall forthwith act on the authenticated copy of this order without awaiting for any notification.

12 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)