

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

COMPANY PETITION NO.921 OF 2014

Joy Thomas Engineering Private Limited	Petitioner
Vs.	
ESP (Asia) Private Limited	Respondent

Ms. Arya Ambre i/b. L.C. Tolat for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 14th DECEMBER, 2017**

PC.:

1 At the time of admission of the petition the following order
was passed on 3rd March, 2015 :

By the above Petition, the Petitioner seeks winding up of the Respondent Company – ESP (Asia) Pvt. Ltd. (“the Company”) under the Companies Act, 1956 (“the Act”). The Company Petition is taken up for admission.

2. According to the Petitioner, pursuant to the letter of acceptance bearing LOA No. C30009/001 dated 8th February, 2011, issued by the Company to the Petitioner and countersigned by the Petitioner, the Company assigned the composite works for HCUI Revamp Project of M/s. Mangalore Refinery & Petrochemicals Ltd. (MRPL) at Mangalore, Karnataka to the Petitioner. The Petitioner accordingly started the electrical and instrumental works for HCUI Revamp Project at Mangalore, Karnataka, some time in the month of February, 2011 and completed the whole project/activities some time in the month of December, 2011 i.e. within the stipulated period. According to the Petitioner, all the electrical and instrumentation works done and carried out by the Petitioner at the site at Mangalore, Karnataka were duly certified by EIL from time to time. The Petitioner had raised bills aggregating to Rs. 1,44,13,457.41 on the Company. The Company made part payments in the sum of Rs. 90,85,826/-, leaving a balance of Rs. 53,27,631.41. The Petitioner therefore through his Advocate issued a statutory notice dated 8th March, 2014, calling upon the Company to pay the said sum of Rs. 53,27,631.41 to the Petitioner within a period of three weeks from the date of receipt of the said notice. The Company failed and neglected to respond to the said notice. The Petitioner therefore filed the present Petition seeking winding up of the Company on the ground that the Company is unable to pay its debts.

3. A copy of the Petition was served on the Company on 23rd February, 2015 by hand delivery. The Company was also informed that it should

remain present before the Court on 26th February, 2015, when the Petition will be taken up for admission. The matter was taken up for admission on 2nd March, 2015 when none appeared for the Company. The matter was therefore adjourned to 3rd March, 2015 i.e. today. Today again none appear for the Company. In view thereof, I am prima facie satisfied that the amount as claimed by the Petitioner from the Company is due and payable by the Company to the Petitioner. The company has not replied to the statutory notice and has also not made any payments as called upon therein. The Company has failed to appear before this Court despite service of the Company Petition by hand delivery. The Company has also not filed its affidavit in reply. In view thereof I am prima facie satisfied that the Company is unable to pay its debts and the Company Petition deserves to be admitted and advertised. Hence the following order:

xxxxxxxxxxxxx.

2 On 29th November, 2016 the following order was passed :

None for the Respondent. The petition has been duly advertised. No reply has been filed as yet by the Respondent to the petition. However, with a view to give one last chance, the petition is stood over to 20 December, 2016.

3 When the matter was listed on 20th November, 2017 and on 4th December, 2017, none appeared for respondent. Even today there is no affidavit in reply filed opposing the petition and nobody is present for respondent on call.

4 Affidavit confirming publication in Free Press Journal (in English), Navshakti (in Marathi) and also in Maharashtra Government Gazette of one Vinod S. Parab affirmed on 24th March, 2015 is on record. There is also a service report of the Company Department of this Court confirming service under Rule 28 of the Companies (Court) Rules, 1959.

5 This Court while admitting the petition has also made a prima facie observation that the company is unable to pay its debts and company petition deserves to be admitted and advertised. I have considered the pleadings and the documents annexed to the petition. I am also satisfied that the company is unable to pay its debts, is commercially insolvent and requires to be wound up.

6 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b), which read as under :

(a) that the Respondents viz ESP (Asia) Pvt. Ltd. a Company incorporated and registered under the Companies Act, 1956 under Registration No. (U74210MH2006PTC 64684) and having its registered office at 3, Shreehari, Plot No.11, Sector 40, Nerul, Navi Mumbai – 400 706 and Administrative Office at 10, 17, 1st Floor, Neco Chambers, Plot No.48, Sector-11, CBD Belapur, Navi Mumbai – 400 614. Be wound by and under the supervision orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 and rule made thereunder;

(b) that the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the ESP Asia Pvt. Ltd. with all power under the Companies Act, 1956 including the power to take charge of the assets, business affairs, books of accounts, records, documents, papers, vouchers, bill etc. of the Respondent and conduct its affairs and business in the course of winding up and to distribute its assets in accordance with law.

7 Official Liquidator shall forthwith act on an authenticated copy of this order without waiting for any notification.

8 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)