

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

COMPANY PETITION NO.247 OF 2015

M/s.DMK Petrotraders & Carrier Private Limited	..	Petitioner
Vs.		
M/s.Shree Venkatesh Steels Limited	..	Respondent

Mr.Anilkumar Patil for the petitioner.
Ms.Yogini Chauhan, Deputy Official Liquidator present.
Mr.B.G. Bhoir and Mr.Ramesh Plande, representative of the workers present.

CORAM : R.D. DHANUKA, J.
DATE : 6th January 2017

P.C. :

. By this petition, the petitioner has prayed for winding up of the respondent-company and for appointment of the official liquidator.

2. The petition is placed on board for 'hearing and final disposal.' It was the case of the petitioner that during the period between August 2013 to October 2013, the petitioner had supplied the goods i.e. furnace oil to the respondent.

3. The respondent admitted its dues on 4th March 2014 through its authorised signatories in writing "Confirmation of Accounts" showing details of accounts during the period between 1st April 2013 to 3rd March 2014. The petitioner has annexed a copy of the invoices showing the details of purchasers/services of the petitioner.

4. The petitioner issued a statutory notice upon the respondent through their advocate by its letter dated 26th August 2014. The respondent, however, vide its reply dated 15th September 2014 denied the contents of the said notice dated 26th August 2014.

5. The petitioner accordingly filed this petition inter alia praying for winding up the respondent-company and for appointment of the official liquidator.

6. By a detailed order dated 1st September 2016 passed by this Court, the aforesaid company petition is admitted. The petitioner claims a sum of Rs.21,45,290/- of which the principal sum is Rs.17,70,008/- as on 25th August 2014 and has claimed interest @24% p.a. as per the terms and conditions of sale as contained in the invoices raised by the petitioner from time to time.

7. In the reply to the statutory notice, the respondent-company contended that they are a sick industrial undertaking and a reference has been made to the Board of Industrial and Financial Reconstruction (BIFR) as a result of which, by operation of law, the legal proceedings as against the respondent-company would stand suspended.

8. Learned counsel for the respondent made a statement before this Court on 1st September 2016 that the reference made by the company to BIFR has been rejected and BIFR has recommended winding up of the respondent-company. No appeal is filed before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

Thereafter, the banks and other secured creditors attached and took possession of the assets of the respondent-company, as a result of which the further proceedings in the reference before the BIFR stood abated.

9. By an order dated 27th October 2014 passed in Company Petition No.575 of 2014 against the respondent, this Court has already passed an order appointing the Official Liquidator as Provisional Liquidator with a direction to take charge of the books, assets and business of the respondent-company. The liquidator has already advertised the petition as directed by an order dated 27th October 2014.

10. The company application filed by the respondent seeking to set aside the order dated 27th October 2014 passed in Company Petition No.575 of 2014 is dismissed. Admittedly, no affidavit-in-reply is filed by the respondent-company to this petition though served. None of the averments made in the petition has been denied. This Court thus passed a detailed order on 1st September 2016 while admitting the petition after hearing of the learned counsel for the parties.

11. None appears for the respondent today when the matter was called out. All the contentions of the petitioner in the petition have therefore remained uncontroverted and there is no reason why the allegations/submissions made by the petitioner in the company petition should not be accepted. The respondent-company has not come forward to oppose the petition.

12. For the reasons set out in the order dated 1st September 2016 and herein, I am satisfied that the respondent-company is unable to pay

its debts, is commercially insolvent and deserves to be wound up.

13. I therefore pass the following order :-

- (i) For the reasons recorded aforesaid and for the reasons recorded by this Court while admitting the company petition on 1st September 2016, the company petition is allowed in terms of prayer clauses (a) and (b). No order as to costs.
- (ii) The official liquidator to forthwith act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court without waiting for any further notification from this Court or from any other authority.

14. In so far as the claims, if any, of the Navi Mumbai General Kamgar Sanghatana whose representatives are present in Court today are concerned, in view of winding up of the respondent-company, the workers may file their claim before the official liquidator.

R.D. DHANUKA, J.