

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

COMPANY PETITION NO.15 OF 2015

M/s. Jain Irrigation System LimitedPetitioner
Vs.
Indage Restaurants & Leisure LimitedRespondent

Ms. Simantini Mohite a/w. Ms. Shruti Maniar i/b. Solomon and Company
for petitioner.
None for respondent.

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

PC.:

1 On 23rd January, 2017 while admitting the petition this Court
was pleased to pass the following order :

1. Learned counsel appearing for the petitioner states that the respondent is served. Affidavit of service is already filed. None appeared for the respondent. No affidavit in reply has been filed by the respondent.

2. By this petition, the petitioner seeks winding up of the respondent company. The respondent had issued purchase order on 3rd February, 2005 upon the petitioner for supply of Dripper, Valve, Joiner, Flush Valve and Fertilizers Tank etc. and issued further purchase orders on 3rd February, 2005. The respondent addressed a letter to the petitioner on 18th January, 2006 in relation to completion report of installation of HDPE & PVC Pipe for lift irrigation. The respondent addressed another letter on 17th July, 2006 and gave completion report of the work done. The respondent issued third and fourth purchase orders on 19th January, 2008 and 2nd March, 2008 respectively. The respondent acknowledged vide its letter dated 28th August, 2008 that Drip installation project was satisfactorily completed by the petitioner.

3. It is the case of the petitioner that since the respondent did not release the payment against the pending invoices, the petitioner issued a notice on 1st July, 2010. Vide letter dated 12th June, 2011, the respondent admitted the liability in the sum of Rs.22,87,072/-. The petitioner thereafter exchanged various letters and reminders to the respondent. The last such letter was addressed on 24th December, 2013. The respondent vide its undated letter, admitted a sum of Rs.22,87,072/-. Since the respondent did not pay the said amount, the petitioner issued a statutory notice on 13th June, 2014. The said notice was served on the respondent on 16th June, 2014. Neither there was any reply in response to the said statutory notice nor any payment. The petitioner thus has

filed this company petition.

4. No affidavit in reply has been filed. A perusal of the documents annexed to the petition clearly indicates that the petitioner had supplied various goods. The project of the respondent was satisfactorily commissioned by the petitioner. The respondent has also admitted the liability at least in the sum of Rs.22,87,072/-. There is no reply to the statutory notice. In my view, the respondent is thus unable to pay its debts and is commercially insolvent.

xxxxxxxxxxxx

2 Petitioner has filed an affidavit of one Anant Bagul affirmed on 2nd May, 2017 confirming publication in Free Press Journal (in English) and Navshakti (in Marathi) on 7th March, 2017. There is also an affidavit of one Simantini Mohite affirmed on 5th June, 2017 confirming publication in Maharashtra Government Gazette on 5th April, 2017. The report of Company Department of this Court also indicates that notice under Rule 28 of the Companies (Court) Rules, 1959 has been duly served upon respondent.

3 While admitting the petition, this Court was pleased to observe that a perusal of the documents annexed to the petition clearly indicates that petitioner had supplied various goods and respondent has also admitted the liability atleast in the sum of Rs.22,87,072/-. There is no reply to the statutory notice or to the petition. Therefore, the averments in the petition are uncontroverted. This Court while admitting the petition has also observed that respondent is unable to pay its debts and is commercially insolvent. Having considered 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.

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

(a) that the Respondent, namely, Indage Restaurants & Leisure Limited, be wound up by and under the directions and orders of this Hon'ble Court under the provisions of Companies Act, 1956;

(b) that Official Liquidator attached to this Hon'ble Court be appointed as Liquidator of the Respondent, namely, Indage Restaurants & Leisure Limited, with all powers under the Companies Act, 1956, including the power to take charge of all assets, business, affairs, books of accounts, records, documents, papers, vouchers, bills 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.

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

6 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)