

vai

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

COMPANY PETITION NO.980 OF 2014

Shambhulal A. Shah & Co.	...Petitioner
V/s.	
Everest Photo Offset Ltd.	...Respondent

Mr.Prashant Chande for the Petitioner.

Ms.Chaitrika Patki i/b Vidhi Partners for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 13TH APRIL, 2017.

P.C. :-

1. Mr.Chande, learned counsel appearing for the petitioner states that the respondent is already served. No affidavit in reply has been filed by the respondent.
2. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.
3. The petitioner has sold, supplied and delivered the goods to the respondent on 7th September, 2010 and on various other dates and has raised various invoices. The goods were delivered to the respondents which are reflected in various delivery challans. According to the petitioner, the respondent is indebted in the sum of

Rs.11,78,193/- inclusive of interest from the date of filing of the petition and further interest thereon from the date of filing of the petition till payment.

4. The petitioner has annexed copies of the invoices and various other documents. The respondent has confirmed the outstanding balance in favour of the petitioner as on 26th February, 2013 in the sum of Rs.8,45,621/-.

5. The respondent never raised any dispute with reference to the quality and/or the quantity of the goods supplied by the petitioner. The respondent made part payment in the sum of Rs.2,52,233/- leaving outstanding balance of Rs.8,45,621/-. The post dated cheques issued by the respondent aggregating to Rs.9,45,000/- were dishonoured upon presentation for the reason "exceeds arrangement".

6. The parties had signed the consent terms in this company petition on 6th April, 2015. Under those consent terms, the respondent had admitted the liability of the petitioner and has agreed to pay a sum of Rs.9,45,621/- on or before 20th May, 2015 in full and final settlement of the claim of the petitioner. The said consent terms however, could not be filed as this company petition did not reach for admission for some time.

7. There was no reply to the statutory notice dated 28th

October, 2013 by the respondent though was served upon the respondent at the registered office of the company.

8. By a detailed order passed by this Court on 14th June, 2016, this Court after taking the cognizance of the consent terms duly signed by the parties and other documents annexed to the company petition, held that the respondent is unable to pay its debts. Learned advocate appearing for the respondent opposed the admission of the petition. The said order passed by this Court has attained finality.

9. Though the petition was advertised, the respondent did not file any affidavit in reply till date. Learned counsel for the respondent seeks adjournment on the ground that the submissions would be made on the next date and not today. A perusal of the record clearly indicates that the respondent has admitted its liability and issued the post dated cheques which were dishonoured. The parties have also signed the consent terms. The respondent has admitted the liability of the petitioner and has agreed to make payment in installments. The said consent terms could not be filed since the matter could not reach.

10. For the reasons recorded in the order passed by this Court on 14th June, 2016 and for the reasons recorded as aforesaid, I am of the view that the respondent is unable to pay its debts and is commercially insolvent. I am not inclined to grant an adjournment in this matter for the aforesaid reasons.

11. I therefore, pass the following order :-
 - a). The company petition is made absolute in terms of prayer clauses (a) and (b). No order as to costs.
12. The Official Liquidator to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)