

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

COMPANY PETITION NO.198 OF 2015

Mr.Ashok Sah)....Petitioner
V/s.

Varun Jewels Pvt. Ltd.)....Respondent

Ms.Bhargavi Raval i/by Rekha C.Shukla for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 21.12.2017

P.C.:-

1 The petition is filed seeking winding up of respondent company Varun Jewels Pvt. Ltd. on the ground that it is unable to pay its debts, commercially insolvent and requires to be wound up.

2 On 28.6.2016 when the petition came up for admission, this court was pleased to pass the following order :-

“This Company Petition has been filed seeking to wind up the Respondent Company-Varun Jewels Pvt Ltd on the ground that it is unable to pay its debts. It is the case of the Petitioner that the Respondent Company is indebted to the Petitioner in the sum of Rs.20 lakhs together with interest @ 18% p.a. from the due date of the bill of exchange till payment.

2 The brief facts giving rise to the present controversy are that on 6th January, 2012 the Respondent Company, for valuable consideration drew an on demand bill of exchange on M/s Varun Industries Ltd, Mr. Kiran N. Mehta and Mr. Kailash Agarwal in the sum of Rs. 20

lakhs. The payee under the bill of exchange was the Petitioner and the accepters were the said Varun Industries Ltd, Mr. Kiran N. Mehta and Mr. Kailash Agarwal. It is the case of the Petitioner that when the said bill was presented for payment to the accepters as well as to the Respondent Company, it was dishonoured. Thereafter, the Respondent Company to repay the aforesaid amount, issued a cheque dated 31st May, 2013 for Rs. 20 lakhs which was also dishonoured for the reasons "insufficient funds". In these circumstances, the Petitioner served a statutory notice under Sections 433 and 434 of the Companies Act, 1956 on the registered office of the Respondent Company. The same has been duly received by the Respondent Company as is evidenced by the acknowledgement annexed at Exhibit-D-1 to the Petition.

3 Despite service of the aforesaid statutory notice, the Respondent Company chose not to reply to the same or controvert the contents therein. In these circumstances, the present Petition is filed.

4 After the Petition was accepted by this Court, the same was duly served on the registered office of the Respondent Company as is evidenced by the affidavit of service dated 23rd March, 2015. Despite service of the Company Petition, no reply has been filed and none have appeared today to oppose the Petition.

5 On going through the papers and proceedings in the Company Petition, I find that not only was the bill of exchange dishonoured when presented for payment but even cheque of Rs. 20 lakhs that has given thereafter was dishonoured by the bankers of the Respondent for the reason "insufficient funds".

6 In these facts, I find that the claim of the Petitioner is really undisputed and the Respondent Company is indebted to the Petitioner in the sum of Rs. 20 lakhs together with interest thereon. In these circumstances, the following order is passed:-

....."

3 Respondent even after the petition was admitted, has not entered appearance or filed any affidavit opposing the petition. On record is the affidavit of one Dilipkumar A.Nagpal affirmed on 12.8.2016 on behalf of petitioner confirming publication of the notice in 'Free Press Journal' and 'Navshakti' on 27.7.2016. In the affidavit it is also mentioned that the Notification in Maharashtra Government Gazette has also been published. There is a report of the company department in which it is stated that Notice sent under Rule 28 of the Company (Courts) Rules 1956 has been returned with the endorsement 'Addressee Moved'.

4 Ms.Raval appearing for petitioner tenders the extract of the Master Data of the respondent company maintained by Ministry of Corporate Affairs (MCA). Ms.Raval states that extract was taken today. The same is taken on record and marked 'X' for identification. From this extract, it appears that the registered address is the same as mentioned in the cause title and the same is the address to which company department has sent notice under Rule 28. Therefore, I would accept notice as good service.

5 While admitting the petition this court came to a finding that the claim of petitioner is undisputed and company is indebted to petitioner in the sum of Rs.20 lakhs together with interest thereon.

6 I have also considered the petition and the documents annexed thereto and I am also satisfied that the company is indebted to petitioner in the sum of Rs.20 lakhs.

7 In the circumstances, I am satisfied that the company is unable to pay its debts, commercially insolvent and requires to be wound up.

8 Petition therefore, allowed in terms of prayer clauses-(a) and (b) and the same read as under :-

“(a) That VARUN JEWELS PVT. LTD. being the Respondent Company herein be wound up by and under the order and directions and supervision of this Hon'ble Court under the relevant Provisions of the Companies Act, 1956 ;

(b) That the Official Liquidator, High Court, Bombay be appointed as Liquidator of the entire assets, properties, affairs and records of the Respondent Company with all powers under the Companies Act, 1956.”

9 Official Liquidator to take necessary action immediately without waiting for any Notification.

10 Petition accordingly stands disposed.

(K.R.SHRIRAM,J)