

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

**COMPANY PETITION NO.170 OF 2015**

Mars Petrochem Pvt. Ltd. )....Petitioner  
V/s.

Omsai Motors Private Limited )....Respondent

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Ms.Trupti Surve i/by Sahil Mahajan for petitioner.  
None for respondent.

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**CORAM : K.R.SHRIRAM,J**

**DATE : 21.12.2017**

**P.C.:-**

1 When the petition came up for admission on 19.3.2015 this court was pleased to pass the following order :-

*1. By the above Company Petition, the Petitioner seeks winding up of the Respondent Omsai Motors Private Limited (the Company) under the Companies Act, 1956. The Petition is taken up for admission.*

*2. According to the Petitioner, the Petitioner is the authorized distributor of M/s. Exxon Mobil Lubricants Private Limited for various oil's and lubricant products (the said products). According to the Petitioner, at the request of the Company, the Petitioner from time to time supplied the said products to the Company. The said products were duly received by the Company without raising any dispute and objection.*

*3. According to the Petitioner, despite repeated requests the Company failed to pay the balance amount aggregating to Rs. 4,05,744/ as more particularly set out in para 7 of the Petition. The Petitioner therefore through its Advocate issued a statutory notice dated 19<sup>th</sup> September, 2014 calling upon the Company to pay an amount of Rs. 5,82,141/ with interest @ 24% p.a. to the*

*Petitioner within a period of three weeks from the date of receipt of the said notice. The statutory notice was sought to be served at the registered office address of the Company. However, the same was returned with the remark 'left'.*

*4. 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 and sought to serve the copies of the Petitions at the registered office address of the Company and also at the address of the Director of the Company. However, the said packets containing the copies of the Petitions are returned with the remark "left / delivery attempted Addressee Moved". An Affidavit of service of the Petition dated 19<sup>th</sup> March, 2015 is on record.*

*5. From the aforestated facts, it prima facie appears that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The statutory notice as well as the copies of the Petitions were sought to be served on the Company. However, the packets containing the copies of the statutory notice and Petition are returned with the remarks "left / delivery attempted Addressee Moved". Since the statutory notice as well as the Petition were sought to be served at the Registered Address of the Company, which address on that day was shown as the Registered Office of the Company in the record of the Registrar of Companies, the said notice and the Petition are deemed to have been served on the Company, though the same have been returned with the remarks "left / delivery attempted Addressee Moved". The Company has not come forward to oppose the Petition. In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. I am therefore 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 :*

(i) *The Company Petition is admitted and made returnable on 8<sup>th</sup> April, 2015.*

(ii) *Office to issue Notice under Rule 28 of the Companies (Court) Rules, 1959 to the Company.*

(iii) *The Petitioner is directed to advertise the Petition in two local newspapers, viz. 'Free Press Journal' (in English) and 'NavShakti' (in Marathi) and also in the Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute noncompliance with this direction or with the Companies (Court) Rules, 1959.*

(iv) *The Petitioner shall also deposit an amount of Rs 10,000/with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this Order, with intimation to the Company Registrar, failing which the Petition shall stand dismissed for nonprosecution without further reference to the Court. After the advertisements are issued, the balance if any, shall be refunded to the Petitioner.*

2           Thereafter on 29.11.2016 this court was pleased to pass the following order :-

*"After admission, this petition has been duly advertised and an affidavit proving the publication of the advertisement in local newspapers, and also in Government Gazette is tendered across the bar.*

*2. None appears for the Respondent. As a last chance to the Respondent, the petition is stood over to 20 December 2016. The petitioner is directed to give a notice of the next date of hearing together with a copy of today's order to the Respondent and file affidavit to that effect by the next date."*

3           Ms.Surve appearing for petitioner tenders an affidavit of one Ved Prakash Mishra affirmed on 1.2.2017 stating that notice in compliance with this court's order dated 29.11.2016 was sent to the company but the envelope came undelivered with the endorsement "addressee left". Ms.Surve tenders the extract taken today from the Company Master Data in which the registered address given continues to be the address which is shown in the cause title and the address to which the last notice was sent pursuant to order dated 29.11.2016. Extract is taken on record and marked 'X' for identification.

4           There is also an affidavit of said Ved Prakash Mishra affirmed on 7.7.2016 proving advertising the petition in 'Free Press Journal' (in English) on 10.4.2015 and in 'Navshakti' (in Marathi) also on 10.4.2015. The affidavit also confirms notice being given in the Maharashtra Government Gazette. The registry has filed a service report in which it is stated that the notice that was sent under Rule 28 of the Companies (Court) Rules 1956 has been returned with the endorsement 'left' and the address given in the envelope is the same registered address as it appears from the Company Master Data. Therefore, the notice is deemed to have been served on the company.

5           The company not having filed any reply opposing the

petition, the averments contained in the petition are uncontroverted. Even the statutory notice dated 19.9.2014 sent through an advocate has not been replied to.

6           It is settled law that where no response to a statutory notice has been made, the court may pass a winding up order on the basis that amount claimed has not been denied by the company and there is a presumption of inability to pay by the company. Where no response has been made to the statutory notice, the respondent-company runs a risk of winding up petition being admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, by virtue of section 434 of the Companies Act 1956 a presumption of the indebtedness can be legitimately drawn by the court where no reply to the statutory notice is forthcoming.

7           In the circumstances, having considered the petition and the documents in support, I am satisfied that the company is unable to pay its debts, commercially insolvent and requires to be wound up. Petition is therefore, allowed in terms of prayer clauses-(a) and (b) which read as under :-

*“(a) the company namely “Omsai Motors Private Limited” be wound up by and under the orders and directions of this Hon'ble Court and under the provisions of the Companies Act, 1956 ;*

*(b) this Hon'ble Court be pleased to appoint the Official Liquidator of this Hon'ble Court or some other fit and proper person as it deems fit as the Liquidator of the company namely “Omsai Motors Private Limited” with all powers and authorities under the Companies Act, 1956.”*

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

9            Petition accordingly stands disposed.

**(K.R.SHRIRAM,J)**