

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

COMPANY PETITION NO.92 OF 2015

Srinivas Clearing & Shipping (India) Pvt. Ltd.Petitioner

Vs.

M/s. Sealand Container Lines (India) Pvt. Ltd.Respondent

Ms. Shobhana R. Waghmare i/b. Mulani and Co. for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 14th DECEMBER, 2017

P.C.:

1 When the petition was taken up for hearing on 20th March,
2015 the following order was passed :

1. Heard the learned Advocates for the parties and by consent, the following order is passed :

(i) The Director of the Company who is present in Court admits that an amount of Rs.6,55,730/- is due and payable by the Company to the Petitioner.

(ii) He undertakes to pay an amount of Rs.6,55,730/- to the Petitioner in full and final settlement of the claim of the Petitioner on or before 07-04-2015. The undertaking is accepted.

(iii) The Director of the Company further agrees that in the event of the Company committing default in making payment of the aforesaid amount as undertaken, the Company Petition shall without reference to this Court be revived, stand admitted, made returnable within six weeks from the date of default and advertised in two local newspapers i.e. Free Press Journal (in English) and Navshakti (in Marathi) and in the Maharashtra Government Gazette. The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within two weeks from the date of default, with intimation to the Company Registrar failing which the Petition shall stand dismissed for non-prosecution. In the event of any default the Official Liquidator shall forthwith stand appointed as provisional liquidator and shall immediately take charge of the records as well as the movable and immovable properties of the Company. Notice under Rule 28 of the Companies (Court) Rules, 1959 shall also stand waived on behalf of the Company.

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2 Ms. Waghmare, counsel for petitioner states that respondent, however, did not make the payment. Thereafter, on 29th November, 2016 the following order was passed :

After the admission order, the petition has been duly advertised. The Respondent has throughout remained absent. There is no reply to the petition. The matter appeared on board on 23 June 2015 for final hearing, and as a last chance was stood over to the next date. Even today, none appears for the Respondent. However, considering that this matter has come up after more than one year from the last date, one more last opportunity is being granted to the Respondent to appear and show cause. To that end, the petition is stood over to 20 December 2016. The Petitioner is directed to serve a notice of the next date of hearing alongwith a copy of today's order on the Respondent and file an affidavit to that effect by the next date.

3 Ms. Waghmare, counsel for petitioner states that the order as directed by this Court was sent to the Advocate for respondent. Ms. Waghmare undertakes to file an affidavit to that effect within one week from today.

4 Petitioner has filed an affidavit of one Sachin Raghunath Pawar affirmed on 8th June, 2015 confirming publication in two newspapers, viz., Free Press Journal (in English) and Navshakti (in Marathi) and also in Maharashtra Government Gazette. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived by respondent as recorded in the order dated 20th March, 2015.

5 The debt has been admitted by respondent and respondent's director gave an undertaking to this Court to pay the amount of Rs.6,55,730/- to petitioner in full and final settlement of the claim of

petitioner on or before 17th April, 2015. No amount has been paid at all to petitioner by respondent.

6 In the circumstances, it is rather obvious that the company is unable to pay its debts, is commercially insolvent and requires to be wound up. I have considered the pleadings and the documents annexed to the petition. Infact no affidavit in reply opposing the petition has been filed by respondent.

7 Company petition is, therefore, allowed in terms of prayer clause – (a), which reads as under :

(a) That M/s. Sealand Container Lines (India) Pvt. Ltd. registered under the Companies Act, 1956 having its registered office at Block C-7, Jer Baug, Victoria Garden Road, Byculla (East), Mumbai – 400 027, be wound up by and under the directions of this Hon'ble Court under provisions of the Companies Act, 1956; That the Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as the Liquidator of the assets, properties and income and books of accounts of the Company, M/s. Sealand Container Lines (India) Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956.

8 Official Liquidator shall forthwith act on an authenticated copy of this order without waiting for any notification. Official Liquidator at the time of taking charge being satisfied that petitioner has filed the affidavit as per the undertaking given in paragraph 3 above.

9 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)