

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

COMPANY PETITION NO.306 OF 2015

M/s.Nemani Steels Private Limited)....Petitioner
V/s.

M/s.Black Gold Exim Private Limited)....Respondent

Mr.Maulik K.Tanna for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 1.2.2018**

P.C.:-

1 The petition is filed for winding up of respondent company-Black Gold Exim Private Limited on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 When the petition was taken up for admission on 24th January, 2017, the following order was passed :-

“Learned counsel for the respondent has tendered an affidavit of service which indicates that the respondent has been served with a notice by email pursuant to the orders dated 21st November 2016 and 30th November 2016 passed by this Court.

2. *By this petition, the petitioner seeks winding up of the respondent-company on the ground that the respondent is unable to pay its debts.*

3. *The respondent has placed purchase orders to the*

petitioner on 5th October 2012 for supply of various materials which were delivered by the petitioner during the period between October 2012 and November 2013. The petitioner raised various invoices upon the respondent. The respondent issued two cheques for a sum of Rs.1,72,01,673/- dated 3rd January 2014 and a cheque for a sum of Rs.1,98,37,432/- dated 1st February 2014 towards part payment of the amount due and payable by the respondent to the petitioner. Both these cheques were dishonoured on presentation by the bankers of the petitioner with the remark "Payment stopped by Drawer."

4. The petitioner issued statutory notices on 27th January 2014 and 27th February 2014. The respondent responded to the said notice on 20th September 2014.

5. Learned counsel appearing for the petitioner invited my attention to the annexures to the petition and more particularly paragraph 5 of the reply of the respondent dated 20th September 2014 to the statutory notice. He submits that the respondent has admitted liability to the extent of Rs.1,04,40,393/- and out of the said amount paid a sum of Rs.10 lakh. He submits that the adjustment sought by the respondent for a sum of Rs.50,24,405/- towards the alleged delivery of goods to a third party was not on instructions of the petitioner and is disputed by the petitioner. He submits that even according to the respondent, the respondent is liable to pay a sum of Rs.44,05,988/- which amount is disputed by the petitioner. According to the petitioner, the respondent is liable to pay a sum of Rs.1,72,01,673/- as on 31st December 2013 and further interest thereon till payment. None appears for the respondent though served. No affidavit-in-reply is filed.

6. A perusal of the documents annexed to the petition clearly indicates that even according to the respondent, the respondent is liable to pay at least to the extent of Rs.44,05,988/- and has admittedly not paid the said amount.

7. In view of the reasons recorded aforesaid, a

presumption has to be thus drawn that the respondent is unable to pay its debts and is commercially insolvent.

8.....”

3 On record is the affidavit of one Anil Kandoi affirmed on 4.2.2017 confirming advertisement of the petition in 'Free Press Journal' in English and in 'Navshakti' in Marathi, both Mumbai edition on 2.2.2017 and an affidavit dated 26.12.2017 confirming publication in the Maharashtra Government Gazette for the period 21.12.2017 to 27.12.2017 at serial no.M17267.

4 The company department has placed on record a report dated 18.2.2017 stating that the notice under Rule 28 of the Companies (Court) Rules,1959, was sent to two addresses one of which is the registered address, has come back undelivered. The company department has noted that the notice that was sent to the registered address has come back with the endorsement “item delivery attempted INSUFFICIENT ADDRESS” and the notice sent to the other address has come back with the endorsement “left address”.

5 The Associate of this Court handed over a print out of the Company Master Data, extract taken today by him from the MCA

Website. The Associate took this print out at the request of the court as the counsel was unable to assist the court.

6 The registered address shown in the Company Master Data still shows the same address to which the notice under Rule-28 was sent. Therefore, I would accept that the notice is deemed to have been served upon the company.

7 The company has not filed any affidavit opposing the petition. Therefore, the averments in the petition are not controverted. In the reply to the statutory notice dated 28.9.2014, the company has admitted that it was liable to pay atleast Rs.44,05,988/- and even issued 3 cheques totaling to Rs.65,00,000/- and those cheques were dishonoured due to stop payment instructions given by the company. Even this amount has not been paid.

8 Therefore, having heard the counsel and having considered the petition and documents annexed thereto, I am satisfied that the company is unable to discharge its debts and is commercially insolvent. Hence, petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) That the Respondent Company viz., M/s.Black Gold Exim Private Limited, whose registered office is situated at 11/4, Kharadi Mundwa Bypass Road, Near Hotel Prachi, Kharadi, Pune-411014, Maharashtra, be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) The Official Liquidator of this Hon'ble Court be appointed Liquidator of the Company with all powers under Section 457 of the Companies Act 1956 to take charge of the assets, business affairs, properties, bank accounts, books of account vouchers, documents etc. of the Company with all powers under the provisions of the Companies Act, 1956.”

9 The Advocate for petitioner shall furnish a copy of this order, duly authenticated by the Associate of this court, to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

10 Petition stands disposed.

11 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to adjustment for any charges payable by way of cheque drawn in favour of advocate for petitioner.

(K.R.SHRIRAM,J)