

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

COMPANY PETITION NO. 607 OF 2016

M/s. The Supreme Industries Ltd.	.. Petitioner
Vs.	
M/s. Snehal AC and R Engineering Pvt. Ltd.	.. Respondent

Mr. Sachin Shamrao Joshi for petitioner.

Mr. Sameer Khedekar i/b Rajesh M. Kanojiya for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 13TH MARCH 2018**

P.C.

1. Petitioner is seeking winding up of the company M/s. Snehal AC and R Engineering Private Limited (the company) on the ground that the company is indebted to petitioner and is unable to discharge its debt.

2. It is the case of petitioner that they sold and supplied to the company Capcell Cross Link Polyethylenes and as per the instructions received from the company, the goods were delivered at the company's site addresses at M/s. Bharat Serum and Vaccines Ltd., Ambernath, District Thane, Maharashtra and M/s. Marvel Edge, Pune, Maharashtra. Copies of the two purchase orders dated 16th December 2014 and 20th December 2014 are annexed at Exh.'B' and Exh.'C' to the petition. The payment was 20% advance and balance 80% within 60 days by post dated cheques (PDCs).

3. Petitioner raised invoices for the goods supplied and copies of the invoices along with lorry receipts are at Exh. 'E', 'F' and Exh.'G' to the petition. The total value of the three invoices is Rs.7,90,299/-. The company has made some part payment aggregating to Rs.86,693/-. It is stated, after giving credit to this part payment received and also a sum of Rs. 350/- for excess payment against earlier invoice to the company, an amount of Rs. 7,03,256/- was due and payable by the company to petitioner. The company in settlement of this amount issued two cheques, one for Rs. 2,08,172/- and the other for Rs.4,94,908/-. Both cheques were dishonoured when presented. Thereafter, the company has, at the request of petitioner, confirmed balance as on 30th September 2015 of Rs.7,03,256/- payable to petitioner. A copy of the balance confirmation letter dated 6th October 2015 issued by petitioner and confirmed by the company is at Exh.'H' to the petition. The company also has issued a ledger account to petitioner for the period 1st April 2014 to 30th September 2015 for which the company also acknowledged that there is an amount of Rs. 7,03,256/- due and payable. As no payments came forth, petitioner caused a statutory notice dated 3rd November 2015 under the provisions of the Companies Act, 1956 issued through their Advocate. The company has not even replied to the statutory notice.

4. On 3rd August 2017, the company sought time to file reply in the matter and the matter was stood over to 24th August 2017. On 24th August 2017, again, at the request of the company, time to file reply was granted upto 8th September 2017 and it was made clear that no extension of time will be granted on the next date. As on date, there is no affidavit in reply filed opposing the petition. Therefore, the averments in the petition remain un-controverted. 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.

5. I have perused the petition and also considered the documents annexed thereto. I am satisfied that petitioner has supplied the goods, the company has received the goods and the company has acknowledged its liability to pay in the sum of Rs.7,03,256/- towards principal. The fact that despite acknowledgement of debt, the company has not paid the admitted

amount for more than two years and also not replied to the statutory notice, it is obvious that the company is unable to discharge its debt and is commercially insolvent. Therefore, the following order is passed :-

: O R D E R :

(a) The company petition is admitted and is made returnable on 7th June 2018.

(b) Petitioner is directed to advertise within two weeks the petition in two local newspapers, viz., (i) Free Press Journal (in English); and (ii) Navshakti (in Marathi) as 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 non-compliance with this direction or with the Company (Court) Rules, 1959.

(c) Petitioner shall deposit Rs.15,000/- toward publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, within a period of two weeks, failing which petition shall stand dismissed for non-prosecution without further reference to the Court. After

the advertisements are issued, the balance, if any, shall be refunded to petitioner.

(d) Respondent waives notice under Rule 28 of Companies (Court) Rules, 1959.

6. Notwithstanding the above order, I am still inclined to grant two weeks time for the company to deposit this amount of Rs.7,03,256/- with the Prothonotary and Senior Master, High Court, Bombay. If the amount is deposited, the petition will stand dismissed without further reference to the Court.

If the amount is not deposited within two weeks, then petitioner may go ahead and advertise the petition and the period of two weeks as per paragraph 5(b) above will commence after the two weeks period to deposit is over.

(K.R. SHRIRAM, J.)