

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

COMPANY PETITION NO.446 OF 2016

Withal Commercial Private Limited Petitioner

Vs.

Sudar Industries Limited Respondent

Ms. Neha Mehta for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 20th JULY 2018**

P.C.:

1 This petition is for winding up of respondent company - Sudar Industries Limited (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 31st October 2017 at the time of admission, the following order came to be passed :

1 Pursuant to an Inter Corporate Deposit agreement dated 23.2.2017, petitioner had advanced sum of Rs.1,67,00,000/- as Inter Corporate Deposit (ICD) to Sudar Industries Ltd. (company) to be paid within 3 days together with interest fixed at 1% of the principal amount for the period of 3 days. ICD was rolled over/extended from time to time and finally pursuant to supplementary ICD dated 1.10.2014, the company agreed to repay to petitioner Rs.2 crores after a period of 90 days together with interest @ 24% p.a. aggregating to Rs.11,83,562/- to be repaid on or before 30.12.2014. In effect, a sum of Rs.35 lakhs that was due as interest was added to the principal amount of Rs.1,65,00,000/- and supplementary ICD agreement was entered into for Rs.2 crores. The company issued 2 post dated cheques, both dated 30.12.2014 for Rs.2 crores and Rs.10,65,205/- towards repayment of principal and interest after deducting tax at source. By an email dated 12.12.2014 the company requested petitioner not to deposit both the cheques since they were going through some difficult financial situation but remitted by

RTGS sum of Rs.10,65,205/- on 9.1.2015. Amount of Rs.2 crores, however, remained unpaid. No further interest also has been paid on the sum of Rs.2 crores. Petitioner caused a notice dated 27.5.2015 issued through its advocate under Sections 433, 434 & 439 of the Companies Act 1956. It is stated in the petition that the company sent a one line holding letter dated 20.7.2015 in which it is stated "we are collating the relevant documents in the matter and request for further time of 3 weeks to reply i.e., on or before August 10, 2015". It is stated that no reply was sent thereafter.

2 Petitioner served the petition upon the company and an affidavit of service of one Vishwas Zorie affirmed on 16.9.2016 is filed. From the affidavit it appears that the company was served on 3.9.2016. Based on the directions of this court passed on 14.8.2017 read with order dated 27.9.2017 petitioner served the petition once again by e-mail to the company. An affidavit of service of Vishwas Zorie affirmed on 5.10.2017 confirming service upon respondent by e-mail at CS@sudarindustries.com is on record.

3 I have perused the petition and the exhibits annexed thereto. I have also considered the submissions advanced on behalf of petitioner. I am prima facie satisfied that an amount of Rs.2 crores plus 24% interest p.a. is due and payable to petitioner by the company. The company has neither responded to the statutory notice nor the petition. The allegations made in the petition have therefore remained uncontroverted. I am therefore, satisfied that the company is unable to pay its debts and the company deserves to be wound up. Hence the following order :-

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3 On record is an affidavit of one Vishwas Jori affirmed on 17th November 2017 confirming advertising the petition on 11th November 2017 in Free Press Journal and Navshakti. The order of 31st October 2017 has also been delivered by hand delivery and RPAD to the company. There is another affidavit of Vishwas Jori affirmed on 18th June 2018 submitting application to Maharashtra Government Press and paying charges on 14th June 2018.

4 Ms. Mehta, counsel for petitioner states that gazette publication is yet to be released but correctly points out that paragraph 3(b) of the order dated 31st October 2017 provides “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 Companies (Court) Rules, 1959”. Ms. Mehta states that in any event, as and when gazette publication is available, the same will be filed in the registry.

5 The Company Department has placed on record a service report dated 29th November 2017 confirming service of notice under Rule 28 of the Companies (Court) Rules, 1959 upon the company. There is no affidavit in reply filed opposing the petition. Therefore, none of the averments in the petition are controverted. The company did not even respond to the statutory notice. 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 allowed. 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.

6 I have heard Ms. Mehta, counsel for petitioner and also considered the petition and the documents annexed thereto. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

7 Therefore, petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) that the company, viz. Sudar Industries Limited, be ordered and directed to be wound up under the directions of this Hon'ble Court as per the provisions of the Companies Act, 1956;

(b) that the Official Liquidator, High Court, Bombay be appointed as Liquidator of the company, viz., Sudar Industries Limited, with all powers to take charge of all the assets including machineries and other properties and records of the company with the provisions of the Companies Act, 1956.

8 Official Liquidator, within two weeks, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

9 Upon receipt of the authenticated copy from petitioner's advocate, Official Liquidator shall forthwith cause notice to all concerned Directors calling upon them to file their respective statement of affairs

strictly in consonance with the provision of law. All Directors of respondent company, now in liquidation, are hereby directed to file their respective statement of affairs as required under Section 454 of the Companies Act 1956, failing which Official Liquidator shall proceed further and lodge criminal complaint against the erring Directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

10 Company petition accordingly stands disposed.

Gauri
Amit
Gaekwad

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signed by
Gauri Amit
Gaekwad
Date:
2018.07.23
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(K.R.SHRIRAM, J.)