

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 189 OF 2016**

M/s. Surya Exim Limited

.. Petitioner

Vs.

M/s. Parth Foils Private Limited

.. Respondent

Mr.Dhiren Akbari for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 28TH JUNE 2018

P.C.

1. The petition is filed for winding up of respondent company – Parth Foils Private Limited (the company), on the ground that it is unable to discharge its debt and is commercially insolvent.
2. On 26th July 2017, when the petition was taken up for admission, the following order came to be passed :-

“1] By the present petition under Section 433(e), 434 read with 439 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-Company namely M/s Parth Foils Private Limited

2] It is the case of the petitioner that, as per order placed by the respondent-company the petitioner, sold, supplied and delivered goods namely PVC resin to the respondent and raised various invoices petitioner issued statutory notice dated 10.8.2015. The respondent received it however has failed to comply with or reply it.

3] The Petitioner therefore filed the present petition on 12.1.2016 in this Court for winding up of the respondent-Company. The petition is accepted on 5.4.2016 and in pursuance of the directions of the Company Registrar, the petitioner issued

notice of acceptance to the respondent and has filed affidavit of service dated 6.6.2016. Despite service, none appeared for the respondent.

4] Perused the petition and documents annexed thereto. Prima facie it appears that the respondent is not serious in contesting the claim of the petitioner. It further prima facie appears that the respondent-Company is unable to pay the debts of the petitioner and is commercially insolvent.”

4. No affidavit in reply is filed. Therefore, none of the averments in the petition are controverted. There is no reply to the statutory notice also. 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, 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.

5. On record is an affidavit of one J.P. Saboo affirmed on 23rd April 2018 in Free Press Journal and Navshakti on 12th August 2017. Mr.Akbari tenders a copy of the advertisement of petition in Maharashtra Government gazette for the period May 3-9, 2018 at Sr.No.1841 is taken on record and marked 'X' for identification.

6. The company department has placed on record a service report dated 23rd August 2017 confirming service of notice under Rule 28 upon the company.

7. Mr. Akbari also states that he had also written to the company on 3rd May 2018 informing the company that the petition is fixed for final hearing on 7th June 2018 by registered post A.D. as well as by email. Mr. Akbari states that both have been delivered in the company.

8. In the circumstances, petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) Pass appropriate orders directing the respondent company be wound up under the provisions of Section 433(e), 434(1)(a) and 439 of the Companies act, 1956 for its inability, neglect and failure to pay and discharge its admitted debts and liabilities.

(b) Appoint the Official Liquidator, High Court of Judicature at Bombay as liquidator of the respondent company with all powers under the Companies Act, 1956/2013 including the power to take possession of all assets, books of accounts, stock in trade, cash on hand, movable properties including furniture and fixtures as well as immovable properties.”

9. Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the official liquidator who shall take immediate steps without waiting for any notification.

10. Upon receipt of the authenticated copy from petitioner's advocate, the 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 statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the 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.

11 The company petition accordingly disposed.

**Shraddha
Kamlesh
Talekar**

(K.R. SHRIRAM, J.)

Digitally signed by
Shraddha Kamlesh
Talekar

Date: 2018.07.21
19:12:23 +0530