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

COMPANY PETITION NO.517 OF 2016

SICOM Limited ….Petitioner
Vs.
Sajjan Udyog Export Limited ….Respondent

Mr. Vishal Kanade I/b. Mr. Satish S. Raut for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 10th SEPTEMBER 2018

P.C.:

1 This petition is for winding up of respondent company - Sajjan Udyog Export 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 10th April 2018 at the time of admission, the following order came to be passed :

> *1. Petitioner is seeking winding up of the company - Sajjan Udyog Export Limited (the company) on the ground that the company is unable to discharge its debts.*
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> *2. There are two affidavits of service filed by petitioner, one by Satish Raut affirmed on 25th November 2016 and the other by P.S. Jadhav affirmed on 19th March 2018. To the affidavit dated 19th March 2018, is annexed a copy of the letter dated 5th March 2018 addressed by the advocate for petitioner to the company informing the company about the petition being listed on 14th March 2018 and it is stood over to 19th March 2018. In the office copy, there is an endorsement that the company has shifted. Shri Kanade appearing for petitioner, however, tenders an extract of the MCA website maintained by the Ministry of Corporate Affairs in which the registered address of the company shown to be the same as shown in the cause title. Therefore, I would proceed on the basis that the petition has been served.*
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> *3. In August 1991, Central Bank of India had sanctioned and disbursed Term Loan of Rs.68 lakhs to one Sajjan Udyog, a proprietary firm.*

Sajjan Udyog was enjoying various credit facilities from Central Bank of India and in October 1992, the liabilities of Sajjan Udyog (including the liabilities to the Central Bank of India) was taken over by the company and the company executed necessary documents in favour of the Central Bank of India. The company also availed various other facilities including Export Bills purchase/discounting facilities etc. The company executed various documents, viz., Hypothecation Agreement dated 24th September 1992, undertakings, mortgage documents etc. Central Bank of India also granted to the company Packing Credit facility of Rs.425 lakhs and Export Bills purchase/discounting facilities of Rs.550 lakhs. The documents executed by the company to secure loan/facilities are listed in the petition. The company failed and neglected to pay Central Bank of India. Central Bank of India and the other lenders of the company, viz., Canara Bank and State Bank of Travancore jointly filed Suit No. 2117 of 1997 against the company and guarantors for their dues as stated in the suit. The said suit was transferred from this Court to the Debt Recovery Tribunal (DRT) Mumbai. DRT, by an order dated 31st December 2003, interalia, directed the company to pay a sum of Rs.22,86,24,507/- to Central Bank of India with further interest @ 15% per annum with quarterly rests. Order was also passed to sell the properties in the event of default by the company. Further thereto, certain premises of the company were also sold.

4. On or about about 31st March 2010, Central Bank of India assigned to petitioner the credit facilities to company along with underlying securities. The Promoter of the company Shri Sajjan Jhunjhunwala also offered to pay Rs. 2 crores to make a One Time Settlement. Petitioner also took over possession of the mortgaged assets owned under SARFAESE Act to recover its dues. As no payments came forth, petitioner caused notice to be issued under Section 434 of the Companies Act, 1956 to which there is no reply. In fact, it has to be noted that it is stated in the petition that the company refused to accept the statutory notice served by petitioner. There is no reply also 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, 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. The company has also not entered appearance through any advocate. No reply to the petition is also filed and therefore, the averments in the petition are not controverted.

6. I have perused the petition and the documents annexed thereto. It is clear that the company is indebted to Central Bank of India and in view *of the assigned liabilities, is indebted to petitioner. Petitioner has also issued notice under Section 13(2) of the SARFAESI Act on 29th October 2014, and in view of nonpayment by the company, has taken over possession of the mortgaged assets.*

7. In these circumstances, I am prima facie satisfied that there is a debt payable by the company to petitioner and petitioner is unable to discharge its debts. Therefore, the following order is passed :

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3 The company has neither entered appearance nor filed any affidavit in reply opposing the petition. Therefore, none of the averments in the petition are controverted.

4 Petitioner has filed affidavit of one Sandesh Kamble affirmed on 19^{th} April 2018 confirming advertising the petition in Navshakti and Free Press Journal and also in the Maharashtra Government Gazette. The affidavit also mentions that copy of the order was attempted to be served by registered post AD etc. but the packets came back undelivered. Mr. Kanade tenders an affidavit of Sandesh Kamble affirmed on 10^{th} September 2018 which is taken on record. Mr. Kanade also tenders an extract of the company master data which indicates that the address of the company, to which notice under Rule 28 of the Companies (Court) Rule 1959 was sent, is the same address even as on date. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

5 Heard the counsel and also considered the petition and the documents annexed thereto and also considered the order of admission.

None of the averments as stated earlier have been controverted and I see no reason why the view taken at the time of admission should be changed today.

6 In the circumstances, as the company is unable to discharge its debts, petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

> *(a) that the Respondent Company Sajjan Udyog Export Limited be ordered to be wound up by and under the directions of this Hon'ble Court;*
>
> *(b) that the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the Respondent Company viz. Sajjan Udyog Export Limited with all powers under Section 457, 458 read with Sections 454, 455 and 456 of the Companies Act, 1956.*

7 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.

8 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.

9 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)