

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

COMPANY PETITION NO.809 OF 2015

M/s.J.K.Steel Corporation	)....Petitioner
V/s.	
Pyramid Building Systems Pvt. Ltd.	)....Respondent

WITH

COMPANY PETITION NO.783 OF 2015

M/s. Sandeep Steels	)....Petitioner
V/s.	
Pyramid Building Systems Pvt. Ltd.	)....Respondent

Mr.Niraj Shah i/by Siddharth Murarka for petitioners.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 5.1.2018

P.C.:-

1 Both the petitions are filed seeking winding up of respondent-company Pyramid Building Systems Pvt. Ltd. on the basis that company is unable to discharge its debts and is commercially insolvent.

2 When the petitions were listed on 10.1.2017 for admission, the following order came to be passed :-

"1. By these two company petitions filed against the respondent company, the petitioner seeks winding up of

the respondent company and prays for appointment of the Official Liquidator and other reliefs.

2. Insofar as Company Petition No.809 of 2015 is concerned, the parties had entered into a Memorandum of Understanding (MOU) on 1st April, 2014. Under the said Memorandum of Understanding, the respondent confirmed the balance outstanding payable to the petitioner at Rs.32,97,128.32 ps. The respondent agreed to pay the said amount in three installments on various dates. Pursuant to the said Memorandum of Understanding, the respondent issued three cheques in favour of the petitioner in the sum of Rs.11.00 lakh, Rs.10,97,128/- and Rs.11.00 lakh respectively. Upon presentation of those three cheques, the same were dishonoured on the ground "funds insufficient". The petitioner has filed separate criminal proceedings against the respondent under section 138 of the Negotiable Instruments Act read with other provisions of law, which are pending.

3. The petitioner issued a statutory notice on 20th November, 2014 calling upon the respondent to pay a sum of Rs.32,97,128.32 ps. with further interest thereon totaling to Rs.36,74,355/- and further interest thereon with effect from 30th November, 2014 and threatened to file the company petition in the event of the respondent committing default in complying with the said requisition. The said notice was received by the respondent. There was no reply to the said statutory notice. As on 19th November, 2014, the claim of the petitioner is Rs.36,74,355/- and further interest thereon is claimed by the petitioner upto the date of payment. No affidavit in reply is filed to this petition though the respondent was served long back.

4. Insofar as Company Petition No.783 of 2015 is concerned, the parties had entered into a Memorandum of Understanding on 9th May, 2014. The respondent admitted the liability in the sum of Rs.33,36,824/- and agreed to pay the said amount to the petitioner in installments. All the cheques issued by the respondent were dishonoured on presentation. The respondent also did not make any payment though entered a separate Memorandum of Understanding in that regard on 9th May, 2014.

5. The respondent also signed a balance confirmation statement thereby admitting and acknowledging the liability to the petitioner.

6. On 31st December, 2014, the petitioner issued a statutory notice calling upon the respondent company to pay a sum of Rs.47,01,490/- with further interest thereon. There is neither any reply to the said notice nor any payment made by the respondent. As on 31st December, 2014, the claim of the petitioner is Rs.47,01,490/- with further interest thereon at the rate of 24% p.a. till payment. No reply is filed in this petition also though the petitioner was served long back.

7. Learned counsel appearing for the petitioner invited my attention to the aforesaid facts and would submit that since the respondent company is unable to pay its dues, the petition for winding up of the respondent company shall be admitted and interim relief separately claimed in the company application shall be granted.

8. Learned counsel appearing for the respondent on the other hand submits that the respondent company has proposed to settle the dues of the petitioner by making payment in the pending criminal complaints filed by the petitioner. He submits that the requisite returns are already filed by the respondent company with the authority from time to time. He submits that the matter may be adjourned to enable the respondent company to make payment to the petitioner.

9. Learned counsel for the petitioner in rejoinder submits that as per the record of the Registrar of Companies in respect of the respondent company, no returns are filed by the respondent company since 2010.

10. On perusal of the record as set out aforesaid and for the reasons recorded aforesaid, I am of the view that the respondent company is unable to pay its debts to the petitioner. No reply was given to the statutory notice. No affidavit in reply has been filed by the respondent. A presumption thus has to be drawn against the respondent that the respondent is unable to pay debts.

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3 No affidavit in reply opposing the petition has been filed. Therefore, the averments contained in the petitions are not controverted. Notice under Rule 28 of Company (Court) Rules has also been waived.

4 Petitioners have filed affidavit of one Ajay Bhagat affirmed on 20.2.2017 confirming publication in 'Free Press Journal' and in 'Navshakti' on 21.1.2017 and in the Maharashtra Government Gazette for the period 9-15.2.2017.

5 The court in the order dated 10.1.2017 has expressed a view that the respondent-company is unable to pay its debts to petitioner. No reply has also been given to the statutory notice.

6 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.

7 I have also considered the petitions and the documents annexed thereto and heard Shri Shah for petitioners. I am also satisfied that the company is unable to pay its debts, commercially insolvent and requires to be wound up.

8 Petition allowed in terms of prayer clauses-(a) and (b) except the portion bracketed in red ink. Prayer clauses-(a) & (b) therefore read as under :-

“(a) that the Respondent Company, namely Pyramid Building Systems Private Limited having its registered office at Flat No.101, Building No.4, Vidhyut Nagar, Nr. Matruchaya Hospital, Malyan Dahanu Road-401602, Maharashtra be wound up by and under the orders, direction and supervision of this Hon'ble Court ;

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of

Companies Act 1956 or later enactment to take charge of the Respondent Company and to conduct its affairs during the course of its winding up.”

9 Official Liquidator to take immediate steps without waiting for any Notification.

10 Both the petitions disposed accordingly.

(K.R.SHRIRAM,J)