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

COMPANY PETITION NO. 236 OF 2016

Primesec Investments Ltd. .. Petitioner
Vs.
Sarvin Mercantile Pvt. Ltd. .. Respondent

Ms.Prachi Garg i/b DSK Legal for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 26TH APRIL 2018

P.C.

1. The petition is filed for winding up of the company Sarvin Mercantile Private Limited (the company) on the ground that the company is unable to discharge its debt.

2. On 25th September 2017, when the petition was taken up for admission, the following order came to be passed :-

> *"1. The petition was accepted on 26th April, 2016 and thereafter it was served upon the respondent company. The affidavit of service is on record. The company had not entered appearance nor has it filed an affidavit in reply. On 14th August, 2017 the counsel for the petitioners was directed to make one more attempt and intimate the company about pendency of the petition and that the same may be listed so as to enable them to appear and oppose the petition, if they so desire. This was done. The affidavit of service dated 22nd August, 2017 indicates that the email is sent at the address prescribed by the company and deponent further states that no failure report has been received. In the circumstances the petitioner had made all possible efforts to serve the petition and alert the respondent as to the pendency of this petition.*
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> *2. The petition was heard for admission on 24th August, 2017. None appeared for the respondent company on call on that date. An*

order came to be passed admitting the petition but inadvertently the cause title in the order showed two petitions and thus a common order came to be passed in two different petitions with varying amounts claimed as debts. On the application of the petitioners, the order dated 24th August, 2017 was recalled on 19th September, 2017 and the matter was placed on board on 21st September, 2017. On 21st September, 2017 since the respondent's may not have been aware of the fact that the order had been recalled, the Advocates for the petitioner were directed to issue one more email intimating the respondent that the petition would be listed for admission on 25th September, 2017.

3. Pursuant to order dated 19th September, 2017, the learned Counsel for the petitioner states today that on 21st September, 2017 an email was sent to the company intimating them that the matter would be listed today. Copy of the email enclosing a copy of the order dated 19th September, 2017 is annexed to the affidavit of service dated 22nd September, 2017.

4. The matter is once again listed for orders today. The respondent is absent on call. The petitioner seeks an order of winding up of the respondent company under Sections 433 and 434 of the Companies Act, 1956. The respondent also approached the petitioner with the intention of funding the respondents' investment and in particular the purchase of shares of Gitanjali Gems Ltd. The parties entered into a loan agreement containing various provisions. The learned counsel for the petitioner contended that the company incurred liability to the respondent to tune of Rs.28,46,23,193.37. He relied upon the provisions of agreement and the fact that the statutory notice came to be issued on 29th October, 2015.

5. The notice is addressed to the registered office of the respondent company as evidenced by Company Master Data appearing at Exhibit-U. In the statutory notice the petitioner demanded a sum of Rs.19,00,26,230.78 consisting of principal sum and balance being interest and after crediting a sum of Rs.33,00,000/- received by way of dividend. The details of the transaction and its basis is to be found in statutory notice served upon the company as evident from Exhibit "S-1". There is no reply to statutory notice.

6. It is contention of the petitioner that apart from monthly transactions they were also dealing with derivatives. The petitioner received a sum of Rs.33,00,000/- apparently by way of dividend. However, the fact remains that large sum of money appears to be owing to the petitioner company. In the circumstances and in view of the fact that some of the monies said to be due and failure to reply to the *statutory notice gives rise to presumption of deemed commercial insolvency.............”*

3. Petitioner has filed an affidavit of one Rajesh Pawar affirmed on 31st October 2017 confirming advertising the petition in two local newspapers, viz., Free Press Journal and Navshakti on 4th October 2017 and also in the Maharashtra Government Gazette for the period October 12, 2017 to October 18, 2017 at Sr.No.M-17207. Service Report dated 21st November 2017 shows that notice sent under Rule 28 of the Companies (Court) Rules, 1959 has come back with the endorsement '*Unclaimed*'. The counsel further states that a copy of the order dated 25th September 2017 was forwarded to the company by registered post A.D. and the same came back undelivered. The counsel tenders an extract of the company master data maintained by the Ministry of Corporate Affairs, which extract the counsel states, was taken today, in which the registered address of the company is shown to be the same to which the notice under Rule 28 was sent. The extract is taken on record and marked 'X' for identification. I would, therefore, accept that notice under Rule 28 has been served on the company.

4. The company has not replied to the statutory notice nor has filed any affidavit opposing the petition. Therefore, none of the averments in the

petition are controverted.

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

> *"(a) that the Respondent, having its registered office situated at Gala No.5, 1st Floor, House No.1018, Hissa No.73/2, Anjur Phata Road, Dapode, Bhiwandi, Thane 421302, be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956.*
>
> *(b) that the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the Respondent Company to take charge of the assets, books of account and properties of the Respondent with all powers under the provisions of Companies Act 1956."*

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

7. The company petition accordingly disposed.

8. A copy of this order also be forwarded to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)