

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

COMPANY PETITION NO.317 OF 2016

Kuehne Nagel Pvt. Ltd.)....Petitioner
V/s.

Inlays India Pvt. Ltd.)....Respondent

Mr.Prathamesh Kamat i/by M/s.A.Mehta Laljee and Co. for
petitioner.
Ms.Dhwani Mehta for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 4.5.2018

P.C.:-

1 The petition is filed for winding up of the respondent company-Inlays India Pvt. Ltd. on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 6.10.2017 at the time of admission of the petition, the following order came to be passed :-

1 Petitioner is a Freight Forwarder and Logistic Operator and has carried respondent's cargo by Air. Towards the service rendered by petitioner to respondent, petitioner raised 6 invoices for an aggregate amount of Rs.8,47,421/-. In response to petitioners' e-mail dated 4.2.2017 calling upon respondent to make payment, respondent has by an e-mail dated 6.2.2015, informed petitioner that "Bills are under process for payment, hopefully it will be credit within month". No payment was made and finally by e-mail dated 20.5.2015, respondent again stated "There is some legal constraints from IT Department going on with the company, because of which your payment has been delayed. Please bear with us for some more days." But no payment was made.

2 Petitioner through their advocates' notice dated 17.9.2015 issued under Section 434 of the Companies Act, called upon respondent to pay sum of Rs.8,47,421/- along with interest @ 18% p.a. In reply respondent, by its advocates' letter dated 9.10.2015, for the first time, denied liability and stated that petitioner had agreed to accept sum of Rs.3,37,045/- in full and final settlement. Admittedly, even that amount has not been paid. Hence, petition came to be filed

3 In the affidavit in reply to the petition, filed by one Apurva Shekhar for respondent affirmed on 19.8.2017 paragraph nos.7 & 8 read as under :-

"7 That it is humbly submitted before this Hon'ble Court that the chances of revival and rehabilitation of the Respondent are bleak and unlikely ;

8 That it is therefore, just and equitable to wind up the Respondent in terms of the provisions of the Companies Act, 1956".

4 Hence, following order :-

(a) The Company Petition is admitted and made returnable on 11.12.2017 ;

(b) Petitioner is directed to advertise the petition in 2 local newspapers viz. "Free Press Journal" (in English) and "Navshakti" (in Marathi) both Mumbai edition and also in the Maharashtra Government Gazette. 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.

(c) The petitioner shall also deposit an amount of Rs.10,000/- with the Prothonotary & Senior Master of this Court with intimation to the Company Registrar towards publication charges, within a period of two weeks from the date of this order, failing which the petition shall stand dismissed for non prosecution without further reference to the Court.

5 In view of the statement as quoted above in para-3, service as required under Rule 28 of the Companies (Court) Rules, 1959 is dispensed with".

3 Ms.Mehta for the company reiterates the statement as recorded in paragraph-3 of the order dated 6.10.2017 that the company be wound up.

4 On record is the affidavit of one Dinesh Mishra affirmed on 8.12.2017 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 4.11.2017 and in the Maharashtra Government Gazette. Mr.Kamat for petitioner states Gazette Notification was not readily available but has annexed receipt dated 17.12.2017 which form part of the affidavit of Dinesh Mishra. Mr.Kamat undertakes to file the Gazette Notification within two weeks from today. Undertaking accepted.

5 Notice under Rule 28 of the Companies (courts) Rules 1959 has been waived.

6 In the circumstances, petition is allowed in terms of prayer clause-(a) with costs in the sum of Rs.50,000/-. Prayer clause-(a) reads as under :-

“(a) that the Company be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956 and the Official Liquidator attached to this Hon'ble Court, be appointed as Liquidator of the Company together with all its assets, business affairs, property, books of accounts, bank

accounts, vouchers, files, documents, machinery, furniture and fixtures, etc., with all powers under the provisions of the Companies Act, 1956".

7 The advocate for petitioner shall file a copy of this order, duly authenticated by the Associate of this court with the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

8 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to deductions if any.

9 Petition disposed accordingly.

(K.R.SHRIRAM,J)