

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

COMPANY PETITION NO.205 OF 2011

Mr. Nilesh Modi, Proprietor of
Manusha Enterprises

....Petitioner

Vs.

M/s. Brier Systems Pvt. Ltd.

....Respondent

Ms. Nirmala Gopal for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 12th APRIL, 2018**

P.C.:

1 The counsel for petitioner states that further to the order dated 1st March, 2018, the petition was re-advertised in Free Press Journal and Navshakti, both Mumbai edition, on 14th March, 2018 and in the Maharashtra Government Gazette for the period 22-28 March, 2018 at serial no.M-17377. The counsel for petitioner states that she has filed a personal affidavit of service dated 10th April, 2018 in the registry. Statement accepted.

2 The registry has placed on record a service report dated 29th May, 2017 stating that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 was returned with the endorsement “Not claimed. Returned to Sender”.

3 The counsel for petitioner tenders Company Master Data extract taken on 3rd January, 2018 in which the registered address is shown

to be the same to which the notice under Rule 28 was sent. The same extract is taken on record and marked 'X' for identification. Therefore, the notice under Rule 28 is deemed to have been issued.

4 On 1st March, 2018, the following order was passed :

1. By this petition, petitioner is seeking winding up of respondent company – M/s. Brier Systems Pvt. Ltd. (the Company) under the Companies Act, 1956.

2. On 17th April, 2017 when the petition was taken up for admission, the following order came to be passed :

1. Learned counsel appearing for the petitioner states that the respondent is served and tendered affidavit of service dated 31st March, 2017. The affidavit of service is taken on record. None appeared for the respondent when the matter was called out.

2. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.

3. It is the case of the petitioner that during the period 20th June, 2009 and 24th September, 2009, the petitioner sold, supplied and delivered stainless still sheets to the respondent upon its request and raised various invoices amounting to Rs.20,43,768/-. The respondent made part payment of Rs.7,89,642/- to the petitioner leaving the balance of Rs.12,54,126/-.

4. The petitioner issued a statutory notice on 24th October, 2010 at the registered office address of the respondent calling upon the respondent to pay a sum of Rs.14,29,033/- with further interest at the rate of 24% p.a. as on 30th September, 2010 till realization. There was no response to the said statutory notice. The petitioner thus filed this petition inter alia praying for winding up of the respondent. According to the petitioner, the respondent has to pay a sum of Rs.14,29,033/- as on 31st December, 2010 with further interest thereon till realization.

5. Learned counsel for the petitioner invited my attention to various documents annexed to the petition, including tax invoices, various receipts issued by the transporters in respect of the delivery of those goods effected upon the respondent by those transporters of various goods on behalf of the petitioner. A perusal of the record indicates that the petitioner has sold, supplied and delivered various goods to the respondent and

had raised various invoices. The respondent however, made part payment to the petitioner. There is no response to the statutory notice though was served upon the registered office of the respondent. No affidavit in reply is filed. The averments thus made in the petition are deemed to have admitted.

6. On perusal of the documents annexed and in view of the fact that there is no response to the statutory notice and no affidavit in reply has been filed, I am of the view that the respondent is unable to pay its debts and is commercially insolvent.

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3. The company has not filed any affidavit in reply. Therefore, none of the averments in the petition are controverted. There is no reply to the statutory notice either. 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 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.

4. On record is an affidavit of one Nirmala V. Gopal affirmed on 31st March, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 16th March, 2017. Ms. Gopal, counsel for petitioner states that the admission of the petition has been published in the Maharashtra Government Gazette for the period February 814, 2018 at serial no.M17321.

5. I find that the notices given in the newspapers as well as in the Maharashtra Government Gazette are not in accordance with the format prescribed under the Companies Court Rules.

6. The counsel for petitioner seeks indulgence and states that within two weeks fresh notices will be given in accordance with the format prescribed under the Companies Court Rules/Company Department.

7. Leave granted. Petition be made returnable on 12th April, 2018.

5 Having considered the petition and the documents annexed thereto and the fact that the company has not even filed an affidavit in reply opposing the petition and the fact that there is no response even to the statutory notice, it is obvious that debt is payable to petitioner, debt has not

been discharged and the company is commercially insolvent and requires to be wound up.

6 Therefore, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) that the said company, viz., M/s. Brier Systems Pvt. Ltd. be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) that Official Liquidator, High Court, Mumbai be appointed as Liquidator with authority and all powers under Section 457 of the Companies Act, 1956 to take charge and deal with the assets/properties (immovable, movable, tangible and/or intangible), stock-in-trade, business affairs, property, books of account, files and bank account, vouchers, files and documents, machinery, etc. with all necessary powers under the provision of Companies Act, 1956.

7 Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)