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

COMPANY PETITION NO. 839 OF 2014

M/s. Ram Ratna Wires Ltd. ….Petitioner

Vs.

M/s.Kanchan International Ltd. ….Respondent

Mr.R.D. Soni I/b Ram and Co. for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 19TH JULY, 2018

P.C.:

1. The petition is filed for winding up of the company Kanchan International Ltd. (the company) on the ground that the company is unable to discharge its debt.

2. On 27th February 2017, while admitting the petition, the following order was passed :-

> *“. Mr.Soni, learned counsel appearing for the petitioner states that the respondent is served. Affidavit of service is already filed 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 submitted by the learned counsel for the petitioner that as per the order placed by the respondent with the petitioner, the petitioner sold, supplied and delivered the goods to the respondent viz. Enameled Copper Winding Wires under their various bills, through their two units viz. (1) Salasar Copper for Rs.81,32,625.03 and (2) Salasar Copper Unit 2 for*

Rs.12,47,198.81 totalling to Rs.93,79,823.84 ps.

4. It is submitted that the respondent made part payment towards those bills issued by the petitioner leaving a balance of Rs.92,53,156.31. Learned counsel for the petitioner invited my attention to the various cheques annexed at Ex.B-1 to B-16 and also memos issued by the bank in support of his submission that those cheques issued by the respondent towards part payment were dishonoured upon presentation by the petitioner to its bankers.

5. The petitioner thereafter through its advocate's letter dated 2nd January, 2013 issued a statutory notice upon the respondent calling upon the respondent to pay outstanding dues with interest at the rate of 21% per annum.

6. Learned counsel invited my attention to the letter dated 25th January, 2013 which was reply of the respondent through its advocates to the statutory notice dated 2nd January,2013. He submits that except bare denial in the said letter, there is no other defence raised. She submits that the said reply contains various false and misleading statement and contrary to the documents on record showing that the goods were sold and delivered by the petitioner to the respondent and various cheques towards part payment were issued by the respondent in favour of the petitioner which were dishonoured on presentation.

7. With the assistance of the learned counsel for the petitioner, I have perused the documents annexed to the company petition and also the statutory notice and reply of the respondent thereto and reply of the petitioner thereto. No affidavit in reply is filed though served.

8. The petitioner has placed reliance on the invoices issued by the petitioner upon the respondent and the receipts under which the goods were delivered. The petitioner also placed reliance on the dishonoured cheques which are annexed to the petition. A perusal of the dishonoured cheques annexed to the petition clearly indicates that the respondent had issued those cheques in favour of the petitioner.

9. In my prima facie view the reply to the statutory notice is contrary to the documents on record and is false and incorrect. I am inclined to accept the statement made in the petition to the *effect that the petitioner has sold and supplied the goods as per the order placed by the respondent and the cheques issued by the respondent were dishonoured on presentation. In my view the defence raised by the respondent in reply to the statutory notice is totally frivolous and moon shine.*

10. In my prima facie view, the company is unable to pay its debts and is commercially insolvent. ……………”

3 Thereafter, the company took out an application for recall of the order of admission and an affidavit in reply has been filed by petitioner. During the pendency of the said application, on 27th February 2018, the following order came to be passed :-

“1 This application is for recalling the order of admission passed by this court on 27.2.2017. Without going into the merits of the application, after Shri Soni counsel for original petitioner briefly gave an overview of the matter. Shri Dubey for the company stated that as per company's record only Rs.55,00,000/ is payable, whereas according to Shri Soni, amount payable is Rs.85 lakhs plus. Shri Dubey also stated that the company in any way is not doing much business and is suffering from financial crunch. It was suggested to Shri Dubey that the company deposits Rs.60 lakhs with the Prothonotary & Senior Master, High Court, Bombay, in which case, court may consider disposing of the petition itself and refer both the parties to arbitration. At the request of Shri Dubey, stand over to 5.3.2018 for filing consent minutes of the order.”

4 On 3rd May 2018, none appeared for the company and the following order came to be passed :-

“1 Notice under Rule 28 of the Companies (Court) Rules, 1959 has come back undelivered with the endorsement “left” when it was sent to the registered office as mentioned in the cause title. The Company Master Data extract taken out today shows the registered address to be different from what is mentioned in the cause title and in the notice under Rule 28.

2 Mr. Soni, counsel for petitioner seeks leave to amend the cause title.

3 Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.

4 Notice under Rule 28 to be served at the registered address. Liberty to serve the same by hand delivery also granted. Copy of this order be also served by email."

5 Shri Soni has tendered an affidavit of one Shekhar Manohar Maheshwari, affirmed on 2nd July 2018 in which it is stated that the affiant could not trace or find any Shop No.11 at the address mentioned as the registered address in the company Master Data maintained by Ministry of Corporate Affairs. It is also stated that on the other address mentioned in the company master data, when an attempt to serve notice under Rule 28 was made, it was refused. The affidavit is taken on record.

6 In view of the averments contained in the affidavit, I would proceed on the basis that the notice under Rule 28 has been served.

7 On record is also an affidavit of one Partik Sushilkumar Agarwal affirmed on 26th April 2018 confirming advertising the petition in Free Press Journal and Navshakti on 23rd March 2018 and an application dated 28th April 2018 has been made to the Maharashtra Government Gazette. Mr.Soni tenders a copy of the gazette notification for the period April 26-May 2, 2018 in which at Sr.No.M-1830 where the petition has been advertised. The

same is taken on record and marked 'X' for identification.

8 It has to be noted that, as recorded in the order dated 27th February 2018, admittedly, the company is suffering from financial crunch and even the admitted amount of Rs.55 lakhs has not been paid. In view of what is recorded in the order of 27th February 2018 and having considered the documents annexed to the petition and having heard Shri Soni, the company is indebted to petitioner, unable to discharge its debt, commercially insolvent and requires to be wound up.

9 In the circumstances, company petition is allowed in terms of prayer clause (a) which reads as under :-

> *"(a) That the Company M/s. Kanchan International Ltd. be wound up by and under the orders and directions of this Hon'ble Court and the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the Company, its affairs, assets, books of account, papers, vouchers, files etc. with all powers under the provisions of the Companies Act, 1956."*

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

11. Upon receipt of the authenticated copy from petitioner's advocate, the 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 statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the 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.

12. The company petition accordingly disposed.

(K.R. SHRIRAM, J.)