

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

COMPANY PETITION NO. 999 OF 2000

Purshottam Hindi Bhavan Nyas SamitiPetitioner

Vs.

M/s.Synthetics and Chemicals Ltd.Respondent

WITH

COMPANY PETITION NO. 1042 OF 1999

M/s. Kanpur Plastipack Ltd.Petitioner

Vs.

M/s.Synthetics and Chemicals Ltd.Respondent

WITH

COMPANY PETITION NO. 1095 OF 2000

Sovandevi s. SanghviPetitioner

Vs.

M/s.Synthetics and Chemicals Ltd.Respondent

WITH

COMPANY PETITION NO. 74 OF 2001

Pratap Singh Punjabi RathodPetitioner

Vs.

M/s.Synthetics and Chemicals Ltd.Respondent

Ms.Krithika Anand I/b M/s. Dhruve Liladhar and Co. for petitioner in CP/999/2000.

None for petitioner in CP/1042/1999, CP/1095/2000 & CP/74/2000.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 28TH JUNE, 2018

P.C.:

COMPANY PETITION NO. 999 OF 2000

1 The above petition is for winding up of respondent company-

M/s.Synthetics and Chemicals Ltd. (the company) on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 26th March 2018, while admitting the petition, this Court was pleased to pass the following order :-

“1. By this petition, petitioner is seeking winding up of respondent company – M/s. Synthetics and Chemicals Limited (the company) under the provisions of Companies Act, 1956 on the grounds that the company is unable to discharge its debts and is commercially insolvent.

2 The company had taken on rent the 3rd floor admeasuring about 4084 sq. ft. of petitioner's premises vide Lease Agreement dated 21st November, 1994. The lease was initially for a period of three years and was thereafter continued. Under clause III (3) of the Lease Agreement, the company was to pay a monthly rent of Rs.25/ per sq. ft. excluding service charges payable on or before the 10th day of each English calendar month and also to pay charges towards consumption of electricity or water. The monthly rent worked out to Rs.1,02,100/ per month. The rent as per the agreement was enhanced by 20% from April, 1998 onwards and therefore, the lease rent became Rs.30/ per sq. ft. and the monthly rent worked out to Rs.1,22,520/. The company paid the increased lease rent for the months of April and May, 1998 but from 1st June, 1998 the company failed and neglected to pay any amount. On 1st March, 2000, the company vacated the premises without even informing petitioner and left behind some furniture, fixtures, air conditioners etc. On 1st March, 2000, the company also wrote a letter to petitioner informing them that there was an understanding between the company and one M/s. DSSI for payment of Rs.15 lakhs for the wood works done on the leased premises and the furniture, fixtures, air conditioners etc. provided petitioner grants to M/s. DSSI permission to occupy the floor which had been vacated. Petitioner did not agree and got the furniture and fixtures valued by Government approved Valuer in the presence of the representative of the company. The Valuer has given a report dated 3rd August, 2000 assessing the value at Rs.2,49,045/. The Valuer has also given estimate for restoring the premises to its

original condition after dismantling all items at Rs.41,245/ which would mean that the net value of the assets left over by the company is Rs.2,07,800/.

3 According to petitioner, the company did not pay rent for 21 months including electricity, generator and water bill totaling to Rs.29,40,895/. Petitioner, therefore, caused notice dated 24th March, 2000 to be addressed to the company under Section 434 of the Companies Act, 1956. The company, however, did not respond. The petition was served upon the company and on 16th March, 2001 the company informed the Court that it has filed a reference before BIFR. The petition, therefore, was stayed. The company also informed the Court that an affidavit shall be filed within a period of one week placing on record the exact status of the proceedings before BIFR and copies of the relevant papers will be furnished to petitioner's counsel. The counsel for the company also gave an undertaking to the Court that the company will inform petitioner as well as the Company Registrar of this Court as soon as the proceedings under Sick Industrial Companies Act are concluded.

4 Ms. Anand, counsel for petitioner states that on or about 6th September, 2016 petitioner's advocates received an affidavit of one Sunil Dutt Sharma, Director of the company, affirmed on 27th June, 2016 informing them that the reference to BIFR was dismissed and the company has preferred an appeal before AAIFR being appeal no.132 of 2014. Ms. Anand states that thereafter, they have not received any information from the company or its advocates.

5 When the petition was listed on 14th March, 2018, the following order was passed :

1. Section 4(b) of amended Sick Industrial Companies (Special Provisions) Repeal Act, 2003 provided that on such date as may be notified by the Central Government, any appeal preferred to AAIFR or any reference made or inquiry pending to or before BIFR shall stand abated provided that a company in respect of which such appeal or reference or inquiry that stands abated may make reference to the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) within 180 days from the commencement of the IBC in accordance with the provisions of the IBC. The notified date is 1st December, 2016 and 180 days expired on or about 31st May, 2017. There is nothing on record to

show that any such reference has been made to the NCLT.

2. Ms.Anand for petitioner further states that the company has not been filing an affidavit as directed by this court by an order dated 28.6.2016. Therefore, petition be listed for admission on 26.3.2018. Even today nobody is present for the company.

6 There is no affidavit in reply opposing the petition. 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 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.”

3 The company has not filed any affidavit in reply and therefore, none of the averments in the petition are controverted. It should be noted that even to the statutory notice, no reply was given. 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, 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 Ms. Anand states that when petitioner served the copy of the order dated 26th March 2018 by email, hand delivery, courier and by registered post A.D., the email notice went through and the courier and registered post A.D. came back undelivered with the endorsement '*Closed*' and the hand delivery packet, because the office was closed, was delivered to the neighbouring office. Ms. Anand undertakes to file affidavit to this effect within one week from today. Undertaking accepted.

5 On record is an affidavit of one Ravindra B. Rikame affirmed on 23rd April 2018 confirming advertising the petition in Free Press Journal and Navshakti on 13th April 2013 and also in Maharashtra Government Gazette for the period 19-25, April, 2018 at Sr. No.1820. Notice under Rule 28 of the Companies (Court) Rules, 1959 was directed to be served again because on 21st June 2018, it came to light that the registered address of the company has changed. Ms. Anand states that notice under Rule 28 was sent by hand delivery on 26th June 2018 at about 3:00 P.M. and the office was found to be closed. On record is an affidavit affirmed on 28th June 2018 confirming attempt to serve notice under Rule 28.

In these circumstances, I will proceed on the basis that the notice under Rule 28 has been served.

6 As the company has chosen not to enter appearance or filed any affidavit in reply opposing the petition as noted above, none of the averments in the petition are controverted, having perused the petition and documents annexed thereto, I am satisfied that the company owes a debt to petitioner and the company is unable to discharge its debts, the petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) That the Company, viz., Synthetics and Chemicals Ltd. be ordered to be wound up under the directions of this Court under the provisions of the Companies Act, 1956.

(b) that the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the said Company with all powers under the provisions of the Companies Act, 1956.”

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

8 The above company petition accordingly disposed.

**WITH
COMPANY PETITION NO. 1042 OF 1999
WITH
COMPANY PETITION NO. 1095 OF 2000
WITH
COMPANY PETITION NO. 74 OF 2001**

9 Respondent company – M/s. Synthetics Chemicals Limited has been ordered to be wound up by the above order passed today in Company

Petition No. 999 of 2000.

10 Therefore, these three petitions also stand disposed with liberty to petitioners to lodge their affidavits of proof of debt with the Official Liquidator, who shall consider the same in accordance with law.

11 If the order dated 28th June 2018 in Company Petition No.999 of 2000 winding up respondent company – M/s. Synthetics Chemicals Limited is recalled or set aside in appeal, liberty is given to these petitioners to revive their respective petitions and move once again for necessary orders including winding up of respondent company.

(K.R. SHRIRAM, J.)