

issued a statutory notice dated 6th June 1999 through its advocates as required under the Companies Act, 1956, to which Mr. Gadre states there was no response.

3 Petition was adjourned sine die because the company had filed a reference before BIFR. BIFR had sanctioned the scheme which was challenged by one of the creditors, viz., Tata Motors Limited. By a judgment dated 16th May 2008 passed by the Hon'ble Supreme Court of India in Civil Appeal No.3640 of 2008, the Supreme Court set aside the order of BIFR passed on 1st May 2007 and the order dated 13th February 2006 sanctioning the scheme. The scheme itself came to be set aside and the matter was remanded back to BIFR and BIFR was directed to reconsider the matter afresh. By an order dated 7th September 2016, parties were directed to make enquiries as to the current state of affairs of the reference and file a status report.

4 The matter was once again listed on 16th April 2018 when none appeared for the company. There is nothing on record to indicate that the company had used the window period of 1st December 2016 to 31st May 2017 granted under the Insolvency and Bankruptcy Code to carry forward the reference in the NCLT.

5 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. Therefore, I will have to proceed on the basis that the reference has abated even if it was still pending.

6 On 8th June 2018 when the matter was listed none appeared for the company. Even today there is nobody present for the company. There is no affidavit in reply filed opposing the petition. Therefore, the averments in the petition are not controverted. There is no reply to the statutory notice also. 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.

7 Having considered the petition, the documents annexed thereto, it is rather clear that the company owed to petitioner as on 31st March 1999 a sum of Rs.2,01,939/-. I am therefore, satisfied that the company is unable to pay its debts and the company deserves to be wound up. In the circumstances, in my view, the petition requires to be admitted and the following order is passed :-

ORDER

(i) The company petition is admitted and made returnable on 2nd August 2018;

(ii) Petitioner is directed to advertise the petition within two weeks in two local newspapers, viz. 'Free Press Journal' (in English) and 'Navshakti' (in Marathi) and also in 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;

(iii) Petitioner shall also deposit an amount of Rs.15,000/-with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to petitioner;

(iv) A copy of this order shall forthwith be served on the company by hand delivery, email, courier and by Registered Post AD by the Advocate for petitioner.

(K.R. SHRIRAM, J.)