

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

COMPANY PETITION NO.603 OF 2015

M/s. Witmans Industries Pvt. Ltd.Petitioner

Vs.

Radhey Forgings Pvt. Ltd.Respondent

Mr. Niraj Shah i/b. Mr. Siddharth Murarka for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 4th JANUARY, 2018**

P.C.:

1 This petition is filed for winding up of respondent company - Radhey Forgings Pvt. Ltd. on the ground that the company is unable to discharge its debts and is commercially insolvent. The amount claimed is only about Rs.1,48,150/-. The claim is for goods sold and delivered. When the petition was taken up for admission on 6th February, 2017, this Court was pleased to pass the following order :

1. Learned counsel appearing for the petitioner states that the respondent is served with the copy of the notice and the petition by e-mail. The statement is accepted. 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 petitioner that during the period between 2012 and 2013, the petitioner sold and delivered the goods to the respondent and raised various invoices in the sum of Rs.1,13,412/-.The respondent committed default in making payment under those invoices to the petitioner. Learned counsel appearing for the petitioner tenders the copies of the delivery challans to indicate that the goods supplied by the petitioner under various invoices were supplied upon the respondent. The delivery challans are taken on record.

4. The petitioner issued a statutory notice on 2nd June, 2014 calling upon the respondent to pay a sum of Rs.1,48,150/- with further

interest thereon from the due date till payment.

5. There is no response to the said statutory notice nor any payment was made by the respondent.

6. Learned counsel for the petitioner tenders a copy of a letter dated 16th December, 2013 addressed to the petitioner informing the petitioner that the respondent would clear the entire outstanding of the petitioner as per the books of account upto March, 2014. It is submitted by the learned counsel that inspite of the said letter, the respondent did not pay the amount.

7. Learned counsel for the petitioner invited my attention to the Company / LLP Master Data of the respondent stating that the last AGM of the respondent was on 30th September, 2011. The last balance sheet filed with the Registrar of Companies by the respondent was on 31st March, 2011.

8. None appeared for the respondent though the respondent was served by e-mail. No affidavit in reply has been filed. There is no response to the statutory notice.

9. On perusal of the documents annexed to the petition, it is clear that the petitioner had supplied various goods to the respondent under various invoices annexed to the petition. The respondent has failed to pay the amounts under those invoices to the petitioner. In these circumstances, I am of the view that the respondent is unable to pay its debts and is commercially insolvent.

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2 Thereafter, respondent has neither entered appearance nor filed any affidavit in reply. The averments in the petition are, therefore, uncontroverted. Mr. Shah, counsel for petitioner states that petitioner has advertised the petition in Free Press Journal and Navshakti on 23rd February, 2017 and gazette notice also has been issued. Mr. Shah further states that affidavit of service has already been filed.

3 I am unable to trace the same in the records and proceedings. There is no noting either in the remarks in the cause list. Mr. Shah undertakes to file affidavit of service within one week from today.

Undertaking accepted.

4 The Company Department has filed a report dated 9th/14th March, 2017 in which it is stated that the notice under Rule 28 of the Companies (Court) Rules, 1959 served upon respondent company has come back with the endorsement “left”. Mr. Shah tenders a printout of the Company Master Data maintained by the Ministry of Corporate Affairs. Mr. Shah states that this printout was taken out today. The same is taken on record and marked 'X' for identification. The registered address given in the Company Master Data is the same address to which the notice under Rule 28 has been sent by the registry. Therefore, in my view, notice under Rule 28 has been effectively served. Mr. Shah also tenders a copy of an email dated 19th December, 2017, which is taken on record and marked 'X-1' for identification, addressed to respondent company at the email ID mentioned in the Company Master Data informing the company about the petition being taken up for final hearing. Despite that nobody is present for respondent.

5 This Court while admitting the petition, in its order dated 6th February, 2017 has observed “respondent is unable to pay its debts and is commercially insolvent”. I have heard Mr. Shah, counsel for petitioner and also considered the pleadings and the documents annexed to the petition. I am also satisfied that there is a debt and the company is unable

to discharge its debts, is commercially insolvent and requires to be wound up.

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

(a) that the Respondent Company, namely Radhey Forgings Private Limited, having its registered office at 14, Silver Cascade, behind Hotel President INN, Mahatma Nagar, Nashik, Maharashtra be wound up by and under the orders, direction and supervision of this Hon'ble Court;

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of Companies Act, 1956 or later enactment to take charge of the Respondent Company and to conduct its affairs during the course of its winding up and also investigate into the affairs of the company with regard to transfer of funds/benefits to holding company and the managing director.

7 Official Liquidator shall forthwith act on an authenticated copy of this order without waiting for any notification. Official Liquidator shall not take charge until petitioner files an affidavit of service as per undertaking recorded above.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)