

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

COMPANY PETITION NO. 974 OF 2014

George T.J.	.. Petitioner
Vs.	
SRK Shelters Private Limited	.. Respondent

Mr. Mohammed Kaleem S. Dehlvi for petitioner.

Mr. Prashant Darandale for respondent.

Mr. Aseef Ibrahim, Chief Executive Officer of respondent company present.

**CORAM : K.R.SHRIRAM, J.
DATE : 16TH MARCH 2018**

P.C.

1. This petition is filed to wind up respondent company- SRK Shelters Private Limited (the company) on the ground that the company is unable to pay its debt.

2. When the petition was taken up for admission on 18th April 2016, after the matter was argued for some time, the counsel appearing for the respective parties requested the Court to record the company's consent to pay in full and final settlement, a sum of Rs. 90 lakhs over 19 installments.

The order dated 18th April 2016 reads as under :-

"1. This Company Petition has been filed by the Petitioner- George T. J. seeking to wind up the Respondent Company-SRK Shelters Private Limited on the ground that the Respondent Company is unable to pay its debts. It is the case of the Petitioner that the Respondent Company is indebted to the Petitioner in the sum of

Rs.83,79,645/-. After the matter was argued for some time, the learned counsel appearing for the respective parties, on instructions, agreed to the following order being passed by consent:-

(I) The Respondent Company, shall in full and final settlement of the claim of the Petitioner pay a sum of Rs.90 lakhs in the following manner:-

Sr.No.	Date	Amount Rs.
1	25 th May 2016	5,00,000/-
2	25 th June 2016	5,00,000/-
3	25 th July 2016	5,00,000/-
4	25 th August 2016	5,00,000/-
5	25 th September 2016	5,00,000/-
6	25 th October 2016	5,00,000/-
7	25 th November 2016	5,00,000/-
8	25 th December 2016	5,00,000/-
9	10 th January 2017	5,00,000/-
10	25 th January 2017	5,00,000/-
11	10 th February 2017	5,00,000/-
12	25 th February 2017	5,00,000/-
13	10 th March 2017	5,00,000/-
14	25 th March 2017	5,00,000/-
15	10 th April 2017	5,00,000/-
16	25 th April 2017	4,00,000/-
17	10 th May 2017	4,00,000/-
18	25 th May 2017	3,50,000/-
19	10 th June 2017	3,50,000/-
Total Rs.		90,00,000/-

(II) If the payment is made in the aforesaid time schedule, without any default, the Company Petition shall stand dismissed. If the Respondent Company commits a default in paying even a single installment, then, the Company Petition shall stand admitted and made returnable after six weeks from the date of default. In such an event, the Petitioner is at liberty to revive this Petition and apply for further directions with reference to advertisement of the Petition etc.

(III) Whilst the installments are being paid, the complaints filed under Section 138 of the Negotiable Instruments Act, 1881, against the Respondent Company and its Directors shall be kept in abeyance.

(IV) If there is a default of even a single installment, the Petitioner will be at liberty to prosecute the said complaints.

(V) If all installments are paid, as set out earlier, then, the Petitioner undertakes to withdraw the complaints filed by him against the Respondent Company and its Directors.

(VI) The Company Petition is disposed of in the aforesaid terms.

(VII) The Advocate for the Respondent Company undertakes to file his Vakalatnama by 20th April, 2016. The said undertaking is accepted.”

Mr. Dehlvi for petitioner states that the first three installments were paid and thereafter the company stopped paying.

3. Thereafter, the company has filed an affidavit in reply through one K.R. Malik affirmed on 30th January 2018 in which the company once again admits that it owes money to petitioner. Admittedly, the company has not applied to the Court for extension of time to make the payments as noted above. In the affidavit in reply, it is the case of the company that they had an agreement with one Alka Venture Private Limited and one Sairung Developers and Promoters Private Limited for development of a property. Disputes arose and all the disputes were referred to arbitration. The Arbitrator has passed an award on 2nd December 2017 directing Alka Venture Private Limited to pay the company an amount of Rs.5,13,75,000/- with further interest at the rate of 12% from 1st June 2017 till the date of the award and future interest. The Arbitrator has also given further reliefs to the company. In the affidavit, it is stated that the company expects Alka

Venture Private Limited will pay the amount under the award within four months and as and when the amounts are received, the company will pay Rs.68,79,645/- to petitioner in one installment. When the petition was taken up for hearing on 1st March 2018, it was stood over to today because the four months period from the date of the award was expiring on 2nd March 2018. Today, Mr. Prashant Darandale is appearing for the company and states that one Mr.Aseef Ibrahim, Chief Executive Officer of the company is present in Court and states that the company has now decided to file execution proceedings against Alka Venture Private Limited and as and when execution proceedings are heard, disposed and the company recovers money under the execution proceedings, the company will pay the amount payable to petitioner. This offer of the company itself shows that the company personally is unable to discharge its debts and is commercially insolvent. It was even suggested to the counsel for the company whether the company would make payment immediately at least 50%. The counsel, on instructions, answered in the negative.

4. Petitioner has filed an affidavit of one C.H. Saghvekar affirmed on 9th December 2016 confirming advertising the petition in Free Press Journal and Navakaal on 29th November 2016 and in Maharashtra Government Gazette for the issue 8-14 February 2018 at Sr. No. 17322. The registry has

also filed a service report dated 1st February 2018 confirming service of notice under Rule 28 of the Companies (Court) Rules, 1959.

5. In the circumstances, as it is clear that the company is unable to discharge its debt and is commercially insolvent and it is not the company's case either that it is commercially very solvent, the petition is allowed in terms of prayer clauses (i) and (ii), which read as under :-

“(i) that the company, SRK Shelters Private Limited, be wound up under Section 433(e) & (f) of the Companies Act, 1956 under the supervision of this Hon'ble Court;

(ii) that the Official Liquidator, High Court, Bombay or some other fit or proper person be appointed as the Liquidator of the assets, properties and income also the business of the Company.

6. The official liquidator to take further steps upon receiving a copy of this order authenticated by the Associate of this Court without waiting for any formal notification.

7. Company Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)