

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

COMPANY PETITION NO.614 OF 2015

M/s. Mitsu Engineering

....Petitioner

Vs.

Jailaxmi Sugar Products (Nitali) Pvt. Ltd.Respondent

Mr. Kezer Abbas Kharawala i/b. Lex Juris for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 4th JANUARY, 2018

P.C.:

1 This petition is for winding up of respondent company - Jailaxmi Sugar Products (Nitali) Pvt. Ltd. on the ground that the company is indebted to petitioner in the sum of Rs.3,44,69,632.97/- inclusive all interest, company is unable to discharge its debts and is commercially insolvent. When the petition was taken up for admission on 2nd August, 2016, this Court was pleased to pass the following order :

This Company Petition has been filed seeking to wind up the Respondent Company – Jaylaxmi Sugar Products (Nitali) Pvt. Ltd. on the ground that it 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.3.44 Crores which is inclusive of interest.

2 It is the case of the Petitioner that during the course of business of the Respondent Company, the Respondent Company had approached the Petitioner for supply of various materials. The Respondent Company had supplied the materials as per their various purchase orders, the details of which have been set out in paragraph 5 of the Petition.

3 As per the aforesaid purchase orders, the Petitioner supplied the material and raised their tax invoices from time to time aggregating to a total sum of Rs.2,21,81,246/-, the details of which have been set out from pages 4 to 8 of the Petition.

4 In discharge of their liability, the Respondent Company also issued four cheques aggregating to a sum of Rs.2.20 Crores, the details of which have been set out in paragraph 9 of the Petition. When these cheques were presented for payment, the same were dishonoured with the remark "insufficient funds". In these circumstances, the Petitioner was constrained to serve a statutory notice dated 16 February, 2015, on the registered office of the Respondent Company calling upon the Respondent Company to pay its outstanding dues, failing which winding up proceedings would be initiated. When this statutory notice was sought to be served on the Respondent Company at its registered office, the packet containing the statutory notice was returned back with the remarks "unclaimed". It is in these circumstances that the present Petition is filed.

5 After the Petition was accepted, the same was sought to be served on the registered office of the Respondent Company. However, the packet containing the Company Petition was also returned back with the remark "unclaimed".

6 As far as the service of the statutory notice is concerned, it is not in dispute that even today the registered office of the Company, in the records of the ROC is the same as the address on which the statutory notice was sought to be served. This being the position, and applying the ratio of the decision of this Court in the case of Deepak Machineries Pvt. Ltd. Vs Ispat Industries Ltd.¹ I am satisfied that the service of the statutory notice is complete and good service.

7 On the same parity of reasoning and applying the ratio of the decision of this Court in the case of M/s Euroamer Garuda Resorts (India) Pvt. Ltd. Vs. Endeavour Media Management Pvt. Ltd.², I am satisfied that the service of the Company Petition is complete and good service. Despite service, none have appeared today and no affidavit-in-reply has been filed.

8 After going through the papers and proceedings in the Company Petition, I am satisfied that huge amounts are due and payable by the Respondent Company to the Petitioner and which are undisputed. In fact, in discharge of their liability, the Respondent Company had also issued cheques aggregating to a sum of Rs.2.20 Crores which have been dishonoured. In these circumstances, I am clearly satisfied that the Respondent Company is unable to pay its debts which would entitle the Petitioner to an order of admission of the Company Petition.

xxxxxxxxxxxx

2 Petitioner has filed an affidavit of service of one Mangesh Vinayak Tirodkar affirmed on 1st September, 2016 confirming advertising

the petition in The Indian Express and Loksatta, Pune edition on 13th August, 2016. The affidavit of service also mentions about publication of notice in Maharashtra Government Gazette on 13th August, 2016. Service report filed by the Company Department states that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 has been returned with the remark “Not claimed”. The address to which the notice has been sent is the same address as it appears from the extract of the Company Master Data maintained by the Ministry of Corporate Affairs. Mr. Kharawala states that the printout was taken out today. The same is taken on record and marked 'X' for identification. Therefore, I would conclude that the notice under Rule 28 has been validly effected. No affidavit in reply has been filed by respondent company and therefore, the averments in the petition have not been controverted.

3 This Court while admitting the petition has clearly satisfied that respondent company is unable to pay its debts and the claim of petitioner is undisputed. I have heard Mr. Kharawala, 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.

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

(a) The company, Jailaxmi Sugar Products (Nitali) Pvt. Ltd. having its registered office at 702, G6, Phase II, Ganga Dham, Market Yard, Pune – 411 037 be wound up by this Hon'ble Court in accordance with provisions of the Companies Act, 1956;

(b) The Official Liquidator attached to this Hon'ble Court be directed to forthwith take possession of the assets of the company including the books, records and documents of the company.

5 Official Liquidator shall forthwith act on an authenticated copy of this order.

6 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)