

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

COMPANY PETITION NO.418 OF 2016

Bhavesh K.Sheth)
Karta and Manager of Bhavesh K.Sheth HUF)...Petitioner
V/s.

Rusam Developers Pvt. Ltd.)....Respondent

Mr.Bhupendra Parekh for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 15.6.2018

P.C.:-

1 This petition is filed for winding up the respondent company- Rusam Developers Pvt. Ltd. (the said company) on the grounds that the company is unable to discharge its debts.

2 At the time of admission on 7.7.2017 the following order came to be passed :-

“1. By the present petition under Section 433(e) and 434 of the Company Act, 1956 the petitioner has prayed for winding up of the respondent company namely Rusam Developers Pvt. Ltd. The respondent company is in the business of development of properties. The petitioner booked flat in the project of the respondent and paid a sum of Rs.30.00 lacs through RTGS. The respondent issued a Letter of Allotment cum receipt dated 30.5.2013 confirmed the same on 1.11.2014. The respondent could not complete the project and failed to handover the possession of the premises to the applicant within stipulated period. After lot of persuasion by the petitioner the respondent returned the said amount by way of cheque which on presentation was dishonoured with remark “Account closed”. The petitioner therefore issued

a statutory notice dated 13.2.2016. The respondent received the said notice however failed to comply with or reply it.

2. The petitioner thereafter filed the present petition on 15.3.2016 for winding up of the respondent company. The petition is accepted on 23.8.2016 and in pursuance of the directions issued by the Company Registrar, the petitioner tried to serve the respondent. The record indicates that the envelope containing notice and copy of the petition has been returned back with the remark of postal department "left".

3. I have perused the petition. The record indicates that the notice of the present petition was served upon the respondent at its registered address submitted by it with the Registrar of Companies and as per the master data till date the same is not changed. It is informed by the learned counsel for the petitioner that the respondent is also facing criminal prosecution and the police have lodged FIR against it and the process of investigation is going on. In view thereof, prima facie it appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent."

3 At the time of admission also, nobody was present. Even today nobody is present. No affidavit in reply has been filed. Therefore, none of the averments in the petition are controverted. There is no reply to statutory notice. 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 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 On record is the affidavit of one Bhavesh K.Sheth affirmed on 21.9.2017 confirming publication of the notice in 'Free Press Journal' and 'Navshakti' on 24.7.2017 and in the Maharashtra Government Gazette for the period 7.9.2017 to 13.9.2017 at serial no.M-17183. The company department has placed service report dated 15.8.2017 stating that notice under Rule 28 has come back with the endorsement "INTIMATION POSTED/UNCLAIMED". Mr.Parekh tenders extract of company master data taken today in which registered address shown is the same to which notice under Rule 28 has been sent and is the same as reflected in the cause title of the petition. Therefore, I proceed on the basis that notice has been served.

5 I have also perused the petition and the documents annexed thereto and heard Mr.Parekh. I am satisfied that there is a debt, company is unable to discharge its debts, commercially insolvent and therefore, requires to be wound up.

6 Therefore, the petition is allowed in terms of prayer

clauses-(a) which reads as under :-

“(a) M/s.Rusam Developers Pvt. Ltd. be wound up under the superintendence of the Hon'ble Court and the Official Liquidator attached to the Hon'ble High Court of Judicature at Bombay be appointed Liquidator thereof with usual powers under the provisions of the Companies Act with direction to take forthwith in its custody the assets and effects of the said company ;

7 The advocate for petitioner shall, within 2 weeks, furnish a copy of this order, duly authenticated by the Associate of this court to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

8 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to any deductions if any.

9 Petition disposed accordingly.

(K.R.SHRIRAM,J)

Jahagirdar
Kiran
Ganesh

Digitally signed
by Jahagirdar
Kiran Ganesh
Date:
2018.08.07
15:22:16
+0530