

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

COMPANY PETITION NO.563 OF 2015

Sanghvi Movers Limited

....Petitioner

Vs.

Delta Infra Limited

....Respondent

Mr. Rohan Sawant a/w. Ms. Aditi Shukla i/b. M/s. Crawford Bayley and Co.
for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 4th JANUARY, 2018

PC.:

1 On 20th February, 2017 this Court was pleased to pass the
following order :

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5. By this petition, the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to pay its debts.

6. The petitioner was issued three work orders for hiring crane by the respondent on various terms and conditions mentioned in those three work orders for payment of hire charges. The petitioner raised several invoices upon the respondent for payment towards hire charges under those three work orders. The invoices are annexed to the petition.

7. The petitioner sent invoices on 7th December 2012, 11th December 2012 and 31st December 2012 to the respondent for payment. On 31st December 2012 the respondent sent e-mail to the petitioner admitting the liability and agreed to pay outstanding amount to the petitioner in installments. The respondent thereafter made part payment of Rs.7,00,000/- on 14th January 2013 and 29th January 2013. The petitioner thereafter sent further e-mail to the respondent for payment. In response to the said e-mail, the respondent vide e-mail dated 19th March 2013 informed that because of the delay in incoming payment, the respondent was not in a position to pay the said amount to the petitioner and would clear the amount within a week. The respondent sent further e-mail on 25th March, 2013 to the petitioner informing the petitioner that the respondent was trying its best to clear the outstanding dues of the petitioner on 31st March, 2013.

8. Since the respondent did not make any payment, the petitioner issued a statutory notice on 12th July, 2013 at the registered office address of the respondent calling upon to pay Rs.11,90,475/- with further interest thereon. The said statutory notice was delivered to the respondent at its registered office address. The acknowledgement of the said notice is annexed at Ex.S to the petition. There was neither any response to the said notice nor any payment. The petitioner thus filed this petition.

9. Mr. Savant, learned counsel appearing for the petitioner invited my attention to the annexures to the petition which indicates that the petitioner had given its cranes to the respondent on payment of hire charges agreed to be paid by the respondent. The respondent however did not pay the entire payment and only made part payment. A perusal of the correspondence exchanged between the parties indicates that the respondent has admitted its liability and had assured the petitioner to pay the said amount within the time but did not pay the balance amount. There is no affidavit in reply filed. There is no response to the statutory notice. I am therefore of the view that the respondent is unable to pay its debts and is commercially insolvent. I, therefore, pass the following order :-

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2 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.

3 Moreover, even at the time of admission of petition nobody appeared for company. Paragraphs 1 to 4 of the order dated 20th February, 2017 read as under :

Mr. Savant, learned counsel appearing for the petitioner invited my attention to the four affidavits of service already filed by the petitioner in this petition which shows that the respondent is served. He submits that pursuant to the order passed by this court, the respondent is also served at the e-mail address which was mentioned in one of the e-mail sent by the petitioner i.e. e-mail dated 31st December, 2012. The respondent is also served by the publication of the notice in the newspaper as directed by this court.

2. A perusal of the affidavits of service filed by the petitioner indicates that the respondent has been served prior to 15th December, 2016. This petition is thus maintainable in this court.

3. Learned counsel appearing for the petitioner also invited my attention to the judgment of this court in case of M/s.Medi Carriers Pvt. Ltd. vs. M/s.Frontiango Life-Sciences Pvt. Ltd., 2016 SCC Online Bom 6814 in support of his submission that one of the notice which is returned by the postal authorities with the remark 'left' also amounts to good service. He submits that the said notice was attempted to be served upon the respondent at the registered address of the respondent which continues to be the registered address of the respondent even today. He submits that the respondent has not informed to the petitioner about any change of address. Statement is accepted.

4. In the said judgment of this court in case of M/s.Medi Carriers Pvt. Ltd. (supra) it is held that the service of the notice at the registered office address of the respondent company which is returned with remark 'left' also amounts to good service on the ground that the registered address of the company continued to be the same. I am therefore satisfied that the respondent was served with the copy of the notice.

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4 Petitioner has filed affidavit of one Ramkrishna D. Sinkar affirmed on 6th April, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) and also in the Maharashtra Government Gazette. The report dated 14th March, 2017 filed

by the Company Department states that the notice that was sent under Rule 28 of the Companies (Court) Rules, 1959 was returned undelivered with the endorsement “left”. Mr. Sawant, counsel for petitioner tenders a printout of the Company Master Data from MCA portal taken on 4th January, 2018, which is taken on record and marked 'X' for identification, in which the registered address is shown to be the same to which the Company Department had served the notice under Rule 28. Therefore, I would accept the same as good service.

5 Respondent company has not filed any affidavit in reply opposing the petition. Therefore, the averments in the petition are uncontroverted. Nobody is present on call either to oppose the petition. The service as required in law has been completed. The Court while admitting the petition has observed “A perusal of the correspondence exchanged between the parties indicates that respondent has admitted its liability and had assured petitioner to pay the said amount within the time but did not pay the balance amount.....”.

6 I have heard Mr. Sawant, counsel for petitioner and also considered the pleadings and the documents annexed to the petition. I am also satisfied that the liability has been admitted by respondent company and there is a debt and the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

(a) that the Respondent be wound up by and under appropriate orders, directions and supervision of this Hon'ble Court in accordance with the provisions of the Companies Act, 1956;

(b) that this Hon'ble Court be pleased to appoint Official Liquidator, High Court, Bombay or any other fit and proper person as the Liquidator of all the assets of respondent with all powers including the power to conduct the affairs of respondent in the course of winding up and to distribute its assets in accordance with law.

8 Official Liquidator shall forthwith act on an authenticated copy of this order without waiting for any notification.

9 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)