

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

COMPANY PETITION NO. 358 OF 2016

Zhejiang Medicines & Health Products Import & Export Co. Ltd.	...Petitioner
<i>Versus</i>	
Desmo Exports Limited	...Respondent

Ms.Krithika Anand i/b Dhruve Liladhar and Co. for petitioner.

Mr.Viraj Kandpile i/b Vyas and Bhalwal for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 26TH APRIL 2018**

P.C.

1. The petition is filed for winding up of the company Desmo Exports Limited (the company) on the ground that the company is indebted to petitioner, is unable to discharge its debt and is commercially insolvent.
2. This Court was pleased to admit the petition on 6th October 2017 and the following order came to be passed :-

“1. The petitioner is company based in China and engaged in the supply of the chemicals for pharmaceuticals uses. The respondents approached the petitioner and offered to purchase goods on credit. The petitioner agreed and sold, supplied and delivered goods as per five invoices, copies whereof, are annexed to the petition at Exh. B1 to B5. The total amount raised for these five invoices is USD 221632.40. The respondent did not make the payment despite reminders. The copies of emails which were exchanged between the petitioner and the respondent, also annexed to the petition. By email dated 21st November, 2014, the respondent informed the petitioner about irregularities in payment on due date and the same reads as under:

“Dear Sir,

*With reference to the following mail, we would like to inform you that due to drastic fall in the prices of some of the commodity which we have imported and the lack lustre demand for the same in the market. Due to this sudden behavior of the market we could not honour the payments on due date. We require some more time to regularise the irregularities that has caused due to these market conditions. We request you to please understand our genuine difficulties and extend your fullest support and cooperation. Hopefully, will make the payment asap., Thanks & Regards
Geeta Waddepelli For Desmo Exports Limited.
www.desmoexports.com”.*

By another email dated 19th June, 2015, the respondent again acknowledged liability and the same reads as under:

“Dear Madam,

We would like to inform you that due to drastic fall in the prices of some of the commodities which we have imported, due to this sudden behavior of the market we could not honour the payments on due date. We hereby admit the outstanding of USD 221,632.40 towards Zhejiang Medicines & Health Products Import & Export Co. Ltd. and we would like to clear the outstanding payments as soon as possible.

We will arrange the payment of USD 10,000/- in June, 2015 at the earliest against the outstanding payments just to show our intentions. We require some more time to regularise the irregularities that has caused due to these market conditions. We request you to please understand our genuine difficulties and extend your fullest support and co-operation.

*Thanks & Regards
Geeta Waddepelli
For Desmo Exports Limited.
www.desmoexports.com”*

As no payment was made, the petitioner through their advocate caused notice dated 28th September, 2015 to be issued to the respondent. The respondent, however, had ignored the notice and did not even reply to the letter or make any payment. Hence, this petition was filed.

2. *For the first time, in the affidavit in reply affirmed on 14th August, 2017 by one Dilip M. Jindal, almost three years after the supply of goods was made and more than two years after the acknowledgement of liability, the respondent has raised the defence of defects in the quality of the goods supplied. The respondent, however, has also acknowledged that in June, 2015, the respondent paid USD 10,000/ to the petitioner and the respondent is undergoing the financial difficulty. Therefore, it is quite clear that the defence taken now is nothing but an after thought to avoid payment of admitted liability. In my view, the respondent has no defence and the petition is requires to be admitted.....”*

3. In the affidavit in reply, the company admits that it is undergoing severe financial crisis. At the time to admission, the Court has considered the affidavit in reply and still proceeded to admit the petition. No fresh affidavit has been filed by the company stating as to why the petition should be rejected. The counsel for the company also did not make in submissions. Petitioner has also filed an affidavit of one Subhash Shankar Kate, affirmed on 23rd August 2017 confirming publication of notice of admission of the petition in two local newspapers, viz., Free Press Journal and Navshakti on 3rd November 2017 and also in the Maharashtra Government Gazette on 3rd November 2017 for the period November 16-22, 2017 at Sr.No.M-17238. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived.

4. Having considered the petition and the documents annexed thereto, I am satisfied that the company is indebted to petitioner, is unable to

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

5. In these circumstances, petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) that Desmo Exports Limited to be ordered to be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) that the Official Liquidator, High Court, Bombay be appointed as the Liquidator of Desmo Exports Limited with all powers under the Companies Act 1956.”

6. Petitioner's advocate to forward an authenticated copy of this order, within two weeks, to the official liquidator who shall take immediate steps without waiting for any notification.

7. The company petition accordingly disposed.

8. A copy of this order also be forwarded to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)