

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

COMPANY PETITION NO.1055 OF 2015

M/s.Serum Institute of India Ltd.)....Petitioner
V/s.

Hargo Pharm Pvt. Ltd.)....Respondent

Mr.Madhav J.Jamdar for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 22.3.2018

P.C.:-

1 The petition is seeking winding up of the company-Hargo Pharm Pvt. Ltd. (the said company) on the grounds that the company is unable to pay its debts and is commercially insolvent.

2 On 1.8.2017 at the time of admission of the petition, the court was pleased to pass the following order :-

“By this petition filed under sections 433 and 434 of the Companies Act, 1956, the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to pay its debts.

2. It is the case of the petitioner that in the year 2008, at the request of the respondent to open Foreign Letters of Credit for items, the petitioner opened various Foreign Letters of Credit. The respondent issued three cheques in favour of the petitioner. Out of the three cheques, only cheque of Rs.30,00,000/- was cleared in the accounts of the petitioner. The remaining two cheques of Rs.30,00,000/- and Rs.36,44,635/- were dishonoured for

want of sufficient funds. The petitioner has already filed the proceedings under section 138 read with section 141 of the Negotiable Instruments Act, 1881 against the respondent in the court of Judicial Magistrate First Class, Cantonment Court, Pune and the same are pending. The respondent issued further five cheques in respect of another payment which were also dishonoured upon presentation.

3. The petitioner had also issued a notice to the chartered accountant of the respondent Mr.Mihir Doshi for various details. The said chartered accountant vide their e-mail dated 22nd February,2015 informed the petitioner that the said chartered accountant had discontinued providing services to the respondent since they had not paid their professional fees to the said chartered accountant.

4. Learned counsel for the petitioner invited my attention to the statutory notice dated 17th February,2015 issued by the petitioner through its advocate upon the respondent placing various facts on record and calling upon the respondent to pay Rs.4,04,31,594/- with further interest thereon. The said notice was returned unserved on the ground that there was no such address which was disclosed by the respondent in the records of the Registrar of Companies. The petitioner thereafter had served the said statutory notice by three e-mails sent by the petitioner to the respondent which were duly received by the respondent. There was no response to the said statutory notice.

5. Mr.Jamdar, learned counsel appearing for the petitioner invited my attention to the averments made in paragraph (XXXIV) of the petition and would submit that the last balance-sheet filed by the respondent with the Registrar of Companies as on 31st March,2012 clearly shows loss of Rs.4,41,97,491/-. There are no reserves reflected in the balance-sheet of the respondent. He submits that the respondent has also acknowledged the liability of the petitioner in the said balance-sheet.

6. Learned counsel also invited my attention to the averments made in paragraph (XXX) of the petition and

would submit that the respondent had given a fake address on the record of the Registrar of Companies. The representative of the petitioner has personally visited the said premises for delivering the notice on 19th February, 2015 and found that there was no such address/building by the name 'Laxmi Park' at Kalher in Bhiwandi. In these circumstances, learned counsel also presses interim reliefs in terms of prayer clauses (c) and (d).

7. A perusal of the record indicates that the petitioner had issued three Foreign Letters of Credit upon the respondent for consideration. All the cheques issued by the respondent except a cheque of Rs.30,00,000/-, were dishonoured with the remark 'fund insufficient'. There was no response to the statutory notice.

8. A perusal of the balance-sheet of the respondent as on 31st March, 2012 indicates that the company has incurred substantial loss in the sum of Rs.4,41,97,491/- for the year ending 31st March, 2012. There are no reserves shown in the said balance-sheet of the respondent. The respondent has also admitted the liability of the petitioner in the balance-sheet and also in response to the notice of demand issued under section 138 of the Negotiable Instruments Act. In my prima facie view, the company is heavily indebted and is unable to pay its debts. There is no reply filed by the respondent. The petitioner has also made out a case for interim reliefs as prayed. I, therefore, pass the following order :-

9. The Company Petition is admitted, returnable after eight weeks. There shall be interim relief in terms of prayer clauses (c) and (d) excluding the words 'dealing with'.

10. The respondent and the Official Liquidator to act on the authenticated copy of this order.”

3 On 22.8.2017 the court was pleased to pass further order as under :-

“This petition was admitted vide order dated 1st August, 2017. The matter is listed at the instance of the petitioner who seeks further directions in respect of the advertisement to be issued. The service of the petition under Rule 28 of the Company (Court) Rules, 1959 shall be deemed to have been Waived.

2. In the circumstances, I pass the following order :

(i) In view of the admission of the petition, the petition shall be advertised in two local newspapers i.e. Free Press Journal (In English) and Navshakti (in Marathi) and in the Maharashtra Government Gazette and returnable date is extended to 3rd October, 2017.

(ii) Further delay in publication of the advertisement in the Maharashtra Government Gazette shall not invalidate the advertisement and shall not constitute non compliance of this direction or of the Company (Court) Rules, 1959

(iii) The Petitioner shall deposit an amount of Rs.10,000/-with the Prothonotary and Senior Master of this Court towards publication costs, within one week from the date of uploading this order , with intimation to the Company Registrar failing which the Petition shall stand dismissed for non prosecution.”

4 As noted in paragraph-6 of the order dated 1.8.2017, the address of the company seems to be a fake address as given by the company before the Registrar of Companies.

5 Naturally, there is no reply to the statutory notice nor any affidavit in reply filed opposing the petition. Petitioner has placed on record an affidavit of Ajay Subhash Loke affirmed on 28.9.2017

confirming publication in 'Free Press Journal' and 'Navshakti' on 5.9.2017 and 7.9.2017, respectively and another affidavit dated 21.2.2018 confirming advertising the petition in the Maharashtra Government Gazette in the issue for the period 8 to 14.2.2018 at serial no.M17323.

6 Office has placed on record a service report dated 6.9.2017 stating that the notice under Rule 28 sent to the company has come back with the endorsement "not known". Mr.Jamdar for petitioner states that though at the petitioner's request this court had in the order dated 22.8.2017 noted that the service of petition under Rule 28 shall be deemed to have been waived, the company department still attempted to serve notice but the same came back with the endorsement 'address not known'.

7 Mr.Jamdar tenders print out of the MCA website from Company Master Data maintained by the Ministry of Corporate Affairs which he says was taken today in which registered address of the company is still shown to be the same which is mentioned in the cause title and to which notice under Rule 28 was served. The same is taken on record and marked 'X' for identification.

8 Mr.Jamdar further tenders an affidavit of one Ajay S.Loke affirmed on 28.2.2018 stating that petitioner has not received any notice pursuant to Public Notice and Gazette Notification.

9 In the circumstances, having considered the order passed at the time of admission on 1.8.2017 read with order dated 22.8.2017, the petition and the documents annexed thereto, I am also satisfied that the company is unable to discharge its debts and is commercially insolvent and requires to be wound up.

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

“(a) That the Respondent-Company namely Hargo Pharm Pvt. Ltd., be wound up by and under the directions and supervisions of this Hon'ble Court as per the provisions of the Companies Act, 1956 ;

(b) That the Official Liquidator, High Court, Bombay, be appointed as the Liquidator of the entire assets, properties, affairs and records of the Respondent-Company with all powers under the Companies Act, 1956.”

11 Official Liquidator to take further steps on receiving authenticated copy of this order from the advocate for petitioner without waiting for any Notification.

12 Petition stands disposed.

(K.R.SHRIRAM,J)