

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

COMPANY PETITION NO.667 OF 2015

Mentor Capital Ltd.)....Petitioner
V/s.

ABG International Pvt. Ltd.)....Respondent

Mr.Aseem Naphade a/w Mr.Arun H.Mehta and Ms.Ashwini Pawar
i/by Akshar Laws for petitioner.

None for respondent.

Mr.Mahendhar Aithe-Company Prosecutor for Official Liquidator
present.

CORAM : K.R.SHRIRAM,J

DATE : 5.1.2018

P.C.:-

1 At the outset, Mr.Naphade appearing for petitioner seeks leave to amend the petition to add further prayer clause as prayer clause-(b). Leave to amend granted. Amendment to be carried out forthwith.

2 I am not adjourning the matter or directing petitioner to serve the amended petition on the company because the amendment sought is only a consequential amendment in the event the court passes an order for winding up of the defendant-company.

3 This petition is filed for winding up of the respondent-

company ABG International Pvt. Ltd. on the ground that the company is unable to discharge its debt, is commercially insolvent and requires to be wound up.

4 When the petition was taken up for admission on 14.2.2017 the following order came to be passed :-

1. Mr.Mehta, learned counsel appearing for the petitioner states that the respondent is served. Affidavit of service is already filed.

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

3. It is the case of the petitioner that the respondent has approached the petitioner for demand term loan facility of Rs.60.00 crore for a temporary period. The petitioner sanctioned and disbursed the loan of Rs.50.00 crore to the respondent repayable with interest at the rate of 18% p.a. in accordance with the terms and conditions agreed upon between the parties in the loan agreement.

4. It is the case of the petitioner that as against the said loan of Rs.50.00 crore disbursed by the petitioner to the respondent, the respondent made part payment leaving the balance amount of Rs.18.00 crore. The respondent thereafter issued 10 cheques to the petitioner towards part payment of the principal amount and interest. Upon presentation of those 10 cheques by the petitioner, those cheques were returned with the remarks "funds insufficient". The petitioner thereafter sent a statutory notice on 4th December, 2014 to the respondent, which was received by the respondent. The respondent neither made any payment nor gave any response thereto. The petitioner thus filed this petition inter-alia praying for winding up of the respondent. As on the date of 30th March, 2015, the claim of the petitioner against the

respondent is Rs.20,24,96,043/- with further interest thereon.

5. Mr.Mehta, learned counsel for the petitioner invited my attention to the annexures to the company petition and would submit that the respondent only made part payment as against the disbursed loan amount of Rs.50.00 crore and the principal amount of Rs.18.00 crore with interest thereon totalling to Rs.2,24,96,043/- is still due and payable by the respondent to the petitioner. He submits that there is no response to the statutory notice. No affidavit in reply is filed.

6. It is submitted by the learned counsel that the respondent company is facing through severe financial crises and the financial condition of the respondent is not sound. He submits that the petitioner has to recover substantial amount from the respondent and thus this Court shall appoint the Official Liquidator as Provisional Liquidator in terms of prayer clause (b) of the company petition.

7. I have perused the annexures to the petition and have heard the learned counsel for the petitioner. A perusal of the documents annexed to the petition prima-facie indicates that the petitioner had disbursed a sum of Rs.50.00 crore as and by way of loan to the respondent. The respondent however, failed to make payment inclusive of principal amount of Rs.18.00 crore and also failed to pay interest thereon. The cheques issued by the respondent towards part payment also came to be dishonoured with the remarks "funds insufficient". There is no response to the statutory notice. There is no payment made by the respondent in response to the said statutory notice. No affidavit in reply is filed. Under these circumstances, I am of the prima-facie view that the respondent is unable to pay its debts and is commercially insolvent.

8. Considering the facts of this case, the petitioner has made out a case for appointment of the Official Liquidator as a Provisional Liquidator as prayed.

9....."

5 Petitioner has filed an affidavit of one Vinod Maruti Kamathe affirmed on 22.3.2017 confirming advertisement of the petition in 'Free Press Journal' and in 'Navshakti' on 1.3.2017 and also in Maharashtra Govt. Gazette on 1.3.2017. Company department has filed a report dated 14.3.2017 confirming service upon respondent-company. Notice under Rule-28 of the Company (courts) Rules 1959, has also been waived. Nobody had appeared for the company at the time of admission of the petition. Even yesterday i.e., 4.1.2018 when the petition was listed, none appeared for the company. Even today, nobody is present for the company. Though I find India Law Advocates having filed Vakalatnama on behalf of the company, there is no affidavit in reply opposing the petition and therefore, none of the averments in the petition are controverted.

6 Respondent company has not even replied to the statutory notice.

7 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.

8 Learned Judge while passing the order of admission on 14.2.2017 has observed that the respondent-company has issued cheques which were dishonoured due to insufficient funds and also that respondent is unable to pay its debts and is commercially insolvent.

9 I have also considered the petition, the documents annexed thereto and also heard the counsel for petitioner. I am satisfied that there are huge amount of debts due and payable to petitioner by respondent-company. The company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

“(a) That the Respondent Company, ABG International Pvt. Ltd. be wound up under the provisions of the Companies Act, 1956 by order and direction of this Hon'ble Court ;

(b) That pending the hearing and final disposal of the petition this Hon'ble Court may be pleased to appoint Official Liquidator of this Hon'ble Court as Provisional Liquidator of the Respondent-company.”

11 Official Liquidator to take further steps immediately without waiting for Notification.

12 Petition stands disposed.

(K.R.SHRIRAM,J)