

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

COMPANY PETITION NO.363 OF 2016

Tricon Energy UK LimitedPetitioner

Vs.

Balmukund Chemicals Pvt. Ltd.Respondent

WITH

COMPANY PETITION NO.394 OF 2016

Farmasino Pharmaceuticals (Jiangsu) Co. Ltd.Petitioner

Vs.

Balmukund Chemicals Pvt. Ltd.Respondent

Ms. Krithika Anand i/b. M/s. Dhruve Liladhar and Co. for petitioner in both petitions.

None for respondent in CP/363/2016.

Ms. Heena Shaikh i/b. R.R. Nair for respondent in CP/394/2016.

CORAM : K.R.SHRIRAM, J.

DATE : 3rd MAY, 2018

P.C.:

COMPANY PETITION NO.363 OF 2016

1 This petition is for winding up of respondent company - Balmukund Chemicals Pvt. Ltd. (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 24th August, 2017 while admitting the petition, the Court was pleased to pass the following order :

1. By this petition, the petitioner seeks an order of winding up of the respondent company for inability to pay its debt as and when they arise. It is the petitioner's case that the respondent company is indebted to a sum of USD 258,804 for value of the goods sold and delivered.

2. The petitioner claims to have supplied PVC Resin to the respondent under a single invoice dated 9th November, 2014. The respondent company, however, failed and neglected to pay price of the goods. As a result on 24th February, 2015 the petitioner sought remittance of the sum due and payable and the respondent vide email agreed to pay the sum within few days. The email dated 24th February, 2015 received from the respondent company was sent on Tuesday at 11.32 am and body of the emails states that the payment will be made latest by Friday. It is the case of the petitioner that no part of the amount has been received. The invoice dated 9th November, 2014 is based on sales contract dated 29th October, 2014 which sets out particulars of shipment, destination and identity of the respondent as a buyer of the goods.

3. Learned counsel submitted that the statutory notice was duly served, however, it appears the office of the company was found closed, as the company had shifted its address. However that being last known address and disclosed in the Company Master Data a copy of which appears at Exhibit-D the petitioner cannot be faulted. The petition came to be accepted on 23rd August, 2016.

4. Attempts to serve the company with a copy of the petition have also been made at the same address. The postal packets shows that the company has shifted and the postal packets have returned. According to the affidavit of service postal remarks show "not known". In the circumstances on 4th October, 2016 the company had also admitted service of the petition by email address provided in Company Master Data which is found at Exhibit-D. The status of the company is shown as "Active" and last balance sheet was filed on 31st March, 2014. I am satisfied that petitioner has made all efforts to serve the petition. By way of abundant precaution vide order dated 14th August, 2017 this Court directed the petitioner to send an email indicating that the petition will be listed today and also to file affidavit of service which has affirmed on 27th July, 2017 and which indicates that the company office was found closed as a copy sent by post and could not be served by hand delivery since the premises was closed and courier was returned with remark "shifted". However, learned counsel for the petitioner has submitted that email intimating the company that the matter will be listed today was sent at the said email address and has not been returned undelivered. In the circumstances all efforts of services have been made and the company is deemed to be aware that the petitioner is pending.

5. The respondent has not entered appearance nor has it filed any affidavit in reply. It appears that the company is commercially insolvent. Learned counsel for the petitioner undertakes to file the affidavit of service of the email on or before 31st August, 2017. In the circumstances I pass the following order :

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3 With this petition, there is another petition listed today, viz., company petition no.394 of 2016. Ms. Heena Shaikh, counsel instructed by advocate R. R. Nair in company petition no.394 of 2016 is seeking an adjournment because her counsel is in difficulty. So far as company petition no.363 of 2016 is concerned, nobody is appearing for the company and Ms. Shaikh states that she has no instructions to appear in this petition.

4 No affidavit in reply has been filed opposing the petition. Therefore, none of the averments in the petition are controverted. Ms. Anand in fairness stated that her instructions are that there is some review petition is lodged in this petition but that petition is still lying under office objections.

5 At the same time, it has to be noted that the company had enough time to file an affidavit in reply because the order of admission is dated 24th August, 2017. Nobody had entered appearance for the company in this petition and nobody is present in Court today for the company. There is an affidavit of service of one Ravindra B. Rikame affirmed on 5th October, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 14th September, 2017 and also in the Maharashtra Government Gazette for the period 21st - 27th September, 2017 at serial no.M-17196. The notice under Rule 28 of the Companies (Court) Rules, 1959 has come back undelivered with the endorsement "Intimation posted" as per service report

dated 28th September, 2017 fled by the Company Department. Ms. Anand tenders an extract of the Company Master Data maintained by the Ministry of Corporate Affairs, which Ms. Anand states was taken on 27th April, 2018, and the registered address shown is the same address to which notice under Rule 28 has been served and even the earlier notices have been served. The extract is taken on record and marked “X” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

6 I have considered the petition, the documents annexed thereto and also heard Ms. Anand, counsel for petitioner. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

7 In the circumstances, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) That Balmukund Chemicals Pvt. Ltd. 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 Official Liquidator, High Court, Bombay be appointed as Liquidator of Balmukund Chemicals Pvt. Ltd. with all powers under the Companies Act, 1956.

8 Official Liquidator to take further steps in accordance with law without waiting for any notification upon receiving an authenticated copy of this order, which Ms. Anand states, will be forwarded within two weeks of the order getting uploaded. The counsel for petitioner is also directed to

forward a copy of this order to National Company Law Tribunal for information.

9 Company petition accordingly stands disposed.

COMPANY PETITION NO.394 OF 2016

1 In view of the above order passed in company petition no.363 of 2016, this petition also stands disposed with liberty to petitioner to lodge their proof of debt with Official Liquidator, who shall consider the same in accordance with law.

2 If the order dated 3rd May, 2018 in company petition no.363 of 2016 winding up respondent company – Balmukund Chemicals Pvt. Ltd. is recalled or set aside in appeal, liberty is given to petitioner to revive this petition and move once again for necessary orders including winding up of respondent company.

(K.R. SHRIRAM, J.)