

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

COMPANY PETITION NO.718 OF 2015

M/s.3B Semiconductors Private Limited)....Petitioner
V/s.

M/s.Gemini Training & Staffing Pvt. Ltd.)....Respondent

Ms.Nutan Patel i/by Mahesh Menon and Co. for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 5.1.2018

P.C.:-

1 This petition is filed for winding up of the respondent-company Gemini Training & Staffing Pvt. Ltd. on the ground that the company is unable to discharge its debt, is commercially insolvent and requires to be wound up.

2 On 20.2.2017 when the petition was taken up for admission, this court was pleased to pass the following order :-

“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 company on the ground that the respondent is unable to pay its debts.

3. The respondent had issued the purchase order upon the petitioner which is annexed to the petition for supply of goods. The petitioner supplied the goods and raised

invoices upon the respondent which are annexed to the petition. The respondent has made part payment in respect of the invoices dated 12th April, 2014 but did not make any payment in respect of the other three invoices. The petitioner made demand vide letter dated 18th October, 2014. There is no payment in response to the said notice. The petitioner thereafter issued a statutory notices dated 20th January 2015 and 25th February 2015. The statutory notices have been served upon the respondent. There was neither any response thereof nor any payment. The petitioner has thus filed this petition.

4. I have perused the averments made in the petition with the assistance of the learned counsel for the petitioner and have perused the documents which indicates that the petitioner had supplied goods to the petitioner. The respondent has not made payment in respect of the invoices. The cheques issued by the respondent have been dishonoured. 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 :-

.....”

3 Petitioner has filed affidavit of service of one Vithal Patil affirmed on 22.3.2017 confirming publication of the petition in 'Free Press Journal' and in 'Navshakti', both on 10.3.2017 and in the Maharashtra Govt. Gazette on 11.3.2017. The company department has filed a service report dated 16.3.2017 in which it is reported that notice that was sent under Rule 28 of the Company (courts) Rules 1959 by RPAD has been returned undelivered with the endorsement

`left' . Ms.Patel for petitioner tenders an extract of the company master data maintained by Ministry of Corporate Affairs with respect to respondent company Gemini Training & Staffing Pvt. Ltd. The extract has been taken on 4.1.2018 and the same is taken on record and marked `X' for identification. The company master data shows the registered address to be the same as in the cause title and as stated in the envelope in which notice under Rule 28 was sent. Therefore, I would accept the notice under Rule 28 as served upon the company.

4 Even at the time of admission, none appeared for respondent company. Nobody is present today either. No affidavit in reply opposing the petition has been filed. Therefore, the averments are also uncontroverted. Respondent-company has not responded to the statutory notice either.

5 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.

6 This court in its order dated 20.2.2017 has observed that goods were supplied by petitioner to the company, the company has not made any payment in respect of the invoices and the cheques issued by the company have also been dishonoured and court is of the view that company is unable to pay its debts and is commercially insolvent.

7 I have also considered the petition, the documents annexed thereto. It does indicate that petitioner has supplied goods to the company. Respondent has not made payment in respect of the invoices and the cheques issued by respondent company have been dishonoured. I am also therefore, of the view that respondent company is unable to pay its debts, is commercially insolvent and requires to be wound up. Therefore, petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that the Company, M/s.Gemini Training & Staffing

Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 306/307, Om Chambers, above Hotel Panchali, Jangli Maharaj Road, Pune, Maharashtra-411 005, be ordered to be wound up by and under the provisions of the Companies Act, 1956/Companies Act,2013 ;

(b) that an Official Liquidator or some fit and proper person be appointed Liquidator of the Company with all its assets and affairs with all powers under the provisions of the Companies Act, 1956/Companies Act, 2013.

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

9 Company Petition stands disposed.

(K.R.SHRIRAM,J)