

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

COMPANY PETITION NO.438 OF 2016

Synchem International Co. Ltd.Petitioner
Vs.
Divyaratna Agrotech Pvt. Ltd.Respondent

WITH

COMPANY PETITION NO.340 OF 2016

Zhejiang Medicines & Health Products
Import and Export Co. Ltd.Petitioner
Vs.
Divyaratna Agrotech Pvt. Ltd.Respondent

WITH

COMPANY PETITION NO.349 OF 2016

Wenda Company LimitedPetitioner
Vs.
Divyaratna Agrotech Pvt. Ltd.Respondent

Ms. Pooja Kane a/w. Ms. Krithika Anand i/b. M/s. Dhruve Liladhar and Co.
for petitioner in all petitions.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 3rd MAY, 2018**

P.C.:

COMPANY PETITION NO.438 OF 2016

1 This petition is for winding up of respondent company -
Divyaratna Agrotech 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 23rd August, 2017 while admitting the petition, the Court
was pleased to pass the following order :

*1. The learned Counsel for the petitioner states that attempts at
serving the respondent have not succeeded. The packets sent to them*

have come back with the remark “left”. Affidavit of service indicates that in addition to the attempts at service through post, an email has been sent to them as per records available in the Company Master Data at Exhibit D to the affidavit of service. Affidavit proving service dated 26th October, 2016 and copy of the email is also attached at Exhibit C.

2. None appears for the respondent company. The company has also not entered appearance. The facts reveal that the company has not paid value of goods sold and delivered and as a result statutory notice dated 14th August, 2015 came to be issued copy of which appears at Exhibit B. The notice is seen to have been served as evident from the postal acknowledgment appearing at Exhibit-F. An additional copy seems to have been sent by courier. There is no reply to the statutory notice. In view of the same, it appears that the company has chosen not to oppose this petition

3. The petition proceeds on the basis that the respondent is unable to pay USD 150,744. The averment in paragraph 8 indicates that the company is in financial difficulty and should be deemed commercially insolvent. In view of the failure of the company to reply to the Statutory Notice nor enter appearance and file an affidavit in reply opposing the petitioner, despite service of notice, it would be appropriate to pass the following order :

xxxxxxxxxxxx

3 Petitioner has approached this Court as an unpaid vendor. Petitioner had, in or around September 2014, supplied to the company two quantities of melamine on credit to the company. The Sales Contract dated 11th September, 2014 was entered into and as per two invoices raised by petitioner, petitioner supplied 132 tons of melamine of 99.8% worth USD 150,744. It is stated that the terms of payment under the Contract was D/A 90 days after B/L date. As no payments came forth, petitioner caused notice dated 14th August, 2015 to be issued to the company to which, it is stated, there is no reply.

4 The company has not filed any affidavit in reply opposing the petition. Therefore, none of the averments in the petition are controverted. There is no reply even to the statutory notice. 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 allowed. 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.

5 Petitioner has filed an affidavit of one Ravindra B. Rikame affirmed on 5th October, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 4th September, 2017 and also in the Maharashtra Government Gazette for the period 21st - 27th September, 2017 at serial no.M-17195. The Company Department has filed a service report dated 16th September, 2017 stating that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 has been returned undelivered with the endorsement "Left addressee".

6 Ms. Kane, counsel for petitioner tenders an extract of the Company Master Data, which Ms. Kane states was taken today, in which the

registered address shown is the same to which notice under Rule 28 was served and the same address which is mentioned in the cause title. The extract is taken on record and marked “X” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has also been served on the company.

7 I have considered the petition, the documents annexed thereto and also heard Ms. Kane, 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.

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

(a) That Divyaratna Agrotech 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 the said company with all powers under the Companies Act, 1956.

9 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. Kane 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.

10 Company petition accordingly stands disposed.

COMPANY PETITION NO.340 OF 2016
WITH
COMPANY PETITION NO.349 OF 2016

1 In view of the above order passed in company petition no.438 of 2016, these petitions also stand disposed with liberty to petitioners to lodge their respective 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.438 of 2016 winding up respondent company – Divyaratna Agrotech Pvt. Ltd. is recalled or set aside in appeal, liberty is given to petitioners to revive their petition and move once again for necessary orders including winding up of respondent company.

(K.R. SHRIRAM, J.)