

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

COMPANY PETITION NO.1159 OF 2015

Nilkamal Limited)....Petitioner
V/s.

Cottstown Fashions Limited)....Respondent

Mr.Sanskar Marathe 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 Cottstown Fashions Limited (the said company) on the grounds that the company is unable to discharge its debts and is commercially insolvent.

2 On 18.1.2017 this court was pleased to pass the following order :-

“Learned counsel for the petitioner states that the respondent has been served. Affidavit of service is already filed. None appeared for the respondent when the matter was called out. No affidavit in reply is filed. By this petition the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to pay its debts.

2. Learned counsel for the petitioner invited my attention to the purchase order issued by the respondent company upon the petitioner on 11th December,2012. According to

the said purchase order, the respondent had agreed to pay 30% to the petitioner alongwith purchase order and also agreed to pay 70% within 10 to 15 days after restoration and verification of the goods. Pursuant to the said purchase order, the petitioner supplied material and completed the installation on 11th January,2013. A perusal of the installation/commissioning report annexed at Ex.'F' indicates the date of the installation and commissioning on 11th January,2013.

3. The respondent thereafter made further payment of Rs.3,66,187/- on 22nd May,2013 to the petitioner. It is the case of the petitioner that the respondent agreed to pay further amount of Rs.4,09,276/- to the petitioner as and by way of full and final settlement and issued three cheques to pay the said amount which were dated 19th November,2013, 9th December,2013 and 14th December, 2013. Upon presentation of the said cheques, the same were dishonoured on the ground of 'funds insufficient'.

4. The petitioner issued statutory notice on 17th December,2014 calling upon the respondent to pay a sum of Rs.3,67,063/- with further interest thereon under section 433(e) read with section 434 of the Companies Act, 1956. The said statutory notice was received by the respondent company on 20th December,2014. There is neither any response to the said statutory notice nor any further payment is made by the respondent. The petitioner filed this petition for winding up and for various reliefs. No affidavit in reply is filed.

5. After perusing the documents annexed to the company petition and the averments made in the company petition, I am of the prima facie view that the respondent company is unable to pay its debt.....”

3 There is an affidavit of service of one Dinesh Vin affirmed on 2.8.2017 confirming publication in 'Free Press Journal' and in

`Navshakti' on 10.6.2017 and in Maharashtra Govt. Gazette issued dated 27.7.2017 to 2.8.2017 at Serial No.M-17122.

4 Mr.Marathe for petitioner states that due to inadvertence, returnable date in the Maharashtra Govt. Gazette public notice was shown as 22.3.2017 and this date was mentioned because the original order of admission gave it as the returnable date.

5 Nobody has entered appearance for the company nor does the record indicate any other claimants having lodged any claim. Mr.Marathe also confirms not having received any response from any party following advertisement of the petition. No reply is filed and therefore, none of the averments have been controverted. There is no reply 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.

6 Having perused the petition and documents annexed thereto and having heard Mr.Marathe for petitioner, even I am satisfied that the company is unable to discharge its debts and is commercially insolvent and requires to be wound up.

7 Therefore, Petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that Cottstown Fashions Limited may be wound up by the directions of this Hon'ble Court under provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the Respondent Company, with all necessary powers to take charge of the assets and properties of the Respondent company and distribute the same as per the directions of this Hon'ble Court.”

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

9 Petition stands disposed.

(K.R.SHRIRAM,J)