

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

COMPANY PETITION NO.907 OF 2005

Rasendra Chemexport Pvt. Ltd.)....Petitioner
V/s.

Emtex Industries (I) Limited)....Respondent

WITH

**COMPANY PETITION NO.219 OF 2010
COMPANY PETITION NO.247 OF 2011**

Mr.Mahesh J.Devani for petitioner in CP No.907 of 2005.
None for petitioners in CP No.219/2010 & CP No.247/2011.

**CORAM : K.R.SHRIRAM,J
DATE : 16.4.2018**

P.C.:-

COMPANY PETITION NO.907 OF 2005

1 The petition is filed for winding up of the company Emtex Industries (I) Limited on the grounds that the company is unable to pay its debts and is financially and commercially insolvent.

2 Petitioner is an unpaid vendor. It is stated in the petition that as per the orders and instructions received from the company, petitioner sold, supplied and delivered sodium hydro sulphide, sodium formaldehyde hydroxylate etc. to the company as covered

under six invoices. The details of the invoices are mentioned in paragraph-5 of the petition and copies are annexed to Exh.A to Exh.A-5 to the petition. Copies of the delivery challans are also annexed to the petition at Exh.B to Exh.B5. It is stated that respondent accepted the goods without any dispute, demand or complaint. It is also stated that on or about 20.3.2003, the company issued Sales Tax 'C' form covering 7 invoices included the 6 which are subject matter of this petition. Copy of the 'C' form is annexed at Exh.C to the petition.

3 As no payments came forth, petitioner caused a Notice dated 16.12.2005 issued through its Advocate as required under Section 434 of the Companies Act 1956 demanding sum of Rs.4,61,340.44 together with interest thereon @ 24% p.a. The amount claimed in the petition is less than what was claimed in the demand notice.

4 There is no reply as stated in the petition.

5 After the petition was filed, the company had filed a Reference before the Board of Industrial & Financial Reconstruction (BIFR). Section 4(b) of amended Sick Industrial Companies (Special

Provisions) Repeal Act, 2003 provided that on such date as may be notified by the Central Government, any appeal preferred to AAIFR or any reference made or inquiry pending to or before BIFR shall stand abated provided that a company in respect of which such appeal or reference or inquiry that stands abated may make reference to the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) within 180 days from the commencement of the IBC in accordance with the provisions of the IBC. The notified date is 1st December 2016 and 180 days expired on or about 31st May, 2017. There is nothing on record to show that any such reference has been made to the NCLT.

6 In the order dated 6.9.2017 the Prothonotary and Senior Master has recorded the statement made by Mr.Uday Sankar Samudrala-advocate for respondent that the Reference before BIFR has abated. On 19.3.2018 Mr.Samudrala requested for further time to file affidavit in reply and as last chance, time was granted upto 24.3.2018. The company was also directed to pay sum of Rs.25,000/- as cost to petitioner for the adjournment. Mr.Devani for petitioner states that this cost has not been paid and no reply has been served upon him. Even in the record & proceedings I do not find any reply of the company opposing the petition.

7 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 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 There is no reply to the petition as well and therefore, none of the averments in the petition are controverted. Moreover, I have also considered the petition and the documents annexed thereto. From the documents, it does appear that the goods have been supplied by petitioner to the company and the company has acknowledged receipt of the goods by issuing 'C' form. From the averments in the petition that the company has not made the payments for the goods supplied and the 'C' form covers 7 invoices, 6 of which formed subject matter of the petition, I am satisfied that there is a debt payable by the company to petitioner. Petitioner is

unable to discharge its debts and is commercially insolvent. This is further confirmed in view of the fact that the company despite being given an opportunity, has chosen not to file affidavit in reply and has not even paid the cost as imposed by this Court.

9 Therefore, the following order is passed :-

ORDER

(i) The Company Petition is admitted and made returnable on 28.6.2018 ;

(ii) Petitioner is directed to advertise the petition, within two weeks, in two local newspapers, viz. 'Free Press Journal' (in English) and 'Nav-Shakti' (in Marathi) and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959 ;

(iii) Petitioner shall also deposit an amount of Rs.15,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company

Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court.

After the advertisements are issued, the balance, if any, shall be refunded to petitioner ;

(iv) A copy of this order shall forthwith be served on the Company by hand delivery and by Registered Post AD by the Advocate for petitioner ;

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AND
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1 None appears for petitioners. Both the petitions dismissed for non prosecution.

(K.R.SHRIRAM,J)