

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

**COMPANY PETITION NO.1032 OF 2015**

M/s.Urvi Trading Corporation )....Petitioner  
V/s.

Jai Mahalaxmi Ispat (I) Pvt. Ltd. )....Respondent

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Ms.Jyostna Pandhi a/w Kanchi Joshi I/by M/s.Mahesh Jani & Co.  
for petitioner.

Mr.Prakash Mishra for respondent.

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

**DATE : 24.9.2018**

**P.C.:-**

1. This petition is filed for winding up of the respondent company- Jai Mahallaxmi Ispat (I) Pvt. Ltd. on the grounds that the company is unable to pay its debts and is commercially insolvent.

2. On 20.8.2018, at the time of admission of the petition, the following order came to be passed :-

*"1 Ms. Pandhi for Petitioner states that by a common order dated 15.01.2018, this petition has been admitted. It is an order passed by me and today, I noticed that the order is erroneous. A common order could not have been passed because though three petitions have been listed together namely CP No. 1031 of 2015, CP No. 1032 of 2015 and CP No. 1043 of 2015, only the Petitioner is common, but the Respondent Companies are different. Therefore, a common order of admission could not have been passed. To the extent of the order of admission of CP Nos. 1032 of 2015 and 1043 of 2015 is concerned, the same is recalled. I would have expected the Counsel for Petitioner to at least bring to the notice of this Court this error. Sad to note, nothing was done, despite the fact this matter has been listed on many occasions after 15.01.2018.*

*2 Petitioner seeks to wind up the Company on the ground that Jai*

*Mahalaxmi India Pvt. Ltd. ('the company') is unable to discharge its debts and is commercially insolvent.*

*3 Petitioner is an unpaid vendor to whom the Company is indebted in the sum of Rs.3,64,352/plus interest. To the Petition is annexed copies of Purchase Orders, Delivery Challan called Tax Challan and Lorry Receipt. Also annexed to the petition is a copy of a letter received from the Company signed by its Store incharge confirming receipt of all materials. As payment did not come forth, petitioner caused various demand letters issued to the Company. The Company also issued two cheques, one for Rs.50000/and other for Rs.25000/and both the cheques came to be dishonoured, as payment was stopped by the Company. As no payment come forth, Petitioner issued Statutory Notice which was addressed to the Company as well as its Managing Director separately. The letter was sent to various address as of the company. The stand taken in the reply to the notice is that Company never received any goods and hence, no payment was required to be made and also the cheques which were dishonoured were never given to Petitioner. In the AffidavitinReply to the petition, the Company admits having issued these cheques. At paragraph 5 while dealing with the petition paragraphwise, the Company states "..... since, the Petitioner Company had not supplied the goods and materials as alleged therefore, I had stopped the payment in respect of the Cheques mentioned as therein". Therefore, it is rather obvious that the stand of the Company smacks of dishonesty. On the one hand, Company state that no cheques were issued and on the other hand, it says cheques were issued but payment was stopped due to non supply. Therefore, the defence that no goods were supplied and hence, no payment was to be made is a moonshine defence. I have to also note that the Counsel for Company at the outset, brought to the notice to the Court the averments in paragraph Nos. 6 to 9 of the AffidavitinReply and stated that the financial condition of the company is very bad, it is not doing any business and all its assets are attached by Punjab National Bank to which Company owes amounts in excess of Rs.39 crores. Counsel for the Company also stated that he leaves to the Court whether Company should be wound up.*

*4 In the circumstances, in my view, the petition requires to be admitted and the following order is passed :-  
....."*

3. No further reply has been filed to make out a case as to why company petition should not be allowed.

4. Ms.Pandhi for petitioner states that the petition has been advertised in 'Free Press Journal' and 'Navshakti' and in Maharashtra Government Gazette and relies upon an affidavit of Sundar Singh Dangar affirmed on 17.9.2018 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 30.8.2018 and in the Maharashtra Government Gazette for the period 13-19<sup>th</sup> September 2018 at Serial No.M-18166.

5. Notice under Rule 28 of the Company (Courts) Rules 1959 has been waived.

6. Mr.Mishra for the company states that the company's position is very bad and company should be ordered to be wound up.

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

*(a) That the said Company be wound up by and under the orders supervision and direction of this Hon'ble Court under the provisions of the Companies Act, 1956 ;*

*(b) That the Official Liquidator be appointed as the Liquidator of the said Company with all powers under the provisions of Companies Act, 1956 to take charge of the assets of the said Company and/or conduct its affairs in the course of winding up and to distribute its assets in*

*accordance with Law.*

8. Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification appointing him as liquidator. The advocate for petitioner states that authenticated copy will be served within two weeks upon the order being uploaded.

9. Registry to return the amount of Rs.15,000/- deposited by petitioner subject to any deductions if any.

10. Upon receipt of the authenticated copy from Petitioner's advocate, the Official Liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the Official Liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

11. Petition disposed accordingly.

Jahagirdar  
Kiran  
Ganesh

Digitally signed  
by Jahagirdar  
Kiran Ganesh  
Date:  
2018.09.27  
14:08:36 +0530

(K.R.SHRIRAM,J)