

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

COMPANY PETITION NO.680 OF 2015

M/s. Oswal Minerals Limited Petitioner
Vs.
Suneem Industries Pvt. Ltd. Respondent

Mr. Niraj Shah i/b. Mr. Siddharth Murarka for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 4th JANUARY, 2018**

PC.:

1 This petition is for winding up of respondent company -
Suneem Industries Pvt. Ltd. On 20th February, 2017 when the petition was
taken up for admission, this Court was pleased to pass the following order :

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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 petitioner has sold and supplies various goods to the respondent and raised invoice dated 20th August, 2012 for an amount of Rs.14,36,820/-. The respondent received the said goods. It is the case of the petitioner that out of the said amount, the respondent made part payment and did not pay the balance principal amount of Rs.9,00,000/-. The petitioner has maintained ledger account of the respondent in its books for the period 1st April 2012 to 15th April, 2015.

4. Since the respondent did not make payment of the balance amount, the petitioner issued statutory notice on 21st January, 2015 calling upon the respondent to pay a sum of Rs.12,97,880/- with further interest on the principal amount. The said notice was received by the respondent. Neither there was any payment in response to the said notice nor any response. The statutory notice was sent at the registered address of the respondent which was returned with the remark "Company is Closed". The petitioner thereafter served statutory notice upon the directors of the respondent company. The petitioner thus filed this petition.

5. With the assistance of the learned counsel for the petitioner, I have perused the averments made in the petition and the annextures to the

petition. I am of the prima facie view that the petitioner has sold, supplied and delivered various goods to the respondent. The respondent has made part payment in respect of the goods to the petitioner. The statutory notice which is received by the directors is not responded too. The statutory notice was sought to be delivered by the petitioner at the registered office of the respondent company which is not changed in the records of the Registrar of Company nor any intimation was received by the petitioner from the respondent about any change of address. I am therefore of the view that the respondent having failed to pay the balance amount though the goods were supplied is unable to pay its debts and is commercially insolvent.

6. Mr.Murarka, learned counsel for the petitioner fairly pointed out that there was no provision for payment of interest in the invoices issued by the petitioner. Be that as it may, the amount due and payable by the respondent to the petitioner is more than statutory amount under the provisions of Companies Act. This petition is thus maintainable. I, therefore, pass the following order :-

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2 Petitioner has filed an affidavit of one Prakash Bane affirmed on 10th March, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 6th March, 2017 and also in the Maharashtra Government Gazette on 6th March, 2017. The Company Department has also filed a service report confirming service of the notice under Rule 28 of the Companies (Court) Rules, 1959 upon the company. No affidavit in reply has been filed by the company opposing the petition. Therefore, the averments in the petition are uncontroverted.

3 This Court while admitting the petition has observed that “petitioner has sold, supplied and delivered various goods to respondent and some part payment was made but respondent has failed to pay the balance amount though the goods were supplied and hence is unable to

pay its debts and is commercially insolvent. I have heard Mr. Shah and also considered the pleadings and the documents annexed to the petition. 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.

4 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b), except the portion in prayer clause – (b) “..... and also investigate into the affairs of the company with regard to transfer of funds/benefits to holding company and the managing director.” Therefore, prayer clauses – (a) and (b) read as under :

(a) that the Respondent Company, namely, Suneem Industries Pvt. Ltd., having its registered office at C 12, MIDC, Shendra, Aurangabad, Maharashtra – 431 005, be wound up by and under the orders, direction and supervision of this Hon'ble Court;

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of Companies Act, 1956 or later enactment to take charge of the Respondent Company and to conduct its affairs during the course of its winding up.

5 Official Liquidator shall forthwith act on an authenticated copy of this order.

6 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)