

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

COMPANY PETITION NO.691 OF 2015

M/s. Vinayak Tubes

....Petitioner

Vs.

Emergency Electronic Security (India) 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

P.C.:

1 This petition is for winding up of respondent company –
Emergency Electronic Security (India) Pvt. Ltd. On 8th March, 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 on the ground that the respondent is unable to pay its debts.

3. It is the case of the petitioner that pursuant to the orders placed by the respondent, the petitioner has sold, delivered and supplied to the respondent various goods under various invoices issued by the petitioner. The respondent has already paid the entire principal amount except a sum of Rs.1,00,000/-. There is provision for payment of interest at the rate of 24% p.a. in the invoices in case of delay beyond the period of 60 days. The petitioner accordingly issued debit notes dated 31st December, 2014 for the delayed payment in the sum of Rs.4,29,413/-.

4. The respondent issued a cheque of Rs.1,00,000/-. The said cheque was however, dishonoured upon presentation by the petitioner.

5. The petitioner thereafter issued a statutory notice on 31st December, 2014 upon the respondent, which was duly received by the respondent. The respondent vide its letter dated 20th January, 2015 has expressed its regrets for non-clearing the said cheque upon presentation and assured the petitioner to pay the amount of Rs.1,00,000/- towards the principal outstanding. The respondent

however, did not pay the said amount. The petitioner thus filed this petition for winding upon of the respondent.

6. Mr.Murarka, learned counsel appearing for the petitioner invited my attention to the annexures to the petition and submits that the respondent has admitted the liability. He submits that a cheque of Rs.1,00,000/- towards the payment of outstanding principal amount is dishonoured upon presentation. He submits that by a letter dated 20th January, 2015, the respondent had assured to pay the balance amount but no further payment is made by the respondent. He submits that however, the contents of the statutory notice are not denied by the respondent in the letter dated 20th January, 2015.

7. A perusal of the record indicates that the petitioner has sold, supplied and delivered various goods to the respondent. A copy of the notice annexed at Exhibit "B" indicates that the respondent has agreed to pay interest at the rate of 24% p.a. on the delayed payment. The petitioner has accordingly issued a debit note. A cheque in the sum of Rs.1,00,000/- issued by the respondent is dishonoured upon presentation. A perusal of the letter dated 20th January, 2015 indicates that though the respondent replied to the statutory notice dated 31st December, 2014, the contents of the said notice are not denied. The respondent apologized since the cheque was dishonoured and assured to make the principal outstanding amount. The respondent however, did not make any further payment.

8. No affidavit in reply is filed, though served. On perusal of the documents annexed to the petition, I am of the prima-facie view, that the respondent is unable to pay its debts and is commercially insolvent.

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2 Petitioner has filed an affidavit of one Prakash Bane affirmed on 13th June, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 22nd May, 2017 and also in the Maharashtra Government Gazette on 25th May, 2017. The Company Department has also filed a service report dated 10th April, 2017 confirming service of the notice under Rule 28 of the Companies (Court) Rules, 1959 upon the company. Mr. Shah, counsel for petitioner tenders printout of the Company Master Data from Ministry of Corporate Affairs taken out today in

which the registered address shown remains the same as in the cause title. The printout is taken on record and marked 'X' for identification. Respondent company has not filed any affidavit in reply opposing the petition. Therefore, the averments in the petition are uncontroverted.

3 This Court while admitting the petition has observed that “A perusal of the record indicates that petitioner has sold, supplied and delivered various goods to the respondent and respondent had issued a cheque in the sum of Rs.1 lakh which was dishonoured on presentation. It is also noted that respondent apologized since the cheque was dishonoured and assured to make the principal outstanding amount and the Court is satisfied that respondent is unable to pay its debts and is commercial insolvent. I have heard Mr. Shah and also considered the pleadings and the documents annexed to the petition. I am also satisfied that respondent 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, Emergency

Electronic Security (India) Pvt. Ltd., having its registered office at A-302 Razvi Househill Road, Bandra (W), Mumbai – 400 050, Maharashtra and having CIN No.U31200MH1999PTC122419, Registration No.122419, 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.)