

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

COMPANY PETITION NO.678 OF 2015

M/s. Oswal Minerals Limited

....Petitioner

Vs.

M/s. Dharmraj Aluminum Industries Pvt. Ltd.

....Respondent

Mr. Niraj Shah i/b. Mr. Siddharth Murarka for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY, 2018

P.C.:

1 Mr. Shah, counsel for petitioner states that further to the order dated 4th January, 2018, petitioner's advocates had sent a fresh notice under Rule 28 of the Companies (Court) Rules, 1959 to respondent company at the new address given in the Company Master Data extract taken on 4th January, 2018. Mr. Shah states that the packet has come back with the endorsement “unclaimed” and tenders an affidavit of one Prakash Bane affirmed on 25th January, 2018. In the affidavit, it is also mentioned that notice was also sent by email at the email ID mentioned in the Company Master Data which has been delivered. The Company Department has filed a report dated 22nd January, 2018 in which it is mentioned that the notice under Rule 28 of the Companies (Court) Rules, 1959 that was sent has come back with the endorsement “left”. In my view, therefore, notice is deemed to have been served on the company.

2 The company has neither filed any affidavit in reply opposing the petition nor anyone entered appearance. The averments in the petition are, therefore, not controverted. The company has also not responded 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.

3 This Court while admitting the petition, in its order dated 25th April, 2017 has expressed a view that the company is unable to pay its debts and is commercially insolvent. I have also considered the petition, the documents annexed thereto and also heard Mr. Shah, counsel for petitioner. Even I am satisfied that the company is indebted to petitioner as per the confirmation of accounts dated 12th April, 2014 and the company is unable to pay its debts and is commercially insolvent.

4 In the circumstances, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) that the respondent company, namely M/s. Dharmraj

Aluminum Industries Pvt. Ltd., having its registered office at B/2, Devprayag, Bhaktimandir Marg, Opp. Thanawala Automobiles, Thane – 400 602, Maharashtra, be wound up by and under the orders, direction and supervision of this Hon'ble Court;

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

5 Official Liquidator to take steps immediately without waiting for notification.

6 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)