

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

COMPANY PETITION NO.1063 OF 2015

M/s. Sankur Refractory & MineralsPetitioner

Vs.

Sumo Industries Private LimitedRespondent

Ms. Juilee Ghadge i/b. Mr. Sanjiv A. Sawant for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 8th FEBRUARY, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – Sumo Industries Private Limited (the Company) under the Companies Act, 1956.

2 At the time of admission, the following order came to be passed on 5th December, 2016 :

1. This petition is filed for winding up of Respondent company on the ground of inability pay its debts. The Petitioner's debt arises out of a contract for sale of goods. The contract is evidenced by tax invoices issued by the Petitioner to the Respondent towards supply of goods. The invoices are raised over the period between 12th March 2013 to 21st March 2013. Delivery challans are also issued in respect of the goods sold and delivered. The delivery challans have been duly acknowledged by the Respondent. The invoices aggregate to an amount of Rs.10,54,276/-. The Respondent has failed to pay the amount. After a couple of reminders, a statutory notice has been addressed by the Petitioner to the Respondent at its registered address. Despite receipt of this notice, which is evidenced by the acknowledgement card duly signed by the addressee, there is no compliance or even a reply.

2. The petition is duly served on the Respondent. An affidavit in proof of such service has been filed by the Petitioner on 29th June 2015. When the matter was called out on the last occasion, none appeared for the Respondent. The petition was, however, stood over to the next

date as a last chance to the Respondent. Even today, when the matter is called out, none appears for the Respondent. There is no reply on record either.

3. In the premises, it appears that prima facie there is no defence to the Petitioner's debt, which is neither disputed nor paid despite service of statutory notice. Prima facie there is a deemed inability to pay debts.

xxxxxxxxxxxxxx

3 Petitioner has filed an affidavit of one Khemraj Gajanand Todi affirmed on 1st February, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 5th January, 2017 and also of lodging in the Maharashtra Government Press notice to be published in the Maharashtra Government Gazette. Ms. Ghadge, counsel for petitioner undertakes to file an affidavit of petitioner with copy of the gazette notification within four weeks from today. Undertaking accepted. There is a service report dated 9th January, 2017 filed by the Company Department stating that the notice under Rule 28 of the Companies (Court) Rules, 1959 has been served.

4 There is no affidavit in reply filed by the Company opposing the petition. Therefore, the averments in the petition are not controverted. There is no reply to the statutory notice either. 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,

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.

5 I have heard the counsel for petitioner and also considered the petition and the documents annexed to the petition. I am also satisfied that the Company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

(a) That this Hon'ble Court be pleased to pass an order thereby winding up respondent company, namely, Sumo Industries Private Limited situated at Gat No.211, Nimbalak, Behind MIDC, District Ahmednagar – 414 111 by and under the directions of this Hon'ble Court;

(b) This Hon'ble Court be pleased to appoint Official Liquidator, High Court, Bombay or some other fit and proper person as Liquidator of the respondent company, namely, Sumo Industries Private Limited to conduct its affairs in the course of winding up and to distribute its assets in accordance with law.

7 Petitioner's advocate to forward a copy of this order duly authenticated by the Associate of this Court to Official Liquidator. Official Liquidator to take further steps upon receiving copy of the order without waiting for notification.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)