

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

COMPANY PETITION NO.462 OF 2016

Ato (I) Ltd.)....Petitioner
V/s.

Powerdeal Energy Systems (India) Pvt. Ltd.)....Respondent

Ms.H.D.Kapadia i/by K.G.Parmar for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 27.2.2018

P.C.:-

1 This petition is filed for winding up of the respondent company Powerdeal Energy Systems (India) Pvt. Ltd. on the ground that the company is unable to discharge its debts and commercially insolvent.

2 It is the case of petitioner that they rendered transportation services to the company as per the two consignment notes No.04/41023 dated 19.3.2014 and No.04/41038 dated 21.3.2014. Thereafter petitioner raised two invoices, one for Rs.50,000/- and other for Rs.51,600/- aggregating to a total of Rs.1,01,600/-. It is stated that despite several reminders, the company failed to remit transportation charges of Rs.1,01,600/- and hence petitioner caused a notice dated 11.6.2015 issued through its Advocate under the

provisions of Companies Act 1956. Despite receipt of notice, the company has failed and neglected to pay and even respond. Hence this petition came to be filed.

3 On 23.8.2017 this court has noted that petitioner has filed an affidavit of service dated 7.10.2016, indicating that the company was served with copy of petition along with intimation that the matter would be listed despite which the company has not entered appearance. Petitioner was directed to once again issue an intimation to company by e-mail at the e-mail address provided in the Company Master Data intimating that petition will be listed for admission on 18.9.2017. Petitioner has filed an affidavit of Raja Maniyer affirmed on 18.9.2017 in which it is stated that e-mail notice has been sent and the notice was also sent by speed post. Notice sent by speed post came back undelivered with the endorsement "refused". In the circumstances, I would proceed on the basis that the company has chosen to remain absent. No affidavit in reply has been filed which means none of the averments in the petition are controverted. The company also chose not to reply to the Statutory Notice.

4 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 admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, 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 also considered the petition and the documents annexed thereto. I am satisfied that prima facie case has been made out to wind up the company. Hence, the following order :-

ORDER

- (i) The Company Petition is admitted and made returnable on 3.5.2018 ;
- (ii) Petitioner is directed to advertise the petition within two weeks in two local newspapers circulated in Nasik, one in English and one in Marathi and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such

advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959 ;

(iii) Petitioner shall also deposit an amount of Rs.15,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to petitioner ;

(iv) A copy of this order shall forthwith be served on the Company by hand delivery/Registered Post AD/e-mail/speed post by the Advocate for petitioner ;

(K.R.SHRIRAM,J)