

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

COMPANY PETITION NO.727 OF 2015

Bhalani Biomedicals Pvt. Ltd.	)....Petitioner
V/s.	
M/s.Ganpati Multi Speciality Medicare Pvt. Ltd.	)....Respondent

Mr.Parikshit Desai i/by Hiren Mehta for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 5.1.2018

P.C.:-

1 This petition is filed for winding up of the respondent-company M/s.Ganpati Multi Speciality Medicare Pvt. Ltd. on the ground that the company is unable to discharge its debt, is commercially insolvent and requires to be wound up.

2 On 25.4.2017 when the petition was taken up for admission, this court was pleased to pass the following order :-

“1. Learned counsel appearing for the petitioner states that the respondent is served. Affidavit of service dated 24th August, 2015 is already on record. None appeared for the respondent when the matter was called out.

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 in the month of July, 2009, the respondent approached the petitioner and had placed the order for medical disposable items. The petitioner accordingly delivered the items to the respondent from time to time and issued the invoices upon the respondent. The respondent never raised any dispute upon accepting the delivery of the said goods and also made various payments from time to time. It is the case of the petitioner that for the period between 14th November, 2013 and 31st July, 2014, the petitioner had raised 119 invoices upon the respondent which are pending. The petitioner has annexed the list of outstanding invoices as Exhibit "C". The petitioner has also annexed the copies of the outstanding invoices as Exhibits "D-1" and "D-2".

4. Since the respondent did not make any payments of the 119 invoices, the petitioner issued a notice on 8th November, 2014 calling upon the respondent to pay a sum of Rs.46,74,330/- with further interest thereon. The said statutory notice was duly served upon the registered office address of the respondent. The respondent however, neither made any payment nor gave any response to the said statutory notice.

5. According to the petitioner, a sum of Rs.49,33,237/- is due and payable by the respondent to the petitioner as on the date of filing of the petition and further interest at the rate of 24% p.a. from the date of filing of the petition till realization.

6. Learned counsel for the petitioner invited my attention to the invoices annexed to the petition and also to the notice of demand dated 8th November, 2014. He also invited my attention to the statutory notice annexed at Exhibit "F" to the petition and would submit that there is no response to the said statutory notice.

7. On perusal of the documents annexed to the petition, I am of the view that the respondent has not made any payment to the petitioner in respect of the invoices in question. There is no response to the statutory notice. No affidavit in reply is filed by the respondent. The

statements made in the petition are deemed to have been admitted.

8. *I am of the view that the respondent is unable to pay its debts and is commercially insolvent.*

9.....”

3 Counsel for petitioner tenders affidavit of one Vijay Kanade affirmed on 5.1.2018 confirming publication of the admission of petition in 'Free Press Journal' and in 'Navshakti', both on 13.5.2017 and also in the Maharashtra Govt. Gazette on 12.5.2017.

4 The company department has filed a service report dated 29.5.2017 confirming service under Rule 28 of the Company (courts) Rules 1959. Nobody has entered appearance for respondent company. Nobody appeared on 25.4.2017 when the petition was taken up for admission or even yesterday, i.e., 4.1.2018 when the petition was called out and stood over to today. Even today, nobody is present for respondent company. No affidavit in reply has been filed opposing the petition. Therefore, the averments contained in the petition are uncontroverted.

5 Respondent-company has not responded to the statutory notice either.

6 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.

7 At the time of admission, this court in its order dated 25.4.2017 has expressed a view that the respondent company is unable to pay its debts and is commercially insolvent.

8 I have also considered the petition, all documents annexed thereto and heard Mr.Desai for petitioner. I am also satisfied that the company is unable to pay its debts and is commercially insolvent.

9 Petition is therefore, allowed in terms of prayer clauses-(a)

and (b) which read as under :-

“(a) that the Respondent viz. M/s.Ganpati Multi Speciality Medicare Private Limited, a company within the meaning of Companies Act, 1956 having its registered office at Plot No.327/328, National Highway (N.H.) 6, Vidya Nagar, Aakashwani Chowk, Jalgaon-425 001, Maharashtra be ordered and directed to be wound up by and under the orders and directions of this Hon'ble Court ;

(b) that the Official Liquidator, High Court, Bombay or some other fit and proper person as this Hon'ble Court may deem fit and proper, be appointed as Liquidator of M/s.Ganpati Multi Speciality Medicare Private Limited, with all powers under the provisions of Companies Act, 1956.”

10 Official Liquidator to take further steps without waiting for Notification.

11 Petition accordingly stands disposed.

(K.R.SHRIRAM,J)