

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.220
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 772 OF 2015

Karim V. Dhuka carrying Business in Style Shri Karim V. Dhuka	.. Petitioner
Vs.	
Mata Mohatadevi Milk and Milk Products Private Limited	.. Respondent

Mr. Sandip A. Shah for petitioner.

None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 19TH JANUARY 2018**

P.C.

1 On 5th December 2016, this Court was pleased to pass the following order :-

1 This petition seeks winding up of the Respondent-company on the ground of inability to pay its debts. The Petitioner's debt, which is in the sum of Rs.3,05,754/-, arises out of a contract of sale of goods. The contract is evidenced by invoices raised by the Petitioner. The invoices raised are for the period between 04 October 2014 and 29 November 2014 and aggregate to a sum of Rs.2,78,250/-. There is no dispute between the parties as to the quantity or quality of the goods sold and delivered or the correctness of the invoices raised in respect thereof. After sending a couple of reminders, a statutory demand notice is addressed by the Petitioner to the Respondent at its registered address. In reply to the statutory notice, the Respondent has admitted having received the goods in good condition and also admitted its readiness and willingness to pay the outstanding amounts. The Respondent has sought three weeks' time to clear the dues. The reply is of 23 March 2015. There has been no payment since then to the Petitioner. The statutory notice addressed by the Petitioner is neither complied with nor replied by the Respondent.

2 The petition has been duly served on the Respondent. An affidavit of service was tendered on the last occasion, i.e. 03rd October 2016. Despite default of appearance, this Court directed the

Petitioner's advocate to address an E-mail to the Respondent intimating it of the next date of hearing. Accordingly, an intimation has been sent by E-mail by the Petitioner to the Respondent. An affidavit in proof of such service has been tendered across the Bar today. Despite service of the petition and the special intimation of the date of hearing as mentioned above, the Respondent chooses to remain absent. There is no reply filed to the petition.

3. *In the premises, prima facie there appears to be no defence to the petition. The Petitioner's debt, which is uncontested, is not paid or secured to the satisfaction of the Petitioner despite service of statutory notice. Accordingly, prima facie there is deemed inability to pay. In the premises, the following order is passed.*

ORDER

- (i) The Company Petition is admitted and made returnable on 17 January 2017;*
- (ii) The Petitioner is directed to advertise the Petition in two local newspapers, viz. "Free Press Journal" (in English) and "Nav-Shakti" (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 the 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) The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards the 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 the Petitioner;*
- (iv) A copy of this order shall forthwith be served on the Company by hand delivery and by Registered Post AD by the Advocate for the Petitioner.*

2 Petitioner has filed his own affidavit affirmed on 9th January 2018 confirming advertising the petition in Free Press Journal and Navshakti on 21st December 2016 and in the Maharashtra Government Gazette for the period 29th December 2016 to 4th January 2017 at Sr.No.M-16290.

3 Notice served by the registry under Rule 28 of the Companies (Court) Rules, 1959 has come back with the endorsement 'Left'. Mr. Shah for petitioner tenders the Company Master Data extract taken today from the website of the Ministry of Corporate Affairs from which it appears that the registered address is the same to which the notice under Rule 28 was dispatched. The said extract is taken on record and marked 'X' for identification.

4 Therefore, I am inclined to accept that notice under Rule 28 has been effectively served upon respondent-company.

5 Heard Mr. Shah for petitioner, perused the petition and the documents annexed thereto. There is no reply filed by the company opposing the petition. To the statutory notice dated 19th March 2015, the company has replied by a letter dated 23rd March 2016 copy whereof is at Exh.'D' to the petition which reads as under :

*“Mata Mohatadevi Milk & Milk Products Private Limited.
Shop No.2, Radha Mohan Building, Road No.7, Golibar, Santacruz
East,
Mumbai 400 055.*

Date : 23.03.2015

To,

*Shri Karim V. Dhuka
Haji Dost Mohmad Stable, At & Post Pelhar,
Taluka Vasai, Dist. Thane.*

Re: Legal notice dated 10.03.2015.

Sir,

1. We are in receipt of the aforesaid legal notice addressed by your advocate and have noted the contents thereof.

2. As you are well aware that we have always maintained that the goods mentioned under the invoices have been duly received by us in good condition and that we are always ready and willing to make the payment. However, due to severe financial losses and liquidity crunch, we have been unable to make your payments. Due to our good relations, we have been requesting you to bear with us for sometime as we are in the process of clearing various liabilities which the company has incurred over the last several years.

3. As assured to you, we are still ready and willing to pay the outstanding amounts. However, we would require about 3 weeks clearing all your dues. You are requested to kindly bear with us for some time and we request you not to instruct your Advocate to adopt any proceedings against us.

Yours truly,
For Mata Mohatadevi Milk & Milk Products Private Limited.
Sd/-
Director”

6 The company has not honoured its commitment to pay. I am satisfied, therefore, that the company is indebted to petitioner, is unable to discharge its debt and is commercially insolvent. When the petition was taken up for admission, this Court has also observed that *prima-facie* there appears to be no defence to the petition and there is deemed inability to pay.

7 In the circumstances, the company requires to be wound up.

Company petition allowed in terms of prayer clauses (a) and (b) which read as under :

“(a) that the Company viz. Mata Mohatadevi Milk & Milk Products Pvt. Ltd. Be wound up by and under the Orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) that the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed as liquidator of the Company, with all powers under the Companies Act, 1956 including the powers to take charge of all the assets of the Company to conduct its affairs in the course of winding up and to distribute its assets in accordance with law.”

7 The official liquidator to take possession without waiting for any notification.

8 The Company Petition disposed accordingly.

(K.R. SHRIRAM, J.)