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

COMPANY PETITION NO.660 OF 2015

Ashok Mohansing Bajaj ....Petitioner

Vs.

Dynamic Beverages Pvt. Ltd. ....Respondent

Ms. Kavita S. Lalwani for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 4th JANUARY, 2018

P.C.:

1 On 14th February, 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. Two affidavits of service are already filed by the petitioner.*
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> *2. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.*
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> *3. On 21st August, 2014, M/s.Laxmi Enterprises for valuable consideration drew three demand bills of exchange on the respondent, first in the sum of Rs.9,60,000/-, second and third of Rs.1,50,000/- each in favour of the petitioner. The said demand bills of exchange were accepted by the respondent for consideration. The respondent made part payment towards demand bills of exchange dated 21st August, 2014, Rs.9,60,000/- i.e. on 20th September, 2014 for Rs.2,10,000/- and on 29th October, 2014 for Rs.3,00,000/- and promised to pay a sum of Rs.4,50,000/- against the first demand bill of exchange dated 21st August,2014 and Rs.3,00,000/- for the balance two demand bills of exchange dated 21st August, 2014 of Rs.1,50,000/- each.*
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> *4. The petitioner presented all three demand bills of exchange on 19th January, 2015 for payment of the balance sum of Rs.4,50,000/- of the first demand bill of exchange and Rs.3,00,000/- of other two demand bills of exchange which came to be dishonoured.*
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> *5. The petitioner thereafter on 19th January, 2015 presented all three demand bills of exchange upon Laxmi Enterprises for payment. The said Laxmi Enterprises issued three cheques of Rs.1,50,000/- each towards part payment to the petitioner. All three cheques were*

dishonoured upon presentation with the remarks "funds insufficient".

6. The petitioner thereafter issued a statutory notice on 7th April, 2015 to the respondent calling upon to pay a sum of Rs.7,50,000/- with interest at the rate of 18% p.a. from the due date till payment. The said statutory notice was received by the respondent. Neither there was any payment nor any response to the said statutory notice. According to the petitioner, the respondent is liable to pay a sum of Rs.7,92,375/- on the date of filing of the petition and further interest thereon.

7. Ms.Lalwani, learned counsel appearing for the petitioner invited my attention to various annexures annexed to the petition and would submit that though the respondent made part payment in respect of demand bills of exchange which were accepted by the respondent, the respondent did not pay the balance amount. She submits that there is no response to the statutory notice. No affidavit in reply is filed.

8. A perusal of the record prima-facie indicates that the respondent had accepted three bills of exchange and made part payment to the petitioner. The bills of exchange were dishonoured upon presentation. The bills of exchange were subsequently presented for payment upon Laxmi Enterprises. Three cheques issued by Laxmi Enterprises in the sum of Rs.1,50,000/- each also came to be dishonoured with remark "funds insufficient". There is no reply to the statutory notice. There is no affidavit in reply filed by the respondent.

9. I am therefore, of the prima-facie view that the respondent is unable to pay its debts and is commercially insolvent.

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2 Records indicate that petitioner has filed an affidavit dated 20th April, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi). There is also an affidavit of petitioner affirmed on 26th April, 2017 confirming advertising the petition in the Maharashtra Government Gazette. There is a service report dated 12th April, 2017 filed by the Company Department in which it is stated that the notice was sent under Rule 28 of the Companies (Court) Rules, 1959 to two addresses, viz., G-12/12-A, Ansa Indl. Estate, Saki Vihar Road,

Sakinaka, Andheri (East), Mumbai – 400 072 and also at C/o. Smart Aqua Industry, Behind Red Chilli Hotel, Kalyan-Murbad Road, Kumbha Village, Kalyan-District-Thane – 421 301. Both these addresses are given in the cause title and the Sakinaka address is the registered address of the company. The service report indicates that the notice that was sent to the Sakinaka address came back undelivered with the endorsement "unclaimed" but the packet sent to Kalyan District has been delivered.

3 It is settled law that if the notice has been sent to the registered address and it is unclaimed, it is still good service. In any event, the company has received the notice under Rule 28 at its alternate address. I am therefore, inclined to accept that the notice under Rule 28 of Companies (Court) Rules, 1959 has been served. Even to the statutory notice, respondent company had not filed any reply. 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.

4 This Court in its order dated 14th February, 2017 after considering the petition and the documents annexed thereto and hearing the counsel for petitioner has observed "I am therefore, of the *prima-facie* view that the respondent is unable to pay its debts and is commercially insolvent". Despite service of notice, respondent has not filed any affidavit in reply opposing the petition. Therefore, the averments in the petition are uncontroverted. I have heard Ms. Lalwani and also considered the pleadings and the documents annexed to the petition. I am also satisfied that respondent had accepted three bills of exchange and made part payment to petitioner and the bills of exchange were dishonoured upon presentation. Even the cheques issued were dishonoured with remarks "funds insufficient". Therefore, it is clear that the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

5 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b), which read as under :

> (a) That the Respondent Company viz. Dynamic Beverages Pvt. Ltd. be ordered to 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 this Hon'ble Court be pleased to appoint the Official Liquidator of this Hon'ble Court as Liquidator of the Respondent Company viz., Dynamic Beverages Pvt. Ltd., with all powers under the Companies Act, 1956 including the power to take charge of the assets, books of accounts,

affairs, records, documents, papers, vouchers, bills etc. of the said company.

6 Official Liquidator shall forthwith act on an authenticated copy of this order.

7 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)