

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

COMPANY PETITION NO.792 OF 2015

Standard Chartered Bank

....Petitioner

Vs.

Fourcee Infrastructure Equipments Pvt. Ltd.

....Respondent

Mr. Parikshit Desai i/b. Mr. Vikramsinh Yadav 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 – Fourcee Infrastructure Equipments Pvt. Ltd. (the Company) under the Companies Act, 1956.

2 When the petition was taken up for admission, this Court was pleased to pass the following order on 20th April, 2017 :

1. Learned Counsel appearing for the Petitioner states that the Respondent is already served. Affidavit of service is already filed. Today, 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. Vide an Agreement dated 20.4.2013 the Petitioner had sanctioned credit facility on the terms and conditions recorded in the Agreement between the parties. The Respondent executed various documents in favour of the Petitioner during the period April 2013 and 20 April 2013. The Respondent committed default in making repayment of the dues to the Petitioner. The Petitioner issued a notice on 23.2.2013 upon the Respondents for payment of the over due amounts. The Respondent however committed default and did not pay the over due amounts to the Petitioner. The Petitioner issued statutory notice dated 23.2.2015 upon the Respondent at the Registered Office address of the Respondent. Though the said notice was served on the Respondent at the Registered Office address of the Respondent, neither payment is made nor any response was given to the notice issued to the

Respondent. Learned Counsel for the Petitioner invited my attention to the various documents annexed to the Petition and would submit that the Respondent committed default of the huge amount and have not responded to the statutory notice.

4. A perusal of the documents annexed to the Petition indicates that the Respondents had advanced various facilities to the Respondent and the Respondent committed default in making repayment and thus the amount is due under those facilities. There is no response to the statutory notice. The Respondent has also not held any Annual General Meeting after 31.7.2013 and has not filed any Balance sheet after 31.3.2014.

5. It is the case of the Petitioner that equity investors of the Respondents have alleged misappropriation of funds by the Respondent. No affidavit in reply is filed by the Respondent. Averments made in the Petition are deemed to have been admitted.

6. Considering all the documents annexed to the Petition and the since the Respondent did not give any reply to the statutory notice and did not file Affidavit in reply, I am of the view that the Respondent is unable to pay its debts.

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3 On record is an affidavit of one Vijay Kanade affirmed on 19th June, 2017 and 6th February, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 13th May, 2017 and corrigendum was published on 23rd January, 2018. Mr. Desai, counsel for petitioner states that petitioner has already lodged with the Government Press the notice of admission of the petition to be published in the Maharashtra Government Gazette and the application was made on 6th January, 2018. Mr. Desai tenders the acknowledgment details which is taken on record and marked 'X' for identification.

4 There is a service report dated 29th May, 2017 filed by the Company Department stating that the notice under Rule 28 of the

Companies (Court) Rules, 1959 was returned undelivered with the endorsement “Unclaimed. Return to sender”. Mr. Desai tenders an extract of the Company Master Data which he states was taken on or about 5th February, 2018. The registered address in the Company Master Data is the same address to which the notice under Rule 28 was sent and the same address as mentioned in the cause title of the petition to which statutory notice was also sent. Therefore, I would proceed on the basis that notice under Rule 28 is deemed to have been served on the Company.

5 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.

6 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.

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

(a) that Respondent viz., Fourcee Infrastructure Equipments Pvt. Ltd., a Company within the meaning of Companies Act, 1956 having its registered office at 431, Laxmi Mall, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai – 400 053 be ordered and directed to be wound up by and under the orders and directions of this Hon'ble Court;

(b) that 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 Fourcee Infrastructure Equipments Pvt. Ltd. with all powers under the provisions of Companies Act, 1956.

8 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.

9 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)