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

COMPANY PETITION NO. 281 OF 2005

Satnam Engineers and
Fabricators Pvt. Ltd. ....Petitioner

Vs.

MTZ Polyfilms Limited ....Respondent

WITH
COMPANY PETITION NO. 282 OF 2005

Lunar Tanks and Vessels ....Petitioner

Vs.

MTZ Polyfilms Limited ....Respondent

WITH
COMPANY PETITION NO. 812 OF 2005

M/s. Well Pack Papers and
Containers Ltd. ....Petitioner

Vs.

MTZ Polyfilms Limited ....Respondent

WITH
COMPANY PETITION NO. 750 OF 2008

Marathwada Packaging Pvt. Ltd. ....Petitioner

Vs.

MTZ Polyfilms Limited ....Respondent

Mr.Jagdish M. Chodankar for petitioner in CP/282/2005 & CP/282/2005.

Mr. A.R. Bamne I/b A.R. Bamne and Co. for petitioner in CP/750/2008.

Ms.Aishwarya Hadkar I/b M/s. Legal Vision for respondent in CP/281/2005, CP/282/2005 and CP/812/2005.

Mr.Ganesh Ambekar I/b Thakore Jariwala and Associates for respondent in CP/750/2008.

Mr.Mangesh Nalawade I/b Vipul Shukla for Creditor of respondent company.

CORAM : K.R.SHRIRAM, J.
DATE : 21ST JUNE, 2018

P.C.:

COMPANY PETITION NO. 750 OF 2008

1 The above petitions are for winding up of respondent company-MTZ Polyfilms Limited (the company) on the ground that the company is unable to discharge its debts.

2 On 17th July 2009, while admitting the petition, the following order came to be passed :-

> *"1. None appears for the Respondents though served. On the earlier occasion, it was argued on behalf of Respondent that Respondent company had been declared as sick industrial company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985. However, the Petitioner had relied on Clause-16 of the Scheme formulated by the BIFR which expressly enables the Petitioner to pursue its claim involved in the present Petition against the Respondent company. That claim will have to proceed on its own merits notwithstanding the pendency of the BIFR proceedings. The claim of the Petitioner is founded on the decree passed by the Court of competent jurisdiction. It is a money decree. There is nothing on record to suggest that the said decree has been challenged or has been stayed by Court of competent jurisdiction. Inspite of statutory notice, the Respondent failed to pay the outstanding dues. Besides, inspite of institution of present Petition for winding up of the Respondent company, no attempt has been made to pay any amount to the Petitioner. The decretal amount is now stated to be in the range of Rs.20 lakhs. It is quite obvious that the Respondent company is unable to pay its debts. Accordingly, this Petition deserves to be admitted. Hence, admitted.*
>
> *2. In so far as interim-relief is concerned, interim*

relief in terms of prayer clause (d) is granted which will operate till the disposal of the Petition.

3. Petitioner to take steps to issue publication regarding admission of this Petition in two local newspapers, namely, "Free Press Journal", "Maharashtra Times" and in the Maharashtra Government Gazette. The Petitioner shall deposit an amount of Rs. 10,000/- with the Registrar (O.S.)/Prothonotary and Senior Master towards the publication charges, within three weeks thereafter with intimation to the Company Registrar failing which the Petition shall stand dismissed without further reference to the Court.

4. If the above condition is complied with, Petition be listed for hearing as per its turn."

The company had filed a reference to the Board for Industrial and Financial Reconstruction (BIFR) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

3 The petition, therefore, came to be adjourned from time to time because of the BIFR reference.

4 On 14th March 2018, the following order came to be passed :-

"1 Section 4(b) of amended Sick Industrial Companies (Special Provisions) Repeal Act, 2003 provided that on such date as may be, any appeal preferred to AAIFR or any reference made or inquiry pending to or before BIFR shall stand abated provided that a company in respect of which such appeal or reference or inquiry that stands abated may make reference to the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) within 180 days from the commencement of the IBC in accordance with the provisions of the IBC. The notified date is 1st December, 2016 and 180 days expired on or about 31st May,

> *2017. There is nothing on record to show that any such reference has been made to the NCLT.*
>
> *2 Therefore, petition be listed for final hearing on 5.4.2018."*

5 Today, at the outset, Shri Ambekar appearing for the company stated that the company has filed a reference to the National Company Law Tribunal, Mumbai (NCLT) on 19th April 2018 after the 180 days period got over. This 180 days window came to an end on 31st May 2017. The reference therefore is not maintainable. It has to be also noted and it is rather obvious, that the reference has been filed in view of the order dated 14th March 2018 passed by this Court. Therefore, there is no impediment in hearing and finally disposing of this company petition.

6 Petitioner is an unpaid vendor. Pursuant to the orders placed by the company, petitioner sold and delivered, during the period from 17th May 2005 to 26th September 2005, goods for an aggregate amount of Rs.13,56,476/- and raised nine invoices. As the company did not make payment, petitioner filed a Special Civil Suit No.53 of 2007 before the Court of Civil Judge, (Senior Division) at Aurangabad. This suit came to be decreed by a judgement and decree dated 16th August 2007 in the sum of Rs.16,74,310/- together with interest @ 18% per annum from the date of the suit till payment/realization. As the company did not make any payment, petitioner caused a notice to be served upon the company through

its advocates' notice dated 23rd April 2008 under Section 434 of the Companies Act, 1956. The notice when one reads is under Section 434(1)(a) of the Companies Act, 1946. No reply was given to this statutory notice. Even in the affidavit in support, the company has not denied receiving the notice but only makes a bald statement that the contents of the notice are not admitted. The other defence taken in the affidavit in support that under Section 434(1)(b), petitioner can file a winding up petition only if execution or other process issued on a decree or order is returned unsatisfied in whole or in part. According to company the stipulation required under Section 434 (1)(b) is execution or process issued for satisfaction of decree.

7 Shri Ambekar appearing for the company stated that his instructions are only to state that the reference that was filed before NCLT, was filed on 19th April 2018, more than almost 11 months after the cut off date and he has no instructions to argue on the merits of the petition.

8 The fact that there is a decree against the company has not been denied. The fact that the amount under the decree has not been paid is not denied. The statutory notice issued also has not been replied to. 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.

9 I am, therefore, satisfied that there is a debt payable by the company, the company is unable to pay its debts, is commercially insolvent and required to be wound up. On record is an affidavit of one Nilesh I. Shah affirmed on 4th February 2010 confirming advertising the petition in Free Press Journal and Maharashtra Times on 13rd October 2009 and 15th October 2009, respectively and also in Maharashtra Government Gazette for the period 22-28, Octoer, 2009 at Sr. No.254. Notice under Rule 28 of the Companies (Court) Rules, 1959 has also been served as per the affidavit of one Bharat N. Acharya from the Company Department, affirmed on 30th October 2009.

10 In these circumstances, the petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

> *"(a) that the Respondent company namely MTZ Polyfilms Ltd. Be would up under Section 433 of the Companies Act, 1956 by and under the orders and directions of this Hon'ble Court.*

> *(b) that the Official Liquidator, High Court, Bombay and/or some other fit and proper person be appointed as the Liquidator of the Respondent Company with all powers under the Companies Act, 1956 including the power to take charge of the assets and management of the Respondent company in the course of the winding up and to distribute its assets in accordance with Law."*

11 Petitioner's advocate to forward within two weeks, an authenticated copy of this order to the official liquidator who shall take immediate steps without waiting for any notification.

12 The above company petition accordingly disposed.

COMPANY PETITION NO. 281 OF 2005
WITH
COMPANY PETITION NO. 282 OF 2005
WITH
COMPANY PETITION NO. 812 OF 2005

13 Respondent company - M/s. MTS Polyfilms Limited has been ordered to be wound up by the above order passed today in Company Petition No. 750 of 2008.

14 Therefore, these three petitions also stand disposed with liberty to petitioners to lodge their affidavits of proof of debt with the Official Liquidator, who shall consider the same in accordance with law.

15 If the order dated 21st July 2018 in Company Petition No.750 of 2008 winding up respondent company – M/s. MTS Polyfilms Limited is recalled or set aside in appeal, liberty is given to these petitioners to revive their respective petitions and move once again for necessary orders including winding up of respondent company.

(K.R. SHRIRAM, J.)