

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

**COMPANY PETITION NO. 898 OF 2015**

|                               |               |
|-------------------------------|---------------|
| M/s. Premier Transport Ltd.   | ...Petitioner |
| <i>Versus</i>                 |               |
| M/s. Morn Logistics Pvt. Ltd. | ...Respondent |

Mr.S.V. Vora a/w. Ms. S.S. Vora for petitioner.

None for respondent.

**CORAM : K.R.SHRIRAM, J.**  
**DATE : 2<sup>ND</sup> FEBRUARY 2018**

**P.C.**

1 Further to the order dated 19<sup>th</sup> January 2018, Shri Vora appearing for petitioner tenders an affidavit of one Sadanand Shetty affirmed on 28<sup>th</sup> January 2018 confirming service of notice under Rule 28 of the Company (Courts) Rules, 1959 at the new registered address of respondent company. The notice under Rule 28 has been sent by hand delivery, registered post A.D. and by email all of which had been delivered. Despite that respondent is not present in Court either in-person or through an Advocate.

2 At the time of admission of the petition on 26<sup>th</sup> April 2017, this Court was pleased to pass the following order :-

*1 Learned counsel for the petitioner states that the respondent has not claimed the papers and proceedings sent by the petitioner and has filed an affidavit of service on 11<sup>th</sup> September, 2015. None appeared for the respondent when the matter is called out.*

*2 By this petition the petitioner seeks winding up of the*

respondent company on the ground that the respondent is unable to pay its debts.

3 It is the case of the petitioner that pursuant to the request made by the respondent, from time to time the petitioner had transported various consignments from Bhimasar to Kandala containing various goods of the respondent and deliver the same in sound and intact condition at the destination. The petitioner raised five invoices upon the respondent in the sum of Rs.4,67,500/- Copies of the invoices are annexed to the petition.

4 It is the case of the petitioner that the respondent, thereafter, made part payment of Rs.2 lakhs on 17<sup>th</sup> April, 2014, against the total outstanding of Rs.4,67,500/-.

5 The petitioner, thereafter, vide letter dated 20<sup>th</sup> February, 2015 called upon the petitioner to pay balance amount of Rs.2,67,500/- with interest thereon. The respondent, however, by a letter dated 1<sup>st</sup> March, 2015 alleged that the respondent was liable to pay only Rs.55,300/- and agreed to pay the said amount to the petitioner. The petitioner denied the said allegations made by the respondent in the said letter by its reply letter dated 16<sup>th</sup> March, 2015 and forwarded the statement of account of the respondent in the books of account of the petitioner showing an amount of Rs.3,73,045/- due and payable by the respondent to the petitioner as on 20<sup>th</sup> February, 2015. There was no response to the said letter. Petitioner, thereafter called upon the respondent vide a statutory notice dated 18<sup>th</sup> April, 2015 to pay a sum of Rs.2,67,400/- together with interest at the rate of 25% p.a. on the due date. The said notice was served at the registered office of the respondent. The said notice was, however, returned with the remark "unclaimed". The petitioner, thereafter, sent the said notice by E-mail at the E-mail address of the respondent. According to the petitioner, the respondent is liable to pay to the petitioner an amount of Rs.3,39,724/- as on 2<sup>nd</sup> June, 2015 and further interest thereon from the date of filing the petition, till its realization.

6 Learned counsel appearing for the petitioner invited my attention to various documents annexed to the petition. Respondent, however, alleged that only a sum of Rs.55,300/- is due and payable to the petitioner from the respondent. It is submitted that the petitioner had denied the said allegation and drew my attention to the statements of account showing the payment of Rs.3,73,045/- due and payable by the respondent to the petitioner as on 20<sup>th</sup> February, 2015. The statutory notice has been served on the said

respondent. There was no response to the statutory notice. No affidavit in reply has been filed.

7 On perusal of the documents annexed to the petition, and in view of the fact that the respondent has not responded to the statutory notice and also not filed any affidavit in reply, I am of the view that the respondent is unable to pay its debts and is commercially insolvent.

8 Hence, I pass the following order.

*:: O R D E R ::*

i) The company petition is admitted and shall be advertised in two local newspapers, namely (I) Free Press Journal (in English) and Navshakti (in Marathi) as also in the Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959;

ii) The company petition is made returnable on 22<sup>nd</sup> June, 2017. The petitioner shall deposit Rs.10,000/- (Rupees Ten Thousand) towards publication charges with the Prothonotary & Senior Master, under intimation to the Company Registrar, within two weeks from the date of this order, failing which the petition shall stand dismissed for the non-prosecution without further reference to the Court. After the advertisements are issued, the balance, if any, shall be refunded to the petitioner.

3 As per the letter dated 1<sup>st</sup> March 2015, copy whereof is annexed to the petition at Exh.D, respondent company had raised a dispute on the amount payable. According to company, the amount payable to petitioner was only Rs. 55,300/- and not the amount as claimed by petitioner. At the

same time, even this amount of Rs.55,300/- had not been paid. In response to their letter dated 1<sup>st</sup> March 2015, petitioner had responded by its letter dated 16<sup>th</sup> March 2015 and forwarded the statement of accounts of respondent in the books of accounts of petitioner showing an outstanding of Rs.3,73,045/-. There was no response to the said letter and there was no response even to the statutory notice dated 18<sup>th</sup> April 2015. No affidavit in reply also is filed to the petition. Therefore, averments in the petition are uncontroverted.

4 On record is an affidavit of one Sadanand Shetty affirmed on 11<sup>th</sup> July 2017 confirming advertising of petition in Free Press Journal and Navshakti on 5<sup>th</sup> May 2017 and also in Maharashtra Government Gazette on 11<sup>th</sup> July 2017 at for the period 11-17 May 2017 at Sr.No.M-1745. Notice under Rule 28 also has been served.

5 Having considered the petition and the documents annexed thereto, I have to conclude that the company is unable to discharge its debts and is commercially insolvent. Petition stands disposed in terms of prayer clauses (a) and (b) which read as under :-

*(a) That M/s. MORN LOGISTICS PRIVATE LIMITED, having its registered office at 001 Ground Floor, Green Homes, Marol Pipe Lane, Andheri (East), Mumbai 400 059 be wound up*

*under the direction of this Hon'ble Court and under the provisions of the Companies Act, 1956.*

*(b) That the official liquidator be appointed as liquidator of the company with necessary powers under the provision of the companies Act, 1956.*

6      An authenticated copy of this order shall be served by the advocate for petitioner on the official liquidator who shall take immediate steps without waiting for any notification.

7      Company petition disposed.

**(K.R. SHRIRAM, J.)**