

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

COMPANY PETITION NO. 899 OF 2015

PPG Asian Paints Pvt. Ltd.	.. Petitioner
Vs.	
Acumen Motors Pvt. Ltd.	.. Respondent

Mr. Tejas Bhatt a/w. Ms. Saloni C. Sathe for petitioner.

None for respondent.

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

P.C.

1 The petition is seeking winding up of respondent-company Acumen Motors Pvt. Ltd. (the company) on the ground that the company is unable to pay its debts and is commercially insolvent. When the petition was taken up for admission on 26th April 2017, the following order was passed :-

1 Learned counsel appearing for the petitioner states that respondent is served. Affidavit of service dated 22nd September, 2015 is already on record. None appeared for the respondent though served.

2 It is the case of the petitioner that petitioner and respondent had entered into an agreement dated 1st March, 2006 for supplying of the printing materials for the period of five years. The respondent had agreed to purchase the printing materials for the sum of Rs.1.25 crore during the said period of five years. The petitioner had accordingly invested a sum of Rs. 7 lakhs. It is, however, the case of the petitioner that as against the commitment of the respondent to purchase the printing materials for Rs.1.25 crores during the period of five years, the respondent, however, purchased materials amounting to Rs.4,67,047/-. The balance amount of materials was not purchased by the respondent within the period of five years. The respondent did not

return the payment of Rs.7 lakhs alongwith interest thereon, though the petitioner repeatedly called upon the respondent to return the said amount of Rs. 7 lakhs.

3 Learned counsel appearing for the petitioner invited my attention to the documents annexed to the petition, the agreement dated 1st March, 2006 entered into between the parties and also demand promissory note signed by the respondent. The respondent had also issued a receipt acknowledging the payment of Rs.7 lakhs which is at page 35 of the petition.

4 Since the respondent did not refund the amount of Rs.7 lakhs to the petitioner, the petitioner issued a statutory notice at the registered office address of the respondent which was duly received by the respondent. The respondent has neither made any payment nor gave any reply to the statutory notice. According to the petitioner, the respondent is liable to pay a sum of Rs.7,39,411/- with further interest thereon from 1st June, 2013, till its realization.

5 With the assistance of the learned counsel for the petitioner, I have perused the documents including the provisions of the contract agreed into between the parties. In clause (9) of the agreement, the respondent had agreed to repay the amount of funds disbursed by the petitioner in the sum of Rs.7 lakhs described in Schedule-I of the agreement. The contractual period had expired by efflux of time. The respondent did not respond to the statutory notice. No affidavit in reply is filed. None appeared for the respondent when the matter is called out. The averments made in the petition are deemed to have been admitted by the respondent. In my view, the respondent is unable to pay its debts and is, commercially insolvent.

6 I, therefore, 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 27th 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 three weeks from the date of admission, 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.

2 On record is the affidavit of one Saloni C. Sathe affirmed on 4th September 2017 confirming advertising the petition in Free Press Journal and Navshakti on 23rd May 2017 and in the Maharashtra Government Gazette for the period June 15-21, 2017 at Sr.No. M-1782. There is a service report dated 31st May 2017 in which it is stated that the notice under Rule 28 of the Companies (Court) Rules, 1959 was sent to the registered address of the company and also to another address of the company. The notice sent to the registered address has been served whereas the notice sent to the another address has been returned with the endorsement “Unclaimed”. Mr. Bhatt tenders an extract of the Company Master Data which she says was taken today from the MCA website showing the registered address of the company. The same is taken on record and marked 'X' for identification. There is no affidavit in reply filed opposing the petition. From the cause list, it appears that one Advocate Girish Mahadeo Joshi has filed Vakalatnama on behalf of the company. Mr. Bhatt states that petitioner's Advocates have not received any communication from Mr. Joshi that he is entering appearance on behalf of

respondent-company and no affidavit-in-reply also is filed. Therefore, the averments are uncontroverted. Even to the statutory notice there was no reply received. 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 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.

3 I am satisfied that the company is indebted to petitioner, is unable to pay its debts and is commercially insolvent. Therefore company is required to be wound up. Hence, the petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) That the Respondent-Company, viz., ACUMEN MOTORS PRIVATE LIMITED be wound up by and under the orders and directions of this Hon'ble Court.

(b) That, the Official Liquidator attached to this Hon'ble Court be appointed as Liquidator of the Respondent Company viz., ACUMEN MOTORS PRIVATE LIMITED with all powers under the provisions of the Companies Act, 1956 including the power to take possession of all its affairs, assets, management, books, papers and vouchers.”

4 The official liquidator to take immediate steps without waiting for any notification.

5 The company petition accordingly disposed.

(K.R. SHRIRAM, J.)