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

COMPANY PETITION NO. 900 OF 2015

PPG Asian Paints Pvt. Ltd. .. Petitioner
Vs.
Pashankar Auto Wheels 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 Pashankar Auto Wheels 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 the record and proceedings along with notice was sent by the petitioner at the registered office address of the respondents, which is notified with the office of Registrar of Companies. The packet is, however, returned undelivered with the remark "Left Address" . Learned counsel tenders the latest copy of the company/LLP Master Data, obtained by the petitioner on 3rd April, 2017 which also indicates the same registered office address of the respondent company at which the petitioner had sent the papers and proceedings along with notice. The registered office of the respondent company situates at the same address. Statement made by the learned counsel for the petitioner is accepted.*
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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.

3 The petitioner and the respondent had entered into an agreement dated 1st October, 2012 whereby the respondent agreed to purchase the material worth Rs.60 lakhs in the first years, Rs.66 lakhs in the second year and Rs.74 lakhs in the third year aggregating to Rs.2 crores. Under the said agreement, the petitioner invested a sum of Rs.40 lakhs with the respondent which was liable to be refunded by the respondent to the petitioner upon the respondent not completing the purchase of the committed materials or upon termination of the said agreement. It is the case of the petitioner that the respondent however purchased the material worth Rs.22,04,731 only as against the material of Rs.2 crores. The said agreement has expired by efflux of time. The petitioner, thereafter, made a demand for the refund of the said amount from time to time with interest. The respondent, however, did not return the said amount.

4 The petitioner issued a statutory notice on 21st February, 2015 through its advocate's letter calling upon the respondent to pay a sum of Rs.49,67,438/- with interest thereon at the rate of 12% p.a. Though, the said notice was served upon the respondent at its registered office address, the respondent neither made any payment nor gave any response. According to the petitioner, as on 31st May, 2015, the respondent is liable to pay a sum of Rs.51,25,852/- with further interest thereon at the rate of 12% p.a. from 1st June, 2015 till realization.

5 The learned counsel appearing for the petitioner invited my attention to various annexures to the petition including the agreement entered by which the respondent had agreed to purchase the plaintiff's product amounting to Rs.2 crores. Upon expiry of contract period or earlier termination, the respondent was liable to return the invested amount of Rs.40 lakhs made by the petitioner. The respondent, however, refused to return the said amount. There is no response to the statutory notice. No affidavit in reply is filed by the respondent. Respondent has unclaimed the notice. The papers and proceedings as well as the notice were returned with the remark "left".

6 The respondent did not disclose its new address to the petitioner. A perusal of the company/LLP Master Data which is annexed to the petition as well as produced before this court *which is obtained on 3rd March, 2017 clearly indicates that the registered office of the company is the same at which the statutory notice as well as the papers and proceedings and the notice were sent by the petitioner. The statement of the learned counsel appearing for the petitioner is that even today the registered office of the respondent is the same where the papers and proceedings were sent by the petitioner. The said statements accepted. On perusal of the document and in view of the fact that the respondent has not responded to the statutory notice and has not filed any affidavit in reply, I am of the view that the respondent is unable to pay its debts and is commercially insolvent. Averments made in the petition are deemed to have been admitted.*

7 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 3rd July, 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 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-1783. There is a service report dated 29th May 2017 in which it is stated that the notice under Rule 28 of the Companies (Court) Rules, 1959 was sent to two addresses of the company and both have come back with the endorsement *"Left"*. Mr. Bhatt tenders an extract of the Company Master Data which she says was taken today from the MCA website in which the address shown is the same to which notice under Rule 28 was sent. Therefore, I am inclined to accept the notice under Rule 28 is duly served. The said copy of Company Master Data is taken on record and marked 'X' for identification. There is no affidavit in reply filed opposing the petition. Therefore, the averments are uncontroverted. Even to the statutory notice dated 23rd February 2015, 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., M/s. Pashankar Auto Wheels 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., M/s. Pashankar Auto Wheels 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.)