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

COMPANY PETITION NO.763 OF 2015

Wealthtree Advisors Private Limited ....Petitioner

Vs.

Sharepro Services (India) Pvt. Ltd. ....Respondent

Ms. Prachi Ojha i/b. Advaya Legal for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 4th JANUARY, 2018

P.C.:

1 This petition is for winding up of respondent company - Sharepro Services (India) Pvt. Ltd. When the petition was taken up for admission on 8th March, 2017, this Court was pleased to pass the following order :

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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. It is the case of the petitioner that the petitioner and the respondent had entered into an Engagement Letter dated 5th January, 2014 by which the petitioner had agreed to provide the respondent their high quality CFO support. Under the said agreement, the respondent had agreed to pay monthly fixed fees of Rs.1,50,000/- to the petitioner. The period of the said agreement was minimum 12 months. It is the case of the petitioner that the petitioner raised various invoices towards the fixed fees for the services rendered by the petitioner to the respondent to the tune of Rs.14,78,802/-. The respondent made initial payment upto April, 2014, leaving a balance amount of Rs.5,72,492/-. The respondent also deducted tax at source in the sum of Rs.63,610/- upto April, 2014. The last payment received by the petitioner from the respondent was on 11th June, 2014 in the sum of Rs.1,51,686/-.

4. It is the case of the petitioner that since the respondent did not pay the balance amount to the petitioner, the petitioner issued a notice on 15th January, 2015 calling upon the respondent to make payment within ten days. There was no response to the said notice. The *petitioner thereafter issued a statutory notice through its advocate's letter on 7th April, 2015 calling upon the respondent to pay an amount of Rs.9,30,969/- with further interest on the principal amount of Rs.8,42,700/-. Though the respondent received the said statutory notice, did not pay any further amount to the petitioner. The petitioner thus filed this petition inter-alia praying for winding up of the respondent. According to the petitioner, the respondent is liable to pay a sum of Rs,9,30,969/- as on 31st March, 2015 and further interest thereon. No affidavit in reply is filed.*

5. On perusal of the documents annexed to the petition as summarized aforesaid, I am of the prima-facie five that the petitioner has rendered the services to the respondent under the said Engagement Letter dated 5th January, 2014. Though the respondent made only part payment aggregating to Rs.5,72,492/- and deducted the tax at source in the sum of Rs.63,610/-, could not pay the balance amount. There is no reply to the statutory notice. No affidavit in reply has been filed.

6. I am of the prima-facie view that the respondent is unable to pay its debts and is commercially insolvent.

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2 Petitioner has filed an affidavit of one Nitin Advirekar affirmed on 29th April, 2017 confirming advertising of the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 18th April, 2017 and also in the Maharashtra Government Gazette. Company Department has filed a service report dated 10th April, 2017 in which it is mentioned that the notice under Rule 28 of the Companies (Court) Rules, 1959 sent to the company has been returned by the postal authority with the endorsement “refused”. Refusal, in law, is good service.

3 Despite service, no affidavit in reply opposing the petition has been filed by respondent. Therefore, the averments in the petition are uncontroverted. Even to the statutory notice, there is no reply. 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 admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, 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.

4 This Court while admitting the petition has observed that petitioner had rendered services to respondent and respondent only made some part payment and there is still further amounts payable by respondent company to petitioner. The Court has also noted that respondent is unable to pay its debts and is commercially insolvent. I have heard the counsel for petitioner and also considered the petition and the documents annexed to the petition. I am satisfied that the company is indebted to petitioner, is unable to discharge its debts and is commercially insolvent and requires to be wound up.

5 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b), which read as under :

(a) that the Company - Sharepro Services (India) Pvt.

Ltd. having its registered office at 13AB, Samhita Warehousing Complex, 2nd Floor, Andheri-Kurla Road, Behind Sakinaka Telephone Exchange, Andheri East, Mumbai – 400 072 be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) that the Official Liquidator be appointed as Liquidator of the Company to take charge of the assets, books of account and properties of the Company with all powers under the provisions of the Companies Act, 1956.

6 Official Liquidator shall forthwith act on an authenticated copy of this order.

7 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)