

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

COMPANY PETITION NO. 1170 OF 2015

The Abhyudaya Co-operative Bank Ltd. ... **Petitioner**

V/s.

M/s. Goyal Allied Steel Pvt. Ltd. ... **Respondent**

Mr. Vishal Ghosalkar for the Petitioner.

Mr. Ajit Singh I/b APS Law Associates for the Respondent.

CORAM : K.R. SHRIRAM, J.

DATE : 20th AUGUST, 2018

P.C.:

. This petition is filed for winding up Goyal Allied Steel Pvt. Ltd. ('the company') on the ground that the company is unable to discharge its debt and it is commercially insolvent.

2 On 16.01.2017, while admitting petition, the following order came to be passed :

“ Learned counsel appearing for the petitioner seeks liberty to carry out amendment in prayer clauses (b) and (d). Learned counsel appearing for the respondent has no objection if the amendment is permitted. Statement is accepted.

2. Leave to amend is granted to carry out amendment within three days from today.

3. By this petition, the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to

pay its debts.

4. *There is no dispute that the learned arbitrator had rendered an award in Arbitration Case No.ARB/ACB/311 of 2010 on 28th March 2011 directing the respondent to pay various amounts of Rs.25,79,23,134.02 to the petitioner with interest thereon. It is not in dispute that the respondent has not challenged the said award and the same has attained finality.*

5. *The petitioner issued a statutory notice on 27th January 2015 which was duly received by the respondent. The respondent gave vague reply to the said notice and did not make payment pursuant to the said notice.*

6. *Out of the several properties mortgaged by the respondent in favour of the petitioner, the petitioner has sold three properties and have realised certain amounts. After appropriating the said amounts, the petitioner has still to recover a sum of Rs.25,79,23,134.02. No affidavit-in-reply is filed by the respondent.*

7. *Learned counsel appearing for the petitioner states that three properties are already sold by the petitioner. He submits that even after selling of those properties and giving credit of the amount of sale of those properties, the petitioner has still to recover more than Rs.25 crores from the respondent.*

8. *In my view, since the arbitral award rendered by the learned arbitrator has attained finality and no payment is made by the respondent of the admitted liability, the respondent-company is unable to pay its debts and is commercially insolvent.*

9. *I therefore pass the following order :-*

(i) *The company petition is admitted and is made returnable after eight weeks.*

The petitioner shall advertise the petition in two local newspapers, viz. "Free Press Journal" (in English) and "Navshakti" (in Marathi) and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy

- of the notice shall not invalidate such advertisement and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959.*
- (iii) The learned counsel appearing for the respondent-company waives service of the company petition under Rule 28 of the Companies (Court) Rules, 1959.*
 - (iv) The petitioner shall also deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards the publication charges, with intimation to the Company Registrar, failing which, the petition to stand dismissed for non-prosecution without further reference to the Court. After the advertisements are issued, the balance, if any, shall be returned to the petitioner.*
 - (v) There shall be interim relief in terms of prayer clause [c-(i)] excluding the words “dealing with.”*

10. In so far as the submission of the learned counsel for the petitioner that in view of the admitted liability and since substantial amount is due from the respondent and in view of the fact that even according to the respondent, the properties described in paragraph (i) on page 23 at Exhibit-B annexed to the petition could not be sold inspite of various efforts made by the petitioner and thus the official liquidator be appointed as a provisional liquidator is concerned, the learned counsel for the respondent seeks time to take instructions as to whether such properties can be sold by the official liquidator. This Court will accordingly consider this prayer of the learned counsel for the petitioner on the next date.

11. Place the company petition on board for 'Directions' on 30th January 2017.”

3 On 13.02.2017, the following order came to be passed:

“By a separate order passed by this court on 16th January, 2017, Company Petition No.1170 of 2015 is already admitted. The matter was adjourned at the request of the learned counsel for the respondent on the ground that the respondent seeks to make an attempt to settle the dispute and to take inspection as to whether records prescribed in paragraph (5)(i) on page 23 of Ex.B

to the petition can be called by the Official Liquidator. The proposal given by the respondent for settlement is rejected by the petitioner.

2. A perusal of the record indicates that the claim of the petitioner against the respondent is Rs.25,79,23,134.20 with further interest as on 30th April, 2010 till payment. The property of the respondent described in paragraph (5)(i) on page 23 of Ex.B annexed to the petition is far less in value as against the claim of the petitioner against the respondent. In my view the petitioner has made out a case for appointment of the Official Liquidator as a Provisional Liquidator. There shall be interim relief in terms of prayer clause (b). Interim relief in terms of prayer clause (c) is already granted by this court vide order dated 16th January,2017 to continue during the pendency of the petition.

3. It is not in dispute that the property described in paragraph (5)(i) on page 23 of Ex.B annexed to the petition could not be sold by the petitioner inspite of various efforts made by the petitioner. Official Liquidator is thus directed to sell the said property in question by public auction and take all necessary steps to sell the said property.

4. Learned counsel appearing for the respondent at this stage prays that the Official Liquidator shall not take physical possession of all its affairs, assets, management, books, papers and vouchers for a period of two weeks to enable the respondent to make one more attempt to settle the dispute amicably. Statement is accepted. It is made clear that the Official Liquidator shall not implement the relief in terms of prayer clause (b) for a period of two weeks. If the matter is not settled within two weeks, the petitioner shall inform the Official Liquidator to implement the order passed by this court in terms of prayer clause (b)."

4 No Affidavit-in-Reply has been filed and the Counsel appearing for the Company also did not make any submission. None of the averments in the petition, therefore, have been controverted.

5 Mr. Ghosalkar tendered two affidavits of one Rajendra Gurav affirmed on 09.08.2018 and 20.08.2018 confirming advertisement of petition in Free Press Journal and Nav-Shakti on 2018 and Maharashtra Government Gazette for the period 9th to 15th August 2018 at Serial No. 18139.

6 I have also perused the documents annexed to the petition. The Arbitration Award dated 28.03.2011 has become final. It is not even challenged by the Company.

7 In the circumstances, I am satisfied that the Company is unable to discharge its debts, is commercially insolvent and it requires to be wound up. The petition is, therefore, allowed in terms of prayer clauses (a) and (b), which read thus:

“(a) that the Respondent Company M/s. Goyal Allied Steel Pvt. Ltd. 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 M/s. Goyal Allied Steel Pvt. Ltd. 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.”

8 Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the Official Liquidator who shall take immediate steps without waiting for any notification. The counsel for petitioner also to

forward a copy of this order to the National Company Law Tribunal, Mumbai for information.

9 Upon receipt of the authenticated copy from petitioner's advocate, the Official Liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the Official Liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

10 The Prothonotary and Senior Master, Bombay High Court to return the amount of Rs.10,000/- deposited by the Petitioner subject to deductions, if any.

11 Petition disposed accordingly.

(K.R. SHRIRAM, J.)