

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

COMPANY PETITION NO.1060 OF 2015

Build CraftPetitioner

Vs.

M/s. Baycity Resorts Pvt. Ltd.Respondent

Mr. Bhupendra Parekh for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY, 2018

PC.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Baycity Resorts Pvt. Ltd. (the company) on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 Respondent company placed an order upon petitioner for construction of swimming pool in proposed club house to be constructed on the plot of land bearing no.164, Hill Road, Bandra (West), Mumbai – 400 050. Under the said contract, the company was liable to make various payments and as payments were not made, petitioner filed summary suit being summary suit no.3176 of 2004 in this Court. The summary suit came to be decreed in favour of petitioner in the sum of in the sum of Rs.35,00,000/- plus interest of Rs.7,70,958/- plus cost. As the decretal amount was not paid, petitioner caused statutory notice dated 6th May,

2015 issued under Section 434 of the Companies Act, 1956 to which the company did not file any response.

3 At the time of admission, nobody appeared for the company. There is no affidavit on record opposing the petition. Therefore, the averments in the petition are not controverted. Even to the statutory notice, the company did not file any response. 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.

4 Petitioner has filed an affidavit of one Himadulla Qureshi affirmed on 9th March, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 21st January, 2017 and in the Maharashtra Government Gazette for the period February 9-15, 2017 at Serial No.M-16334. There is a service report dated 7th February, 2017 filed by the Company Department confirming service of notice under Rule 28 of the Companies (Court) Rules, 1959 upon the company.

5 I have heard Mr. Parekh, counsel for petitioner and also considered the petition and the documents annexed to the petition. Petitioner has decree dated 16th August, 2006 in its favour. It is also stated that the decree has not been satisfied. It is, therefore, quite obvious that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

6 In the circumstances, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) The company namely M/s. Baycity Resorts Pvt. Ltd. may be ordered to be wound up under the provisions of the Company Act I of 1956 or any statutory modification thereof;

(b) Official Liquidator attached to this Hon'ble Court may please be appointed as Liquidator of respondent company namely M/s. Baycity Resorts Pvt. Ltd. with usual powers under Section 457 and 458 of the Company Act I of 1956 or any statutory modification thereof.

7 Official Liquidator to take steps immediately without waiting for notification.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)