

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

COMPANY PETITION NO.867 OF 2015

Ashish Shah,
Carrying on business in the trade name and
style of M/s. Shah EnterprisesPetitioner

Vs.

Maestros Mediline Systems LimitedRespondent

Mr. Manish Bohra i/b. A.S. Khan and Associates for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 12th JANUARY, 2018

PC.:

1 By this petition, petitioner is seeking winding up of respondent company – Maestros Mediline Systems Limited on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 On 20th March, 2017 when the petition was taken up for admission, 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 company under the provisions of the Companies Act, 1956 on the ground that the respondent is unable to pay its debts.

3. It is the case of the petitioner that during the period between 8th August, 2012 and 3rd March 2013, pursuant to the orders placed by the respondent, the petitioner sold, supplied and delivered various goods to the respondent in the sum of Rs.4,16,442/-. The respondent received the said goods in good condition and issued the invoices upon the respondent. It is the case of the petitioner that the respondent made part payment of Rs.49,514/- towards re-payment of the goods sold and supplied by the petitioner. The respondent returned some of the goods of the amount less than Rs.4,000/- in respect of which the petitioner has already given credit to the respondent. The respondent

thereafter issued a cheque of Rs.1,54,983/- dated 9th August,2013 towards part payment and assured the petitioner to honour the said cheque. The said cheque however was dishonoured on presentation by the petitioner with its bankers' with the remark 'payment stopped by the drawer'.

4. Learned counsel appearing for the petitioner invited my attention to various invoices annexed to the petition and also to a copy of the cheque of Rs.1,54,983/-. He also invited my attention to Ex.E and would submit that the respondent had confirmed their liability to the sum of Rs.3,62,329/- as on 31st March,2013 to the petitioner. He submits that there is no response to the statutory notice.

5. A perusal of the record indicates that the petitioner has supplied goods to the respondent pursuant to the order placed by the respondent from time to time. The respondent however has made payment of Rs.49,514/- and as returned some goods of less than Rs.4,000/-. The petitioner has already given credit of the said goods returned by the respondent. A cheque of Rs.1,54,983/- dated 9th August, 2013 issued by the respondent is dishonoured on representation by the petitioner with remark 'payment stopped by the drawer'. There is no response to the statutory notice. No affidavit in reply is filed.

6. According to the petitioner, the respondent is liable to pay Rs. 4,66,364/- on the date of filing of petition with further interest thereof.

7. For the reasons recorded aforesaid, I am of the view that the respondent is unable to pay its debts and is commercially insolvent. I, therefore pass the following order :-

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3 On record there is an affidavit of one Santosh Laxman Tilatkar affirmed on 30th June, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) and also in the Maharashtra Government Gazette. Company Department has filed a service report dated 12th April, 2017 confirming notice under Rule 28 of the Companies Court (Rules), 1959 has been served. There is no affidavit in reply opposing the petition has been filed by respondent company. Therefore, the averments in the petition are not controverted. It should be

noted that the company did not even reply to the statutory notice issued under the provisions of Companies Act, 1956. 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 This Court while admitting the petition has expressed a view that respondent company is unable to pay its debts and is commercially insolvent. I have heard Mr. Bohra and also considered the pleadings and the documents annexed to the petition. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, 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 said Company - Maestros Mediline Systems Limited having its registered office at Plot No.EL/63, TTC IND Area Electronic Zone, Mahape, Navi Mumbai – 400 710 be ordered and directed to 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, High Court, Bombay or some other fit and proper person be appointed as Liquidator of the assets, properties and income as also the business of the said Respondent Company, with all powers under the Companies Act, 1956.

6 The Prothonotary and Senior Master to return the amount of Rs.10,000/- deposited by petitioner after adjusting charges, if any payable.

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

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)