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

COMPANY PETITION NO.307 OF 2015

R.N.Oswal Hosiery Factory)….Petitioner
V/s.
Reid & Taylor (India) Limited)....Respondent

Mr.Ravish Mishra i/by Vijay B.Dhigreja for petitioner.
Mr.Aditya Singh i/by Little and Co. for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 22.3.2018

P.C.:-

1 On 25.1.2018, after hearing the parties, the Court was satisfied that the company requires to be wound up and started dictating the order. It came to light that there was no proof of Gazette notification and there was nothing on record to show that petitioner was a registered partnership firm. Counsel for the company also informed the Court that they will be applying to the Hon'ble Supreme Court of India for clarification to the effect that this petition has also been stayed. Therefore, the matter was stood over to 15.2.2018 for passing final order. Mr.Singh for the company states that they have not moved the Hon'ble Supreme Court of India for any clarification.

2 Mr.Mishra for petitioner tenders an affidavit of one

Surinder Mohan Jain, partner of petitioner affirmed on 14.3.2018 to which is annexed acknowledgment of registration of firm issued by Registrar of firms Punjab, confirming that petitioner has been entered in the register of firms. Also on record is an affidavit of one Sandeep Shinde affirmed on 15.3.2018 confirming advertisement of petition in Government Gazette for the period 8 to 14th February, 2018 at Serial No.M17317.

3 In the circumstances, as noted in the order dated 6.2.2017 read with order dated 25.1.2018, the company requires to be wound up. There is no affidavit in reply filed opposing the petition. None of the averments have been controverted. There is a service report dated 15.3.2017 placed by the company department in which it is stated that notice under Rule 28 has been served but the rubber stamp on the acknowledgment is that of S.Kumar Nationwide Ltd. Mr.Singh for the company on instructions states that Reid & Taylor (India) Limited and S.Kumar Nationwide Ltd are group of companies and carrying on business from the same address. Therefore, there could have been mix up of rubber stamp. In the circumstances, I would consider that notice under Rule 28 has been served on the company.

4 None of the averments in the petition are controverted.

There is no reply to the statutory notice either. 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.

5 The fact that at the time of admission of the petition, the counsel for the company submitted to the court that his client has instructed him to make a statement that the company petition be admitted by the court itself, confirms that the company does not dispute the claim of petitioner that there is a debt, the company is unable to pay its debt and is commercially insolvent.

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

> *“(a) that the said Company namely Reid & Taylor (I) Ltd. be wound up by and under the Orders and supervision of this Hon'ble Court ;*

> *(b) that this Hon'ble Court be pleased to appoint the Official Liquidator, High Court, Bombay or some other fit and proper person as the Liquidator of assets, properties and income as well as the business of the Company, namely Reid & Taylor (I) Ltd. with all powers under the provisions of the Companies Act (I) of 1956 and in law generally."*

7 Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate of petitioner without waiting for any notification.

8 Petition accordingly, stands disposed.

9 Mr.Singh for the company seeks stay of this order. The only reason for seeking stay is some of the creditors have approached NCLT with a petition. Counsel, however, does not know what petition it is. Moreover, that cannot be a reason for granting stay of the order because the company is not disputing that it is unable to discharge its debts to petitioner. As noted above, the company has informed the court that court may admit the petition in the affidavit in reply opposing the petition.

Hence, stay refused.

(K.R.SHRIRAM,J)

KJ