IN THE HIGH COURT OF JUDICATURE AT BOMBAY.220
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 857 OF 2015

M/s. Sandeep Steels .. Petitioner
Vs.
Dhanshree Developers Private Limited .. Respondent

Mr.Niraj Shah i/b Siddharth Murarka for petitioner.

Mr. Shailesh Kantharia i/b Mahesh D. Pol for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 19TH JANUARY 2018

P.C.

1 On 12th January 2018, it was recorded that out of Rs.99 lakhs that the company agreed to pay as per the consent terms filed as on 10th January 2018, a sum of Rs. 41,50,000/- was to be paid but the company had paid only Rs.7,50,000/-. Therefore, an opportunity was given to the company to pay the balance Rs. 34 lakhs to make the installments upto date. The company was also put to notice that if the amount is not paid on or before 18th January 2018, the petition will be allowed and respondent-company will stand wound up. The Managing Director of the respondent-company was also directed to remain present in Court. Yesterday, though the petition was listed, could not be taken up due to paucity of time and is taken up today. Mr. Kantharia appearing for company states that the Managing Director of the company-Mr. Shankarrao A. Borkar was present

in Court yesterday but he is not present today as he is supposedly unwell. Mr. Shah, for petitioner, of course disputes this and states yesterday until 2.00 P.M., when he asked the advocate on record for company as to whether the Managing Director is present, he was told he is not present. Mr. Shah also stated that he inquired about payment of Rs.34 lakhs to which there was no response.

2 Be that as it may, on 12th January 2018, the company was put to notice that the company will stand wound up if the amount of Rs.34 lakhs was not paid on or before 18th January 2018.

Admittedly, that amount was not paid. Even today, the counsel for company states that they are in no position to make payment, and that the company shall pay a sum of Rs. 3 lakhs by tomorrow and the balance of Rs. 34 lakhs in the first week of February-2018. If the company had approached to this Court earlier and requested the Court for extension of time when it made the first default itself, I would have believed the counsel for respondent. It is therefore quite obvious that when the company petition was taken up for final hearing and it does appear that the company will be wound up, the company is coming up with such an offer and in that offer also states that it cannot pay the amount immediately. Therefore, it is quite obvious that the company is unable to pay its debt, is commercially insolvent and requires to be wound up.

3 On record is an affidavit of one Prakash Tukaram Bane affirmed on 17th November 2017 confirming advertising the petition in Free Press Journal and Navshakti on 3rd November 2017 and in the Maharashtra Government Gazette for the period 9 to 15th November 2017 at Sr. No.M-17230. The records and proceedings indicates that notice under Rule 28 of the Companies (Court) Rules, 1959 has been served. At the same time, it should be noted that this Court in ***Mr. Shivkant Chaudhary Vs. Mr. Dinesh Chandra Maingi*** [1] has held that notice under Rule 28 can be waived either expressly or by implication by conduct. The company has been represented on every occasion and has also filed the consent terms. Even today, the company is represented. Therefore, notice under Rule 28 is deemed to have been waived impliedly. In these circumstances, there is no impediment in passing the order of winding up.

4 From what is noted above read with the orders dated 7th September 2017 and 12th January 2018, it is quite obvious that the company was indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up. Accordingly, the petition allowed in terms of prayer clauses (a) and (b) which read as under :-

> "(a) *that the Respondent company, namely M/s. DHANSHREE DEVELOPERS PVT. LTD. having its registered office at 24, Borkar Compound, Western Express Highway, Borivali (East),*

1 CA/735/2015 in CP/328/2008 DT. 28.11.2017 (yet to be reported)

Mumbai-400 066, be wound up by and under the orders, direction and supervision of this Hon'ble Court.

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of Companies Act 1956 or later enactment to take charge of the Respondent Company and to conduct its affairs during the course of its winding up."

5 The official liquidator to take immediate steps without waiting for notification.

6 Company petition disposed accordingly.

(K.R. SHRIRAM, J.)