

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.1145 OF 2015**

The Abhyudaya Co-operative Bank Ltd.)...Petitioner
V/s.

M/s.Kudus Steel Rolling Mills Pvt. Ltd.)...Respondent

Mr.Vishal C.Ghosalkar for petitioner.
None for respondent.

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

P.C.:-

1 The petition is seeking winding up of the company Kudus Steel Rolling Mills Pvt. Ltd. (the said company) on the grounds that the company is unable to discharge its debts and is commercially insolvent.

2 On 18.1.2017, the following order came to be passed :-

“Learned counsel for the petitioner states that the respondent has been served. He tenders affidavit of service which indicates that the respondent is served. None appeared for the respondent when the matter was called out. No affidavit in reply is filed.

2. By this petition, the petitioner seeks winding up of the respondent company under the provisions of the Companies Act, 1956.

3. The petitioner had granted various loan facilities to the respondent during the period between 12th September,2006 to 5th August, 2008. Since the respondent company committed a default, the petitioner filed

proceedings under section 84 of the Multi State Co-operative Societies Act, 2002. The learned arbitrator has rendered an award on 5th April,2011. The respondent has not impugned the said award. The said arbitral award has thus attained finality.

4. On 30th January,2015, the petitioner issued a statutory notice upon the respondent calling upon the respondent to pay a sum of Rs.25,33,26,729.77 with further interest thereon under sections 433 and 434 of the Companies Act, 1956. The said notice was received by the respondent company but neither any payment was made pursuant thereto nor any response thereto was issued. The petitioner accordingly filed this petition inter alia praying for winding up.

5. Since the arbitral award has attained finality and since no response to the statutory notice is issued by the respondent nor any payment is made, I am of the prima facie view that the respondent company is unable to pay its debts. I, therefore, pass the following order :-

(a) The company petition accordingly stands admitted and shall be advertised in two local newspapers viz. (1) "Free Press Journal" (in English) and (2) "Navshakti" (in Marathi) and also in (3) "Maharashtra Government Gazette". Any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959.

(b) Company petition is made returnable on 22nd March,2017. The petitioner shall on or before 25th January,2017 deposit a sum of Rs.10,000/- towards publication charges with the Prothonotary and Senior Master under the intimation to the Company Registrar, failing which the company petition shall stand dismissed for non-prosecution without further reference to

the court. After the advertisements are issued, the balance, if any, shall be refunded to the petitioner.”

3 As noted by the Court while admitting the petition, respondent company has not filed any reply opposing the petition. Therefore, the averments in the petition are uncontroverted.

4 There has been 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 On record is the affidavit of one Rajendra Gurav affirmed on 15.6.2017 confirming advertisement of the petition in 'Free Press Journal' and in 'Navshakti' on 27.4.2017 and another affidavit dated 1.3.2018 confirming advertisement of the petition in Maharashtra

Government Gazette for the period 22nd to 28th February 2018 at Serial No.M-17342.

6 Mr.Ghosalkar for petitioner points out that in the Maharashtra Government Gazette Notice, the returnable date is shown as 3.5.2017 due to inadvertence because the petition was advertised only in February-2018. Mr.Ghosalkar states that this happened because the returnable date given in the newspaper advertisement was 3.5.2017. In my view, this error is not fatal to the petition and no prejudice will be caused. Further the company or third parties could have contacted Shir Ghosalkar or the Company Registrar for details.

7 I have also perused the petition and the documents annexed thereto. There is an award against the company which has attained finality. Mr.Ghosalkar states that after the award was passed on 5.4.2011, company has not paid a penny to petitioner. Even to the statutory notice there is no response. Even to this petition, there is no 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.

8 In the circumstances, I am satisfied that the company is unable to discharge its debts and is commercially insolvent.

9 Hence, Petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) That the Respondent Company M/s.Kudus Steel Rolling Mills 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.Kudus Steel Rolling Mills 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.”

10 Official Liquidator to take further steps on receiving authenticated copy of this order from the advocate for petitioner without waiting for any Notification.

11 Petition stands disposed.

(K.R.SHRIRAM,J)