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

COMPANY PETITION NO.615 OF 2016

Sahney Kirkwood Private Limited ….Petitioner

Vs.

Mill Stores Company (Bombay) Pvt. Ltd. ….Respondent

Ms. A.A. Mujawar I/b. Economic Laws Practice for petitioner.
Mr. Mohan G. Salian I/b. MGS Legal for respondent.
Mr. Uday Jaisani, Director of respondent present.

CORAM : K.R.SHRIRAM, J.
DATE : 20th JULY 2018

P.C.:

1 This petition is for winding up of respondent company - Mill Stores Company (Bombay) Pvt. Ltd. (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 14th March 2018 at the time of admission, the following order came to be passed :

> *1. The petition is filed for winding up of respondent company- Mill Stores Company (Bombay) Pvt. Ltd. on the grounds that the company is unable to discharge its debts, commercially insolvent and requires to be wound up.*
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> *2. The case of petitioner is that the company had approached petitioner with a request to place Inter-Corporate Deposit in the sum of Rs.3 crores for a period of 34 days from 12.8.2015 and due on 15.9.2015 carrying interest @ 16% p.a. Accordingly, the company placed Inter-Corporate Deposit of Rs.3 crores. As per the letter dated 12.8.2015, copy whereof is annexed to Exh.D to the petition, the company has acknowledged receipt of Rs.3 crores as Inter-Corporate Deposit for a period of 34 days from 12.8.2015 to 14.9.2015 due date being 15.9.2015 together with interest @ 16% p.a. The company had also issued Post Dated Cheques, Demand Promissory Note and Undertaking for honouring the Post Dated Cheques. The Post Dated Cheques were, cheque for Rs.3 crores towards principal and cheque for Rs.4,02,411/- towards interest payment. Copy of the*

Demand Promissory Note, Post Dated Cheques and the undertaking are annexed to the petition.

3. These Post Dated Cheques were to be deposited on 15.9.2015. It is stated that just before Post Dated Cheques were to be deposited, the company requested petitioner not to deposit the said cheques as the company was facing financial crisis with a promise to make the payment at the earliest. By a letter dated 1.3.2016 the company issued a cheque for Rs.1 crore on account of refund of principal. This cheque was dishonoured due to insufficiency of funds. Petitioner therefore, caused statutory notice issued to the company to which there is no reply. Hence, the petition came to be filed.

4. There is no affidavit in reply opposing the petition on record. Petitioner has also not received any copy of affidavit in reply. Therefore, none of the averments in the petition are controverted.

5. Mr.Jeejeebhoy for the company on instructions stated that no affidavit has been lodged in the registry or copy given to petitioner.

6. 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 admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, 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.

7. Having considered the averments in the petition and the documents annexed to the petition, it is very clear that petitioner had placed Inter-Corporate Deposit for Rs.3 crores. Mr.Jeejeebhoy on instructions states that the company does not deny having received the Inter-Corporate Deposit and having agreed to repay the interest @ 16% p.a. within a period of 34 days as mentioned in Exh.D to the petition. It is almost 2 & Â½ years since the amount was repayable and company has not paid a single Penny in that regard. Therefore, it is rather obvious that the company is unable to discharge its debts and commercially insolvent. Therefore, the following order is passed :

ORDER

(i) The Company Petition is admitted and made returnable on 7.6.2018 ;

(ii) Petitioner is directed to advertise the petition within two weeks in two local newspapers, viz. `Free Press Journal' (in English) and `NavShakti' (in Marathi) and also in 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

noncompliance with this direction or with the Companies (Court) Rules, 1959 ;

(iii) Petitioner shall also deposit an amount of Rs.15,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the 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 petitioner ;

(iv) Counsel for respondent waives notice under Rule 28 of Company (Courts) Rules, 1959.

8. Mr.Jeejeebhoy states that the company has all intention to settle the claim of petitioner. Therefore, the company is given 4 weeks time to deposit the amount of Rs.3 crores together with interest as mentioned in Exh.D to the petition with the Prothonotary & Senior Master, High Court, Bombay. In which case, the petition will stand dismissed without further reference to the court. The two weeks period given for advertising the petition will commence on the expiry of 4 weeks period.

3 Ms. Mujawar, counsel for petitioner states that even though the Court had granted four weeks time to deposit the amount of Rs.3 Crores with interest and more than three months have passed since four weeks period got over, the company has not paid a penny. Mr. Salian, counsel for respondent company, on instructions from Mr. Uday Jaisani, Director of respondent company, who is present in Court, states that the entire amount will be paid within four weeks from today. Ms. Mujawar, counsel for petitioner is opposing grant of any adjournment and states that the company should be wound up.

4 The Inter-Corporate Deposit was given to the company on 12th August 2015 and was due on 15th September 2015 carrying interest at 16% p.a. Almost three years have passed and not a penny has been paid.

Even in March 2018 when the petition came up for admission, the company assured the Court that it had all intentions to pay. The assurance has not been fulfilled. Even today Mr. Salian states that the company wants to pay petitioner but has no money. Mr. Salian is seeking four weeks time as last chance to make the payments. Therefore, the admitted position is that the company is indebted to petitioner, is unable to discharge its debts and is commercially insolvent and requires to be wound up.

5 On record is an affidavit of one Anant Kinjalkar affirmed on 15th May 2018 confirming advertising the petition on 25th April 2018 in Free Press Journal and Navshakti and also in the Maharashtra Government Gazette for the period May 3-9, 2018 at serial no.M-1837. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived at the time of admission.

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

> *(a) That the Respondent company, i.e., Mill Stores Company (Bombay) Private Limited CIN : U17100MH1949PTC007091 be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 r/w the Companies Act, 2013;*
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> *(b) That the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the Company with all powers under Section 457 of the Companies Act 1956 r/w the Companies Act, 2013 to take charge of all the assets, divisions, business, business affairs, subsidiaries, property, properties, bank accounts, books of accounts, vouchers,*

documents etc. of the Company with all powers under the provisions of the Companies Act, 1956 r/w the Companies Act, 2013.

7 Company petition accordingly stands disposed.

8 Notwithstanding the above, in view of the statement made by Mr. Salian, on instructions from Mr. Uday Jaisani, I would grant the company time upto and including 20th August 2018 to pay the entire claim, as per the particulars of claim, to petitioner. If this amount is paid, then the matter be listed for directions on 24th August 2018. If this amount is not paid, Official Liquidator, within two weeks from 20th August 2018, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

9 Upon receipt of the authenticated copy from petitioner's advocate, Official Liquidator shall forthwith cause notice to all concerned Directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All Directors of respondent company, now in liquidation, are hereby directed to file their respective statement of affairs as required under Section 454 of the Companies Act 1956, failing which Official Liquidator shall proceed further and lodge criminal complaint against the erring Directors, without seeking prior

sanction of this Court for initiation of criminal prosecution.

Gauri Amit Gaekwad

Digitally signed by Gauri Amit Gaekwad
Date: 2018.07.23 18:41:35 +0530

(K.R.SHRIRAM, J.)