

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

COMPANY PETITION NO.890 OF 2015

M/s.Foseco India Ltd.)....Petitioner
V/s.

M/s.Tulsi Castings and Machining Ltd.)....Respondent

Ms.Muazma Ansari 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 Tulsi Castings and Machining Ltd. (the said company) on the grounds that the company is unable to discharge its debts and is commercially insolvent.

2 At the time of admission of the petition on 26.4.2017, the following order came to be passed. Paragraph nos.3 to 9 of the said order dated 26.4.2017 read as under :-

3. It is the case of the petitioner that at the request made by the respondent, the petitioner sold various foundry products between 3rd May, 2013 and 22nd February, 2014 in the sum of Rs.1,098,463.81. The petitioner has annexed 21 invoices in the company petition. Under those invoices, the respondent was liable to pay to the petitioner a sum of Rs.1,098,463.81 within a period of 30 days from receipt of the invoices. It is the case of the petitioner that the petitioner, however, though received the said goods in

accordance with the order placed by the respondent, the respondent failed and neglected to make payment to the petitioner.

4. On 19th September, 2014, the respondent confirmed the payment of Rs.12,06,986.19 payable by the respondent to the petitioner as on 31st March, 2014.

5. The petitioner, thereafter issued a statutory notice dated 1st December, 2014 which was duly served upon the respondent at its registered office address and called upon the respondent to pay a sum of Rs.1,098,463.81 with interest thereon. Though, the said notice was duly served upon the respondent at its registered office, there was neither any response to the statutory notice nor any payment was received from the respondent. According to the petitioner as on the date of filing petition, the respondent is liable to pay a sum of Rs.1,098,463.81 along with the interest thereon till realization.

6. Mr. Das, the learned counsel appearing for the petitioner invited my attention to the invoices annexed to the company petition and also the confirmation of balance as on 31st March, 2014 given by the respondent confirming payment of Rs.12.06,986.19 due and payable by the respondent to the petitioner. There is no response to the statutory notice. No affidavit-in-reply is filed. Averments made in the Company petition are deemed to have been admitted by the respondent.

7. Considering the facts mentioned hereinabove and in view of the fact that there is neither any reply to the statutory notice nor any affidavit-in-reply is filed, I am of the view that the respondent is unable to pay its debts and has admitted its liability to the tune of Rs.12.06,986.19 as on 31st March, 2014.

8. Learned counsel appearing for the petitioner also prays for appointment of official liquidator as provisional liquidator. In support of this prayer, learned counsel for the petitioner invited my attention to the averments made in paragraph no.16 of the company petition and submits that

the company is commercially insolvent and is unable to discharge its debts and liabilities in normal course of business to the petitioner. Since the respondent has not filed affidavit, I am inclined to accept the statement made by the petitioner in paragraph 16. A perusal of documents annexed to the petition regarding website of Ministry of Corporate Affairs (Exhibit-F) also indicates that last annual general meeting of the respondent was held on 20th December, 2013 and the last balance sheet of the company was filed as on 31st March, 2013. In my view the company is heavily indebted to various creditors, and thus, it would be just, necessary and expedient for protecting interest of the creditors that Official Liquidator is appointed as provisional Liquidator.

9. *I, therefore, pass the following order:*

3 The company has not filed any affidavit in reply opposing the petition though one advocate Ravi P.Jadhav has filed Vakalatnama. His name also appears in the cause list. Therefore, none of the averments in the petition are controverted. As noted in the order of admission, no reply has been given by the company to the statutory notice. 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 Petitioner has filed an affidavit of one Sandeep Ganar affirmed on 17.1.2018 confirming advertising of the petition in 'Free Press Journal' and in 'Navshakti' on 15.12.2017 and in the Maharashtra Government Gazette in the issue of 21 to 27.12.2017 at Serial No.M-17264. The company department has placed service report dated 26.5.2017 confirming service of the notice under Rule 28 of the Companies (Court) Rules 1959 on the company. Even then, no affidavit in reply has been filed opposing the petition.

5 I have also perused the petition and the documents annexed thereto. The documents at Exh.B to the petition from company to petitioner confirms that as on 31.3.2014 the company admits that sum of Rs.11,89,347.47 is payable to petitioner.

6 In the circumstances, the company not having paid this amount despite acknowledging its liability in the sum of Rs.11,89,347.47/- but according to petitioner, the amount is Rs.12,06,986.19 as on 31.3.2014 and the company has not paid any

of these amounts as stated in the petition, it is very clear that the company is unable to discharge its debts, commercially insolvent and requires to be wound up.

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

“(a) That the Company-M/s.Tulsi Castings and Machining Limited Company be wound up by and under the Order, directions and supervisions of this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) That the Official Liquidator, High Court, Bombay be appointed as Liquidator of the entire assets, properties, affairs and records of the Company”

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

9 Petition stands disposed.

(K.R.SHRIRAM,J)