

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

COMPANY PETITION NO.962 OF 2015

Richa Realtors Private Limited

....Petitioner

Vs.

M/s. Shree Swami Samarth Trading
Enterprises Private Limited

....Respondent

Mr. Anilkumar K.P. for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 8th FEBRUARY, 2018**

PC.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Shree Swami Samarth Trading Enterprises Private Limited (the Company) under the Companies Act, 1956.

2 At the time of admission, the following order came to be passed on 3rd February, 2017 :

Mr.Anilkumar, learned counsel for the petitioner states that the respondent is served. He states that the affidavit of service is already filed by the petitioner pursuant to the order dated 5th December,2016. The petitioner has once again served the notice upon the respondent on 17th December,2016. Statement is accepted. None appeared for the respondent though served.

2. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.

3. Learned counsel appearing for the petitioner invited my attention to the decree passed by this court on 8th March,2013 in Summary Suit No.969 of 2012 which was filed by the petitioner against the respondent herein inter alia praying for recovery of sum of Rs.14,38,92,763/- with interest at the rate of 18% per annum from the date of filing of the suit till realization and for further order and decree directing to pay Rs.2,00,000/- per day from 15th September, 2011 till the possession of the premises is handed

over to the plaintiff. The respondent did not challenge the said decree passed by this court.

4. The petitioner thereafter issued statutory notice on 25th May, 2015 upon the respondent under sections 433 and 434 of the Companies Act, 1956 calling upon the respondent to pay Rs.31,40,31,610/- with interest at the rate of 18% per annum. The respondent replied to the said notice on 21st June, 2015. It is contended in the said reply by the respondent that the decree passed by this court on 8th March, 2013 is nullity and thus no amount is due and payable by the respondent to the petitioner.

5. It is not in dispute that the said decree dated 8th March, 2013 is not impugned by the respondent and has attained finality.

6. No affidavit in reply is filed by the respondent though served.

7. In my view, the respondent is unable to pay its dues and is commercially insolvent.

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3 Petitioner has filed an affidavit of one Vikas Nathuram Kadam affirmed on 24th March, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 28th February, 2017 and also in the Maharashtra Government Gazette for the period 16-22 March, 2017 at serial no.M-16367. The counsel for petitioner tenders copy of the gazette notification which is taken on record and marked 'X' for identification. There is a service report dated 14th March, 2017 filed by the Company Department stating that notice under Rule 28 of the Companies (Court) Rules, 1959 was served.

4 There is no affidavit in reply filed by the Company opposing the petition. Therefore, the averments in the petition are not controverted.

5 The Court while admitting the petition has expressed a view that respondent is unable to pay its dues and is commercially insolvent. I have heard the counsel for petitioner and also considered the petition and the documents annexed to the petition. I am also satisfied that the Company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

6 In the circumstances, company petition is allowed in terms of prayer clause – (a) which reads as under :

(a) That the company, viz., M/s. Shree Swami Samarth Trading Enterprises Private Limited having their registered office at Shop No.1, Parel House, Dr. E. Borges Road, Parel, Mumbai – 400 012, be wound up by and under the direction of this Hon'ble Court under the provisions of Sections 433 and 434 of the Companies Act, 1956;

7 Petitioner's advocate to forward a copy of this order duly authenticated by the Associate of this Court to Official Liquidator. Official Liquidator to take further steps upon receiving copy of the order without waiting for notification.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)