

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

COMPANY PETITION NO.1002 OF 2015

Percept H.Private Limited)....Petitioner
V/s.

Daiki Brands Private Limited)....Respondent

Mr.A.A.Pande for petitioner.

Mr.K.K.Sonawane I/by Jondhale and Co. for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 3.9.2018

P.C.:-

1. The petition is filed for winding up of the respondent company-Daiki Brands Private Limited on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 2.8.2018, the following order came to be passed :-

"1. Petition was admitted on 28th November 2017 and time to deposit the amount of Rs.10,000/- was extended on 12th December 2017. Mr. Joshi, counsel for petitioner states that the amount of Rs.10,000/- has been deposited with Prothonotary and Senior Master, High Court, Bombay but as he was hopeful of the petition getting settled, did not advertise the petition.

2. I am rather surprised that petitioner chose to wait for eight months hoping the petition to be settled. Mr. Jondhale, counsel for respondent company states that there is some account reconciliation to be done. The company had eight months after admission of the petition and in any event, the dispute relates to period of

2011-2012 and therefore, had seven years to reconcile the accounts.

3. Therefore, last opportunity is given for the parties to reconcile their accounts upto 4th August 2018. If the accounts are not reconciled, petitioner shall advertise the petition on 6th August 2018 and also submit the draft of the advertisement to Maharashtra Government Gazette on 6th August 2018. If this is not done and compliance affidavit is not filed by 8th August 2018, petition shall stand dismissed without further reference to this Court. If compliance affidavit is filed, petition be listed for directions on 9th August 2018.”

3 It has to be noted that on that date the company was represented by an Advocate. The time to advertise was extended on 9.8.2018 at which time also company was represented. Till date, no affidavit in reply has been filed opposing the petition. As noted in the order of admission, company has admitted that a sum of Rs.7,24,613/- was due and payable as on 31.3.2013. None of the averments in the petition are controverted. There is no reply also sent to the statutory notice.

4 Petitioner has filed an affidavit of one Manahaz Meherji affirmed on 8.8.2018 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 4.8.2018. There is also an affidavit of one Ashok R.Singh affirmed on 3.9.2018 confirming advertising the petition in Maharashtra Govt. Gazette for the period 16-27 August

2018 at serial no.M-18145.

5 The company department has placed a report dated 9.1.2018 confirming service of the notice under rule 28 of the Company Court Rules 1959. All the conditions for winding up of the company has been complied with.

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

“(a) that the Respondent Company viz. Daiki Brands Private Limited having its Registered Office at 207/A, Enterprise Co-op Premises Society Limited, Prabhadevi Industrial Estate, prabhadevi, Mumbai-400 025, be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator be appointed as the Liquidator of the Respondent Company to take charge of the assets, books of account and properties of the Respondent Company with all powers under the provisions of the Companies Act, 1956;

(c) that this Hon'ble Court may be pleased to appoint the Official Liquidator or some other fit and proper person as Liquidator of the Respondent Company and to conduct its affairs in the course of winding up and to distribute its assets in accordance with law.”

7 Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the Official Liquidator who shall

take immediate steps without waiting for any notification. The counsel for petitioner also to forward a copy of this order to the National Company Law Tribunal, Mumbai for information.

8 Upon receipt of the authenticated copy from petitioner's advocate, the 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 statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the 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.

9 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to any deductions if any.

10 Petition disposed accordingly.

11 Notwithstanding the above, I would given an opportunity to the company to escape from being wound up. On 31.3.2013 the

company has acknowledged debt in the sum of Rs.7,24,613/-. More than 5 years have passed and even if we take simple interest @ 10% p.a., it would be about Rs.72,000/- p.a. and for 5 years it will be Rs.3,60,000/-. Therefore, if the company deposits sum of Rs.10,00,000/- within two weeks with the Prothonotary and Senior Master, High Court, Bombay, the petition be listed for directions on the following Monday. The time for the Official Liquidator to take further steps would commence on the expiry of this two weeks' period.

Jahagirdar
Kiran
Ganesh

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signed by
Jahagirdar
Kiran
Ganesh
Date:
2018.09.05
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(K.R.SHRIRAM,J)