

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

**COMPANY PETITION NO.550 OF 2016
WITH
COMPANY APPLICATION NO.473 OF 2016**

Ingram Micro India Pvt. Ltd.)....Petitioner
V/s.

RSG Infotech Pvt. Ltd.)....Respondent

Mr.Kedar Jogappa Wagle for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 4.5.2018**

P.C.:-

1 The petition is filed for winding up of the respondent company-RSG Infotech Pvt. Ltd. on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 24.7.2017 at the time of admission of the petition, the following order came to be passed :-

“By the present Petition under Sections 433(e), 434 r/w 439 of the Companies Act, 1956, the Petitioner has prayed for winding up of the Respondent Company namely – RSG Infotech Pvt. Ltd., .

2 It is the case of the Petitioner that as per the purchase orders placed by the Respondent Company, Petitioner sold, supplied and delivered Iphones to the Respondent Company and raised various invoices to that effect. The Petitioner was also maintaining a running account of the Respondent Company and the payments made by

the Respondent Company, was given credit by the Petitioner. It is the further case of the Petitioner that the Respondent Company did not pay the balance amount of Rs. 56,44,709/-. As per the contract, the Petitioner is entitled to charge interest @ 24% p.a. on the delayed/ outstanding Payment.

3 As the Petitioner did not receive its amount due and payable from the Respondent Company, it issued a statutory notice dated 16th March, 2016 and called upon the Respondent Company to pay its debts, amounting to Rs.56,44,709/-. The Petitioner has also claimed amount of Rs.11,06,281/towards interest. Thus, total amount claimed by the Petitioner is Rs.67,50,990/-. The particulars of claim are annexed at Exh. M (pg. 50) to the Petition. The Respondent Company received the said notice, however, neglected and failed to comply with or reply it. The Respondent Company, sent an Email dated 31st March, 2016 to the Petitioner, wherein it admitted the liability and also gave schedule of repayment of the outstanding amount. In furtherance of the email dated 31st March, 2016, the Respondent Company issued a cheque dated 6th April, 2016 for Rs.56,44,709/- in favour of the Petitioner. The said cheque was dishonoured on presentation.

4 As the Respondent did not pay the balance amount, Petitioner filed the present Petition on 28th July, 2016 for winding up of the Respondent Company. The Petition is accepted on 27th September, 2016 and in pursuance of the directions issued by the Company Registrar, the Petitioner served the Respondent with the notice of acceptance and has filed an affidavit of service dated 11th January, 2017 to that effect. Despite service, none appeared for Respondents.

5 Heard the learned Counsel for the Petitioner. Perused the petition and documents annexed thereto. The record indicates that after service of Petition upon the Respondent, the Respondent Company further addressed a letter dated 30th November, 2016 to the Petitioner, and has admitted its liability and has also given a

schedule of repayment, however, till date the Petitioner has not received any amount. Prima facie it appears that the Respondent is unable to pay the debts to the Petitioner and is commercially insolvent.”

3 As per the order dated 11.9.2017, one Anil Achary-director of the company had appeared in court and sought time to engage an advocate. The petition was stood over to 18.9.2017, on which date matter did not get called out due to paucity of time. The cause list does not indicate any Advocate having entered appearance. Mr.Wagle for petitioner also states that he has also not received any communication from any advocate. Mr.Wagle also states that no affidavit in reply has been received by him. Record & proceedings also do not indicate any reply having been filed. Therefore, none of the averments in the petition are controverted. In fact, in response to the statutory notice, the company through Mr.Anil Achary has sent an e-mail to petitioner, in which the company has given a schedule as to how it is going to discharge its debts. Mr.Wagle states that no payment was received even after the said e-mail.

Mr.Wagle also tenders e-mail dated 13.11.2016 from the company after the petition was filed, once again giving a schedule of payment for discharging its debts to petitioner.

4 On record is an affidavit of one Manohar Sundaram affirmed on 24.8.2017 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 15.8.2017 and in the Maharashtra Government Gazette for the period 17th August 2017 to 23rd August 2017 at Serial No.M-17156. The company department has also placed service report dated 21.8.2017 confirming service of notice under Rule 28 under the Companies (courts) Rules 1959.

5 In view of the above, admittedly, there is a debt payable to petitioner and the company is unable to discharge its debts. Therefore, it is quite obvious that the company is commercially insolvent and requires to be wound up.

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

“(a) RSG INFOTECH PRIVATE LIMITED the Respondent company herein, be wound up by and under the directions of this Hon'ble Court, under the provisions of the Companies Act, 1956 as amended ;

(b) The Official Liquidator, High Court, Bombay, be appointed as the Liquidator of the Respondent Company with all necessary powers to take charge of the assets and properties of the Respondent company and distribute the same as per the directions of this Hon'ble Court.

7 The advocate for petitioner shall file a copy of this order, duly authenticated by the Associate of this court with the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

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

9 Petition disposed accordingly.

10 In view of the above, the Company Application No.473 of 2016 stands disposed.

(K.R.SHRIRAM,J)