

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

COMPANY PETITION NO. 1010 OF 2015

M/s. Krishna Sheet Processors Pvt. Ltd.

Through Authorised Person Mayur Khandelwal .. Petitioner.

Vs.

M/s. Fab Auto Parts Private Limited

.. Respondent.

Mr. Niraj Shah i/b Law Chambers of Siddharth Murarka for the Petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 2ND FEBRUARY 2018

P.C.

1 This petition is seeking winding up of company M/s. Fab Auto Parts Private Limited on the ground that it is indebted to petitioner, is unable to discharge its debt and is commercially insolvent.

2 On 12th September 2017, when the petition was taken up for admission, this Court was pleased to pass the following order :-

1. By this petition, the petitioner seeks an order of winding up of the respondent company in its inability to pay price of the goods sold and delivered. It is the case of the petitioner that pursuant to the orders placed by the petitioner diverse quantities of hot rolled steel sheets from time to time in respect of the diverse sums came to be payable under various invoices raised by the petitioner against the company. The company has made part payments from time to time and as of 30th March, 2013 the company confirmed the outstanding of Rs.35,85,753.55 as closing balance on the ledger account of the petitioner in the books of the respondent.

This accounts are annexed to the petition at Exhibit-D and the amount shown therein are shown as credit by the petitioner. Not

only has the company provided a ledger account of the petitioner in its books, vide email dated 30th October, 2013 the company confirmed that the amount of Rs.31,85,753.00 was due and offered to make further part payments despite which no payments were made. As a result a statutory notice came to be issued on 16th May, 2015. It appears that the statutory notice demanded a sum of Rs.29,85,763.00 (after giving credit for part payment) and further interest thereon at 24% per annum. There is no reply to the statutory notice, as a result the petition came to be presented and was accepted on 15th September, 2015 and was duly served upon the respondent company. The Advocate on behalf of the respondent company has since entered appearance and sought time on 15th June, 2017, 16th June, 2017 and 30th June, 2017.

2. Mr.Kadtane, learned counsel for the respondent submitted on instructions that the respondent intends to amicably settle the matter and time was sought at the request of respondent. Time was granted upto 28th July, 2017. Thereafter the matter is listed today. On 9th August, 2017 the matter came to be adjourned due to paucity of time. Today, learned counsel for the respondent states that despite contacting their clients no instructions are forthcoming. He has no instructions to make a statement on the settlement talks. Learned counsel for the petitioner states that the respondents have not approached them with any proposal for settlement.

3. There is no affidavit in reply. There is no reply to the statutory notice either. In the circumstances it appears that principal sum of Rs.29,85,753 is clearly a debt payable to the petitioner and which remains unpaid despite demand in view of deeming provisions of the section. The respondent company appears to be unable to pay its debts as and when they arise. In the circumstances I pass the following order :

i) The Petition is admitted and made returnable after six weeks.

ii) The Petition shall be advertised by the Petitioner in the daily editions of two local newspapers namely 'Free Press Journal' (in English), 'NavShakti' (in Marathi) and in the Maharashtra Government Gazette.

iii) The Petitioner shall, within a period of two weeks from today, deposit an amount of Rs. 10,000/- (Rupees Ten Thousand only) with the Prothonotary & Senior Master of this Court towards publication charges with intimation to the Company Registrar, failing which the Company Petition shall stand dismissed for non-prosecution.

iv) Pending the hearing and final disposal of the Company Petition, the Official Liquidator, High Court, Bombay, is appointed as Provisional Liquidator of the Respondent Company. The Provisional Liquidator shall forthwith take charge of the assets/properties and records of the Respondent Company without awaiting any notification.

v) The Liquidator shall act on an ordinary copy of this Order duly authenticated by the Registry of this Court.

vi) The learned Counsel for the Respondent Company waives service of the Petition under Rule 28 of the Companies Court Rules, 1959.

(vii) The Advocates for the Petitioner shall forthwith forward a copy of this order to the Company at its registered address.

3 Even today, no affidavit in reply has been filed opposing the petition. Therefore, the averments are uncontroverted. No reply has also been sent 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 Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived at the time of admission of the petition. Petitioner has filed an affidavit of one Prakash Bane, affirmed on 2nd November 2017 confirming advertising the petition in Free Press Journal and Navshakti on 29th September 2017 and in the Maharashtra Government Gazette for the period October 12-18, 2017 at Sr.No. M-17209.

5 At the time of admission, this Court has observed that even before admission, when the petition was listed on 30th June 2017, respondent had sought time to settle petitioner's claim. Time was granted upto 28th July 2017. On 12 September 2017, the counsel for respondent informed the Court that despite contracting their clients, no instructions were forthcoming. The Court has also observed that company is unable to pay its debt. I have also perused the petition and the documents annexed thereto and also heard Mr. Sharma for petitioner. I am also satisfied that the company has indebted to petitioner, is commercially insolvent and requires to be wound up.

6 In the circumstances, the petition allowed in terms of prayer clauses

(a) and (b) which read as under :-

(a) that the Respondent Company, namely M/s. FAB AUTO PARTS PRIVATE LIMITED, having its registered office at J-150, M.I.D.C., Bhosari, Pune, Maharashtra – 411 026, India, be wound up by and under the orders, directions and supervision of this Hon'ble Court.

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of Companies Act, 1956 or later enactment to take charge of the Respondent Company and to conduct its affairs during the course of its winding up.

7 Petitioner's advocate to forward an authenticated copy of this order to the official liquidator who shall take further steps without waiting for any notification.

8 Company petition accordingly disposed.

(K.R. SHRIRAM, J.)