

Gauri Gaekwad

petitioner also issued debit note against the respondent company. The respondent company in discharge of its part liability made payment of Rs.7,00,000/- to the petitioner leaving behind a sum of Rs.11,73,761/-. As per the contract the petitioner is entitled to charge 24% interest per annum on the delayed payment by the respondent. The petitioner has charged interest upto 31.1.2016 and has claimed total amount of Rs.17,72,571/- which includes principal amount plus penalty and penal interest charged by the Sales Tax Department. As the respondent did not make the payment, the petitioner issued a statutory notice date 12.1.2016. After receipt of the said notice the respondent by its reply dated 12.2.2016 sought time to give detailed reply on the ground that the respondent had become sick however, no elaborate reply was given by the respondent. The respondent thus had failed to either reply or comply with the statutory notice dated 12.1.2016 issued by the petitioner.

2. The petitioner thereafter filed the present petition for winding up of the respondent company on 25.2.2016. The petition was accepted on 2.8.2016 and in pursuance of the directions issued by the Company Registrar the petitioner tried to serve the respondent at its various addresses namely Registered address, Corporate office and the Administration Office. The envelope containing copy of the notice and petition sent at the registered address of the respondent returned back with the endorsement of the postal department "person shifted". As far as notices issued to the respondent at its Corporate office and Administration office are concerned the same have been duly served upon it and an affidavit of service dated 24.8.2016 has been filed to that effect. Despite service of notice none appears for the respondent.

3. I have perused the copy of the petition. It appears that by its reply dated 12.2.2016 to the statutory notice of the petitioner, the respondent has nowhere disputed the claim of the petitioner and has simply sought time to give a elaborate reply on the ground that the respondent company had become sick. In view thereof, prima facie it appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent.

xxxxxxxxxxxxxx

3 The company took out an application being company application no.571 of 2017 to recall the order of admission dated 3rd July, 2017 and to hear the petition on merits. Since the main petition itself is listed for final hearing today, the company application was also taken up alongwith the main petition.

4 The counsel for respondent company gave an undertaking to file Vakalatnama on behalf of the company in the petition. Undertaking accepted. The counsel for respondent company stated that the Vakalatnama is already filed in company application but due to oversight a separate Vakalatnama has not been filed in the petition. The counsel for respondent company further stated that the affidavit in support of the company application be treated as reply to the company petition.

5 The claim of petitioner basically is that of unpaid vendor. If one considers the affidavit in support of the company application, the company admits having received goods worth Rs.18,73,761/-. The company states that it has paid Rs.8 lakhs to petitioner between 30th May, 2015 to 1st August, 2016. The petition has been lodged on 26th February, 2016 and therefore, some payments have been made after filing of the petition. The company does not dispute the fact that it owes money to petitioner. The only grievance raised is regarding the interest charged at 24% p.a. The counsel for petitioner stated that the company cannot raise that as a grievance because the invoice expressly provides for 24% p.a. on unpaid amounts. The counsel for respondent company also brought to the attention of the Court an email dated 9th February, 2016 which is part of the emails at Exhibit "C" to the affidavit in support of the company application. On 9th February, 2016 the company has offered to pay a sum of Rs.1 lakh per

month by stating “*We very much regret to inform you that the company is not at all in proper financial shape*”. After 9th February, 2016 only Rs.1 lakh has been paid and not a penny beyond that. Even today, when I asked the counsel for respondent company that when the company will make the payment, the counsel was not committal. Even the financial statements of the company are not produced to show the solvency of the company.

6 The fact that admittedly the amounts are payable to petitioner. Except for Rs.1 lakh, no amount has been paid after 9th February, 2016 though an offer was made to settle the entire amount by paying Rs.1 lakh per month. This in itself shows that the company is commercially insolvent and is unable to discharge its debts.

7 Petitioner has also placed on record an affidavit of one Praful V. Chavan affirmed on 7th August, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 27th July, 2017. Petitioner has also filed another affidavit of Praful V. Chavan affirmed on 18th August, 2017 confirming advertising the petition in the Maharashtra Government Gazette for the period 3rd - 9th August, 2017 at serial no.M-17140. The Company Department has placed a service report dated 18th August, 2017 stating that notice served under Rule 28 of the Companies (Court) Rules, 1959 has come back undelivered with the endorsement “Unclaimed/return to sender”. Ms. Chandarana, counsel for petitioner tenders Company Master Data

extract, which Ms. Chandarana states was taken on 26th April, 2018, in which the registered address shown is the same address to which notice under Rule 28 has been served. The extract is taken on record and marked “X” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

8 I have considered the petition, the documents annexed thereto and also heard Ms. Chandarana, counsel for petitioner. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

(a) That the company, namely Sriguru Credit Capital Services Ltd., i.e., respondent company herein, be wound up by and under the orders of this Hon'ble Court under the provisions of Section 433 (e) and 434 of the Companies Act, 1956;

(b) That Official Liquidator attached to this Hon'ble High Court be appointed Liquidator of respondent company, namely, Sriguru Credit Capital Services Ltd. under the provisions of the Companies Act, 1956 with all the powers under the Companies Act, 1956.

10 Notwithstanding the above, at the request of counsel for the company, I am inclined to give an opportunity to the company to redeem itself by depositing a sum of Rs.15 lakhs with the Prothonotary and Senior Master, High Court, Bombay under advise to advocate for petitioner on or

before 15th June, 2018. If this amount is deposited, the petition to be listed on the Friday after the date of deposit for directions. If the amount is not deposited, Official Liquidator to take further steps in accordance with law without waiting for any notification upon receiving an authenticated copy of this order, which Ms. Chandarana states, will be forwarded within two weeks from 15th June, 2018. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

11 Company petition accordingly stands disposed.

12 In view of the above, company application also stands disposed.

(K.R. SHRIRAM, J.)