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

COMPANY PETITION NO.613 OF 2016

Sicom Limited)....Petitioner
V/s.
Molekule (India) Pvt. Ltd.)....Respondent

Mr.Rohan Rajadhyaksha a/w Ms.Cheryl Fernandes I/by AZB & Partners for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 13.7.2018

P.C.:-

1. The petition is for winding up of the respondent company-Molekule (India) Pvt. Ltd. On the grounds that the company is unable to pay its debts.

2 On 27.3.2018 at the time of admission, the following order came to be passed :-

> *"1. Petitioner is seeking winding up of the company-Molekule (India) Private Limited.*
>
> *2. It is petitioner's case that the company, which is engaged in the business of manufacturing and dealing in chemical products, approached petitioner vide letter dated 7th March 2011 for financial assistance. By a letter dated 16th March 2011, petitioner sanctioned a facility of Revolving Short Term Loan for an amount of Rs.20 crores for a term of three years with minimum of 3 years of 1 year each with the first cycle ending on the 364th day. The loan amount was to be utilized for consolidation of the*

promoter's ownership interest within group companies, acquisition of business and for general corporate purpose. Towards repayment, the company gave post dated cheques and also executed an agreement for revolving short term facility dated 21st March 2011. A Director of the company Mr. Shashikant Patel executed a joint demand promissory notice dated 21st March 2011 and the same director also executed a deed of guarantee dated 21st March 2011. The interest payable on this Rs.20 crores was @ 14.25% per annum or such other lending rate as may be in force at the time of execution of documents. Thereafter, the company made a further request for similar facility vide its letter dated 24th January 2014. Petitioner, by its letter dated 18th February 2014, sanctioned and disbursed to the company a further sum of Rs.4.84 crores as revolving short term loan basically on the same terms and conditions as the earlier facility that was granted as reflected in the agreement dated 21st March 2011 but this amount of Rs. 4.84 crores was to be repaid with interest @15.25% per annum or such other lending rate as may be in force at the time of execution of documents. Further documents, as in the first case, were executed by the company and Shri Shashikant Patel. The company also created an equitable mortgage of immovable properties of its group company-Plethico Ltd. by deposit and delivery of title deeds. The declaration and other documents executed are as stated in Paragraph 7.10 of the petition.

3. In paragraph 7.11 of the petition, it is stated that despite sufficient time and several opportunities to repay the amounts, the company failed to repay the amounts under the Rs. 20 crores loan and Rs. 4.84 crores loan and company's accounts with petitioner were declared as NPA. Shri Rajadhyaksha appearing for petitioner states, as could be seen from Paragraph 7.12 of the petition, the company had paid some amount and therefore to say that the company failed and neglected to pay the amounts under the Rs.20 crores and Rs.4.84 crores loan may not be correct and therefore, seeks liberty to amend the petition. Shri Rajadhyaksha states that petitioner will come with a draft amendment on 9th April 2018.

4. In any event, it is stated that the company owes an amount in excess of Rs.28 crores towards principal and interest. It is also stated that the company issued various post-dated cheques to secure repayment of Rs. 20 crores facility and Rs. 4.84 crores facility, respectively, but many cheques were dishonoured. The last 9 cheques are mentioned in paragraph 7.13 of the petition. It is stated that petitioner has also commenced proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) against the company. It is stated that there is no reply to the statutory notice dated 7th April 2016. Hence the petition.

5. Petitioner has filed an affidavit of service of one Ajit Ghadashi affirmed on 15th December 2016 confirming that petition has been served upon the company. Shri Rajadhyaksha further states that even after the petition was listed on 20th March 2018, petitioner's advocates have sent an email dated 20th March 2018 informing the company about the petition filed and that it will be listed for admission today. Shri Rajadhyaksha states that the email ID to which the email dated 20th March 2018 was sent, was 'ankit@molekuleindia.com' and that is the same email ID as shown in the MCA website extract, copy of which is taken yesterday, i.e., 26th March 2018. The company, though served, is not present and nobody has entered appearance.

6. Heard the counsels and perused the petition and also the documents annexed to the petition. No affidavit in reply opposing the petition is filed though served. Therefore, averments in the petition are not controverted. Even to the statutory notice, there is no reply filed. 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 admitted for hearing at the threshold stage itself. Admission of the petition at its first *hearing is possible because, 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.*

7. In the circumstances, I am satisfied that the respondent-company is unable to discharge its debt and is commercially insolvent, petition requires to be admitted. Therefore, the following order is passed"

3 Petitioner has filed an affidavit of one Mukesh Mahyavanshi affirmed on 20.6.2018 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 29.4.2018 and in the Maharashtra Govt. Gazette for the period 10th to 16th May 2018 at serial No.M-1845. The notice that was sent under Rule 28 of the Companies Court Rules, it appears from the service report of the Company Department dated 16.5.2018 has come back undelivered with the endorsement "left". Mr.Rajadhyaksha tenders extract of master data maintained by the ministry of corporate affairs for the company which he says was taken today, in which the registered address shown is the same to which notice under Rule 28 was also sent. That is the address which is also stated in the cause title. Extract is taken on record and marked "X" for identification.

4 Mr.Rajadhyaksha states when petitioner attempted to serve the amended petition along with the order of admission, the packet

that was sent to the registered office came back undelivered and the security guard in the premises informed that the company has shifted its office. The other packet that was sent to another address at AML Centre 2, Mahal Industries Estate, Mahakali Caves Road, Andheri (E), Mumbai-400 093, also came back undelivered with security guard informing that the company has shifted. In the affidavit of Mukesh Mahyavanshi affirmed on 20.6.2018 it is also stated that the 3rd packet which was sent to an address of the company at 38, Industrial Estate, Polo Ground, Indore-452 015 also came back with the endorsement "refused". It is not clear from where petitioner got the other two addresses apart from registered office address. Be that as it may, since the registered address as mentioned in the MCA web site has remained unaltered and attempt to serve on those addresses have been effected, I am inclined to proceed on the basis that the company is avoiding service. Otherwise the company would have ensured that its registered office address has changed in the MCA record.

5 In the circumstances, as stated in the order of admission, the company still owes to petitioner substantial amounts and the company's account with petitioner have also been declared as NPA. Petitioner has also commenced proceeding under Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (SARFAESI Act) and there is no reply to the statutory notice. There is no reply even filed opposing the petition and therefore, none of the averments in the petition are controverted. Therefore, I am of the view that the company is unable to discharge its debts, 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) That the Respondent Company be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 ;*
>
> *(b) That the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed as the Liquidator of the Respondent Company and all its assets, divisions, businesses, subsidiaries including assets of the subsidiaries, affairs, properties, bank accounts, books of accounts, vouchers, files, documents etc. with all powers under the provisions of the Companies Act, 1956."*

7 The advocate for petitioner shall furnish a copy of this order, duly authenticated by the Associate of this court within two weeks to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator. Upon receipt of the authenticated copy from the 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 the respondent company, now in liquidation are hereby directed to file their respective statement 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.

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

(K.R.SHRIRAM,J)