

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

COMPANY PETITION NO.696 OF 2016

Kkalpana Industries (India) Limited Petitioner

Vs.

Laxmi Power Cables Private Limited Respondent

Mr. Sham V. Walve a/w. Mr. Manish Kenia and Ms. Priyanka Mishra I/b.
Legal Spectrum for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 20th JULY 2018

P.C.:

1 This petition is for winding up of respondent company -

Laxmi Power Cables Private Limited (the company) under the provisions of
the Companies Act, 1956 on the ground that the company is unable to
discharge its debts and is commercially insolvent.

2 On 4th January 2018 at the time of admission, the following
order came to be passed :

1. By this petition, petitioner seeks winding up of respondent company alleging that respondent is unable to pay its debts and commercially insolvent.

2. Petitioner carries on business as manufacturers and suppliers of Polyethylene and PVC compounds. Pursuant to orders placed with petitioner from time to time by respondent, petitioner sold and delivered to respondent various quantities of Polyethylene compound and submitted their invoices from time to time. Respondent accepted delivery of the goods and bills without raising any objection whatsoever. According to petitioner, there are 18 invoices totaling to Rs.38,89,165/- which were raised upon respondent company. The invoices also provide that the amounts were to be paid within 65 days and if not paid, would attract 24% p.a. interest. It is stated in the petition that respondent paid a sum of Rs.56,906/- leaving a balance amount of Rs.38,32,259/- as due and payable. The invoices were raised between 7th March, 2014 and 31st July, 2014.

3. Respondent issued in respect of dues and interest 17 cheques as per the statement given in paragraph 6 of the petition and all the cheques were dishonoured on presentation due to insufficiency of funds. Petitioner, therefore, issued a demand notice dated 17th March, 2015 as required under Section 138 of the Negotiable Instruments Act, 1881. Thereafter, towards payment of dues to petitioner, respondent company issued four cheques, all dated 29th October, 2015. The first three cheques were for Rs.10 lakhs each and the forth cheque was for Rs.9,54,911/-. The difference between Rs.39,54,911/- and the outstanding amount of Rs.38,32,859, the counsel for petitioner states, was towards interest. When these four cheques were presented, they were also dishonoured due to insufficient funds. As despite repeated request respondent did not pay the amount, petitioner caused a statutory notice dated 2nd February, 2016 issued through their Advocates.

4. On record there is an affidavit of one Shaikh Ahmed Ali affirmed on 3rd January, 2017 confirming service of petition upon respondent company on 30th November, 2016. The company has neither entered appearance nor filed any reply opposing the petition. Therefore, the averments in the petition are uncontroverted.

5. To the statutory notice, respondent has not filed any reply. 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.

6. It should be noted that there was another petition being company petition no.154 of 2015 which was admitted against same respondent company and this Court had by an order dated 19th March, 2015 appointed Official Liquidator as Provisional Liquidator. This petition came to be dismissed earlier today because petitioner therein was not appearing in this Court and the Advocate had informed the Court that he has not receiving any instructions.

7. I am therefore, satisfied that the company is unable to pay its debts and the company deserves to be wound up. In the circumstances, in my view, the petition requires to be admitted and the following order is passed :

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3 Mr. Walve, counsel for petitioner states that the petition has been advertised in Free Press Journal and Navshakti on 1st March 2018 and

relies on an affidavit of one Shaikh Ahmed Ali affirmed on 26th March 2018. Mr. Walve also tenders gazette notification for the period 28th June – 4th July 2018 at serial no.1895, which is taken on record and marked “X” for identification. Mr. Walve states that the order copy was sent to the company and the same has come back undelivered with the endorsement “left”. The Company Department has placed on record a service report dated 3rd February 2018 stating that the Notice under Rule 28 of the Companies (Court) Rules, 1959 sent to the company has come back undelivered with the endorsement “Not claimed, return to sender”. Mr. Walve states that the registered office of the company still remains the same to which notice under Rule 28 was served and relies upon Company Master Data extract which has been taken today. Therefore, I would proceed on the basis that notice under Rule 28 has been served on the company.

4 No affidavit in reply has been filed by the company opposing the petition. Therefore, none of the averments in the petition are controverted. There is no reply to the statutory notice either. 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.

5 Heard Mr. Walve, counsel for petitioner and also considered the petition and the documents annexed thereto. 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.

6 Therefore, petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) That LAXMI POWER CABLES PRIVATE LIMITED be wound up by this Hon'ble Court under directions of this Hon'ble Court and under the provisions of the Companies Act, 1956;

(b) That Official Liquidator or some other fit and proper person be appointed as Liquidator with all powers under Section 457 of the Companies Act, 1956 to be exercised under Section 458 of the said Act without sanction and intervention of this Hon'ble Court save and except in case of sale of immoveable properties.

7 Official Liquidator, within two weeks, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

8 Upon receipt of the authenticated copy from petitioner's advocate, 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 statement of affairs as required under Section 454 of the Companies Act 1956, failing which 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 Company petition accordingly stands disposed.

Gauri
Amit
Gaekwad

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by Gauri Amit
Gaekwad
Date:
2018.07.23
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(K.R.SHRIRAM, J.)