

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

COMPANY PETITION NO. 1076 OF 2015

M/s. Sandeep Steels

.. Petitioner

Vs.

Volt-Age Infra Pvt. Ltd.

.. Respondent

Mr. Niraj Shah i/b Siddharth Murarka for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 13TH APRIL 2018

P.C.

1. The petition is filed for winding up of the company Volt-Age Infra Private Limited (the company) on the ground that the company is unable to discharge its debt.

2. On 9th January 2018, when the petition was taken up for admission, the following order came to be passed :-

“1 The petition is filed for winding up of respondent company on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Respondent company had placed three purchase orders upon petitioner for supply of steel products mentioned in the purchase orders. In the purchase orders, payment term is mentioned as “30 days PDC. 2% interest per month if delayed”. Based on the purchase orders, petitioner supplied the material and raised three invoices. The three invoices mentioned that “interest at 24% p.a. will be charged extra if payment is not made within 30 days”.

3 It is the case of petitioner that payments were made of the principal amount but as they were not paid within the period of 30 days credit granted, interest on those amounts at 24% p.a. was

payable. Petitioner, it is stated that, made repeated request upon the company but as the company did not make the payment, caused a notice dated 10th June, 2015 be issued through their advocates in accordance with the provisions of the Companies Act, 1956. It is stated that the notice was served upon the company but no reply was received. Petitioner has filed an affidavit of service of one Prakash Tukaram Bane affirmed on 16th November, 2015 confirming service of the petition on the company. The company did not choose to file any affidavit in reply opposing the petition. Thereafter, petitioner filed an additional affidavit of Bhavin Mehta affirmed on 31st October, 2017 placing on record copies of the purchase orders and the invoices raised. Mr. Shah, counsel for petitioner states that this affidavit was served upon the company on 6th November, 2017 and undertakes to file a further affidavit of service during the course of this week. Undertaking accepted.

4 It should also be noted that this Court on 5th July, 2017 directed petitioner to give notice to respondent company that petition will be taken up for hearing on 19th July, 2017. Petitioner has filed an affidavit of Prakash Tukaram Bane affirmed on 20th July, 2017 confirming that they have served the notice as directed by this Court and the notice was received by the company on 17th July, 2017.

5 Respondent company though served has neither entered appearance nor filed any affidavit in reply opposing the petition. Therefore, the averments in the petition and further affidavit are not controverted. Even to the statutory notice, there is no reply or response by respondent company. 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 Therefore, it does appear *prima facie* that the company is indebted to petitioner, is unable to discharge its debts and commercially insolvent.”

3. Post-admission, Shri Shah appearing for petitioner states that

petitioner has advertised the petition in, two local newspapers, viz., Free Press Journal and Navshakti on 13th January 2018 and also in the Maharashtra Government Gazette for the period 18-24th January 2018 at Sr.No.17299 and relied upon an affidavit of one Prakash Tukaram Bane affirmed on 25th January 2018. Shri Shah further states that notice sent under Rule 28 of the Companies (Court) Rules, 1959, dated 23rd January 2018 has come back with the endorsement '*left*'. Shri Shah tenders a copy of the company master data maintained by the Ministry of Corporate Affairs, which extract Shri Shah states, was taken yesterday, i.e., 12th April 2018, in which the registered address of the company is shown to be the same to which the notice under Rule 28 was sent. The extract is taken on record and marked 'X' for identification. Petitioner has also filed an affidavit of Shri Prakash Tukaram Bane affirmed on 25th January 2018 confirming forwarding a copy of the order dated 9th January 2018 to the company.

I would, therefore, accept that a notice under Rule 28 has been served on the company.

4. The company has not replied to the statutory notice nor has filed any affidavit opposing the petition. Therefore, none of the averments in the petition are controverted.

5. In these circumstances, petition is allowed in terms of prayer clauses

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

*“(a) that the Respondent Company, namely **M/s. VOLT-AGE INFRA PVT. LTD.**, having its registered office at C-403, 4th Floor, Business Court, Mukund Nagar, Pune, Maharashtra – 411037, be wound up by and under the orders, direction 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.”

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

7. The above company petition accordingly disposed.

8. At this stage, Shri Shah states that petitioner has filed a Civil Suit before the City Civil Court at Dindoshi being Suit No.2294 of 2015. Shri Shah states that in Paragraph 14 of the petition it has been mentioned that petitioner will be filing a civil suit and prayer clause (c) also provides for leave under Section 446 be granted. Shri Shah states the suit was filed after the petition was lodged but before the petition was admitted. Shri

Shah, therefore, prays, to avoid multiplicity of proceedings, petitioner be permitted to prosecute the said suit without being insisted to take out a separate company application. I find substance in what Shri Shah stated because it is also mentioned in the petition that petitioner is intending to file a suit and relief has been sought in prayer clause (c) and petitioner has already filed a suit before admission of petition. It would also save substantial judicial time if the Court considers the given facts and circumstances of this case, and not be insistent for a formal application. Therefore, leave is hereby granted to petitioner to prosecute Civil Suit No.2294 of 2015.

(K.R. SHRIRAM, J.)