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

COMPANY PETITION NO.1150 OF 2015

Simon Steel (India))….Petitioner
V/s.
Srujanna Fenco Food Engineering Pvt.Ltd.)....Respondent

Mr.Waqar Ahmad for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 22.3.2018

P.C.:-

1 The petition is seeking winding up of the company Srujanna Fenco Food Engineering Pvt.Ltd. (the said company) on the grounds that the company is unable to discharge its debts and is commercially insolvent.

2 On 10.8.2017 at the time of admission, the court was pleased to pass the following order :-

> *"1. By this petition, the petitioner seeks winding up of the respondent company under Sections 433 (e)(f) and 434(1)(A) of the Companies Act. It is the case of the petitioner that there were some purchase orders placed by the company. The petitioner sold and delivered the diverse quantities of stainless steel plates. According to the petitioners, the respondent company is in business of manufacturing food processing machinery and in the usual course of business they requested the petitioner to supply stainless steel plates of different dimensions and diverse quantities.*

2. The petitioner claims to have sold and delivered these quantities of stainless steel plates collectively valued to Rs.2,20,244/-. Learned counsel for the petitioner has invited my attention to Exhibit-A to Exhibit-E containing invoices raised by the petitioner in respect of supplies made and he has also relied upon lorry receipts which indicates name of the consignment. He submits that there is no acknowledgment recorded in the said lorry receipts. It is not in dispute that these consignments were in fact delivered. It is further submitted that the amounts having remained unpaid the petitioner is entitled to interest at the rate of 24% per annum as appearing in the condition no.3 on the invoice. The petitioner has therefore claimed a sum of Rs.80,736/- as interest on the unpaid sum.

3. On 30th April, 2013 the petitioner has issued the statutory notice to the respondent at the registered office at the company reflected in company master details on the website of the Ministry of Corporate Affairs of Government of India. The demand in statutory notice clearly sets out the fact that supplies were made pursuant to the orders placed and that a total sum of Rs.2,20,244/- along with interest was due. Learned Advocate for the petitioner has also relied upon postal acknowledgments received from the company as well as two of its Directors to whom copies of the statutory notice was marked.

4. The petition came to be accepted on 24th November, 2015. Thereafter it came on board on various dates and lastly on 8th August, 2017. The respondent company has not appeared nor has it entered appearance on its behalf. On 8th August, 2017 the petitioner's Advocate was directed to send an email communication to the company. He submits that an email was sent on the email address provided in Company Master Details. He has tendered a delivery report which states that the delivery was incomplete since there was problem in delivery of the email to the said address. The address appearing in delivery failure report is same as provided by the company in the company master details. In the *circumstances the company has chosen not to appear despite service of notice and is unable to pay its debts as and when it arise in usual course of business.*

5. Admit
6. ……….”

3 Petitioner has filed an affidavit of one Kashimsha U. Patel affirmed on 6.2.2018 confirming advertisement of the petition in `Free Press Journal' and in `Navshakti' on 27.9.2017. There is also another affidavit of Aniket Salve affirmed on 22.2.2018 confirming advertisement of the petition in Maharashtra Govt. Gazette from 15th February to 21st February 2018 at Serial No.M-17333. The company department has placed service report dated 27.9.2017 confirming service of notice under Rule 28 of the Company (Courts) Rules 1959.

4 The company has not replied 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 Even to the petition, there is no reply and therefore, the averments in the petition are not controverted.

6 In the circumstances, having perused the petition and the documents annexed thereto and having heard Shri Waquar Ahmad for petitioner, I am satisfied that the company is unable to discharge its debts and is commercially insolvent.

7 Therefore, Petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

> *"(a) that the Company-Srujann Fenco Food Engineering Private Limited, be wound up under the supervision, direction and orders of this Hon'ble Court in accordance with the provisions of the Companies Act, 1956 ;*
>
> *(b) that the Official Liquidator be appointed Liquidator of the Respondent Company, with all necessary powers under the provisions of the Companies Act, 1956, to take charge of the affairs, assets and business of the company and/or to conduct its affairs in the course of winding up."*

8 Official Liquidator to take further steps on receiving authenticated copy of this order from the advocate for petitioner without waiting for any Notification.

9 Petition stands disposed.

(K.R.SHRIRAM,J)