

M/s. Mahakali Sales CorporationPetitioner

Vs.

Maharashtra Steels Pvt. Ltd.Respondent

CORAM : K.R.SHRIRAM, J.
DATE : 3rd MAY, 2018

1 This petition is for winding up of respondent company -
Maharashtra Steels Pvt. Ltd. (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.

1. This is a petition for winding up of the respondent company namely Maharashtra Steels Pvt. Ltd. on the ground that the respondent is unable to pay the debt of the petitioner.

The petitioner is a proprietary concern and is engaged in the business of imported steam coal. That, as per the orders placed by the respondent company the petitioner supplied the goods of Rs.30,20,000/to the respondent. As per the terms agreed between the parties, the petitioner is entitled to charge interest at the rate of 18% per annum on delayed payment and has claimed an amount of Rs.12,72,262/towards the interest. The respondent is thus liable to pay a total amount of Rs.42,94,438/to the petitioner. The respondent in part compliance of its obligation issued several cheques for an aggregate amount of Rs.12,72,262/which were dishonoured on presentation for the reason "insufficient funds and other reasons". The petitioner thereafter issued a statutory notice dated 24.7.2017. The respondent received the said notice, however neither complied with

nor replied it.

2) The petitioner therefore, filed the present petition on 2.9.2015. The present petition is admitted on 1.12.2015 and in pursuance of the directions issued by the Company Registrar the respondent company has been duly served and an affidavit of service dated 30.12.2015 has been filed to that effect. Despite service none appears for the respondent.

3) I have perused the petition and prima facie it appears that the respondent is unable to pay the debt of the petitioner.

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3 The company has not filed any affidavit in reply opposing the petition. Therefore, none of the averments in the petition are controverted. There is no reply even to the statutory notice. 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.

4 On record is an affidavit of one Prakash Bane affirmed on 5th October, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 12th July, 2017 and also in the Maharashtra Government Gazette for the period 20th - 26th July, 2017 at serial no.M-17117. Notice

under Rule 28 of the Companies (Court) Rules, 1959 has been duly served upon respondent company as per service report dated 27th July, 2017 filed by the Company Department. Infact on the last occasion, i.e., 13th April, 2018 when the petition was listed, the registry was once again directed to serve notice to the company. The Company Department has placed a fresh service report dated 25th April, 2018 in which it is stated that the notice sent, pursuant to order dated 13th April, 2018, has duly been served upon respondent company.

5 Mr. Shah, counsel for petitioner states that petitioner is contemplating to file a civil suit. Mr. Shah states that in the petition it has been mentioned that petitioner is contemplating to file a civil suit and prayer clause - (c) also provides for leave under Section 446 be granted. Mr. Shah, therefore, prays to avoid multiplicity of proceedings, petitioner be permitted to prosecute the said suit without being insisted upon to take out a separate company application. I find substance in what Mr. Shah states. It would also save substantial judicial time if the Court considers, given the facts and circumstances of this case, and not be insistent for a formal application.

6 I have considered the petition, the documents annexed thereto, additional affidavit dated 26th March, 2018 and also heard Mr. Shah, 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.

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

(a) that respondent company, namely Maharashtra Steels Pvt. Ltd. having its registered office at 19 Lalbahadur Shastri Marg, Bhandup (W), Mumbai, Maharashtra – 400 078 be wound up by and under the orders, direction and supervision of this Hon'ble Court;

(b) that Official Liquidator or some other fit and proper person be appointed as Liquidator of respondent company with all powers under the provisions of Companies Act, 1956 or later enactment to take charge of respondent company and to conduct its affairs during the course of its winding up;

(c) that the necessary leave under Section 446 be granted to petitioner to continue the suit proceeding.

8 Official Liquidator to take further steps in accordance with law without waiting for any notification upon receiving an authenticated copy of this order, which Mr. Shah states, will be forwarded within two weeks of the order getting uploaded. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

9 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)