

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

COMPANY PETITION NO.883 OF 2009

M/s.D.I.Steel Pvt. Ltd.)....Petitioner
V/s.
New Haven Steel Ball Corporation Pvt. Ltd.)....Respondent

WITH

COMPANY PETITION NO.11 OF 2011

COMPANY PETITION NO.74 OF 2011

COMPANY APPLICATION NO.251 OF 2011

COMPANY PETITION NO.336 OF 2012

COMPANY PETITION NO.337 OF 2012

OFFICIAL LIQUIDATOR'S REPORT NO.196 OF 2017

COMPANY APPLICATION NO.329 OF 2017

COMPANY APPLICATION NO.60 OF 2018

Mr.S.P.Kanuga for petitioner in CP 883/2009.
Mr.Dishang Shah i/by P.M.Shah for petitioner in CP 11/2011.
Mr.Yakshay Chheda i/by AL Legal for petitioner in CP 336/2012 and CP 337/2012.
Mr.Saurab Pakale i/by Jayesh Mestry for applicant in CA 416/2017.
Mr.Aditya Shiralkar i/by Vijay B.Kanoria for applicant in CA 329/2017.
Mr.C.K.Rajan for Carborundum Universal Ltd. (creditor).
Mr.Arun Mehta i/by Akshar Laws for unsecured creditor.
Mr.Chirag Balsara a/w Mr.Kunal Mehta, Mr.Sachin Pandey and Ms.Jaylaxmi C.Gaud i/by Parimal K.Shroff and Co. for Jehaan Mehta (ex-director).
Mr.Raju Jain i/by Khushbu Prabhu for Mr.Mitesh D.Mehta (director).
Ms.Pranjali Bhandari for Mr.Sunil Mehta(director).
Ms.Sonali Kurekar i/by Vikas Mahangare for Mr.Milan Mehta (Director).
Mr.Mahendhar Aithe-Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM,J

DATE : 7.6.2018

P.C.:-

COMPANY PETITION NO.883 OF 2009

1 This petition originally was filed by one Girdharilal Agrawal & Co. (original petitioner) for winding up of respondent company New Haven Steel Ball Corporation Pvt. Ltd. (the said company).

2 On 23.2.2010 the original petitioner and the company entered into consent terms which was taken on record by this court by which the company admitted its liability to the original petitioner and also gave post dated cheques in discharge of its liability. The consent terms also provided that in the case of even a single default, the petition will stand automatically admitted without any further orders of the court and there shall be order in terms of prayer clauses-(c) and (d) of the said petition. Prayer clauses-(c) and (d) provided for appointment of Official Liquidator as provisional liquidator with all powers under the Companies Act 1956 and for an order of injunction restraining the company, its servant, agents and officers from in any manner directly or indirectly, selling, transferring off, alienating, encumbering, parting with possession of or or creating any 3rd party

rights in any manner whatsoever. The consent terms also provided that in such an event, petitioner shall advertise the petition in 'Free Press Journal' and 'Loksatta' and also in the Maharashtra Government Gazettee.

3 It is stated that the company committed default and accordingly by the self operative provisions in the consent terms, petition came to be automatically admitted and advertised. On record is an affidavit of one Karan Dharnidharka affirmed on 29.3.2011 confirming advertising the petition in 'Free Press Journal' and 'Loksatta' on 16.3.2011 and in the Maharashtra Govt. Gazettee for the period 17 to 23.3.2011 at serial no.1300. On record is the service affidavit of one Satish B.Gangurde a clerk working in the company department of the office of the Prothonotary & Senior Master affirmed on 18.3.2011 stating that the notice sent under Rule 28 was returned with the endorsement "not claimed". Shri Jain for the ex-director Nitesh Mehta states that the registered address as shown in the cause title remains unaltered.

Shri Balsara for another ex-director-Jehaan Mehta tenders extract of the company master data maintained by the ministry of corporate affairs which also shows the registered address to be the same address which is shown in the cause title and to which notice

under Rule 28 was served. Therefore, I am accepting that the notice has been effectively served. A copy of the extract is taken on record and marked 'X' for identification. After the service was effected, the claim of the original petitioner was settled and therefore, pursuant to an order dated 6.11.2017 the present petitioner D.I.Steel Pvt. Ltd. represented by Mr.Kanuga was substituted as petitioner in place of the original petitioner. Mr.Kanuga tenders a notice of admission of proof of debt issued by the Official Liquidator whereby the petitioner's debt in the sum of Rs.74,21,203/- out of the claim of Rs.1,12,02,053/- has been admitted. Mr.Kanuga states that he will independently take steps for the difference also.

4 In addition to this petitioner, there are other petitioners who are also praying for the winding up of the company. Mr.Jain for Nitesh Mehta states that the company has no funds and there is no way the liability of the petitioners or all other creditors can be settled. Mr.Jain states that the only option left for the court is to wind up the company.

5 In the circumstances, as the company is unable to discharge its debts, even to the extent of the claim admitted by the office of the Official Liquidator, in my view, the company is

commercially insolvent and requires to be wound up.

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

“(a) that the Respondent Company, viz. New Haven Steel Ball Corporation Pvt. Ltd. be ordered to 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 High Court of Bombay, or some other fit or proper person be appointed by this Hon'ble Court as liquidator of the Respondent Company viz. New Haven Steel Ball Corporation Pvt. Ltd., with all powers under the provisions of the Companies Act, 1956.”

7 All interim applications stand disposed.

8 The advocate for petitioner shall furnish, within 2 weeks, a copy of this order, duly authenticated by the Associate of this court to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

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

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1. In view of the above order, all these petitions stand disposed with liberty to petitioners to lodge their proof of debt with the Official Liquidator, who shall consider the same in accordance with law.

2 If the order dated 7.6.2018 in Company Petition No.883 of 2009 winding up respondent company-New Haven Steel Ball Corporation Pvt. Ltd. is recalled or set aside in appeal, liberty is given to petitioners to revive their petition and move once again for necessary orders including winding up of respondent company.

COMPANY APPLICATION NO.251 of 2011

1 Mr.Jain for the applicant states that nothing survives in this application. Application disposed.

(K.R.SHRIRAM,J)