

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

COMPANY PETITION NO.1180 OF 2015

Krishna Sheet Processors Pvt. Ltd.Petitioner

Vs.

Narmada Offshore and Technical Services Pvt. Ltd.Respondent

Mr. Niraj Shah I/b. Mr. Siddharth Murarka for petitioner.

None for respondent

CORAM : K.R.SHRIRAM, J.

DATE : 3rd MAY, 2018

P.C.:

1 This petition is for winding up of respondent company - Narmada Offshore and Technical Services 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.

2 On 27th June, 2017 while admitting the petition, the Court was pleased to pass the following order :

1. By this petition filed under Sections 433(e) and 434 of the Companies Act, 1956, the petitioner is seeking winding up of the respondent-company, namely, Narmada Offshore And Technical Services Pvt. Ltd. on the ground that the respondent is unable to pay the debts of the petitioner.

2. The petitioner sold, supplied and delivered to the respondent various materials/goods as per the orders/requirements of the respondent and raised necessary invoices. As per the terms and conditions, the period for making payment was 7 days and the petitioner is entitled to charge interest @ 30% p.a. on delayed payment. The petitioner has sold, supplied and delivered the goods amounting to Rs.67,97,476/-. As the respondent did not pay the said amount, it is the case of the petitioner that the petitioner is entitled for interest @ 30% till 12.06.2015 amounting to Rs.77,49,361/- as accrued interest on the said principal amount. Thus, the total outstanding amount as on 12.06.2015 is Rs.1,45,46,837/-. As the

respondent failed and neglected to pay the said amount, the petitioner served statutory notice dated 26.06.2015. The respondent neither replied nor complied with it.

3. The petitioner, therefore, filed the present petition for winding up of the respondent-company on 04.09.2015. The petition is accepted on 01.12.2015 and in pursuance of the directions issued by the Company Registrar, the petitioner has tried to serve the envelope containing the notice and the copy of the petition upon the respondent-company by speed post. The Postal Authorities have returned the said envelope with an endorsement that "the respondent has refused to accept and hence returned". An affidavit of service dated 30.12.2015 to that effect is filed on record. As the respondent has refused to accept the service, it amounts to good service.

4. I have perused the petition and prima-facie it appears that the respondent is unable to pay the debts of the petitioner and is commercially insolvent.

Hence, the following order:

xxxxxxxxxxxxx

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-17116. 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 because the service report dated 25th July, 2017 states that the notice that was sent under Rule 28 of the Companies (Court) Rules, 1959 was returned undelivered with the endorsement “left”. The Company Department has placed a fresh service report dated 20th April, 2018 in which it is stated that the notice sent, pursuant to order dated 13th April, 2018, has also come back undelivered with the endorsement “left”.

5 Mr. Shah, counsel for petitioner tenders an extract of the Company Master Data, which Mr. Shah states was taken on 13th April, 2018, in which the registered address shown is the same address as shown in the most recent notice sent by the Company Department. The extract is taken on record and marked “X” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has also been served on the company and the company is not interested in contesting the petition.

6 Mr. Shah, counsel for petitioner states that petitioner has filed a civil suit in this Hon'ble Court being suit (lodging) no.930 of 2015. Mr. Shah

states that in the petition it has been mentioned that petitioner has filed 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 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.

7 I have considered the petition, the documents annexed thereto 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.

8 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 Narmada Offshore and Technical Services Pvt. Ltd. having its registered office at J C 142, TTC Industrial Areapanwane Village, Mumbai – 400 705, India, 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 with regard to suit (lodging) no.930 of 2015 filed before Hon'ble High Court

against respondent company and its directors.

9 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.

10 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)