

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

COMPANY PETITION NO.1276 OF 2015

M/s.Fortune Finance)....Petitioner

V/s.

M/s.Land Marine Equipment Services Pvt. Ltd.)....Respondent

Ms.Krupa Parekh for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 23.8.2018

P.C.:-

1. The petition is filed for winding up of the respondent company-Land Marine Equipment Services Pvt. Ltd. (the company) on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 22.6.2017 at the time of admission of the petition, the following order came to be passed :-

“1 This is a petition for winding up of the respondent company on the ground that the respondent is unable to pay the admitted debt of the petitioner.

The transaction between the petitioner and the respondent is based upon the Bills of Exchange dated 16.4.2014 for a sum of Rs.12.00 lacs. Upon the insistence of the petitioner in part payment of the admitted liability the respondent made payment of Rs.3.00 lacs to the petitioner and for the balance payment of Rs.9.00 lacs issued a cheque dated 10.3.2015 which on presentation was dishonoured. The

petitioner therefore, issued statutory notice under Section 433 and 434 of the Company Act, 1956. The respondent received the said notice however, neither replied nor complied with the same.

2. The petitioner thereafter filed the present petition on 23.9.2015 for winding up of the respondent company. The present petition was admitted on 5.1.2016 and in pursuance of the directions issued by the Company Register the petitioner tried to serve a notice upon the respondent. The record indicates that the packet containing notice and petition returned back with the endorsement of the postal department "intimated post" however, it appears that the respondent did not claim the delivery of the said packet. An affidavit of service dated 11.2.2016 has been filed by the petitioner.

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

*4 Hence, the following order.
....."*

3 On 13.4.2018 petition came to be dismissed as none appeared for petitioner. On 24.7.2018 petition came to be restored and petitioner was directed to advertise the restoration of the petition in 'Free Press Journal' and 'Navshakti'.

4 Petitioner has placed on record an affidavit of one Krupa Parekh affirmed on 23.8.2018 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 14.8.2018.

5 Prior to dismissal of the petition and subsequent restoration, petitioner had also advertised the petition in 'Free Press Journal' and 'Navshakti' on 25.7.2017 and in the Maharashtra Government Gazette for the period 3rd to 9th August 2017 at Serial No.M-17131.

6 On record is the service report of the Company department dated 16.5.2018 confirming service of the Notice under Rule 28 of the Company Court Rules 1959.

7 Despite service, no affidavit in reply opposing the petition has been filed. Therefore, none of the averments in the petition are controverted. It has to be also noted that the company has not even replied 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.

8 I have perused the petition, heard Ms.Parekh and also considered the documents annexed thereto. I am also satisfied that the company is indebted to petitioner, unable to pay its debts and is commercially insolvent.

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

“(a) That the respondent company namely M/s.Land-Marine Equipment Services Pvt. Ltd., be wound up by an order under the orders and directions of this Hon'ble Court under the provisions of Companies Act, 1956 ;

(b) That the Official Liquidator, Hon'ble Court Bombay to be appointed as the Liquidator of the company with all powers under the Companies Act, 1956, to take charge of the assets of the company and conduct its affairs in the course of winding up.”

10 Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the Official Liquidator who shall take immediate steps without waiting for any notification. The counsel for petitioner also to forward a copy of this order to the National Company Law Tribunal, Mumbai for information.

11 Upon receipt of the authenticated copy from petitioner's advocate, the Official Liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the Official Liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

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

13 Petition disposed accordingly.

Jahagirdar
Kiran
Ganesh

Digitally
signed by
Jahagirdar
Kiran
Ganesh
Date:
2018.08.27
19:40:48
+0530

(K.R.SHRIRAM,J)