

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

COMPANY PETITION NO.1305 OF 2015

Nilkamal Ltd.	)....Petitioner
V/s.	
Siddheshwar Industries Pvt. Ltd.	)....Respondent

WITH

COMPANY PETITION NO.723 OF 2016

SKK Steel Enterprises Pvt. Ltd.	)....Petitioner
V/s.	
Siddheshwar Industries Pvt. Ltd.	)....Respondent

Mr.Sanskar Marathe for petitioner in CP No.1305 of 2015.
Mr.Girish B.Kedia for petitioner in CP No.723 of 2016.
None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 19.4.2018

P.C.:-

1 Both the petitions listed today are for winding of the respondent company-Siddheshwar Industries Pvt. Ltd. on the grounds that the company is unable to discharge its debts, commercially insolvent and requires to be wound up.

2 The Company Petition No.1305 of 2015 was admitted by an order dated 26.7.2017. At the time of admission, on 26.7.2017 the

following order came to be passed :-

“1] By the present petition under Section 433(e), 434 read with 439 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-Company namely Siddeshwar Industries Pvt. Limited.

2] It is the case of the petitioner that, the petitioner sold, supplied and delivered goods to the respondent and raised invoices aggregating to Rs.4,97,785/- which includes statutory taxes to be paid to the concerned authorities. The respondent in discharge of its liability, made part payment of Rs.1,04,789/-. As the respondent did not make the balance payment, petitioner issued statutory notice dated 10.2.2015. The respondent received it however did not comply with or reply it.

3] The Petitioner therefore filed the present petition on 12.10.2015 in this Court seeking winding up of the respondent-Company. The petition is accepted on 23.2.2016 and in pursuance of the directions of Company Registrar, served the respondent with the notice of acceptance and has filed affidavit of service dated 2.3.2016 to that effect. The petition came up for hearing on 20th June 2017, when this Court after taking into consideration the claim involved in the petition, directed the petitioner to serve Advocate's notice upon the respondent and file affidavit of service. Accordingly the petitioner served the respondent once again and has filed affidavit of service dated 19th July 2017. Despite service, none appeared for the respondent.

4] Perused the petition and the documents annexed thereto. Prima facie it appears that the respondent is not serious in contesting the claim of the petitioner. It further appears that, the claim of the petitioner is an admitted debt by the respondent. It prima facie appears that the respondent- Company is unable to pay the debt of the petitioner.

.....”

3 On 14.3.2018 the Company Petition No.723 of 2016 was also admitted since Company Petition No.1305 of 2015 had already been admitted.

4 Today, Mr.Marathe appearing for petitioner tenders a compilation of invoices raised by petitioner on the company and also the evidence of part payment received. In Company Petition No.1305 of 2015 the amount payable is very small i.e., Rs.69,871/- as principal and Rs.23,380/- towards `C' form making a total of Rs.93,251/-.

5 In Company Petition No.723 of 2016, it is the case of petitioner that petitioner had supplied to the company steel bars and M.S.channels of various quantities and had raised 17 invoices. The company though having received these goods, has not made any payments.

6 it is also stated in the petition that as the company was in the business of manufacturing high quality clothes dye forgings and a supplier of component and dealt with all kind of materials handling storage systems (excluding plastics) and accessories and parts thereof including providing storage solution systems logistic services and

installations thereof, the company used to generate lot of scrap which was sold in the market. Petitioner being in the business of manufacturing steel products, had offered to purchase the scrap generated by the company and paid advance of Rs.2,80,48,374.78 to the company for purchase of steel scrap. There are documents annexed to the petition to show that invoices were raised and also advance was paid to the company. It is stated in the petition that the company did not make the payments for the goods supplied nor had delivered the scrap or returned the advance paid. Hence, petitioner issued a notice as required under the provisions of Companies Act 1956 through its Advocate's letter dated 20.10.2015. No reply was received. 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.

two newspapers viz. 'Free Press Journal' and 'Navshakti' on 19.12.2017 and also in Maharashtra Government Gazette for the period 15 to 21st February 2018 at Serial No.M-17333. There is a service report dated 12.9.2017 placed by the Company Department confirming delivery of notice under Rule-28 of the Company (court) Rules 1959 upon the company.

8 Mr.Kedia appears for petitioner in Company Petition No.723 of 2016 tenders a copy of the letter dated 13.4.2018 addressed by him to the company which has been delivered to the company on 16.4.2018 informing the company that the petition is kept for final hearing and disposal today. Mr.Kedia undertakes to file an affidavit to that effect within one week from today. Undertaking accepted. Notice under Rule 28 of the Company (court) Rules 1959 has been served even in Company Petition No.723 of 2016. Mr.Kedia also tenders an extract, which he says was taken today, of the Company Master Data of the company in which registered address of the company is shown to be the same as mentioned in the cause title of the company petition. The same is taken on record and marked 'X' for identification.

9 The company has chosen not to file any reply to either of

the petition. Therefore, none of the averments in both the petitions have been controverted.

10 In the circumstances, having perused the petitions and the documents annexed thereto. I am satisfied that the company is indebted to petitioners, unable to discharge its debts, commercially insolvent and requires to be wound up.

11 Therefore, both the petitions are allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that Siddeshwar Industries Pvt. Ltd. may be wound up by the directions of this Hon'ble Court under provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator, High Court, Bombay, be appointed as the Liquidator of the Respondent Company with all necessary powers to take charge of the assets and properties of the Respondent Company and distribute the same as per the directions of this Hon'ble Court.

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

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

14 Petitions disposed accordingly.

(K.R.SHRIRAM,J)