

balance of Rs. 21,05,289/-. Though the Petitioner called upon the Company from time to time to pay the balance amount at the earliest, the Company failed to pay the said amount to the Petitioner. In fact, the Company by its letter dated 11th May, 2011 has expressly acknowledged to pay a sum of Rs.21,05,289/- to the Petitioner. The Petitioner therefore through its Advocate issued a statutory notice dated 3rd August, 2014 to the Company calling upon the Company to pay an amount of Rs.21,05,289/- alongwith interest @ 15% per annum from the due date till actual payment to the Petitioner within a period of 21 days from the date of receipt of the said notice. The said notice was received by the Company. However, the Company failed and neglected to respond to the same or to make any payment as called upon therein.

3. The Petitioner therefore filed the present Petition on the ground that the Company is unable to pay its debts and deserves to be wound up. The above Company Petition is served on the Company by Speed Post on 3rd March, 2015. However, the Company has not filed its Affidavit in reply and has also not come forward to oppose the Petition. It is therefore submitted on behalf of the Petitioner that the Petition be admitted and directed to be advertised.

4. From the aforestated facts, I am prima facie satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has failed to respond to the statutory notice or to make any payment as called upon therein. The Company has also not filed its Affidavit in reply despite being served with a copy of the Petition on 3rd March, 2015. The Company has not come forward to oppose the above Petition. In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. I am therefore prima facie satisfied that the Company is unable to pay its debts and the Company Petition deserves to be admitted and advertised.

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3 Petitioner has filed an affidavit of one Dhairsheel Vaidya affirmed on 6th October, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 20th September, 2017. Petitioner has also filed an affidavit of one Dattatraya Nimbolkar affirmed on 20th January, 2018 confirming advertising admission of petition in Maharashtra

Government Gazette for the period 4-10 January, 2018 at serial no.M-17279. There is a service report dated 7th April, 2015 filed by the Company Department stating that the notice under Rule 28 of the Companies (Court) Rules, 1959 has been delivered on or about 28th March, 2015.

4 There is no affidavit in reply filed by the Company opposing the petition. Therefore, the averments in the petition are not controverted. There is no reply to the statutory notice either. 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, 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.

5 The Court while admitting the petition has expressed a view that the amount as claimed by petitioner is due and payable by the Company and the Company is unable to pay its debts. I have heard the counsel for petitioner and also considered the petition and the documents annexed to the petition. I am also satisfied that the Company is unable to

discharge its debts, is commercially insolvent and requires to be wound up.

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

(a) that Respondent namely Yashraaj Ethanol Processing Private Limited be ordered to be wound up by and under the directions, supervision and control of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) that Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as Liquidator of all the business, assets, properties, income and books of accounts of respondent with all the powers under the provisions of the Companies Act, 1956.

7 Petitioner's advocate to forward a copy of this order duly authenticated by the Associate of this Court to Official Liquidator. Official Liquidator to take further steps upon receiving copy of the order without waiting for notification.

8 Company petition accordingly stands disposed.

COMPANY PETITION NO.280 OF 2015

1 Since respondent company - Yashraaj Ethanol Processing Pvt. Ltd. has been ordered to be wound up by an order dated 8th February, 2018 in company petition no.94 of 2015, this petition also stands disposed with liberty to petitioner to lodge their proof of debt with Official Liquidator, who shall consider the same in accordance with law.

2 If the order dated 8th February, 2018 in company petition no.94 of 2015 winding up respondent company – Yashraaj Ethanol Processing Pvt. Ltd. is set aside in appeal, liberty is given to petitioner to revive this petition and move once again for necessary orders including winding up of respondent company.

(K.R. SHRIRAM, J.)