

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

COMPANY PETITION NO.324 OF 2015

Pacecon Engineering Projects LimitedPetitioner

Vs.

Vitthal Distilleries LimitedRespondent

Mr. Bharat Gadhavi a/w. Mr. Niranjan P. Bhavake i/b. Tejesh Dande and Associates for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 8th FEBRUARY, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – Vitthal Distilleries Limited (the Company) under the Companies Act, 1956.

2 On 9th August, 2016 when the petition was taken up for admission, the following order was passed :

1. This Company Petition has been filed seeking to wind up the Respondent Company – Vitthal Distilleries Ltd. on the ground that it is unable to pay its debts. It is the case of the Petitioner that the Respondent Company is indebted to the Petitioner in the sum of Rs.9,36,501/- comprising of the principal amount of Rs.6,34,917/- and interest thereon at the rate of 15 % p.a.

2. The brief facts giving rise to the present controversy are that the Petitioner and the Respondent executed an Erection Agreement dated 27th July 2009 for erection of a grain based distillery plant to manufacture 45 KLPD Total Spirit at Awarpimpri, Taluka Paranda, District Osmanabad. As per the said Erection Agreement, the total contract price was Rs.1,22,00,000/- which was inclusive of all taxes and duties. It is the case of the Petitioner that as per the Erection Agreement, the Respondent paid a sum of Rs.20,00,000/- as advance. Thereafter, the Respondent made further payment of Rs.95,65,082/-. Hence the total amount paid by the Respondent Company came to Rs.1,15,65,082/-. It is the case of the Petitioner that all the work that

it had done for erection of the said plant, it has raised various invoices aggregating to Rs.1,21,99,999/-. Against this, as stated earlier, the Respondent has paid an aggregate sum of Rs.1,15,65,082/- which left the balance amount of Rs.6,34,917/- which is claimed in the present Petition. It is the case of the Petitioner that they called upon the Respondent to make the aforesaid payment but without any success. It is in these circumstances the Petitioner was constrained to serve a statutory notice dated 3rd August 2014 on the Respondent Company asking it to make the aforesaid payment failing which winding up proceedings would be initiated. The record indicates that the statutory notice has been duly served on the registered office of the Respondent Company. Despite service of the statutory notice, no reply was given and neither were the requisitions contained therein complied with. It is in these circumstances that the present Company Petition has been filed.

3. After the Company Petition was accepted, the same was served on the Respondent Company as evidenced by the affidavit of service dated 28th July 2016. Despite service of the Company Petition, none have appeared today and no affidavit in reply has been filed controverting the averments and allegations contained in the Company Petition.

4. On going through the record and proceedings in the Company Petition, I find that the claim of the Petitioner is undisputed. Out of the aggregate amount of Rs.1,21,99,999/- claimed by the Petitioner under the invoice raised by it, the Respondent Company has made part payment in the sum of Rs.1,15,65,082/-. The balance amount of Rs.6,34,917/- has not been paid by the Respondent Company. Even the record does not indicate that any dispute has been raised with reference to this balance amount.

5. Looking to the totality of the facts of the case and considering that no affidavit in reply has been filed by the Respondent Company contesting this Company Petition, the following order is passed :

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3 On record is an affidavit of one Dattatraya Nimbolkar affirmed on 20th January, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 19th December, 2017 and also in the Maharashtra Government Gazette for the period 4-10 January, 2018 at serial no.M-17280. The Company Department has filed a service report dated 17th September, 2016 stating that the notice under Rule 28 of the

Companies (Court) Rules, 1959 has been delivered.

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 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, Vitthal Distilleries 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.

(K.R. SHRIRAM, J.)