

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

COMPANY PETITION NO.376 OF 2015

Shri Madhukar Mane son of N.L. ManePetitioner

Vs.

Amra Remedies LimitedRespondent

Mr. V.P. Vaze i/b. City Legal for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 22nd FEBRUARY, 2018**

PC.:

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

2 On 12th July, 2016 the petition came to be admitted and the following order was passed :

This Company Petition has been filed seeking to wind up the Respondent Company-Amra Remedies Limited on the ground that the Respondent Company 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.19,02,853/- which arises on account of non-refund of an interest being security deposit of Rs.10,00,000/- placed by the Petitioner with the Respondent Company as well as the dues in the sum of Rs.5,67,993/- being the amount outstanding under various invoices raised for the services rendered by the Petitioner to the Respondent Company.

2. The brief facts giving rise to the present controversy are that, originally the Respondent Company was operating as a division of one Tube Glass Container Limited. The said Tube Glass Container Limited entered into an agreement dated 23rd March, 2011 on the terms and conditions, more particularly, set out therein. As required under Clause 11 of the said Agreement, the Petitioner has paid the said Tube Glass Container Ltd, a sum of Rs.10 lakhs by cheque dated 9th March, 2011 towards the interest being security deposit. Thereafter,

the Respondent Company was incorporated as a separate legal entity and an Agreement dated 1st July, 2011, was entered into between the Respondent Company and the Petitioner. The terms and conditions of this Agreement are almost identical to the terms and conditions of the agreement dated 23rd march, 2011 entered into with Tube Glass Container Ltd including the Clause for payment of interest bearing security deposit of Rs. 10 lakhs. In view of the fact that Amra Remedies Limited (Respondent Company) was incorporated as a separate legal entity, M/s Tube Glass Container Ltd, transferred to Amra Remedies Ltd (Respondent Company) the said interest bearing deposit of Rs.10 lakhs paid by the Petitioner under the earlier Agreement dated 23rd March, 2011. As per the terms of the Agreement dated 1st July, 2011, the Respondent Company paid a sum of Rs.76,500/- towards interest @ 8.5% for the period April 2011 to March 2012 on the said interest bearing security deposit of Rs.10 lakhs.

3. It is the case of the Petitioner that thereafter the company failed and neglected to pay to the Petitioner any interest. This interest is also claimed in the present Petition. Over and above this, the Petitioner under the aforesaid Agreement, provided services to the Respondent Company and raised their bills in relation to the same. It is the case of the Petitioner that for all the bills that were raised on the Respondent Company, it paid only a sum of Rs.15,40,105/- leaving a balance outstanding of Rs.5,67,993/-. As the company failed and neglected to pay these outstanding dues, the Petitioner by a Statutory Notice dated 7th March, 2014 under Sections 433 and 434 of the Companies Act, 1956 called upon the Respondent Company to refund the security deposit of Rs.10 lakhs as well as pay its dues under the outstanding bills, failing which winding up proceedings would be initiated. The record indicates that the said Statutory Notice has been duly served on the registered office of the Respondent Company.

4. 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 Petition is filed.

5. After the Petition was accepted, the same was duly served on the Respondent Company as evidenced by the affidavit of service dated 20th April, 2015. Despite service of the Company Petition, none have appeared today and no affidavit-in-reply is filed controverting the averments and allegations contained in the Company Petition.

6. On going through the papers and proceedings of the Company Petition, I find that the claim of the Petitioner is really undisputed. Furthermore, there is no affidavit-in-reply filed on behalf of the Respondent Company controverting the averments and allegations in the Company Petition.

xxxxxxxxxx

3 There is no affidavit in reply opposing the petition. Therefore, the averments in the petition are not controverted. Even to the statutory notice, there is no reply. 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 Petitioner has filed an affidavit of one Vaijanath Pandurang Vaze affirmed on 22nd January, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 21st December, 2017. The said Vaijanath Pandurang Vaze has also filed another affidavit affirmed on 20th February, 2018 confirming advertising the petition in the Maharashtra Government Gazette for the period 8-14 February, 2018 at serial no.M-17318. The Company Department has filed a service report dated 12th August, 2016 confirming service of notice under Rule 28 of the Companies (Court) Rules, 1959 upon the company.

5 I have perused the petition, the documents annexed thereto and also heard Mr. Vaze, counsel for petitioner. I am also satisfied that the claim of petitioner is undisputed and hence it can be concluded that the company is unable to discharge its debts 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 Amra Remedies Limited, the company above named, having its registered office at H wing, 4th Floor, Tex Centre, Off Saki Vihar Road, Chandivali, Andheri (E), Mumbai – 400 072 be wound up by and under the order and direction of this Hon'ble Court pursuant to the provisions of the Companies Act, 1956;

(b) That Official Liquidator, High Court be appointed as Liquidator of the company with all powers under 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.)