

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

COMPANY PETITION NO.1258 OF 2015

M/s.Shriram City Union Finance Ltd.)....Petitioner
V/s.

M/s.Vedant International Garments)
Manufacturing Ltd.)....Respondent

Ms.Nikita Pawar i/by S.I.Joshi and Co. for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 19.4.2018

P.C.:-

1 On 13.4.2018, the following order was passed :-

“1 The petition is filed for winding up of the company Vedant International Garments Manufacturing Ltd. (the Company) on the ground that the company is unable to discharge its debts.

2. Petitioner has extended loan facility of Rs.25 lakhs to the company and accordingly a loan agreement dated 25th November 2013 was entered into between petitioner and the company. The company repaid some part of the loan with interest in installments as on 27th June 2015. The company was liable to pay a sum of Rs.4,71,617/-. As no payments came forth, petitioner caused a statutory notice dated 27th June 2015 issued claiming a sum of Rs.17,50,505/including principal amount plus interest. The company, through its advocate, sent a holding letter dated 7th July 2015 but thereafter did not reply to the statutory notice. A copy of the letter dated 7th July 2015 is taken on record and marked 'X' for identification.

3. On 21st June 2017, while admitting the petition, the following order came to be passed :

1 The present petition is filed for winding up of respondent company, namely, M/s. Vedant International Garments Manufacturing Ltd. The petitioner is non banking Financial company.

2 That upon a request of the respondent, the petitioner provided loan facility to the respondent to the tune of Rs.25,00,000/-. The respondent has acknowledged the said loan. The petitioner and respondent have entered into a financial agreement dated 25.11.2013. The record indicates that the respondent company did not repay the loan in its entirety and as on 27.06.2015 the respondent company was liable to pay an amount of Rs.4,71,617/-. The petitioner has also claimed further interest and future recoverable amount from the respondent company to the tune of Rs.12,78,888/as per the terms and conditions of the finance/loan agreement. The respondent company was thus liable to pay to the petitioner a total sum of Rs.17,50,505/ as on 28.06.2015. The petitioner company has also claimed for further interest on the amount due and payable as per the finance/loan agreement. As the respondentcompany did not pay the outstanding amount of the petitioner, the petitioner issued as statutory notice dated 27.06.2015, however, the respondent neither replied nor complied with the said notice.

3 The petitioner, therefore, filed the present petition on 15.10.2015 for winding up of the respondent company. The present petition was accepted on 15.12.2015 and in pursuance of the directions issued by the Company Registrar, the petitioner has served the notice upon the respondent company. An affidavit of service dated 02.02.2016 has been filed to that effect. Despite service, none appears for the respondent.

4 I have perused the petition and it, prima facie, appears that the respondent company is unable to pay the dues of the petitioner.”

4. To the statutory notice also, 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, 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 in Debt.

5. Petitioner has filed an affidavit of one Vishal Wankhade affirmed on 6th July 2015 confirming advertising the petition in Free Press Journal and Navshakti on 4th July 2015 and 5th July 2017, respectively. There is no evidence that the petition is also advertised in Maharashtra Government Gazette though Ms. Joshi states that necessary charges were paid.

6. Stand over to 19th April 2018.”

2 Ms.Pawar for petitioner tenders an affidavit of one Vishal Wankhade affirmed on 19.4.2018 confirming advertising the petition in the Maharashtra Government Gazette for the period 20 to 26th July 2017 at serial No.M-17110.

3 No reply to the statutory notice has been given as noted earlier. No affidavit in reply opposing the petition has been filed.

Therefore, none of the averments in the petition are controverted. The Company Department has also placed on record report dated 14.7.2017 stating that the notice that was sent under Rule 28 of the Company (court) Rules 1959 has been returned 'unclaimed'. Ms.Pawar tenders copy of extract of the Company Master Data taken on 9.2.2018 in which the registered address is shown to be the same to which the notice under Rule 28 was sent. It is the same address which is also mentioned in the cause title. Therefore, notice under Rule 28 is deemed to have been served on the company. The extract of the company master data is taken on record and marked 'X' for identification.

4 I have also perused the petition and the documents annexed thereto. I am also satisfied that the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

“(a) that the said Respondent Company registered under the Companies Act 1956, having its Registered office at 109/110, Navyug Industrial Estate, T.J.Road, Sewree (West), Mumbai, Maharashtra-400 015 be wound up by an order and under the directions of this

Hon'ble Court under the provisions of the Companies Act, 1956;

(b) That the Official Liquidator of High Court, Bombay be appointed as Liquidator of the said Company for all its assets, properties, bank accounts and book debts with necessary powers under the provisions of the Companies Act, 1956.

6 Ms.Pawar states that authenticated copy of this order will be forwarded to the Official Liquidator within two weeks of the order being uploaded. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

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

8 Petition disposed accordingly.

(K.R.SHRIRAM,J)