

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

COMPANY PETITION NO.386 OF 2015

M/s. Realsunrise Traders Pvt. Ltd.Petitioner

Vs.

M/s. Thandiram Textiles Pvt. Ltd.Respondent

Mr. C.N. Mehta i/b. MMK Law Associates for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 8th FEBRUARY, 2018

PC.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Thandiram Textiles Pvt. Ltd. (the Company) under the Companies Act, 1956.

2 When the petition was taken up for admission, the Court was pleased to pass the following order on 20th March, 2017 :

Mr.Mehta, learned counsel appearing for the petitioner states that the respondent is served. None appeared for the respondent when the matter was called out. No affidavit in reply is filed.

2. Mr.Mehta, learned counsel appearing for the petitioner invited my attention to the order dated 5th December,2016 passed by this court observing that this company petition is filed on the basis of the loan of Rs.1,95,00,000/- which is undisputed. There is no response to the statutory notice issued by the petitioner. This court prima facie observed that the respondent has no defence to offer. However, with a view to give a last opportunity to the respondent, the petitioner was directed to communicate the next date of the hearing alongwith this order passed by this court to the respondent by post as well as e-mail.

3. Mr.Mehta, learned counsel appearing for the petitioner states that after the order of this court passed on 5th December,2016, the petitioner has informed the respondent about the next date of hearing and also conveyed the said order dated 5th December,2016.

4. A perusal of the record indicates that the petitioner has advanced a sum of Rs. 95 lacs to the respondent as and by way of friendly loan

for which the respondent had agreed to pay interest @ 24% per annum or quarterly rest basis.

5. The respondent however did not make any payment. The petitioner accordingly issued a statutory notice on 24th September, 2014 which was received by the respondent. Neither any repayment was made by the respondent to the petitioner nor any reply was given. According to the particulars of claim the petitioner is liable to recover interest @ 24% p.a. from 1st October, 2013 till the date of payment, a total sum of Rs.1,17,31,279/- from the respondent. No affidavit in reply is filed.

6. For the reasons recorded aforesaid and in view of the prima facie observations made by this court in order dated 5th December, 2016, I am of the view that the respondent is unable to pay its debt and is commercially insolvent.

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3 Petitioner has filed an affidavit of one Satish Mahadu Hule affirmed on 8th February, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 23rd May, 2017. Petitioner has filed another affidavit of Satish Mahadu Hule affirmed on 8th February, 2018 in which it is stated that the email that was sent to the email ID given in the Company Master Data maintained by the Ministry of Corporate Affairs was undelivered for reason "Address not found". In the affidavit, it is also stated that the packet containing letter dated 11th January, 2018 alongwith two orders which petitioner had forwarded informing the Company that the matter would appear today for final hearing came back undelivered with the endorsement "Unclaimed Returned to Sender". In the second affidavit, it is also stated that petitioner has filed with the Government Press, notice for publication in the Maharashtra Government Gazette on 29th December, 2017.

4 There is a service report dated 20th April, 2017 filed by the Company Department which states that the notice under Rule 28 of the Companies (Court) Rules, 1959 sent to the Company has come back with remark “Unclaimed. Returned to sender”. Mr. Mehta, counsel for petitioner makes a solemn statement to the Court that the registered office address in the MCA website today is the same address to which the last communication was sent, notice under Rule 28 of the Companies (Court) Rules, 1959 was sent and the same address as stated in the cause title of the petition. Mr. Mehta undertakes to file extract of the Master Company Data during the course of today. In view of the statement made by Mr. Mehta, the notice under Rule 28 is deemed to have been served on the Company.

5 As no affidavit in reply has been filed by the Company opposing the petition, none of the allegations are 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.

6 The Court while admitting the petition was *prima facie* satisfied that respondent is unable to pay its debts and is commercially insolvent. 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.

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

(a) that the Company M/s. Thandiram Textiles Pvt. Ltd. be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) the Official Liquidator attached to the Hon'ble Court or some other fit and proper person be appointed as Liquidator of the Company and all its assets, divisions business, subsidiaries of the Company including the assets of the subsidiaries, business affairs, property, bank accounts, book of accounts, vouchers, documents etc. with all powers under the provisions of Companies Act, 1956.

8 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.

9 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)