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

COMPANY PETITION NO.585 OF 2015

M/s. Tata Capital Financial Services Ltd. ….Petitioner

Vs.

M/s. BUI Private Limited ....Respondent

Ms. Anisha Nair i/b. India Law for petitioner.
Mr. Hitesh P. Vyas for respondent.

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

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. BUI Private Limited (the Company) under the Companies Act, 1956.

2 On 22nd March, 2017 the petition came to be admitted and the following order was passed :

> *. By this petition, the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to pay its debts.*
>
> *2. The petitioner had granted a Long Term Loan Facility for an aggregate amount of Rs.10 crore to M/s.Union Batteries Private Ltd. The respondent herein was the guarantor in respect of the said transaction. The principal borrower as well as the respondent herein committed default in making repayment of the loan amount.*
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> *3. By a separate order passed by this Court on 29th November 2016 in Company Petition No.168 of 2015, this Court has already passed an order of winding up against the principal borrower. The petitioner issued a statutory notice on 7th April 2014 to the principal borrower as well as the respondent herein. There was neither any payment made nor any reply was given to the statutory notice. According to the petitioner, a sum of Rs.2,93,21,934/- is due and payable as on 7th February 2014 with further interest @9% p.a. till payment or realisation.*
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> *4. Learned counsel for the petitioner invited my attention to the averments made in the affidavit-in-reply dated 8th January 2017*

filed by the respondent in this petition and submits that the respondent has not denied the liability of the petitioner towards the claims made by the petitioner.

5. Mr.Vyas, learned counsel for the respondent submits that there is no manufacturing and trading activity of his client and as such there is no revenue. He submits that all immovable assets of the respondent have been mortgaged to the Bank of India and Exim Bank and are now in possession of Edelweiss Asset Reconstruction Company Limited under the SARFESI Act.

6. A perusal of the affidavit-in-reply indicates that the liability of the petitioner is not disputed by the respondent. The principal borrower is already wound up by a separate order passed by this Court on 29th November 2016. The respondent has neither made any payment nor gave response to the statutory notice.

7. In these circumstances, I am of the prima facie view that the respondent is unable to pay its debts and is commercially insolvent. A perusal of the affidavit-in-reply indicates that the respondent is heavily indebted and has no source of revenue.

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3 Today, Mr. Vyas, counsel for respondent company reiterates the submissions made at the time of admission. As the affidavit in reply indicates the liability of petitioner is not disputed by the company and respondent company has neither made any payment nor gave any response to the statutory notice, 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 Moreover, the principal borrower has already been ordered to be wound up by a separate order dated 29th November, 2016 passed by this Court in company petition no.168 of 2015.

5 Even the affidavit in reply indicates that the company is heavily indebted and there is no source of revenue. Infact Mr. Vyas, counsel for respondent company submits that there is no manufacturing and trading activity of the company and as such there is no revenue. Mr. Vyas also submits that all immovable assets of the company have been mortgaged to Bank of India and Exim Bank and now in possession of Edelweiss Asset Reconstruction Company Limited under the provisions of SARFAESI Act.

6 Petitioner has filed an affidavit of one Narendra Ambre affirmed on 12th February, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 8th January, 2018 and also in the Maharashtra Government Gazette for the period 1-7 February, 2018 at serial no.M-17311. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived by the company at the time of admission.

7 I have perused the petition, the documents annexed thereto and also heard Ms. Nair, counsel for petitioner. I am also satisfied that the company is unable to discharge its debts, is commercially insolvent and

requires to be wound up.

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

> *(a) That the company, viz., M/s. BUI Private Limited, be ordered to be wound up by and under the order and direction of this Hon'ble Court under the provisions of the Companies Act, 1956;*
>
> *(b) That Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as Liquidator of M/s. BUI Private Limited with all powers under the provisions of the Companies Act, 1956.*

9 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.

10 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)