

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

COMPANY PETITION NO. 109 OF 2016

M/s. Rajkotia Medicare Pvt. Ltd. .. Petitioner
Vs.
M/s. JNN Lifesciences Pvt. Ltd. .. Respondent

Ms.Jaishree Surati i/b S. Ashwinikumar and Co. for petitioner.

None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 4TH MAY 2018**

P.C.

1. The petition is filed for winding up of the company JNN Lifesciences Private Limited (the company) on the ground that the company is unable to discharge its debt and is commercially insolvent.

2. At the time of admission of petition, on 15th January 2018, the following order came to be passed :-

“1 Petitioner is seeking winding up of respondent company M/s.JNN Lifesciences Pvt. Ltd. on the ground that the company is unable to discharge its debts, commercially insolvent and requires to be wound up.

2 Petitioner had supplied various pharmaceutical goods to company for a total sum of Rs.83,063/- as reflected in paragraph-5 of the petition. Petitioner also raised 8 invoices between 26.6.2014 till 26.9.2014, copies of the invoices are annexed to the petition. Invoices mentioned that interest will be charged @ 24% p.a. if payment is not made within due date.

3 It is stated in the petition that the company

despite reminders did not make any payment for some time but finally issued cheque of Rs.50,058/- towards part payment of invoices. This cheque when deposited came to be dishonoured due to 'insufficient funds'. Petitioner therefore, caused statutory notice under the provisions of Companies Act 1956 issued through their advocates' letter dated 15.9.2015. The company did not reply to the statutory notice.

4 There is an affidavit of service of one Nikesh Thakur affirmed on 29.7.2016 stating that the petition came to be returned with the endorsement "addressee left". At the request of petitioners' advocate this court permitted petitioner to serve the petition by substituted service. Petitioner has placed on record another affidavit affirmed on 28.11.2017 confirming notice in 'Free Press Journal' and in 'Navshakti' on 28.7.2017. On the directions of this court, Ms.Surati for petitioner states that petitioner served petition by email to company at the email id mentioned at the MCA website on 20.9.2017. Ms.Surati states that email has been delivered but nobody responded.

5 Court Associate on the directions of the court checked the web site and gave today, print out of the company master data which is taken on record and marked 'X' for identification. This indicates the registered address to be the same to which the petition and the email was sent. Therefor, I am satisfied that petitioner has served the petition upon the company. Company has not filed any affidavit in reply, therefore, none of the averments in the petition are controverted. Company has also not replied to the statutory notice.

6 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 admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, by virtue of Section 434 of the Companies Act 1959 a presumption of the indebtedness can be legitimately drawn by the court where no reply

to the statutory notice is forthcoming.

7 Having heard petitioner and considered the petition with the documents annexed therein, I am satisfied that petitioner had supplied the goods to the company and the company is unable to discharge its debts and is commercially insolvent. Therefore, the following order is passed”

3. On record is the affidavit of one Nikesh P. Thakur affirmed on 17th March 2018, advertising the petition in two local newspapers, viz., Free Press Journal and Navshakti on 22nd February 2018 and also in the Maharashtra Government Gazette for the period March 8-14, 2018 at Sr.No.M-17356. Company Registrar has filed a Service Report dated 6th February 2018 stating that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 has come back with the endorsement 'Left'. Ms.Surati tenders an extract of the company master data maintained by the Ministry of Corporate Affairs, which extract the counsel states, was taken on 3rd May 2018, in which the registered address of the company is shown to be the same to which the notice under Rule 28 was sent. It is the same address as mentioned in the cause title also. The extract is taken on record and marked 'X' for identification. I would, therefore, proceed on the basis that notice under Rule 28 has been served on the company. Ms.Surati also tenders a print out of an email dated 2nd May 2018 from the advocate on record for petitioner to the company at the email address mentioned in the

company master data, which email Ms.Surati states has not bounced back and therefore must have been delivered. A copy of the email is also taken on record and marked 'X-1' for identification.

4. The company has not filed any reply opposing the petition. Therefore, none of the averments in the petition are controverted. It should also be noted that if the address of the company has changed, the company should have notified the change to the Registrar of companies and the fact that it has not been done only shows that the company is avoiding its creditors.

5. In these circumstances, petition is allowed in terms of prayer clause (a) which reads as under :-

“(a) THAT the said Company, viz., JNN Lifeschences Private Limited be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956 and the Official Liquidator attached to this Hon'ble High Court, be appointed as Liquidator of the Company together with all its assets, business affairs, property books of account, bank accounts,, vouchers, files, documents, machinery, furniture and fixtures etc. with all powers under the provisions of Companies Act 1956.”

6. Petitioner's advocate to forward an authenticated copy of this order within two weeks to the official liquidator who shall take immediate steps without waiting for any notification.

7. The Company Petition accordingly disposed.
8. A copy of this order also be forwarded to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)