

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

COMPANY PETITION NO.33 OF 2016

M/s.Flaktwoods ACS (India) Pvt. Ltd.)....Petitioner
V/s.

M/s.Trans Tech Turnkey Pvt. Ltd.)....Respondents

WITH

COMPANY PETITION NO.637 OF 2016

Abhay Kumar Gupta)....Petitioner
V/s

Trans Tech Turnkey Pvt. Ltd.)....Respondent

Mr.Puneet K.Gogad for petitioner in CP No.33/2016.

Mr.Kishore Jain i/by Shweta Jain for petitioner in CP No.637/2016.

None for respondents.

CORAM : K.R.SHRIRAM,J

DATE : 19.4.2018

P.C.:-

COMPANY PETITION NO.33 OF 2016

1 The petition is filed for winding up of the respondent company-Trans Tech Turnkey Pvt. Ltd. on the grounds that the company is unable to pay its debts and is commercially insolvent.

2 It is stated in the petition that the petitioner placed various purchase orders upon the company for supply of goods at the various projects being executed by the company. It is stated that petitioner

supplied and raised various invoices totaling to sum of Rs.1,12,81,482.00. Against this amount, the company has paid sum of Rs.4,00,04,050 leaving a balance of Rs.70,78,942/-. As the company did not make the payment, petitioner called upon the company to make the payment. It is stated that the company in response to a notice dated 13.4.2015 sent by petitioner, vide letter dated 21.7.2015 informed petitioner that the company's bank account have been attached by the Government authorities for non payment of statutory dues and as part of restructuring exercise, company has reconciled this account and assured petitioner to pay outstanding dues at the earliest. As no payment came forth, petitioner caused statutory notice dated 7.10.2015 issued through its advocate as required under the Companies Act 1956. Though the company has received the notice, no reply has been given 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.

3 Hence the petition came to be filed.

4 On 28.6.2017 when the petition was taken up for admission, the following order came to be passed :-

“1. This is a petition for winding up of the respondent company namely M/s. Trans Tech Turnkey Pvt. Ltd. on the ground that the respondent company is unable to pay the debt of the petitioner.

The respondent company had placed work orders with the petitioner for their project Hospira Health Care Pvt. Ltd. for supply of air handling unit. The petitioner supplied the necessary goods to the respondent and raised various invoices in that behalf. The total amount due and payable by the respondent to the petitioner is Rs.70,78,942/-. The respondent company by its communication dated 21.7.2015 had acknowledged its debt and promised to pay the outstanding dues at the earliest. As the respondent failed and neglected to pay the admitted amount to the petitioner, the petitioner issued a statutory notice dated 7.10.2015. The said notice was duly served upon the respondent however the respondent company neither complied nor replied it.

2. The petitioner therefore, filed the present petition on 19.11.2015 for winding up of the respondent company. The petition is accepted on 2.2.2016 and in pursuance of the directions issued by the Company Registrar the respondent company has been duly served. An affidavit of service dated 16.2.2016 has been filed to that effect. Despite service none appears for the respondent.

3. I have perused the petition. The record indicates that the respondent has acknowledged its liability by the

a letter/communication dated 21.7.2015. It prima facie appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent.
.....”

5 On record is an affidavit of one Rahul Bapu Sonawane affirmed on 14.8.2017 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 9.8.2017. Counsel for petitioner states that he has not received any communication from anybody in response to the notice. Counsel tenders a copy of the advertisement in Maharashtra Government Gazette for the period 24-30th August 2017 at Serial No.M-17161 which is taken on record and marked 'X' for identification. The company department has filed a service report dated 29.7.2017 confirming service of notice under Rule 28 of the Companies (Courts) Rules 1959 upon the company.

6 Counsel for petitioner states that he received a letter dated 12.8.2017 from M.S.Raje & Co. advocates informing the advocate for petitioner that the company desires to oppose this petition and will be filing detailed affidavit in reply. Between 12.8.2017 till date more than 7 months have passed and no affidavit in reply or even Vakalatnama is filed on behalf of the company. Copy of the said letter is taken on record and marked 'X-1 for identification.

7 Therefore, there is no opposition to the petition. None of the averments in the petition are controverted. There was no reply to the statutory notice.

8 Having perused the petition and the documents annexed thereto, I am satisfied that the company is indebted to petitioner, unable to pay its debts and is commercially insolvent and requires to be wound up.

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

“(a) that the Company Trans Tech Turnkey Pvt. Ltd. be ordered to be wound up by and under the orders and directions of this Hon'ble Court under The Companies Act, 1956;

(b) that the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as Liquidator of M/s.Trans Tech Turnkey Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956.

10 The advocate for petitioner shall furnish a copy of this order, duly authenticated by the Associate of this court with the office of Official Liquidator. The Official Liquidator shall forthwith act

thereupon without waiting for any notification appointing him as liquidator.

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

12 Petition disposed accordingly.

COMPANY PETITION NO.637 OF 2016

1 In view of the order of winding up in Company Petition No.33 of 2016 passed today i.e., 19.4.2018, this petition also is accordingly disposed. Petitioner is at liberty to lodge its claim with the Official Liquidator who shall consider the same in accordance with law.

2 Petitioner is also at liberty to apply to this court for revival of this petition and for further orders should the order of winding up passed in Company Petition No.33 of 2016 is recalled or set aside in appeal.

3 Petition disposed.

4 In the event of the order in Company Petition No.33 of 2016 is recalled or set aside in appeal, petitioner/advocate for petitioner in Company Petition No.33 of 2016 to inform the petitioner

in this petition. The advocate for petitioner in this petition to forward a copy of this order to petitioner/advocate for petitioner in Company Petition No.33 of 2016.

(K.R.SHRIRAM,J)