

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

COMPANY PETITION NO. 17 OF 2016

Ashok Mohansing Bajaj

....Petitioner

Vs.

ITALIAN DESIGN BAGAGE PVT. LTD.

....Respondent

Ms.Kavita S. Lalwani for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 6TH JULY, 2018

P.C.:

1 The petition is for winding up of respondent company Italian Design Bagage Private Limited (the said company) on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 28th June 2017, the following order came to be passed :-

"1. By the present petition under Section 433(e) and 434 of the Company Act, 1956 the petitioner has prayed for winding up of the respondent company namely Italian Design Bagage Pvt. Ltd. The claim of the petitioner is based on demand Bill of Exchange dated 11.4.2015 for an amount of Rs.10.00 lacs. On demand of the said amount the respondent has paid an amount of Rs.2,50,000/- keeping a balance of Rs.7,50,000/-. As the respondent did not pay the balance amount to the petitioner, the petitioner issued a statutory notice dated 8.10.2015 to the respondent. Though the respondent received the said notice it neither complied with nor replied the same.

2. The petitioner thereafter filed the present petition on 16.11.2015 for winding up of the respondent company. The petition was accepted on 2.2.2016 and in pursuance of the directions issued by the company Registrar petition is served upon the respondent and the petitioner has filed an affidavit of service dated 22.2.2016 to

that effect. Despite service of notice none appeared on behalf of the respondent.

3. I have perused the petition and prima facie it appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent.....”

3 On record is an affidavit of one Ashok Mohansingh Bajaj, affirmed on 28th July 2017 confirming advertising the petition in Free Press Journal and Navshakti on 26th July 2017. There is another affidavit of Ashok Mohansingh Bajaj 10th August 2017 confirming advertising the petition in Maharashtra Government Gazette for the period August, 3-9, 2017 at Sr.M-17137. Notice under Rule 28 has come back with the endorsement 'left'. There is a service report dated 29th July 2017 of the company department in which it is stated that the notice under Rule 28 when it was sent to the another address of the company, the same has been delivered. Nevertheless, the company master data extract, which Ms.Lalwani states was taken today, shows the registered address as : 'Office No.304, 3rd floor, the Silver Pearl Building, Opp. China Gate, Water Field Road, Bandra (W), Mumbai 400 050' is the address on which the notice under Rule 28 is served. Therefore, I would proceed on the basis that the notice under Rule 28 has been served.

4 The averments in the petition are not controverted as no affidavit in reply has been filed. Even to the statutory notice, there was 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 indebtedness can be legitimately drawn by the Court where no reply to the statutory notice is forthcoming.

5 Therefore, I am satisfied that the company is unable to pay its debt, is commercially insolvent and requires to be wound up. Petition, therefore, allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) That the Company, viz., ITALIAN DESIGN BAGADE 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 this Hon'ble Court be pleased to appoint the official liquidator of this Hon'ble Court as Liquidator of the Respondent Company, viz., ITALIAN DESIGN BAGADE PVT. LTD. With all powers under the provisions of the Companies Act, 1956 including the power to take charge of the Assets, Books and Accounts, affairs, records, documents, paper Vouchers, Bills etc. of the said Company.”

6. Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the official liquidator who shall take immediate steps without waiting for any notification. The counsel for petitioner also to forward a copy of this order to the National Company Law Tribunal,

Mumbai for information.

7. Upon receipt of the authenticated copy from petitioner's advocate, the official liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the official liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

8. The company petition accordingly disposed.

**Shraddha
Kamlesh
Talekar**

Digitally signed
by Shraddha
Kamlesh Talekar
Date: 2018.07.23
20:11:56 +0530

(K.R. SHRIRAM, J.)