

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

**COMPANY PETITION NO. 1021 OF 2015
WITH
COMPANY APPLICATION NO. 1075 OF 2015
IN
COMPANY PETITION NO. 1021 OF 2015**

M/s. Rohit & Company

....Petitioner

Vs.

Arihant Component (India) Pvt. Ltd.

....Respondent

Mr.Niraj Shah I/b Law Chamber of Siddharth Murarka for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 19TH JULY, 2018

P.C.:

1. The petition is filed for winding up of the company Arihant Component (India) Pvt. Ltd. (the company) on the ground that the company is unable to discharge its debt.

2. On 18th September 2017, the following order came to be passed :-

1. Mr.Murarka, learned counsel states that service has been attempted but the postal packet sent to the company has returned with the remark "Left". He has filed an affidavit to that effect. He further states that on 23rd September, 2015 a copy of the petition was also forwarded to the email address of the company and that the email has not been returned undelivered. It appears that vide email dated 24th June, 2017 the company has been intimated that the matter was to appear on board on 28th June, 2017. The email also attaches thereto a copy of the order dated 13th June, 2017 and despite such intimation no appearance has been entered. Mr.Murarka therefore seeks admission of the petition.

2. *The petitioner's claim arises out of non payment of price of various items sold and delivered. The non payment of these amounts resulted in the petitioner filing criminal complaint under Section 138 of the Negotiable Instruments Act in relation to the bounced cheques before the 71st Metropolitan Magistrate Court. In the complaint the consent terms were arrived at between the parties, a copy of which appears at Exhibit-E. Under the consent terms, 12 cheques came to be issued in full and final settlement of the petitioner's claim. This was made subject to an order passed in Lok Adalat. Mr.Murarka submitted that only seven cheques were honoured leaving a balance of Rs.7,75,000/- towards the principal sum. The statutory notice is seen to be issued on 24th June, 2015 addressed to the registered office of the company which was returned "unclaimed" as seen from postal authorities' remark. Meanwhile, an email addressed to the company appears to have been delivered since it has not bounced back as stated in the affidavit of service dated 28th October, 2015. A second email was sent on 24th June, 2017 as stated above.*

3. *Considering the fact that the company has been sufficiently made aware of pendency of the petition, the company ought to have been represented. It appears that the company is not interested in contesting this petition. I am satisfied that all reasonable efforts to serve the company has been made and the principal sum of Rs.7,75,000/- which appears to be unpaid is due and payable by the company. The same will qualify as a debt due and payable in the ordinary course of business. The company is not in a position to pay its dues as and when they arise."*

3. The provisional liquidator was appointed and provisional liquidator has taken symbolic possession of the company.

4. No affidavit in reply has been filed and therefore, none of the averments in this petition are controverted.

5. Petitioner has filed an affidavit of one Sagar Mane affirmed on 15th

June 2018 confirming advertising the petition in Free Press Journal and Navshakti on 9th June 2018 and in the Maharashtra government gazette for the period June 14-20, 2018 at Sr.No.1882.

6. The notice under Rule 28 has been returned with the endorsement “*Left, Returned to Sender*” as per the service report dated 27th October 2017 of the company department. Shri Shah tenders an extract of the company master data, which Shri Shah states was taken on 5th July 2018 in which the registered address shown is the same to which the company department had served notice under Rule 28 of the Companies (Court) Rules, 1959. The company master data extract is taken on record and marked ‘X’ for identification.

7. Therefore, I would accept that the notice under Rule 28 has been effectively served.

8. I have heard Shri Shah, considered the petition and also the documents annexed thereto. Even I am satisfied that there is a debt owed to petitioner, the company is unable to discharge its debt, commercially insolvent and requires to be wound up.

9. Therefore, petition allowed in terms of prayer clause (a) and (b)

which read as under :-

“(a) that the Respondent Company, namely M/s. Arihant Component (India) Pvt. Ltd., having its registered office Bldg. No.2, Flat No.1, Sakal Nagar Bane Road, Pune – 411 007, Maharashtra, be wound up by and under the orders, direction and supervision of this Hon'ble Court.

“(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the provisions of Companies Act, 1956 or later enactment to take charge of the Respondent Company and to conduct its affairs during the course of its winding up.”

10. Shri Shah states that petitioner has already filed a suit in the Bombay City Civil Court at Mumbai being Suit No.102071 of 2015. Shri Shah states that in paragraph 19 to the petition, petitioner stated that petitioner was contemplating to file civil suit and has also prayed for leave under Section 446 be granted to continue the suit. Shri Shah is seeking prayer clause (c) so far as it relates to the suit.

11. In my view, it would avoid multiplicity of proceedings if the leave under Section 446 to prosecute the said suit is granted along with this order. Therefore, leave to prosecute Suit No.102071 of 2015 is granted under Section 446 of the Companies Act, 1956.

12. 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.

13. 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.

14. The company petition accordingly disposed.

15. In view of above, Company Application No.1075 of 2015 stands disposed.

(K.R. SHRIRAM, J.)

**Shraddha
Kamlesh
Talekar**

Digitally signed
by Shraddha
Kamlesh Talekar

Date: 2018.07.21
18:50:50 +0530

Shraddha Talekar, PS