

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

COMPANY PETITION NO.129 OF 2016

Reliance Asset Reconstruction Company Ltd.)....Petitioner
V/s.

M/s.Hajner Biotech Energies Pvt. Ltd.)....Respondent

Mr.Nikhil Rajani i/by V.Deshpande and Co. for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 19.4.2018

P.C.:-

1 The petition is filed for winding of the respondent company-Hajner Biotech Energies Pvt. Ltd. on the ground that the company is unable to pay its debts and is commercially insolvent.

2 At the time of admission, the following order came to be passed on 19.7.2017 :-

1. By this petition under Sections 433(e), 434 read with Section 439 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-company, namely, M/s. Hajner Biotech Energies Pvt.Ltd.

2. The petitioner is an Asset Reconstruction Company and is the Assignee of ING Vysya Bank for the financial facilities extended by it to the respondent-company. It is the case of the petitioner that initially the ING Vysya Bank sanctioned and disbursed Cash Credit Facility to the tune of Rs.30 Crores and Working Capital Demand loan of Rs.24 Crores to the respondent by executing an agreement dated 12.07.2011. The respondent has also

executed a Demand Promissory Note dated 12.07.2011 for an amount of Rs.30 Crores for availing Cash Credit Facility. As per the agreement the petitioner is entitled to charge interest @ 14.85 per annum on delayed payment/outstanding amount. In due course of time, the petitioner has taken over the liability from the said ING Vyasya Bank by a Deed of Assignment dated 19.09.2014. That, the petitioner was maintaining one consolidated account for the financial facilities advanced by it to the respondent. As the respondent did not pay the outstanding amount to the petitioner, the petitioner issued a statutory notice dated 27.05.2015. The respondent received the same, however, neither complied with nor replied it.

3. The petitioner, therefore, filed the present petition on 26.11.2015 for winding up of the respondent company on the ground that as on 23.11.2015 the respondent company did not make the payment of Rs.45,74,24,437.41 to the petitioner. The petitioner has also claimed further interest @ 14.85% per annum from 24.11.2015 till realisation. The particulars of the claim are annexed at page 140 of the petition. The petition is accepted on 23.02.2016 and in pursuance of the direction issued by the Company Registrar, the petitioner has served the respondent with a notice of acceptance and an affidavit of service dated 19.03.2016 has been filed to that effect. Despite service, none appears for the respondent.

*4. Perused the petition and the documents annexed to it. The record clearly indicates that the respondent has executed the aforestated agreement dated 12.07.2011 and in pursuance of the same, the respondent is liable to make the outstanding payment to the petitioner. It, prima facie, appears that the respondent is unable to pay the debts to the petitioner and is commercially insolvent.
.....”*

3 Mr.Rajani for petitioner tenders an affidavit of one Mahesh

Girkar affirmed on 6.9.2017 about advertising the petition in 'Free Press Journal' and 'Navshakti' on 20.8.2017. Mr.Rajani also tenders another affidavit of Mahesh Girkar affirmed on 15.12.2017 confirming advertising the petition in Maharashtra Government Gazette for the period 23-29th November 2017 at Serial No.M-17241. There are two service reports placed on record by the Company Department which indicate that notice under Rule 28 of the Company (court) Rules 1959 has been served on the company. There is no affidavit in reply opposing the petition. Therefore, none of the averments are controverted. There is no reply to the statutory notice either. 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 I have perused the petition, heard Mr.Rajani and also considered the documents annexed thereto. I am also satisfied that

the company is indebted to petitioner, unable to pay its debts and is commercially insolvent.

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

“(a) that the Respondent Company viz.M/s.Hanjer Biotech Energies Pvt. Ltd. be ordered to be wound up by and under the directions of this Hon'ble Court ;

(b) that the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the Respondent Company viz.M/s.Hanjer Biotech Energies Pvt. Ltd. with all powers under Section 457, 458 read with Section 454, 455 and 456 of the Companies Act, 1956.

6 The advocate for petitioner shall furnish a copy of this order, duly authenticated by the Associate of this court to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

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

8 Petition disposed accordingly.

(K.R.SHRIRAM,J)