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

**COMPANY PETITION NO.29 OF 2016**

M/s. Lalit and Surendra ….Petitioner

Vs.

Bagla International Private Limited ….Respondent

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Ms. Gaurangi Patil i/b. Mr. Alok D. Mishra for petitioner.
None for respondent.

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**CORAM : K.R.SHRIRAM, J.**
**DATE : 3rd MAY, 2018**

**P.C.:**

1 This petition is for winding up of respondent company - Bagla International Private Limited (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 13th February, 2018 while admitting the petition, the Court was pleased to pass the following order :

> *1. This petition is for winding up of respondent company Bagla International Pvt. Ltd. (formerly known as M/s. Mishka Gold Jewellery Limited) (the company) on the ground that the company is unable to discharge its debts and is commercially insolvent.*
>
> *2. Petitioner is a firm of Chartered Accountants. It is stated in the petition that (a) petitioner had been appointed as Chartered Accountant some time in December, 2009 for accounting, auditing and taxation purpose of the company; (b) petitioner rendered necessary services including auditing accounts and filing returns with the Income Tax Authorities and Registrar of Companies and (c) petitioner raised two invoices, copies whereof are at Exhibit A1 and A2 to the petition, for total sum of Rs.6,31,632/-. Company had paid a sum of Rs.3,07,080/- leaving a balance of Rs.3,24,552/-. By Confirmation of Accounts dated 1st September, 2015 the company has confirmed that a sum of Rs.3,24,552/- was due and payable to petitioner. As this amount was not paid, petitioner caused a notice*

*dated 26th October, 2015 issued through their Advocates under the provisions of Companies Act, 1956. It is stated that no reply was given by the company.*

*3. On record is an affidavit of one Ajit Shivram Ghag affirmed on 7th March, 2016 confirming service of the petition on the company. Subsequently, pursuant to orders passed by this Court, petition has been served once again upon the company as reflected in the affidavit of one Firoz M. Khan affirmed on 26th July, 2017. There is a further affidavit of Firoz M. Khan affirmed on 16th September, 2017 confirming service of petition by email upon the company. Subsequent thereto, petition was amended to reflect the change of name of the company from "M/s. Mishka Gold Jewellery Limited" to "Bagla International Pvt. Ltd.".*

*4. Mr. Mishra, counsel for petitioner states that the amended petition also has been served on the company by hand delivery, email and speed post and undertakes to file a further affidavit of service within one week from today. Undertaking accepted.*

*5. Having perused the petition and the documents annexed thereto and having heard Mr. Mishra, prima facie it does appear that petitioner's services were availed by the company, petitioner raised its invoices and by way of Confirmation of Accounts the company has acknowledged its liability to petitioner.*

*6. There is no affidavit in reply filed by company opposing the petition. Therefore, the averments in the petition are not 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 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 1956 a presumption of the indebtedness can be legitimately drawn by the court where no reply to the statutory notice is forthcoming.*

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3 Petitioner has filed an affidavit of one Girish Dubey affirmed on 23rd April, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 16th March, 2018 and also in the Maharashtra Government Gazette for the period 5th - 11th April, 2018 at serial no.M-

17399. Copy of the order dated 13th February, 2018 has also been served upon the company by petitioner as noted in the affidavit of service dated 23rd April, 2018. The Company Department has placed on record a service report dated 14th March, 2018 confirming service of notice under Rule 28 of the Companies (Court) Rules, 1959 alongwith copy of the order dated 13th February, 2018 upon the company.

4 I have considered the petition, the documents annexed thereto and also heard Ms. Patil, counsel for petitioner. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

5 In the circumstances, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

> *(a) this Hon'ble Court be pleased to wind up respondent company under the provisions of the Companies Act, 1956;*
>
> *(b) this Hon'ble Court be pleased to appoint Official Liquidator or some other fit and proper person as Liquidator to take charge of all the business, assets, properties and books of accounts of respondent company with all the powers under the provisions of the Companies Act, 1956.*

6 Official Liquidator to take further steps in accordance with law without waiting for any notification upon receiving an authenticated copy of this order, which Ms. Patil states, will be forwarded within two weeks of the order getting uploaded. The counsel for petitioner is also directed to

forward a copy of this order to National Company Law Tribunal for information.

7 Company petition accordingly stands disposed.

**(K.R. SHRIRAM, J.)**