

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

COMPANY PETITION NO.131 OF 2016

Mr.Parasmal Pratapji Sheth)....Petitioner
V/s.

M/s.Jogeshwari Breweries Private Limited)....Respondent

Mr.Jagdish Nagar i/by Jagdish Nagar & Associates for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 29.1.2018**

P.C.:-

1 This petition has been filed to wind up the respondent company Jogeshwari Breweries Private Limited (the company) on the ground that the company is unable to pay its debts and is commercially insolvent.

2 Petitioner, pursuant to purchase order placed by the company, had supplied and delivered to the company, various quantities of SS. Plates/pipe fittings, flanges, channels etc. under 2 invoices dated 25.1.2014 and 27.1.2014 for a total sum of Rs.6,71,373/-. Copies of the Lorry receipts and delivery challans are also annexed to the petition.

3 It is the case of petitioner that despite repeated reminders,

company failed and neglected to pay the amounts under the 2 invoices. The invoices also provide for interest to be paid @ 21% p.a., if the payment was not made within 30 days. It also provides for any dispute to be communicated within 7 days in writing. It is the case of petitioner that no dispute was communicated and as no payment came through, petitioner caused notice to be issued through his advocate as required under Companies Act 1956. It is stated that no reply has been given by the company.

4 There is an affidavit of one Parasmal Pratapji Shet affirmed on 25.5.2016 in which it is stated that petition when it was served, came back as undelivered with the endorsement 'unclaimed'. Mr.Nagar for petitioner tenders extract of the company master data from the web site of Ministry of Corporate Affairs, in which registered address shown is the same to which the petition was dispatched. The extract is taken on record and marked 'X' for identification.

5 In my view, it is deemed service of the petition. Even to the statutory notice there has been 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, 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.

6 I have perused the documents annexed to the petition and I am satisfied that the goods were supplied based on purchase orders issued by the company and the company has not discharged its debts. Therefore, a prima facie case that the company is unable to pay its debts is made out. Therefore, the following order is passed :-

ORDER

(i) The Company Petition is admitted and made returnable on 12.4.2018 ;

(ii) Petitioner is directed to advertise the petition in two local newspapers, viz. 'Free Press Journal' (in English) and 'Nav-Shakti' (in Marathi) and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959 ;

(iii) Petitioner shall also deposit an amount of

Rs.15,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to petitioner ;

(iv) A copy of this order shall forthwith be served on the company by hand delivery, by Registered Post AD, courier and by email by the Advocate for petitioner ;

(K.R.SHRIRAM,J)