

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

COMPANY PETITION NO.162 OF 2016

HDFC Bank Ltd.)....Petitioner
V/s.

Tornado Motors Pvt. Ltd.)....Respondent

Mr.Parikshit Desai i/by Hiren Mehta 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-Tornado Motors Pvt. Ltd. on the grounds 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 3.7.2017 :-

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 Torrent Motors Pvt. Ltd.

The petitioner is a banking company. At the request of the respondent company the petitioner provided Inventory Funding Facility, having an over all limit of Rs.2,00,00,000/- (Rupees Two Crore only). As per the request of the respondent, the petitioner also encashed the amount under the Inventory Funding facility to the extent of Rs.3,00,00,000/- (Three crores only) along with Adhoc Trade Advance. The respondent has executed an

agreement dated 11.10.2010 in that behalf. That, as on 31.7.2017 an amount of Rs.1,68,56,922.51 (Rupees One Crore, sixty eight lacs, fifty six thousand nine hundred twenty two and fifty one paise) was due and payable by the respondent to the petitioner. As the respondent failed to make the said payment to the petitioner, it therefore, issued a statutory notice dated 27.7.2015 to the respondent. Though the said notice was received to the respondent, the respondent neither replied nor complied with it.

2. The petitioner thereafter filed the present petition on 9.12.2015 for winding up of the respondent company. The petition was accepted on 29.3.2016 and in pursuance of the directions issued by the Company Registrar, petition is duly served upon the respondent and the petitioner has filed an affidavit of service dated 28.4.2016 to that effect. Despite service of notice none appeared on behalf of the respondent.

3. I have perused the petition. The record indicates that the Directors of the respondent company in their capacity as Directors have acknowledged the debt letter dated 10.10.2013. The respondent company has also acknowledged the debt of the petitioner by a letter of acknowledgment dated 10.10.2013. It thus prima facie appears that the respondent has acknowledged and admitted the debt of the petitioner. Though the respondent has been duly served none appears for the respondent. It prima facie appears that the respondent is not serious in contesting the claim of the petitioner. In view thereof, prima facie it appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent.

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3 Mr.Desai for petitioner tenders an affidavit of one Vijay Kanade affirmed on 19.7.2018 confirming publication in Maharashtra Government Gazette for the period 31st August- to 6th September 2017

at Serial No.M-17173 and another affidavit of Vijay Kanade affirmed on 31.8.2017 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 16.7.2017. There is service report dated 7.8.2017 placed on record by the Company Department which indicates that notice under Rule 28 of the Company (court) Rules 1959 has been returned with the endorsement "left". Notice under Rule 28 therefore, is deemed served. There is no reply to the petition. Therefore, none of the averments are controverted. Mr.Desai also tenders an extract of Company Master Data of the company dated 8.2.2018 in which registered address is shown to be the same as mentioned in the cause title of the company petition. The same is taken on record and marked 'X' for identification. 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.Desai 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 viz. Tornado Motors Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at Shop Nos.04 and 05, Vikas Centre, S.V.Road, Santacruz (West), Mumbai-400 054 be ordered and directed to be wound up by and under the orders and directions of this Hon'ble Court ;

(b) that the Official Liquidator, High Court, Bombay or some other fit and proper person as this Hon'ble Court may deem fit and proper, be appointed as Liquidator of M/s.Tornado Motors Private Limited, with all powers under the provisions of Companies Act, 1956.

6 The advocate for petitioner shall furnish a copy of this order, duly authenticated by the Associate of this court with 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.