

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

COMPANY PETITION NO. 172 OF 2016

Samsung C & T Corporation India Pvt. Ltd. .. Petitioner
Vs.
Daman Polymers India Pvt. Ltd. .. Respondent

Mr. Rupesh Geete I/b M/s. Legasis Partners for petitioner.

Mr. N.T. More I/b MMK Law Associates for respondent.

**CORAM : K.R. SHRIRAM, J.
DATE : 28TH JUNE 2018**

P.C.

1 The petition is filed for winding up of respondent company - M/s. Daman Polymers India Pvt. Ltd. (the company), on the ground that it is unable to discharge its debt and is commercially insolvent.

2 On 4th July 2017, the following order came to be passed :-

1. By the present petition under Sections 433(e) and 434 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-company, namely, Daman Polymers India Pvt. Ltd.

2. The petitioner sold, supplied and delivered goods i.e. 'polymers' to the respondent-company aggregating to a sum of Rs.59,14,082/- and raised invoices in that behalf. The respondent-company has accepted the goods and acknowledged the invoices. In discharge of its part of liability, the respondent has made a payment of Rs.6,27,816/- thereby leaving outstanding amount of Rs.52,86,266/-. As the respondent did not make payment despite repeated requests, the petitioner issued a statutory notice dated 28.08.2015 which is duly served upon the respondent. The respondent neither complied with nor replied it.

3. The petitioner, therefore, filed the present petition on

04.12.2015 for winding up of the respondent-company. The petition is accepted on 26.04.2016 and in pursuance of the directions issued by the Company Registrar, the petitioner has served the respondent with a notice of acceptance and the affidavit of service dated 08.06.2016 has been filed to that effect.

4. Heard learned counsel for the petitioner and the learned counsel for the respondent. Learned counsel for the respondent has no serious opposition to the petition and submitted that, appropriate orders may be passed in the interest of justice. I have perused the petition and prima facie it appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent.”

3 Even today, there is no affidavit in reply filed opposing the petition, therefore none of the averments in the petition are controverted.

4 Shri More appearing for respondent states that he has no instructions in the matter. In the order dated 4th July 2017, at paragraph 4, it is noted as under :-

“4.Learned counsel for the respondent has no serious opposition to the petition and submitted that, appropriate orders may be passed in the interest of justice.”

5 On record is an affidavit of one Dilip Palawankar affirmed on 11th May 2018 confirming advertising the petition in Free Press Journal and Navshakti on 9th May 2018. So far as Maharashtra Government Gazette is concerned, petitioner has annexed to the affidavit of Dilip Palawankar stating a receipt dated 11th May 2018 issued by the Maharashtra Government Press, Charni Road, Mumbai confirming receiving payments

for publication in the government gazette.

6 In the order dated 4th July 2017, it has been recorded that 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.

Mr. Geete for petitioner states that once the gazette notification is out, he shall file the same in the registry along with the affidavit of petitioner. Notice under Rule 28 has been waived.

7 In the circumstances, having considered the petition and the documents annexed thereto and the respondent not filing any affidavit in reply opposing the petition and in view of the company's counsel's statement as recorded in the order dated 4th July 2017 that the company has no serious opposition to the petition, petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) directing the winding-up of M/s. Daman Polymers India Private Limited under the relevant provisions of the Companies Act, 1956, and

(b) direct the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed as the Liquidator of the Company and all its assets, divisions, businesses, subsidiaries including assets of the subsidiaries, affairs, properties, bank accounts, books of accounts, vouchers, files, documents etc.,

with all powers under the provisions of the Companies Act, 1956.”

8 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.

9 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.

10 The company petition accordingly disposed.

(K.R. SHRIRAM, J.)

Shraddha
Kamlesh
Talekar

Digitally signed by
Shraddha Kamlesh
Talekar

Date: 2018.07.21
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Shraddha Talekar PS