

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

COMPANY PETITION NO.214 OF 2016

Abid LalljeePetitioner
Vs.
Senator Motors Pvt. Ltd.Respondent

Mr. Anirudh Hariani a/w. Mr. M. Mistry i/b. Hariani and Co. for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 20th APRIL, 2018**

P.C.:

1 This petition is for winding up of respondent company - Senator Motors Pvt. Ltd. (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 19th July, 2017 when the petition was taken up for admission, this Court was pleased to pass the following order :

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. Saaga Infra Projects Pvt. Ltd.

2. The petitioner is a proprietor of M/s. Advertising and Marketing Associates and M/s. AMA Communication Services and engaged in the business of preparing and publishing advertisements, printing and supply of marketing material. It is the case of the petitioner that as per the orders placed by the respondent, the petitioner prepared and published advertisement for Skoda cars and also supplied marketing material to the respondent-company and raised various invoices in that behalf aggregating to a sum of Rs.44,65,128.56. The respondent made a payment of Rs.26,34,178:76, which includes the credit amount of Rs.2,76,385/- leaving behind outstanding amount of Rs.18,30,949:30 to be paid by the respondent to the petitioner. That, as per the contract the petitioner is also entitled to charge interest @ 21% per annum on delayed payment. As the respondent did not make

the payment of the said amount, the petitioner issued a statutory notice dated 23.10.2015. The respondent received the said notice, however, failed and/or neglected to comply with or reply it.

3. The petitioner, therefore, filed the present petition on 16.12.2015 for winding up of the respondent-company. The petition is accepted on 12.04.2016 and in pursuance of the directions issued by the Company Registrar, the petitioner has served the respondent and filed affidavit of service dated 06.06.2016 to that effect. The record indicates that, after service of the notice, the respondent has caused its appearance through an Advocate. The petition was taken up for hearing on 05.07.2017, however, nobody appeared for the respondent on that date and therefore this Court directed the petitioner to issue Advocate's notice to the respondent, intimating that the present petition will be taken up for hearing for admission today. Accordingly the petitioner has served a notice upon the Advocate for the respondent. A duly acknowledged photocopy of the notice dated 11.07.2017 is produced on record. Despite notice, none appears for the respondent.

4. I have perused the petition and the documents annexed to it. It, prima facie, appears that the respondent is liable to pay the aforesaid amount of Rs.18,30,949.80 alongwith interest to the petitioner and no plausible explanation for non payment of the same has been offered by the respondent despite service of statutory notice. It further, prima facie, appears that the respondent is unable to pay the debt of the petitioner and is commercially insolvent.

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As in the first sentence of the order dated 19th July, 2017 the name of respondent company was erroneously typed as “M/s. Saaga Infra Projects Pvt. Ltd.”, by an order dated 3rd August, 2017, the name of respondent company was corrected to read as “Senator Motors Private Limited”.

3 Petitioner has filed an affidavit of one Ram Shinde affirmed on 4th September, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 23rd August, 2017. There is another affidavit of said Ram Shinde affirmed on 15th September, 2017 confirming advertising

the petition in the Maharashtra Government Gazette for the period 7-13 September, 2017 at serial no.M-17182. The Company Department has filed a service report dated 23rd August, 2017 stating that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 came back undelivered with the endorsement "Addressee Left". Mr. Hariani, counsel for petitioner tenders an extract from the MCA website and states that the same is taken today, which indicates the registered address to be the same to which notice under Rule 28 was sent and the same address as in the cause title. The extract is taken on record and marked "X" for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been effective.

4 There is no affidavit in reply opposing the petition. Therefore, none of the averments in the petition are controverted. Having considered the petition, the documents annexed to the petition and heard Mr. Hariani, 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 Therefore, petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) that respondent company, viz., Senator Motors Pvt. Ltd. be ordered to be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) That Official Liquidator attached to High Court, Bombay or some other fit and proper person be appointed by this Hon'ble Court as Liquidator of respondent company - Senator Motors Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956.

6 Company petition accordingly stands disposed.

7 Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification

(K.R. SHRIRAM, J.)