

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

COMPANY PETITION NO.828 OF 2015

Santosh Shyam Mogaveera and Ors.Petitioners

Vs.

Nutrix Hospitality Services Pvt. Ltd.Respondent

Mr. Arsh Misra I/b. M.V. Kini and Company for petitioners.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 31st JULY 2019

P.C.:

1 This petition is for winding up of respondent company - Nutrix Hospitality Services 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 5th December 2016 while admitting the petition, the Court was pleased to pass the following order :

1. Heard learned counsel for the Petitioner.

2. The petition seeks winding up of the Respondent-Company on the ground of inability to pay its debts. The Petitioner's debt arises out of a written contract, which is recorded in the form of Memorandum of Understanding between the parties. Under this contract, the Petitioner was appointed Canteen Contractor of the Respondent. The Petitioner placed a deposit of Rs.12 lakhs with the Respondent. This deposit was refundable on completion of the contract. It is the Petitioner's case that the contract came to an end prematurely after the Respondent denied access to the Petitioner to the food refrigeration kitchen at its factory premises. Even by efflux of time, the contract has come to an end on 05th June 2016. The Respondent has failed to refund of the security deposit of the Petitioner. A statutory demand notice duly served by the Petitioner in this behalf at the registered address of the Respondent has elicited no response save and accept a holding letter addressed on 10th March 2015.

3. The petition has been duly served by the Petitioner on the Respondent. An affidavit in proof of such service has been filed as of 17th August 2015. There is an appearance filed by an advocate on behalf of the respondent. Despite filing an appearance, none appeared for the Respondent on the last occasion, i.e. on 16th August 2016. The matter was, however, stood over with a view to give one more chance to the Respondent. Even today, none appears for the Respondent. No reply to the petition is on record.

4. In the premises, it appears prima facie that the Respondent has no defence to offer. The Petitioner's debt, which is not disputed, is not paid by the Respondent despite service of the statutory notice. In the premises, there is prima facie deemed inability to pay on the part of the Respondent.

5. Accordingly, the following order is passed :

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3 After the petition was admitted, respondent has filed an affidavit of one Shantaram Mogaveera affirmed on 7th May 2015 denying the liability. The defences raised are (a) the MOU was a forged document, (b) respondent having mercy on petitioner granted him some business to be run and petitioner has raised a bill of almost Rs.30 lakhs and creditors are chasing respondent and the signatures of respondent in the MOU are forged and (c) there was no reply to the statutory notice because the directors of the company were out of station.

4 In paragraph 3 of the order dated 5th December 2016, the Court has recorded that there is an appearance filed by an advocate on behalf of respondent. Despite filing an appearance, none appeared for respondent on 16th August 2016. The matter was stood over with a view to give one more chance to respondent and on 5th December 2016, when the petition was

taken up for admission, once again none appeared for respondent. Even today nobody is present for respondent though the name of the advocate, who had filed appearance on behalf of respondent – Sharon Patole and Santosh Mahamuni, through whom the affidavit in reply also has been filed, is shown in the cause list.

5 As regards the defence of forgery in MOU, there is nothing in the affidavit in reply to indicate what steps respondent has taken to lodge a criminal complaint against petitioner if there was some element of truth in the allegation of forgery. On the defence that creditors of petitioner are chasing respondent, except bald statement in the affidavit, there is nothing to support this allegation. As regards the directors being away when the notice under Section 434 was received, again there is no evidence. Even for a moment if I consider that there was some truth in what respondent stated, even if reply could not have been sent within 21 days period, the reply could have been sent later or a reply could have been filed opposing the admission of the petition. None of that has been done.

6 Therefore, in my view, these are nothing but an after thought and the defences taken are unsustainable. In the circumstances, there is absolutely no defence to the petition.

7 After the petition was admitted, Mr. Misra states that copy of the order has been sent to respondent. Petitioner has filed an affidavit of

one Arun Puthran affirmed on 21st March 2017 confirming advertising the petition in Free Press Journal and Navshakti on 3rd February 2017 and also in the Maharashtra Government Gazette for the period 9th – 15th March 2017 at serial no.M-16358. Notice under Rule 28 of the Companies (Court) Rules, 1959 has come back undelivered with the endorsement “unclaimed”. The address to which the notice has been sent is the same registered address which can be found in the Company Master Data, extract of which is taken on 30th July 2019 and tendered in Court today. The same is taken on record and marked “X” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

8 I have considered the petition, affidavit in reply and the documents annexed with the pleadings. I am in agreement with the observations made by the Learned Single Judge while admitting the petition. Therefore, there is no impediment for granting the reliefs as prayed for in the petition.

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

(a) That the said company, i.e., M/s. Nutrix Hospitality Services Pvt. Ltd. be wound up under the directions and orders of this Hon'ble Court as per the provisions of Companies At, 1956;

(b) That the Official Liquidator be appointed as Liquidator of the Company, i.e., M/s. Nutrix Hospitality Services Pvt. Ltd., with all powers under the provisions of the Companies Act, 1956.

10 Official Liquidator, within two weeks, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

11 Upon receipt of the authenticated copy from petitioner's advocate, 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 statement of affairs as required under Section 454 of the Companies Act 1956, failing which 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.

12 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)