

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.149 OF 2016**

Prasum Metals Pvt Ltd.	..Petitioner
Vs.	
Oren Kitchen Appliances Pvt Ltd.	..Respondent

Mr. Surender M. Sharma for Petitioner
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATE : 24th JULY 2019**

P.C.:

1 The Petition is for an order seeking winding up of the company Oren Kitchen Appliances Pvt. Ltd. (the company) on the ground that the company is indebted to petitioner, is unable to pay its debt and is commercially insolvent.

2 On 30th January, 2018 while admitting the petition, the Court was pleased to pass the following order :

“1 The petition is for an order seeking winding up of the company Oren Kitchen Appliances Pvt. Ltd. on the ground that the company is indebted to petitioner, is unable to pay its debt and is commercially insolvent.

2 It is stated in the petition that in the year 2012, the company requested petitioner to supply raw material, i.e., stainless steel wire in coil form. Petitioner started supply and respondent kept placing orders. The last supply was made sometime on or about 18 December 2012. Four such invoices dated 3rd October 2012, 3rd November 2012, 5th November 2012 and 18th November 2012 for a total amount of Rs.14,35,632/was outstanding.

3 It is stated that respondent made payment of Rs.7,99,959/leaving a balance amount of Rs.6,35,678/as outstanding. The invoices provided for interest at 24% per annum on late payment. It is stated

in the petition that the company issued five cheques, copies whereof are at Exh. 'I' to the petition and all the five cheques were dishonoured on presentation. As company failed to pay the amounts outstanding, petitioner sent reminders to which also there was no response. Petitioner, therefore, caused a statutory notice dated 2nd November 2013 to be issued to which there is no reply. Hence this petition.

4 There is an affidavit of one Sujay Ghosalkar affirmed on 13th July 2017 in which it is stated that the packet containing copy of the petition that was sent to the company came back with the endorsement 'left'. Mr. Sharma for petitioner has tendered an extract of Company Master Data, which he says was taken yesterday, i.e., 29th January 2018 from the Ministry of Corporate Affairs website in which the registered address shown is the same address to which petition has been sent. The extract is taken on record and marked 'X' for identification. Therefore, the petition is deemed to have been served on the company.

5 There is no affidavit in reply opposing the petition. The averments in the petition therefore are uncontroverted. There is no reply to the statutory notice also. 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, respondentcompany 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.

6 In the circumstances, I am satisfied that the company is unable to pay its debt, is commercially insolvent and requires to be wound up. Therefore, the following order is passed :

(a) The company petition is admitted and is made returnable on 12th April 2018.

(b) Petitioner is directed to advertise the petition in two local newspapers, viz., (i) Free Press Journal (in English); and (ii) Navshakti (in Marathi) as also in the 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 noncompliance with this direction or with the Company (Court) Rules, 1959. (c) Petitioner shall deposit Rs.15,000/toward publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, within a period of two weeks, failing which petition shall stand dismissed for nonprosecution without further reference to the Court. After the advertisements are

issued, the balance, if any, shall be refunded to petitioner.

7 A copy of this order to be sent to company by the advocate on record for petitioner to the Company by hand deliver, courier, Registered Post AD and by email.”

3 On record is the affidavit of Sanjay Gurav affirmed on 22nd October 2018 confirming publication of notice of admission of the petitioner in Free Press Journal and Navshakti on 18th October 2018. The company department has placed on record a service report confirming service of the notice under Rule 28 of the Companies (Court) Rules, 1959 and that the packet has come back undelivered with the endorsement “left”. Mr. Sharma tenders an extract of the company master data from the website of Ministry of Corporate Affairs, which he says, has been taken today, in which the registered address of the company shown, is the same to which notice under Rule 28 was also sent. I would, therefore, proceed on the basis that notice under Rule 28 has been validly served. Mr. Sharma tenders Gazette Notification dated 23rd October 2018 issued for the period 1st to 7th November 2018, in which at Sr.No.18190 the advertisement of the petition has been published. The said notification is taken on record and marked as “X” for identification.

4 No affidavit in reply has been filed. On record there is also affidavit of Heet Patel affirmed on 20th April 2018, in which it is stated that when the copy of the order of admission dated 30th January 2018 was sent to the company, it came back with endorsement “left”. Therefore, petitioner

has also complied with the directions given in paragraph 7 of the admission order.

5 Respondent has not filed any reply. Even when the petition before admission was served, no reply opposing the petition was filed. Therefore, in my view, there is no impediment in allowing the petition. Therefore, petition is allowed in terms of prayer clauses (a) and (b), which read as under:

“(a) The Respondent company, namely Oren Kitchen Appliances Pvt Ltd. be wound up under the orders, directions, supervision and control of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) The Official Liquidator attached to the High Court be appointed as official liquidator of the said Respondent company, i.e. Oren Kitchen Appliances Pvt Ltd., with all necessary powers under the provisions of the Companies Act 1956 including powers to take charge of all the assets, affairs, business, bank accounts, papers, books of accounts, vouchers, documents, properties, income etc. of the Respondent company i.e. Oren Kitchen Appliances Pvt Ltd.”

6 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.

7 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.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)