

COMPANY PETITION NO.37 OF 2012

CORAM : K.R.SHRIRAM,J
DATE : 29th FEBRUARY, 2016

1 By this petition the petitioner seeks winding up of the
Respondent Company M/s. Space Mercantile Company Private Limited.

2 The Respondent Company is incorporated under the provisions of the Companies Act 1956. The authorised share capital of the Respondent Company is Rs.10 lakhs divided into 1 lakhs equity shares of Rs.10 each, and the subscribed and paid-up capital of the Respondent Company is Rs. 9 lakhs divided into 90,000 equity shares of Rs.10 each. The main object of the Respondent Company is of export of gold Jewellery.

3 The petitioner is one of the agencies nominated by
Government of India for import and export of various items. The

Directors of the Respondent Company approached the petitioner for export of certain items of jewelery and an agreement was executed accordingly. The Directors of the Respondent Company also submitted their personal guarantee.

4 Pursuant to the agreement the Respondent Company obtained various orders from the foreign buyers and exported gold jewelery through the petitioner. The petitioner sent letter on 9th May, 2008 to the Respondent Company that it had not received payment from foreign buyers towards various invoices of the petitioner. The Respondent Company by their reply dated 13th September, 2008 gave assurance to pay the amount of Rs.7.5 crores by October, 2008. Inspite of several correspondence thereafter, the Respondent Company did not pay the amount and therefore the petitioner deposited the post dated cheques submitted by the Respondent Company vide their letter dated 5th November, 2009 for a sum of Rs.1,85,77,745/, Rs.15,60,63,799/, Rs.6,73,82,053/and Rs.77,33,046/. Upon presentation the cheques were dishonored and the complaint under section 138 of the Negotiable Instruments Act was filed by the petitioner.

5 Since the Respondent did not pay the amount, the petitioner issued a notice for winding up on 20th December, 2010 demanding the

total outstanding sum of Rs.40,29,46,829/-. The notice was served on the Respondent. Since the Respondent did not pay the amount, the present company petition has been filed.

6 The notice which was issued to the Respondent Company was returned with the postal endorsement “left”. By order dated 8th October, 2012 office was directed to examine whether this would amount to good service. Office placed the report on record stating that since the registered address of the Respondent Company continues to be the same, in view of the decision of this Court in the case of Tervakoski Oy V/s.Kedia Lamikote (India) Limited in Company Petition No.44 of 2012 the service will have to be treated as good service.

7 This Court has taken a view in several cases that if the registered address of the Company continues to be the same in the register of the Registrar of the Companies, then the notice which has been returned with the remark “left” will have to be treated as good service.

8 I have heard learned counsel for the petitioner and perused the petition and the annexures thereto. It appears that the petitioner had provided certain services pursuant to the agreement between the parties.

By letter dated 13th September, 2008 the Respondent has acknowledged the liability to pay the amount. The post dated cheques which were issued have been dishonored. Thereafter the winding up notice issued on 20th December, 2010 has gone unanswered.

9 There was one more notice issued on 18th April, 2011 by the petitioner which also was not answered by the Respondent Company. None appeared to oppose the petition, even though served. In view of the fact that there is admission of the liability and the cheques issued have been dishonored, the court came to a conclusion that the Respondent Company was not in a position to pay the legitimate dues of the petitioner and as no defence of whatsoever nature was raised, the court further concluded that prima facie, the Respondent Company was not commercially solvent. The petition was therefore, admitted on 16th January, 2013. The respondent company has not filed any affidavit in reply nor are they present even today to oppose the petition.

10 The counsel for the petitioner tenders an affidavit of one V.V. Mandavkar affirmed on 22nd April, 2013 proving publication of notice in Free Press Journal, Navshakti and also in the Maharashtra Government Gazette. It was published in the said two newspapers on 20th February, 2013 and in the Government Gazette on 21st February, 2013 to

27th February, 2013. The affidavit of service filed by one Vijay Ghodke, Clerk of the Company Department proving service under rule 28 is also on record, in which it is stated that the packet sent to the respondent company has come back undelivered with the endorsement “left”.

11 Ms. Shah, counsel for the petitioner states that the company's address is the same as mentioned in the cause title and there is no change, whatsoever. Ms. Shah, undertakes to file an affidavit to this effect within two weeks from today. The undertaking is accepted.

12 In view of the above, it is quite obvious that the company is unable to pay its debts, is commercially insolvent and deserves to be wound up. The company petition is, therefore, allowed in terms of prayer clauses – (a) and (b), which read as under :-

(a) that the respondent company, i.e., M/s. Space Mercantile Company Private Limited be ordered to be wound up by an order of this Hon'ble Court;

(b) that the Official Liquidator, High Court, Bombay be appointed as Liquidator of the respondent company with all powers under the Companies Act, 1956 including the power to take possession of all the assets, Books of account, Stock in trade, cash in hand, movable properties including furniture and fixtures as well as all immovable properties.”

13 The Official Liquidator to act on a copy of this order only after being satisfied that the address of the company, as on date, is the same as

mentioned in the cause title.

14 The petition is accordingly disposed.

(K.R.SHRIRAM,J)