

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

COMPANY PETITION NO.597 OF 2016

Axis Bank Limited)....Petitioner
V/s.

Xeco Marketing Private Limited)....Respondent

Ms.Priyanka Fadia i/by S.N.Fadia for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 4.5.2018**

P.C.:-

1 The petition is filed for winding up of the respondent company-Xeco Marketing Private Limited on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 3rd August 2017 at the time of admission of the petition, the following order came to be passed :-

“1] By the present petition under Section 433(e), 434 read with 439 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-Company namely XECO Marketing Pvt. Ltd.

2] It is the case of the petitioner that, at the request of respondent company the petitioner has extended various financial facilities aggregating to R.5 Crore to the respondent. The said financial facilities were subsequently merged under one head namely 'Over Draft Facility'. In its discharge of liability, the respondent made

part payment to the petitioner, however, failed to make payment of balance principal amount of Rs.4,66,86,683/-. As per the terms of the contract, the petitioner is entitled to levy interest @ 13% per annum on delayed payment. As respondent did not make payment, petitioner issued a statutory notice dated 18.1.2016 to the respondent. The respondent received it, however, the respondent neither complied with nor replied it.

3] As the respondent did not pay the amount, the Petitioner filed the present petition on 18.10.2016 for winding up of the respondent- Company. The petition is accepted on 18.10.2016 and in pursuance of the directions of the Company Registrar, the petitioner issued notice of acceptance to the respondent and has filed affidavit of service dated 18.11.2016. The notice of acceptance sent by the petitioner is returned back with postal remark "not claimed". Despite service, none appeared for the respondent.

4] Perused the petition and documents annexed thereto. The record clearly indicates that the service upon the respondent is completed. It appears that the respondent is not serious in contesting the claim of the petitioner and inter alia indicates that the respondent is admitting the liability of debt. Prima facie it appears that the respondent -Company is unable to pay the debt of the petitioner and is commercially insolvent".

3 On record is an affidavit of one Vijay Shetty affirmed on 21.8.2017 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 12.8.2017. There is another affidavit of Vijay Shetty affirmed on 24.10.2017 confirming advertising the petition in the Maharashtra Government Gazette for the period 28.9.2017 to 4.10.2017 at Serial No.M-171199. The company department has

also placed service report dated 20.9.2017 which shows that Notice under Rule 28 under the Companies (courts) Rules 1959 is returned with endorsement "Item delivery attempted second intimation". Ms.Fadia tenders an extract of the Company Master Data maintained by Ministry of Corporate Affairs which Ms.Fadia states that is taken on 4.5.2018 i.e., today in which the registered address is the same to which notice under Rule 28 has been sent and also as mentioned in the cause title. Therefore, I proceed on the basis that notice under Rule 28 has been served. Copy of the extract taken on record and marked 'X' for identification.

4 Having perused the petition and documents annexed thereto and having heard the counsel for petitioner, I am satisfied that the company is indebted to petitioner, unable to pay its debts and is commercially insolvent and requires to be wound up.

5 Therefore, the petition is allowed in terms of prayer clauses-(a) & (b) which read as under :-

“(a) that Respondent Company, Xeco Marketing Private Limited (formerly known as Xeco Website Management Services Private Limited), having its registered office at No.9, Ground Floor, Maharashtra Garage, P.G.Solanki Mart, Jubilee Baug, Grant Road, Mumbai 400 007 be wound up by an order and under the supervision of this Hon'ble Court under the

provisions of the Companies Act, 1956 ;

(b) the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the Companies Act, 1956 including the power to take charge of all the assets of the Respondent company to conduct the affairs of the Respondent Company in the course of winding up and to distribute its assets in accordance with law.”

6 The advocate for petitioner shall file a copy of this order, duly authenticated by the Associate of this court with the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

7 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to deductions if any.

8 Petition disposed accordingly.

(K.R.SHRIRAM,J)