

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

COMPANY PETITION NO.628 OF 2015

Manorama Industries Private LimitedPetitioner

Vs.

M P Oil Extraction Private LimitedRespondent

Ms. Trupti Surve i/b. Mr. Sahil Mahajan for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 4th JANUARY, 2018

P.C.:

1 This petition is for winding up of respondent company. On 6th February, 2017 the petition was taken up for admission and this Court was pleased to pass the following order :

1. *Learned counsel appearing for the petitioner states that the respondent is served. Affidavit of service is already filed. None appeared for the respondent when the matter was called out.*
2. *By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.*
3. *The petitioner and the respondent had entered into an agreement on 9th April 2012 wherein it was agreed that maximum quantity of seed to be crushed was 10,000 Mts. The said agreement was modified by an agreement dated 5th June, 2012 thereby quantity of proposed seed to be crushed was increased from 10,000 Mts. to 15,000 Mts.*
4. *The respondent prepared a letter of termination of the agreement dated 8th May, 2013. The parties held a meeting on 16th August, 2013 and recorded the said minutes of meeting. In the said minutes of meeting, it was agreed that the respondent would return the balance amount of Rs.8,50,000/- to the petitioner. The agreement dated 8th May, 2013 came to be amicably terminated on various terms and conditions mentioned therein. In the last paragraph of the said minutes of meeting, it was agreed that thereafter no further mutual claims were due from either parties.*
5. *The respondent however, did not return the said amount of Rs.8,50,000/-. The petitioner accordingly issued a statutory notice on 5th December, 2013. The respondent responded to the said notice and*

denied the said claim on frivolous grounds. The petitioner thereafter filed winding up petition in this Court. This Court admitted the said company petition. The respondent thereafter filed a company application inter-alia praying for recall of the order of admission passed by this Court on the ground that the statutory notice was not served upon the correct address. The petitioner accordingly withdrew the said company petition on 3rd February, 2015 and issued a fresh notice upon the respondent on 5th February, 2015.

6. The respondent responded to the said notice. In the said notice, the respondent did not dispute that the amount of Rs.8,50,000/- is due and payable however, alleged that the said amount was subject to the set off of the claim of the respondent on account of service tax, labour charges, Hamali, packing material etc.

7. A perusal of the documents annexed to the petition indicates that the parties have recorded their agreement in the minutes of the meeting dated 16th August, 2013. The respondent agreed to pay the balance amount of Rs.8,50,000/-. In my view, the excuse on the part of the respondent in response to the statutory notice that the said amount of Rs.8,50,000/- was subject to the set off of various claims of the respondent is frivolous. A perusal of the minutes of meeting dated 16th August, 2013 indicates that upon payment of Rs.8,50,000/- from the respondent to the petitioner, none of the parties had any claim of any nature whatsoever against each other. The respondent did not make payment of Rs.8,50,000/-. In the said minutes of meeting, it was not agreed by the petitioner that the said amount of Rs.8,50,000/- was subject to any adjustment as alleged by the respondent in response to the said statutory notice.

8. In my view, the respondent had accepted the liability of Rs.8,50,000/-, which the respondent has failed to pay. No affidavit in reply is filed. I am of the view that the respondent is unable to pay its debts. In my view, the respondent company is commercially insolvent.

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2 Petitioner has filed an affidavit of service of one Ved Prakash Mishra affirmed on 20th March, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 18th February, 2017 and also in the Maharashtra Government Gazette on 17th February, 2017. The notice sent by the Company Department under Rule 28 of the Companies (Court) Rules, 1959 has been returned with the

endorsement “Unclaimed”. Ms. Surve, counsel for petitioner tenders extract of the Company Master Data maintained by the Ministry of Corporate Affairs. Ms. Surve states that the printout was taken out today. The same is taken on record and marked 'X' for identification. The registered address mentioned therein is the same address to which notice under Rule 28 was sent. Therefore, I would conclude that the notice sent under Rule 28 has been validly effected. No affidavit in reply has been filed by respondent company and therefore, the averments in the petition are uncontroverted.

3 This Court while admitting the petition has concluded that respondent is unable to pay its debts and is commercially insolvent. I have heard Ms. Surve and also considered the pleadings and the documents annexed to the petition. I am also satisfied that there is a debt and the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

4 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b), which read as under :

(a) the company namely, M P Oil Extraction Private Limited be wound up by and under the orders and directions of this Hon'ble Court and under the provisions of the Companies Act, 1956;

(b) this Hon'ble Court be pleased to appoint the Official Liquidator of this Hon'ble Court or some other fit and proper person as it deems fit as the Liquidator of the company namely, M P Oil Extraction Private Limited with all powers and authorities under the Companies Act, 1956.

5 Official Liquidator shall forthwith act on an authenticated copy
of this order.

6 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)