

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

**COMPANY PETITION NO.722 OF 2015**

M/s. Kiran Metal Corporation ....Petitioner  
Vs.  
M/s. Classi-Mech Equipments Pvt. Ltd. ....Respondent

Mr. Deepak Sharma for petitioner.  
Mr. S.H. Bohra for respondent.

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**CORAM : K.R.SHRIRAM, J.**  
**DATE : 25<sup>th</sup> JANUARY, 2018**

**PC.:**

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Classi-Mech Equipments Pvt. Ltd. (the company) on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 Petitioner had sold, pursuant to purchase orders issued by the company, various quantities of aluminum plates and raised two invoices dated 19<sup>th</sup> November, 2013 and 12<sup>th</sup> December, 2013 for a total sum of Rs.3,79,886/-.

3 When the petition was admitted on 18<sup>th</sup> November, 2016, this Court was pleased to pass the following order :

*. Heard learned Counsel for the Petitioner. The Petitioner seeks winding up of the Respondent Company on account of the Petitioner's debt. The Petitioner's debt arises on account of sale of goods. The Petitioner sold goods being aluminum plates to the Respondent Company. The purchase orders raised by the Respondent and the invoices, together with deliver challans of the Petitioner in respect of the goods sold and delivered, are produced with the petition. According to the Petitioner, a total amount of Rs.3,79,886/towards*

*principal and an interest of Rs.1,01,000/- are payable by the Petitioner. The Petitioner has served a statutory notice on the Respondent. There is no reply to the statutory notice. The Respondent has filed a reply to the petition. The Respondent in its reply does not dispute the liability on account of the principal amount due and payable by the Respondent to the Petitioner. The Respondent only denies its liability to pay interest. The Respondent has averred that the Respondent is in a bad financial condition and can pay the principal amount only after a one time settlement is arrived at with its bankers and its account is made operational.*

*2. Despite service of the petition, the Respondent does not appear at the hearing. On the last date also, i.e. on 19 September 2016, none had appeared for the Respondent. The petition was stood over to the next date. Even today, none appears for the Respondent.*

*3. In these facts, prima facie there is no defence to the Petitioner's claim. There is admittedly no dispute as to the principal amount due and payable by the Respondent to the Petitioner. There is no concrete offer made for payment of the undisputed amount either. In the premises, there is a prima facie inability to pay debts on the part of the Respondent.*

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4           After this order was passed, Mr. Sharma states that respondent company issued two cheques, one for Rs.1,50,048/- and the other for Rs.3,79,886/- towards part payment of company's dues and both the cheques came to be dishonoured on presentation due to insufficient funds.

5           Mr. Bohra, counsel for respondent does not dispute that. Mr. Bohra states that subsequently, respondent company paid a sum of Rs.72,000/- by NEFT sometime in November, 2017. Mr. Sharma, however, states that his instructions are the company has paid only Rs.40,000/-. Mr. Bohra states that respondent company is unable to pay the balance amount because it owes an excess of Rs.14 crores to various people including financial institutions. This statement of Mr. Bohra itself is enough

to wind up the company as it confirms company's inability to discharge its debts and commercial insolvency.

6           On record is an affidavit of one Pranav Ashok Mane affirmed on 15<sup>th</sup> February, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 2<sup>nd</sup> December, 2016 and also in the Maharashtra Government Gazette for the period January 19-25, 2017 at serial no.M-16315. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been returned undelivered and the endorsement is not legible. The Company Master Data extract taken on 4<sup>th</sup> January, 2018 from the MCA website shows the same address to which notice under Rule 28 was dispatched. The extract is taken on record and marked 'X' for identification. Therefore, notice under Rule 28 is deemed to have been served.

7           I have heard Mr. Sharma, counsel for petitioner and also considered the petition and the documents annexed to the petition. Considering the facts and circumstances as mentioned earlier and the submissions made by counsel Mr. Bohra, it is rather obvious that the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

*(a) that the company M/s. Classi-Mech Equipments Pvt.*

*Ltd. be wound up by and under the order and directions and supervision of this Hon'ble Court under the provisions of the Companies Act, 1956;*

*(b) that Official Liquidator, High Court, Bombay be appointed as Liquidator of the company and its entire assets, properties, affairs and records of the company, lying in the registered office of respondent company situated at Gala No.11, Sahakar Vijay Industrial Estate, Navghar, Vasai-East – 401 210, with all powers under the Companies Act, 1956.*

9                      Official Liquidator to take steps immediately without waiting for notification.

10                     Company petition accordingly stands disposed.

**(K.R. SHRIRAM, J.)**