

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

COMPANY PETITION NO.752 OF 2015

Vaishali Yevle Prop. of M/s. Rohan Engineering Co.Petitioner

Vs.

M/s. Germini Agro Private LimitedRespondent

Mr. Anand S. a/w. Mr. Ali Zain Patel i/b. Mr. Jamshed Ansari for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 4th JANUARY, 2018

P.C.:

1 On 17th December, 2015, the consent terms entered into between petitioner and respondent company was taken on record. The undertakings given by company was also accepted and petition was disposed in accordance with the consent terms. Respondent had admitted liability to the extent of principal amount of Rs.4,09,411/- and undertook to pay the said amount on or before 30th December, 2015. It was also mentioned in the consent terms that failure to pay would result in the petition getting admitted and advertised in newspapers and Government Gazette without reference to this Court.

2 On 14th March, 2016 the following order was passed :

1. Consent Terms were filed on 17th December 2015 and an order was passed in those terms on that day. Under those terms the Respondent was to pay an amount of Rs.4,09,411/- to the Petitioner on or before 30th December 2015.

2. Nothing has been paid. The matter is listed for directions today at the instance of the Petitioner. The Advocate for the company states that the company is unable to pay its debts. This is sufficient ground

to admit the Petition, ordered to be advertised and to appoint the Official Liquidator. However, the matter is shown under the caption of directions today.

3. List the Company Petition for admission tomorrow, i.e., 15th March 2016.

3 On 15th March, 2016 the following order was passed :

1. The Petition was listed for directions yesterday. Vide an order dated 17th December 2015, Consent Terms were arrived at. An amount of Rs.4,09,411/- was to be paid. As I noted yesterday nothing has been paid.

2. The Petition is listed for admission today. None appears for the Respondent. In these circumstances, it is clear that the Company is unable to pay its debts within the meaning of Sections 433 and 434 of the Companies Act.

3. Hence the following order:

(a) The Company Petition is admitted and made returnable on 2nd May 2016;

(b) Service of the petitions under Rule 28 of the Companies (Court) Rules, 1959 shall be deemed to have been waived.

(c) The Petition shall be advertised in two local newspapers, namely, (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 non-compliance with this direction or with the Company (Court) Rules, 1959.

(d) The Petitioner shall deposit Rs. 20,000/- toward publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, on or before 28th March 2016, failing which the Petition shall stand dismissed for non-prosecution without further reference to the Court. After the advertisements are issued, the balance, if any, shall be refunded to the Petitioners.

4. The Official Liquidator is appointed as a Provisional Liquidator of the Company and is directed to forthwith take charge of all its assets and properties. The Official Liquidator shall, on or before 20th June 2016, make a report as to the status regarding taking charge of the company's assets and properties. Further, pending the hearing and final disposal of this Petition, the Company, by itself, its directors, officers, servants and agents is restrained from in any manner creating any dispositions whatsoever of any of its assets or properties without leave of this court except in the ordinary and regular course of its business.

5. The Petitioner shall also be entitled to costs quantified at Rs.50,000/- to be recovered in the course of winding up.

4 Respondent company has not paid a penny even after the order of 15th March, 2016 was passed. Petitioner has filed an affidavit of one Swapnil Vijay Pardhe affirmed on 27th January, 2017 confirming advertising of the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 6th April, 2016 and also in the Maharashtra Government Gazette. In the order dated 15th March, 2016 it has been noted that service of petition under Rule 28 of the Companies (Court) Rules, 1959 shall be deemed to have been waived.

5 In view of the facts and circumstances as noted above and in the orders passed by this Court and having heard the counsel for petitioner and also considered the petition and the documents annexed to the petition, I am satisfied that respondent company is unable to pay its debts and is commercially insolvent and requires to be wound up.

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

(a) M/s. Germini Agro Private Limited, having Registration Number 11-135398 of 2002 and having CIN-U51221MH2002PTC135398 be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) that the Official Liquidator, High Court, Bombay or any other fit and proper person be appointed as

Liquidator of all assets, properties, funds and affairs of
M/s. Germini Agro Private Limite.

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

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)