

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

COMPANY PETITION NO.588 OF 2016

Shah Mehta Holdings Private Limited)....Petitioner
V/s.

Metropolitan Overseas Limited)....Respondent

Ms.Anusha Jacob a/w Ms.Trisha Sarkar i/by DSK Legal 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-Metropolitan Overseas 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 Metropolitan Overseas Limited.

2] It is the case of the petitioner that, in furtherance of the loan agreements dated 14.7.2010 and 24.7.2010, petitioner advanced a loan of Rs.52 lakhs to the respondent. As per the contract, the petitioner is entitled to charge/levy interest @ 16% per annum on delayed payment. The respondent in discharge of its liability

made part payment leaving behind an outstanding principal amount of Rs.28,38,563/-. It is the case of the petitioner that, petitioner is entitled for interest of Rs.18,11,580/- from 29.4.2012 till 31.5.2016 aggregating to Rs.46,50,143/-. The particulars of claim is annexed to the petition as Exh."B" (page-16). The respondent by its Confirmation of Accounts dated 1.7.2013 has confirmed its liability. As respondent did not make payment, petitioner issued a statutory notice dated 7.6.2016 to the respondent at its registered address as per record of the Registrar of Companies. The said notice returned back to the petitioner with postal remark "left". The record indicates that the petitioner also tried to serve the respondent at its email address which is on record of the Registrar of Companies.

3] As the respondent did not pay the amount, the Petitioner filed the present petition on 29.6.2016 for winding up of the respondent- Company. The petition is accepted on 27.9.2016 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 14.10.2016. Despite service, none appeared for the respondent.

*4] Heard the learned Counsel for the petitioner. Perused the petition and documents annexed thereto. The record clearly indicates that the respondent has admitted and confirmed its liability to pay the amount of Rs.28,38,563/- by signing the Confirmation of Accounts dated 1.7.2013. As per contract, the petitioner is also entitled to charge interest. Prima facie it appears that the respondent -Company is unable to pay the debt of the petitioner.
....."*

3 On record is an affidavit of one Rajesh Pawar affirmed on 15.2.2018 confirming advertising the petition in 'Free Press Journal'

and 'Navshakti' on 1.2.2018 and in the Maharashtra Government Gazette for the period 8th to 14th February, 2018 at Serial No.M-17319. The company department has also placed service report dated 16.9.2017 which shows that Notice under Rule 28 under the Companies (courts) Rules 1959 is returned with endorsement "left". Ms.Jacob tenders an extract of the Company Master Data maintained by Ministry of Corporate Affairs which Ms.Jacob 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 was served. 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) which reads as under :-

“(a) that this Hon'ble Court be pleased to pass an order and direction that the Respondent company be wound up by and under the provisions of the Companies Act, 1956 and the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the

Respondent company in relation to all its assets, business affairs, property, bank account, books of account, vouchers, filed documents, etc. along with all powers under the provisions of the Companies Act, 1956”

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)