

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

COMPANY PETITION NO.1169 OF 2015

The Abhyudaya Co-operative Bank Ltd.)
(A Multi State Co-operative Society))....Petitioner
V/s.

M/s.Giriraj Rubbers Pvt. Ltd.)....Respondent

Mr.Vishal C.Ghosalkar for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 22.3.2018

P.C.:-

1 The petition is seeking winding up of the company Giriraj Rubbers Pvt. Ltd. (the said company) on the grounds that the company is unable to discharge its debts and is commercially insolvent.

2 On 6.4.2017 this court was pleased to pass the following order :-

“Learned counsel appearing for the petitioner states that the respondent is served. Affidavit of service dated 12th January 2017 filed by the petitioner indicates that the respondent is served. None appears for the respondent though served. No affidavit in reply is filed.

2. By this petition, the petitioner seeks winding up of the respondent-company on the ground that the respondent is unable to pay its debts.

3. *Learned counsel for the petitioner states that there was a loan transaction between the petitioner and the respondent. The dispute was referred to arbitration. The arbitrator made an award on 11th September 2013 directing the respondent to pay a sum of Rs.1,88,60,198.80 to the petitioner. The said award is not challenged by the respondent and has not made any payment to the petitioner.*

4. *The petitioner, thereafter, issued a statutory notice dated 6th February 2015 to the respondent calling upon the respondent to pay a sum of Rs.1,09,21,767.58 with further interest thereon. The said notice was received by the respondent.*

5. *My attention is invited to the reply dated 18th February 2015 to the said statutory notice dated 6th February 2015. The respondent has given its no objection to the petitioner to initiate the winding up action under Sections 433 and 434 of the Companies Act, 1956 against the respondent and to realize the dues of the banks by selling the mortgaged properties to the banks. No affidavit-in-reply is filed. None appears for the respondent though served.*

6. *In these circumstances, I am of the prima facie view that the respondent is unable to pay its debts and is commercially insolvent in view of the respondent has given its no objection if the company petition is entertained by this Court.”*

3 Since the company itself has consented for winding up of the company, the petition can be allowed. On record is also an affidavit of one Rajendra Gurav affirmed on 15.6.2017 confirming advertisement of the petition in 'Free Press Journal' and in 'Navshakti' on 11.1.2017. Petitioner has also filed another affidavit

of Rajendra Gurav affirmed on 1.3.2018 confirming advertisement of the petition in Maharashtra Government Gazette for the period 22 to 28.2.2018 at Serial No.M-17343. Mr.Ghosalkar for petitioner explains due to inadvertence the returnable date in the Maharashtra Government Gazette is given as 19.6.2017 though the notice is published during the period 22 to 28.2.2018 because the newspaper notice is given the same returnable date.

4 The company department has placed service report dated 6.5.2017 stating that the notice sent under Rule 28 of the Company (Court) Rules 1959 was returned undelivered with the endorsement 'un-claimed returned to sender'. Mr.Ghosalkar for petitioner tenders the extract of the Company Master Data which he says is taken today in which the registered address of the company is shown to be the same as mentioned in the cause title and to which notice under Rule 28 is served. Therefore, notice under Rule 28 is deemed to have been served. The extract of the Company Master Date is taken on record and marked 'X' for identification.

5 In the circumstances, Petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) That the Respondent Company-M/s.Giriraj Rubbers Pvt. Ltd. be wound up by and under the orders and directions of this Hon'ble Court ;

(b) That the Official Liquidator attached to this Hon'ble Court be appointed as Liquidator of the Respondent Company M/s.Giriraj Rubbers Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956 including the power to take possession of all its affairs, assets, management, books, papers and vouchers.”

6 Official Liquidator to take further steps on receiving authenticated copy of this order from the advocate for petitioner without waiting for any Notification.

7 Petition stands disposed.

(K.R.SHRIRAM,J)