

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

COMPANY PETITION NO.603 OF 2016

Bijco Holding Limited)....Petitioner
V/s.

Crest Animation Studios Limited)....Respondent

Mr.Vishal Kanade 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-Crest Animation Studios 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 Crest Animation Studios Limited.

2] It is the case of the petitioner that, it advanced a loan to the tune of Rs.1.5 Crore by RTGS mode on 12.11.2012 to the respondent. The respondent confirmed the outstanding amount including interest on 1.4.2013 and has accepted the liability as of 31.3.2013 for an amount of Rs.1,58,28,493/- towards the repayment of

the amount to the petitioner. As the respondent did not make payment, petitioner issued a statutory notice dated 27.1.2016. The respondent received it and by its reply dated 20.2.2016 informed the petitioner that due to financial difficulties, the payment could not be made and sought time to make payment. The respondent has admitted its liability in the said reply, as per statutory notice.

3] As the respondent did not pay the amount, the Petitioner filed the present petition on 27.7.2017 for winding up of the respondent- Company. The petition is accepted on 18.10.2016 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 17.12.2016. Despite service, none appeared for the respondent.

*4] Perused the petition and documents annexed thereto. The record indicates that in the Company Application No.161 of 2017 in Company Petition No.606 of 2016 filed by another creditor, this Court by an Order dated 10.4.2017 has granted injunction against the respondent company restraining it from creating any third party rights or interest and/or alienate the property of the respondent company. The record indicates that despite there being assurance given by the respondent company in its reply dated 20.2.2016, the respondent did not make payment to the petitioner. Prima facie it appears that the respondent -Company is unable to pay the debt of the petitioner and is commercially Insolvent.
.....”*

3 No affidavit in reply is filed and therefore, none of the averments have been controverted. At the same time, in response to the statutory notice, there is an admission of liability vide letter dated

20.2.2016, copy whereof is annexed to the petition at Exh.I.

4 Petitioner has filed an affidavit of one Shailesh Kadam affirmed on 12.1.2018 confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 15.11.2017 and in the Maharashtra Government Gazette for the period 18 to 24th January 2018 at Serial No.M-17291. The same is taken on record and marked 'X' for identification.

5 In view of the admission noted above and in view of the fact that there is no affidavit in reply opposing the petition and having perused the petition and documents annexed to the petition and after hearing 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.

6 Therefore, the petition is allowed in terms of prayer clause-(a) which reads as under :-

“(a) that the company viz.Crest Animations Studios Limited be wound up by and pursuant to the orders and directions of this Hon'ble Court.”

7 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.

8 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to deductions if any.

9 Petition disposed accordingly.

(K.R.SHRIRAM,J)