

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

COMPANY PETITION NO. 278 OF 2016

Vimay Dattatray Mokashi

...Petitioner

Versus

E-Cognosys Information Systems Pvt. Ltd.

...Respondent

Mr.Vijay Baburao Kulkarni for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 26TH APRIL 2018

P.C.

1. The petition is filed for winding up of the company E-Cognosys Information Systems Pvt. Ltd.(the company) on the ground that the company is indebted to petitioner, is unable to discharge its debt and is commercially insolvent.

2. On 26th July 2017, at the time of admission, 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 e-Cognosys Information Systems Private Limited.

2] It is the case of the petitioner that, he was employed with the respondent-company as a project management consultant. That the respondent did not pay his salary from October 2013 to April 2014. The petitioner therefore issued a statutory notice dated 7.4.2015. The record indicates that the respondent refused to accept the service of the said notice.

3] The petitioner therefore filed the present petition on 12.12.2015

in this Court seeking winding up of the respondent-Company. The petition is accepted on 21.6.2016 and in pursuance of directions of the Company Registrar, the petitioner issued notice of acceptance to the respondent at its registered address as per the record of Registrar of Companies. However, the envelope containing the said notice and petition returned back with postal remark "left". The Advocate for the petitioner thereafter again served the respondent at its last known address at Hyderabad and the said notice has been duly served upon the respondent-company. The petitioner has filed an affidavit of service dated 19.7.2017. Despite service, none appeared for the respondent.

4] I have perused the petition and the documents annexed to the petition. The Division Bench of this Court in the case of Mr Sanjay Sadanand Varrier Vs. M/s Power Horse India Pvt.Ltd. (in Company Petition No.263 of 2015), has held that an employee can maintain a petition for winding up of a Company under section 439 r/w sections 433(e) and 434 of the Companies Act, 1956 as a creditor based on the claim of the recovery of his unpaid salary and wages. Thus the petitioner is having locus-standi to file the petition. The record clearly indicates that the respondent did not make legitimate payment i.e. salary of the petitioner for the months from October 2013 to April 2014. Thus prima facie it appears that the respondent-Company is unable to pay the debts of the petitioner."

3. The petitioner has filed an affidavit of one Vijay Bahurao Kulkarni affirmed on 12th September 2017 confirming advertisement of notice of admission of the petition in two local newspapers, viz., Free Press Journal and Navshakti on 4th August 2017 and also in the Maharashtra Government Gazette on for the period August 17-23, 2017 at Sr.No.M-17153. There is a service report filed by the Company Department dated 11th August 2017 stating the packet containing Notice under Rule 28 of the Companies (Court) Rules, 1959 has come back with the endorsement 'left'. Shri Kulkarni tenders an extract of the company master data maintained by the Ministry of Corporate Affairs, which extract the counsel states, was taken

today, in which the registered address of the company is shown to be the same to which the notice under Rule 28 was sent. The extract is taken on record and marked 'X' for identification. I would, therefore, accept that notice under Rule 28 has been served on the company. The company has not filed any affidavit in reply opposing the petition. Therefore the averments in the petition remain uncontroverted. There is also no reply to the statutory notice dated 27th April 2015. It is settled law that where no response to a statutory notice has been made, the Court may pass a winding up order on the basis that amount claimed has not been denied by the company and there is a presumption of inability to pay by the company. Where no response has been made to the statutory notice, respondent-company runs a risk of winding up petition being allowed. By virtue of Section 434 of the Companies Act 1956 a presumption of the indebtedness can be legitimately drawn by the Court where no reply to the statutory notice is forthcoming.

4. Having considered the petition, the documents annexed thereto and heard Shri Kulkarni, I am satisfied that the company is indebted to petitioner, is unable to discharge its debts and is commercially insolvent and hence, requires to be wound up.

5. In these circumstances, petition is allowed in terms of prayer clauses

(a) and (b) which read as under :-

“(a) that the Company be ordered to be wound up by an order of this Hon'ble Court under the direction and supervision of this Hon'ble Court.

(b) that the Official Liquidator, High Court, Mumbai be appointed as Liquidator of the Company with directions to take charge of the entire assets, books and records of the Company lying at the Company's registered office at Gala No.2, Navketan Industrial Estate Co-Op. Society Limited Mahakali Caves Road, Andheri (East), Mumbai 400 093, Maharashtra, with all powers under the Companies Act including the power to realize book debts of the Company and to divide and distribute the net assets of the Company as realized and other amounts of the Company coming to his hands amongst the creditors of the Company in accordance with Law.”

6. Petitioner's advocate to forward an authenticated copy of this order, within two weeks ,to the official liquidator who shall take immediate steps without waiting for any notification.

7. The company petition accordingly disposed.

8. A copy of this order also be forwarded to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)