

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMPANY PETITION (L) NO.1 OF 2019**

Aditya Birla Idea Payments Bank Ltd.

..Petitioner

Mr. Gaurav Joshi, Senior Advocate a/w Mr. Karl Tamboly, Mr. Peshwan Jehangir, Mr. Himanshu Vidhani and Ms Anumeha Karnatak i/b Khaitan and Co. for Petitioner

**CORAM : K.R.SHRIRAM, J.
DATE : 28th AUGUST 2019**

RC.:

1 By this Petition, Petitioner seeks to wind itself up on account of certain unanticipated developments in the business landscape leading to an unviable business model. The decision of winding up has been made pursuant to the resolution of the board of directors dated 19th July 2019. The shareholders of Petitioner have also unanimously accorded their approval for winding up of the company by virtue of their resolution dated 26th July 2019. As per the financial statements of Petitioner, as on 30th June 2019, Petitioner is in a position to pay its debts, statutory dues and costs in full.

2 The short facts of the case may be stated as follows:

Petitioner is a public limited company incorporated on 19th February 2016 under the provisions of the Companies Act, 2013 and licensed by the Reserve Bank of India ("RBI") to operate as a payments bank under Section 22 of the Banking Regulation Act, 1949 read with the

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Guidelines for Licensing of "Payments Banks" dated 27th November 2014. Mr. Joshi for Petitioner states that changes in the regulatory and market conditions have made the payment space that Petitioner operates extremely competitive and non-remunerative for Petitioner. In light of such circumstances, Petitioner is incurring huge costs leading to losses and has resolved to close down its business, pay off all its creditors and deposit holders (bank account and wallet holders) and wind up the company. The board of directors of Petitioner have also furnished relevant declarations, along with affidavits, in support of the solvency of Petitioner.

3 On the issue of jurisdiction, under Section 3(7) of the Insolvency and Bankruptcy Code 2016, "a 'corporate person' means but shall not include any financial service provider."

Financial service provider is defined as a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator. Financial service regulator is defined under Section 3(18) of Insolvency and Bankruptcy Code 2016, "means an authority or body constituted under any law for the time being in force to regulate services and include the Reserve Bank of India....."

Sub section 16 of Section 3 of Insolvency and Bankruptcy Code 2016, defines financial services to include:-

"(a) accepting of deposits;

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- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....
- (h).....
- (i) selling, providing, or issuing stored value or payment instruments or providing payment services.”

Reserve Bank of India vide certificate dated 3-4-2017 has granted the licence to petitioner to carry on payments bank business in India subject to Reserve Bank of India’s terms and conditions. Rule 721, 725 and 726 of the High Court (Original Side) Rules, read as under:

“721. Presentation and hearing of petitions under Part III or Part III-A of the Act – An application under Part III or Part III-A of the Act shall be made by petition and shall be signed and verified in the same manner as a plaint. The petition shall be presented to the Judge taking company winding up matters or to such other Judge as the Chief Justice may direct. The Judge may reject the application summarily or pass such orders and give such directions as he may deem proper, including directions for notice of the petition being given to such person or person as may seem to him likely to be affected by the proceedings.

725. Application in winding up to be by petition – Applications for the determination of all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a Banking Company, shall be made by petition. The petition shall contain a statement of facts relied on and the nature of the relief asked for. The petition shall be signed and verified in the same manner as a plaint.

726. Notice of petition – Petitions mentioned in the last preceding rule shall be presented to the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or to such other Judge as the Chief Justice may direct. The Judge shall direct notice of the petition to be given to the respondent or such person or persons as may seem to him likely to be affected by the proceedings. Such notice shall be served together with a copy of the petition and the petition shall not be heard until fourteen days after service of the notice, unless the Judge otherwise directs.”

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Moreover, it is provided in Section 1(4)(c) of the Companies Act 2013, that the provisions of the said Act shall apply to banking companies, except in so far as the said provisions inconsistent with the provisions of the Banking Regulation Act 1949. Mr. Joshi submits that Section 36B of the Banking Regulation Act 1949 means, in relation to banking company, the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated. Registered office of Petitioner is also within the jurisdiction of this court.

Therefore, this court will have jurisdiction.

4 Mr. Joshi further states that a letter dated 26th July 2019 has also been addressed to the RBI in respect of closure of the banking outlets of Petitioner and for issuance of the certificate of solvency in terms of Section 44 of the Baking Regulation Act, 1949. Mr. Joshi also states that in pursuance of the said letter, the RBI has conducted the relevant inspection of the operations of Petitioner.

5 In the premises, the following order is passed:

(i) The Petition hereby stands admitted and is made returnable on

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18th September 2019 for final hearing, subject to removal of office objections and finally getting number.

- (ii) In the light of the letter of Petitioner dated 26th July 2019 addressed to the RBI and the inspection carried out thereafter of the operations of Petitioner; the RBI to process the clearance of Petitioner's application as expeditiously as possible in terms of Section 44 of the Banking Regulation Act 1949.
- (iii) In the meantime, Petitioner is directed to advertise the admission of this Petition in two local newspapers, viz. 'Times of India' (all India edition) (in English) and 'Maharashtra Times' (Mumbai edition) (in Marathi).
- (iv) This order shall also be uploaded and made available for public viewing in the website of Petitioner.

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(K.R. SHRIRAM, J.)

30/08/19
Section Officer
High Court, Appellate Side
Bombay 400 032