

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO. 30 OF 2014

SOCRATES VALMIKI FALEIRO AND ANR., ... Petitioners
Versus
- ... Respondent

Shri Deep D. Shirodkar, Advocate for the petitioners.
Shri Jatin Ramaiya, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 10th April, 2015

P.C.:

Heard Shri Deep D. Shirodkar, learned Counsel appearing for the petitioner and Shri Jatin Ramaiya, learned Counsel appearing for the respondent.

2. The above petition is filed by the petitioners for winding up of the respondent/Company on the ground that despite of the statutory notice issued to pay the amount of Rs.1,89,000/-, the respondent/Company failed to pay such debts. It is also the case of the petitioners that as such, the respondent-Company is not in a position to pay the debts.

3. The respondents have opposed the said application, inter alia, contending that as far as payment of TDS is concerned, the respondents have obtained an order from the Income Tax Authorities

to defer payment of such amount.

4. On the last date of hearing of the above petition, the respondents had tendered two cheques to the petitioners, totally amounting to a sum of Rs.4,05,000/-. It is not disputed that the petitioners have duly received the amount of the said cheques.

5. Shri Shirodkar, learned Counsel appearing for the petitioners has pointed out that a sum of Rs.1,20,000/- approximately is still payable by the respondent/Company, inclusive of the TDS from the amounts received by the petitioners. The learned Counsel further points out that in the meanwhile, the proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, have also been initiated by a secured creditor against the respondent/Company which, according to him, would justify the admission of the above petition.

6. Shri Ramaiya, learned Counsel appearing for the respondent/Company has pointed out that as per the last financial statement produced by the respondent/Company, the total value of the assets of the respondent/Company works out to more than Rs.5,00,00,000/-. The learned Counsel further points out that in case there is any default in the payment towards the deposit of the TDS, the petitioners are always free to recover the said amount from the respondent/Company. The learned Counsel, however, accepts that in

fact a sum of Rs.1,26,000/-, inclusive of Rs.80,000/- and the TDS deducted from the amounts paid to the petitioners, is due and payable to the petitioners.

7. On consideration of the submissions of the learned Counsel, the fact remains that a sum of Rs.1,26,000/- is due and payable to the petitioners. The said amount is in excess of the sum of Rs.1,00,000/- as provided under Section 434(1)(a) of the Companies Act. Apart from that, the fact that the amount due to the petitioners in terms of the original notice issued by the petitioners to the respondent has not been disputed. In fact, a substantial amount was even paid by the respondent to the petitioners. In such circumstances as, admittedly, more than Rs.1,00,000/- is due by the respondent, the petitioners have made out a case for admitting the above winding up petition. But, however, considering the contention of the learned Counsel appearing for the respondent that the respondent would make all payments due to the petitioners, I find that a case is made out for admission of the petition, subject to what has been stated herein below. In case the amount due, as accepted by the respondent, is deposited and allowed to be paid to the petitioners, the question of admitting the above winding up petition would not arise.

8. The contention of the learned Counsel appearing for the petitioners that admission of the above winding up petition would be to the benefit of the creditors, also cannot be accepted in the facts and

circumstances of the present case.

9. The above view is supported by the observations of the Division Bench of this Court, Principal Seat at Mumbai, in the case of of Videocon Industries Limited vs. Intesa Sanpaolo S.P.A., in Appeal (L) No.29 of 2014 in Company Petition No.528/2012, wherein it has been observed at paras 42 and 43, thus :

"42. When we so indicated at the conclusion of the arguments, learned counsel for Videocon, however, submits that in any view of the matter the learned Company Judge erred in directing Videocon to pay the amount to the Bank. It is submitted that at the most the amount could have been directed to be deposited in Court but not paid over to the Bank. It was vehemently submitted that the winding up petition is for the benefit of all the creditors and any amount paid after filing of the winding up petition would enure for the benefit of all the creditors and, therefore, the impugned direction given by the learned Judge requiring Videocon to pay 38 Million Euros to the Bank is contrary to the settled legal position.

43. The argument is fallacious for the simple reason that after Videocon pays the amount to the Bank, the winding up petition would stand dismissed and, therefore, there would be no order of admission of the winding up petition or publication of the advertisement for inviting other creditors to come forward with their claims. That stage would not at all arise if Videocon makes the payment. It is only if Videocon fails to make payment even after three adjudications that Company Petition would stand admitted, which would be followed by publication of the advertisement for inviting claims from the other creditors. We, therefore, do not find any merit in this contention also."

10. Taking note of the aforesaid observations, I find that in case the amount claimed to be due by the petitioners is paid by the respondent/ Company within the specific period, the above winding up petition does not call for admission and consequently deserves to be dismissed.

11. In view of the above, I pass the following :

O R D E R

- (I) The Petitioner shall deposit a sum of Rs.1,26,000/- in this Court, within one month from today.
- (II) In case, the respondent/Company fails to deposit the said sum of Rs.1,26,000/- within the said period, the petition will stand admitted and the petitioners shall proceed to publish the notice in two newspapers, one in "The Navhind Times" and other in regional language Marathi "Gomantak".
- (III) In case the amount is deposited within the time stipulated herein above, the petition shall stand accordingly dismissed and the petitioners shall be at liberty to withdraw such amount deposited.

F. M. REIS, J.

ssm.