IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 220 OF 2013

Mahendra G. Lodha … Petitioner

Versus

Shree Rajlaxmi Logistics Limited … Respondent

ALONG WITH

COMPANY APPLICATION (L) NO. 333 OF 2014

IN

COMPANY PETITION NO. 220 OF 2013

Shree Rajlaxmi Logistics Limited … Applicant

IN THE MATTER BETWEEN :

Mahendra G. Lodha … Petitioner

Versus

Shree Rajlaxmi Logistics Limited … Respondent

Mr. Hemant Sethi for the Petitioner.
None for the Respondent / Applicant.

CORAM : S.J. KATHAWALLA, J.
DATED : 29TH JANUARY, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of Shree Rajlaxmi Logistics Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Company by its three letters all dated 1st November, 2010, requested the Petitioner to grant financial

assistance to the Company by way of inter corporate deposit (ICD) / short term loans aggregating to Rs.6 Crores with interest at the rate of 18% per annum. The Petitioner acceded to the request made by the Company and disbursed an amount of Rs.6,00,00,000/- Crores. The Company executed a demand promissory note dated 1st November, 2010 promising to pay to the Petitioner on demand an amount of Rs.6 Crores and also issued three cheques dated 31st October, 2012 to the Petitioner aggregating Rs. 6 Crores. The said cheques upon being deposited by the Petitioner on 31st October, 2012 were returned dishonoured. Thereafter, proceedings under section 138 of the Negotiable Instruments Act were taken out by the Petitioner. In the proceedings under section 138 of the Negotiable Instruments Act, the parties arrived at a settlement on 10th July, 2013 and the Company issued fresh cheques. However, the said cheques were also dishonoured when presented for payment by the Petitioner.

3. At the stage of Admission, the learned Advocate for the Company relied on the Affidavit-in-reply filed by the Company and submitted that there was an understanding between the Petitioner, the Company and one Mr. Dharmendra Gandhi, a friend of the Petitioner, that the repayment liability was of the said Mr. Dharmesh Ghandi and the Respondent will not be liable to pay any amount to the Petitioner.

4. By a detailed order of this Court (Coram : N.M.Jamdar, J.) dated

23rd October, 2013, the above Company Petition was admitted and directed to be advertised. Paragraphs 5 and 6 of the said order dated 23rd October, 2013 are relevant and reproduced hereunder :

> *"5 As it has been rightly contended by the learned counsel for the petitioner there is absolutely no material placed on record in support of the stand taken in the affidavit in reply for the first time. The letter issued by the respondent company dated 1 November 2010, requesting the petitioner to release the amount is placed on record. The letters issued by the petitioner releasing the amount to the respondent are on record. The amount of Rs. 6 crores has been transferred into the bank account of the respondent company. The cheques given by the respondent company have been dishonoured. Even after the settlement in the proceedings under section 138 of the Act, the cheques have been dishonoured. In the settlement deed executed in the proceedings under section 138, no such theory of Mr. Dharmendra Gandhi being part of the transaction is mentioned. The said settlement deed is executed in July 2013 and the affidavit in reply is filed in October 2013,*

taking completely a different stand. On the face of it, it shows that such a stand is taken to avoid liability of the petitioner. As stated, earlier the money has been received by the respondent company and without any justification it has not been repaid. The cheques issued have been dishonoured twice.

6 Under these circumstances, prima facie, a case for admission of the petition is made out. However, in order to give one more opportunity to the respondent, I propose to pass a conditional order to the effect that if the respondent deposits the amount as claimed in this petition in the registry of this court within a period four weeks from today, then the petitioner will be entitled to withdraw the same and the petition will stand dismissed. If the amount is not so deposited within a period of four weeks from today, then the petition will stand automatically admitted."

5. Thereafter, on 21st November, 2013 in Company Application (L) No. 588 of 2013 taken out by the Company, this Court (Coram : N.M. Jamdar, J.) passed the following order :

" *Not on board. Produced by way of praecipe.*

2. The learned counsel for the applicant states that he has given notice to the original petitioner. The learned counsel for the original petitioner is present. By consent the application is disposed of by permitting the applicant to deposit an amount of Rs.1,00,00,000/- within a period of 10 days from today. The balance amount shall be paid in 5 equal monthly installments. Upon deposit of the said amount the original petitioner shall be permitted to withdraw the same. As far as the payment by way of 5 monthly equal installments is concerned, it shall be paid directly to the petitioner. Liberty to the original petitioner to apply in case of any default committed by the respondent.

3. The returnable date in the petition will stand modified accordingly. Time granted to the original petitioner to deposit an amount of Rs.10,000/- is extended by a period of one week from today.

The application stands disposed of in above terms".

6. On 19th June, 2014 this Court passed an order in Company Application No. 439 of 2013 inter alia recording that despite several opportunities being given to the Company, the Company has failed and neglected to pay the entire amount as agreed to the Petitioner. In view

thereof, pending the hearing and final disposal of the Petition, the Official Liquidator, High Court, Bombay was appointed as Provisional Liquidator of the Company to take charge of the assets and affairs of the Company under the provisions of the Companies Act, 1956. The above Petition was made returnable on 21st July, 2014 and directed to be advertised.

7. Accordingly, the admission of the above Petition was advertised. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been returned with the remark 'left'.

8. Since on 22nd July, 2014, the Company made certain part payments to the Petitioner and promised to make further payment on 31st July, 2014, this Court passed the following order :

> *"The Learned Advocate appearing for the Respondent has handed over the demand draft of Rs. 50 lakhs to the Advocate for the Petitioner. He undertakes to bring a further demand draft of Rs. 50 lakhs on 31st July, 2014. In view thereof, stand over to 31st July, 2014.*
>
> *In the meantime, the Official Liquidator who is appointed as Provisional Liquidator of the Respondent Company shall take inventory of all the assets (movable and immovable) of the Respondent Company and shall also obtain one set of the statutory records, maintained by the Respondent Company.*

Thereafter, the Official Liquidator shall not take any further steps in the matter until further orders.

Stand over to 31st July, 2014".

9. On 26th September, 2014 again time was granted to the Company to make payment to the Petitioner. The said order dated 26th September, 2014 is reproduced hereunder :

"1. The learned Advocate for the Applicant Company on instructions, undertakes to pay an amount of Rs.2,60,00,000/- to the Petitioner as follows :

Amount (Rs.)	*on or before*
50,00,000/-	*10-10-2014*
1,00,00,000/-	*20-10-2014*
1,10,00,000/-	*31-10-2014*

The undertaking is accepted. Stand over to 03-11-2014".

10. Today, the matter is taken up for final hearing. The learned Advocate appearing for the Petitioner has submitted that the Company has failed and neglected to pay the entire amount as per the undertakings given to the Court. He submits that the Company therefore deserves to be wound up.

11. From the aforestated facts, it is clear that a conditional order dated 23rd October, 2013 was passed by this Court (Coram : N.M.Jamdar,

J.) directing the Company to pay the entire amount as claimed by the Petitioner within a period of four weeks from the date of the said order. Thereafter from time to time, further time was granted to the Company to make the agreed payment to the Petitioner. Though, more than a year has passed, the Company has failed and neglected to pay the entire amount to the Petitioner. Notice under Rule 28 of the Companies (Court) Rules, 1959, which was sought to be served on the Company is returned with the remark 'Left', as can been seen from the Service Report dated 1st August, 2014 filed by the Section Officer, Company Department. Since the Notice was sought to be served at the registered address of the Company, which address on that day was shown as the Registered Office of the Company in the record of the Registrar of Companies, the said Notice is deemed to have been served on the Company, though the same has been returned with the remark 'Left'. Even at this stage, none appear for the Company. For the reasons set out in the order dated 23rd October, 2013 and herein, I am satisfied that the Company is unable to pay its debts and deserves to be wound up. The above Company Petition is, therefore, allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

> *"(a) That the Respondent Company Shre Rajlaxmi Logistics Limited, be ordered to be wound up by and under the orders and directions of this Honourable*

Court, under the provisions of Companies Act, 1956 ;

(b) That the Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as Liquidator of the said Company viz. Shree Rajlaxmi Logistics Limited".

12. The Official Liquidator to forthwith act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court without waiting for any further notification from this Court or from any other authority.

13. The above Company Petition is accordingly disposed of.

14. The above Company Application also stand disposed of as infructous.

(S.J. KATHAWALLA, J.)