

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**COMPANY PETITION NO. 653 OF 2013**

SICOM Limited ... Petitioner  
Versus  
M/s. ICCON Oil and Specialties Limited ... Respondent

Ms.Jaymala Raut i/b. M/s. J.J. Associates for the Petitioner.  
Mr.Bhagwat i/b. Divekar Bhagwat and Company for the Respondent.

**CORAM : S.J. KATHAWALLA, J.**  
**DATED : 18<sup>TH</sup> MARCH, 2015**

**P.C.**

1. By the above Company Petition, the Petitioner seeks winding up of M/s. ICCON Oil and Specialties Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Company approached Central Bank of India (CBI) in the year 1990 seeking various loan facilities. The CBI granted and disbursed loan facilities to the Company as more particularly set out in paragraph 7 of the Petition. Since the Company failed and neglected to pay the dues of the CBI, the Accounts of the Company in respect of the loan facilities were classified as 'Non Performing Assets' (NPA) as per the norms of the Reserve Bank of India (RBI).

3. According to the Petitioner, the Company is indebted to the Petitioner in the sum of Rs.17,54,91,394.44/- as per particulars of claim, annexed and marked as Exhibit-C to the Petition.

4. The CBI had filed Original Application being O.A.411 of 2001 before the Debt Recovery Tribunal, Mumbai (DRT) for recovery of debts due from the Company. The Original Application was adjourned sine die, since the Company informed the DRT that a Reference had been filed before the BIFR under section 15(1) of SICA Act by the Company.

5. The BIFR by its order dated 12<sup>th</sup> December, 2005 ordered that the Reference filed by the Company had abated on account of action of CBI under Section 13(4) of the SARFAESI Act, 2002. Thereafter, CBI filed an Application for revival of Original Application No. 411 of 2001 before the DRT. However, the Company had preferred an Appeal before the AAIFR which was dismissed by the AAIFR only on 29<sup>th</sup> January, 2008. The Company thereafter challenged the order of AAIFR before this Court in Writ Petition No. 2909 of 2008. By an order dated 8<sup>th</sup> January, 2010, this Court restored the Appeal of the Company before the AAIFR. By a Deed of Assignment dated 28<sup>th</sup> December, 2010 executed between the Petitioner and the CBI (the Assignor), the CBI unconditionally and irrevocably assigned, transferred and released in favour of the Petitioner, all the financial assistance granted by it to the Company.

6. In the above circumstances, the Petitioner served a statutory notice dated 11<sup>th</sup> February, 2013 on the Company. In response the Company informed the Petitioner that the Appeal filed by the Company before the AAIFR is pending.

7. According to the Petitioner, as per the BIFR status on 31<sup>st</sup> January, 2013, the reference of the Company is shown as abated and no Appeal is pending before the AAIFR. The Petitioner therefore filed the present Petition on the ground that the Company is unable to pay its debts and deserves to be wound up. The above Company Petition was served on the Company. The Company failed to file its response.

8. The above Petition was admitted by an order dated 16<sup>th</sup> February, 2015 and the same was directed to be advertised. Paragraphs 8 and 9 of the said order are relevant and reproduced hereunder :

*“8. The Company Petition has appeared before this Court on several occasions, when the learned Advocate appearing for the Company has sought time from the Court on the ground that an Appeal filed by the Company is pending before the AAIFR. This Court repeatedly requested the Advocate for the Company to provide particulars of the Appeal and to produce the Minutes of the hearings held before the AAIFR. The*

*learned Advocate appearing for the Company after seeking several adjournments informed the Court that despite requests made to the Company, the Company has failed to handover any documents in support of its contention that an Appeal is pending before the AAIFR. This Court therefore directed the Advocate for the Company to keep the Director of the Company present in Court. Pursuant thereto, Mr. Tushar Shah, Director of the Company is today present before the Court. Mr. Shah has informed the Court that he is unable to produce any record / document / order to show that the Appeal filed by the Company before the AAIFR is pending as of today. Mr. Shah has further informed the Court that the Company has stopped functioning since the year 2009 and since the year 2011 the Petitioner is in physical possession of all the assets of the Company.*

*9. From the aforestated facts, it is clear that the Petitioner has claimed that an amount of Rs.17,54,91,394.44/- is due and payable by the Company to the Petitioner. Mr. Shah, the Director of*

*the Company has informed the Court that he has no document / order to show that any proceedings filed by the Company are pending before the AAIFR. Though the Company is represented in the above Petition by its Advocates since 4<sup>th</sup> March, 2014, the Company has not filed its Affidavit-in-Reply. Even at this stage, the Company does not dispute that the amount claimed by the Petitioner is not due and payable to them by the Company. In fact, Mr. Shah has admitted that the Company has completely shut its business since the year 2009 and the physical possession of its assets is with the Petitioner since the year 2011. An intervention Application is also filed before this Court by the Government of Maharashtra through the department of Sales Tax stating that an amount of Rs. 2,77,72,073/- is due and payable by the Company to the Sales Tax department as on 29<sup>th</sup> April, 2013 and the said dues need to be settled on priority basis. I am therefore satisfied that the Company is commercially insolvent and the Petition deserves to be admitted and advertised.*

*Hence, the following order :”*

9. Pursuant to the said order dated 16<sup>th</sup> February, 2015, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. Affidavit proving publication dated 16<sup>th</sup> March, 2015 is on record. The Company has not filed its Affidavit in Reply. Even at this stage, no fresh arguments are advanced on behalf of the Company.

10. For the reasons set out in the order dated 16<sup>th</sup> February, 2015 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 (c), which are reproduced hereunder :

*“(a) that the Debtor Company i.e. M/s. ICCON Oil and Specialties Limited be wound up by and under the order and directions of the Hon'ble Court under the provisions of the Companies Act, 1956 for being commercially insolvent and unable to pay its debts as due to the Petitioner ;*

*(c) that the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed Liquidator of the Company viz. M/s. ICCON Oil and Specialties Limited with all its assets, properties, funds, affairs, books of account, papers, vouchers and all other*

*documents with all powers under the provisions of the Companies Act, 1956”.*

11. 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.

12. Company Application (L) No. 603 of 2014 is also disposed of with liberty to the Sales Tax Authorities to file their claim before the Official Liquidator.

13. The above Company Petition is accordingly disposed of.

**(S.J. KATHAWALLA, J.)**