

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 431 OF 2014

Kotak Mahindra Bank Limited ... Petitioner

Versus

Sea Eagle Dredging Marine Infrastructure Private Limited ...Respondent

Mr. S.N. Faida a/w. Ms. P.S. Fadia for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATE : 8TH JANUARY, 2015

PC.:

1. By the above Company Petition, the Petitioner seeks winding up of Sea Eagle Dredging Marine Infrastructure Private Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The above Company Petition is taken up for hearing and final disposal.
2. According to the Petitioner, the Company had approached the Petitioner with a proposal for obtaining Saral Loan facility of Rs. 50 Lakhs for business expansion. Accordingly, the said loan was sanctioned by the Petitioner. The Company thereupon executed several documents including Loan cum Hypothecation Agreement dated 29th February, 2012 in favour of the Petitioner, as set out in paragraph 5 of the Petition.
3. According to the Petitioner, the Company failed and neglected to

pay the loan instalments from July, 2013 and the Petitioner became entitled to recall the entire outstanding principal amount and all the other charges including interest and penal interest payable thereon. The Petitioner by its Recall Notice dated 7th September, 2013 called upon the Company forthwith to pay the entire loan as per the terms of the loan documents. Since the Company failed to make any payment to the Petitioner, the Petitioner through its Advocate issued a Statutory Notice dated 29th October, 2013 to the Company setting out the above facts and called upon the Company to pay a sum of Rs. 41,69,122.75/- as on 28th October, 2013 together with further interest and other charges thereon at the contractual rates within a period of three weeks from the date of the service of the said Statutory Notice.

4. According to the Petitioner, despite having received the Statutory Notice, the Company failed to respond to the same or to make any payment as called upon therein. The Petitioner therefore filed the present Petition seeking winding up of the Company on the ground that the Company is unable to pay its debts. The Company despite having received a copy of the Petition failed to file its Affidavit-in-Reply and also failed to come forward to oppose the Petition. It is therefore submitted on behalf of the Petitioner that the Company Petition be admitted and directed to be advertised.

5. The above Company Petition was admitted and directed to be advertised by an order of this Court dated 28th November, 2014. Paragraph 5 of the said order dated 28th November, 2014 is relevant and reproduced hereunder :

“5. From the aforestated facts, it prima facie appears that an amount of Rs. 41,69,122.75/- is due and payable by the Company to the Petitioner. The Company has not replied to the statutory notice and has also not made any payments to the Petitioner as called upon therein. The Company despite having received a copy of the Petition has not filed its Affidavit-in-Reply and has also not come forward to oppose the Petition In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. I am therefore prima facie satisfied that the Company is unable to pay its debts and the Company Petition deserves to be admitted and advertised. Hence, the following order”

6. Pursuant to the said order dated 28th November, 2014, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette, as can be seen from the Affidavit proving publication dated 17th December, 2014. Notice under

Rule 28 of the Companies (Court) Rules, 1959, has been served on the Company, as can be seen from the service report dated 17th December, 2014 filed by the Section Officer, Company Department. Even at this stage, no Affidavit opposing the Petition has been filed by the Company. All the contentions of the Petitioner in the Petition have therefore remained uncontroverted and there is no reason why the allegations / submissions made by the Petitioner in the Company Petition should not be accepted..

7. For the reasons set out in the order dated 28th November, 2014 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) Sea Eagle Dredging Marine Infrastructure Private Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 202-203, 2nd Floor, Plot No. 21 Sector 21, Nerul (East), Mumbai 400 706 be wound up under the provisions of Companies Act, 1956 and the assets of the said Company be equitably dealt with in accordance with Law to discharge the debt owed to the Petitioners.

(b) that the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as Liquidator of the said Company with all necessary powers under the provisions of the Companies Act, 1956".

8. 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.

9. The above Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)