

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 747 OF 2014

M/s. Ncube Logistic and Warehousing Pvt.Ltd. ... Petitioner

Versus

M/s. Future Axiom Telecom Limited ... Respondent

Ms. Sunita Perumal i/b. Mr. Sachin V. Masurkar for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATE : 15TH APRIL, 2015

PC.:

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Future Axiom Telecom 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. The Petitioner is engaged in the business of importing and distributing electronic devices, products and equipments including mobile hand sets, their consumables, accessories etc. The Company being in the business of setting up a chain of retail marketing stores, placed upon the Petitioner orders for supply of mobile hand sets of the make "FLY" which are imported and distributed by the Petitioner in India. On the basis of various purchase orders placed by the Company, the Petitioner supplied mobile hand sets to the Company under invoices raised between the

period 23-01-2012 to 14-02-2012 and forwarded the invoices raised on the Company from time to time.

3. On 24th August, 2013, the Company confirmed the balance outstanding in their accounts for the above supplies being Rs.23,06,262/- and requested the Petitioner to reconcile and confirm the said balance outstanding in their books of account. The Petitioner confirmed that an amount of Rs.23,06,262/- is due and payable by the Company to the Petitioner and pointed out that there were certain other invoices, the value of which are not included in the balance confirmation statement and the invoices were for a total value of Rs.8,62,414/. The Petitioner even furnished the details of the said invoices and the same were duly acknowledged and verified by the Company and no objection or clarification as regards the said invoices was raised by the Company. The Petitioner therefore, by its letter dated 23-09-2013 called upon the Company to pay a sum of Rs.31,68,675/- to the Petitioner. Since the Company failed and neglected to pay any amount, the Petitioner through its Advocate issued a statutory notice dated 28-10-2013 calling upon the Company to pay an amount of Rs.40,76,857/- within a period of 21 days from the receipt of the said notice. Despite receipt of the statutory notice, the Company failed and neglected to reply 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. A copy of the Company Petition was served at the registered address of the Company. The same was accepted by one Mr. Patil on 04-01-2015, who also affixed a rubber stamp of 'Future Lifetime Fashion Ltd.'

4. The above Company Petition was admitted and directed to be advertised by an order of this Court dated 3rd March, 2015. Paragraph 4 of the said order dated 3rd March, 2015 is relevant and reproduced hereunder :

“From the aforesaid facts, prima facie it appears that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Petitioner has served a statutory notice on the Company setting out the aforestated facts and called upon the Company to make payment as claimed within 21 days from the date of receipt of the said notice. However, the Company has failed and neglected to reply to the same or to make any payment as called upon therein. A copy of the Petition is also served on the Company by hand delivery. However, the Company has not filed its Affidavit-in-

Reply to the Petition and has not come forward to oppose the admission of the above Company Petition.

In view thereof, all that is stated in the Petition has remain uncontroverted. 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.....”

5. Pursuant to the said order dated 3rd March, 2015, the admission of the above Petition is advertised in two local news papers as well as in the Maharashtra Government Gazette. An Affidavit proving publication dated 15th April, 2015 is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959, has been served on the Company by Registered Post AD, as can be seen from the service report dated 20th March, 2015 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. The Company has not come forward to oppose the Petition.

6. For the reasons set out in the order dated 3rd March, 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 (b), which are reproduced hereunder :

“(a) M/s. Future Axiom Telecom Limited (the Company herein) incorporated under the provisions of Companies Act, 1956 and having its registered office at Knowledge House, Shyamnagar, Joneshwari Vikhroli Nagar, Link Road, Jogeshwari (E), Mumbai – 400 060 be ordered and directed to be wound up as per the provisions of Companies Act, 1956 by and under the orders, directions, supervision and control of this Hon'ble Court;

(b) The Official Liquidator attached to this Hon'ble Court or some fit and competent person be appointed as liquidator of M/s. Future Axiom Telecom Limited with all powers to take charge of all assets of the Company and to distribute the said assets of the Company in accordance with law”.

7. 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.

8. The above Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)