IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 660 OF 2014

ICICI BANK LIMITED)
a company incorporated under the)
the Companies Act, 1956, and a banking company)
within the meaning of the Banking Regulation)
Act, 1949, having its registered office at)
"Landmark", Race Course Circle, Vadodara 390007)…Petitioner

versus

1. Geodesic Limited)
a public limited company incorporated under)
the provisions of the Companies Act, 1956 and)
having its registered office at B-3 Lunic)
Industries, Cross Road No. B, MIDC)
Andheri East, Mumbai 400093)
2. Mr. Pankaj Kumar)
in his capacity as Chairman of Respondent No. 1)
adult, Hindu, residing at A-903, Lake Castle,)
Hiranandani, Powai, Mumbai – 400076)
3. Mr. Kiran Kulkarni)
in his capacity as the Managing Director of)
Respondent No. 1, adult, Hindu, residing at)
503, Konark Classic, 85 Hill Road, Bandra (W))
Mumbai – 400050)
4. Mr. Prashant Mulekar)
in his capacity as Director of Respondent No. 1,)
adult, Hindu, Flat Nos. B/502, B/603 & B/702,)
Palm House Co-op Housing Society,)
16 Moghul Lane, Matunga (W),)
Mumbai – 400016)…Respondents

Mr. Shyam Mehta, Senior Advocate, with Mr. Aditya Bapat and Ms. Dhanyashree Shah instructed by M/s. Desai & Diwanji for the Petitioner.

None for the Respondents.

Mr. S. Ramakantha, Official Liquidator appointed as Provisional Liquidator of the Respondent No. 1 present.

CORAM: S.J. KATHAWALLA, J.
DATE: 2nd March, 2015

P.C.:

1. This Company Petition is filed by the Petitioner, ICICI Bank Limited, for an order under Section 237 of the Companies Act, 1956, declaring that the affairs of Respondent No. 1, Geodesic Limited ("the Company") ought to be investigated by an inspector appointed by the Central Government. The Company has not filed any affidavit to oppose the Petition.

2. Briefly stated, the facts leading up to the filing of the present Petition are as follows.

2.1 The Petitioner provided credit facilities totaling to Rs. 130 crores to the Company as per a Credit Arrangement Letter dated 14th June 2012. The Petitioner executed various agreements, together called the "Facility Agreements" with the Company in this connection.

2.2 Right from the beginning, the Company started defaulting in respect of its repayment obligations under the Facility Agreements. The Petitioner thereafter filed recovery proceedings before the Debt Recovery Tribunal, Mumbai, which proceedings are pending.

2.3 The Petitioner undertook the exercise of close scrutiny of the financial statements of the Company and its subsidiaries, from which the Petitioner concluded that the business of the Company was being conducted with intent to defraud its creditors and for other fraudulent purposes, and that the persons concerned in the management of the Company's affairs were guilty of fraud, misfeasance and other misconduct towards the Company.

2.4 The Petitioners therefore filed the present Petition.

3. The main grounds made out in the Petition for appointment of an inspector under Section 237 are as under.

4. <u>Siphoning off of cash reserves of the Company and its subsidiaries</u>

4.1 As per the Annual Report of the Company for the 15-month period ended 30th June 2012 ("FY2012 Consolidated Report"), the Company and its subsidiaries had a cash and bank balance of Rs. 1,142.20 crores.

4.2 Despite the high liquidity being shown by the Company in its financial statements, the Company was consistently defaulting in its payment obligations to the Petitioner. The Petitioner repeatedly requested the Company to regularise its payment defaults. The Company, vide a letter dated 22nd February 2013 addressed to the Petitioner assured the Petitioner that the Company had investment accounts in the name of its overseas subsidiaries, and was in the process of liquidation of the deposits and bringing them in the Company for paying the Petitioner's dues. The Company claimed it had the following investments through its overseas subsidiaries:

Subsidiary	**Investment Account (In USD)**	**Ba**
Geodesic Technology Solutions Ltd.	82,020,176.54	BS
Zomo Technologies Ltd.	94,178,719.00	Cl
Emiloto Associated Inc.	29,059,795.40	HS

Total	205,258,690.94	

4.3 In the meanwhile, due to the Company's defaults, the FCCB Bondholders of the Company, through their trustee Citibank NA filed a winding up petition (Company Petition No. 471 of 2013) in this Court. This Court (per G.S. Patel, J.) passed an Order dated 7th April 2014 in that petition inter alia appointing Official Liquidator as the Provisional Liquidator of the Company. The Order dated 7th April 2014 reveals the following.

(a) Respondent Nos. 3 and 4, who are executive directors of the Company, stated to the Court, regarding the Company's subsidiaries, that:

(i) in the account of Emiloto Associated Inc. with HSBC Zurich, there was an amount of USD 29.056 million;

(ii) in the account of Zomo Technologies Limited with Credit Suisse Zurich, there was an amount of USD 92.597 million and

(iii) in the account of Geodesic Technology Solutions Limited, there was an amount of USD 82.01 million.

(b) The counsel for the Company stated that the said amounts were held not in cash, but in investment accounts, and undertook to fully and adequately explain these investments on affidavit on the next date.

(c) On the next date, an affidavit was filed, which the Court observed "*made for the most unfortunate reading.*" The said affidavit showed that the amount of USD 29.06 million earlier stated to be in an investment account with HSBC Zurich was actually given on loan to one Audrain Commercial Corporation, Belize, as far back as July 2012. This loan was to mature only in

July 2014. The loan was stated to be "*by way of a strategic investment.*"

(d) The Court observed that "*the words strategic investment are, of course, a euphemism to camouflage what seems to be nothing but a low-interest bearing loan to an entity carefully kept in the shadows, with neither its credentials not its background specified at any point.*"

4.4 As per the Annual Report of the Company for the next financial year, i.e. the year ended 30th June 2013 ("FY2013 Consolidated Report"), the cash and bank balance of the Company and its subsidiaries had dropped precipitously from Rs. 1,142.20 crores to Rs. 2.90 crores, with no proper explanation for the same. The Auditors opined that they were unable to state the recoverability of the loan of USD 29.033 million shown as due from the Audrain Commercial Corporation.

5. Fraudulent and/or suspicious entries in the financial statement of Geodesic Technology Solutions Limited

5.1 Geodesic Technology Solutions Limited ("GTSL") is a Hong Kong-based wholly owned subsidiary of the Company, which contributes 85.56% of the Company's sales on a consolidated basis. The Petitioner made submissions based on the Annual Report of GTSL for the financial year ended 31st March 2011 ("GTSL Report").

5.2 As per the GTSL Report, GTSL had "Trade Creditors" amounting to HK$ 498,543,284 (or Rs. 285.67 crores, assuming 1HK$ = Rs. 5.73). However, in its Annual Report for the financial year ended 31st March

2011 (“FY2011 Consolidated Report”), the Company showed “Trade Receivables” from GTSL of Rs. 541.96 crores.

5.3 GTSL showed a “loan to a fellow subsidiary” of HK$ 445,794,000. As per the GTSL Report, this loan was unsecured, interest-free and had no fixed terms of repayment. The identity of this fellow subsidiary was nowhere disclosed.

5.4 The GTSL Report showed that GTSL had received an amount of HK$ 444,986,472 (Rs. 255.85 crores) as “share application money due to holding company.” However, in the FY2012 Consolidated Report, the same amount was shown as “trade advances/loan balances” given by the Company to GTSL.

6. Fraudulent and/or suspicious entries in the FY2012 Consolidated Report

6.1 “Loans and advances to related parties” rose from Rs. 200.92 crores in FY2011 to Rs. 610.72 crores in FY2012.

6.2 The Company purchased raw materials amounting to Rs. 218.67 crores but consumed only Rs. 27.14 crores.

6.3 As per the unaudited quarterly statements released by the Company, sales for January-March 2012 were Rs. 230.07 crores, and sales for April-June 2012 were Rs. 203.43 crores. Thus, total sales from January-June 2012 were Rs. 433.50 crores. However, in the FY2012 Consolidated Report, the Company showed “Sundry Debtors less than six months” as amounting to

Rs. 777.78 crores. This figure was not possible even if no sales were realised during the said period.

7. Auditors' qualifications and fraudulent entries in the Revised FY2012 Consolidated Report

7.1 The Company filed a revised Annual Report for the financial year ended June 30, 2012. In the said Report, the Company *inter alia* reduced sales by Rs. 277.76 crores, allegedly due to problems with a new version of one of its products. The Auditors have stated that they are unable to verify the correctness of this write off.

7.2 The Company had earlier shown receipts from GTSL of Rs. 405.44 crores and payments to various creditors of Rs. 404.72 crores. These two entries were reversed because the respective cheques had allegedly "*become stale.*"

8. Auditors' qualifications and fraudulent entries in the FY2013 Consolidated Report

8.1 In the FY2013 Consolidated Report, the Company has reversed sales to GTSL amounting to USD 38,812,000. This reversal has been attributed by the Board of Directors of the Company to problems with a new version of one of its products. The Auditors have stated that they are unable to verify the correctness of this write off.

9. I have considered the averments in the Petition as well as the documents annexed thereto. The Company has neither appeared nor filed any reply to oppose the Petition or to controvert the allegations made therein. The Official Liquidator who is appointed as Provisional Liquidator of the

Company supports the above Petition. From the allegations contained in the Petition and the various documents annexed thereto, it is clear that the business of the Company is being conducted with intent to defraud its creditors and for other fraudulent and unlawful purposes. The facts clearly show that there are circumstances suggesting that persons concerned in the management of the Company's affairs are guilty of fraud, misfeasance and other misconduct. In the circumstances, I am of the view that this is a fit case where the affairs of the Company ought to be investigated by an inspector appointed by the Central Government.

10. In the circumstances, I am passing the following Order.

a) It is declared that the affairs of the Company ought to be investigated by an inspector appointed by the Central Government.

b) The Central Government is directed to appoint one or more Inspectors to investigate the affairs of the Company and to make a report thereon and to submit the same to this Court within a period of six months from today.

c) The Petition is disposed of accordingly with no order as to costs.

(S.J. KATHAWALLA, J.)