

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.219 OF 2011

Punjab National Bank ... Petitioner

versus

MCS Limited ... Respondent

Mr. Rafeeq Peermohideen with Mr. Shakib Dhorajiwala i/by M/s. Vidhi Partners, for Petitioner.

Mr. Hiroo Advani i/by M/s. Advani and Co., for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 28th JANUARY, 2015

PC.

1. The above Company Petition is filed by the Petitioner – Punjab National Bank on 26-05-2011 seeking winding up of M/s. MCS Limited (the Company) under the provisions of the Companies Act, 1956 (the Act). The Company Petition is taken up for hearing and final disposal.

2. At the time of filing of the Petition in the year 2011, the Petitioner had to recover more than Rs.25 Crores from the Company. The Company filed its Reply opposing the admission of the Company Petition. By a detailed order dated 2nd March, 2012 (almost three years ago), the Company Petition was admitted and directed to be advertised. Pursuant thereto, the

admission of the Petition was advertised. Thereafter the Company filed Appeal (L) No.436 of 2012 before the Division Bench comprising of Mohit S. Shah, C.J. & N.M.Jamdar, J. The Appeal was dismissed on 11-07-2012 without going into the merits of the controversy between the parties and only on the ground that the winding up Petition had already been advertised and the Company Judge was to hear the Company Petition finally after the Appellant filed a detailed Affidavit-in-Reply.

3. Thereafter from time to time the Company Petition was called out for hearing. However, adjournments were sought on some pretext or the other. In fact, in the month of November, adjournments were sought on the ground that Advocate Mishra i/by Ms. Meena Kshirsagar, appearing for the Company has undergone an eye surgery. On 12-12-2014, the Advocate for the Company informed the Court that M/s. Advani and Company have now been appointed in the matter and therefore, the matter be adjourned. In view thereof, on 12-12-2014 this Court passed the following order :

“The learned Advocate appearing for the Respondent states that the Respondent Company has informed them that they have now appointed M/s. Advani & Company, 10 Thakur Niwas, 173, J. Tata Road, Churchgate, Mumbai – 400 020 as their Advocates in the above matter and that the present Advocate on record should give their NOC in favour of the new Advocates. The learned Advocate appearing for the Petitioner has informed

the Court that the Company Petition was admitted by a detailed order dated 2nd March, 2012. The Appeal preferred therefrom was dismissed. The Respondent from time to time have obtained adjournments in the matter on one pretext or the other.

2. In view thereof, place the matter for hearing on 18th December, 2014, first on board. It is clarified that no adjournment shall be granted to the parties on that day.”

4. On 18-12-2014, Mr. Advani appeared before the Court only to inform the Court that they have now filed a Reference before the BIFR. The Advocate for the Petitioner opposed the adjournment on the ground that the Reference is not yet registered and the same has been filed on the eve of the hearing and final disposal of the Company Petition, after seeking several adjournments on one pretext or the other. On 06-01-2015, Mr. Advani again sought time and the hearing of the Petition was adjourned to 19-01-2015. On 19-01-2015, Mr. Advani failed to appear before the Court, instead Mr. Shaikh i/by M/s. Advani and Co., appeared before the Court and sought time on the ground that Mr. Advani is in New Delhi. The Advocate gave an undertaking to the Court on instructions that the Company shall proceed with the hearing of the Company Petition on merits on 23-01-2015. The undertaking was accepted and the matter was directed to be placed before this Court for hearing and final disposal on 23-01-2015.

5. On 23-01-2015, Mr. Advani informed the Court that his client is admitting the claim of the Petitioner. However, he further submitted that the Company has several national and international orders which are yet to be executed. He submitted that in fact, an amount of approximately Rs.25 Crores has been loaned by the Company to an entity in Russia and therefore, winding up of the Company at this stage will not be in the interest of the creditors of the Company. This Court informed Mr. Advani not to make any statements in the absence of any documentary evidence and also asked him to give the particulars of the current assets and liabilities of the Company. Mr. Advani, who was making statements before the Court without verifying them, was unable to provide any documentary evidence and was also unable to answer the said query raised by the Court. In view thereof, on 23-01-2015, this Court passed the following order :

“The Chief Accountant of the Company is directed to remain present before this Court on 28th January, 2014 with all the annexures to the Reference filed before the BIFR. Stand over to 28th January, 2015”.

6. Today, when the matter was called out for hearing in the morning session, none appeared for the Company. Therefore the matter was kept back. In the afternoon, Mr. Advani mentioned the matter and requested

the Court that since the Accountant had come from Kolkatta the Court should take up the matter. The Court informed Mr. Advani that his matter will be taken up immediately after the matters fixed at 3.00 p.m., have concluded. The Company Petition was called out at 3.45 p.m., when Mr. Advani commenced his submissions. He once again repeated that the Company has several orders, which are yet to be executed and the Company has to recover a loan of Rs. 25 Crores, which was advanced to an entity in Russia. This Court therefore, asked Mr. Advani to first ask the Accountant who has come from Kolkatta to give particulars to the Court as regards the assets and liabilities of the Company and to also produce documents in support of the above claim made on behalf of the Company. Mr. Advani who had at 3.00 p.m. requested the Court to take up his matter since the Accountant of the Company had come from Kolkatta, now informs the Court that the Accountant from Kolkatta is on his way and will soon reach before the Court. Mr. Advani also informed the Court that it is the Accountant from the Mumbai Office who is present in Court. This Court therefore asked Mr. Advani to inquire from the Accountant who was present from the Mumbai Office as to what are the assets and liabilities of the Company and whether he has any documents to show that the Company has several national and international orders pending execution and also as to why a loan of Rs.25 Crores was given in the year

2007 to a Russian entity and not recovered till date. Mr. Advani thereupon informed the Court that the person present from the Mumbai Office of the Company is not an Accountant. This Court therefore informed Mr. Advani to mention the matter when the Accountant who is on his way from Kolkatta reaches the Court. Mr. Advani now informs the Court that the Accountant posted at the Kolkatta Office has not left for Mumbai. Shocked by the aforestated conduct of Mr. Advani, this Court sought an explanation from Mr. Advani as to why since 3.00 p.m., false and misleading statements are repeatedly made before the Court, despite categorical directions given by this Court on 23-01-2015 that the Chief Accountant of the Company shall remain present before the Court. Mr. Advani who appears to be unperturbed by his aforestated conduct in Court, informs the Court that he is making statements before the Court on instructions. Mr. Advani was therefore, informed by the Court that no Advocate or his client can mislead the Court in the manner recorded hereinabove and attribute the same to "instructions received". Mr. Advani has nothing to say further.

7. From the aforestated facts, it is clear that this Court had as far back as on 02-03-2012 reached a prima facie finding that the Company is unable to pay its debts and had therefore, admitted the Company Petition and directed the same to be advertised. The Company thereafter, filed an Appeal

which was dismissed by an order dated 11-07-2012 on the ground that the admission of the Petition was already advertised and the Company Petition would be heard finally within a period of three to four weeks i.e. by August, 2012. Thereafter, repeated adjournments have been sought by the Company when the matter was taken up for final hearing and on 18-12-2014, the earlier Advocate was changed and M/s. Advani and Co., were brought on record, who sought time on the ground that a Reference has been filed before the BIFR, which is not yet registered. On 19-01-2015, an undertaking was given by the Advocate appearing for the Company that they shall proceed with the hearing and final disposal of the Petition on merits on 23-01-2015. However, on 23-01-2015, Mr. Advani was not able to assist the Court by inter alia providing any particulars qua the financial status of the Company, but instead Mr. Advani was making statements before the Court without having any documents in support thereof. The matter was adjourned to 23-01-2015 to enable the Chief Accountant of the Company to remain present with the relevant documents. However, the Accountant did not remain present on 23-01-2015. Mr. Advani too failed to produce any documents or to answer the queries raised by the Court, instead an attempt was made to mislead the Court under the guise of taking instructions in the matter, as stated hereinabove. The Company as stated hereinabove, has admitted its liability qua the dues of the Petitioner and

except for stating that a Reference has been filed before the BIFR, which is not yet registered, has no defense to the above Petition. I am therefore, satisfied beyond any doubt that the Company is unable to pay its debts, has kept on taking adjournments on one pretext or the other for a period of more than two years and having realized that no further time will be granted by this Court, has now filed a Reference before the BIFR with an intention to stall the hearing of the above Company petition. In view thereof, the Company Petition is allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

- “(a) That the Respondent Company be ordered and decreed to be wound up by and under the orders and directions of this Hon'ble Court ;
- (b) That the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under 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.)