

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.387 OF 2014

M/s. Fortune Credit Capital Limited ... Petitioner

Versus

M/s. Sainath Herbal Care Marketing Private Limited ... Respondent

Mr. Anoop Sharma for the Petitioner.
None for the Respondent.

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

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Sainath Herbal Care Marketing Private Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Company vide its letter dated 30th August, 2010 approached the Petitioner for the purposes of obtaining Demand Loan/Line of Credit Facility upto Rs.8 Crores. The Company executed loan documents, Master Financing Agreement, promissory note etc., in favour of the Petitioner. The Petitioner sanctioned and disbursed the maximum demand loan / line of credit facility of Rs.5,81,53,778.51 to the Company which was utilized by the Company for the purchasing Scripts such as Brushman India Ltd., CNI, Quintegra Solutions, Jeypore Sugar, etc. According to the Petitioner, though initial payments were

made on time by the Company, the Company later not only stopped making payments, but also started avoiding the notices forwarded to them by the Petitioner. The Company also abandoned its registered office premises and notices sent to them were returned with the remark “unclaimed” or “left”. The Petitioner through its Advocate, issued a statutory notice dated 09-05-2013 to the Company calling upon the Company to pay an amount of Rs.5,81,53,778.51 along with interest thereon within three weeks from the receipt of the said notice. The said notice was also returned with the remark “left” (page 154 of the Petition). 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 above Petition sought to be served on the company was returned with the remark “unclaimed”/return to sender”. A notice was also sought to be served by the Registry of this Court on the Company. However, the same was returned with the remark of the Office Delivery Peon “The Company has been closed for so many years”.

3. The above Petition was admitted by an order of this Court dated 5th March, 2015 and the same was directed to be advertised. Paragraph 3 of the said order dated 5th March, 2015 is relevant and reproduced hereunder :

“3. From the aforesaid facts, it is prima facie

established that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Petitioner has abandoned its office premises. Though the statutory notice as well as copies of the Petition were sought to be served at the registered office address of the Company, the same have been returned with the remark "Left". Since the statutory notice as well as the Petition were sought to be served at the Registered Address of the Company, which address on that day was shown as the Registered Office of the Company in the record of the Registrar of Companies, the said notice and the Petition are deemed to have been served on the Company, though the same have been returned with the remarks "left". The Company has failed and neglected to reply to the statutory notice, and has not come forward to file its Affidavit-in-Reply to the Petition opposing 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 ”

4. Pursuant to the order dated 5th March, 2015, the admission of the above Company Petition has been advertised in two local news papers as well as in the Maharashtra Government Gazette. The learned Advocate appearing for the Petitioner undertakes to file the Affidavit proving publication of admission of the Petition. The undertaking is accepted. Notice under Rule 28 of the Companies (Court) Rules, 1959, which was sought to be served on the Company is returned with the remark 'Unclaimed. Returned to Sender', as can be seen from the Service Report dated 26th March, 2015 filed by the Section Officer, Company Department. Since the Notice was sought to be served at the registered address of the Company, which address on that day was shown as the Registered Office of the Company in the record of the Registrar of Companies, the said Notice is deemed to have been served on the Company though the same has been returned with the remark 'Unclaimed. Returned to Sender'. Even at this stage, none appear for the Company. 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.

5. For the reasons set out in the order dated 5th 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) That M/s. Sainath Herbal Care Marketing Private Limited, may be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act of 1956 ;

(b) That the Official Liquidator, High Court, Mumbai or some other fit and proper person be appointed as Liquidator of the Company with necessary powers to him under the provisions of the Companies Act, 1956 to take charge of the assets, affairs, business, books of accounts, papers, vouchers and all other documents and to conduct the affairs of the Company for the purposes of winding up".

6. 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.

7. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)