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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION

**COMPANY APPLICATION NO.495 OF 2013**
**IN**
**COMPANY PETITION NO. 619 OF 2013**
**WITH**
**COMPANY PETITION NO. 179 OF 2012**
**WITH**
**COMPANY PETITION NO.180 OF 2012**
**WITH**
**COMPANY PETITION NO.186 OF 2012**

Srei Equipment Finance Ltd. ...Applicant/Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.398 OF 2012**

Dewan Housing Finance Corp. Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.137 OF 2013**

IndusInd Bank Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.285 OF 2013**

CISCO Systems Capital (India) Pvt. Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.286 OF 2013**

CISCO Systems Capital (India) Pvt. Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.571 OF 2013**

Barclays Bank PLC. throgh its Manager ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.619 OF 2013**

SREI Equipment Finance Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.293 OF 2014**

IndusInd Bank Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.606 OF 2014**

Lakshmi Vilas Bank Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.747 OF 2015**

ICICI Bank Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY PETITION NO.188 OF 2014**
**WITH**
**COMPANY PETITION NO.189 OF 2015**

JM Financial Asset Reconstruction Co. Pvt. Ltd. ...Petitioner
vs
Spanco Ltd. ...Respondent.

**WITH**
**COMPANY APPLICATION NO.428 OF 2014**
**IN**
**COMPANY PETITION NO.474 OF 2014**

United Bank of India ...Petitioner
VS
M/s Spanco Limited ...Respondent.

.....

Rushin Kapadia a/w Nikhil Chandaria i/b KASHAR & Co. for Petitioner in CP No.137 of 2013 and CP No.293 of 2014
Mr Harinder Toor a/w Rajesh Vanzara, Ms Nikita Jacob , Ms Swati Sawant i/b S.K.Legal Associates for the Petitioner in CP No.398 of 2012.
Rachit Bigghe i/b Sagar Kasar & Punit Bhalla for Petitioner in CP No.285 of 2013 & CP No.286 of 2013
Mr Parikshit Desai i/b Hiren Mehta for the Petitioner in CP No.571 of 2013
Mr Rohit Gupta a/w Ms Anaisha i/b PKA & Associates for Petitioner in CP No.619 of 2013 & CP No.606 of 2014.
Mr Nikhil Rajani i/b V. Deshpande & Co. for the Petitioner in CP No.188 of 2014 and CP No.189 of 2014
Ms Jasmine Upadhye i/b M.V.Kini & Co. for the Petitioner in CP No.474 of 2014
Mr Rohan Rajadhyaksha i/b Desai & Diwanji for the Petitioner in CP No.747 of 2015

Mr Shanay Shah i/b Solomon & Co. for the Petitioner in CP No.179 of 2012 and CP No.180 of 2012.
Ms Soma Singh a/w Shubro Dey i/b Vivek Sharma for the Petitioner in CP No.186 of 2012
Mr Zal Andhyarujina a/w Ms Shruti Sardesai i/b Phoenix Legal for the Respondent Co.

**CORAM : S.C. GUPTE, J.**
**AUGUST 12, 2015**

**P.C. :**

This group of Petitions is filed by creditors of the Respondent Company, many of whom are unsecured creditors, for winding up on account of the company's inability to pay its debts. None of the debts is seriously disputed by the company. What is submitted instead is that it is not advisable or in the interest of either the company or its creditors including the petitioning creditors, shareholders and other stakeholders to wind up the company at this date. It would be more advantageous to organize instead sale of the various divisions of the company as going concerns so that maximum sale proceeds are generated for the benefit of the entire class of creditors.

2 Before we examine these aspects, the facts of one of the winding up petitions, Company Petition No.398 of 2012, may be considered as a representative case. The debt in this case arises out of an inter corporate deposit agreement between the creditor and the company. The agreement is produced with the Petition. The total claim is of over Rs.5.78 crores. Neither the agreement nor the quantum of the claim is disputed at the hearing of the Petition. After giving the company an opportunity to arrange for funds and deferring the hearing of the matter for three months for the purpose, the Company Petition was admitted by this Court on 17 December 2013. The company preferred an appeal. The appeal was disposed of by the Appeal Court recording an undertaking of the company and its Chairman & Managing Director to pay the dues of the Petitioner by post-dated cheques. The Appeal Court directed that in the event of there being any two defaults, the admission order of the learned Single Judge shall stand confirmed. The company committed defaults. Except for the first installment, all post-dated cheques were dishonoured. The admission order thus stood revived. This was noted by a learned Single Judge of this Court in an order

dated 24 July 2014. The returnable date was extended to 14 August 2014 and the Petition was duly advertised in local newspapers and Government Gazette. The company court thereafter directed bringing into this Court of all payments due to the company by various contracting parties for the benefit of all creditors of the company by way of an interim measure. All contracting parties were also asked to file affidavits disclosing their pending contracts with the company and their pending dues owed to it. Some of the parties have filed their affidavits. (The overall picture which emerges from these affidavits is discussed later in this order.) After this date, all that is deposited in this Court on behalf of the contracting parties is a sum of about Rs.14,61,328/- though some of these parties have directly discharged statutory dues of tax payable by the company, as permitted under the orders of this Court. That is the position today when these petitions are called out for final hearing.

3 Claims forming part of other pending winding up petitions against the company are also substantial. The claims of the petitioning creditors in the various companion petitions, which aggregate over Rs.468 crores as on the respective dates of the petitions, are set out below:

| **Sr.No.** | **Company Petition No.** | **Claim amount** |
|---|---|---|
| 1 | Company Petition No.137 of 2013<br>**Indusland Bank Ltd.** | Rs.2,14,61,084.18 |
| 2 | Company Petition No.285 of 2013<br>**USCO Systems Capital (India) Pvt. Ltd.** | Rs.37,42,09,276/- |
| 3 | Company Petition No.571 of 2013<br>**Barclays Bank PLC through its Manager** | Rs.18,95,03,635.59 |
| 4 | Company Petition No.619 of 2013<br>**SREI Equipment Finance Ltd.** | Rs.10,28,56,634/- |
| 5 | Company Petition No.188 of 2014<br>**UCO Bank** | Rs.21,97,43,194/- |
| 6 | Company Petition No.189 of 2014<br>**Uco Bank** | Rs.21,97,43,194 /- |
| 7 | Company Petition No.293 of 2014<br>**Indusland Bank Ltd.** | Rs.22,47,85,151.80 |
| 8 | Company Petition No.286 of 2013<br>**USCO Systems Capital (India) Pvt. Ltd.** | Rs.37,42,09,276/- |

| | | |
|---|---|---|
| 9 | Company Petition No.179 of 2012<br>**Hewlett Packard Finance Services India Pvt. Ltd.** | Rs.28,87,59,055/- |
| 10 | Company Petition No.180 of 2012<br>**Hewlett Packard Finance Services India Pvt. Ltd.** | Rs.11,39,72,988/- |
| 11 | Company Petition No.606 of 2014<br>**Lakshmi Vilas Bank Ltd.** | Rs.85,97,05,619.23 |
| 12 | Company Petition No.747 of 2015<br>**ICICI Bank Ltd.** | Rs.126,70,99,428.83 |
| 13 | Company Petition No.186 of 2012<br>**IBM India Pvt. Ltd.** | Rs.9,05,97,609.94 |
| 14 | Company Petition No.474 of 2014<br>**United Bank of India** | Rs.44,65,38,034/- |

4 As noted above, no arguments are advanced on the merits of these debts claimed as due and owing to the creditors by the Respondent Company. The Respondent relies upon two common affidavits filed in these proceedings. There are affidavits dated 30 June 2014 and 29 July 2015. Relying on these, it is submitted as follows:

**(i)** The Respondent company is in the industry of information technology consulting and software. It creates technology infrastructure to help drive e-governance efficiency across key sectors. It mainly participates in projects with various government departments and companies, public sector undertakings, telecom service providers, defence etc.

**(ii)** Over the past two decades, the company has built various business segments, each with its own area of expertise, skill, goodwill and technical know how. These are -

(a) Power Segment (distribution) ;
(b) Power Segment (system Integration);
(c) Business process outsourcing;
(d) Mobile banking;

(e) E-governance; and

(f) Network integration.

Having regard to the performance of all these segments over time, each of these segments possesses tremendous goodwill and has a great potential for growth.

**(iii)** Until 2010, the company was awarded major contracts by these government, public sector agencies, etc. and had tremendous growth. But in 2011, as a result of a recession that struck the Indian economy, and more particularly the IT and power sectors, the company underwent financial difficulties. Despite these difficulties, the company persistently made bona fide efforts to make payments to its creditors and restructure their dues.

**(iv)** As against these liabilities, an amount of over Rs.700 crores is recoverable by the company from various contracting parties including government agencies towards its outstanding dues.

**(v)** Each of these segments, in the premises, may be sold independently by way of a slump sale for which potential purchasers may be identified. Alternatively, one or more segments may be permitted to be operated by the company under the supervision of the Court and proceeds brought into the Court and utilized for repayment of creditors.

**(vi)** If winding up orders are passed instead and Official Liquidator is appointed to take charge of the management and affairs of the company, repayment of all creditors would not be possible.

**(vii)** There are several employees working on different projects of the company and winding up may not be in their interest either.

5 As may be seen even at the first blush, these are all matters of speculation, spiced up by several generalizations and platitudes. The hard facts, on the other hand, which emerge as categorical admissions in the affidavits of the Company, are as follows:

(a) There is not a single new project undertaken by the company since 2010;

(b) Though the company has substantial receivables (pegged at over Rs.700 crores) the dues of secured and unsecured creditors are far in excess of the value of all assets belonging to the company;

(c) All assets of the company are either charged or hypothecated in favour of banks / financial institutions and may not be available for satisfaction of unsecured creditors; and

(d) The company actually sought to restructure its debts and achieve further financial assistance from its twelve participating consortium lenders by adopting a Corporate Debt Restructuring (CDR) mechanism, which did not, however, fructify.

6 Even the affidavits filed by various parties, with whom the Respondent company claims to have ongoing contracts, do not suggest any encouraging picture of its future prospects. Many of these contracts have either come to an end or are nearing an end. For example, the contract with ITI Limited ( for MSWAN project), from which alone the company claims to have received over Rs.19 crores in a span of seven months ( i.e. from 22.9.2011 to 27.4.2012) has expired on 12 May 2015. The other contract of ITI Limited ( for OSWAN project), which brought the company over Rs.33.49 crores over a span of three and half years, expires in August 2015. Agreement with NAM Technologies Pvt.

Ltd., through which the company earned over Rs.4.54 crores from December 2012 to September 2013, is valid only up to 31 December 2015. Khadi & Village Industries Commission contract has expired in January 2014. So also has the contract with Pension Fund Regulatory & Development Authority expired in September 2014. ONGC, which had a contract of the value of about Rs.21 crores, has terminated its contract with the company and all payments due thereunder have been made. In case of some other contracts, by reason of its failure to complete the contract, notices have been issued to the company (e.g. Master General of Ordinance, Army HQ contract) or no further work is undertaken and no dues are payable (e.g. Bank of India contract). It is clear from the affidavits of contracting parties that there are no substantial receipts to be expected from out of the existing contracts in future, except perhaps the past outstandings.

7 The financials of the Company, as are disclosed to this Court, may now be examined. All that we have before us is the audited balance sheet for the year 2012-13. The balance sheet (consolidated) shows a total liability of Rs.2408.26 crores as at 31 March 2013. There is a loss of Rs.310.32 crores as at 31 March 2013. As against these, the trade receivables are Rs.615.46 crores. No financials have been disclosed for the years 2013-14 and 2014-15. But even from unaudited performance disclosed on affidavit (up to the quarter ended 30 June 2013), it is clear that there are mounting losses, eroding further the net worth of the company. After the hearing was concluded, at the bidding of the Court, a couple of papers are tendered across the bar, which are said to be an unsigned trial balance sheet for the financial year 2013-14 (without any annexures). The so called balance sheet cannot even be looked at to ascertain the company's financial standing as at 31 March 2014. But what is disclosed actually presents a more disturbing picture than the earlier year's balance sheet. The current liabilities (not consolidated) have gone from Rs.288.84 crores to Rs.1145.09 crores. On the asset side, inventories show a decrease from Rs.432.61 crores to Rs.124.80 crores and trade receivables have come down from Rs.589.92 crores to Rs.484.03 crores. (It is not known how the Respondent company talks of trade receivables of Rs.700 crores in its affidavits.) The profit

and loss account shows a loss of Rs.575.77 crores (before tax) as against the loss of Rs.443.88 crores (before tax) as at 31.3.2013. None of the notes (said to be 46 in number) forming part of this purported balance sheet and profit & loss account is produced before the Court. All assets of the company are admittedly charged to secured creditors. The immovable property of the company at Vashi and Gurgaon is charged to IDBI for debentures, whilst the property at Sion is charged to State of Mysore. State Bank of Mysore has already taken possession of this property and is currently in the process of securitizing the asset under the SARFAESI Act. All movables and current assets are hypothecated to banks and financial institutions for working capital facilities, with further subservient charges. Lease finance in respect of much of the equipment of the Company is recalled by lenders. None of the secured creditors of the company is willing to extend any further help or restructure its debt. Admittedly, nothing much is likely to come to the hands of unsecured creditors.

8 The emerging picture is of a clear commercial insolvency. And what is more, there is not even a suggested prospect of the company being brought out of this financial mess. Even the affidavit of the company does not suggest any revival, but simply proposes a sale of its undertakings through court as going concerns, though, of course, no potential purchaser is even identified in this behalf. In other words, what is suggested as an alternative to winding up is a systematic close-down of the Company

9 It is precisely to take care of a situation like this that the winding up jurisdiction is to be ideally exercised by the company court. If at all the company is to be effectively closed down by a systematic sale of its business assets, and in the absence of any support from its creditors, the matter cannot be left to the discretion of the management of the company, but must be undertaken by the Official Liquidator to be accomplished under the machinery available under the Companies Act. The Liquidator, in such a case, must act so as to protect the interest of all creditors, and particularly the unsecured creditors, as a class, and supervise the closure to the benefit of all.

10 It is clear from the disclosures of the company that there is no prejudice to be suffered by reason of winding up of the company by any workmen. Most of the workmen of the company are on contract and engaged for specific projects, which are, as noted above, either at end or nearing it and are not expected to yield any further substantial revenues.

11 Mr Andhyarujina for the Respondent company relies upon the judgments of **Tata Iron and Still Co. Ltd Vs. Micro Forge (India)**[1] and **Dallah Albaraka (Ireland) Ltd Vs. Pentasoft Technologies Ltd.**[2] in support of his submissions that a winding up order shall not be passed on a creditor's petition, if it would not benefit him or the creditors of the company in general and that the Court in such a case is obliged to consider whether it would be in the interest of justice to give the company some time to come out a momentary financial crisis or any other temporary difficulty and that winding up was a measure of last resort. No doubt if despite its current inability to pay its debts, a company has good prospects of coming back to life, the Court will be inclined to give a chance to the Company to resurrect itself rather than bring about a commercial death of the company. For the Court to adopt such course, the Court must be told of a specific proposal, which, in the opinion of the Court, is likely to materilize. In other words, a reasonable prospect for resurrection and survival is a *sine que non* for the Court to give more time to the Company, which is clearly unable to pay its debts. As noticed above, there is no prospect of resurrection or survival of the company in sight, leave aside any reasonable prospect. The company is not only unable to pay its debts as of now but is commercially insolvent and there is no proposal even suggested for revival of the company. As noticed above, what is suggested instead is to allow a co-ordinated sale of the undertakings and businesses of the company so as to realize maximum value to the benefit of the creditors. An unpaid creditor may not be entitled to a winding up order if it is not beneficial to the general body of creditors. But that is not the case here. Both secured and unsecured creditors of the company are pressing for the winding up order. If the company is indeed to be closed down and its assets are to be put to

1 2001 (Vol.104) Company Cases 533
2 (2010) 157 Comp Cases 413 (Mah)

sale either as going concerns or otherwise, it is better that the exercise is carried out by the Official Liquidator. The entire class of creditors will in that case stand to gain. It is particularly necessary to protect the interests of unsecured creditors. The Official Liquidator is best placed to look after the interest of all creditors including, in particular, unsecured creditors, and accordingly, supervise the sale of assets and businesses.

12 Accordingly, the following order is passed:

**(i)** Company Petition is allowed in terms of prayer clause (a) which is reproduced below;

> "(a) that the Respondent Company i.e. Spanco Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at B-22, 2nd Floor, Krishna Bhavan, B.S.Doshi Marg, Devnar, Mumbai – 400 088, be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956 and Official Liquidator be appointed as Liquidator to take charge of the assets of the Respondent Company:"

**(ii)** The Official Liquidator shall forthwith act on a copy of this order authenticated by the Associate of this Court without waiting for any notification;

**(iii)** Company Petition No.398 of 2012 as well as other companion Company Petitions are disposed of accordingly.

13 On the application of learned Counsel for the Respondent, this order is stayed for a period of four weeks from today. The interim orders operating in the petitions shall continue to operate during the period of stay.

**( S.C.GUPTE J. )**