

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 157 OF 2014

Kotak Mahindra Bank Limited ... Petitioner

Versus

Zaintrans Marketing Limited ... Respondent

Mr. S.N. Faida a/w. Ms. P.S. Fadia for the Petitioner.
None for the Respondent.

CORAM: S.J. KATHAWALLA, J.
DATE: 8TH JANUARY, 2015

PC.:

1. By the above Company Petition, the Petitioner seeks winding up of Zaintrans Marketing Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, the Company had approached the Petitioner with a proposal for obtaining Light Commercial Vehicle Loan Facility of Rs. 4,84,931/- for purchase of a vehicle namely TATA XENON Pick Up. After considering the request of the Company, the Petitioner sanctioned the loan to the tune of Rs. 4,84,931/-. The Loan cum Guarantee Agreement was also executed on 26th March, 2013 between the Petitioner and the Company. Under the said Agreement, the Company had agreed to repay the loan alongwith interest as per the repayment schedule attached to the said Agreement. The Company had also agreed to pay overdue interest on default in payment of repayment of any loan

instalment as mentioned in the said Agreement.

3. According to the Petitioner, the Company failed and neglected to pay loan instalments from May, 2013. In view thereof, the entire loan amount together with interest and all other dues became due and payable by the Company to the Petitioner. The Petitioner therefore vide its recall notice dated 18th July, 2013 had recalled the entire loan forthwith as per the terms of the loan documents. However, the Company failed and neglected to make any payment to the Petitioner.

4. According to the Petitioner, the Petitioner therefore issued statutory notice dated 26th July, 2013 to the Company calling upon the Company to pay an amount of Rs. 5,22,813.12/- with interest thereon as claimed within three weeks from the date of the service of the said statutory notice. The Company received the statutory notice but failed and neglected to respond to the same or to make any payment as called upon therein.

5. The Petitioner therefore filed the present Petition seeking winding up of the Company and attempted to serve a copy of the same on the Company. However, the packet containing the Petition was returned with the remark 'unclaimed'.

6. On 14th November, 2014, when the above Petition was taken up for admission, none appeared for the Company. In view thereof, this Court

directed the Petitioner to serve a copy of the Petition at the registered address of the Company and branch office of the Company by hand delivery. However, as can be seen from the Affidavit filed by the Petitioner dated 25th November, 2014 the premises of the Company were found to be locked when an attempt was made to serve a copy of the Petition as directed by this Court.

7. The above Company Petition was admitted by an order of this Court dated 27th November, 2014 and the same was directed to be advertised. Paragraph 6 of the said order dated 27th November, 2014 is relevant and reproduced hereunder :

“6. From the aforestated 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 Company has received the statutory notice issued by the Petitioner but has failed to reply to the same or to make any payment as called upon therein. Though, the copy of the Petition has been sought to be served at the address of the Company, the same is returned with the remark 'unclaimed'. Service of the Petition was once again attempted on the Company by the Petitioner. However, the office of the Company was found to be closed. In view

thereof, the Company is deemed to have been served with a copy of the Petition at its registered address. The Company has not come forward to oppose the Petition. In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. 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....”

8. Pursuant to the order dated 27th November, 2014 the admission of the above Company Petition has been advertised in two local news papers as well as in the Maharashtra Government Gazette as can be seen from the Affidavit proving publication dated 17th December, 2014, which is on record. 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', as can be seen from the Service Report dated 29th December, 2014 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'. 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.

9. For the reasons set out in the order dated 27th November, 2014 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 clause (a) and (b), which are reproduced hereunder :

“(a) Zaintrans Marketing Limited, a Company registered under the provisions of the Companies Act, 1956 and having its registered office at Office No. 201, 2nd Floor, Ruby Com Commercial Secto, 4 Opp Navratri Hotel, Airoli, Navi Mumbai 400 708 be wound up under the provisions of Companies Act, 1956 and the assets of the said Company be equitably dealt with in accordance with Law to discharge the debt owed to the Petitioners.

(b) that the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as

Liquidator of the said Company with all necessary powers under the provisions of the Companies Act, 1956".

10. 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.

The above Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)