

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 453 OF 2014

State Bank of India ... Petitioner
 Versus
 Asian Electronics Limited ... Respondent

Mr. Dlieep S. Paranjpe for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 26TH FEBRUARY, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of Asian Electronics Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The Company Petition is taken up for hearing and final disposal.
2. According to the Petitioner, under the sanction letters dated 28-07-2006, 13-10-2006 and 18-02-2008, the Petitioner granted loans to the Company, as more particularly set out in paragraph 2 of the Petition. The documents executed by the Company in consideration of the said facilities are set out in paragraph Nos.3, 4, 6 and 10 of the Petition. The Company has also executed Balance Confirmation Letter as set out in paragraph No.13 of the Petition. The Company defaulted in making payments under the above agreed facilities. In view thereof, the Petitioner through its

Advocate issued a Statutory Notice dated 17-07-2013 calling upon the Company to pay an amount of Rs.23,67,61,740.53 with future interest to the Petitioner within 21 days from the date of receipt of the statutory notice. The Company despite having received the statutory notice failed and neglected to reply to the same or to make any payment as called upon therein. 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.

3. The above Company Petition was admitted and directed to be advertised by an order of this Court dated 9th January, 2015. Paragraph 3 of the said order dated 9th January, 2015 is relevant and reproduced hereunder :

“From the aforestated facts, I am prima facie satisfied that the amount of Rs.23,67,61,740/- as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has failed and neglected to reply to the statutory notice or to make any payment as called upon therein. The Company Petition is duly served on the Company as can be seen from the Affidavit proving service dated 14-08-2014. The Company has also failed to file its Affidavit-in-Reply and/or has also not come forward to oppose the Petition. In view thereof, all that is stated in the

Petition has remained 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 said order dated 9th January, 2015, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. The Affidavits proving publication dated 21st February, 2015 and 25th February, 2015 are 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 'not found', as can be seen from the Service Report dated 5th February, 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 'not found'. 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 9th January, 2015 and herein, I am satisfied that the Company is unable to pay its debts, is commercially insolvent and deserves to be wound up. The above Company Petition is, therefore, allowed in terms of prayer clause (a), which is reproduced hereunder :

“(a) That this Hon'ble Court be pleased to pass the order of winding up of the Respondent Company viz. ASIAN ELECTRONICS LTD., having its Registered Office at 107, 1st Floor, Sumer Kendra Building, Behind Mahindra Towers, P.B. Marg, Worli, Mumbai – 400 018 and the Official Liquidator, High Court, Bombay, be appointed as the Liquidator of the Company with all powers under the Companies Act, 1956; under the provisions of Section 433 and Section 434 of the Companies Act, 1956”.

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.)