

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 190 OF 2014

M/s. AB and CO Global Private Limited ... Petitioner

Versus

M/s. Tutis Technologies Limited ... Respondent

Mr. Anil Tripathi i/b. Mr. Prem Kumar Pandey for the Petitioner.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 19TH MARCH, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Tutis Technologies 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, pursuant to the orders placed by the Company, the Petitioner has from time to time sold, supplied and delivered to the Company electronic goods under various invoices aggregating to Rs. 17,75,084/-. The invoices are annexed and marked as Exhibits-A-1 to A-5 to the Petition.
3. According to the Petitioner, as set out in para 12 of the Petition after certain part payments were made by the Company to the Petitioner, an amount of Rs.93,31,474/- was due and payable by the Company to the

Petitioner as on 31st March, 2012. As can be seen from Exhibit-E to the Petition, the Director of the Company has confirmed that the said balance of Rs. 93,31,474/- is due and payable by the Company to the Petitioner. The Company has also issued cheques aggregating to Rs.93,31,474/- to the Petitioner. However, upon presentment all the cheques were dishonoured and returned with the remarks 'Fund Insufficient'. The Company by its email dated 16th May, 2012 addressed to Petitioner admitted its liability and sought time on the ground that the Company is starved of finances.

4. The Petitioner therefore through his Advocate issued a statutory notice dated 3rd July, 2012 to the Company calling upon the Company to pay an amount of Rs.93,31,474/- along with accrued interest thereon within a period of three weeks from the date of receipt of the said notice. The Advocate for the Company by his letter dated 19th July, 2012 informed the Petitioner that he is seeking instructions from the Company and shall thereafter forward his detailed reply to the statutory notice. No response to the statutory notice was thereafter received by the Petitioner from the Company or its Advocate.

5. The Petitioner therefore filed the present Petition on the ground that the Company is unable to pay its debts and deserves to be wound up. A copy of the Petition was sought to be served at the registered office

address of the Company. However, the packet containing the copy of the Petition was returned with the remark “left”.

6. The above Petition was admitted by an order dated 5th February, 2015 and the same was directed to be advertised. Paragraph 6 of the said order is relevant and reproduced hereunder :

“6. From the aforestated facts, I am prima facie satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has expressed its inability to make the said payment due to financial problems. The Company has not replied to the statutory notice save and except an interim reply stating that the Advocate is seeking instructions from the Company and shall revert back with a detailed response which is not received by the Petitioner till date. The Petition was sought to be served on the Company. However, the packet containing the copy of the Petition is returned with the remark “left”. Since the Petition 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 Petition is deemed to have been served on the Company, though the same has been returned with the remark “left”. The Company has not filed its Affidavit-in-Reply to the Petition and has also 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”

7. Pursuant to the said order dated 5th February, 2015, the admission of the above Petition was advertised in two local news papers as well as in the Maharashtra Government Gazette. An Affidavit proving publication dated 2nd March, 2015 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 'Article Undelivered (Left India)', as can be seen from the Service Report dated 27th 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 'Article Undelivered (Left India)'. 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.

8. For the reasons set out in the order dated 5th February, 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 the Company namely M/s. Tutis Technologies Limited be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator, High Court, Bombay be

appointed Liquidator with authority and all powers under Section 457 of the Companies Act, 1956 to take charge and deal with the assets / properties of the said Company in accordance with law”.

9. 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.
10. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)