

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 366 OF 2014

Bhoruka Capital Limited

... Petitioner

Versus

M/s. Omnitech Infosolutions Limited

... Respondent

Ms. N. Jain, instructed by M/s. Ashok Purohit & Co., for the Petitioner.
Mr. Abhineet Sharma for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATED : 18th March, 2015

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Omnitech Infosolutions Limited (the Company) under the Companies Act, 1956. The Petition is taken up for hearing and final disposal.

2. According to the Petitioner, under an Agreement dated 8th February, 2013 at the request of the Company, the Petitioner placed Inter Corporate Deposit (ICD) for a sum of Rs. 50 Lacs with the Company for a period of 180 days i.e. from 8th February, 2013 till 7th August, 2013. The aforesaid ICD was repayable on 7th August, 2013 i.e. upon expiry of 180 days. The said Agreement is signed by the Company as the borrower and Ms. Shubhangi Avinash Pitale as the Pledger.

3. According to the Petitioner, pursuant to the said Agreement Ms. Shubhangi Avinash Pitale created charge by way of pledge over 65800 equity shares of the Company with the Petitioner as and by way of security towards the

repayment of the said ICD amount. The Company failed to comply with the terms agreed upon in the Agreement dated 8th February, 2013 and the cheques issued by the Company were also dishonoured. Thereafter, the Petitioner sold 7070 pledged shares and recovered only Rs.1,52,033.54/-.

4. The Petitioner therefore through its Advocate issued a statutory notice dated 29th October, 2013 to the Company calling upon the Company to pay an amount of Rs. 43,32,894/- with interest thereon as claimed within a period of 21 days from the date of receipt 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. The Company is served with a copy of the Petition. However, the Company has failed to file its Affidavit-in-Reply to the same.

5. The above Petition was taken up for admission on 28th November, 2014 when Shri Gaurav Sharma, Company Secretary of the Company in response to a query raised by the Court stated that the Company has no fixed assets but has liabilities to the tune of Rs.250 Crores. The Company Petition was therefore admitted. Paragraph 6 of the order is relevant and reproduced hereunder:

6. *From the aforestated facts, it prima facie appears that an amount Rs. 43,32,894/- is due and payable by the Company to the Petitioner. The Company has failed to respond to the statutory notice. The Company has not filed its Affidavit-in-Reply to the Petition. The Company Secretary Shri Sharma has informed the Court that the Company has no fixed assets but has liabilities to the tune of Rs. 250 Crores. 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. ..”

6. Thereafter the above Petition along with five other Petitions appeared before this Court from time to time for hearing and final disposal.

7. On 3rd February, 2015, this Court was informed that a CDR Scheme has been approved and that M/s. Axis Bank is the monitoring agency. The Petitioner in the above Petition as well as the other Petitioners appearing in Company Petition Nos. 499 of 2014, 428 of 2014, 434 of 2014, 518 of 2014 and 544 of 2014 informed the Court that they are not parties to the CDR scheme and are entitled in law to seek winding up of the Company. However, this Court on 3rd February, 2015, passed the following order:

“ The Company shall file its Affidavit-in-Reply on or before 09-02-2015 and shall annex thereto all the documents referred to and/or relied upon therein. The Company undertakes to forward a copy of the Affidavit to the Advocate for the Petitioners on or before 07-02-2015. M/s. Axis Bank/Monitoring Agency shall remain present before this Court on 09-02-2015 at 11.00 a.m. Stand over to 09-02-2015.”

However till date the Company has failed and neglected to file any affidavit-in-

reply to the above Petition.

8. Despite the aforestated conduct of the Company, this Court gave an opportunity to the Company to submit a proposal as to how they intend to make payments to the above Petitioner and also the Petitioners in the other five Petitions. The Company tendered a payment schedule in Court wherein they agreed to pay 2.5 per cent of the debt of the Petitioners during the quarter January – March, 2015, nil amount for the quarter April – June, 2015, 2.5 per cent for the quarter July – September, 2015, 10 per cent for the quarter October – December, 2015, 15 per cent for every quarter from January – March, 2016 upto January – March, 2017 and 10 per cent for the quarter April – June, 2017. The Company refused to pay any interest to the Petitioners. The Petitioner informed the Court that the payment schedule offered by the Company is not acceptable to them. However, this Court gave time to the Company to try and improve its offer and consider payment of some interest to the Petitioners. Instead of improving the offer, today the Learned Advocate appearing for the Company informs the Court that M/s. Axis Bank has informed them that the Company cannot make payments to the Petitioners who are unsecured creditors even as per the payment schedule handed over in Court. In view thereof, the Company is unable to make any offer of repayment to the Petitioner. This Court is therefore satisfied that the Company is unable to pay its debts and deserves to be wound up. In view thereof, the following order is passed:

The Company Petition is therefore allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder:

(a) That the Company viz. Omnitech Infosolutions Ltd. be wound up by and pursuant to the orders and directions of this Hon'ble Court.

(b) That the Official Liquidator of this Hon'ble Court be appointed Liquidator of all assets and affairs of the company Omnitech Infosolutions Ltd. with all powers under the provisions of the Companies Act, 1956."

9. The Official Liquidator is directed to forthwith act on an ordinary copy of this Order duly authenticated by the Associate of this Court without waiting for any further notification.

(S.J. KATHAWALLA, J.)