

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 312 OF 2014

Ravisha Financial Services Private Limited ... Petitioner

Versus

M/s. Dahlia Traders Private Limited ... Respondent

Ms. Jaymala Ostwal i/b. JJ Associates for the Petitioner.
None for the Respondent.

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

P.C.

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Dahlia Traders Private Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. The Petitioner is engaged in non-banking financial business and provides financial assistance to its borrowers. The Petitioner at the request of the Company sanctioned a loan of Rs. 11 crores and disbursed the same to the Company from time to time, on terms and conditions stated in the Loan Cum Pledge Agreement dated 3rd September, 2009 which was duly accepted and signed by the Company. According to the Petitioner, in consideration of the said financial assistance / loan facility, the Company hypothecated/pledged shares of Shree Ashtavinayak Cine Vision Ltd. by way of collateral security and availed the facility of loan against shares. In

the year 2010, as there was shortfall in the margin in respect of the shares deposited by the Company, the Petitioner called upon the Company to furnish additional securities / difference amount of the margin. The Petitioner vide its Letter dated 22nd December, 2010 called upon the Company to furnish additional securities / difference amount as per the terms of the loan cum pledged Agreement. Since the Company failed and neglected to respond to the said Letter, the Petitioner deposited two cheques aggregating to Rs. 2 crores which were submitted by the Company to the Petitioner towards repayment of installments / shortfall of margin amount. The said cheques were dishonoured and returned to the Petitioner with the remark “stop payment by drawer”.

3. According to the Petitioner, as on 21st March, 2013, a sum of Rs. 5,09,78,436.84 was due and payable by the Company to the Petitioner. The Petitioner therefore through its Advocates issued a statutory notice dated 2nd April, 2013, calling upon the Company to pay the said amount of Rs. 5,09,78,436.84 with interest thereon as claimed within a period of three weeks from the date of receipt of the said notice. According to the Petitioner, the packet containing the said notice forwarded at the Registered Address of the Company was returned with the remark “left”, whereas the notice served at the principal business address of the Company was received on 4th April, 2013, duly acknowledged by the

Director of the Company.

4. The Petitioner therefore filed the present Petition and sought to serve the same at the Registered Address of the Company. However, the packet containing the copy of the Petition was returned with the postal remark "left". In view thereof a copy of the Petition was also served at the Branch Office of the Company which was received by the Company. Thereafter, on 20th June, 2014, M/s. Thakore Jariwala & Associates filed their appearance on behalf of the Company. On 15th November, 2014, when the above Company Petition was taken up for admission, the Advocates for the Company informed the Court that the Company is not coming forward to give them any further instructions in the matter and therefore they be discharged from appearing for the Company. In view thereof, this Court on 15th November, 2014, passed the following Order :

"The learned Advocate appearing for the Respondent states that the Respondent Company is not giving any instructions in the matter and therefore they be discharged from appearing for the Respondent Company. In view thereof, the learned Advocate appearing for the Respondent Company are discharged from appearing for the Respondent Company. However, they shall forward a copy of this order to the respondent Company by hand delivery

and shall produce the acknowledgement before this Court on 21st November, 2014. Place the Company Petition for 'Admission' on 21st November 2014, first on Board.”

5. When the above Petition was taken up for Admission on 21st November, 2014, M/s. Thakore Jariwala & Associates, Advocates have informed the Court that the Registered Office of the Company is closed and a copy of the Order dated 15th November, 2014, sought to be served through a courier is also returned with the remark 'Company is not there'.

6. The above Company Petition was therefore admitted by an order of this Court dated 21st November, 2014 and the same was directed to be advertised. Paragraph 5 of the said order dated 21st November, 2014 is relevant and reproduced hereunder :

“5. From the aforestated facts it appears that an amount of Rs. 5,09,78,436.84 is due and payable by the Company to the Petitioner. The Company has failed to respond to the statutory notice or to make any payment as called upon therein. Though M/s. Thakore Jariwala & Associates have in the above Company Petition filed their Vakalatnama on behalf of the Company on 20th June, 2014, the Company has failed and neglected to give any instructions to them, because of which they were compelled to take a discharge in the matter. The Company has also not filed its Affidavit in Reply. In view

thereof, all the statements/submissions made in the Company Petition have remained uncontroverted. I am therefore prima facie satisfied that the Company is unable to pay its debts and the above Company Petition deserves to be admitted and advertised. Hence the following Order”

7. Pursuant to the order dated 21st 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 and the Affidavit proving publication dated 23rd December, 2014 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 'Left', as can be seen from the Service Report dated 9th 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 'Left'. 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.

8. For the reasons set out in the order dated 21st 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 clauses (a) and (c), which are reproduced hereunder :

“(a) That the Respondent Company M/s. Dahlia Traders Pvt. Ltd. be wound up by and under the order and directions and supervision of the Hon'ble Court under the provisions of the Companies Act, 1956 for being commercially insolvent and unable to pay its debts as due to the Petitioner ;

(c) that the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed Liquidator of the Respondent Company viz. M/s. Dahlia Traders Pvt. Ltd., with all its assets, properties, funds, affairs, books of account, papers, vouchers and all other documents with all powers under the provisions of the Companies Act, 1956”.

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.)