

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 428 OF 2014

Diligent Investment Ltd.

... Petitioner

Versus

M/s. Omnitech Infosolutions Limited

... Respondent

Mr. R. Piprodia, instructed by M/s. RMP Legal, 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, the Petitioner has paid Rs. 75 Lacs to the Company through three separate remittances through RTGS for which the Company issued three Inter Corporate Deposit Receipts (ICDs) duly stamped and signed by the Company. The Company also created pledge over 203580 equity shares of the Company. The Company committed default in repayment of the amount. In view thereof, the Petitioner issued a recall notice dated 29th July, 2013 to the Company calling upon the Company to repay the entire principal sum of Rs. 75 Lacs alongwith accrued interest. The Company made some part payments. The Company admitted its liability and agreed to make the balance payment. However, the Company failed and neglected to pay the balance

payment to the Petitioner. The Petitioner therefore through its Advocate issued a statutory notice dated 30th September, 2013 calling upon the Company to pay an amount of Rs. 67,34,513/- to the Petitioner within a period of three weeks from the date of receipt of the said statutory notice. The Company received the said statutory notice but failed to reply to the same.

3. The Petitioner therefore filed the present Company Petition seeking winding up of the Company on the ground that the Company is unable to pay its debts. The Company has received a copy of the Petition as far back as on 26th July, 2014 but failed and neglected to file its Affidavit-in-Reply to oppose the above Company Petition.

4. 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 5 of the order is relevant and reproduced hereunder:

“5. From the aforesaid facts, it prima facie appears that an amount Rs. 67,34,513/- 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. ..”

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

6. 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, 366 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.

7. 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 respondent Company namely M/s. Omnitech Infosolutions Limited be wound up by and under the order and direction of this Hon'ble Court under the provision of the Companies Act, 1956. .

(b) That the Official Liquidator, High Court, Bombay be appointed as the Liquidator of M/s. Omnitech Infosolutions Limited, with all powers under the Companies Act, 1956, to take charge of the assets of the Company and conduct its affairs in the course of winding up. ”

8. 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.)