IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 518 OF 2014

M/s. Streamline Shipping Company Pvt. 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 had extended a loan of Rs. 50 Lacs to the Company for 180 days at 17% per annum. The Company inter alia executed a Loan cum Pledge Agreement dated 17th July, 2013 wherein after admitting that the Company had taken a loan of Rs. 50 Lacs from the Petitioner, the Company consented to pledge 104000 equity shares in favour of the Petitioner as collateral security towards the loan taken by the Company.

3. According to the Petitioner, due to sudden fall in the market value of the shares pledged by the Company, the security provided had been reduced considerably and further hitting lower circuit in the exchanges. The security offered by the Company therefore could not be realized and became redundant.

4. According to the Petitioner, with great difficulty they could recover an amount of Rs. 3 Lacs from the Company leaving a balance of Rs. 47 Lacs plus interest thereon as agreed to be paid by the Company. The Petitioner therefore through its Advocate issued a statutory notice dated 17th September, 2013 to the Company calling upon the Company to pay an amount of Rs. 47 Lacs with interest thereon as claimed. In response to the earlier statutory notice dated 20th August, 2013, the Company through its Advocate had disputed its liability to make any payment to the Petitioner and informed the Advocate for the Petitioner that they are currently in the process of taking detailed instructions from the Company and will reply to the notice in detail upon receiving detailed instructions in the matter. No detailed reply was thereafter sent by the Advocate for the Company to the Advocate for the Petitioner.

5. 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. The Company has received a copy of the Petition as far back as on 20th August, 2014 but failed and neglected to file its Affidavit-in-Reply to oppose the above Company Petition.

6. 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 7 of the order is relevant and reproduced hereunder:

> *"7. From the aforestated facts, it prima facie appears that an amount Rs. 47 Lacs 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. .."*

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

8. 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, 428 of 2014, 434 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.

9. 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. "*

10. 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.)