

VPH/bdpps

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 681 OF 2015
IN
COMPANY PETITION No. 619 OF 2013
ALONGWITH
NOTICE OF MOTION (L) No. 2476 OF 2015
IN
APPEAL (L) No. 681 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.
SREI Equipment Finance Ltd. ... Respondents

WITH
APPEAL (L) No. 682 OF 2015
IN
COMPANY PETITION No. 782 OF 2014
ALONGWITH
NOTICE OF MOTION (L) No. 2477 OF 2015
IN
APPEAL (L) No. 682 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.
Redington (India) Ltd. ... Respondents

WITH
APPEAL (L) No. 684 OF 2015
ALONGWITH
NOTICE OF MOTION (L) No. 2478 OF 2015
IN
APPEAL (L) No. 684 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.

JM Financial Asset Reconstruction
Company Pvt. Ltd. ... Respondents

WITH
APPEAL (L) No. 683 OF 2015
ALONGWITH
NOTICE OF MOTION (L) No. 2479 OF 2015
IN
APPEAL (L) No. 683 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.

Rapid Radio Solutions Pvt. Ltd. ... Respondents

WITH
APPEAL (L) No. 686 OF 2015
ALONGWITH
NOTICE OF MOTION (L) No. 2486 OF 2015
IN
APPEAL (L) No. 686 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.

Hewlett – Packard Financial
Services (India) Pvt. Ltd. ... Respondents

WITH
APPEAL (L) No. 688 OF 2015
IN
COMPANY PETITION No. 286 OF 2013
ALONGWITH
NOTICE OF MOTION (L) No. 2487 OF 2015
IN
APPEAL (L) No. 688 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.

CISCO Systems Capital (India) Ltd. Respondents

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WITH
APPEAL (L) No. 689 OF 2015
IN
COMPANY PETITION No. 571 OF 2013
ALONGWITH
NOTICE OF MOTION (L) No. 2488 OF 2015
IN
APPEAL (L) No. 689 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.
Barclays Bank PLC ... Respondents

WITH
APPEAL (L) No. 690 OF 2015
IN
COMPANY PETITION No. 293 OF 2014
ALONGWITH
NOTICE OF MOTION (L) No. 2489 OF 2015
IN
APPEAL (L) No. 690 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.
Indusland Bank Ltd. ... Respondents

WITH
APPEAL (L) No. 687 OF 2015
IN
COMPANY PETITION No. 179 OF 2012
ALONGWITH
NOTICE OF MOTION (L) No. 2490 OF 2015
IN
APPEAL (L) No. 687 OF 2015

SPANCO Ltd. ... Appellant / Applicant
Vs.
Hewlett – Packard Financial

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Services (India) Pvt. Ltd. ... Respondents

WITH
APPEAL (L) No. 691 OF 2015
IN
COMPANY PETITION No. 474 OF 2014
ALONGWITH
NOTICE OF MOTION (L) No. 2491 OF 2015
IN
APPEAL (L) No. 691 OF 2015

SPANCO Ltd. ... Appellant / Applicant

Vs.

United Bank of India ... Respondents

WITH
APPEAL (L) No. 692 OF 2015
IN
COMPANY PETITION No. 137 OF 2013
ALONGWITH
NOTICE OF MOTION (L) No. 2494 OF 2015
IN
APPEAL (L) No. 692 OF 2015

SPANCO Ltd. ... Appellant / Applicant

Vs.

M/s. Indusland Bank Ltd. ... Respondents

WITH
APPEAL (L) No. 694 OF 2015
IN
COMPANY PETITION No. 398 OF 2012
ALONGWITH
NOTICE OF MOTION (L) No. 2495 OF 2015
IN
APPEAL (L) No. 694 OF 2015

SPANCO Ltd. - L65990 MH 1984

PLCO 32422

... Appellant / Applicant

Vs.
Dewan Housing Finance
Corporation Limited ... Respondents

WITH

APPEAL (L) No. 696 OF 2015
IN
COMPANY PETITION No. 606 OF 2014
ALONGWITH
NOTICE OF MOTION (L) No. 2498 OF 2015
IN
APPEAL (L) No. 696 OF 2015

SPANCO Ltd. - L65990 MH 1984
PLCO 32422 ... Appellant / Applicant

Vs.
Lakshmi Vilas Bank Ltd. ... Respondents

WITH

APPEAL (L) No. 695 OF 2015
IN
COMPANY PETITION No. 186 OF 2012
ALONGWITH
NOTICE OF MOTION (L) No. 2499 OF 2015
IN
APPEAL (L) No. 695 OF 2015

SPANCO Ltd. ... Appellant / Applicant

Vs.
IBM India Pvt. Ltd. ... Respondents

WITH

APPEAL (L) No. 697 OF 2015
ALONGWITH
NOTICE OF MOTION (L) No. 2500 OF 2015
IN
APPEAL (L) No. 697 OF 2015

SPANCO Ltd. ... Appellant / Applicant

Vs.
ICICI Bank Ltd. ... Respondents

Mr. Zal Andhyarujina a/w Ms. Shruti Sardesai, Ms. Jyoti Singh i/b Phoenix Legal for the Appellant in APPL 681/2015, APPL 682/2015, APPL 684/2015, APPL 683/2015, APPL 686/2015, APPL 688/2015, APPL 689/2015, APPL 690/2015, APPL 687/2015, APPL 691/2015, APPL 692/2015, APPL 694/2015, APPL 696/2015, APPL 695/2015.

Mr. Zal Andhyarujina a/w Ms. Shruti Sardesai i/b Sandip Karnik for the Appellant in APPL 697/2015.

Mr. Rohit Gupta a/w Ms. S. Gandhi, Ms. Anaisha Zachariah i/b PKA Advocates, for Respondents in APPL 681/2015.

Ms. Amrita Sarkar i/b Argus Partners, for the Respondents in APPL 682/2015.

Mr. Nikhil Rajani i/b M/s V. Deshpande & Co. for the Respondents in APPL 684/2015.

Mr. Prasad Joshi i/b I. R. Joshi & Co. for the Respondents in APPL 683/2015.

Mr Shanay Shah i/b M/s Solomon & Co. for the Respondents in APPL 686/2015 & APPL 687/2015.

Ms. Isha Abrol, for the Respondents in APPL 688/2015.

Mr. Hiren Mehta a/w Parikshit Desai, for the Respondents in PPL 689/2015.

Mr. Chirag Balsara a/w Nikhil Chandania i/b K. Ashar & Co. for the Respondents in APPL 692/2015 and 690/2015.

Mr. Rakesh L. Singh a/w Ms. Jasmine Upadhye i/b M. V. Kini & Co. for the Respondents in APPL 691/2015.

Mr. Rajesh Vanzare a/w Mr. S. B. Pawar a/w Nikita Jacob, Swati Sawant i/b S. K. Legal Associates, for the Respondents in APPL 694/2015.

Ms. Soma Singh a/w Shubro Dey i/b Vivek Sharma, for the Respondents in APPL 695/2015.

Mr. Rohan Rajadhyaksha a/w Omkar Bhade, Debashshri Dey i/b Desai & Diwanji & Co. for Respondents in APPL. 697/015

CORAM : V. M. KANADE, &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : SEPTEMBER 16, 2015

PC.

1. Appellant has challenged the order passed by the learned Single Judge dated 12/08/2015 whereby order of winding up of the Appellant – Company was passed and the Official Liquidator was appointed and he was directed to take charge of the assets/property of the Appellant. This order was modified by order dated 31/08/2015.

2. Respondent had filed Company Petition against the Appellant – Company on account of Company's inability to pay its debts. The Appellant did not dispute the fact of its inability to pay the debts. However, it was contended that instead of passing the order of winding up, the various divisions of the Company could be sold and the sale proceeds could be generated for the benefit of creditors of the Company. It is an admitted position that many creditors of the Company are unsecured creditors. The learned Single Judge, after taking into consideration the contention of the Appellant, came to the conclusion that the offer given by the Company was not acceptable since it was vague. The learned Single Judge, therefore, came to the conclusion that Respondent had clearly made out a case of the

Appellant being commercially insolvent and there was no prospect of the Company being brought out of the financial crisis.

3. Mr. Andhyarujina, the learned Counsel appearing on behalf of the Appellant again strenuously urged that the Company, over the years, had earned goodwill in the market and also had developed its own area of expertise in certain fields. He submitted that these fields are –

- (a) Power Segment (distribution);
- (b) Power Segment (system Integration);
- (c) Business process outsourcing;
- (d) Mobile banking;
- (e) E-governance; and
- (f) Network Integration.

He has elaborated the progress made by the Company in these sectors and submitted that if these Segments were offered for sale to interested parties, considerable amount would be generated from the sale of these Segments. He submitted a proposal in the form of a Chart giving particulars of development made by the Appellant in each of these Sectors. He candidly admitted that considerable amount was spent in creating the program and software technology in these Segments. He, however, was not in a position to tell us who could be the potential buyer of these Segments. He then submitted that the Company was

awarded major contracts by Government, Public Sector Agencies etc. but on account of recession the Company had suffered financial difficulties.

4. On the other hand, the learned Counsel appearing on behalf of the Respondent submitted that this proposal was vague and, in fact, some of the creditors of the Company viz. Hewlett Packard Finance Services India Pvt Ltd and IBN India Pvt Ltd were in a better position to exploit these Sectors. He submitted that such an offer was never given to these Creditors. It is an admitted position that total liability of the Company is over Rs 468 crores.

5. In our view, the submission made by the learned Counsel appearing on behalf of the Appellant though appears to be attractive, on a closer scrutiny from the proposal which is given it can be seen that this proposal cannot become successful if ground realities are taken into consideration. Moreover, the said proposal is very vague and has been submitted in a very generalised terms. The learned Single Judge, therefore, has rightly rejected the said submission of the learned Counsel for the Appellant.

6. Mr. Andhyarujina, the learned Counsel appearing for the Appellant relied on the Judgment of the Apex Court in *Shankarlal*

*Aggarwala and Others vs. Shankarlal Poddar and Others*¹ and also on the Judgment of the Gujarat High Court in *Tata Iron and Steel Co. vs. Micro Forge (India) Ltd.*² He also relied upon the judgment of Chancery Division in *Great Western (Forest Of Dean) Coal Consumers' Company*³. There cannot be any dispute about the proposition and the ratio laid down in these judgments. However, in our view, taking into consideration the factual matrix of the present case, ratio of these judgment would not apply to the facts of the present case.

7. We do not see any infirmity in the order passed by the learned Single Judge. We are therefore not inclined to interfere with the order passed by the learned Single Judge. All these appeals are therefore dismissed. Since all these Appeals are dismissed, Notices of Motion taken out therein do not survive and they are also disposed of accordingly.

[Dr. SHALINI PHANSALKAR-JOSHI, J.]

[V. M. KANADE, J.]

1 (1964) 1 SCR 717 : AIR 1965 SC 507: (1965) 45 Com cas 1

2 2001 (Vol.104) Company Cases 533.

3 Vol.XXI Chancery Division 769