

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 407 OF 2014

Small Industries Development Bank of India ... Petitioner

Versus

The Loot (India) Private Limited ... Respondent

Mr. P. Kumar Jain i/b. M/s. Prakash Punjabi & Company 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 The Loot (India) Private Limited (the Company). The above Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, at the request of the Company, the Petitioner granted financial assistance by way of term loan of Rs. 3 crores in the form of Optionally Convertible Subordinated Debt (OCSD) to meet a part of the cost of opening of multi branded stores all over India on the terms contained in the sanction letter dated 25th March, 2010 and the loan agreement dated 26th March, 2010 entered into by and between the Petitioner and the Company.

3. Pursuant thereto, the Petitioner disbursed an aggregate sum of Rs. 3 crores on condition that the Company will repay the said loan and

also pay interest on the said loan, on the respective due dates. According to the Petitioner, the Company failed and neglected to pay to the Petitioner its agreed dues from 10th September, 2011. The Petitioner therefore by its notice dated 31st May, 2012, recalled the entire outstanding amount of the said loan and called upon the Company to pay to the Petitioner an amount of Rs. 3,38,72,037/- as on 30th May, 2012. Despite receipt of the said notice, the Company failed and neglected to pay to the Petitioner its said dues. The Company therefore through its Advocates' issued a statutory notice dated 6th August, 2013 to the Company calling upon the Company to pay an aggregate amount of Rs. 4,05,13,482/- along with interest thereon at the rate of 15 per cent per annum plus penal interest at the rate of 2 per cent per annum within 21 days from the date of the receipt of the said notice. The Company despite having received the said notice failed and neglected to reply to the same or to make any payments as called upon therein. 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 and deserves to be wound up.

4. The above Company Petition was admitted by an order of this Court dated 15th November, 2014 and the same was directed to be advertised. However, at the stage of Admission of the above Petition, none appeared for the Respondent. Paragraph 4 of the said order dated 15th

November, 2014 is relevant and reproduced hereunder :

“4. From the aforestated facts it is clear that an amount of Rs. 4,05,13,482/- is due and payable by the Company to the Petitioner. The Company has neither responded to the statutory notice nor made any payments to the Petitioner as called upon therein. The packet containing a copy of the Petition which was sought to be served on the Company at its registered address is returned with the remark “left without instructions”. Since the Petition was sought to be served at its 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 Petition is deemed to have been served on the Company, though the same has been returned with the remark “left without instructions”. In view thereof, all that is stated in the Petition has remained uncontroverted. 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. Hence the following order”

5. Pursuant to the order dated 15th 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 as can be seen from the Affidavits proving publication dated 15th December, 2014 and 8th January, 2015, which are 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 without instruction', as can be seen from the Service Report dated 3rd 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 without instruction'. 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.

6. For the reasons set out in the order dated 15th 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 clause (a) and (b), which are reproduced hereunder :

“(a) that the Company viz. The Loot (India) Private Limited be wound up by and under the order and directions of the Hon'ble Court under the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator of this Hon. Court or some other fit and proper person be appointed Liquidator of the Company viz. The Loot (India) Private Limited 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".

7. 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.

8. The above Company Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)