

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

COMPANY PETITION NO.101 OF 2012

M/s. Earthtech Enterprises Ltd.	...	Petitioner
versus		
M/s. Quantum E-Services Pvt. Ltd.	...	Respondent

Mr. Jitendra Kesarkar with Mr. Mahi Lalka i/by Mr. Ashok Singh, for Petitioner.
None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 5th FEBRUARY, 2015

PC.:

1. By the above Petition, the Petitioner seeks winding up of the Respondent Company – M/s. Quantum E-Services Pvt. Ltd. (“the Company”) on the ground that it is unable to pay its debts. The Company Petition is taken up for for hearing and final disposal.

2. According to the Petitioner, on or before 20th March, 2006, the Company approached the Petitioner Company for Inter Corporate Deposit of Rs.1,25,00,000/- to meet their working capital requirements. The Company assured the Petitioner that the Inter Corporate Deposit to be provided shall be secured by providing a lien in favour of the Petitioner of 7,50,000 equity shares of Mobile Telecommunications Limited, held by Mr.Anil Ved Mehta, Director of the Company, along with their family members and associates. In

view thereof, an agreement dated 20th March, 2006 for Inter Corporate Deposit and lien was executed between the Petitioner and the Company and the Petitioner paid an amount of Rs.1,25,00,000/- to the Company by cheques. According to the Petitioner, despite numerous reminders and requests, the Company failed to deposit the said 7,50,000 equity shares of Mobile Telecommunications Ltd., in accordance with the agreement dated 20th March, 2006. According to the Petitioner, by Clause (1) of the Inter Corporate Deposit and a lien agreement dated 20th March, 2006, it was agreed that the Company shall within 30 days from the date of commencement of its operations/business, would repay the said amount of Rs.1,25,00,000/-. Though, the Company commenced its business on or around 1st October, 2006, the Company failed and neglected to pay the said amount of Rs.1,25,00,000/- to the Petitioner.

3. The Petitioner therefore, through its Advocate served a statutory notice dated 21st January, 2009 to the Company calling upon the Company to pay a sum of Rs.1,25,00,000/- with interest @ 24% p.a. till the date of actual payment to the Petitioner within 21 days from the receipt of the said notice. The Company despite receipt of the said statutory notice, neither replied to the same nor made any payment to the Petitioner. The Petitioner therefore, filed Company Petition No.389 of 2009 before this Court seeking winding up of the

Respondent Company.

4. According to the Petitioner, during the pendency of the said Company Petition No.389 of 2009, the Company approached the Petitioner for settlement and in fact arrived at settlement wherein the liability of the Company to pay to the Petitioner was restricted to Rs.62,50,000/- and the Company agreed to transfer 7 lacs equity shares of M/s. Mobile Telecommunications Limited in favour of the Petitioner and also assured to provide further shares to cover the payment. The Company also furnished a cheque bearing No.623191 for an amount of Rs.40,00,000/- drawn on ICICI Bank, Mumbai, for repayment of loan.

5. In the meantime, the Company Petition No.389 of 2009 was withdrawn by the Petitioner. The cheque issued to the Petitioner by the Company for an amount of Rs. 40,00,000/- was dishonoured when presented for payment. The Petitioner received an amount of Rs.21,31,285/- after the sale of the said shares leaving a balance amount of Rs.41,14,715/-. The Petitioner thereafter, filed Company Petition No.53 of 2011 which was withdrawn with liberty to file a fresh Company Petition after issuing statutory notice to the Company. The statutory notice dated 26th September, 2011 was accordingly served on the company, whereunder the Company was called upon to pay Rs.41,14,715/- along with interest @ 24 % p.a. till the actual payment

within 21 days from the receipt of the said notice. Despite receipt of the said statutory notice, the Company failed and neglected to make any payment to the Petitioner and also failed to reply to the same. The Petitioner has therefore, filed the above Company Petition seeking winding up of the Company.

6. A copy of the Company Petition was sought to be served by the Petitioner at the registered address of the Company. However, the same was not accepted by the person in occupation of the said office on the ground that the Company had rented the said premises to them. In view thereof, this Court by its order dated 12th June, 2012, directed the Registry to issue notice informing the Company that the Company Petition would be placed before this Court on 27th June, 2012, when the Court shall proceed with the hearing pertaining to the admission of the Petition and pass appropriate orders. By the said order, it was also recorded that the Company may remain present on the adjourned date through its Officers or Advocate. The Section Officer of the Company Department has submitted a report dated 25th June, 2012 annexing a tracking report of the notice forwarded by the Office to the Company, along with a copy of the order passed by this Court dated 12th June, 2012, which shows that the said notice has been delivered to the company on 21st June, 2012.

7. By a detailed order dated 2nd August, 2012 passed by this Court,

the above Company Petition was admitted and directed to be advertised. Paragraph 7 of the order dated 02-08-2012 is relevant and reproduced hereunder :

“7. “From the aforesaid facts, it appears that an amount of Rs.41,14,715/- along with interest as claimed, is due and payable by the Company to the Petitioner. The Company has neither replied to the statutory notice, nor made any payment to the Petitioner after receipt of the same. The Company has failed to appear before this court despite having received the notice issued by the Registry of this Court pursuant to the direction of this Court dated 12th June, 2012. In view thereof, the submissions and contentions made/advanced in the above Company Petition have remained uncontroverted. I am therefore, satisfied that the Company is unable to pay its debt.....

8. Pursuant to the said order, the Company Petition has been advertised and an Affidavit proving publication dated 12-09-2012 is on record. Notice under Rule 28 of the Companies (Court) Rules, 1959, is returned with the remark “Company does not exist.” Since the said notice was sought to be served at the Registered Address of the Company as available with the Registrar of Companies, the service of notice under Rule 28 is implied, though the same is returned with the remark “Company does not exist”.

9. From the aforesaid facts, it is established that the amount as claimed by the Petitioner is due and payable by the Company to the Petitioner. The Company has failed to reply to the statutory notice or to make any payment after the receipt of the same. The Company has failed to appear before this Court at the stage of admission and also at this stage i.e. hearing and final disposal, to oppose the Company Petition. In view thereof, I am satisfied that the Company is unable to pay its debts, is commercially insolvent and deserves to be wound up. The Company Petition is therefore, allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

- (a) the Respondent Company M/s. Quantum E-Services Pvt. Ltd., a private Limited company its registered office at 3rd floor, Interface Building No.16, K. Raheja Complex, Off. New Link Road, Malad (W), Mumbai – 400 064, may kindly be wound up by and under the order and direction of this Hon'ble Court under the provisions of Companies Act, 1956;
- (b) that the Official Liquidator of this Hon'ble Court or such other fit and proper person may be appointed as Liquidator to manage the affairs and assets of the Respondent Company with all necessary powers under the provisions of Company Act, 1956;

10. The Official Liquidator shall forthwith act on a copy of this order without waiting for any Notification.

11. The Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)