SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 572 OF 2013

WITH

COMPANY APPLICATION NO. 236 OF 2014

AND

COMPANY APPLICATION NO. 214 OF 2016

Kotak Mahindra Bank Limited … Petitioner
Versus
Arch Pharma Labs Limited ...Respondent

WITH

COMPANY APPLICATION NO. 216 OF 2016

IN

COMPANY PETITION NO. 572 OF 2013

Sinox Air Products Private Limited … Applicant
Versus
Arch Pharma Labs Limited ...Respondent

Mr. Rohit Gupta, *with Mr. Nikhil Rajani & Ms. Pallavi G., i/b V. Deshpande & Co., for the Petitioner.*
Ms. Sneha Phene, *i/b Malvi Ranchhoddas & Co., for the Applicant in Company Application No. 216 of 2016.*
Mr. Subir Kumar, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 13th June 2016

PC:-

1. Today I have before me a group of 12 Petitions, all seeking winding up of Arch Pharma Labs Ltd. ("**the Respondent Company**"). These Petitions have been pending for a very long time. Some of them were filed in 2013. A list of the pending matters has been handed up to me today. I have taken this list on record and marked it "X" for identification. It contains a convenient summary of claims in each of these Petitions and the nature of the security, if any.

2. The total principal amount in all these 12 Petitions is Rs.288,27,00,100.07. This is only the principal. The interest claims are over and above this amount.

3. During the time that these Petitions have been pending, they have been adjourned on several occasions including by my own orders. They have then been listed before various benches taking up the matters. It seems that at some point there was in 2015 a proposed Corporate Debt Restructuring ("**CDR**") Scheme. There is an order of 17th November 2015, (S.C. Gupte, J.) that directs the Company and ICICI, the Monitoring Institution, to file an Affidavit setting out by 15th December 2015 the details of precise implementation of the CDR Scheme. That order also directed that the proposals for discharge of debts within a fixed time period be set out.

4. ICICI filed an Affidavit in compliance. This is dated 13th January 2016. It notes that the promoters were required to contribute Rs.84.63 crores towards the proposed restructuring. It also notes that the CDR package required the CDR Lenders to infuse additional working capital facilities of about Rs.400 crores to the Respondent, provided the Company created additional security in favour of those CDR Lenders. ICICI's Affidavit clearly notes that the Respondent had not been able to create this additional security to secure the additional infusion of funds. In that very Affidavit, ICICI expressed an apprehension that without this additional working capital, the entire CDR package stood imperilled.

5. There was then another order dated 23rd February 2016 (K.R. Shriram, J) directing ICICI to file an Affidavit indicating its assessment status of the CDR Scheme and the revival prospects of the Respondent. There followed another Affidavit from ICICI, this one dated 23rd February 2016. This Affidavit leaves no room for controversy. It says that ICICI as the Monitoring Institution convened a meeting of a Joint Lender's Forum ("**JLF**") of the Respondent on 29th February 2016. The JLF includes the lenders to the Respondent, including the CDR Lenders. The CDR package was discussed. Once again it was noted that despite several opportunities, the Company had not created the requisite additional security to secure the infusion of additional working capital funds to the extent of Rs.400 crores. Despite this, the viability and revival prospects of the Respondent company were once again discussed. Yet again the CDR Lenders found that despite sufficient time having passed, the Respondent had failed to comply with the CDR package conditions. The CDR Lenders therefore concluded that despite all their efforts, the possibility of reviving the Respondent was remote and that the CDR scheme had failed.

6. Paragraph 6 of this Affidavit also notes, and this is important in view of what is being said to me today, that the majority of the lenders had finally decided to assign their respective loans to an Asset Reconstruction Company. While discussions had taken place in earlier meetings on different available courses of action, the decision to sell or assign the CDR loans had till then not been finalised. At that time, i.e., in February 2016, the assignee of these loans had not been identified. The Monitoring Institution therefore concluded that the CDR scheme was not successful and that the possibility of reviving company was remote.

7. In the meantime, these Petitions appeared on board periodically and were adjourned. The record indicates that there are a very large number of orders noting this state of affairs. The last of these is 22nd April 2016 (S.C. Gupte, J). At this stage, it was noted that one J.M. Financial Asset Reconstruction Company, who claimed to be a transferee or assignee of debts from 17 lender banks, all creditors of the Respondent, sought an adjournment saying that the instructions had only been received recently. The Company Petitions were stood over to 26th April 2016 by consent, it being clearly noted that no further accommodation would be granted.

8. It seems that by April 2016, Company matters were then assigned to Mr. Justice Colabawalla. He was unable to hear them and ultimately the matters were listed before me on 7th June 2016 for directions. That day, I directed that they be listed today on the supplementary board.

9. Mr. Khandekar appears for J.M. Financial Asset Reconstruction Company. He confirms that his clients are indeed the assignees or transferees of debts from several lenders banks. He does not, however, appear to have any instructions to make a statement about there being any financial reconstruction or revival proposal of the Company under consideration. This is telling, for in Court today, I specifically asked Mr. Subir Kumar for the Company to take instructions as to what amount could be paid by the end of the day to each of these Petitioning Creditors only in order to show the Company's *bona fides* since an application was repeatedly made for an adjournment on the ground that the company was being attempted to be revived *inter alia* with the assistance of JM Financial. I did not specify any amount or any percentage of claim to be paid to the Petitioners. I left that to the Company.

10. At 2 p.m., I was told that the only instructions received from the Company were to say that no amount at all could be paid to any of these Petitioning Creditors.

11. Despite this, an application is made and made repeatedly for an adjournment. To what end and for what purpose I am wholly unable to understand. Mr. Kumar says that within a week the Company will consider a revival package after discussing a debt restructuring with JM Financial. He looks with more hope than conviction to his right. There sits Mr. Khandekar in silence, with no instructions to support what Mr. Kumar says. To say that Mr.

Kumar proposes too little too late is being overly generous. In fact, Mr. Kumar proposes absolutely nothing other than an adjournment. Those are his only instructions. What is beyond doubt is that the CDR Scheme has failed utterly. The various Affidavits on record including those that I referred to earlier show that this CDR collapse was at least partly, and possibly even principally, due to the Company's failure to create additional security required as a pre-condition for the infusion of further working capital. Many lenders have cut their losses and assigned their debts to JM Financial. That Asset Reconstruction Company does not today seem to be willing to commit to a thing. These applications for an adjournment are backed by absolutely nothing. There is not a single concrete proposal that is placed. All that I am told, and told repeatedly, is that the assignment of the debt has taken place "only recently". That is incorrect. That assignment to JM Financial, the Asset Reconstruction Company, was of 31st March 2016. Two and half months have passed. Nothing whatever has been done toward reviving this Company. Most telling is what transpired in Court today. Given the opportunity to make some payment to the Petitioning Creditors, and despite being put to no terms as to the amount of that payment, the Company's response was only that it could pay nothing at all. The application for adjournment must be refused, and it is.

12. It is in these circumstances that I propose to take up the first Petition for admission. An order of admission in any one Petition is sufficient for the entire group.

13. The claim in the present Petition is by Kotak Mahindra Bank. The amount said to be due is Rs. 42,67,85,662 as of 30th June 2013. Of this, there is a Bill Discounting facility, the claim under which is approximately Rs. 9 crores. The only defence taken in the Affidavit in Reply is that the Bill Discounting facility was afforded to the Company by Kotak without a request letter from the Company. That the bills have actually been discounted and that the Company enjoyed the funds is not in dispute. As to the question of the request letter, the Affidavit in Rejoinder at page 201 clearly shows a request for just such a facility. At page 199, there is in addition an acknowledgement of liability from the bank in respect of this very facility. The second defence is that the bank cannot maintain a proceeding before the Debt Recovery Tribunal and also before the Company Court. This is an unsustainable proposition *inter alia* in view of the decision of this Court in *Viral Filaments Limited v IndusInd Bank Limited*.[1] That decision is binding on me and, in any case, I am in most respectful agreement with it.

14. It is impossible to conclude that there is any defence, let alone a *bona fide* defence to this Petition. The Company is clearly unable to pay its debts. There are a very large number of claims that are still pending.

15. Hence, the following order:

(a) The company petition is admitted and made returnable on 26th July 2016;

---

1 2001 (3) ALL MR 737

(b) Service of the Petition under Rule 28 of the Companies (Court) Rules, 1959 shall be deemed to have been waived.

(c) The Petition shall be advertised in two local newspapers, namely, (i) Free Press Journal (in English), Navshakti (in Marathi) as also in the Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Company (Court) Rules, 1959.

(d) The Petitioner shall deposit Rs. 20,000/- toward publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, on or before 21st June 2016, failing which the Petition shall stand dismissed for non-prosecution without further reference to the Court. After the advertisements are issued, the balance, if any, shall be refunded to the Petitioners.

16. In the facts and circumstances of the case, the Official Liquidator is also appointed the Provisional Liquidator of the properties and assets of the Company. He will proceed to immediately take charge of those properties and assets. The Company, itself, its directors, agents and employees is also restrained from in any manner disposing of, alienating, parting with possession or transferring any of the assets of the Company, except in the ordinary and usual course of its business.

17. In view of this order, Company Application No. 236 of 2013 is infructuous and stands disposed of.

18. I have passed an order admitting the Petition itself. Company Application No. 216 of 2016 is an application by a Petitioning Creditor to be joined as a party to the Petition. The Company Application is made absolute with no order as to costs.

(G. S. PATEL, J.)