

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

COMPANY PETITION NO. 76 OF 2014
WITH
COMPANY APPLICATION (L) NO.63 OF 2016
IN
COMPANY PETITION NO.76 OF 2014

Delta Power Solutions (India) Pvt. Ltd. Petitioner

VERSUS

Microqual Techno Ltd. Respondent

.....

Mr. Siddarth Murarka for Applicant in CAL No.63/2016.

Mr. Darshan Mehta I/b M/s. Dhruv Liladhar & Co. for petitioner.

Mr. B. K.Rai I/b Hitesh Nagar for Respondent.

Mr. Balkrishna Choudhary, Director of the Company present.

.....

CORAM : K. R. SHRIRAM, J.
DATED : 2nd FEBRUARY, 2016.

P.C.

1. This petition was filed on the basis that the petitioner had sold and supplied to the company power plant, solar solution panel, solar inverter, etc. as covered under 10 invoices. The total amount payable under these 10 invoices was Rs.79,86,116.03/-. The company paid a sum of Rs.20 lakhs and the balance of Rs.59,86,116.03/- was outstanding. The company had also issued two cheques for Rs.55,47,842/- which were dishonoured.

2. The petitioner has commenced proceedings under section 138 of the Negotiable Instruments Act, 1881. As the company failed and neglected to pay the balance amount, the petitioner issued notice under section 433 and 434 of the Companies Act, 1956 through their advocate's letter dated 26th September, 2013. Though the company received the notice, the company neglected to pay the amount. The petitioner, therefore, filed this petition.

3. On 16th September, 2014, this Court was pleased to pass a consent order after hearing the advocates for the parties whereby the company agreed to pay an amount of Rs.60,00,000/- alongwith interest @ 6% p.a. on reducing balance to the petitioner in full and final settlement of the claim of the petitioner. The said amount of Rs.60,00,000/- plus interest was to be paid in equal monthly installments of Rs.4,00,000/- each within a period of 15 months. The first installment due was in the month of September, 2014 which was paid in court. The subsequent installments were to be paid on or before 10th day of each succeeding month. The last installment was to be paid in November, 2015. The order also provided that in the event of the respondent company committing any single default in payment of the installments, the company petition shall without reference to the court, revive, stand admitted, made returnable within six weeks from the date

of default and advertised in two local newspapers. The notice under Rule 28 of the Companies (Court) Rules, 1959 stood waived on behalf of the company.

4. As the company was unable to pay the installments due for the month of February, 2015 to July, 2015, this Court by an order dated 4th August, 2015, made the petition returnable for final hearing on 25th August, 2015. The returnable date was extended on 31st August, 2015 upto 15th September, 2015. It was also directed that it will be advertised in the newspapers and Maharashtra Government Gazettes in terms of the order dated 16th September, 2014. The petitioner has advertised in two newspapers, i.e., Free Press Journal (in English) and Navshakti (in Marathi) on 2nd September, 2015. It is also advertised in the Government Gazette on 10th September, 2015. Mr. Mehta appearing for the petitioner undertakes to file an affidavit to this effect on or before 3rd February, 2016.

5. The matter was thereafter listed on 13/01/2016 and 18/01/2016, when the parties stated that they were trying to settle the matter and will be filing consent terms on 25/01/2016. On 25th January, 2016 again time was granted upto 1st February, 2016 for filing revised consent terms. On that date, it was made clear that if the consent terms are not filed, the parties will have to go on with the matter on the next date.

6. On 1st February, 2016 the counsel for the company requested for some time to take instructions and therefore, the matter was stood over to today. Today, Mr.Balkrishna Choudhary, the Director of the Company is also present in Court and states that he is not in a position to make any payment. The Director of the Company further states that they have not filed the Annual Returns for the last four years.

7. Despite consent order passed on 16th September, 2014, the company has failed to pay the sum of Rs.60,00,000/- plus interest in equal monthly installment of Rs.4,00,000/- each. The company after payment of five installments has not paid the balance amount. Since February, 2015, amounts have not been paid.

8. Therefore, I am satisfied that the company is unable to pay its debts, is commercially insolvent and deserves to be wound up.

9. The petition is allowed in terms of Prayer Clauses (a) and (b) which have been reproduced hereunder :-

Prayer (a) : That Microqual Techno Limited be ordered to be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956.

Prayer (b) : That the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the said Company with all powers under the Companies Act, 1956.

10. The Official Liquidator shall forthwith act upon this order without waiting for any notification.

11. The company petition is accordingly disposed of.

(K. R. SHRIRAM, J.)