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

COMPANY PETITION NO.641 OF 2014

WIPRO Limited ….Petitioner

Vs.

Core Education and Technologies Limited ….Respondent

WITH

COMPANY PETITION NO.694 OF 2014

Barclays Bank PLC ….Petitioner

Vs.

Core Education and Technologies Limited ….Respondent

WITH

COMPANY PETITION NO.926 OF 2014

Credit Suisse Finance (India) Pvt. Limited ….Petitioner

Vs.

Core Education and Technologies Limited ….Respondent

Mr. Akshay B. Udeshi i/b. M/s. Sanjay Udeshi and Co. for petitioner in CP/641/2014.
Ms. Sonam Shethia i/b. Juris Corp for petitioner in CP/694/2014.
Mr. Vishnu Shriram i/b. Phoenix Legal for petitioner in CP/926/2014.
Mr. Rishabh Shah a/w. Ms. Shirin Shaikh i/b. Raval-Shah and Co. for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 30th OCTOBER, 2017

P.C.:

COMPANY PETITION NO.926 OF 2014

1 Petitioner seeks winding up of respondent company on the ground of its inability to pay its debts.

2 The debt in the present case is alleged to be of Rs.144 crores. This debt arises out of two loan facility agreements between the parties, under which petitioner granted loans of Rs.100 crores and Rs.30 crores,

respectively to respondent. The loan of Rs.30 crores from out of these facilities was, inter alia, secured by a guarantee agreement by the promoter entity-Wisdom Global Enterprises Limited. On the basis of a claim made by the same petitioner against the guarantor promoter entity, a winding up petition against that company has already been admitted by an order passed by this Court on 6th April, 2015 in Company Petition No.927 of 2014.

3 The defence raised in that petition at the instance of the guarantor and which is raised in the present petition at the instance of respondent, who is the principal borrower, are common. That defence is that the shares, which were pledged by respondent with petitioner, were not sold by petitioner at the relevant time but were sold much later and at a loss. This defence, which was raised in connection with the loan of Rs.30 crores, which was the subject matter of the corporate guarantee in Company Petition No.927 of 2014, is raised even in this petition and also in relation to the loan Rs.100 crores for which shares of the same company were pledged by respondent. Petitioner has already given credit of about Rs.3.06 crores in the loan of Rs.30 crores to respondent (as noted by this Court in the order dated 6th April, 2015 in Company Petition No.927 of 2014). Petitioner is similarly giving credit of a sum of Rs.16.74 crores from the sale of pledged shares in relation to the facility of Rs.100 crores. After

giving such credits, the total amount of Rs.144 crores is due and payable by respondent to petitioner.

4 Petition, therefore, was admitted on 13th October, 2015 with an observation that no bonafide defence to the petition has been raised.

5 Today, Mr. Shah, counsel for respondent states that petitioner allegedly ought to have sold the pledged shares of respondent company on 25th February, 2013, when the share price fell below 60% from Rs.292.80/- to Rs.198.70/- per share. The pledged shares were sold by petitioner on 26th February, 2014 when the share price was further reduced to Rs.16.25/- per share and therefore, petitioner is allegedly responsible for the so called loss of value of the security and hence respondent need not pay to petitioner the amounts as claimed.

6 Identical argument was raised in Company Petition No.927 of 2014 filed by petitioner against Wisdom Global Enterprises Limited, a group company of respondent company, who were the guarantors to the amounts advanced to respondent company. This Court while dealing with the said submissions, in its order dated 6th April, 2015 has observed that petitioner acted in the best interest of petitioner by selling the pledged shares in a responsible manner, at the prevailing market prices to encash its security and thereby maximize the recovery from the sale of the pledged

shares. The Court also further observed in other words, petitioner acted in a reasonable and prudent manner by selling the maximum number of shares that were practically possible on the Stock Exchange on a given trading day without adversely impacting the share price which had, in any event, already seen a rapid decline. No appeal was preferred against this finding of the Court. Therefore, the observation of the learned Single Judge in his order dated 6th April, 2015 that this defence of petitioner raised today and similarly raised in that petition cannot be accepted, is final. I must add that the pledged shares mentioned in the order dated 6th April, 2015 in Company Petition No.927 of 2014 are the same shares which are referred to in this petition. In the circumstances, I cannot accept the submissions of Mr. Shah, counsel for respondent.

7 The counsel for petitioner states that the admission of petition has been advertised in Free Press Journal on 29th October, 2015, in Navshakti on 29th October, 2015 and in Maharashtra Government Gazette on 29th October, 2015. The counsel for petitioner undertakes to file affidavit of having advertised notice within one week from today. Undertaking accepted.

8 Notice under Rule 28 of the Companies (Court) Rules, 1959 has already been waived by company. In the circumstances, I am satisfied that the company is unable to pay its debts, it 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 herein under :

> (a) That this Hon'ble Court may kindly be pleased to pass an order for :
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> (i) Winding-up of the Respondent Company, namely, CORE Education & Technologies Limited having its registered office at Block No.1-4, Building No.4, Sector III, Millennium Business Park, Mahape, Navi Mumbai - 400 710 India, under the Companies Act, 1956;
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> (ii) Appointment of an Official Liquidator, High Court, Bombay, be appointed as Liquidator of the said Respondent Company, CORE Education & Technologies Limited a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Block No.1-4, Building No.4, Sector III, Millennium Business Park, Mahape, Navi Mumbai - 400 710 India, with all powers under the Companies Act, 1956 to take custody and control of the properties and assets of the said Respondent Company and to undertake the liquidation process;
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> (b) That pending the hearing and final disposal of this petition, an Official Liquidator, High Court, Bombay, be appointed as Provisional Liquidator of the said Respondent Company, CORE Education & Technologies Limited a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Block No.1-4, Building No.4, Sector III, Millennium Business Park, Mahape, Navi Mumbai - 400 710 India, with all powers under the Companies Act, 1956 to take custody and control of the properties and assets of the said Respondent Company."

9 The Official Liquidator shall forthwith act on the authenticated copy of this order without awaiting for any Notification.

10 Petition accordingly stands disposed.

COMPANY PETITION NO.641 OF 2014
WITH
COMPANY PETITION NO.694 OF 2014

1 In view of the order passed above in Company Petition No.926 of 2014, these petitions also stand disposed.

2 Petitioners are at liberty to take appropriate steps in accordance with rules including filing affidavit of claim with the Official Liquidator, who shall consider the same and dispose the same in accordance with law.

(K.R. SHRIRAM, J.)