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

COMPANY PETITION NO.12 OF 2014

Mr. Tajdar Kamal Amrohi ….Petitioner

Vs.

Motherland Industries Limited ....Respondent

Mr. Harshad Ashok Sathe for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 11th DECEMBER, 2017

P.C.:

1 This petition is seeking winding up of respondent company on account of its inability to pay its debts. To save time, it will be useful to reproduce paragraphs 1 to 5 of the order dated 30th October, 2015, which read as under :

> *1] This petition seeks winding up of the respondent company on account of inability to pay its debts. The debt, on the basis of which the present petition is filed, is of Rs.90 lakhs, which is said to arise out of non-repayment of a friendly business loan given by the petitioner to the respondent. About receipt of this amount, there is no dispute between the parties. The amount has been paid by the petitioner to the respondent by two cheques of Rs.40 lakhs and Rs.50 lakhs respectively. The dispute raised by the respondent is that the amount was given towards allotment of shares by the respondent to the petitioner. It is, however, a matter of fact that the cheques were given as far back as in May and September 2012 and that, despite a passage of more than three years, till date no shares are allotted to the petitioner. There is not even a concrete proposal on record for allotment of any shares. On the other hand, the respondent has issued cheques of Rs.40 lakhs and Rs.50 lakhs purportedly towards refund of the debt of Rs.90 lakhs to the petitioner, which cheques have not been presented for payment. The disputes raised by the respondent have to be tested in the light of these hard facts, which do not admit of any controversy. (it is the petitioner's case that the cheques issued towards refund of the debt were, at the request of the respondent, not presented for payment, since there were no adequate funds to honour them. There is, however, some controversy between the parties concerning this aspect.)*

2] In its reply to the statutory notice dated 11th October 2013, the stand taken by the defendant is that the sum of Rs.90 lakhs was given by the petitioner to the respondent as share application money and that the amount has been reflecting as such in the books of accounts of the company. The respondent company being a public company cannot hold on to the share application money beyond a period of six months. Under the applicable provisions of law, the respondent would have to allot shares within the period of six months or refund the share application money with interest. Neither of this is done by the respondent. There is not even an explanation in the reply to the statutory notice for this circumstance.

3] On the other hand, in its reply to the petition the case now advanced is that the amount of Rs.90 lakhs, which is the foundation of the company petition, was brought in through one Girdharilal Sakseria (then a Director of the respondent) who had invested in the respondent company, through himself and other companies which were purportedly held and controlled by him for the respondent's business of exploration of oil in the basins of Tanzania and Somaliland; that Girdharilal had introduced the petitioner to the respondent as one such invester ; that the petitioner had expressed his interest in the project and offered to invest nearly Rs.20 crores in the respondent company; that having regard to the relationship between the respondent and Girdharilal, the investment of the petitioner towards purchase of shares was accepted by the respondent; and that it was abundantly made clear that the valuation of shares to be allotted, returns thereon etc. would all be dependent on the finding of oil in the basins of Tanzania and Somaliland, the exploration of which was the business the respondent was engaged in. The explanation for the two cheques (of Rs.40 lakhs and Rs.50 lakhs) issued by the respondent to the petitioner is that these cheques were issued surreptitiously, dishonestly and without authority by the respondent's director Girdharilal.

4] In its sur-rejoinder, the respondent has produced balance sheet as of 31st March 2013, which shows (in a trial balance produced along with it) Rs.90 lakhs paid by the petitioner as share application money. There is, however, nothing placed on record to show that there was at any time any compliance on the part of the respondent for any alleged issue of fresh shares. No special resolution for authorising the Board of Directors of the respondent to make a preferential allotment of shares is placed on record either.

5] On these facts, there is clearly a debt owned by the respondent to the petitioner. Whether the amount of Rs.90 lakhs was paid by the petitioner to the respondent as a friendly loan or towards share application money, the fact of the matter is that the respondent is bound to refund this amount to the petitioner. The respondent in fact issued cheques towards refund of this debt to the petitioner. it is not possible to accept the contention of the respondent that the cheques were issued surreptitiously or without authority. The cheques are signed by an authorised signatory of the respondent. There is no denial of this *fact. What is claimed is that Girdharilal Seksaria, who was at the relevant time, the director of the respondent, appears to have issued these cheques in abuse of his powers and to favour the petitioner. A public company, such as the petitioner, cannot possibly claim this as a bonafide defence. It appears to be clearly nominal and moonshine.*

5] The respondent clearly owes a debt to the petitioner and it is not possible to accept any of its defences as a bonafide defence.

2 While the petition was considered for admission and the order of admission was passed, respondent were heard at length and affidavits in reply and even sur-rejionder was considered by the Court and the Court came to a conclusion that respondent clearly owes a debt to petitioner and it is not possible to accept any of its defences as a bonafide defence.

3 Respondent company had filed an appeal being appeal no.262 of 2016 challenging the order of admission. The Appeal Court dismissed the appeal. The Appeal Court while dismissing the appeal also considered the defences raised by respondent company and concurred with the findings of the learned Single Jude while admitting the petition.

4 Thereafter, no further affidavit has been filed by respondent company and petition was advertised. Respondent company is not even represented in Court today. There is an affidavit of service of one Pramod R. Khade affirmed on 31st October, 2017 confirming publication in Navshakti (in Marathi), Free Press Journal (in English) and Maharashtra Government Gazette. Notice under Rule 28 of the Companies (Court) Rules, 1959 was dispensed with at the time of admission.

5 In view of the above, I am satisfied that respondent company is unable to pay its debts, is commercially insolvent and deserves to be wound up. Therefore, company petition is allowed in terms of prayer clauses – (a) and (b), which read as under :

> (a) that the Respondent Company, i.e., Motherland Industries Limited be ordered to be wound up by an order of this Hon'ble Court;
>
> (b) that the Official Liquidator, High Court, Bombay be appointed as Liquidator of the Respondent Company with all powers under the Companies Act, 1956 including the power to take possession of all the assets, books of account, stock in trade, cash on hand, moveable properties including future and fixtures as well as all immoveable properties.

6 Official Liquidator shall forthwith act on an authenticated copy of this order without waiting for any notification.

7 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)