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

COMPANY PETITION NO. 83 OF 2014

Alekm Laboratories Ltd. .. Petitioner
Vs.
Karmic Labs Pvt. Ltd. .. Respondent

Ms. Kathleen Lobo a/w. Mr. Vaisakh Shaji i/b Khaitan and Co. for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 6TH NOVEMBER 2017

P.C.

1 Petitioner has filed this petition for winding up of company Karmic Labs Private Limited (The Company) on the ground that the company is unable to pay its debts and commercially insolvent.

2 Petitioner intended to carry out a study for the purposes of assessing the safety and efficacy of certain doses of the molecule, Eprotirome in patients with Hypercholesterolemia at clinical sites. Respondent approached petitioner with a proposal and budget to participate in the study and assist petitioner to carry out the same on behalf of petitioner. Parties entered into a clinical Trial Services Agreement on 28th September 2011 wherein petitioner

engaged respondent on a non-exclusive basis for managing the end to end Clinical Trial Monitoring, Data Management Services etc. Petitioner, in accordance with the agreement remitted a sum of Rs.3,46,53,150.16 to respondent. Petitioner, as provided in the agreement, terminated the agreement whereupon an amount of Rs.3,46,53,150.16 was to be returned by respondent to petitioner.

Respondent paid a sum of Rs.32,67,342/- on 27th July 2012 and a further sum of Rs.32,67,342/- on 12th October 2012 (total amount paid by October 2012 is Rs.65,34,684/-) leaving a balance of Rs.2,81,18,466/-. As no payment was forthcoming, petitioner caused a notice to be issued under Section 433(e) of the Companies Act, 1956 calling upon respondent to pay Rs.2,81,18,466/- along with interest at the rate of 18% per annum on the principal amount.

3 Respondent in its reply dated 18th November 2013 to the notice admitted to repay a sum of Rs.99,61,873/- only. Respondent, after raising various points in their reply to the statutory notice, offered to pay a sum of Rs.32,67,342/- towards full and final settlement.

4 On 9th December 2015, when the petition was taken up for admission, after the matter was heard for some time, counsel for respondent, in fairness,

agreed that a sum of Rs.34,65,316/- was payable to petitioner. Counsel for petitioner stated that if this amount is paid, they will not press for any other amount as alleged in the petition. On 23rd December 2015, the following order, by consent, came to be passed :

> *(1) Parties have, further to the order dated 9.12.2015, amicably settled the matter whereby the respondent agrees and undertakes to pay sum of RS.35 lakhs in full and final settlement of all the claims of the petitioner which is a subject matter of this petition. The respondent has agreed to sum of Rs.35 lakhs in 3 installments as under :-*
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> *(i) Rs.5 lakhs on or before 15.1.2016*
> *(ii) Rs.15 lakhs on or before 25.2.2016*
> *(ii) Rs.15 lakhs on or before 25.3.2016.*
>
> *(2) If the respondent commits any default, the petition will stand admitted and advertised without further reference to the court.*
>
> *(3) The petitioner is agreeable to the installments agreed.*
> *(4) Accordingly, the petition stands disposed.*
> *(5) The petitioner shall withdraw the suit bearing no.503 of 2015 upon receipt of the entire amount of Rs.35 lakhs provided there is no default.*

5 As only the first installment of Rs. 5 lakhs was paid and the balance Rs.30 lakhs was not paid, on 15th March 2016, the following order came to be passed :

> 1. *By an order dated 23rd December 2015, it was recorded that parties had settled their disputes. The Respondent had agreed to pay Rs.35 lakhs in three installments. The first installment of Rs.5 lakhs was paid on 15th January 2016. The Respondent defaulted in payment of the second installment of Rs.15 lakhs, due on 25th February 2016.*
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> 2. *Clause 2 of the order of 23rd December 2015 says that in the event of any default, the Petition is to stand admitted and advertised without further reference to the Court. This needs certain further directions.*

3. Hence the following order :

(a) The company petition stands admitted as on 26th February 2016 and is made returnable on 2nd May 2016.
(b) Service of the petitions 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, viz., (i) Free Press Journal (in English); and (ii) 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 28th March 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.

6 Petitioner has filed an affidavit of one Nilesh Chavan affirmed on 29th April 2016 confirming publication in two local newspapers, i.e., Free Press Journal (in English) and Navshakti (in Marathi). Petitioner has filed a further affidavit of Mr.Nilesh Chavan affirmed on 10th June 2017 confirming publication of admission of petition in Maharashtra Government Gazette. Service of the petition under Rule 28 of the Companies (Court) Rules, 1959 was waived as recorded in the order dated 15th March 2016. However, even at this stage, none appeared for the Company to oppose the Company Petition.

7 In view above, 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) that the Company namely, KARMIC LABS PVT. LIMITED, having its registered office at Karmic Labs Pvt. Ltd., 1105, Zara Nahar Amrit Shakti, Chandivali, Powai, Mumbai 400 072, be ordered to be wound up by and under the order and directions and supervision and control of this Hon'ble Court under the provisions of the Companies Act, 1956;*
> *(b) that the Official Liquidator, High Court, Bombay, or some other fit and proper person be appointed as the Liquidator of all the business, assets, properties, income and books of accounts of the company with all the powers under the provisions of the Companies Act, 1956."*

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

9 The Company Petition is accordingly disposed of.

(K.R. SHRIRAM, J.)