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

COMPANY PETITION NO.540 OF 2000

Sicom Ltd.)….Petitioner
V/s.
Hitechi Jewellary Industries. Ltd.)....Respondent

WITH

COMPANY PETITION NO.258 OF 2002

M/s.Chokshi Arvind Jewellers)….Petitioner
V/s.
Hitechi Jewellary Industries. Ltd.)....Respondent

Ms.Shyama Parkar i/by M/s.M.P.Rege and Co. for petitioner in CP No.540 of 2000.
None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 7.6.2018

P.C.:-

COMPANY PETITION NO.540 OF 2000

1 The petition is filed for winding up of the respondent company-Hitechi Jewellary Industries. Ltd. on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 6.4.2018, the following order came to be passed :-

"1. Ms.Parkar appearing for petitioners in Company Petition No.540 of 2000, states that the order of winding up of the company passed on 20.8.2009 has been recalled by an order dated 27.7.2010 since BIFR/AAIFR proceeding filed by the company was pending. Subsequently, the petition has been listed on quite a few occasions and adjourned sine-die.

2 As noted in the order dated 14.3.2018, there is nothing on record to indicate that the company has filed any Reference before the NCLT because BIFR/AAIFR proceeding would have stood abated on 31.5.2017. Section 4(b) of amended Sick Industrial Companies (Special Provisions) Repeal Act, 2003 provided that on such date as may be notified by the Central Government, any appeal preferred to AAIFR or any reference made or inquiry pending to or before BIFR shall stand abated provided that a company in respect of which such appeal or reference or inquiry that stands abated may make reference to the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) within 180 days from the commencement of the IBC in accordance with the provisions of the IBC. The notified date is 1st December, 2016 and 180 days would have expired on or about 31st May, 2017.

3 The petition was originally admitted by an order dated 23.11.2000. Paragraph nos.4, 5, 6 & 7 of the said order read as under :-

> *"4. This petition has been filed by Petitioner-SICOM Ltd. to wind up the Respondent-company as, according to the petitioners, a sum of Rs.62,37,254.00 is the amount due and payable by the Respondents to the petitioners towards the short term loan facility of Rs.1.00 Crore extended by the Petitioners to the Respondents.*
>
> *5. So far as the Respondents are concerned, it is contended on their behalf that the petitioners are holding the shares and that the petitioners have filed petition for enforcement*

of bank guarantee against the State Bank of India to which Respondents herein are party. However, the fact remains that so far as the petitioners herein are concerned, though they have issued five cheques for Rs.20.00 lacs in favour of the petitioners, only two were honoured and the remaining could not be deposited by the petitioners as the Respondents by their letter dated 13th April, 1999 requested the petitioners not to deposit the remaining cheques.

6. Therefore, from the facts of this case, it is apparent that the conduct of the Respondents has not at all been fair and bonafide. Though liability has been admitted, the Respondents are not in a position to repay the same and the defence taken is absolutely dishonest.

7. Hence, petition admitted. Returnable on 2nd March, 2001. Usual order as to publication. Petitioners to deposit Rs.2000 towards publication charges with the Prothonotary and Senior Master within 3 weeks. This order will become operative after two weeks so that if the Respondents have a serious desire to settle with the petitioners, the same can be offered to the petitioners."

4 On 20.8.2009 this Court was pleased to pass the following order :-

"1. This Company Petition for winding up of the respondent company has come up for final hearing.

2. The petition was admitted by an order of this Court dated 23rd November, 2000 after the Court came to the conclusion from the facts of the case that the conduct of the respondent was not at all fair and bonafide and though the liability was admitted the

> *respondents were not in a position to repay the same and the defence taken was absolutely dishonest. After admission of the above Company Petition, the same was advertised on 16th March, 2002 in Free Press Journal on 6th March, 2002 in Dainik Navshakti and on 14th March, 2002 in the official gazette. No affidavit is filed by the company till date nor has the company come forward to oppose the passing of any final orders in the company petition.*
>
> *3. Under the circumstances to avoid repetition for the same reasons on which the company petition was admitted as set out in the order dated 23rd November, 2000, the company petition is made absolute in terms of prayer clauses (a) and (b). The petition is accordingly disposed of."*

5 Ms.Parkar states that so far as notice under Rule 28 is concerned, there is an affidavit of one Vishwas S.Shinde affirmed on 15.11.2010 confirming service of notice under Rule 28. I have perused the said affidavit and it appears that packet has been returned with the endorsement "Intimation Posted/Not claimed return to sender". Ms.Parkar is unable to state whether notice was sent on the registered address of the company even on that date. Ms.Parkar states within one week from today, petitioners will request the Company Registrar to issue fresh notice and also provide the current address as per the MCA website.

Notice made returnable on 3.5.2018."

3 There is a report dated 5.5.2018 filed by the company department stating that the notice sent to the company under Rule 28 has come back undelivered with the endorsement "not claimed, return

to sender”. Ms.Parkar tenders an extract of the company master data maintained by the ministry of corporate affairs which Ms.Parkar states is taken on 11.4.2018 in which registered address shown is the same to which notice under Rule 28 has been dispatched by the registry. I would therefore, proceed on the basis that Rule under 28 has been effectively served upon the company. Copy of the extract is taken on record and marked `X' for identification.

4 There is also an affidavit of one S.M.Hattarkar affirmed on 24.7.2009 confirming advertising the petition in `Free Press Journal' and `Navshakti' on 6.3.2002 and in the Maharashtra Govt. Gazette on 24.3.2002 at serial no.639.

5 In fact, even in the reply to the statutory notice, the company has admitted the liability and sought time to make the payment. Despite which, no payment has been made.

6 In the circumstances, I am satisfied that the company is unable to pay its debts, commercially insolvent and requires to be wound up.

7 The petition is therefore, allowed in terms of prayer clauses-(a) and (b) which read as under :-

> *"(a) that Hitechi Jewellery Industries Ltd. be ordered to be wound up under the provisions of Section 434 of Companies Act, 1956 ;*
>
> *(b) that official Liquidator, High Court, Bombay be appointed as Liquidator of all assets and affairs of the Company with all powers under Companies Act, 1956."*

8 The advocate for petitioner shall furnish within 2 weeks, a copy of this order, duly authenticated by the Associate of this court to the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

9 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to any deductions if any.

10 Petition disposed accordingly.

<u>COMPANY PETITION NO.258 OF 2002</u>

1. In view of the order passed above, this petition stands disposed with liberty to petitioner to lodge their proof of debt with the Official Liquidator, who shall consider the same in accordance

with law.

2 If the order dated 7.6.2018 in Company Petition No.540 of 2000 winding up respondent company-Hitechi Jewellery Industries Ltd. is recalled or set aside in appeal, liberty is given to petitioner to revive their petition and move once again for necessary orders including winding up of respondent company.

(K.R.SHRIRAMJ)

KJ