

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

COMPANY PETITION NO.863 OF 2015

Beumer Technology India Pvt. Ltd.)...Petitioner
V/s.

ABG Cements Ltd.)....Respondent

WITH

COMPANY PETITION NO.745 OF 2015

COMPANY PETITION NO.229 OF 2015

CONTEMPT PETITION (L) NO.4 OF 2017

CONTEMPT PETITION NO.7 OF 2018

WITH

COMPANY PETITION NO.454 OF 2016

WITH

COMPANY PETITION NO.297 OF 2016

Mr.Deepan Dixit I/by Apporv Singh for petitioner in CP No.454/2016.

Mr.Tarun Sharma I/by Nilesh Patil for petitioner in CP No.229/2015 and CNPCPL No.4/2017.

Mr.Sagar V.Divekar a/w Abhimanyu Mhapankar for petitioner in CP No.745/2015 and CNPCP 7/2018.

Mr.Umesh Gulati I/by S.J.Singh for petitioner in CP No.863/2015 and CNPCPL No.14/2018.

Mr.Mohan Salian I/by MGS Legal for petitioner in CP No.297/2016.

Mr.Rohit Gupta I/by M/s.S.K.Legal Associates LLP for respondent company.

CORAM : K.R.SHRIRAM,J

DATE : 23.8.2018

P.C.:-

1. There are 5 petitions listed today and in each of the petitions respondent-company had entered into consent terms and had given undertakings to honour the consent terms and has committed

breach of the undertakings. In some petitions, on 2 or 3 occasions, fresh consent terms have been entered into, fresh undertakings have been given and those undertakings are again breached.

2 Petitioner in Company Petition No.863 of 2015 has also filed Contempt Petition being Contempt Petition (L) No.14 of 2018.

COMPANY PETITION NO.863 OF 2015

3 Mr.Gulati for petitioner in Company Petition No.863 of 2015 states that the company had entered into, with the petitioner, revised consent terms dated 8.2.2018 under which the company undertook to pay a total principal amount of Rs.2,31,36,208/-. The company paid sum of Rs.50 lakhs out of this and the balance Rs.1,81,36,208/- was to be paid in 4 equal monthly installments.

4 Mr.Gulati states that the company defaulted in the first installment itself that was due on or before 30.4.2018 and made that payment on 15.5.2018. Mr.Gulati states that thereafter no installments have been paid and also brings to the notice of this court that the company had agreed that the consent terms be taken as an undertaking to this court. Clause-5 of the consent terms also provides that in case there was any default for payment of installment for any

reason whatsoever, the company petition shall be allowed in terms of prayer clauses-(a) and (b).

5 On 19.7.2018 the following order came to be passed :-

“1 Shri Thakker tenders and affidavit of Vijay Prakash Sharma, Managing Director and C.E.O. of respondent company affirmed on 18th July 2018 in which paragraphs 8 and 9 read as under :

“8 The Respondent Company was making substantial efforts to reduce its existing liability by reduction of debt due and payable. The Respondent Company approached its Bankers from time to time, to agree to settlement for reduction of the liability. The Bankers in its meeting held on 12th July, 2018 have now finally agreed to settle the dues of Rs.3535.39 crores of the Respondent Company at an aggregated amount of Rs.2834 crores as one time settlement. The Respondent was informed during the meeting that the proposal is accepted by all the bankers. The bankers have given time till 30th September 2018 to make payment of OTS amount.

9. I say and submit that in view of the recent development, the Respondent will be in position to reduce its liability and interest burden accordingly. The Respondent is in advanced talks with various banks and private equity funds to fund the entire one time settlement as well as for capital expenditure/working capital for unning the plant which can be utilized for repayment of dues of vendors, like the Petitioners. I say within three weeks from today, we will have in principle approval from Private Bank/investor for discharging OTS amount and providing further finance to discharge other creditors.”

Certain portions in paragraphs 8 and 9 are handwritten and these were written in the Court in presence of the Court and on instructions of the affiant. In paragraph 8, addition was made by Shri Rohit Gupta on instructions from Shri Sharma and the addition to paragraph 9 was made by Shri Sharma himself. Shri Toshnival, Director of the company and Shri Khan, company secretary of the company, both confirmed what is stated in the affidavit.

3 In view of the averments in the affidavit, stand over to 23rd August 2018. It is made clear that no further time will be granted to the company on this ground or any other ground whatsoever.

4 Shri Thakker states that though this affidavit is filed in Company Petition No.745 of 2015, it would apply equally in all the petitions.”

6 Mr.Gupta today tenders a letter dated 19.7.2018 from Punjab National Bank containing revised minutes of Top Executive of members bank held on 10.7.2018. As per the minutes, Mr.Rishi Agarwal the promoter of the respondent company [who has been disqualified from being a director in any company] had attended this meeting along with other executives of the company and Mr.Agarwal on behalf of the company agreed to pay 85% of the dues outstanding with the bank. From the affidavit of Vijay Prakash Sharma affirmed on 18.7.2018 on behalf of the company, it appears that the outstanding are approximately in the region of Rs.3535 crores. Mr.Gupta tendered copy of a letter dated 1.8.2018 addressed to respondent company by

YES Bank Limited. Even YES Bank has not committed to finance the company's payment towards financial creditors, capital expenditure and working capitals. YES Bank has also laid out certain conditions including the fact that they will not fund so long as existing promoters are in control. That itself shows lack of trust on the promoters in the bank and commercial insolvency of the company. There are other petitions also in which the company had committed default as noted above.

7 In the affidavit of Vijay Prakash Sharma affirmed on 18.7.2018, Vijay Prakash Sharma who is the managing director and CEO of the company has averred that within 3 weeks the company will have in principal approval from private bank or investors for discharging OTS amounts. Three weeks period came to an end on 9.8.2018. Two weeks have passed since and even today there is no hope of any one coming forward to fund the company.

8 In the circumstances, I am satisfied that the company is unable to discharge its debts and is commercially insolvent.

9 On record is the affidavit of one Ravi Shankar Assistant Manager, Legal of petitioner in Company Petition No.863 of 2015

confirming advertising the petition in 'Free Press Journal' and 'Navshakti' on 25.7.2017 and 29.7.2017, respectively and in the Maharashtra Government Gazette for the period 3 to 9th August 2017 at serial No.M-17132. Notice under Rule 28 has been waived.

10 In the circumstances, the petition no.863 of 2015 is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that the Company (ABG Cement Limited), be wound up by and under the supervision, direction and orders of this Hon'ble Court in accordance with the provisions of the Companies Act, 1956 ;

(b) that the Official Liquidator be appointed Liquidator of the Respondent Company, with all necessary powers under the provisions of the Companies Act, 1956, to take charge of the affairs, assets and business of the Company and/or to conduct its affairs in the course of winding up.”

11 Official Liquidator, within two weeks, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

12 Upon receipt of the authenticated copy from petitioner's advocate, Official Liquidator shall forthwith cause notice to all

concerned Directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All Directors of respondent company, now in liquidation, are hereby directed to file their respective statement of affairs as required under Section 454 of the Companies Act 1956, failing which Official Liquidator shall proceed further and lodge criminal complaint against the erring Directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

Company Petition accordingly stands disposed.

13 While dictating this order, Mr.Gupta stated that outstanding of all the creditors is only in the region of Rs.12 crores, of which according to Mr.Gupta Rs.5 crores payable to petitioner in Company Petition No.229 of 2015, is disputed.

14 Mr.Gupta tenders photo copy of a letter dated 2.7.2018 from one Roseburg Inc., Mauritius to Punjab National Bank and the background of Roseburg INC, Mauritius from Mr.Deepak Yadav, General Manager- representative of Rose burg who is present in court. The same are taken on record and marked 'X' (colly). All the petitioners are at liberty to make photo copy of this from the court records. Mr.Gupta relying on instructions from Mr.Deepak Yadav-

General Manager of Rose burg Inc. and relying on these two documents which are marked 'X' (colly), states that the company is now owned 51% by Rose burg INC and Rose burg INC will settle all the claims of petitioner. Therefore, as last opportunity, 2 weeks time is granted to the company either by itself or through Rose burg or any other party to settle all the outstanding claims of the petitioners who are before the court today. If all the payments are made on or before 7.9.2018, petitions be listed on 10.9.2018 for directions. If not paid, and the Official Liquidator does not receive confirmation from all the petitioners or proof of payment from the company, Liquidator shall start taking further steps under the provisions of Companies Act.

COMPANY PETITION NO.745 OF 2015
COMPANY PETITION NO.229 OF 2015
COMPANY PETITION NO.454 OF 2016
COMPANY PETITION NO.297 OF 2016

1 In view of the order passed in Company Petition No.863 of 2015, all these petitions stand disposed with liberty to file affidavit of proof of debt with Official Liquidator who shall consider the same in accordance with law. In case the order passed today in Company Petition No.863 of 2015 is recalled or set aside in appeal, liberty to petitioners granted to approach this court for reviving their petitions and apply for further orders including winding up of the company.

CONTEMPT PETITION (L) No.4 of 2017
CONTEMPT PETITION No.7 of 2018
CONTEMPT PETITION (L) No.14 of 2018 (Not on board)

- 1 Prima facie case for contempt made out.
- 2 Admit.
- 3 Show Cause Notice returnable on 5.10.2018 be issued to the company as well as the ex-directors of the company and to Mr.Rishi Agarwal as to why each one of them be not held guilty of contempt of court.
- 4 Liberty to petitioners to amend the petition to add Mr.Rishi Agarwal as respondent. Amendment to be carried out within one week from today.

Jahagirdar
Kiran
Ganesh

Digitally
signed by
Jahagirdar
Kiran
Ganesh
Date:
2018.08.27
18:39:03
+0530

(K.R.SHRIRAM,J)