

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

COMPANY PETITION NO.408 OF 2015

Rakesh Satyaprakash Kapoor)...Petitioner
V/s.

Cosmos Fibre 2 Fashion Pvt. Ltd. & Anr.)....Respondents

Mr.Raj Patel a/w Ms.Amruta Sawant I/by Sonal Doshi & Co. for petitioner.

Mr.Jagdish Khanna, respondent no.2 appeared in person.

Ms.J.Pandey a/w Mr.C.M.Lokesh I/by A.R.Bhole and Co. for respondent no.3.

CORAM : K.R.SHRIRAM,J

DATE : 3.9.2018

P.C.:-

1. The petition is filed for winding up of the respondent company-Cosmos Fibre 2 Fashion Pvt. Ltd., on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 29.1.2018 at the time of admission, the following order came to be passed :-

“1. Respondent no.2 is present in court. Mr.Surve for respondent no.2 on instructions states that petition be admitted and advertised. He is also agreeable for appointment of the Official Liquidator as provisional liquidator of respondent no.1-company.

2. In the circumstances and having considered the order dated 17.6.2011 passed by this court in Company Petition No.406 of 2010 read with order dated 18.7.2012 and

statement made by counsel for petitioner and counsel for respondent no.2 that the consent terms dated 17.7.2012 has not been complied with, the petition stands admitted.

3. The following order is passed”

3 Subsequent thereto, there is no affidavit filed by respondent no.2 as to why the company should not be wound up.

4 On record is the affidavit of one Avinash Waralkar affirmed on 27.8.2018 advertising the petition in 'Free Press Journal' and 'Navshakti' and also in the Maharashtra Government Gazette. The Gazette Notification for the period 23-29 August 2018 at serial No.M-18149 is taken on record and marked 'X' for identification.

5 Heard the parties and seen the conduct of respondent no.2. I have to also note that none of the requirements in the consent terms dated 17.7.2012 which is taken on record on 18.7.2012 in Company Petition No.406 of 2012 has been complied. Therefore, there is no way this company can continue in business. There is absolute dead lock. Therefore, it will be in the fitness of things to wind up the respondent no.1-company.

6 In the circumstances, petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

“(a) that the Respondent No.1 company may be wound up by and under the directions of this Hon'ble Court under the provisions of Section 433(b), (c) and (f) of the Companies Act, 1956 ;

(b) the Official Liquidator be appointed as a liquidator of the company to take charge of the said property of the Respondent No.1 Company being Plot No.N-69 situate at Tarapur Industrial Area of the MIDC within the limits of village Pamtembhi, Taluka and Registration and Sub-district Palghar and Registration District Thane, admeasuring 1800 square meters or thereabouts together with the building and structures standing thereon and more particularly described in “Exhibit-J” hereto as also of other assets and books of accounts of the Respondent No.1 Company under the provisions of the Companies Act, 1956”

7 Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the Official Liquidator who shall take immediate steps without waiting for any notification. The counsel for petitioner also to forward a copy of this order to the National Company Law Tribunal, Mumbai for information.

8 Upon receipt of the authenticated copy from petitioner's advocate, the 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 statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the 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.

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

10 Petition disposed accordingly.

Jahagirdar
Kiran
Ganesh

Digitally
signed by
Jahagirdar
Kiran Ganesh
Date:
2018.09.05
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(K.R.SHRIRAM,J)