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

COMPANY PETITION NO.828 OF 2003

SICOM Limited ….Petitioner
Vs.
Fabrigem Creations Pvt. Ltd. ….Respondent

WITH

COMPANY PETITION NO.829 OF 2003

SICOM Limited ….Petitioner
Vs.
Beautiful Diamonds Limited ….Respondent

Mr. Prakash Panjabi i/b. Prakash Panjabi and Co. for petitioner in both petitions.
Mr. T.N. Tripathi for respondent in both petitions.

CORAM : K.R.SHRIRAM, J.
DATE : 8th JUNE, 2018

P.C.:

COMPANY PETITION NO.828 OF 2003

1 This petition is for winding up of respondent company - Fabrigem Creations Pvt. Ltd. (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 18th February 2005 while admitting the petition, the Court was pleased to pass the following order :

> *1. The present petition is filed by the petitioner who is financial Institution against the respondent company for the recovery of a sum of Rs. 10,14,45,820/-. The said amount is sought to be recovered with interest in respect of the Corporate Loan lent and advanced by the petitioner to the respondent company. In so far as the receipt of the loan and the liability to repay the same is concerned, there are no serious disputes. However, the learned counsel for the respondent has contended that the present petition should be dismissed since the petitioner has suppressed the fact that they have already filed suit*

prior to filing of the present petition. According to him, the petition is not maintainable once Civil remedy is adopted by the petitioner herein. I do not find any substance in the aforesaid contention. It is already well settled that the petitioner can move both the Company Petition as well as suit and adopt both the remedies simultaneously. It is also equally well settled that the company proceedings are not for the recovery of the debt but for winding up of the company whereas the Civil suit is action in personem for the recovery of the amount due and payable. In view of the aforesaid proposition in law, I do not find any merit in the said contention and I reject the same accordingly.

2. The next submission advanced by the learned counsel for the respondent is that there are various securities in favour of the petitioner securing the said loan amount lent and advanced. It is further contended that till and until the said securities are realised and amount due and payable is crystalised, petitioner is not entitled to file and maintain the petition. Therefore, the said petition should be rejected. On the other hand the learned advocate for respondent has relied upon the Judgment of this Court in the case of Canfin Homes V/s Lloyds Steel Industries, 2001(4) Bom.C.R. 84 and has contended that at the stage of admission of the petition, Court is not required to go into whether there is securities in respect of the claim and that the petition should not be entertained till securities are realised. In view of the aforesaid Judgment of this Court, I also do not find any merit in the second contention advanced by the learned counsel for the respondent.

3. The third and the last contention of the the learned counsel for the respondent is that the petitioner has suppressed the material fact that there are various securities in their favour in respect of the claim in the present petition and therefore, petition should be dismissed on the ground of suppression of material fact. I do not find any serious suppression of material facts calling dismissal of the present petition. The present petition is not for enforcement of the securities. Therefore, non-disclosure of the securities would not tantamount to material suppression of the facts in the present case.

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3 Thereafter, the petition did not progress further since the company has filed a reference to BIFR. Those proceedings have abated.

4 On 12th April 2018 the following order came to be passed :

1. The petition was admitted and thereafter advertised. Mr. Tripathi, counsel for respondent company states that the company subsequently filed a reference to BIFR because of which the petition was stayed and was adjourned from time to time. Mr. Tripathi also states that

> *initially BIFR rejected the reference against which the company went to AAIFR and AAIFR remanded the matter back to BIFR. Mr. Tripathi states that after the abatement of the reference before BIFR pursuant to Section 4(b) of the amended Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the company has not preferred any application to NCLT within the 180 days provided.*
>
> *2. In view of this statement made by Mr. Tripathi, effectively there is no impediment in the petition being heard further. From the order sheets, it appears that petitioner has not been appearing at all. Even on 14th March, 2018 none appeared for petitioner. Even today nobody is present for petitioner.*
>
> *3. Therefore, petition stands dismissed.*
>
> *4. Since the petition has been advertised, the company is directed to advertise, in Free Press Journal and Navshakti, both Mumbai edition, the dismissal of this petition. The notice/advertisement has to be given as per the format prescribed by the Company Registrar on or before 21st April, 2018.*
>
> *5. Stand over to 27th April, 2018 for compliance/directions.*

5 Today, Mr. Tripathi, counsel for respondent states that there is no improvement since the order of admission was passed and infact even an appeal challenging the order of admission was dismissed. Therefore, Mr. Tripathi also agrees that the company has no chance of escaping being wound up.

6 On record is an affidavit of one Kalpana Harshan Peringayil affirmed on 18th August 2010 confirming advertising the petition in Free Press Journal and Navshakti on 7th April 2005 and also in the Maharashtra Government Gazette dated 21st April 2005. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived at the time of admission.

7 I have considered the petition, the documents annexed thereto and also heard Mr. Panjabi, counsel for petitioner. I am also satisfied that the

company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

> *(a) that the company Fabrigem Creations Pvt. Ltd. having its registered office at 101-103, Mittal Court, A Wing, 10th Floor, Nariman Point, Mumbai – 400 021 be wound up under the provisions of the Companies Act, 1956;*
>
> *(b) that the Official Liquidator be appointed as Liquidator of the company to take charge of the assets, books of account and properties of the company with all powers under the provisions of the Companies Act, 1956.*

9 Official Liquidator to take further 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.

10 Company petition accordingly stands disposed.

COMPANY PETITION NO.829 OF 2003

Company petition to be listed on 14th June 2018.

(K.R. SHRIRAM, J.)