

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

COMPANY PETITION NO.593 OF 2015

Nina Concrete Systems Pvt. Ltd.Petitioner

Vs.

Orbit Corporation LimitedRespondent

Mr. Sahil Mahajan for petitioner.

Ms. Veenu Chunilal Khatri for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 12th APRIL, 2018

P.C.:

1 This petition is for winding up of respondent company - Orbit Corporation Limited (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 The petition was admitted on 19th January, 2018 at which time the following order was passed :

1. Mr. Mahajan appearing for petitioner states that further to the consent terms dated 8th February 2017, respondent company-Orbit Corporation Ltd. has paid only 2 installments and despite reminders, has failed and neglected to pay. Mr. Kapadia, for respondent, on instructions, states that as per the consent terms, it is an automatic admission if it commits any two defaults and it has. Therefore, petition stands admitted, returnable on 5th April 2018. Respondent waives notice under Rule 28 of the Companies (Court) Rules, 1959.

2. Petitioner is directed to advertise the petition in two local newspapers, viz., (i) Free Press Journal (in English); and (ii) Navshakti (in Marathi) as also in the Maharashtra Government Gazette.

3. 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 noncompliance with this direction or with the Company (Court) Rules,

1959.

4. Petitioner shall deposit Rs.15,000/- toward publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, within a period of two weeks, failing which 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 petitioner.

5. Since, installments have not been paid from 13th May 2017, I asked Mr. Kapadia as to whether he has any concrete proposal to make payments atleast 50% of the outstanding amounts, should be paid within one week. Mr. Kapadia stated it is not possible because there are some orders passed. Therefore, question of granting any stay does not arise.

Request for stay rejected.

3 Against this order, the company had preferred an appeal being appeal lodging no.47 of 2018. That appeal came to be summarily dismissed by an order dated 30th January, 2018.

4 The company had placed three work orders on petitioner to carry out water proofing treatment in three of the building that was constructed/being constructed by the company. Petitioner carried out the requisite work and raised various RA bills. As the payments did not come forth, petitioner sent reminders. By an email dated 15th October, 2013, the company responded to petitioner's letter dated 4th October, 2013 by which petitioner had reminded the company for payment, that it was processing a payment of Rs.39,48,521/- with respect to two of the buildings and the cheques were ready. Despite that no payment was made.

5 Thereafter, petitioner and the company sat together and prepared a reconciliation statement dated 15th March, 2014 in which the

company admitted that as on 15th March, 2014 a sum of Rs.34,71,080/- was payable to petitioner. It should also be noted that the reconciliation statement is referred to in paragraph 13 of the petition, to which there is not even a denial in the affidavit in reply.

6 Ms. Khatri, counsel for respondent company states that certain reconciliations were to be done as stated in the affidavit in reply and therefore, the amounts have not become ripe for payment. I fail to understand this submission because if what Ms. Khatri states is correct, there was no need to file consent terms and I would have expected the company to have opposed the petition at the threshold itself. The affidavit in reply is dated 13th April, 2016 and the consent terms have been entered into on 8th February, 2017 in which the company had agreed and declared that the company shall pay a sum of Rs.45 lakhs in 15 equal installments in favour of petitioner. Paragraph 2 of the consent terms lists the 15 installments. The company paid the first and second installment and stopped paying thereafter. Therefore, this submission of Ms. Khatri cannot be accepted. It should also be noted that while admitting the petition, the company was asked whether it would atleast pay 50% within one week. The counsel for the company had expressed the company's inability to pay within one week but from 19th January, 2018 almost three months have passed and the company, forget paying 50%, has not paid even one rupee.

Ms. Khatri, however, submits that there are many creditors and the company is trying to settle with the other creditors. That also shows that the company is commercially insolvent and unable to discharge its debts to the creditors and requires to be wound up.

7 Petitioner has tendered an affidavit of one Ved Prakash Mishra affirmed on 1st March, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 2nd February, 2018 and in the Maharashtra Government Gazette for the period 8-14 February, 2018 at serial no.M-17325. The notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived by the company at the time of admission of the petition.

8 In the circumstances, I am satisfied that the company is indebted to petitioner, unable to discharge its debts, commercially insolvent and requires to be wound up.

9 Therefore, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) that respondent company, viz., Orbit Corporation Limited, having registered office address at 1st Floor, The View, 165, Dr. Annie Besant Road, Worli, Mumbai – 400 018 be ordered to be wound up by and under the directions, supervision and control of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) that Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as Liquidator of all the business, assets, properties, income and books of accounts of respondent company with all powers under the provisions of the Companies Act, 1956.

10 Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification.

11 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)