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

COMPANY PETITION NO.825 OF 2015

IDBI Bank Limited ….Petitioner

Vs.

M/s. Infinity India Advisors Pvt. Ltd. ....Respondent

Ms. Vinita Hombalkar for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 12th JANUARY, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Infinity India Advisors Pvt. Ltd. on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 On 20th March, 2017 when the petition was taken up for admission, this Court was pleased to pass the following order :

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2. By this petition, the petitioner seeks winding up of the respondent company under the provisions of the Companies Act, 1956 on the ground that the respondent is unable to pay its debts.

3. It is the case of the petitioner that the petitioner had granted a loan of USD 3 million to the respondent for production of Hindi feature film vide its sanction letter dated 4th June, 2008. The respondent executed various documents in favour of the petitioner in respect of the said loan transaction. It is the case of the petitioner that in terms of the loan agreement, the respondent agreed to repay to the petitioner the said loan of Rs.737.93 lakhs in accordance with the Amortization schedule contained therein. The respondent however failed to pay the said amount to the petitioner. The petitioner thereafter issued recall notice dated 24th January, 2012 to the respondent. The respondent failed to pay the said amount in response to the said notice.

4. The petitioner accordingly issued a statutory notice on 22nd January,2015 calling upon the respondent to pay a sum of Rs.21,55,67,359/- togetherwith interest and further interest w.e.f. 1st January,2015 with monthly rests to the petitioner.

5. The respondent vide its advocate's letter dated 26th February, 2015 did not deny the loan but contended that the petitioner had failed to disburse the entire sanctioned loan amount to the respondent. In the said reply, it is alleged that due to lack of fund, the project of the respondent could not be completed. It is further alleged that in the year 2008, there was a worldwide financial turmoil and large number of companies went bankrupt.

6. The petitioner replied on 11th March,2015 to the said letter dated 26th February,2015 and denied the allegations made therein. There was no further response to the said reply dated 11th March,2015 from the respondent. According to the petitioner, the petitioner has to recover a sum of Rs.22,94,18,651/- as on 1st April, 2015 and further interest at the rate of 15% per annum at the monthly rests thereon from 2nd April, 2015 till payment.

7. A perusal of the record clearly indicates that the petitioner had advanced various loan amounts to the respondent. The respondent has not disputed the loan amount but has only disputed the disbursement of the entire amount as sanctioned by the petitioner. These allegations are denied by the petitioner by reply dated 11th March,2015 which is not controverted by the respondent. There is no affidavit in reply filed by the respondent.

8. A perusal of the record annexed to the petition and for the reasons recorded aforesaid, I am of the view that the respondent is unable to pay its debts. Learned counsel for the petitioner fairly invited my attention to the averments in paragraph (6) of the company petition and would submit that the petitioner has also filed an original application before the Debt Recovery Tribunal, Mumbai on 21st February,2013 registered under OA No.34 of 2013 inter alia praying for recovery of outstanding dues of Rs.15,24,17,269/- with further interest thereon. She submits that the petitioner had filed the consent terms with the guarantor in those proceedings. The said guarantor however has committed default in making payment of amount claimed by the petitioner and as a result thereof the said guarantor became liable to pay the entire amount. She submits that though the principal borrower is appearing before Debt Recovery Tribunal, has not paid any amount to the petitioner till date.

9. A perusal of the record indicates that the petitioner has to recover substantial amount from the respondent. The respondent has also not filed any return with the Registrar of Company for quite sometime and is heavily indebted. I am thus inclined to grant interim injunction in terms of prayer clause (d) excluding the word 'dealing with'. I, therefore, pass the following order :-

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3 Ms. Hombalkar, counsel for petitioner tenders affidavit of one Amit Patodi affirmed on 4th July, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 19th May, 2017 and also in the Maharashtra Government Gazette. The Company Department has filed a report dated 6th May, 2017 confirming service of notice under Rule 28 of the Companies Court (Rules), 1959. No affidavit in reply has been filed by respondent company. Therefore, the averments in the petition are not controverted.

4 In the order dated 20th March, 2017 the Court has noted "A perusal of the record indicates that petitioner has to recover substantial amount from respondent, is unable to pay its debts and that even the company has not filed any return with the Registrar of Company for quite sometime and is heavily indebted". I have heard Ms. Hombalkar and also considered the pleadings and the documents annexed to the petition. 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.

5 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b) which read as under :

> (a) That Respondent Company be ordered to be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956;
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> (b) That the Official Liquidator, High Court, Bombay be

appointed as Liquidator of the said company with all powers under the Companies Act, 1956.

6 Official Liquidator to take steps immediately without waiting for notification.

7 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)