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

COMPANY PETITION NO.788 OF 2015

Barclays Bank PLC ....Petitioner

Vs.

M/s. Shreyans Lifestyle Pvt. Ltd. ....Respondent

Mr. Vishwanath Patil a/w. Mr. Parikshit Desai I/b. Mr. Hiren Mehta for petitioner.
Ms. Fatima Barodawala I/b. Mr. Raval Shah for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 2nd AUGUST 2018

P.C.:

1 This petition is for winding up of respondent company - M/s. Shreyans Lifestyle 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 8th January 2018 while admitting the petition, the Court was pleased to pass the following order :

> *1. The petition has been filed on the ground that the company requires to be wound up because it is unable to pay its debt and is commercially insolvent.*
>
> *2. Petitioner was approached by respondent company-M/s. Shreyans Lifestyle Private Limited with a request to sanction certain credit facilities. Petitioner agreed and the overall limit of facility was not to exceed Rs.14,20,00,000/-. The terms and conditions upon which the said credit facility was sanctioned were laid down in the Sanction Letter dated 22nd July 2008. Respondent, through its Directors signed and executed a Term Loan Agreement dated 10th September 2008. One of the signatory to this Term Loan Agreement is one Ashish Chordia. The company has signed and executed a Multi Option Facility Agreement dated 10th September 2008 and one of the signatory to the said document is again Mr. Ashish Chordia. The company has also signed Demand Promissory Note dated*

10th September 2008; Take Delivery Letter dated 10th September 2008 and Letter of Continuing Security dated 10th September 2008 all of which were also signed by Mr. Ashish Chordia. There was a Variation of Sanction Letter for banking facilities as reflected in the letter dated 27th August 2008 to which one of the signatory was Mr. Ashish Chordia.

3. The Company also signed and executed a Deed of Guarantee and a Joint Personal Deed of Guarantee, both dated 10th September 2008 in favour of petitioner. Similarly, the Directors of Company also executed two Supplemental Deeds of Guarantee. It should be noted that the company was making payment from time to time but post October 2009, company failed to pay the outstanding dues and the company was also classified as a Non-Performing Asset (NPA). As on 30th October 2014, company was to pay to petitioner a sum of Rs.5,71,30,489.89. As no payments were forthcoming, petitioner caused a statutory notice dated 31st August 2014 under Section 433(e) read with Section 434 of Companies Act, 1956.

4. The company replied to this statutory notice in which the company has admitted that they owe money to petitioner but the amount of Rs.5,71,30,489.86, as claimed in the statutory notice, is disputed as not being the correct amount. The company also reserved its rights to file a more detailed reply but no reply was sent. Hence the petition came to be filed.

5. In the affidavit in reply, the company has admitted that it was facing cash inflow problem. The company also admitted that they owe money to petitioner and making all efforts to make all outstanding dues of petitioner. Petitioner has of course disputed the figure as set out in the petition as alleged by petitioner as payable by company. This is, however, yet to be determined. Petitioner has filed an additional affidavit of one Rajneesh Parihar, affirmed on 23rd October 2017. At Exh.'A' to the said additional affidavit is a letter dated 27th June 2011 from the Advocate of respondent in which a reference to the proposal of company towards repayment of dues has been made and that petitioner has accepted subject to what is mentioned in the said letter. To the said affidavit is also annexed a letter dated 22nd May 2012 from the company in which the company has proposed repayment plan. It would be useful to reproduce the said letter which is as under :

"SHREYANS LIFESTYLE PRIVATE LIMITED
401, Poonam Chambers, Dr. Annie Bezant Road, Worli, Mumbai-400 018
Mr. V. Shrinath,
Head-BBS and CR, Barclays Bank PLC,
Mumbai.

May 22, 2012

Dear Sir,

Proposed Repayment Schedule for Laon Sanctioned to the

Company
Please refer to the discussions that we had on the subject.
Please note that our proposed repayment plan is as follows :

Proposed Date	*Amount in INR*
7th June	*50,00,000*
14th June	*50,00,000*
21st June	*50,00,000*
28th June	*50,00,000*
7th July	*50,00,000*
14th July	*50,00,000*
21st July	*50,00,000*
30th July	*Remaining outstanding*

We also request you to charge interest @ 13.50% instead of the high rates being currently charged. Kindly accord your approval.

Thanking you,
Yours faithfully,
Sd/-
Ashish Chordia
(Authorised Signatory)"

6. From this letter, it is quite obvious that as on 22nd May 2012, the amounts in excess of Rs. 3,50,00,000/- was payable from company to petitioner and the company had also suggested that petitioner should charge interest @ 13.50 % per annum instead of the high rates. Even if we take figures only on the basis of the figures given by the company, the amount payable as on the date of lodging the petition would be in excess of Rs.3,50,00,000/-. It is not respondent's case anywhere that they have paid any amount after 22nd May 2012.

7. To the additional affidavit dated 23rd October 2017, there is an affidavit in response of one Abhishek Chordia dated 1st November 2017 in which it is stated that the amount claimed in the Debt Recovery Tribunal proceedings varies from the amount mentioned in this petition. Certainly that cannot be a ground not to admit the petition because the company is not coming forth even with a suggestion as to how much according to company is payable to petitioner, which in any event cannot be below Rs.3,50,00,000/- + + as mentioned in the letter dated 22nd May 2012.

8. In the circumstances, the defence is nothing but moonshine. If the company has any sincere intention to make repayment, company would have at least paid the amount of Rs.3,50,00,000/- which as per company's Letter dated 22nd May 2012 was payable as on that *date. It should also be noted that said Mr. Ashish Chordia who is one of the Director of the respondent-company in the present petition is absconding and in other matters, orders have been passed to place a look out for Ashish Chordia, even to the Immigration Authority.*

9. Having heard the counsels and considered the petition, affidavit in reply, additional affidavit and documents annexed to the pleadings, I am satisfied that the company is unable to pay its debt, is commercially insolvent and requires to be wound up. Therefore, the following order is passed :-

xxxxxxxxxxxxx

3 On 22nd January 2018 the following order came to be passed :

1. In paragraph 5 of the order dated 8th January, 2018, in third sentence, the words "Petitioner has of course" to be corrected to read as "Respondent has of course" and in the sixth sentence, the words "Advocate of respondent" to be corrected to read as "respondent company".

2. Rest of the order remains unaltered. Original order to be corrected accordingly.

4 On 3rd May 2018, it was informed to this Court that settlement talks were going on. On 23rd July 2018, it was informed to this Court by the counsel for respondent company that they are not receiving any instructions and Ms. Barodawala was directed to inform the company that on 2nd August 2018 the company petition will be heard finally. Ms. Barodawala tenders an email dated 23rd July 2018 stating that the company has been so informed. The email is taken on record and marked "X" for identification.

5 On record is an affidavit of one Vijay Kanade affirmed on 12th April 2018 confirming advertising the petition in Free Press Journal and Navshakti on 9th April 2018. There is another affidavit of Vijay Kanade

affirmed on 7th June 2018 confirming advertising the petition in the Maharashtra Government Gazette for the period 26th April – 2nd May 2018 at serial no.M-1833. The Company Department has filed a service report dated 22nd January 2018 in which it is stated that the notice sent under Rule 28 of the Companies (Court) Rules, 1959 has been returned with the endorsement “Left”. The Company Master Data maintained by the Ministry of Corporate Affairs shows the registered address to be the same even today to which notice under Rule 28 was sent. The extract of MCA is taken on record and marked “X-1” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

6 After the order of admission has been passed, no further affidavit has been filed by the company. As all those points taken in the affidavit in reply has been considered at the time of admission of the petition, I see no reason why I have to go into all those points once again. After considering the affidavit in reply at the time of admission of the petition, the Court in paragraph 9 had noted “............. I am satisfied that the company is unable to pay its debt, is commercially insolvent and requires to be wound up”.

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

(a) that the Respondent viz. M/s. Shreyans Lifestyle Private

> *Limited, a Company within the meaning of Companies Act, 1956 having its registered office at Shivsagar Estate, Ground Floor, D-Block, Dr. Annie Besant Road, Worli, Mumbai – 400 018, be ordered and directed to be wound up by and under the orders and directions of this Hon'ble Court;*
>
> *(b) that the Official Liquidator, High Court, Bombay or some other fit and proper person as this Hon'ble Court may deem fit and proper, be appointed as Liquidator of M/s. Shreyans Lifestyle Private Limited, with all powers under the provisions of Companies Act, 1956.*

8 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.

9 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.

10 Company petition accordingly stands disposed.

11 Prothonotary and Senior Master, High Court, Bombay to refund the amount of Rs.15,000/- deposited by petitioner towards advertisement, subject to deductions, if any.

(K.R.SHRIRAM, J.)