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

COMPANY PETITION NO.775 OF 2015
WITH
COMPANY APPLICATION (L) NO.382 OF 2018
IN
COMPANY PETITION NO.775 OF 2015

Nipa Gagan Mangat ….Petitioner

Vs.

M/s. Euro-Solo Energy Systems Pvt. Ltd. ….Respondent

Ms. J.N. Pandhi I/b. Khona and Kayser for petitioner.
Mr. Rohit Gupta a/w. Mr. Anup Khaitan I/b. Anup Khaitan and Co. for respondent.
Mr. Rohan Dhanuka, representative of respondent company present.

CORAM : K.R.SHRIRAM, J.
DATE : 20th JULY 2018

P.C.:

COMPANY APPLICATION (L) NO.382 OF 2018

1 Mr. Gupta seeks leave to withdraw the application.

2 Application dismissed as withdrawn.

3 Notwithstanding dismissal of application, applicant to remove all office objections and get the application numbered within two weeks from today.

COMPANY PETITION NO.775 OF 2015

1 This petition is for winding up of respondent company - M/s. Euro-Solo Energy Systems 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 6th April 2017 at the time of admission, the following order came to be passed :

> *. Learned counsel appearing for the petitioner states that pursuant to the order dated 8th March 2017 passed by this Court, the petitioner has served the respondent by e-mail and has filed an affidavit of service dated 22nd March 2017. The said affidavit of service is on record. None appears for the respondent when the matter was called out. No affidavit in reply is filed.*
>
> *2. By this petition, the petitioner seeks winding up of the respondent-company on the ground that the respondent is unable to pay its debts.*
>
> *3. The petitioner had granted a loan of Rs.10 crore to the respondent on 7th January 2011 which was repayable with interest. The respondent, however, only made part payment of Rs.2 crore out of the said amount of Rs.10 crore and did not pay balance amount of Rs.8 crore.*
>
> *4. Learned counsel appearing for the petitioner invited my attention to the statement of Confirmation of Accounts dated 1st April 2011 for the period of 1st April 2010 to 31st March 2011 duly signed by the respondent acknowledging the liability in the sum of Rs.10 crore. She also invited my attention to the statement of Confirmation of Accounts dated 1st April 2012 for the period of 1st April 2011 to 31st March 2012 duly signed by the respondent acknowledging the balance amount of Rs.8 crore addressed by the petitioner to the respondent. Part payment of Rs.2 crore made by the respondent is reflected in the said statement of Confirmation of Accounts for the period of 1st April 2011 to 31st March 2012. Similar statement of Confirmation of Accounts dated 1st April 2013 is signed by the respondent for the period of 1st April 2012 to 31st March 2013 acknowledging the balance amount of Rs.8 crore.*
>
> *5. The respondent herein issued a cheque for an amount of Rs.8 crore towards repayment of the said balance amount which cheque was dishonoured upon presentation by the petitioner with its bankers with remark 'Drawers Signature Differ.' The petitioner, thereafter, issued a legal notice to the respondent and also to its Directors. The Directors of the respondent received the said notice. In response to the said notice issued by the petitioner, one of the Directors of the respondent responded to the said notice by its advocate's letter dated 12th August 2013 and denied the said claim. There was, however, no response to the said notice by the respondent-company.*
>
> *6. The petitioner, thereafter, issued a statutory notice on 30th January 2015 by e-mail to the respondent which was returned with remark "Left." The petitioner, thereafter, issued another on 30th January 2015 calling upon the respondent to the respondent to pay a sum of*

Rs.12,13,66,975/- with further interest thereon. The said notice was also sent to the respondent by e-mail. According to the petitioner, the respondent was liable to pay a sum of Rs.4,43,59,585.51 with further interest from filing the petition till realisation.

7. Papers and proceedings of this company petition along with notices were returned unserved with remark "Left." This Court, by an order dated 8th March 2017 permitted the petitioner to serve the respondent by e-mail. The petitioner had already filed affidavit of service stating that the said notice was served upon by the respondent by e-mail. No affidavit-in-reply is filed.

8. A perusal of the record, prima facie, indicates that the petitioner had granted a loan of Rs.10 crore to the respondent. The respondent has acknowledged the liability by signing the statements of Confirmation of Accounts. The respondent, however, only made part payment of Rs.2 crore. The cheque of Rs.8 crore issued by the respondent was dishonoured. There was no response to the statutory notice issued by the petitioner.

9. In these circumstances, I am of the prima facie view that the respondent is unable to pay its debts and is commercially insolvent.

10. I therefore pass the following order :-

xxxxxxxxxxxxxxxxxx

3 Today Mr. Gupta, counsel for respondent company states that the debt is admitted and money is payable to petitioner.

4 Petitioner has filed an affidavit of one Nipa Gagan Mangat affirmed on 16th March 2018 confirming advertising the petition on 24th April 2017 in Free Press Journal and Navshakti. There is another affidavit of Nipa Gagan Mangat affirmed on 16th March 2018 in which it is states that the petition was advertised in the Maharashtra Government Gazette for the period 27th April - 3rd May 2017 at serial no.M-1730. The Company Department has placed on record a service report dated 30th January 2018 in which it is stated that the notice under Rule 28 of the

Companies (Court) Rules, 1959 sent to the company at its registered office has come back undelivered with the endorsement “Closed”. The Company Master Data maintained by the Ministry of Corporate Affairs even today shows the registered address as “FL-201, Shivkrupa CHS, Plot No.-140, Sector-10, Kharghar, Thane MH 410 210 IN” which is the same address which is mentioned in the cause title and to which notice under Rule 28 has been sent. The extract is taken on record and marked “X” for identification. Therefore, I would proceed on the basis that notice under Rule 28 has been served.

5 As the company admittedly owes money to petitioner and for the past more than five years the company has not been able to pay the amount to petitioner, it is clear that the company is commercially insolvent and requires to be wound up.

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

> *(a) that the Respondent Company, i.e., M/s. Euro-Solo Energy Systems Private Limited, be ordered to be wound up by the order and directions of the Hon'ble Court under the provisions of the Companies Act, 1956 for being commercially insolvent and unable to pay its debts as and when it became due to the Petitioner;*
>
> *(b) That the Official Liquidator attached to this Hon'ble Court or some other fit and proper person be appointed as Liquidator of the Respondent Company with all powers under the Companies Act, 1956 including the power to take*

> *possession of all the assets, Books or accounts, Stock in trade, cash on hand, moveable properties including future and fixtures as well as immoveable properties"*

7 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.

8 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.

9 Company petition accordingly stands disposed.

Gauri Amit Gaekwad

Digitally signed by Gauri Amit Gaekwad
Date: 2018.07.23 18:34:19 +0530

(K.R.SHRIRAM, J.)