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

COMPANY PETITION NO. 1087 OF 2015

IDBI Bank Ltd. .. Petitioner
Vs.
M/s. Nirmal Ayur Life Industries Pvt. Ltd. .. Respondent

Ms.Vinita Hombalkar for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 26TH APRIL 2018

P.C.

1. The petition is filed for winding up of the company Nirmal Ayur Life Industries Pvt. Ltd. (the company) on the ground that the company is unable to discharge its debt and is commercially insolvent.

2. On 9th January 2018, at the time of admission, this Court was pleased to pass the following order :-

> *"1 The petition is filed for winding up of respondent company - M/s. Nirmal Ayur Life Industries Pvt. Ltd., on the ground that it is unable to discharge its debts and is commercially insolvent.*
>
> *2 Petitioner had on a request made by respondent company extended financial assistance in the form of Cash Credit Facility and Term Loan for Rs.195 lakhs as per the sanction letter dated 12th May, 2009. Pursuant to the sanction letter, respondent company executed a Loan cum Hypothecation Agreement and also executed Demand Promissory Note, Undertaking for Non-Disposal of Shareholding and not to withdraw unsecured Loans and Undertaking to create Mortgage all dated 13th May, 2009. The Promoters/Directors of respondent company and its sister company executed guarantee agreements as well.*

3 As respondent company needed further financial assistance, it once again approached petitioner, who by a letter dated 23rd January, 2010, sanctioned Cash Credit Facility of Rs.50 lakhs and Term Loan Facility of Rs.155 lakhs aggregating to Rs.205 lakhs. The company executed a further Loan cum Hypothecation Agreement dated 29th January, 2010 and also Demand Promissory Note and Undertaking to create Mortgage, both dated 29th January, 2010. Like in the first facility, the Promoters/Directors of respondent company and its sister company also executed guarantee agreements.

4 At the request of the company, petitioner sanctioned further Term Loan Facility of Rs.57 lakhs and again similar documents as in the first two cases were signed. By two letters, both dated 18th April, 2011, respondent company acknowledged liability to petitioner and the total liability acknowledged was around Rs.4 crores.

5 Respondent company defaulted and failed and neglected to pay the interest and other amounts to petitioner. By a letter dated 2nd March, 2012 petitioner recalled the entire facility and called upon respondent company to pay a sum of Rs.4,79,78,563.40/- within 7 days. It does not look like respondent company even responded to this letter. Thereafter, petitioner issued a notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) vide letter dated 23rd August, 2012. To this, respondent company replied through their Advocates letter dated 25th October, 2012 denying the liability. Respondent company has not denied the fact that they have entered into the agreements and also executed documents as mentioned above. According to respondent, petitioner had not provided break up of principal and interest calculation and therefore, they were questioning the amount claimed. If one reads the said reply, it is obvious that respondent is only denying the quantum but not denying the fact that they owed substantial money to petitioner. Petitioner has independently commenced proceedings under SARFAESI Act and certain premises have been taken possession and sold.

6 Petitioner caused a notice though their advocates issued under Section 434 of the Companies Act, 1956 to respondent company on 13th April, 2015 to which there is no reply. This notice, when it was served upon the company, the packet was returned undelivered with the endorsement "left". Hence this petition.

7 The counsel for petitioner states that petition has been served upon respondent company but the packet came back with the *endorsement "left". The counsel for petitioner, on instructions from the advocate on record, states that the address as stated in the cause title was the address when the loan agreements were entered into, when the statutory notice was issued, when the petition was filed and when the petition was served. The counsel for petitioner further states that the MCA website provides the same address even today.*

8 Having heard the counsel for petitioner and considered the documents annexed to the petition, it is rather obvious that respondent company had borrowed substantial amounts as mentioned in the documents. Respondent company, if they had wanted to make payments of the amounts owed to the company, they would have atleast responded to the loan recall notice dated 2nd March, 2012. Atleast later they would have written some letter. Even to the notice issued under the provisions of SARFAESI Act, respondent company has only disputed the amount claimed but not denied the fact that they owed money under the various loan agreements. They have also not questioned the loan agreements or the documents alleged to be executed by them. Petitioner having taken steps under the provisions of SARFAESI Act and disposed certain assets also confirms that respondent company is indebted to petitioner, is unable to discharge its debts and is commercially insolvent and requires to be wound up.

9 In the circumstances, the following order is passed :.........."

3. On record is an affidavit of one Pooja Mehta affirmed on 23rd April 2018 confirming advertising the petition in two local newspapers, viz., Free Press Journal and Navshakti on 22nd January 2018 and also in the Maharashtra Government Gazette. There is an affidavit of one Nitin Dhamale affirmed on 10th April 2018 in which it is stated that when an attempt to serve a copy of the order dated 9th January 2018 was made by Registered Post A.D., the Postal Department has stated that the envelope could not be delivered since the addressee has moved. Even the attempt of serving by hand delivery was unsuccessful because the premises was locked

and the security guard present there, refused to accept service and informed the affiant that the company has moved and he has no idea of the new address. The Company Registrar has placed on record a report dated 30th January 2018 in which it is stated that the notice issued under Rule 28 of the Companies (Court) Rules, 1959 was returned undelivered with the endorsement 'left'. Ms.Hombalkar tenders an extract of the company master data maintained by the Ministry of Corporate Affairs, which extract Ms. Hombalkar states, was taken on 21st April 2018, in which the registered address of the company is shown to be the same to which the notice under Rule 28 was sent and in the cause title. The extract is taken on record and marked 'X' for identification. Therefore, the notice under Rule 28 is deemed to have been served.

4. The company has not entered appearance or even file an affidavit opposing the petition. Therefore, none of the averments in the petition have been controverted. The company was also not found at the registered address. If the company has moved or the registered address is changed, it is the obligation of the company to have the change noted in the company register maintained by the Corporate Affairs. Therefore, I would proceed that the company is trying to avoid the creditors. As noted in the order of admission dated 9th January 2018, petitioner having taken steps under the

provisions of SARFAESI Act and disposed certain assets also confirms that respondent company is indebted to petitioner, is unable to discharge its debts and is commercially insolvent and requires to be wound up.

5. In these circumstances, petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

> *"(a) That the Respondent Company be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956.*
>
> *(b) That the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the said Company with all powers under the Companies Act 1956."*

6. Petitioner's advocate to forward an authenticated copy of this order within two weeks to the official liquidator who shall take immediate steps without waiting for any notification.

7. The company petition accordingly disposed.

8. Petitioner also to forward a copy of this order to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)