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

COMPANY PETITION NO.555 OF 2016

Manohar Lokram Dodeja ….Petitioner
Vs.
Shree Vaishnav Alloys Pvt. Ltd. ….Respondent

WITH

COMPANY PETITION NO.557 OF 2016

Reshma Manohar Dodeja ….Petitioner
Vs.
Shree Vaishnav Alloys Pvt. Ltd. ….Respondent

Ms. Kavita S. Lalwani for petitioner in both petitions.
None for respondent.

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

P.C.:

COMPANY PETITION NO.555 OF 2016

1 This petition is for winding up of respondent company - Shree Vaishnav Alloys 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 13th March 2018 at the time of admission, the following order came to be passed :

> *1. The petition is filed for winding up of respondent company-Shree Vaishnav Alloys Pvt. Ltd. on the ground that the company is unable discharge its debt and is commercially insolvent.*
>
> *2. It is stated in the company petition that on or about 2nd May 2012, the company, for a valuable consideration, drew a demand bill of exchange on Shree Vaishnav ISPAT Pvt. Ltd. in favour of petitioner in the sum of Rs.25 lakhs. The said demand bill of exchange was accepted by Shree Vaishnav ISPAT Pvt. Ltd. This amount of Rs. 25 lakhs was advanced to the company on 2nd May 2012 by way of cheque and upon receipt of the said cheque, the company for valuable consideration*

executed the demand bill of exchange. The company paid interest by cheques after deducting TDS. The interest was paid from 7th May 2012 to 7th September 2015. On 29th January 2016, when petitioner presented the said bill of exchange dated 2nd May 2012 for Rs. 25 lakhs to Shree Vaishnav ISPAT Pvt. Ltd. and then to the company for payment, both Shree Vaishnav ISPAT Pvt. Ltd. and the company dishonoured the said demand bill of exchange by nonpayment and but promised to pay the amount within a short time. As repeated requests fell on deaf ears, petitioner caused a notice dated 23rd May 2016 issued to the company through their advocate to which there was no reply. Hence the petition.

3. In the affidavit in reply filed by one Mani Ravi affirmed on 6th March 2018 at paragraph 4(d), the company has not denied the fact that it had accepted the demand bill of exchange for Rs.25 lakhs drawn on Shree Vaishnav ISPAT Pvt. Ltd. In the affidavit, the company stated "the petitioner has not brought on record that it was mutually agreed between petitioner that so long as respondent company will be not in position to pay interest that they shall pay the same and in case of any of financial difficulty, they shall issue preferential share of the company for the value received...... " and the same breath in the next sentence, it is stated that "….the transaction took place with the company when the present management was not there and the entire transaction was not to the knowledge of the current management". These are exfacie contradictory statements. In any event, it is not the company's case either in the reply that they issued any preferential shares or offered any preferential shares. Simply stating they shall issue preferential share of the company for the value received would not help the company. Ms. Lalwavi states that there is another petition filed by other creditors. That petition is yet to be admitted.

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

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3 On record is an affidavit of one Manohar Lokram Dodeja affirmed on 14th June 2018 confirming advertising the petition on 26th April 2018 in Free Press Journal and Navshakti. There is another affidavit of Manohar Lokram Dodeja affirmed on 14th June 2018 confirming advertising the petition in the Maharashtra Government Gazette for the period May 3-9, 2018 at serial no.M-1842. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived at the time of admission.

4 After the petition was admitted, no further affidavit has been filed by the company opposing the petition. As the reply has already been dealt with and stand of the company having been rejected, I am satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

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

> *(a) That the Respondent company, viz., Shree Vaishnav Alloys Private Limited, be ordered to be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956;*
>
> *(b) That this Hon'ble Court be pleased to appoint the Official Liquidator of this Hon'ble Court as Liquidator of the Respondent company, viz., Shree Vaishnav Alloys Private Limited, with all powers under the Companies Act, 1956 including the power to take charge of the Assets, Books of Accounts, affairs, records, documents, papers Vouchers, Bills etc. of the said Company.*

6 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.

7 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.

8 Company petition accordingly stands disposed.

COMPANY PETITION NO.557 OF 2016

1 In view of the above order passed in Company Petition No.555 of 2016, this petition also stands disposed with liberty to petitioner to lodge its proof of debt with Official Liquidator, who shall consider the same in accordance with law.

2 If the order dated 20th July 2018 in Company Petition No.555 of 2016 winding up respondent company – Shree Vaishnav Alloys Pvt. Ltd. is recalled or set aside in appeal, liberty is given to petitioner to revive this petition and move once again for necessary orders including winding up of respondent company.

Gauri Amit Gaekwad

Digitally signed by Gauri Amit Gaekwad
Date: 2018.07.23 18:39:03 +0530

(K.R.SHRIRAM, J.)