

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

**COMPANY PETITION NO.65 OF 2016
WITH
COMPANY APPLICATION NO.405 OF 2016
IN
COMPANY PETITION NO.65 OF 2016**

Kotak Mahindra Bank LimitedPetitioner

Vs.

Kamla Landmarc Properties Pvt. Ltd.Respondent

Ms. Jyoti Sanap I/b. V. Deshpande and Co. for petitioner.
None for respondent.

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

P.C.:

1 This petition is for winding up of respondent company - Kamla Landmarc Properties 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 16th April 2018 while admitting the petition, the Court was pleased to pass the following order :

1. The petition is filed for winding up of the respondent company- Kamla Landmarc Properties Pvt. Ltd. on the ground that the company is unable to pay its debts and is financially and commercially insolvent.

2. Petitioner is a bank that has extended certain loan facilities to Kamla Landmarc Corporation, a partnership firm to the extent of Rs.15,00,00,000/- and to Kamla Landmarc Properties, another partnership firm to the extent of Rs.5,00,00,000/- as per Sanction letter dated 24.1.2011 and 20.4.2011, respectively. Subsequently, in or around March 2012, petitioner granted additional financial facilities to Kamla Landmarc Properties to the extent of Rs.2,00,00,000/- and fresh term loan facilities to the extent of

Rs.15,00,00,000/- Both, Kamla Landmarc Corporation and Kamla Landmarc Properties executed the necessary documents.

3. The loan and facilities granted by petitioner to Kamla Landmarc Corporation and Kamla Landmarc Properties were secured by mortgage of properties and hypothecation of present and future current assets belonging to the company and corporate guarantees given by the company. It is stated in the petition that by executing various documents including Loan-cum-Guarantee Agreement and Deed of Guarantee for securing the loans given by petitioner to Kamla Landmarc Corporation and Kamla Landmarc Properties, the company undertook and gave guarantee to petitioner that in the event of the borrowers failing to perform any of these obligations under the Facility Agreements or failing to repay the amount on the due dates under the Facility Agreement or failing to pay installment or interest or other dues on the due dates, or failing to pay the amounts due under the Facility Agreement on the happening of an event of default under the Facility Agreement, the company will on demand, promptly pay and make good the same without dispute or demur. It is further stated in the petition that as there was default by Kamla Landmarc Corporation and Kamla Landmarc Properties, petitioner recalled the whole of the facilities provided and also invoked the guarantee given by the company and further called upon the company in the capacity of guarantor as well as mortgagor to pay the amounts, payable by Kamla Landmarc Corporation and Kamla Landmarc Properties. It is further stated that as the company did not make the payments, petitioner issued a notice dated 28.7.2015 under Section 433 read with section 434 of the Companies Act 1956. Copies of the documents are annexed to the petition. The company did not respond to the notice and hence the petition came to be filed.

4. On record, is the affidavit of one Mahesh Girkar affirmed on 5.4.2016 confirming service of the petition upon the company. There is no affidavit in reply opposing the petition. Nobody has entered appearance for the company though served. Mr.Gupta appearing for petitioner states that all the directors except one are in judicial custody and that the company is not operational at all.

5. I have considered the petition and also documents annexed thereto. It does appear that the company has executed the documents as stated in the petition. There is no reply to the statutory notice. It is settled law that where no response to a statutory notice has been made, the court may pass a winding up order on the basis that amount claimed has not been denied by the company and there is a presumption of inability to pay by the company. Where no response has been made to the statutory notice, the respondent company runs a risk of winding up petition being admitted for hearing at the threshold stage itself. Admission of the petition at its first hearing is possible because, by virtue of section 434 of the Companies Act 1956 a presumption of the indebtedness can be legitimately drawn by the court where no reply to the statutory notice is forthcoming.

6. I am therefore, satisfied that the company is unable to pay its debts and the company deserves to be wound up. In the circumstances, in my view, the petition requires to be admitted and the following order is passed :

XXXXXXXXXXXXXX

3 Ms. Sanap, counsel for petitioner tenders two affidavits of one Mahesh Girkar, one affirmed on 5th July 2018 and the other on 16th July 2018, confirming advertising the petition in Free Press Journal and Navshakti on 10th June 2018 and in the Maharashtra Government Gazette for the period 12th – 18th July 2018 at serial no.M-18105. The Company Department has filed a service report dated 16th May 2018 confirming service of notice under Rule 28 of the Companies (Court) Rules, 1959 upon the company.

4 There is no affidavit in reply filed by the company opposing the petition and therefore, none of the averments in the petition are controverted. Having perused the petition, the documents annexed thereto and in view of the fact that there is not even a reply to the statutory notice or to the petition, I am satisfied that the company is unable to repay its debts, is commercially insolvent and requires to be wound up.

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

(a) that the Respondent Company viz. Kamla Landmarc Properties Private Limited be ordered to be wound up by and under the directions of this Hon'ble Court;

(b) that the Official Liquidator attached to this Hon'ble Court be appointed as the Liquidator of the Respondent Company viz. Kamla Landmarc Properties Private Limited with all powers under Section 457, 458 read with Sections 454, 455 and 456 of the Companies Act, 1956.

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 application also stands disposed.

9 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.

Gauri
Amit
Gaekwad

Digitally
signed by
Gauri Amit
Gaekwad
Date:
2018.08.03
18:40:43
+0530

(K.R.SHRIRAM, J.)