

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

COMPANY APPLICATION NO.508 OF 2016

IN

COMPANY PETITION NO.644 OF 2016

Capri Global Advisory Services Pvt. Ltd.Applicant/Petitioner

Vs.

Orbit Corporation LimitedRespondent

Dr. Birendra Saraf a/w. Mr. Vijyandra Purohit i/b. Manilal Kher Ambalal and Co. for applicant/petitioner.

Mr. Susmit Sanjay Phatale for respondent and applicant in CA/50/2018.

CORAM : K.R.SHRIRAM, J.

DATE : 26th FEBRUARY, 2018

P.C.:

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1 Dr. Saraf, at the outset, states that knowing the financial condition of the company and in view of the fact that there are few other petitions against respondent company have already been admitted, at this point of time, petitioner is only pressing for prayer clauses – (b) and (c) for appointment of Official Liquidator of this Court as Provisional Liquidator of the company with all powers under the Companies Act, 1956, including power to take charge of all the assets, properties, stock-in-trade, books of accounts and bank accounts of the company.

2 At the ad-interim stage, this Court by an order dated 28th September, 2016 observed the contradictory stand being taken by the company and the Court was pleased to note that in certain unconnected

developments a suit has been filed against the company and in that suit, an order dated 10th August, 2016 has been passed restraining the company and certain other persons, presumably those in-charge of the management of the company, from in any manner alienating or encumbering or creating third party rights in movable or immovable property of the company except in the ordinary course of business.

3 I have to note that few petitions for winding up of the company have already been admitted by this Court. Infact even today another company petition being company petition no.367 of 2016 was admitted.

4 At Exhibit CC to Exhibit FF of the affidavit in support are four letters, two of which are dated 30th July, 2015 and two dated 3rd August, 2015 from the company in which the company in clear, express and unequivocal terms has confirmed that its financial health continued to be in bad shape and the company will be unable to fulfill its obligations, requested for further extension of time and unequivocally admitted that an amount of Rs.84,54,04,151/- alongwith further interest thereon was due and payable as on 31st March, 2015 and an amount of Rs.4,75,72,794/- alongwith further interest was due and payable as on 31st March, 2015. There are further acknowledgments of debts and the cheques given by the company also had been dishonoured as stated in the affidavit in support.

The company having admitted its liability to petitioner and having admitted in unequivocal terms that its financial health continued to be in bad shape and even after the order dated 28th September, 2016, no attempt has been made to pay even a farthing to petitioner and in view of the fact that the counsel appearing for the company simply stated he leaves it to the Court to pass appropriate orders, in my view, it is a fit case to grant prayer clauses – (b) and (c) as stated in the application.

5 In the circumstances, application is allowed and accordingly disposed in terms of prayer clauses – (b) and (c) which read as under :

“(b) that pending hearing and final disposal of this petition, Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as Provisional Liquidator of respondent company, i.e., Orbit Corporation Limited, with all powers under the Companies Act, 1956, including power to take charge of all the assets, properties, stock-in-trade, books of accounts and bank accounts of respondent company;

(c) that pending hearing and final disposal of this petition, respondent company, i.e., Orbit Corporation Limited, by itself, its directors, servants, agents, officers, employees, or otherwise be restrained by an order of injunction of this Hon'ble Court from selling, disposing of, alienating, transferring, encumbering or parting with possession or creating any third party rights or any other rights whatsoever in respect of the assets of respondent company including those described hereinabove in any manner whatsoever.”

6 Official Liquidator to take steps immediately upon receiving an authenticated copy of this order without waiting for any formal notification or information.

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In view of the above order and in view of the fact that the other petitions against respondent company have already been admitted, the following order is passed :

ORDER

(i) The company petition is admitted and made returnable on 3rd May, 2018 ;

(ii) Petitioner is directed to advertise the petition in two local newspapers, viz. 'Free Press Journal' (in English) and 'Navshakti' (in Marathi) and also in Maharashtra Government Gazette. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959;

(iii) Petitioner shall also deposit an amount of Rs.15,000/-with the Prothonotary and Senior Master of this Court towards publication charges, within a period of two weeks from the date of this order, with intimation to the Company Registrar failing which the petition shall stand dismissed for non-prosecution without further reference to the court. After the advertisements are issued, the balance, if any, shall be refunded to petitioner;

(iv) A copy of this order shall forthwith be served on the company by hand delivery, email, courier and by Registered Post AD by the Advocate for petitioner.

(v) Counsel for respondent waives notice under Rule 28 of the Companies (Court) Rules, 1959.

COMPANY APPLICATION NO.50 OF 2018

1 Mr. Phatale, counsel for applicant states that the company

application though not listed be taken up for hearing. Dr. Saraf has no objection.

2 In this application, applicant is seeking leave to sell/dispose off various item/non-core business assets as mentioned in paragraph 4 of the affidavit in support. Paragraph 4 of the affidavit in support reads as under :

4. The item/non core business assets which have been identified by the respondent company are listed herein below :

- a. Scrap lying at various sites, shuttering and propping materials,*
- b. Office equipments including paintings etc.,*
- c. Car and/or other movable assets and similar assets*

3 First of all, this application does not give any details as to which are these so called non-core assets that could be sold. The application also does not disclose as to how these assets have to be sold and whether there are any encumbrances attached to those assets. Since Official Liquidator of this Court has been appointed as Provisional Liquidator, applicant may apply to Official Liquidator, who may consider the application and dispose the same in accordance with law by also keeping in mind any other injunction order passed in any other suit.

4 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)