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

COMPANY PETITION NO.928 OF 2014

Credit Suissse Finance (India) Pvt. Ltd. ....Petitioner

Vs.

Core Intrapower Limited ....Respondent

Mr. Kersi Dastoor i/b. Phoenix Legal for petitioner.
Ms. Fatima Barodawala i/b. Raval Shah and Co. for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 12th APRIL, 2018

P.C.:

1 This petition is for winding up of respondent company - Core Intrapower Limited (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 23rd February, 2017, this court after hearing petitioner, respondent and after considering the affidavits in reply and the rejoinder, passed an order admitting the petition. The said order reads as under :

> *1. By this petition, the petitioner seeks winding up of the respondent company on the ground that the respondent is unable to pay its debts.*
>
> *2. The petitioner has provided a term loan facility to the tune of Rs.100 crore to M/s.Core Education and Technologies Limited on the terms and conditions contained in the facility agreement.*
>
> *3. In so far as the respondent is concerned, the respondent is an associated company of the said borrower and has executed a Corporate Guarantee in favour of the petitioner to secure repayment of the said loan in the sum of Rs.100 crore plus interest thereon.*
>
> *4. It is the case of the petitioner that the principal borrower as well as the respondent committed default in making repayment of the said amount. On 3rd April 2013, the petitioner issued a notice of Event of Default to the borrower. The petitioner has also issued a letter of*

reminder to the borrower on 3rd April 2013. On 26th June 2013, the petitioner invoked the Corporate Guarantee provided to the petitioner to the respondent. On 27th February 2014, the petitioner issued a statutory notice to the respondent calling upon the respondent to repay the total outstanding amount of Rs.34,50,48,279.89 under the 30 Crore Facility Agreement. On 28th March 2014, the respondent through its advocate acknowledged the debt due to the petitioner but raised certain vague and baseless issues. The petitioner denying those baseless allegations vide its advocate's letter dated 28th March 2014. The respondent once again through advocate's letter dated 25th August 2014 raised irrelevant and baseless issues. The petitioner thus filed this petition.

5. According to the petitioner, the petitioner has to recover a sum of Rs.1,15,39,99,758.94 with further interest thereon.

6. Learned counsel appearing for the petitioner invited my attention to serious and baseless issues raised in the affidavit-in-reply which are denied by the petitioner in the affidavit-in-rejoinder. He also invited my attention to a detailed order passed by this court on 6th April 2015 against the respondent herein in Company Petition No.927 of 2014 thereby rejecting all similar contentions raised by the respondent in the affidavit-in-reply and admitting the said petition against the respondent. The said order dated 6th April 2015 passed by this Court against the respondent is not impugned by the respondent.

7. Learned counsel for the petitioner invited my attention to the order dated 29th March 2016 passed by the Division Bench of this Court in Appeal No.259 of 2016 and other connected appeals arising out of the order dated 13th October 2015 passed by the learned Single Judge in Company Petition No.926 of 2014 filed by the principal borrower against the petitioner against an order of admission of the petition which appeals came to be dismissed by a detailed order passed by this Court on 29th March 2016.

8. Learned counsel appearing for the respondent submits that the respondent has raised contentious issues in the affidavit-in-reply which shall be dealt with by this Court before passing any order.

9. A perusal of the order passed by this Court on 6th April 2015 in Company Petition No.927 of 2014 clearly indicates that similar contentions are already rejected by this Court in the said order in the said petition filed by the respondent herein which order is not admittedly impugned by the respondent.

10. A perusal of the order passed by the Division Bench on 29th March 2016 further indicates that the Division Bench has observed that the order dated 6th April 2015 passed in Company Petition No.927 of 2014 has not been challenged and the same has attained finality.

11. In view of the defence raised by the respondent are not bonafide and are moonshine. In my view, the respondent is unable to pay its *debts and is commercially insolvent.*

12. I therefore pass the following order :-

(i) The company petition is admitted and is made returnable on 24th April 2017.

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3 After this order of 23rd February, 2017 was passed, the company has not filed any further affidavit opposing the petition. While considering the petition for admission, the Court has already come to a conclusion that the defences raised by the company are not bonafide and moon shine.

4 Petitioner has filed an affidavit of one Ashish Gala affirmed on 25th January, 2018 confirming advertising the petition in Free Press Journal and Navshakti on 16th January, 2018 and in the Maharashtra Government Gazette for the period 18-24 January, 2018 at serial no.M-17300. The notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived by the company at the time of admission of the petition.

5 Petitioner had provided a term loan facility to the tune of Rs.100 Crore to one M/s. Core Education and Technologies Limited. Respondent is an associated company of M/s. Core Education and Technologies Limited and had executed a corporate guarantee in favour of petitioner to secure repayment of the amount of Rs.100 Crore plus interest thereof. The company - M/s. Core Education and Technologies Limited has already been ordered to be wound up by this Court. Apart from the

company, there was another corporate guarantor also for the said loan which has already been ordered to be wound up.

6 Ms. Barodawala, counsel for the company did not make any submissions opposing the petition but left it to the Court whether to wind up this company also.

7 I have, with the assistance of Mr. Dastoor, considered the petition and the documents annexed thereto, the affidavit in reply and the rejoinder. It is indisputable that the company owes a debt to petitioner and the company is unable to discharge its debts. The defences raised are also baseless and moon shine. At the time of admission itself, this Court has also came to the same conclusion that the defences raised are not bonafide and moon shine.

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

> (a) that respondent company, viz., Core Intrapower Limited be wound up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956;
>
> (b) that Official Liquidator be appointed as Liquidator of respondent company to take charge of the assets, books of account and properties of respondent with all powers under the provisions of the Companies Act, 1956;
>
> (c) that this Hon'ble Court may be pleased to appoint Official Liquidator or some other fit and proper person as Liquidator of respondent company and to conduct its affairs in the course of winding up and to distribute its assets in accordance with law.

9 Official Liquidator to take further steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification.

10 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)