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

COMPANY PETITION NO. 242 OF 2011

SBI Global Factors Ltd.
(Formerly known as Global Trade Finance
Ltd.) ….Petitioner

Vs.

Global Hi-Tech Industries Ltd. ….Respondent

Mr.Rohit Gupta a/w. Mr. Dhaval A. Patil I/b K. Ashar and Co. for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 28TH JUNE, 2018

P.C.:

1 The above petition is for winding up of respondent company-Global Hi-Tech Industries Ltd. (the company) on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 On 13th April 2012, while admitting the petition, this Court was pleased to pass the following order :-

"1 . By this Company Petition, the Petitioner seeks winding up of the Respondent Company Global HiTech Industries Limited (the Company). The Company Petition is taken up for Admission.

2. The Petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and formerly known as Global Trade Finance Limited. The Company is the principal borrower who availed of trade finance facilities from the Petitioner.

3. According to the Petitioner, the borrower Company *approached the Petitioner for trade finance facilities for the sum of Rs. 15,00,00,000/ and the Petitioner sanctioned the said facility by a sanction letter dated 6th February 2008 which was amended from time to time. The borrower Company executed necessary documents at the time of availing trade finance facilities from the Petitioner. The Company did not pay the amount due to the Petitioner and the account of the Company was irregular. Despite receiving repeated requests and reminders, the Company failed to clear the outstanding due and payable by the Company to the Petitioner. The cheques given by the Company towards the discharge of the liability were dishonoured when presented for encashment by the Petitioner.*

4. The Petitioner therefore issued a statutory notice dated 21st October 2010 to the Company calling upon the Company to pay an amount of Rs. 41,74,62,338.81 paise (Rupees Forty One Crores Seventy Four Lacs Sixty Two Thousand Three Hundred Thirty Eight and Eighty One Paise Only) along with interest. The Company despite receipt of the notice did not clear the outstanding amount nor replied to the said notice.

5. The Petitioner therefore submits that the Company is indebted to the Petitioner in the sum of Rs. 41,74,62,338.81 paise as on 30th September 2010. The Company has not responded to the statutory notice and therefore, the claim of the Petitioner is undisputed. Hence, the Petitioner has filed this Petition seeking winding up of the Company.

6. It is further submitted on behalf of the Petitioner that the Company is commercially insolvent. The Company is unable to pay its debts to the Petitioner as and when the same are due. The Company has not paid most of its unsecured creditors. From the available records of the Company as also other charges registered by the financial institutions/banks with Registrar of Companies, it is clear that the Respondent Company is heavily indebted. It is therefore submitted that the Company is not capable of making payment of the outstanding dues in the ordinary course of its day to day business. It is therefore submitted in public interest that the Company Petition be admitted and the Official Liquidator attached to this Court be appointed as Provisional Liquidator of the Company to take charge of all the records, assets and properties of the Company in accordance with law. It is submitted that if the provisional liquidator as prayed is not appointed, the Company would fritter away all its assets.

7. From the aforesaid facts, it is clear that the Company has failed to respond to the statutory notice and therefore the claim of the Petitioner in the sum of Rs. 41,74,62,338.81 paise as on 30th September 2010 has remained undisputed. Despite service, the Company has also not come forward to defend the Petition. In view thereof, the allegations made by the Petitioner in the Petition have remained uncontrovered. There is no reason as to why the allegations/submissions made on behalf of the Petitioner should not be accepted. I am, therefore, satisfied that the Company is unable to pay its debts. The Petitioner has also made out a case for appointment of the Official Liquidator as provisional liquidator of the Company with all powers under the provisions of the Companies Act, 1956. Hence, I pass the following order :.................... "

3 Thereafter the company appeared on 17th August 2012, waived service of notice under Rule 28 of the Companies (Court) Rules, 1959 but no affidavit in reply opposing the petition was filed but the company filed the company application for recall of the order of admission passed on 13th April 2012. Subsequently, it would brought to the notice of the Court that the company had preferred reference to the The Board for Industrial and Financial Reconstruction (BIFR) and therefore, the company withdrew the company application as referred in the order dated 3rd January 2013 and this petition came to be stayed.

4 On 13th September 2017, the Prothonotary and Senior Master, High Court, Bombay passed the following order :-

"None present for the Petitioner.

Ms. Rinki Kejriwal, i/b. Rebecca Dias, Advocate for the

Respondent.

P.C.: It is reported that the matter is earlier pending before BIFR. In view thereof, Parties to inform with regard to the present status of the matter so also as to whether any proceeding is taken out before NCLT. Office to issue notice to the Petitioner accordingly.
Adjourned to 08.01.2018."

5 On 22nd June 2018, the following order came to be passed :-

1 Despite two circulars issued by the registry and despite order dated 13th September 2017 passed by Prothonotary and Senior Master, respondent company has not filed any affidavit as to whether any reference has been filed before NCLT.

2 Section 4 (b) of amended Sick Industrial Companies (Special Provisions) Repeal Act, 2003 provided that on such date as may be notified by the Central Government, any appeal preferred to AAIFR or any reference made or inquiry pending to or before BIFR shall stand abated provided that a company in respect of which such appeal or reference or inquiry that stands abated may make reference to the NCLT under the Insolvency and Bankruptcy Code, 2016 (IBC) within 180 days from the commencement of the IBC in accordance with the provisions of the IBC. The notified date is 1st December, 2016 and 180 days expired on or about 31st May, 2017.

3 Mr. Patil, counsel for petitioner states that he has no information and petitioner have checked online and respondent company does not seem to have filed any proceedings before NCLT.

4 Therefore, petition be listed for final hearing on 28th June 2018.

6 Even today, the company has not filed any affidavit as per two circulars issued by the registry. The company did not appear on 22nd June 2018 and even today, the company has not been represented. There is nothing on record to indicate that the company has, as per the provisions of

Section 4(B) of amended Sick Industrial Companies Act (Special Provisions) Repeal Act, 2003 made any reference to the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2012. Shri Gupta, on instructions, states that even petitioner is not aware of any such petition being filed.

7 No affidavit in reply is filed. Therefore, none of the averments are controverted.

Shri Gupta states that the company has not replied 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, respondent-company runs a risk of winding up petition being allowed. 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.

8 On record is an affidavit of one Rajkumar Dalvi affirmed on 5th September 2012 confirming advertising the petition in Free Press Journal and Navshakti on 23rd August 2010 and 24th August 2012, respectively. In the affidavit, it is also stated that the petition has been advertised in the

Maharashtra Government Gazette for the period 30th August-5th September 2012, at Sr. No.301. Notice under Rule 28 of the Companies (Court) Rules, 1959 has also been waived. Having perused the petition, the documents annexed thereto and after hearing Shri Gupta, even I am satisfied that the company is indebted to petitioner and the company is unable to discharge its debts, is commercially insolvent and requires to be wound up. Therefore, petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

> *"(a) That Global Hi Tech Industries Ltd. be ordered to be wound up and under the orders and directions of this Hon'ble Court;*
>
> *(b) That the Official Liquidator of this Court or some other fit and proper person be appointed as Liquidator of the Global Hi Tech Industries Ltd. with all powers under the Companies Act, 1956."*

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

10 Petition accordingly disposed.

(K.R. SHRIRAM, J.)