

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

COMPANY PETITION NO. 1139 OF 2015

Anil Kapoor	.. Petitioner
Vs.	
Orbit Corporation Limited	.. Respondent

**ALONG WITH
COMPANY APPLICATION NO. 27 OF 2018
IN
COMPANY PETITION NO. 1139 OF 2015**

VKE Plumbing Private Limited	.. Applicant/Intervenor
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In the matter between :

Anil Kapoor	.. Petitioner
Vs.	
Orbit Corporation Limited	.. Respondent

Mr.S.C. Bhandary i/b Bhandary and Bhandary for petitioner.

Ms.Drasti Jani i/b AAK Legal for respondent.

Ms. Minal Dedhia i/b Malvi Ranchoddas and Co. for applicant in CA/27/2018.

**CORAM : K.R.SHRIRAM, J.
DATE : 6TH FEBRUARY 2018**

P.C.

COMPANY APPLICATION NO. 27 OF 2018

1 Ms. Dedhia appearing for applicant seeks leave to withdraw the company application with liberty to file appropriate proceedings.

Company application dismissed as withdrawn with liberty as sought.

COMPANY PETITION NO. 1139 OF 2015

2 This petition is filed for winding up of respondent company-Orbit Corporation Ltd. on the ground that the company is unable discharge its debt and is commercially insolvent.

3 Petitioner has a decree in the sum of Rs. 15 crores. Petitioner had paid to the company a sum of Rs.9 crores as part consideration for a flat that was booked by petitioner in a project 'Orbit Ocean Parque' that was being developed by the company. As the company was unable to complete the project, the company agreed to refund the amount of Rs.9 crores together with interest at the rate of 15% per annum. The company refunded an amount of Rs.1,25,00,000/- as part payment leaving a balance of Rs.7,75,00,000/- plus interest. As the amount was not paid, petitioner filed a summary suit being summary suit No. 891 of 2015. In the summons for judgment No. 7 of 2016 taken out by petitioner in the summary suit, this Court, vide order dated 13th June 2016, was pleased to grant conditional leave to defend and directed the company to deposit a sum of Rs. 10,00,00,000/- with the Prothonotary and Senior Master. Against the order granting conditional leave, the company preferred a commercial appeal being Commercial Appeal No. 23 of 2016 which appeal is still pending. Mr. Bhandary states that the Appeal Court refused to grant any

stay and directed the company to comply with the conditions imposed by this Court. Admittedly, the company did not comply with the conditions imposed by this Court. Therefore, on 19th July 2016, summary suit was decreed together with costs in the sum of Rs. 1 lakh.

4 Against the order dated 19th July 2016 decreeing the suit, the company preferred an appeal being Commercial Appeal (Lodg.) No.278 of 2016. The said appeal along with the earlier appeal filed, being commercial appeal No. 23 of 2016, were both admitted by an order dated 27th February 2017 and while admitting both appeals, the Division Bench was pleased to clarify that no stay is granted to the execution of the decree. Both the Appeals are pending.

5 Even today, when I asked the counsel for the company as to whether they are ready and willing to deposit Rs.10 crores with the Prothonotary and Senior Master, Ms. Jani stated that company is not in a position to deposit the amount. Even no document showing financial status of the company is annexed to the affidavit in reply to show that the company is in good financial and is able to pay the amounts. In fact, there is not even an averment in reply stating that the financial condition of the company is very sound.

6 Even to the statutory notice dated 15th July 2015, a reply has been sent on 25th September 2015 after the petition was filed. Even in its reply, it is stated *“We confirm the amounts received by us from your client. We again reiterate that our intentions still remain the same. Once our financial position improves, we will pay the amount received from your client with reworked returns as per mutual understanding at the appropriate time of settlement”*. Therefore, admittedly, company is indebted to petitioner and the fact that the company is unable to deposit the admitted amount due and payable to petitioner shows that the company is commercially insolvent.

7 In the circumstances, the following order is passed :-

(a) The company petition is admitted and is made returnable on 26th April 2018.

(b) Petitioner is directed to advertise the petition in two local newspapers, viz., (i) Free Press Journal (in English); and (ii) Navshakti (in Marathi) as also in the 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 Company

(Court) Rules, 1959.

(c) Petitioner shall deposit Rs.15,000/- toward publication charges with the Prothonotary and Senior Master, under intimation to the Company Registrar, within a period of two weeks, failing which 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.

(d) Respondent waives notice under Rule 28 of Companies (Court) Rules, 1959.

(K.R. SHRIRAM, J.)