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

CONTEMPT PETITION NO. 1 OF 2019

Aditya Birla Idea Payments Bank Ltd. ... Petitioner

Mr. Gaurav Joshi, Senior Counsel a/w Mr. Peshwan Jehangir, Mr. Himanshu Vidhani and Ms. Anumeha Karnatak i/b Khaitan & Co. for Petitioner.

CORAM : R.I. CHAGLA, J.

DATED : 18th SEPTEMBER, 2019.

P.C. :

1 By this Petition, the Petitioner seeks winding up of its operations voluntarily under the Banking Regulation Act, 1949 read with applicable provisions of the Companies Act. The Learned Senior Counsel submits that the Petitioner is seeking voluntary winding up of its operations as they have become unviable due to certain unanticipated developments in the business and regulatory landscape. The decision of winding up has been made pursuant to the resolution of the board of directors dated 19th July 2019. The shareholders of the Petitioner have also unanimously accorded their approval for the winding up of the company by virtue of their resolution dated 26th July 2019.

2 By this Court's order dated 28th August 2019, the Petition had been admitted and the Petitioner was, amongst all, directed to advertise the admission of this petition in two newspapers and also upload the same for public viewing on its website. The Petitioner has filed affidavit dated 14th September 2019 confirming that these directions have been duly complied with.

3 No one has come forward to oppose this Petition.

4 The Learned Senior Counsel submitted a certificate dated 6th September 2019 issued by the Reserve Bank of India in terms of Section 44 of the Baking Regulation Act, 1949. By the said certificate, the Reserve Bank of India has certified that the Petitioner Company is able to pay in full all its debts to its creditors as they accrue. The Learned Senior Counsel submits that the requirement of solvency certificate for winding up of the Petitioner in terms of Section 44 of the Banking Regulation Act, 1949 have been met. This certificate is placed on record by the Petitioner by way of its Additional Affidavit dated 14th September 2019. The Additional Affidavit is taken on record.

5 The Learned Senior Counsel submits that the shareholders of the Petitioner have by their resolution dated 26th July 2019 suggested the name of one Mr Vijaykumar V. Iyer to be appointed as the Liquidator. Mr Vijaykumar V Iyer is a Senior Director of Deloitte Touche Tohmatsu India LLP and qualified insolvency professional, bearing registration number IBBI/IPA-001/IP-00526/2016-17/1370. Mr Vijaykumar V. Iyer has agreed to accept his appointment as the Liquidator of the Petitioner and has confirmed that he is eligible to be appointed as the Liquidator, by his letter dated 14th August 2019 addressed to the Petitioner. This letter is placed on record by the Petitioner by way of the Additional Affidavit dated 14th September 2019.

6 The Learned Senior Counsel has explained the urgency of passing of an order of winding up of the Petitioner in light of the recurrent losses amounting to Rs. 8,00,00,000/- (approx.) per month that the Petitioner is incurring. The Learned Senior Counsel submits that the business model of the Petitioner has become unviable and if it continues any further it is likely to face operational difficulties.

7 The Learned Senior Counsel has stated on instructions that given the certificate of solvency, all creditors will be paid in full. The statement is accepted. The Learned Senior Counsel accordingly submits

that the requirement of holding of meeting of the creditors be dispensed with in light of the certificate of solvency issued by the Reserve Bank of India and the fact that the Petitioner is in a position to pay all its debts, as and when they accrue.

8 Since the Petitioner is presently in a position to discharge all its debt in full, it should be expeditiously liquidated. There also exist sufficient grounds to wind up the Petitioner.

9 In the circumstances, the Company Petition is allowed in terms of prayer clauses (b), (c) and (e), which read as under:

> "…
> *b) pass an Order for the winding up of the Petitioner;*
> *c) appoint Mr. Vijayakumar Iyer and/or such other person who this Hon'ble Court may deem fit, as the Liquidator with all powers as prescribed under the Banking Regulation Act, 1949 read with the applicable provisions of the Companies Act, 2013, including taking over the assets of the Petitioner, examination of the statements of affairs of the Petitioner, review of audit reports and accounts of the Petitioner etc.;*
> …
> *e) dispense with the requirement of holding a creditors' meeting;*
> …"

10 The Advocates of the Petitioner shall on receipt of the authenticated copy of this order, shall inform the Liquidator of his appointment as well as the Registrar of Companies of passing of this

order. The Registrar of Companies on receipt of this order shall make endorsement in his records relating to the Petitioner and notify in the official gazette that such an order has been made.

11 The Liquidator is hereby directed to, immediately on receipt of authenticated copy of this order from the advocate of the Petitioner, take all necessary steps, including those mentioned hereinbelow to liquidate the Petitioner as expeditiously as possible:

(i) to evaluate the assets of the Petitioner, take measures to protect the asset value and carry on the business of the Petitioner for its beneficial liquidation for such period and to the extent he may deem fit and proper;

(ii) shall invite claims from all creditors by issuing public notice or other means he may feel appropriate, giving them 30 days' time to submit their claims from the date on which the Liquidator publishes/issues the notice. In the event any creditor fails to submit its claim, the amount standing to its credit in the books of the Petitioner shall be deemed to be payable. The Liquidator shall also be at liberty to take such actions as necessary to verify the amount due to the creditors. The Liquidator shall endeavour to repay the verified amounts owed to all the creditors, as expeditiously as possible;

(iii) shall be at liberty to open and operate an escrow account and deposit therein such amounts as may be required to pay the creditors of the Petitioner;

(iv) shall submit a monthly progress report to this Court, in relation to liquidation of the Petitioner until the liquidation process of the Petitioner is completed and the order of dissolution passed;

(v) shall endeavour to liquidate the Petitioner Company within 3 months of the date of this order;

(vi) upon completion of the liquidation process, the Liquidator shall prepare a final report and submit the same to this Court seeking dissolution of the Petitioner.

12 The Liquidator is entitled to do all such acts, things and deeds as may be necessary or deemed fit to ensure expeditious liquidation of the Petitioner.

13 The Liquidator shall be free to approach the Reserve Bank of India for any advice on any matter, if required and the Reserve Bank of India is empowered to examine any record of any proceedings and tender such advice on the matter as it may think fit.

14 All parties and regulatory authorities to act on the authenticated copy of this Order.

15 Company Petition accordingly stands disposed in terms of the above.

16 Liberty to apply.

(R.I. CHAGLA, J.)