



\$~C14 to C17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 12th December, 2023

+ CO.PET. 293/2014, CO.APPL. 1936/2017
CHENNAI NETWORK INFRASTRUCTURE LIMITED
..... Petitioner

Through: Mr. Aayush Agarwala, Adv.
versus

LOOP TELECOM LIMITED Respondent

Through: Ms. Madhani Agrawal, Adv.

C15

+ CO.PET. 777/2014, CO.APPL. 2931/2014, CO.APPL.
1946/2017 & CO.APPL. 1947/2017
VIOM NETWORK LIMITED Petitioner

Through: Ms. Raashi Beri, Adv.
versus

LOOP TELECOM LIMITED Respondent

Through: Ms. Madhani Agrawal, Adv.

C16

+ CO.PET. 921/2015, CO.APPL. 1938/2017 & CO.APPL.
224/2023
INDUS TOWERS LIMITED Petitioner

Through: Ms. Raashi Beri, Adv.
versus

LOOP TELECOM LIMITED Respondent

Through: Ms. Madhani Agrawal, Adv.

C17

+ CO.PET. 6/2016 & CO.APPL. 23/2016
TATA TELESERVICES LIMITED & ANR. Petitioners

Through: Ms. Ravina Rai and Ms.
Apeksha Dhanvijay, Advs.

versus

LOOP TELECOM LIMITED Respondent

Through: Ms. Madhani Agrawal, Adv



CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

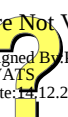
1. This common order shall dispose of the above mentioned separate petitions filed by above noted four petitioner companies against the respondent company, each seeking winding up of the respondent company, which raise a common question of law.

CO.PET. 293/2014

2. This petition has been filed by the petitioner – Chennai Network Infrastructure Ltd. against the respondent company – Loop Telecom Ltd. seeking winding up of the company. The background of the present petition is that the respondent company was registered in 1997 and is engaged in the business of telecommunications. It is licensed to provide telecommunication service in various telecom circles in India All Circles. The respondent company alongwith Aircel Limited, Aircel Cellular Limited, Dishnet Wireless Limited (hereinafter referred to as ‘Aircel Entities’) executed a Master Infrastructure Provisioning Agreement dated 12.10.2009.

3. Later, a Deed of Novation dated 20.07.2010 was executed between the respondent and Aircel Entities, whereby the petitioner came in place instead of Aircel Entities to perform certain obligations under the agreements arising out of the Master Infrastructure Provisioning Agreement and the Deed of Novation.

4. The respondent company became indebted to the petitioner for a sum of Rs.2,10,24,937/- along with interest thereon at the rate of





15% per annum up to 02.12.2013. The said amount was not paid despite the statutory service notice dated 08.04.2014.

CO.PET. 777/2014

5. The petitioner company-Viom Networks Limited in the instant petition, states that it provides passive infrastructure services, in furtherance of which it owns/possess various telecommunication sites, including cellular towers, infrastructure and equipment in various licensed Telecom Circles in India. On 05.01.2010, Wireless TT Info Services Limited (WTTIL) and Quippo Telecom Infrastructure Limited (QTIL) had entered into a Master Services Agreement with the respondent company.

6. The respondent company became liable to pay the petitioner a total sum of Rs. 26,42,68,218 /- including interest till 31.08.2014, and lock in charges which were illegally withheld by the respondent company not only as per the terms and conditions of the MSA but also in terms of the trade practice and mercantile usage prevalent in the market. The respondent company is also liable to pay pendent lite and future interest @ 18% per annum in accordance with law. The said amount was not paid by the respondent despite service of the statutory notice dated 17.10.2014.

CO.PET. 921/2015

7. The petitioner – Indus Towers Limited has filed this petition against the respondent company in respect of violation of the Terms and Conditions contained the Master Services Agreement dated 23.03.2010 since pursuant thereto, the petitioner company has been



providing uninterrupted cellular services to the respondent company.

8. Amount due by the respondent company comes to Rs. 2,76,84,848/- besides an additional amount of Rs. 32,81,711/-, which became due with respect to the energy charges billed by the Petitioner for the services already rendered under the MSA and Rs. 22,92,37,426/- towards exit amount for termination/withdrawal from services from all the sites is also due.

9. The notice of winding up was dated 03.07.2015 and was served upon the respondent company on 05.07.2015. Despite the notices, the respondent company has failed or neglected to make payment of the undisputed, admitted amount due and payable to the petitioner.

CO.PET. 06/2016

10. The petitioner and the respondent entered into an Interconnection Agreement dated 10.04.2009 envisaging inter-connectivity of telecommunication networks in each of the service areas with each other. The petitioner provided the services and raised its invoices for the same to the respondent. The respondent company became unable to repay the petitioners an admitted debt of Rs. 2,68,70,170/- along with an interest at the rate of 11.5% per annum thereon compounded monthly from the respective due dates of the charges mentioned in the agreement dated 10.04.2009 till the date of actual realization.

11. The said amount was not paid by the respondent despite the statutory notice dated 25.02.2015.

ANALYSIS AND DECISION:

12. Having heard the learned counsel for the parties and on perusal



of the record in each of the aforementioned petitions, it is evident that the respondent company is unable to pay its debt in the normal and ordinary course of its business, resulting in institution of the instant winding up petitions. It is pertinent to mention that neither a Provisional Liquidator (PL) nor an Official Liquidator (OL) has been appointed in the present petition.

13. With the enactment of Insolvency and Bankruptcy Code, 2016¹ and introduction of The Companies Act, 2013², particularly Section 434 of the said Act, the present petitions do not deserve to be continued before this Court as the same are still at an initial stage and no PL/OL has been appointed in these matters. Transfer of proceedings relating to winding up, pending before High Courts to the National Company Law Tribunal³, has been provided for in Section 434 of the Act. The said provision reads as under:-

“434. Transfer of certain pending proceedings

(1) On such date as may be notified by the Central Government in this behalf,-

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act; (b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an

¹ IBC

² Act

³ NCLT



appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and

(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer: Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.

Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal [Provided also that]-

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.]

Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under subsection (1) of section 485 of the Companies Act, 1956 but the Company has not been dissolved before the 1st



April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”

14. The Supreme Court in **Action Ispat and Power Limited v. Shyam Metalics and Energy Limited**⁴ has held that winding up proceedings which have not reached an advanced stage ought to be transferred to the NCLT. The relevant extract of the said decision reads as under:-

“22. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a preadmission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a winding up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the

⁴ (2021) 2 SCC 641



immovable or movable properties have taken place, nothing irreversible is done which would warrant a Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case.”

15. This Court in the case **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**⁵ examined the legal position in respect of cases where the winding up petition is not at an advanced stage. It is the opinion of this Court, that, since hardly any proceedings have been undertaken towards winding up of the company, the instant petitions no longer deserve to be continued before this Court. The petitions are at a very nascent stage and no substantive orders have been passed towards winding up of the company.

16. Hence, the instant petitions are transferred to the NCLT. The parties shall appear before the NCLT on 10.01.2024. Interim orders passed by this Court in each of the petitions shall continue till the

⁵ 2023:DHC:5206.



same are reversed or modified by the NCLT. It is left to the domain of the NCLT to consider the matters and pass appropriate orders in accordance with law.

17. The above noted company petitions are accordingly disposed of. The electronic record of the instant petitions be transmitted to the NCLT within a period of one week by the Registry. List before the NCLT on 10.01.2024.

DHARMESH SHARMA, J.

DECEMBER 12, 2023/ss