

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

COMPANY PETITION NO. 280 OF 2016

Citibank N/A Petitioner

Vs.

Tirupati Industries (India) Ltd.Respondent

Mr.Abhishek Bhadang a/w. Mr.Vijayendra Purohit I/b Manilal Kher Ambalal and Co. for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 6TH JULY, 2018

P.C.:

1 This petition is for winding up of the respondent company-Tirupati Industries (India) Ltd. (the company) on the ground that the company is unable to discharge its debt and is commercially insolvent.

2 After the petition was filed, the company had entered into consent terms dated 26th July 2016 with petitioner wherein the company, *inter-alia*, agreed and undertook to pay a sum of Rs.7,16,08,867- to petitioner. Thereafter, certain payments were made as per the consent terms but the company defaulted in making payment of the installment of Rs.2,46,30,000/- (as on 1st September 2016) and Rs.10,00,000/-, each in the month of October and November 2016, respectively.

3 Revised consent terms were filed on 14th December 2016 only in respect of the defaulted amount. Thereafter, the company made certain payments but as the company was unable to comply with the revised consent terms also, the time-line for payment of the amount of Rs.2,49,59,287/- and Rs.18,39,469/- due as on 30th June 2017, was extended as recorded in the order dated 5th July 2017.

4 With a view to bring about quietus to the issue and as a last and final chance to respondent-company to complete the settlement, petitioner, on an unconditional undertaking of respondent-company that it will not seek any further modification/extension of time and/or plea to file further consent before this Court or otherwise, has accepted the proposal of respondent-company to pay an amount of Rs.3,00,00,000/- in full and final settlement of account with respondent-company.

5 Further revised/supplementary consent terms dated 5th January 2018 to the 1st consent terms dated 26th July 2016, as recorded in the order dated 5th January 2018 was filed.

6 As per the revised/further consent terms, the company unconditionally admitted, agreed and confirmed that the company shall pay an amount of Rs.3,00,00,000/-, Rs.1,00,00,000/- was to be paid

simultaneously upon execution of the further consent terms by demand draft and Rs.55,00,000/- was to be paid on or before 15th January 2018. The company has paid Rs. 1,55,00,000/-. The installment of Rs.11,25,000/- that was due on 28th February 2018 was not paid as the cheque came to be dishonoured due to insufficient funds. Thereafter, not a penny has been paid and as that cheques has got dishonoured, the other cheques given by the company were not deposited.

7 There is an amount of Rs.1,90,00,000/- yet to be paid by the company. The further revised consent terms provided in clause 5(iii) that in case of default, the company petition shall revive, stand admitted and be made returnable after six weeks from the date of such default and in clause (iv) service of the petition under Rule 28 of the Companies (Court) Rules, 1959 shall be deemed to have been waived.

Therefore, the petition has got revived.

8 On record is an affidavit of one Pranav Awasthi affirmed on 7th May 2018 confirming advertising the petition in Free Press Journal on 18th April 2018. There is also an affidavit of Pranav Awasthi also affirmed on 7th May 2018 confirming advertising the petition in the Maharashtra Government Gazette for the period April 26-May 2, 2018 at Sr.No.M-1829.

As mentioned earlier, notice under Rule 28 has been waived.

9 Since the company having breached its undertakings repeatedly, as recorded in the orders 26th July 2016 and 5th January 2018 and not having made any attempt to pay the balance amount, I am satisfied that the company is unable to discharge its debt, is commercially insolvent and requires to be wound up. Therefore, the petition is allowed in terms of prayer clause (a) and (c) which read as under :-

“(a) that the Respondent Company, viz., M/s. Tirupati Industries (India) Limited, to be ordered and directed to be wound up by and under the orders and directions of this Hon'ble Court under the Companies Act, 1956.

(b) that the Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as the Liquidator of the Liquidator of the Respondent Company, viz., M/s. Tirupati Industries (India) Limited, with all powers under the provisions of the Companies Act, 1956.”

10 Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the official liquidator who shall take immediate steps without waiting for any notification. The counsel for petitioner also to forward a copy of this order to the National Company Law Tribunal, Mumbai for information.

11 Upon receipt of the authenticated copy from petitioner's advocate, the official liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in

consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the official liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

12 The company petition accordingly disposed.

(K.R. SHRIRAM, J.)