

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

COMPANY PETITION NO. 10-T OF 1999

M/s Toral Trading Corporation,  
duly represented by its  
proprietor, Smt. Kajal K.Shah,  
having her office at Shridhar  
Building, 1st Floor,  
Vasco-da-Gama, Goa  
(Through her Power of Attorney  
Holder Shri K.K.Shah).

... Petitioner.

versus

M/s Carsons Ore Carriers Pvt.Ltd.,  
having its registered Office at  
Menezes Braganza Road, Baina,  
Vasco-da-Gama, Goa - 403 802.

... Respondent.

Mr. P. P. Singh, Advocate for the Petitioner.

Mr. V. P. Thali, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 21ST JUNE, 2002.

**ORAL JUDGMENT**

This Petition is filed by the Petitioner for winding up of the Respondent Company on the ground that the Respondent Company is unable to pay its debts. The Petitioner states that as per the balance sheet, which is Exh.'B' to the Petition, an amount of Rs.5,71,927-30 is payable by the Respondent Company to the Petitioner. It is also stated in the Petition that towards the discharge of the debts, the Respondent Company had issued two cheques bearing No.033435, dated 1st October, 1998 for an amount of Rs.1,63,439/- and another cheque bearing No.033441, dated 15th October,1998 for an amount of

Rs.4,29,396/-, both drawn on Centurion Bank Limited, Vasco-da-Gama. It is further stated in the Petition that the cheques when presented were dishonoured on account of insufficiency of funds. The Petitioner Company had issued the Statutory notice under Section 434 of the Companies Act, 1956 dated 20th March, 1999. The said notice has been duly received by the Respondent Company. However, the Respondent Company had not replied to the said notice.

2. A notice of this Petition was served on the Respondent and this Court on 9th June, 2000 had passed the following Order:-

"Statutory notice was served on the respondents under Section 434 of the Indian Companies Act, 1956. Respondents did not reply or show cause to the said notice. Admittedly, the respondents issued some cheques in favour of the petitioners which, when presented, bounced. In the reply filed also there is no challenged that the monies are not due and payable to the petitioners. In these circumstances, the petitioners have made out a case that the respondents are justly indebted to the petitioner and are unable to pay their debts. Considering that, the respondents to deposit the sum of Rs.5,92,835/- within sixteen weeks from today. If the amount is deposited, the Company Petition to stand dismissed. Liberty to the petitioners to withdraw the amount without any security. In

the event the respondents fail to deposit the amount, the Company Petition to stand admitted. Petitioners to advertise the petition. Order accordingly. In the meantime, there will be an interim relief in terms of prayer clause (d)".

3. By an Interim Order, the Respondent Company, Directors, agents, servants and officers were restrained from dealing with and/or disposing of or encumbering any of its assets in any manner including the Barge, Carsons II bearing No.MRH-611 lying at Cortalim. It appears that the Respondent Company did not deposit an amount of Rs.5,92,835/- within sixteen weeks from 9th June, 2000 and, therefore, the contents of the Petition were advertised in the local newspaper 'Gomantak Times' on 14th February, 2002. The copy of the advertisement as it appeared in the local newspaper is filed along with a pursis in this Court. An Affidavit of the Petitioner Company supporting the publication in the newspaper is also filed.

4. Despite the publication in the newspaper, the Respondent Company has chosen not to put in appearance. This Petition was adjourned on several occasions to afford an opportunity to the Respondent Company for putting its appearance.

5. The Petition was, therefore, taken up for final hearing. I have heard Mr. P. P. Singh, the learned

Advocate appearing for the Petitioner Company. From the averments in the Petition, it is clear that the Respondent Company was indebted to the Petitioner Company in the sum of Rs.5,92,835/- and which liability is not denied by the Respondent Company. The cheques issued by the Respondent Company have been dishonoured on the ground of insufficiency of funds. It is, therefore, apparent that the Respondent Company is unable to discharge its liability and meet its debts.

6. For the aforesaid reasons, the Petition is allowed and M/s Carsons Ore Carriers Pvt.Ltd., Baina, Vasco, Goa is ordered to be wound up. Accordingly, the Official Liquidator is appointed to take charge of the said Company which is ordered to be wound up. Official Liquidator be informed of this Order as per Rule 109 of the Company Court Rules, 1959. The Petitioner to deposit Rs.5000/- for meeting the preliminary expenses with the Official Liquidator, which amount shall be reimbursed to the Petitioner as a first charge. The amount to be paid to the Official Liquidator within six weeks from today.

7. Rule made absolute in the above terms with no order as to costs.

P. V. HARDAS, J.