



**GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS  
OFFICE OF OFFICIAL LIQUIDATOR**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 329/2013 & CA 1079/2013, 1080/2013,  
1084/2013, 1796/2013

DEUTSCHE TRUSTEE COMPANY LTD

..... Petitioner

versus

TULIP TELECOM LTD.

..... Respondent

Present: Mr Rajiv Nayar, Sr. Advocate with Mr L. K. Bhushan and Mr  
Anirudh Arun Kumar, Advocates for the petitioner.  
Mr P.V. Kapur, Sr. Advocate with Ms Diya Kapur, Ms Tejaswi  
Shetty, Ms Himanie Katoch, Advocates for respondent Tulip.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**12.02.2015**

The present petition has been filed by the petitioner company under Sections 433(e) & (f), Section 434 and Section 439 of the Companies Act, 1956 (hereinafter referred to as the 'Act'), *inter alia*, praying for winding up of the respondent company on the ground that the respondent company has failed and neglected to pay a sum of USD 140,172,365.06/-, which was claimed as due and payable by the respondent company to the petitioner company.

Briefly stated, the relevant facts are that respondent company issued 'Zero coupon convertible bonds due 2012' on 26.07.2007 and the said bonds were due for redemption/payment on 26.08.2012 at 144.506% of the principal amount. A trust deed dated 26.07.2007 was executed between the petitioner company and the respondent company whereby the petitioner company agreed to be the Trustee of the bondholders. On the date of

maturity, i.e. 26.08.2012, bonds with principal value of USD 97,001,000/-, having aggregate value of USD 140,172,365.06/-, became due for redemption. Thereafter, petitioner company caused a statutory notice, under Section 434(1)(a) of the Act, dated 19.03.2013 to be issued to the respondent company, calling upon the respondent company to pay the outstanding amount of USD 140,172,365.06/-. Respondent company has not disputed that it is liable to redeem the bonds. Admittedly, the respondent company has been unable to pay the outstanding amount.

The learned counsel for the respondent has submitted that the company is making efforts for revival. It is stated that interest has been shown by certain investors and if the said proposal fructifies then the company would be in a position to revive and repay its debts. He has further submitted that if the company is wound up the creditors would not be in a position to even receive a fraction of the amount owed to them and in this view the court should defer any adverse order to enable the company to take adequate measures for its revival. On a query, whether the company would be in a position to make a deposit in Court pending consideration of the petition, the learned senior counsel appearing for the respondent, candidly, stated that there are no cash flow available with the company to do so.

In view of the aforesaid circumstances, it is apparent that the company is unable to pay its debts. It is also noted that several petitions including the above captioned petition were filed in 2013; and the respondent had sufficient opportunity for preparing a workable scheme indicating the manner in which its creditors could be paid. No such scheme has been placed on record. There is no proposal on behalf of the respondent company

which would lend any credibility to the submission that the petitioner would be in a position to pay its debts within a reasonable period of time. In view of the aforesaid the winding-up petition is admitted and the Official Liquidator is appointed as a Provisional Liquidator. However, in order to enable the respondent company to place a solvent scheme repay its creditors, the directions to publish citations are deferred till 30.04.2015. This is to ensure that there is no adverse effect on the company on account of publicity of this petition. The petitioner shall also not make any press or public statements regarding admission of the present petition. It is directed that the Directors of the company shall furnish the statement of affairs within 21 days from today. The Provisional Liquidator shall also examine the statements of affairs and collect all the necessary data as required. However, the Provisional Liquidator shall not interfere with the functioning of the company till further orders.

List on 30.04.2015 for further proceedings.

VIBHU BAKHRU, J

~~FEBRUARY 12, 2015~~

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ CO.PET. 329/2013 & CA Nos. 1079-80/2013, 1084/2013 &  
1796/2013

DEUTSCHE TRUSTEE COMPANY LTD ..... Petitioner  
Through: Mr L. K. Bhushan and Mr Anirudh  
Arun Kumar, Advocates.

versus

TULIP TELECOM LTD. .... Respondent  
Through: Mr P. V. Kapoor, Sr. Advocate with  
Mr Kuljeet Rawal and Mr Saurabh  
Malhotra, Advocates.  
Mr Vijay Chandra and Ms Sonia  
Sharma, Advocates for Service Tax  
Department.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

% **30.04.2015**

On 12.02.2015, the winding up petition was admitted, however, the publication of citations was deferred. Further, the Provisional Liquidator was directed not to interfere with the functioning of the company till further orders. This was to provide the company and its promoters a final opportunity to present a cogent scheme for the payment of dues owed to the creditors.

The learned senior counsel appearing for the respondent states that the company is not in a position to present such a scheme. However, the company and its promoters are in advanced talks with certain investors. It is noted that a similar statement had been made on behalf of the respondent company on previous occasions also and the hearing of the petitions were

deferred. However, no concrete scheme has been provided. There is also no

~~material on record, which could persuade this Court to believe that the~~

company would be in a position to repay its debts in the foreseeable future.

In the circumstances, I see no reason to defer the publication of citation or to

withhold the Provisional Liquidator from taking over charge of the books of

accounts and assets of the company. Let the petition be advertised in the

Official Gazette, 'Times of India' (English Edition) and 'Jansatta' (Hindi

Edition) for a hearing to be held on 14.08.2015. The Provisional Liquidator

~~shall forthwith take charge of the books of accounts and assets of the~~

company and file a status report before the next date of hearing.

List on 14.08.2015.

VIBHU BAKHRU, J

APRIL 30, 2015

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