IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.519 OF 2013

Riyaz Ahmed Lambay @ R.F.Lambay … Petitioner
versus
M/s. Sand Piper Resorts Ltd. … Respondent

Ms. A.R.Lambay i/by Mr. Vikas Singh, for Petitioner.
None for Respondent.
Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S.J. KATHAWALLA, J.

DATE: 17th NOVEMBER, 2015

P.C.

1. By the above Petition, the Petitioner seeks winding up of the Respondent Company – M/s. Sand Piper Resorts Ltd., ("the Company") under Sections 433 (e) and 434 of the Companies Act, 1956 ("the Act"). The Company Petition is taken up for hearing and final disposal.

2. According to the petitioner, sometime in 1995 the Company's managing director, one Irshad Khatib, told the petitioner that the Company owned a substantial property at Murud-Janjira, and that the Company intended to sell individual plots from this larger property. Mr. Khatib enquired whether the petitioner was interested in investing in the enterprise by buying one or more plots. The petitioner then decided to purchase two plots and paid an initial amount of Rs.2 Lakhs towards this purchase. Thereafter, periodically, the petitioner paid an aggregate of Rs.37.5 Lakhs to the

Company.

3. For five years thereafter, nothing seems to have happened. According to the Petitioner, it was only in the year 2000 that Irshad Khatib told the petitioner that the Company desired now to expand the construction of the resort at the same site. This expansion was to include the plots purchased or agreed to be purchased by the petitioner. According to the Petitioner, Mr. Khatib asked the petitioner to cooperate with the Company. According to the Petitioner, he agreed to support this expansion and to release his rights in the plots that he had agreed to purchase. However, the petitioner claims, there was an agreement that he would be repaid the entire sum that he had paid to the Company "together with the appreciated value of the said plots or entire sum with a percentage of profits on the said project whichever is higher".

4. According to the petitioner, in May 2013 (nothing having happened for the last 13 years since the year 2000), he asked the Company for repayment. After some discussions, since he urgently needed the funds, the petitioner agreed to accept the amount of Rs.1,01,70,346/- in full and final settlement of his dues. According to the petitioner, it was further agreed that if cheques to be issued by the Company in this amount were dishonoured, then the petitioner would be entitled to an amount of Rs.1,36,70,346/- with interest at the rate of 18% per annum.

5. According to the petitioner, some 12 undated cheques totalling to Rs.8,47,528.90 were delivered to him by the Company. The petitioner also says that

the Company requested the petitioner not to encash these cheques and to present them after 15th June 2013.

6. According to the petitioner, as all these cheques were dishonoured, contrary to the understanding, the petitioner became entitled to the entire sum of Rs.1,36,70,346/-. According to the petitioner, the Company also defaulted in filing its regular returns.

7. A statutory notice was issued to the Company on 2nd July 2013 by the petitioner's advocates. This was received by the Company at its registered office. The Company replied on 10th July 2013. A copy of the Company's reply is at Exhibit C to the petition. In its reply, the Company has attempted to deny the entirety of the claim. However, in paragraph 5 of that reply, there is a categorical admission that amounts were in fact due from the Company to the petitioner. Though, the petitioner's Advocate's notice contained details of the petitioner's claim, there is no specific denial by the Company. The Company's reply instead only contains invocation of several legal principles, which are not applicable to the present case.

8. The Petitioner therefore filed the present Petition seeking winding up of the Company. In paragraph 8 of the petition, the petitioner has categorically stated that the Company has defaulted in filing its statutory returns since 2005. At the stage of admission of the Petition, the Company failed to appear and also failed to file its Reply. The above Company Petition was therefore, admitted by an order passed by this Court

(Coram : G.S.Patel, J.) dated 13th February, 2014 and directed to be advertised in two local newspapers as well as in the Maharashtra Government Gazette. The Official Liquidator was appointed as Provisional Liquidator of the Company. In the order of Admission, the learned Judge has held that *"There is no defence at all to this Petition, leave alone one that could be said to be bonafide or substantial"*.

9. Pursuant to the said order, the Petition has been advertised in two local newspapers and Maharashtra Government Gazette and the Affidavit proving publication is on record. Notice under Rule 28 of the Companies Court (Rules) 1959, was sought to be served on the Company. However, the same has been returned with the remark "Left". Since the Notice was sought to be served at the Registered address of the Company, which address on that day was shown as the registered office of the Company in the record of the Registrar of Companies, the said Petition is deemed to have been served on the Company, though the same has been returned with the remark "Left". Even at this stage, the Company has not come forward to oppose the Petition. No reply is filed to the Petition till date. In the circumstances, all that is stated in the Petition including the fact that the Company has defaulted in filing its statutory returns since the year 2005, has remained uncontroverted. I am therefore, satisfied that the Company is unable to pay its debt, is commercially insolvent and deserves to be wound up. The Company Petition is therefore, allowed in terms of prayer clause (a), which is reproduced hereunder :

> "(a) the said Company viz. Sand Piper Resorts Ltd., be wound up under the provisions of the Companies Act, of 1956 by and under the Order and Directions of this Hon'ble Court;

10. The Official Liquidator earlier appointed as Provisional Liquidator of the Company is now appointed as Liquidator of the Company with all powers under the provisions of the Act.

11. The Company Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)