

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.555 OF 2014**

M/s. Om Som En Fab Private Ltd. ...Petitioner

Versus

M/s. Maharana Inn Resorts Pvt. Ltd. ...Respondent

**ALONG WITH
COMPANY PETITION NO.556 OF 2014**

M/s. Ravi Steel Industries ... Petitioner

Versus

Maharana Inn Resorts Pvt. Ltd. ... Respondent

**Mr. Mayur Khandeparkar, i/b. Mr. Girish Kedia, for the Petitioner.
Mr. M.S. Bhandari, i/b. Pranjali Bhandari, for the Respondent.**

**CORAM: G.S. PATEL, J.
DATED: 14th March 2016**

P.C.

1. Heard.

2. The Petitioner, registered partnership firm, seeks an order of winding up against Respondent, Maharana INN Resorts Pvt. Ltd. (**“the Company”**.)

3. The basis of this Petition is that the Petitioner delivered certain construction material to one M/s. Sankalp Developers & Project Consultant. The Petitioner’s case is that it was assured that should Sankalp default in payment of its debt to the Petitioner, the Company would discharge Sankalp’s debt and liability. In other words, according to the Petitioner, the Company is a guarantor for debts of M/s. Sankalp Developers.

4. Mr. Khandeparkar for the Petitioner agrees that there is no document of guarantee. However, he says that the endorsement on page 72 shows an acknowledgement of liability. This is an interesting document. It is a ledger statement. At the top it bears the name of the Petitioner. There is a handwritten endorsement at the foot with the date of 25th July 2013. That handwritten endorsement reads “for Sankalp”. Mr. Khandeparkar insists that this is endorsement by the Company. The endorsement does not say so. There is no rubber stamp. Indeed there is nothing to indicate that the Company made this endorsement. That, surely, a sufficiently triable issue to merit the dismissal of this Petition.

5. Mr. Khandeparkar’s next submission is that the Company issued two cheques of Rs.25 lacs and these could only have been in discharge of its obligation as guarantor. The first of these was cleared; the second is past its validity date. I do not see why this should be so. No covering letter is shown to me by which it can be

said that the Company accepted its role or liability as guarantor. There are several perfectly legal situation and circumstances other than a guarantee in which one party might pay off a part of the debt of another without becoming the liable for the whole of that debt.

6. The Affidavit in Reply squarely takes the point that there is no document of guarantee and that there is no privity of contract of whatsoever between the Petitioner and Respondent. This is certainly a triable issue. It is not a spurious or specious defence entirely lacking in *bona fides*.

7. Indeed Mr. Bhandari for the Company is correct in pointing out that the fact that the Petitioner filed a Summary Suit No.1093 of 2015 in the City Civil Court, Mumbai against M/s. Sankalp Developers just one day before this Company Petition, and did not join the present Respondent as Defendant to that suit, *prima facie* indicates that this case against the Respondent is entirely an afterthought and a pressure tactic.

8. Mr. Khandeparkar says that there is no reply to the statutory notice and that the Company must, therefore, be deemed to be unable to pay its debts. In a situation like this, where I am not convinced that there is any debt due from the Company at all, I do not think the statute intended that a deeming fiction should take the place of evidence.

9. The Company Petition is dismissed. No costs.

(G. S. PATEL, J.)