

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.119 OF 2016
IN
COMPANY PETITION NO.519 OF 2013**

M/s Sand Piper Resorts Ltd.

.... Appellant.

V/s

Mr. Riyaz Ahmed Lambay
@ R.F. Lambay

..... Respondent.

Mr. Navin Tiwari for the Appellant.

Ms. Alisha Lambay alongwith Ms. Sonali Sable, Akshata Naik
i/b Vikas Singh for the Respondent.

Mr. Pankaj Srivastava, Assistant Official Liquidator, present.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: 29th February, 2016

P.C.:-

1. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent.

2. Appellant is aggrieved by the order passed by the learned Single Judge dated 17/11/2015 whereby the learned Single Judge allowed the Petition filed by the Respondent herein and directed that the Appellant/Company be wound up under the provisions of the Companies Act.

3. Brief facts are that, according to Respondent, Appellant/Company owed to the Respondent an amount of Rs 1,36,70,346/- with interest @ 18% per annum. Twelve cheques were given by the Appellant/Company for an amount of Rs 8,47,528.90. The said cheques were dishonoured. Statutory notice was sent by the Respondent to the Appellant/Company on 02/07/2013 which was received by the Company. In the reply given to the said statutory notice, the Appellant denied its liability. Thereafter, the Company Petition was filed by the Respondent which was admitted by the learned Single Judge on 13/2/2014. The learned Single Judge, who admitted the Company Petition, noted that there was no bona fide defence raised by the Appellant/Company. Thereafter, Petition came up for final hearing. No reply was filed to the Petition by the Appellant/Company. Statutory returns have not been filed by the Appellant/Company since 2005. The learned Single Judge has therefore observed that the Company was not in a position to pay its debts and was therefore commercially insolvent.

4. The learned Counsel for the Appellant submitted that on account of default made by the Advocate, no reply could be filed. He submitted that an opportunity may be given to the Appellant to file its reply. He further submitted that after dishonour of cheques, complaint under section 138 has

already been filed. He submitted that the claim of the Respondent/Petitioner is not genuine.

5. We are of the view that the said submissions made by the learned Counsel for the Appellant cannot be accepted for more than one reason. Apart from the fact that there is mere denial of the claim made by the Respondent/Petitioner by the Appellant/Company, the fact remains that the cheques were given towards the payment of the outstanding amount. The cheques were dishonoured when they were presented after 15/6/2013. Thus, as rightly held by the learned Single Judge, there is no genuine, bona fide and substantial defence for non-payment of the amount due and payable to the Respondent/Petitioner. Hence, we are not inclined to interfere with the order passed by the learned Single Judge.

6. Appeal is therefore dismissed.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)