

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.306 OF 2016

M/s. Natural Hut Pvt. Ltd.Petitioner

Vs.

M/s. Appel Land Development Pvt. Ltd.Respondent

WITH

COMPANY PETITION NO.322 OF 2016

M/s. Nichi Investment Co. Pvt. Ltd.Petitioner

Vs.

M/s. Appel Land Development Pvt. Ltd.Respondent

Mr. Dilip Rai i/b. Adv. Jignesh Shah for petitioner in both petitions and CP/305/2016.

Mr. Maulik Kirti Tanna for respondent in both petitions and CP/305/2016.

CORAM : K.R.SHRIRAM, J.

DATE : 30th OCTOBER, 2017

PC.:

COMPANY PETITION NO.306 OF 2016

1 This petition has been filed on the basis that petitioner had advanced a loan of Rs.3,19,00,000/- paid over in nine tranches beginning from 10th October, 2012 to 28th March, 2013. According to petitioner, respondent has issued a confirmation of accounts dated 1st April, 2013 whereby respondent has acknowledged that a sum of Rs.3,19,00,000/- is due and payable by respondent to petitioner and also in the balance sheet for FY 2012-2013 respondent has shown current liabilities as on 31st March, 2013 at Rs.3,77,77,540/- and this amount includes Rs.3,19,00,000/- lent by petitioner to respondent.

2 To the notice sent by petitioner under the provisions of Companies Act, 1956, respondent through its Advocate has replied denying liability. According to respondent, petitioner holds about 16.67% of the equity shares of respondent. Infact there is a letter dated 27th July, 2015, copy whereof is annexed to petition, whereby petitioner has raised a grievance that despite being 16.67% shareholders of respondent, petitioner has not received audited financial statements for the FY 2013-2014 and 2014-2015.

3 It is respondent's case that petitioner had volunteered to contribute a sum of Rs.11 Crores to respondent company against which shares were to be issued. Petitioner had agreed that they would also stand as mortgagors and guarantors for loan taken from Dewan Housing Finance Limited (DHFL) by respondent's subsidiary company towards the project at Udaipur. It is also stated that petitioner after being issued 1,86,250 equity shares are wrongly contending that the amounts which they gave were towards loan transaction whereas it was actually towards contribution in respondent company to be used as the company thought-fit. Respondent has also called upon petitioner to pay the balance amount of Rs.7,81,00,000/- and also to pay DHFL the outstanding amount with interest, penal interest, etc. It is also stated that petitioner has signed as mortgagors in the Mortgage Deed with DHFL and that clearly indicated that

respondent company was being controlled by one of the shareholders of petitioner.

4 It is settled law that when disputed questions of fact are involved, a petition should not be admitted. The reply sent by petitioner to the notice sent under the provisions of Companies Act, 1956 by petitioner has raised various disputed questions of fact.

5 The counsel for petitioner agreed that some disputed questions of fact have been raised in the affidavit in reply as well but petitioner has chosen not to file an affidavit in rejoinder though sufficient time was granted and the last one being on 6th October, 2017.

6 In the circumstances, since respondent has raised various disputed questions of fact, which in view of the reply to the statutory notice cannot termed as after thoughts, in my view, petitioner should file a suit, if advised. This petition is not maintainable.

The petition accordingly stands dismissed.

COMPANY PETITION NO.322 OF 2016

1 The counsel appearing for petitioner states that facts in this petition are identical to the facts in company petition no.306 of 2016 save and except the amount claimed is Rs.19,28,814/- and similar order could be passed.

2 Therefore, in view of the order passed in company petition no.306 of 2016, this petition accordingly stands dismissed.

COMPANY PETITION NO.305 OF 2016

1 Though this petition is not listed today, by consent, taken up for hearing.

2 The counsel appearing for petitioner states that facts in this petition are identical to the facts in company petition no.306 of 2016 save and except the amount claimed is Rs.5,50,000/- and similar order could be passed.

3 Therefore, in view of the order passed in company petition no.306 of 2016, this petition accordingly stands dismissed.

(K.R. SHRIRAM, J.)