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

COMPANY PETITION NO. 133 OF 2014

Bell Finvest (India) Ltd. .. Petitioner
Vs.
Crystal Mirage Ltd. .. Respondent

Mr.Rupesh D. Sohoni for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 6TH NOVEMBER 2017

P.C.

1 Petitioner is seeking winding up of company Crystal Mirage Limited (The Company) on the ground that the company is unable to pay its debts and is commercially insolvent and is required to be wound up.

2 It is petitioner's case that respondent had approached petitioner for an Inter Corporate business loan of Rs.1,10,00,000/- for its urgent business needs. Petitioner agreed to grant a loan of Rs.1,00,80,000/- and granted the loan. As per the terms and conditions, (a) respondent had to repay the said loan in ten equal installments, (b) respondent shall pay interest at the flat rate of 10% per annum amounting to Rs.8,40,000/-, i.e., for the period of 10 months in advance at the time of grant of the said loan, (c) respondent shall

offer two personal guarantors who must agree to give personal guarantee to petitioner in respect of repayment of the said loan by the said company and in case of any delay in repayment of any portion of the said loan or interest, the company shall in addition to the agreed rate of interest also pay, as additional interest, a sum calculated at the rate of Rs.1,000/- for every Rs.1,00,000/- or part thereof of the delayed payment for each day's delay alongwith future interest thereon at the flat rate of 10% per annum, i.e., at the rate of 24% per annum on reducing balance basis on the balance principal loan amount then due. As agreed respondent company also executed a promissory note for the entire loan amount and credited first charge on all assets, current assets, book debts, stock,cash and bank balance, etc. respondent company also agreed that in case it makes any default then the entire balance loan amount shall be repayable in one stroke with agreed costs.

3 Admittedly, petitioner granted the loan of Rs.1,00,80,000/-. Out of 10 equal monthly installments, 07 equal monthly installments were paid amounting to a total of Rs.71,23,000/- leaving a balance of Rs.29,57,000/- towards principal. As respondent company did not pay the 8th monthly installment, petitioner recalled the said loan and called upon respondent to pay the entire balance loan amount in one stroke. Respondent agreed to

repay the entire amount claimed by petitioner and issued a cheque for an amount of Rs.50,19,320/-. The cheque when presented was dishonored due to insufficient funds. Petitioner thereafter commenced proceedings under Section 138 of the Negotiable Instruments Act which are pending. Petitioner also issued statutory notice under Section 434 of the Companies Act, 1956 to which respondent did not even reply.

4 For the petition, respondent has filed a reply in which respondent has admitted the amount payable to petitioner but only states that the demand for 24% interest is, however, on the higher side. In the said reply respondent has also stated that they are going through severe economic hardship and is in talks with its creditors and is looking to make a reference to the corporate debt restructuring mechanism.

5 The Court was pleased to admit the petition on 7th December 2015. The counsel appearing for petitioner states that the order of admitting the petition was not challenged. The counsel also states that after the petition was admitted, no amount was paid by respondent. Respondent is not present either in person or through any advocate.

6 The counsel for petitioner relied on an affidavit of one Mr.Swapnil

Tawade affirmed on 18th December 2015 confirming advertisement of petition in two local newspapers as directed by the order of this Court passed on 7th December 2015, so also in the Maharashtra Government Gazette. Service of the petition under Rule 28 of the Companies (Court) Rules, 1959 was waived as recorded in the order dated 7th December 2015. However, even at this stage, none appeared for the Company to oppose the Company Petition.

7 In view of above, I am satisfied that the Company is unable to pay its debts, is commercially insolvent and deserves to be wound up. The Company Petition is therefore, allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

> *"(a) That CRYSTAL MIRAGE LTD., being the Respondent-Company herein be wound up by and under the order and directions and supervision of this Hon'ble Court under the relevant Provisions of the Companies Act, 1956;*
>
> *(b) That the Official Liquidator, High Court, Bombay be appointed as the Liquidator of the entire assets, properties, affairs and records of the Respondent Company with all powers under the provisions of the Companies Act, 1956."*

8 The Official Liquidator shall forthwith act on a copy of this order without waiting for any Notification.

9 The Company Petition is accordingly disposed of.

(K.R. SHRIRAM, J.)