

IN THE HIGH COURT OF BOMBAY AT GOA**COMPANY PETITION NO. 33 OF 2014**

Ravindra Anand Kamat, aged 55 years,
married, self-employed, F-1, Saraswati CHS,
Yeshwant Nagar, Tisk, Ponda-Goa, 403 401. Petitioner

Shri R.G. Ramani, Advocate for the Petitioner.

CORAM:- C.V. BHADANG, J.

DATE:- 3rd AUGUST 2018.

ORAL JUDGMENT:

This is a petition under Section 439(1)(b) of the Companies Act, 1956 (Act, for short) for winding up of the Company, namely, M/s Waterways Shipyard Private Limited, Vasco (Company, for short).

2. The brief facts are that on 08.10.2010, the petitioner was appointed as a General Manager Administration and Project Development for the Company's Hungarcutta, Udupi Unit, on terms and conditions as mentioned in the appointment letter. The gross monthly salary of the petitioner, as per the appointment letter, was Rs.75,000/- per month i.e. Rs.9 lakhs per annum. On 06.01.2013, the Company asked the petitioner to accept a pay cut from Rs.75,000/- to Rs.50,000/- per month from January, 2013. Looking to the delicate financial condition of the Company, the petitioner accepted the same. However,

subsequently, the petitioner intended to resign from the Company for better prospects and as such, sent his resignation on 03.04.2013, requesting the Company to restrict the notice period to one month, instead of two months. However, the Company did not accede to the same.

3. Be that as it may, the petitioner left the services of the Company w.e.f. 02.05.2013. The petitioner as per the direction of the Company sent a checklist of the pending works and all the documents and licences handled by the petitioner. In short, according to the petitioner, he has not been paid salary for the period from January 2013 till 02.05.2013. The petitioner has also not been paid other benefits, such as, LTA and ex-gratia dues, as set out in para 13 of the petition. According to the petitioner, the Company owes a total amount of Rs.3,93,259.33/- to the petitioner.

4. The petitioner issued a notice dated 13.05.2014 and a second notice dated 11.09.2014, demanding the aforesaid dues, which was received by the Company on 13.09.2014. However, the Company failed to pay the dues. It is in these circumstances, that the petitioner filed this petition for winding up of the Company.

5. The present petition was admitted on 09.02.2015. It appears that even at the stage, prior to admission of the petition, the Company chose not to appear before this Court. Even after the admission of the petition and issuance of the advertisement in the local newspaper Navhind Times and the regional paper Sunaparant, the Company has not appeared before this Court.

6. I have heard Shri Ramani, the learned Counsel for the petitioner and perused record.

7. Shri Ramani, the learned Counsel for the petitioner has submitted that the petitioner would be a creditor of the Company and the fact that the Company is unable to pay the dues of the petitioner, is sufficient to direct winding up of the Company. Shri Ramani has referred to Section 433(e) of the Act, in order to submit that the inability of the Company to pay its debts, is one of the grounds for directing winding up of the Company. The learned Counsel has placed reliance on the provisions of Section 434 of the Act. Section 434 of the Act provides for the contingencies, when the Company is deemed to be unable to pay its debts. Section 434 of the Act reads thus:

“434. Company when deemed unable to pay its debts. (1) A company shall be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of subsection (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.”

8. In the present case, the petitioner had issued a notice to the Company demanding the dues, which has been duly served on the Company and despite that, the Company has neglected to pay the sum or to secure or compound it, within the meaning of Section 434 of the Act.

9. It further appears from the independent Auditors Report dated 04.09.2017 that the Company is a loss making Company and that there is erosion of the capital of the Company and there is mismatch of the assets and liabilities of the Company, in as much as, the liability exceeds the assets. It is submitted that it is otherwise not in public interest that the Company continues its operations.

10. Be that as it may, having regard to the fact that the Company, inspite of the notice, has neglected to pay the outstanding dues or to secure or compound for it to the reasonable satisfaction of the petitioner, within the meaning of Section 434 (1) (a) of the Act, the Company would be “deemed to be unable to pay its debts”. In that view of the matter, the Company is liable to be wound up under Section 433 (e) of the Act.

11. It appears that in pursuance of the advertisement issued, the Canara Bank, Udupi Town Branch, Udupi, Karnataka, had filed Company Application No. 34/2015, for intervention, which was allowed by this Court on 27.03.2015.

12. In such circumstances, the petition is allowed in terms of prayer clauses (a) and (b), appointing the official liquidator of the High Court of Bombay at Goa as liquidator, with all powers, under the provisions of the Act and to take charge of the assets of the Company and to conduct its affairs in the course of its winding up and to distribute the same in accordance with law.

13. The petitioner shall take steps as required as per Rule 113 of the Company (Court) Rules, 1959 by publication of the notice, one each in English and Marathi daily. The Registrar (Judicial) of this Court shall intimate about the passing of the order to the Registrar of Companies/Official Liquidator, within seven days.

C. V. BHADANG, J.

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