

IN THE HIGH COURT OF BOMBAY AT GOA**COMPANY PETITION NO.24 OF 2012**

Mr. Gautam Ramanbhai Patel
aged 61 years, businessman,
having office at Abhijit Building,
1st Floor, Plot NoB-9, Kapole Co-Op.
Housing Society Ltd. Junction of
11th & V. M. Road, J. V. P. D. Scheme,
Juhu, Mumbai 400 049 .. Petitioner

Shri R. G. Ramani and Shri P. Kakodkar, Advocates for the
Petitioner.

CORAM :- C. V. BHADANG, J.

Reserved on : 12th June, 2018

Pronounced on : 19th June, 2018

JUDGMENT :

This is a petition for winding up of Goan Wonderland Properties Pvt Company Ltd. (Company, for short) under Section 433, 434 and 439 of the Companies Act, 1956. The present petition was admitted on 23/01/2015.

2. In pursuance of the public notice one Lume Joao Vincent Fernandes has filed an affidavit on 12/06/2015, opposing the winding up proceedings. It is contended that M/s. Fernandes Realtors Pvt. Ltd (the opposing Company) has filed a suit for specific performance, declaration and permanent injunction against the present Company being Special Civil Suit No.44/2008/B, which is pending before the learned Senior Civil

Judge at Panaji, seeking recovery of an amount of Rs.2,08,65,000 with interest. In short, according to Mr. Fernandes, some time in the first week of October, 2006, the petitioner and Mr. Eric Sequeira had approached him and one Mr. Anselmo D'Souza for expressing their intention to purchase a property at Bambolim and had requested him and Mr. Anselmo D'Souza to act as their agents for the purpose of negotiating the said purchase. According to Mr. Fernandes, he had commenced the ground work of collecting relevant information and documents. It is contended that the petitioner and Eric Sequeira had agreed to pay an amount of Rs.600 per square metre of the said property amounting to 2,08,65,000/- as a recompense for their services for which they have filed the suit.

3. As per the decision of this Court in the case of ***West Hills Realty Private Ltd Vs. Neelkamal Realtors Tower Pvt. Ltd.***; 2017(2) BCR 693, the petition is retained on the file of this Court as it is not liable to be transferred to the National Company Law Tribunal (NCLT, for short).

4. The Company was incorporated on 28/09/2006 under the Companies Act, 1956 (the Act of 1956, for short) as a Private Company, limited by shares with the Registrar of Companies. The

registered office of the Company is situated at Miramar, Panaji, Goa.

5. The Company has authorised share capital of 10 Lakhs divided into 1 Lakh equity shares of Rs.10/- each. However, the paid up capital of the Company is Rs.1 Lakh only.

6. The Company was established *inter alia* with the object of carrying on the business of property and real estate developers and to act as contractors and to carry on business as real estate consultants, agents and investors.

7. The Company has only two shareholders, one being the petitioner and the other being Mr. Eric Sequeira, who is since dead. The petitioner and Mr. Eric Sequeira are holding five thousand shares each since the formation of the Company. The Company has not carried on any business since inception which has been confirmed by the other Director Mr. Eric Sequeira by his letter dated 18/09/2009. The Company has also neither held any Annual General Meeting since inception nor has filed or prepared any audited balance sheet and has failed to comply with any of the formalities as required in law due to "inconsolable disputes between the two directors". The Bank Account of the Company

has been frozen since may 2007 and thus, according to the petitioner, the Company is defunct Company since inception. It is, in these circumstances, that the petitioner is praying for winding up of the Company.

8. Mr. Eric Sequeira filed reply opposing the petition. Mr. Eric Sequeira has set out the various properties, which are associated with Company, in which the Company has made financial investment. He has further set out the various litigations in which the Company is a party, including the cases filed by the petitioner. It is contended that the petition does not satisfy the criteria under which the Company can be wound up. It is contended that it was the responsibility of both the Directors, to hold quarterly meetings and Annual General Meetings, so as to comply with the provisions of the Companies Act and the Income Tax Act, irrespective of the differences. It is submitted that the petitioner has suppressed material facts and has come with unclean hands and the petition is, thus, liable to be dismissed. Mr. Eric Sequeira has prayed for a direction to the petitioner to file return as per the Company Law and Income Tax Act through a mutually agreed Chartered Accountant and for a direction to the petitioner to pay all dues, which he is liable to pay to the Company.

9. I have heard Shri Ramani, the learned Counsel for the petitioner. None appears for Mr. Anselmo D'Souza and Mr. Lume Fernandes.

10. Shri Ramani has referred to a letter dated 18/09/2009 from Mr. Eric Sequeira, which according to the learned Counsel for the petitioner would show that the Company has not carried out any business nor complied with statutory requirements of holding of meetings and filing of returns. He has taken me through the reply of Mr. Eric Sequeira and the rejoinder filed by the petitioner thereto, in order to submit that the case for winding up is made out. Shri Ramani, the learned Counsel for the petitioner has placed on record a public notice (Form No.STK-5A) dated 26/04/2017 from the Registrar of Companies, Goa, Daman and Diu, which shows that the name of the Company has been struck off from the register of Companies under Section 248(1) of the Companies Act 2013 (the Act of 2013, for short) on the ground that the Company has not commenced business within one year of its incorporation and has not been carrying on any business or operation for a period of two years and has not made any application within such period for obtaining the status as a Dormant Company under Section 455 of the Act of 2013. It is submitted that notwithstanding the fact that the name of the

Company has been struck off, the petition for winding up would be maintainable in view of subsection (8) of Section 248 of the Act of 2013. He, therefore, submits that the petition be allowed.

11. I have carefully considered the circumstances and the submissions made.

12. Section 433 of the Act of 1956 sets out the circumstances, in which the Company may be wound up. The said section reads as under :

“433. Circumstances in which company may be wound up by Tribunal. A company may be wound up by the Tribunal,-

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.”

(g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss

account or annual return for any five consecutive financial years ;

(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality ;

(i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G :

Provided that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government.]

13. It can, thus, be seen that a Company can be wound up if a default is made in delivering the statutory report to the Registrar or in holding the statutory meetings and if the Company does not commence its business within a year of incorporation or suspends its business for the whole year. Similarly, under Section 433(d) of the Act of 1956, the Company can be wound up if the number of members is reduced below two in case of a private Company (as in the present case). Under Section 433(g), the Company can be wound up if it has made default in filing with the Registrar its balance sheet, profit and loss account or annual returns for five consecutive financial years. In my considered view, the provisions of Section 433(b), (c), (d) and (g) of the Act of 1956 would be attracted in this case and thus, it would be just and

proper that the Company is wound up. The fact that the Company has not commenced and has failed to hold the statutory meetings and to deliver statutory reports, is explicit from the record, including the letter dated 18/09/2009 from Eric Sequeira. As noticed earlier, there were only two shareholders/ directors of the Company namely, the petitioner and Shri Eric Sequeira and on the death of Mr. Secqueira, the number of members is reduced below two. Thus, the Company, which is a private limited Company, is liable to be wound up also under Section 433(d) of the Act of 1956. In the circumstances, the petition is allowed in terms of prayer clauses (a) and (b), which read thus :

- (a) that the Company viz. Goan Wonderland Properties Pvt. Ltd is may be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956;
- (b) that the Official Liquidator, High Court of Bombay at Goa be appointed as Liquidator for the Company with all powers under the provisions of the Companies Act, 1956 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.

14. 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 or Official Liquidator within 7 days.

C. V. BHADANG, J.

SMA