

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

COMPANY PETITION NO.856 OF 2015

HDFC Bank Limited

....Petitioner

Vs.

Brightlands Resorts Private Limited

....Respondent

Ms. Priyal Chheda a/w. Mr. Dilip Satale i/b. Ms. Divya Jain and Ms. Shweta Jain for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 12th JANUARY, 2018

PC.:

1 By this petition, petitioner is seeking winding up of respondent company – Brightlands Resorts Private Limited on the ground that respondent is indebted to petitioner, is unable to discharge its debts and is commercially insolvent.

2 On 20th April, 2017 when the petition was taken up for admission, this Court was pleased to pass the following order :

1. By this Petition, the Petitioner seeks winding up of the respondent Company on the ground that the respondent is unable to pay its debts.

2. The Petitioner had sanctioned various loan facilities to the respondent in the year 2005. The respondent had executed various documents in favour of the petitioner. The said erstwhile Bank was taken over by Lord Krishna Bank Ltd. Subsequently the said Lord Krishna Bank Ltd had merged with the Petitioner who took over all the assets and liabilities of the said Centurion Bank. Though the Petitioner agreed to accept Rs.8,53,45,000/- by way of full and final settlement of the outstanding loan under the term loan and the Petitioner had accepted One Time Settlement proposal, the respondent failed and neglected to pay the said amount. The Petitioner thereafter filed proceedings under SARFAESI Act against the Respondent. The Petitioner has also filed proceedings against the Respondent before the

Debt Recovery Tribunal inter alia praying for relief of substantial amounts.

3. Since the Respondent failed to pay the dues of the Petitioner, the Petitioner issued statutory notice on 22.12.2012 which was duly served at its Registered Office address of the Respondent but the Respondent neither responded to the said statutory notice nor paid any amount to the Petitioner. The Petitioner has thus, filed this Petition for winding up of the Respondent.

4. I have perused the documents annexed to the Company Petition and also the statutory notice. A perusal of the documents indicates that the Respondent had availed various loan facilities from the predecessor-in-title of the Petitioner. The predecessor-in-title of the Petitioner has merged with the Petitioner. The Petitioner accordingly became entitled to the claim. There is no response to the statutory notice issued to the Respondent. No Affidavit in reply is filed and the Respondent was served long back. The averments made in the petition are deemed to have been accepted.

5. I am therefore of the view that the Respondent is unable to pay its debts and is commercially insolvent.

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3 Subsequent to admission of the petition, respondent company has not filed any affidavit in reply opposing the petition. On record, however, is an affidavit of one Arjas Adi Bharucha, who claims to have been the earlier Director of respondent company, basically narrating the internal problem that he has with other shareholders. There is nothing in that affidavit also denying the claim of petitioner or that the company is financially insolvent. Considering the affidavit of Arjas Adi Bharucha, in totality, it only shows that the company is commercially insolvent.

4 There is an affidavit of one Mohan Palsamkar affirmed on 9th June, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) on 18th May, 2017 and also in the

Maharashtra Government Gazette for the period 15th/31st May, 2017 at serial no.M-1759. Notice under Rule 28 of the Companies Court (Rules), 1959 has been waived at the time of admission of the petition. No affidavit in reply has been filed by respondent company. Therefore, the averments in the petition are not controverted. It should be noted that the company did not even reply to the statutory notice issued under the provisions of Companies Act, 1956. It is settled law that where no response to a statutory notice has been made, the court may pass a winding up order on the basis that amount claimed has not been denied by the company and there is a presumption of inability to pay by the company. Where no response has been made to the statutory notice, the respondent-company runs a risk of winding up petition being allowed. By virtue of Section 434 of the Companies Act 1956 a presumption of the indebtedness can be legitimately drawn by the court where no reply to the statutory notice is forthcoming.

5 This Court while admitting the petition has expressed a view that respondent company is unable to pay its debts and is commercially insolvent. I have heard Ms. Chheda and also considered the pleadings and the documents annexed to the petition. I am also satisfied that the company is indebted to petitioner, is unable to discharge its debts, is commercially insolvent and requires to be wound up.

6 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) The Company, i.e., Brightlands Resorts Private Limited be wound up by and under the orders and directions of this Hon'ble Court and under the provisions of the Companies Act, 1956;

(b) The Official Liquidator of this Hon'ble Court or some other fit and proper person, be appointed as Liquidator of the Company, i.e., Brightlands Resorts Private Limited together with all its assets, effects, properties, business, affairs, bank accounts, books, papers, vouchers, etc. with all powers under the provisions of the Companies Act, 1956, without prejudice to petitioner's right to remain outside the winding up.

7 Official Liquidator to take steps immediately without waiting for notification.

8 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)