

IN THE HIGH COURT OF BOMBAY AT GOA

COMPLAINTS (IN COMPANY PETITION)NO.1 OF 2019

IN

COMPANY PETITION NO.24 OF 2012

The Official Liquidator of Goan
Wonderland Properties Pvt. Ltd.,
(In Liquidation)

... Appellant

Versus

Gautam Ramanbhai Patel

.. Respondent

AND

COMPLAINTS (IN COMPANY PETITION)NO.2 OF 2019

IN

COMPANY PETITION NO.25 OF 2012

The Official Liquidator of M/s. Goan
Wonderland Properties Pvt. Ltd.,
(In Liquidation)

... Appellant

Versus

Gautam Ramanbhai Patel

.. Respondent

AND

COMPLAINTS (IN COMPANY PETITION)NO.3 OF 2019

IN

COMPANY PETITION NO.1 OF 2013

The Official Liquidator of
M/s Goan Wonderland Real Estate Pvt.
Ltd. (In Liquidation).

.. Appellant

Versus

Gautam Ramanbhai Patel

.. Respondent

Ms. T. Ferreira holding for Ms. A. Razaq, Advocate for the Appellant/Official Liquidator.

Mr. R. G. Ramani and Mr. P. Kakodkar, Advocates for the Respondent.

Coram:- M. S. SONAK, J.

Date:- 13th December, 2019

P.C.

Heard Ms. T. Ferreira holding for Ms. A. Razaq for the Appellant/Official Liquidator. Mr. Ramani alongwith Mr. P. Kakodkar appear for the Respondent.

2. This complaint made by the Official Liquidator seeks issuance of process to the Respondent for having committed default in complying with the requirements of Section 454 of the Companies Act, 1956 (the said Act).

3. Though, this complaint seeks the issuance of process and thereafter to try and punish the Respondent, from tenor thereof, it is apparent that same is in the nature of reporting to this Court the default on the part of the Respondent in complying with the provisions of Section 454 of the Companies Act. Therefore, this is in the nature of the report under Rule 132 of the Companies (Court), Rules, 1959 (the said Rules).

4. Be that as it may, any prosecution under Section 454 of the Companies Act is warranted in a situation where any person, without reasonable excuse makes default in complying with any of the requirements of this Section, including in particular, furnishing particular in relation to the company which is wound up. Therefore, before initiating any action in such proceedings, it is the duty of the Court to find out whether the default, if any, in complying with any of the requirements of Section was without reasonable excuse.

5. From the reply filed by the Respondent, it is apparent that the basic ground for ordering of winding up of company was because the predicates of Section 433 (b), (c), (d) and (e) were found to be satisfied. This means that the company had defaulted in delivering the statutory report or holding statutory meeting; the company had not commenced its business within a year from its incorporation, or suspends its business for a whole year; out of the two directors, one of the directors had expired. Incidentally, this petition for winding up was instituted by this very Respondent against whom the Official Liquidator now alleges default.

6. Mr. Ramani points out that the Respondent had in fact dispute that the director who has since expired. One of the reasons of the dispute was that such director has denied the Respondent's access to the record of the company. He points out that there were proceedings pending

between the Respondent and the director who has since expired. The winding up petition was also one such proceeding.

7. In short, the Respondent had pleaded that he really has no access to the record of the company and therefore, he has very reasonable excuse for not providing any details to the Official Liquidator in relation to the company which is wound up.

8. From the material on record, there is really nothing to disbelieve the averments in the reply which are made on affidavit. The averments are also backed by the documents in the form of complaints made by the Respondent against the director, who has since expired. According to me, all this constitute reasonable excuse as contemplated under Section 454(5) of the said Act. Once a case of reasonable excuse has made out, no prosecution under Section 454(5) is really warranted.

9. Besides, it is necessary to note that in this case it is the Respondent who was the Petitioner in the winding up petition. This means that the Court had in fact accepted the case of the Respondent that the predicates of Section 433(b), (c), (d) and (e) had been made out. In such circumstances, it would not at all be appropriate to order any prosecution against the Respondent – original Petitioner.

10. Accordingly, the application seeking issuance of summons or

prosecution is hereby rejected.

at*

M. S. SONAK, J.