IN THE SUPREME COURT OF SEYCHELLES

IN THE MATTER OF Ailee Development Corporation Ltd

AND

IN THE MATTER OF COMPANES ACT, 1972

Civil Side No 27 of 2008

Mr. R. Govinden, Deputy Attorney General for the Petitioner
Mr. B. Georges – Attorney at Law for the Company
Mr. K. Shah, Attorney at Law for the Bank of Baroda (Creditor)
Mr. F. Elizabeth, Attorney at Law for Mr. N. Thelermont (Creditor)

JUDGMENT

Perera ACJ

The Petitioner, the Government of Seychelles and a shareholder of Ailee Development Corporation Ltd *(the Company)* seeks a winding up of the company under Section 205(f) of the Companies Act 1972. That provision empowers the Court to wind up a Company when it "*is of opinion that it is just and equitable*" to do so.

Admittedly, the Company was registered on 13th March 1976. The share capital of Rs.65,404,136 is made up of 65,404,136 shares, and the Petitioner holds 8.4037 % of these shares to the value of Rs.5,496,392. It is not in dispute that these shares were not purchased by the petitioner as an investment for cash, but was allotted in return for tax concessions granted, and for guaranteeing a loan from the International Finance Corporation (I.F.C) to facilitate the development of the Resort in its initial stages. This fact alone does not make the Petitioner inferior in status to other shareholders. In any event, although the Government is an allottee of shares, the said shares were registered with the Registrar of Companies. As Farwell J stated

in *Borland's Trustee* ***v. Steel Brothers & Co Ltd (1901) 1. Ch. 279 at 288,*** " *a share is the interest of a shareholder in the Company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of covenants entered into by all shareholders inter se*……..". The present petition for winding up is being prosecuted by the Government in its capacity as a shareholder, as provided in Section 207(c) of the said Act. However, the Petitioner has averred in paragraph 14 of the petition that *"to let a prime tourist property in the Seychelles to be* abandoned *in a country whose economy is based mainly on tourism not only affects the rights of all shareholders, but the economy of Seychelles itself".*

The Petitioner is therefore seeking not only to recover the indirect investment of Public funds in the shares, but is also seeking to protect the tourism industry and thereby the economy of the country, in its capacity as a sovereign entity. As ***T. Appadurai*** states in "T*he substance of politics"* (4th Edition) Page 110 –

> "The modern State is a social service state ……. it properly intervenes to uphold social standards, to prevent exploitation and manifest injustice, assure and advance the general interest against the *carelessness or selfishness of particular groups".*

Hence the Petitioner is not only a classic shareholder who has invested money, albeit indirectly, to earn a dividend, but one who has "*intervened"* in a tourism business venture, foregoing legitimately due taxes to State Revenue, guaranteeing loans, and having a representative director on the Board of Directors with the purpose of promoting tourism and safeguarding the economy. This was particularly so at the time the Company was incorporated for the main purpose of commencing business as an hotelier. As was stated by ***Lord Wilberforce in Ebrahami v.***

***Westbourne Galleries Ltd* (1972) 2. A.E.R. 492 at 498**, the words "*just and equitable"* must not be confined to such circumstances as affect the Petitioner in his capacity as a shareholder. *"No doubt, in order to present a petition, he must first qualify as a shareholder, but I see no reason for preventing him from relying on any circumstances of justice or equity which affect him in his relations with the Company*" In the present case that relationship is its interest in the tourism industry which is the backbone of the economy of this country.

The basis of the petition that the substratum of the Company has disappeared consequent to the S.L.A not granting a licence to operate beyond 31st December 2007 needs initial consideration. In this respect the Court has to consider the affidavits of Ms. Philomena Hollanda, an Inspector of the Seychelles Tourism Board (S.T.B), Mr Franky Lespoir, a Civil Engineer of the Ministry of National Development and Ms. Mina Crea, the Chief Executive Officer of the S.L.A., and their respective testimonies in Court. So also the affidavit and testimony of Mrs. Veronique Herminie in support of the petition.

Evidence

Ms. Hollanda carried out two inspections of the Plantation Club Hotel on behalf of the S.T.B, and the S.L.A. For present purposes, the first inspection on 27th March 2006 was made jointly with Officers from the Ministry of Health, and the Fire Prevention Unit. She produced the report of that inspection titled "*Routine inspection visit of Plantation Club Hotel on 27th March 2006 – Renewal of Licence*," marked A1. The second inspection visit on 2nd November 2007 was done on behalf of the S.T.B. and S.L.A. That report was marked A2. She however testified that prior to that she had carried out 10 to 12 inspections of this hotel commencing for the year 2002. During those visits deficiencies with regard to the structure of the buildings and also

hygiene and sanitation were observed and reported. Those reports were however not produced. There had been no major renovation since 1988, when the hotel started to operate, up to the year 2002. She stated that due to the inconsistencies in rectifying the defects, the general condition was getting worse each year. She further stated that the inspection reports are sent to the S.L.A. with recommendations, but decisions are taken independently by that organization.

Ms. Hollanda's report marked A1 addressed to the Manager of the hotel, with copies to the Environmental Health Section, the S.LA, and Fire Prevention Unit is illustrated by 70 photographs depicting defects and short comings in the structure.

However, I shall only make general reference to them as they are not disputed, but set out the various recommendations the S.T.B. made towards their rectification and renovation, and which they allege were not complied with.

As regards the defects observed in 14 guest rooms of different categories in different accommodation blocks *(photographs 1 to 7 and 12 to 15)* Ms Hollanda has stated that the inspection team was informed during the visit of 27th March 2006 that the Managing Director was on an overseas trip to source new furniture and upholstery for the refurbishment of guest rooms, and that bathroom renovation works (photograph 8 to 11) were on going in the upper floor of block 100, and block 200. They were also informed that renovation on physical structures of the accommodation blocks and refurbishment works of guest rooms were still ongoing. Ms. Hollanda then states – "*we are recommending that a progress report is forwarded to our attention to keep us updated on the number of rooms in the different accommodation blocks that have been completely renovated and refurbished".*

The defects in the Frangipani Restaurant are depicted in photographs 18 to 21. Ms. Hollanda stated that those defects had been observed in the report of 29th August

2005. During the visit of 27th March 2006, the team was informed that reparation work will be done on the walls, ceiling and roof eaves after the re-roofing of that area was completed. She notes that this issue of re-roofing of the Frangipani Restaurant area and the complete re-roofing of the "*back of house*" areas was raised as far back as April 2003, but that no such work had started.

In the Buffet area, the counter needed replacement and the stainless steel cabinet/chillers need maintenance and cleaning. In the Lazare Restaurant the cushion covers needed replacement and the chairs to be varnished. This issue had been raised in the report of 29th August 2005, but had not been done. In the swimming pool, renovation work had to commence in June 2005 according to an action plan put up by the hotel, but had not been done. In the walkways, the thatched ceiling and timber columns had not been replaced although recommended in October 2002. According to an action plan such work had to be completed by December 2005. Further recommendations made in a report dated 14th October 2002 regarding the scullery of the Lazare Restaurant had not been attended to, and also the defects in the ceiling of that area which the hotel had undertaken to attend to by March 2005 had not been done. Ms Hollanda has depicted these areas in photographs 37 to 55. In the Provision Store, the ceiling had damp patches, and some of the wall tiles were either chipped or missing. Those defects are shown in photographs 52 to 59. She notes that the recommendation to replace the damaged wall tiles was made in the report of 29th August 2005. Another recommendation made in the report of 15th April 2003 to repair the ceiling along the corridor to the Staff Changing Rooms had not been complied with. As regards the Staff Kitchen and Laundry Rooms the hotel had undertaken in their action plan of March 2005 to repair the roof and the ceiling, and painting of walls, but had not been done. Those defects are shown in photographs

60 to 64. In the kitchen of the Coco De Mer Restaurant the ceiling as well as the upper louvers needed to be cleaned, and the doors to be varnished. (*Photographs 65 to 70).* This recommendation made in the report of 20th December 2005 had not been followed. The Restaurant floor tiles had also not been replaced.

In the report of 31st March 2006, Ms. Hollanda notes that most of the works specified in the latest action plan submitted by the hotel had not been done, and the time frames had expired or were being continuously postponed. She further refers to a meeting in April 2005, where the hotel was requested to submit a detailed Master Plan which included major renovation and refurbishment work, and any future extension of improvement works. That request was also made in the report of 29th August 2005, but no such plan had been submitted. In forwarding that report to the S.L.A, Ms Hollanda stated that the recommendation made for the Master Plan and completion of work on the action plan were being referred for "*further consideration and follow up".*

Ms Hollanda testified that the issuing of a licence, upon considering the report was a matter entirely left to the S.L.A, and that the Role of the S.T.B. was to make a report. She stated that previous non compliance with the action plans submitted by the hotel, were also reported to the S.L.A. in the past. She further stated that in May 2006, the S.L.A. had called upon the Company to show cause why the licence should not be cancelled on the basis of the S.T.B. report of March 2006.

Ms. Hollanda also produced a subsequent inspection visit report dated 6th November 2007 (A2). Questioned by Counsel for the Petitioner as to the difference she saw between March 2006 and November 2007, she stated that the structural State of the building had deteriorated. The wall tiles were cracked, some areas of

the ceilings were damp and wooden pillars had wood rot. The C.I. roofing sheets were rusting, and in some there were holes. The Harvey tiles over the Frangipani Restaurant did not appear to have been changed since 1988. Hence despite the recommendation, the re-roofing had not been done. However, the hotel was in operation. Ms Hollanda further stated in her testimony that the Company would have saved a lot of money instead of just patching up little defects by maintenance just to improve the aesthetic aspect so that clients cannot see the defects as was done most of the time. In her report of 6th November 2007, she stated that "*the only possible solution for the Plantation Club Hotel was to close down the back of house area facilities and service areas to carry out the structural renovation. We were informed that in view of the actual state of these areas, it will take at least six to eight months to complete all structural and refurbishment work".* She gave an example of Berjaya Hotel which closed for major renovations after being given a deadline, just as was given to the Plantation Club Hotel.

Mr Georges, Learned Counsel for the Company prefaced his cross examination of Ms Hollanda by stating thus –

> "Like you, I also think, the Plantation Club itself think the hotel in certain respects needed refurbishment, upgrading, attention, repair and everything else that has been mentioned throughout the case. This is not disputed, so we are not here to say that everything which you put in your report were made up by you with the intention of harming the hotel, far from it".

Mr Georges however referred Ms. Hollanda to the final recommendation in her report of 6th November 2007 which stated "*as we did not received (sic) proper master/renovation plans, STB is therefore maintaining its previous recommendations that hotel closes down once the licence expires",* and asked her two questions – (1) Did the STB actually recommend that the licence be not renewed? And (2) what

was the main reason why the STB so recommended. She replied that the STB had recommended the non renewal of the licence since October 2005. She also stated that the reason for such recommendation was not mainly the non production of a master plan, but also the various discrepancies found on the inspection visits. She stated that a master plan was necessary to remedy the major defects in all the areas after closing down. Ms Hollanda further stated that from the point of view of the STB, whether there was a master plan or not the hotel had to be closed down for effecting the repairs mentioned in the reports. She explained that the visit of November 2007 was to see whether there was an improvement in the works based on the recommendations, and not for the purpose of making a final adverse report to enable the S.L.A. to close down the hotel. It was a monitoring inspection, as the hotel was in operation.

Further cross examined by Mr Georges, Ms Hollanda stated that between March 2006 visit and the 2007 visit, exterior structural renovations of seven accommodation blocks had been done. She stated that in at least 60% of the rooms she visited at random interior areas needed reparation work. There was no systematic pattern of repairs, as only the rooms in worst conditions were attended to. She stated that some of the rooms could not be inspected as she was told that they were occupied. She denied that she was purposely refraining from giving any credit to the hotel for renovations done. She produced a letter dated 18 July 2006 addressed to Mr Joseph Nourrice, Executive Director of the Seychelles Investment Bureau by Mr Mark Davidson the Managing Director of the Company, in which the status of the plans for renovation in accordance with the government directives was given. Mr Davidson had stated –

> "……The Company has decided that a partial or "soft" renovation is no longer adequate to meet the long term needs of assuming the future validity of the project. ***We are now planning to close down the resort***

at the end of February 2007, for a full renovation and upgrade to 4 star and to enter 5 star standard".

He had also stated –

> "Financial restructuring of the massive and long standing debt burden of the hotel is an essential factor, if the Company is to raise and apply the capital necessary to undertake such a thorough renovation on a property of this size. We have also made significant progress on this front".

In that letter, Mr. Davidson undertook to furnish "*preliminary plans in the reasonable future".* Ms. Hollanda stated that in her report of 6th November 2007 she recommend the closure of the hotel when its licence expired on 31st December 2007 as the master plan and renovation plans had not been submitted by the Company and as Mr. Davidson himself by letter dated 6th December 2006 (P3) had undertaken to close the Resort with effect from 31st May 2007, but had not done so. She denied the suggestion that in December 2007, the hotel was not in such a bad state as to have its operational licence not being renewed. She stated that the STB and the S.L.A. were being given assurances of renovations and repairs which were not fully complied. She concluded that there would have been catastrophic consequences, especially in the main building had the hotel been permitted to operate.

Mr. Franky Lespoir, Civil Engineer attached to the quality assurance Section, Inspectorate Unit of the Ministry of National Development carried out an inspection of the hotel on 28th December 2007 to assess its structural status. He testified that there was the possibility of a major collapse of some areas of the building, especially the "*back of house"* area. There were cracks on load bearing columns. He

produced his report dated 7th January 2008, where his observations of defects are depicted in photographs marked 1 to 8. They show an area of a wooden ceiling which had perished as a result of dampness, corrosion of steel structures, cracks on beams, lintels and wall tiles. He concluded that

1. *The actual state of the building is not safe.*
2. *For safety reasons, it is recommenced that the establishment be closed down to carry out renovation work.*

The management should come up with a renovation plan after a complete structural assessment is made of the whole establishment and submitted to the Planning Authority.

Mr Lespoir, on being cross examined stated that the inspection was done with Ms Hollanda and the Company Engineer Mr Deepak Chopra. He said that the back of house area was in an "*aggressive environment*" due to the closeness to the sea, hence more corrosion of iron and metal. He stated that he did not inspect the accommodation area, but observed settlement cracks, especially in the conference room. He also did not inspect the concrete columns as they had decorative claddings. On being questioned about the corrosion of reinforcement in the concrete columns, he stated that they were in an open area, and the possible causes were the composition of the concrete, bad workmanship, and the capillary reaction of the soil working upwards. He stated that unless the cause is identified and treated, the back of house area was in danger of collapsing. He was however unaware of the "*fosroc" method*" which was suggested by Mr Georges.

I shall now deal with the evidence of Ms Mina Crea, the C.E.O of the S.L..A, who stated that the decision not to renew the licence of the Company was based on the reports of the S.T.B, Mr. Lespoir and other Regulatory Bodies. There are six tourism conditions which a licensee should comply with, of these the three most

important are (1) good hygiene, (2) physical cleanliness (3) safety. The Plantation Club Hotel had operated for 20 years, but had never been closed down for major repairs. She stated that the closure of this hotel was not a *"forced closure*" but one where there had throughout been mutual agreement. The management was summoned to appear before the board on 17th May 2007 for the reason that the situation was deteriorating and most of the works specified in the action plan were yet to be completed. She stated that Mr. Davidson and Mr Mondon, the General Manager appeared, and that they were given an opportunity to explain themselves before any decision regarding the renewal of the licence was taken. They wanted an extension of time, and the board granted them time till December 2006 to submit a plan. Before that date, Mr Mondon informed the S.L.A. that they had a master plan for long term renovation of the resort, which was under preparation. In July 2006, Mr Davidson wrote to the STB and SLA stating that the hotel would close down on 1st May 2007 for that purpose, and wanted the licence up to that date. Subsequently they sought a further extension up to December 2007. The S.L.A. once again granted that request. She produced the final licence for the period 1st June 2007 to 31st December 2007, in which the following conditions were, *inter alia* made –

"- to submit to the Seychelles Tourism Board and Seychelles Licensing Authority, acceptable plans for the *complete renovation of the hotel, within two months*

- *To show proof of preparing the work to start immediately after December 2007*
- *To ensure that no bookings should be taken for tourist clients beyond December 2007".*

Ms Crea stated that at the end of two months, she reminded them about the plans,

but received no reply. Further reminder was sent in September 2007warning that if they failed to comply, the licence will not be renewed and hence the hotel will cease to operate. The Management of the hotel wrote back questioning the reason for such decision. In that letter dated 12th September 2007 the hotel –

1. *Assured that they were progressing with all due diligence to prepare the planned renovations and that they will be submitted "as soon as they are ready".*

2. *Stated that they were aware of the conditions laid down by the S.L.A, but wanted "clarification on the grounds for licensing's dissatisfaction with our standards".*

3. *Maintained that the establishment was maintaining good standards of hygiene and guest satisfaction and attracting sales from weddings, prestigious annual events, government workshops and seminars and conferences, "despite the "tired" condition of our resort".*

4. *That it is not the normal international practice for hotel establishments to be closed down for merely failing to be most modern and up to date, or for failing to present renovation plans by a certain date.*

5. *Health and safety issues, or issues involving repeated complaints of mistreatment of guests of travel industry operators are grounds for such actions by authorities, but that the "track record" of this hotel did not show such matters.*

On being cross examined, Ms. Crea stated that the requirement of a master plan was to maintain tourism standards as the hotel was engaging in patch work repairing which was found to be recurring whenever the regulatory bodies inspected. She stated that the decision to close down was taken because the hotel was not in good standard. If repairs were done to the satisfaction of the Regulatory bodies, then even if there was no master plan, the licence may have been given if recommend by them. But the final decision was which the S.L.A. acting independently. In that respect, the explanations of the licencee would also be considered. Ms Crea stated that although the hotel had agreed to close down for repairs, Mr Davidson suddenly took a hard line and informed the S.L.A. that their establishment was maintaining good standards and attracting clients, and questioned the basis of the decision to close down, when it was known to him throughout the discussions and correspondence.

As regards the claim of the S.L.A. that only minor works were done by the hotel, Mrs Crea stated that the hotel had stated that major renovation would be done after closing down, and hence whatever was done without closing would have been minor work. She stated that the statement in the STB report that "*exterior structural ren*ovations *done*" should be explained by an expert, or the maker of that report. She maintained that it should be minor repairs. As regards hygiene and cleanliness, Mr Georges referred Ms Crea to a report sent to the hotel by the Ministry of Health stating that although the levels were acceptable, contamination could still occur due to poor maintenance of the buildings, and asked how and why a decision was taken to close down when this aspect was accepted. She replied that there were other reports. It must here be noted that Ms. Hollanda's report of 6th November 2007 also states that an improvement was noted compared with their previous visits. Ms. Crea stated that she could not produce other reports from the Ministry of Health

on this matter, but maintained that the decision was taken by the SLA on the basis of reports of regulatory bodies and discussions with them. The decision to close down on 31st December 2007 was taken in May 2007 when all parties including the managers met the S.L.A and the licence was extended up to that date on conditions. She further stated that the STB was giving chances to the management of the hotel in good faith, but they ignored the recommendations. The STB and the SLA took into consideration the renovation work done by the hotel on a piece meal manner. That was not acceptable to the SLA to grant a renewal of the licence. The expectation of the SLA and STB was that the hotel be closed down, and major renovation work commenced on a major plan. If they did that, they could have reapplied for a licence.

Ms. Crea further testified that reports were obtained from the STB and Mr. Lespoir in November and December 2007, to review the decision taken in May 2007 to close down, and not to consider that issue afresh. The repair and renovation work done was considered, but there was no substantial or major improvement. The STB maintained the view that a master plan to renovate was the only way to put the hotel back to an acceptable standard. If there were major renovations, the SLA may have reconsidered the position.

Ms. Crea also stated that the management disregarded the instructions given that no bookings should be taken beyond December 2007, and Mr Davidson in a letter dated 14th December 2007 informed the S.L..A that the board of directors had decided that such prohibition was unlawful and hence bookings could continue as normal.

Ms. Crea stated that the SLA was not aware of any decision on the part of the Government to file a winding up petiton, and denied that the decision to close down was influenced by the government.

The court on a visit of the locus in quo observed all the defects set out in the reports of the STB and Mr Lespoir. It was observed that although some attempt had been made to effect minor repairs, the recommendations of the STB and the SLA had not been followed as required. In one of the three cantilevers holding the main roof of the Frangipani Restaurant, it was observed that the concrete hidden by the cladding had cracked into pieces. The safety of the main roof in that area is uncertain. The Bar Manager's room was atrocious. The ceiling had perished exposing the roof, and the whole room was dirty.

However, the Company appeared to have been engaged in piecemeal patch work in an attempt to barely satisfy the Regulatory Bodies so that the SLA could at least grant extensions of the licence. But a permanent solution was not in sight at the time the petition for winding up was filed. Mr. Davidson candidly conceded that it was due to the weak financial position of the Company.

The Company did not produce any evidence of serious negotiations with potential investors or partners. The SLA was accommodating the Company in the interest of the Tourism Industry, while the Management of the hotel was getting deeper and deeper into debt, and systematically permitting the hotel structure to deteriorate day by day. Having agreed to submit a master plan to facilitate a major renovation and upgrade of the property by closing the hotel on 31st May 2007, the Company defaulted up to 31st December 2007 when the licence was not renewed. By letter of 14th December 2007, the Company took up legal issues with the SLA as regards its decision but failed to exercise its legal remedies. On the basis of these matters, and on the basis of the reports of the STB and Mr Lespoir, the hotel was in a state which was not acceptable to the Tourism standards of the country, despite the fact that certain important functions were held up to January 2008.

The present petition for winding up has been filed on the ground specified in Section

205(f), on the basis that the substratum of the Company has disappeared as its ability to operate has ceased with the SLA deciding not to renew the licence beyond 31st December 2007. The Petitioner's case is supported by Mrs Veronique Herminie, Principal Secretary responsible for Investment, Land Use and Industries of the Ministry of National Development, who has been duly authorized by the President of the Republic to represent the Government. In her affidavit supporting the petition, she avers that the Government owns 8% shares in the Company and is represented on the Board of directors. The main object of the Company was to carry on business as an hotelier. She refers to the meetings held in April and October 2005 between the Company and the SLA where the Company had agreed to submit a master plan for redevelopment of the hotel. The rest of the averments corroborate the averments in the affidavits of Mrs Crea and Ms Hollanda as regards the various correspondence between the Regulatory Bodies and the Company. However in paragraph 14, she avers that she verily believes that the Company is not ready and willing to produce a master plan and does not have the means to finance a major renovation project that is needed and which would necessarily involve a huge financial commitment which the Company has admitted in its letter dated 30th November 2006 addressed to the Governor of the Central Bank, namely 18-20 million US dollars. She further avers that with the refusal of the SLA to renew the licence, the substratum of the Company has disappeared. It is also averred that according to an independent Auditor's Report dated 1st December 2006, the Company is insolvent and its ability to continue its operation is dependant on certain factors mentioned by the Auditor. She further avers that to let a prime tourist property in Seychelles to be "*abandoned*" in a country whose economy is based mainly on tourism not only affects the rights of all the shareholders and the economy itself. It is therefore averred that due to the resulting mismanagement, and the running down of the infrastructure of the hotel, and the disappearance of the

substratum, the Government as a shareholder feels that it is losing its investment, and the only way to recover was by seeking a winding up of the Company. The Petitioner in this respect relies on the affidavits of Ms. Crea, Ms Hollanda and Mr. Franky Lespoir.

Mrs Herminie testified that the government was pursuing the petition as a shareholder and also in its sovereign capacity as government. She stated that the government assisted the Company to complete the construction of the hotel in 1987 by guaranteeing a loan agreement of the Company with the International Finance Corporation (I.F.C). This was done to promote the Tourism Industry in Seychelles. She explained that by using the word *"abandoned"* in paragraph 17 of her affidavit, she meant "*closed down".* She denied that the Government was aware that the Company had strategic partners or potential investors at the time of closure of the hotel, and that the Government was too hasty in seeking a winding up. She also denied a suggestion that the Government had any plan to sell the hotel to anyone if the Company was wound up.

Mr Georges, Learned Counsel for the Company further cross examined Ms Herminie as to why the Government did not pursue other options available to a shareholder. She stated that at the time of filing the petition, the Government was not aware that the Company might have been able to sell its assets, but there was a possibility that negotiations were in progress. She also stated that the Government did not consider advising the management to sell the assets. She stated that it was not reasonable to do that when it was known that the Company was insolvent. Hence the government considered that winding up was the better option. She further stated that the Managing Director had informed the Central Bank that he was not selling the Company, but was only approaching the government to negotiate loans on their behalf. She agreed that the 18 to 20 million US dollars was estimated to

turn the resort to a 5 star grade, but that a 4 star grade would have cost less. The government did not agree to assist, as now, as a matter of policy, the Government does not assist private businesses with loans. That position was taken both as a shareholder and as a sovereign entity. She denied that the Government did not contact the Company after closure to ascertain what its intentions were before filing this petition, because it had wanted the hotel to close down anyway. She further stated that the government did not consider the appointment of a receiver instead of a liquidator, in which case a winding up could have been averted and management would lie with the receiver. Mrs Herminie also stated that the possibility of the Company pursuing other objects in the memorandum of association depended on the SLA. She stated that due to the closure, the government could not recover taxes from the Company. She said that the value of the assets of the Company in the year 2004, according to the audit report was Rs 235 million (*approximately 40 million US dollars),* but that value has appreciated 100% over the past four years. She further stated that it was because of that, that the government has a better chance to recover its investment. She also stated that the minority protection provision in the Companies Act was not invoked as the government could not rely on any "oppression" which is an element in that provision. She also said that Mr Davidson as a representative of E.O.D.C which held 50% shares had indicated that the assets will not be sold. Hence the government as a minority share holder did not find it necessary to ask him to reconsider. She stated that the loan of US dollars 3 million given to the Government by the Company is in the Treasury for repayment. It has been partly repaid, but after the death of Dr. Davidson, the father of Mr. Mark Davidson, a power of Attorney has become necessary. For 20 years the government has not received dividends nor taxes, and hence there was no benefit in retaining the shares. The Company had operated as an hotelier since 1988, and no other licence was applied for, nor issued for any other object. The Company cannot open another hotelier business abroad, as it is a local Company. The Company did

not contact the SLA after closure to inform of any investment opportunity that had arisen later. She clarified that only a secured creditor could ask to place a Company on receivership, and hence the Government had no legal basis to do that:

Mr Mark Davidson, the Managing Director of the Company testified that the Company was formed, and the hotel business was launched by his father Dr. Davidson. He came to Seychelles in 2004, and became the Managing Director in 2005 after the death of his father. Initial financing came from the Bank of Baroda and its Consortium banks. Later and IFC loan was obtained to complete the work. These loans have not been repaid and hence the Company has not been able to reach any level of profits.

Mr Davidson stated that the closure of the Company was received by him and the staff with a mixture of depression, sadness and anger, as it was not justified. Until the closure, several high profile functions were hosted in the hotel. The guests included Kings, heads of States, and one Shiekh Abdul Monsin AbdulMalik Al Shaikh, a wealthy Arab who had been a repeat guest for 17 years. One Suleman Al Dahar was one of his managers. The Arabs usually book about 100 rooms, and were also permitted the exclusive use of an area on the property which was popularly called "*Saudi City",* to keep their containers. It was essentially a storage area. When he is in the hotel, he receives visitors which included high ranking Government officials. For the past 10 years, the Shiekh was interested in buying the hotel, but his father did not agree. In 2005, Mr. Suleman approached him regarding the sale, but when he refused, he said *"Mark, we can do it the easy way or the hard way*". Mr Davidson stated that he took that as a threat which still subsists. He alleged that the motive of the Government is to see that the Arab party buys the hotel at a winding up, and not the desire to recover its shares. He also stated that he had positive proof that the provisional liquidator had allowed a container of food

and drinks to enter the hotel premises after he was appointed.

As regards the events leading to the closure of the hotel, he stated that several recommendations of the STB were complied with. He admitted that as an old hotel, there was rust and peeling of paint, but stated that it was not derelict as guests continued to come until January 2008. There was upgrading in 1991-92 with the addition of rooms. Of those 8 were executive suites and 47 De Luxe rooms.

Mr Davidson maintained that despite the reports of the STB, the hotel was not in such a bad state to merit closing down. Refuting the reports, of Ms Hollanda, he stated that half of the rooms in block 100 were renovated, and in block 700, only 7 rooms were not done. In the walkway, three quarters of wooden posts were replaced. New Harvey tiles were fixed in the central complex. The Frangipani Restaurant was enclosed with glass partitioning, and its terrace was extended to accommodate more guests. The Coco De Mer bar was also extended. A new kitchen was installed. New equipments like washing machines, dryers and kitchen appliances were purchased. These were observed by Court on the visit of the locus in quo.

Mr Davidson stated that the hotel could not close down for repairs due to its financial position. Hence repairs were done while in operation. The STB wanted a "*fresh product*", and he was working towards it. The Company was seeking strategic partners and investors, and operating under pressure. He further explained that due to the conditions attached to the existing loans, especially from the Bank of Baroda consortium, the approval of banks was necessary before accepting investments. In that respect the Company contacted a Malaysian group. But negotiations failed when they wanted to buy the hotel, and also due to complexities of the debts and financing.

Mr Davidson blamed the original contractors for the poor workmanship in constructing the building. He stated that nine years ago, an Indian Engineering Company was engaged to do renovation work. They used a method called "*fosroc,"* which involved a special mixture of chemicals and cement, to repair load bearing columns and other areas. No proof was however produced to Court on this matter. Hence the Court is unable to consider the durability of those repairs. Mr Davidson claimed that the steel strusses are structurally sound and that cracks are present in some of the non load bearing walls and columns. He further stated that the reception desk was to be completely renovated after major renovations were complete. He also testified regarding other reparation work done to some concrete columns after December 2007. In this respect, the Court, during the visit of the locus observed that the corrosion shown in photographs 3 and 4 of Mr Lespoir's report relating to the back of the house area had been repaired. Mr. Davidson refuted the aspersion in the affidavit of Mrs Herminie that the hotel was being "*abandoned".* However, as stated earlier, Mrs Herminie had explained in her testimony that what she meant was "closed down". In any event, paragraph 17 of the affidavit only contains a supposition, and not an allegation of abandonment in the sense of "*running away*" leaving the hotel unattended. Mr Davidson stated that deadlines given by SLA could not be kept due to inability to source the necessary finances anticipated. Hence it was not possible to close down. He stated that a master plan needed financing by strategic partners and also their approval. That was why plans could not be prepared. As regards health and hygiene, Mr Davidson stated that in fact the Ministry of Health in November 2007 complimented the hotel and stated "*keep it up*". He stated that the Company contacted prestigious Companies like the Carrimjee Group, the Taylor Group and Beachcomber to assist them. He claimed that negotiations were ongoing when the winding up petition was filed. He further stated that if a winding up order is made, after paying the first line

creditors, nothing will be left for the Government to recover. The market value of the assets was about 40 million US dollars, but the total debts exceeded 200 million US dollars. He was optimistic that the ongoing negotiations with prospective partners could end within one month. He said that the Parcel T. 147 on which the hotel is situated, is 180 acres in extent. The hotel and the garden is on 80 acres. He said that if he sells 100 acres, he could fetch about 10 million euros. In that respect, he stated that if, the Government approached the Company before filing the petition, the Rs.5.4 million which the government is seeking could have been settled after such sale. It was submitted by the Petitioner that Parcel T. 147 is encumbered with numerous mortgages and charges and that a sale will not benefit the Company.

On being cross examined, Mr Davidson stated that from 1988 to end of December 2007, the Company had only a licence to operate a hotel, which was the main object for which the Company was formed. No applications were made to operate any other hotel in Seychelles or abroad. He said that he and the board decided to ignore the directions of the S.L.A. as they felt that the SLA was seeking to close their business for wrong reasons. They also thought that there was no legal basis for the SLA to call for a master plan. He stated that he expected the winding up petition. Questioned about the plans the Company had stated were being prepared, Mr. Davidson stated that some were in his office, and others had already been sent to the STB and S.L.A. He further stated that until the Company found the necessary finances to implement comprehensive plans, they could not be submitted. He stated that the Company was struggling to survive. The Company has four times more debts than is assets and hence had no collateral to raise funds. He claimed that all what was needed was a "*soft renovation*" to be operative. He was prepared to give 50% shares of E.O.D.C. the main holding Company to save the Company, even if he lost controlling rights. He maintained that there was still the possibility of finding serious investors or partners, and also the possibility of selling part of the

property or shares to save the Company from being wound up. In this respect, Dr. Phogat the Chief Executive of the Bank of Baroda who had given notice to appear as a creditor testified that the debt of around 130 million US dollars due to the bank and its consortium has not been paid. An attempt to foreclose, in case No. 129/96 (P7) also failed due to a legal technicality contained in a deferment agreement in favour of other creditors. In this respect, an earlier attempt made by another Company called Air et Chaleur in case No. 121 of 1991 (P6) to foreclose also had failed due to the same deferment agreement. Dr Phogat stated that the Company is insolvent and therefore should be wound up. He however stated that although the Company was not cooperative to settle the loan earlier, towards the year 2007, three Companies approached the bank directly, they were the Carrimjee Group, the Bharti Group of India and Capital Market Finance Co of Mauritius. One group offered 5 million US dollars to settle the loan, but it was not accepted. At the time of filing the petition, the Capital Market Finance Co. was keen, but negotiations were stopped with the winding up petition being filed. These negotiations were for that Company to take over the debt of the consortium banks directly. Even if that materialized, the indebtedness of the Company would not have changed. The actual capital disbursement by the bank was USD 13 to 13.5 million.

The Law

The grounds for winding up provided in Section 205 of the Companies Act of Seychelles are disjunctive in nature. That Section states that a Company may be wound up by Court "if" -, and proceeds to set out six grounds (a) to (f). Section 222 of the Companies Act 1948 of the United Kingdom however, provides that "*the Court may order the winding up of a Company if one or several of the following grounds for winding up are present".* The grounds are however basically the same. Hence in Seychelles, a Company can be wound up "*if the Court is of opinion that it is just and equitable".*

As was held by ***Crossman J in Re Davies and Colett Ltd (1935) Ch. 693*** at 698, "*in exercising the powers conferred by this Subsection, the Courts have not limited their discretion to matters ejusdem generis as those enumerated in Sub-Sections 222 (a) – (g) of the Companies Act 1948, but have felt it free to consider in the widest possible terms what justice and equity require*". It was also held in the case of ***Ebrahimi v. Westbourne Galleries Ltd (1972) 2. All. E. R. 492*** that "t*he general words of the Sub Section should remain general and not be reduced to the sum of particular instances".* Neville J's statement in ***Re Bleriot Manufacturing Aircraft Co. Ltd (1916) 32 T.L.R. 253,*** sums up these pronouncements, when he stated that "the words "just and equitable" are of the widest significance *and do not limit the jurisdiction of the Court to any case. It is a question fo fact and each case must depend on its own circumstances".*

In the present case therefore, on the basis of the averments in the petition, the *"just and equitable"* ground could be given a wide interpretation to include the Public interest element relied on by the Petitioner. The Petitioner has mainly averred that it is just and equitable to wind up the Company as the substratum has gone as a result of the Seychelles Licensing Authority (SLA) refusing to renew the licence to operate and that hence the main object for which the Company was formed has become impracticable. The Company, in paragraph 8 of its affidavit avers that it is *"not fair* for the Petitioner to complain that the substratum of the Company has disappeared with the non renewal of the licence. This was engineered by one or another of the Seychelles Tourism Board and the S.L.A, both agencies of the Government. For the same Government to use the result of an action of one of its agencies as support for an argument that the substratum of the Company has disappeared and to seek winding up of the Company on that ground is a circular and self-serving move which the Court should loath to entertain". The Company further

avers in paragraph 9 of the said affidavit that "*even if the Company is unable to manage the resort without proper licences, it does not follow that the substratum of the Company has disappeared since there are other options open to the Company to persue in order to resume operation. Amongst these are; pursuing an appeal against the refusal to licence; seeking judicial review of the decision not to licence; finding the funds to renovate and seek renewal of the licence upon this being effected; finding a strategic partner for the Company with a view to effecting the renovations and reopening, selling the resort*"

As regards the first option the SLA, by letter dated 4th January 2008, informed the Company that the licence which expired on 31st December 2007 would not be renewed, and that consequently all business operations should cease by 31st January 2008. The present petition for winding up was filed on 4th February 2008. Therefore the Company had one month to pursue its legal option. Under Section 15 of the Licenses Act *(Cap 113)* the Company, if aggrieved with the decision of the S.L.A. could have appealed to the Minister within 15 days thereof. This they failed to do. Further, the Company could have sought judicial review of the S.L.A. decision within three months, and sought a stay of the present proceedings pending the decision of the Court, as the essence of the present petition is the disappearance of the substratum due to the non renewal of the licence by the S.L.A. No such application for judicial review was made, and in any event such application may now be considered time barred under Rule 4 of the Supreme Court *(Supervisory Jurisdiction)* Rules, 1995.

Mr Georges, Learned Counsel for the Company submitted that the appeal to the Minister was not pursued, as the Company found that it would be a futile exercise knowing that the Minister of Finance, the Appellate Authority, would not hold in their

favour as the government was in any event contemplating filing a winding up petition. This is legally untenable, as a person aggrieved by any order or decision must exhaust all remedies provided in law.

As regards the option to canvass the decision of the S.L.A. by judicial review, Mr Georges submitted that there were no grounds, as the S.L.A. had followed Rules of natural justice, and had statutory powers to make the decision. This submission is also not acceptable as Mr. Davidson, in his capacity as Managing Director, who can sue and be sued, stated in his letter of 14th December 2007 to the SLA that the prohibition not to take guests beyond 31st December 2007 was unlawful. He also alleged bias. He also stated that the non submitting of renovation plans was not a lawful ground for denying an extension of the licence. Hence there were possible grounds of illegality, acting ultra vires, bias and unreasonableness available to the Company. As I stated, the very basis of the present petition is the disappearance of the substratum consequent to the SLA not renewing the licence. The Company had the legal right to file an application for judicial review within three months of the SLA decision and to seek a stay of the winding up petition. This may failed to do. It was held *inter alia* in the case of ***The Indian Ocean Fishing Club v. M.E.S.A. (1996)*** that the Applicant's failure to contest the decision of the Minister, by way of a writ of certiorari, implied a tacit acceptance of the decision. In these circumstances, the Company cannot in the present proceedings, legitimately seek to canvass the validity of the SLA decision, except as a defence to the present petition.

In contending that the substratum of the Company has not failed, Mr Georges submitted that the Petitioner has wrongly equated closure of the hotel business, to impossibility of pursuing other objects in the memorandum of association. He submitted that the Company could still pursue objects (c) (d) and (e) which are to purchase, develop and manage any land in Seychelles. In this respect he cited the

case of ***Re Suburban Hotel Co (1867) 2. Ch. App 737*** in which it was held that *"before it could be said that the substratum of the Company's business has gone and a winding up order might therefore be justified, it is necessary to show that the business within its objects had become in a practical sense impossible".* Other obvious cases where the substratum had failed were, in ***Re Haven Gold Mining Co*** (***1881) 20 Ch. D. 151, and In Re German Date Coffee Co (1881) 20 Ch. D. 169.***

Palmer's Company precedents (17th Edition) at Page 29, states that the Courts have over the years extended the principle, and it is now possible to say on the authorities that the substratum of a Company is deemed to be gone when –

"(1) The subject matter of the Company is gone; or
(2) The object for which it was incorporated has substantially failed, or

It is impossible to carry on the business of the Company except at a loss.

Mr. Georges contended that the business of the Company within its other objects had not become practically impossible. He contended that if at all, there has been only a temporary set back as there is still the possibility of satisfying the requirements of the SLA, and thereby getting the licence back, and also saving the Company by finding strategic partners and investors. In that respect he relied on the case of ***Davies & Co v. Brunswick (Australia) Ltd (1936) 1 A.E.R. 299*** in which the Privy Council held that –

> "The decisive question must be the question whether *at the date of the presentation of the winding up petition, there was any reasonable hope that the object of trading at profit, with a view to which the Company was formed, would be obtained".*

With respect, I am unable to see how this decision assists the Company, as it was admittedly insolvent since its inception, and Mr. Davidson stated it his testimony that

the hotel was barely surviving, and could only break even. The Company was heavily indebted *at the date of presentation of the petition* and hence there was no *"hope of trading at a profit*" It was therefore impossible for the Company to carry on its business of hotelier except at a loss as the main object for which it was incorporated had substantially failed.

Mr. Georges however contended that in this case the Company could pursue other objects in the memorandum of association and that hence a "*standing over"* order should be made until those objects are pursued.

He cited the case of in ***Re Eastern Telegraph Co Ltd (1947) 2 AER 169,*** which held that where the business has substantially ceased to exist, a winding up order should be made even if majority of shareholders desired to continue to carry on the Company. However Jenkins J proceeded to add an explanation to that and stated -

> "That, I take it, means that if a shareholder has invested his money in the shares of the Company on the footing that it is going to carry on *some particular object, he cannot be forced against his will by the votes of his fellow shareholders to continue to adventure his money on some quite different project or speculation"*

That authority also does not assist the Company, as the Government invested on the shares, albeit indirectly, and guaranteed the I.F.C. loan, to facilitate the Tourism Industry and not for the Company to pursue any other object in its memorandum of association to speculate on the property market. In any event, it is not reasonable to accept that a Company that is insolvent could pursue other alternative objects, when it cannot pursue its main object without being indebted.

Mr. Georges relied heavily on the case of ***Re Taldua Rubber Co Ltd*** ***(1946) 2. A..E.R. 763***, in which the facts appeared to be similar. The Company was formed partly to purchase a rubber estate, but with power to carry on a variety of activities. For 29 years the Company carried on the business of a rubber estate on the Taldua Estate, and during that period it carried on no other business except that it purchased rubber from other estates and processed it on its own estate. When it was sold a petition for winding up was filed on the ground that the substratum had gone, since the Company had been formed solely to work the Taldua Estate. The Court held that the sale of that particular estate did not result in a destruction of the substratum because the paramount object of the Company was to carry on the business of conducting rubber estates and was not limited to the business of carrying on the *particular estate*.

In the present case, admittedly, the main object of the Company was to carry on the business of hoteliers. The Petitioner's shares were directed towards that object. The Government granted tax concessions to promote the Tourism Industry. Hence the Petitioner can legitimately seek a winding up on the ground that the substratum has disappeared in relation to the object that it pursued. The tax concessions were granted, and the IFC loan was guaranteed *to assist the Plantation Club Hotel* and no other hotel. Hence that decision should be distinguished.

The decision in ***Re Kitson & Co Ltd (1946) 1 AER 435,*** which was also relied upon by Mr. Georges could also be distinguished on that ground. In that case the objects of the Compnay were in the widest terms and included power to take over a particular business and carry on the business of general engineering. The Company carried on the particular business for forty six years and then sold it, but the Court refused to hold that the substratum and gone on the ground that its power to carry on general engineering was capable of fulfillment.

As Kay J stated in the case of ***Re Red Rock Gold Mining Co Ltd (1889) 61 L.T. 785 at 787 –***

> "The principle of this Court is, that where an association is formed for a particular purpose, it does not matter that it has large powers in addition to that particular purpose; if that particular purpose fails any shareholder has a right to say "put an end to it, pay me my money".

What is "*just and equitable*" depends on the facts and circumstances of each case. Those words, as stated in ***Re Bleriot Manufacturing*** *(supra),* do not, and should not limit the jurisdiction of the Court to any case. In deciding whether or not to make a winding up order, the Court exercises a judicial discretion. Mr Georges invited the Court to consider whether it would be just and equitable to order a winding up of a Company whose assets are worth more than 40 million US dollars, for a shareholder to recover Rs.5.4 million. The answer would be a definite "*no" if the Company was solvent.* The reality of the situation of the Company is that while its assets are worth about 40 million US dollars, the total debts exceed 200 ml US dollars. The Bank of Baroda consortium itself is owed nearly 130 million US dollars. According to the Audit Report of the year 2004, in respect of the demand promissory notes for advances and interest thereon, the Associated Companies are owed Rs,21,943,234. There is therefore no value in the shares. Adopting the dicta of Kay J in the case of ***Re Red Rock Gold Mining Case*** (supra), it would be just and equitable in the opinion of the Court for the government to say as a shareholder "*put an end to it, pay me my money",* and as the Sovereign entity to state "*put an end to it in the interest of the Tourism Industry and the economy of the country".*

Section 208(2) provides that –

"(2) Where the petition is presented by a creditor, shareholder, contributory or debenture holder of the Company that it is just and equitable that the Company should be wound up, …… the Court, if it is of opinion –

(a) *That the Petitioner is entitled to relief either by winding up the Company or by some other means;*

(b) *That in the absence of any other remedy it would be just and equitable that the Company should be wound up;*

Shall make a winding up order, unless it is also of the opinion both that some other remedy is available to the Petitioner; and that he is acting unreasonably in seeking to have the Company wound up instead of pursuing that other remedy".

In this respect the Court accepts the evidence of Mrs. Herminie that all other legal remedies were considered, and that at the time of presentation of the petition the only remedy available to the Petitioner was the filing of a winding up petition. She stated that the Government would have been acting irresponsibly if it sought to sell its shares knowing that the Company was insolvent. She also saw no reason for the Government to contact the Company to sell the Company before the petition was filed, as the Company had indicated that they did not want to sell its assets. She further stated that acquisition was not an option for the Government in this matter. As regards the suggestion of Mr. Georges that the Government as a minority shareholder could have sought minority protection under the Act, the Court finds as a matter of law, that Section 201(1) of the act provides for protection of minority shareholders. The procedure is for shareholders to complain to the Registrar of Companies who may make an application by petition to Court for an order. In the United Kingdom however, Section 122(1)(g) of the Insolvency Act, 1986 provides for the filing of a petition for winding up by a minority shareholder on the ground that it is

just and equitable to do so. In our law therefore the remedy of a minority shareholder when affairs of a Company are being conducted in a manner which is oppressive or unfairly prejudicial is to complain to the Registrar for protection. The Registrar may then file a petition for an order. The Court is therefore satisfied on the basis of the totality of the evidence that the Petitioner is not acting unreasonably in seeking the winding up instead of pursuing any other remedies suggested by Mr Georges to Mrs Herminie.

Mr. Georges also made an application for a "*stand over*" order on the ground that the shareholders could still guide the procedure for the Petitioner to recover its investment, especially as at the time of closure, there was at least one serious investor as testified by Dr. Phogat. I take it that this application was made under Section 208(1) of the Act, as Section 233(1) does not apply to a contesting Company. He cited the case of In ***Re Strutton's Independence Ltd (1916) 33 TLR 98*** where the Court holding that the substratum had gone, stood over the petition to enable the majority of the shareholders to put forward a scheme for buying out the others. That was done as the Company had the widest of powers. In the present case all these Avenues have been pursued. There was no positive proof at the date of filing the petition which would induce this Court to make a "*standing over*" order, especially when the Petitioner has established on a balance of probabilities that the Company was, when faced with imminent closure, adopted a defiant attitude even to the extent of not pursuing its legal remedies. In these circumstances, a "*standing over"* order would amount to granting another extension to the Company to venture into an uncertain expedition for finances. Hence that application cannot be considered.

Accordingly, the Court is satisfied that at the time of the presentation of the petition there was no reasonable hope that the Company could pursue its main object as an

hotelier, not merely due to the licence not being renewed by the SLA, but mainly due to its inability to find partners or investors who could invest in confidence, knowing the debt situation of the Company. Hence the Court does not agree that it is a temporary set back. In the particular circumstances of this case, it was a practical impossibility. The pursuit of other objects in the memorandum of association was not a viable proposition due to the pervading insolvency of the Company. This state of insolvency had not changed at the time of presentation of the petition for winding up and there had been no hope of finding prospective investors or partners to pull the Company out of the quagmire they had been since its inception. The principal creditors are tied down by the deferment agreement. The interest on those loans are mounting with the Company having no hope to settle them even if they sell the assets. Therefore the Court holds that the substratum of the Company has disappeared, and that in those circumstances it is just and equitable to wind up the Company Ailee Development Corporation Ltd, and the Court so orders.

The Court also hereby approves the following claims of the creditors who have filed their claims pursuant to Regulation 29 of the winding up Regulations, 1975, as they were not contested either by the Petitioner or the Company.

(A) (1) Bank of Baroda - USD 29,080,988.38

(2) State Bank of Indian - USD 28,380,524.95

(3) Indian Overseas Bank - USD 21,831,525.51

(4) Indian Bank - USD 18,259.300.65

(5) Bank of India - USD 32,113,470.76

Amount as at 31st January 2008 = USD **129,665,810.76**

The interest is accruing at the Libor plus rate of 2.5 % and penal interest thereon.

(B) Nicole Thelermont of Bel Ombre.

Award made by the Competent Officer Ministry of Employment and Social Affairs in Case No Rev/193/06 - Sey Rs.76,077.89.

Pursuant to Section 217 (2) of the Act, the Provisional Liquidator appointed by this Court on 8th February 2008, Mr. Gerald Lincoln, the Chief Executive Officer of Ernest & Young – Mauritius, shall continue to be the liquidator of the Company Ailee Development Corporation Ltd. The restrictions on his powers imposed by this Court when he was provisional liquidator shall cease to be operative forthwith, and he shall henceforth be vested with all the powers provided in Section 222(1) and (2) of the Act.

Pursuant to Section 213(1) of the Act, a copy of this order shall forthwith be forwarded by the liquidator of the Company to the Registrar of Companies who shall make a minute thereof in the records relating to the Company. Further pursuant to Sub Section (2) thereof, an inhibition is placed upon all dispositions of, and dealings with, Land Parcel T. 147 situated at Val Mer, Baie Lazare on which the hotel is situated, and the Company Ailee Development Corporation is the registered proprietor, except dispositions and dealings by the said liquidator in the exercise of his powers conferred by him under the Companies Act of Seychelles. Upon production of a copy of this winding up order, the Registrar of Lands shall enter the inhibition against the said parcel of land.

Section 219(1) (a) of the Act provides that where in a winding up by Court a person other than an official receiver is appointed liquidator, that person shall not be capable of acting as liquidator until he has notified the Registrar of Companies of his appointment, and given security for the proper performance of his duties in the

prescribed manner to the satisfaction of the Registrar of the *Court*. The term *"prescribed"* means, prescribed by the Regulations made under the Act. Regulation 47(b) provides that the Court shall fix the amount and nature of the such security. Sub Regulation (c) provides that "*the cost of furnishing the required security by a liquidator…… shall be borne by him personally and shall not be charged against the assets of the Company as an expense incurred in the winding up".* On a consideration of duties that the liquidator would be performing in the winding up, and the value of the assets involved, I fix the amount of security in a sum of Sey Rs. One million, or its equivalent in any convertible foreign currency. This amount shall be furnished by way of a bond entered by the liquidator in his own recognizance with one surety to the satisfaction of the Registrar of this Court, or by providing a professional indemnity insurance cover for that amount, before acting as liquidator.

Judgment is entered, and orders are made accordingly.

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A.R. PERERA

ACTING CHIEF JUSTICE

Dated 23rd day of June 2008