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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 123/2012

RANGJI INVESTMENTS
PVT LTD

..... Petitioner
Through Mr. Praveen Aggarwal, Advocate.

versus

SPORTS AND LEISURE
APPARELS LTD & ANR

..... Respondents
Through None.

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Date of Decision: 25th APRIL, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (ORAL):

1. Present winding up petition has been filed under Section 433(e) read with Sections 434 and 439 of the Companies Act, 1956 stating that the respondent company is unable to pay its debts allegedly amounting to Rs.1,91,91,940/-.
2. The aforesaid amount is stated to be the lease rental due and payable by the respondent company to the petitioner for the period

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Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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December 2008 to December 2011. In this connection, learned counsel for the petitioner has drawn attention of this Court to the Lease Agreement dated 28th July, 2006 read with the Supplemental Agreement dated 26th February, 2008. Clauses 2 and 3 of the Lease Agreement dated 28th July, 2006 are reproduced hereinbelow:

"2. The monthly Lease Rent for the first 12 months (after completion of the Fit-Out period as defined below) of the Initial Term shall be Rs.3,90,000/- (Rupees Three Lakh Ninety Thousand Only). The monthly Lease Rent shall stand increased to Rs.3,95,000/- (Rupees Three Lakh Ninety Five Thousand Only) for the second 12 months of the Initial Term and to Rs.4,00,000/- (Rupees Four Lakhs Only) for the Third 12 months of the Initial Term.

3. Possession of the Premises : The Lessor undertakes to hand over possession of the Leased Premises to the Lessee on the date of this Agreement i.e. 28th of July 2006 (the "Date of Possession" or "Effective Date") to enable the Lessee and/or its authorised representatives to commence the fit-outs work."

3. However, upon a perusal of the paper book, this Court finds that the respondent in its reply to the statutory winding up notice has stated that the petitioner is not entitled to claim the agreed lease rental as after the execution of the aforesaid Agreements, the civic authorities had demolished a staircase unauthorizedly constructed by the petitioner. The relevant portion of the reply to the legal notice is reproduced hereinbelow:-

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“4. The contents in paragraph 7 of your notice are denied as statements made with no basis. Our client states that it was much later did your client agree to restore the proper aisle access way to the premises, after the demolition of the staircase by the civic authorities. Our client states that it is an undeniable fact that the demolition by the civic authorities was evidence of your client's illegal construction at the said premises. Therefore as per the agreed terms your client is not entitled to claim any rent from our client till the staircase aisle access way is rectified fully. As regards the averments in paragraph 8 of your notice our client had already replied vide the reply notice dated March 7, 2009 and stands by the same.

5. On the averments in paragraphs 9 and 10 of your notice as regards your client's statement of account as per which our client is liable to pay a sum of Rs.4,43,822/- (Rupees Four Lac Forty Three Thousand Eight Hundred and Twenty Two Only) is disputed as the matter is subjudice before the competent court. The calculation put forth vide paragraph 10 is incorrect and unsustainable and our client accordingly denies that any monies in the said manner or range are payable to your client.

6. With regard to allegations made vide paragraphs 11 to 15 our client reiterates and stands by the earlier reply dt. 07.03.2009 sent by them through their counsels and other reply on various other dates as mentioned in your notice and our client clarifies that with regard to the payment of rent the matters are pending before the Small Causes Courts at Chennai to determine the monthly rent and to deposit the monthly rent before the court and while the matter is subjudice claiming there is outstanding rentals is unsustainable. Your client is stopped from claiming any rental monies from our client since they denied to receive the monthly rental and directed to deposit the same in court. Therefore our client has filed R.C.O.P.No.1078 of 2010 before the X Small Causes Court Chennai to deposit the monthly rent as

directed by you and the same is still pending.

Further Our client confirms that they paid the monthly rent of December 2008, January, February and March 2009 in advance and thus your client's untenable claims by no means makes our client liable to pay your client. Our client denies that they are liable to pay any interest to your client when in the first place they do not owe your clients any monies as incorrectly claimed. Our client wishes to clarify that they are the statutory tenant and in legal possession of the premises and your client does not have any authority to determine the lease agreement as stated by you in violation of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the said Act).

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12. As to the averments made in Paragraph 26 of your notice while admitting deposit of the TDS amount we hereby deny that we have accepted any specific liability of any amount to your client and the deposit of TDS is only to show their bonafide intentions and in view of the RCOP No.1078 of 2010 filed by our client invoking the provisions of the said Act in view of your express denial to receive monthly rentals consequent to your clients letter May 06, 2010. We hereby also confirm that we have paid Rs.2,86,05,412 on account of TDS since April 2008 till date in view of the rentals paid by us to your client or the provisions made by us for the petition filed being RCOP 1078 of 2010. Deposit of TDS is in view of the compliance of prevailing laws and accounting standards and there for shall at no stage be treated as the admission of any specific liability.

13. With regard to allegations and averments vide paragraphs 27, 28 and 29 of your notice our client denies that our client is liable to the claimed monthly rental as stated. Our client as already stated is a statutory tenant as per the said Act and the question

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of your clients determination of the lease agreement is meaningless and absurd in this context. Our client once again asserts that they are not liable to pay any rental monies as demanded by your client with interest @ 18%. As regards the advance amount of Rs.23,40,000/- (Rupees Twenty Three Lacs Forty Thousand Only) our client already informed to you to deduct the same on an earlier occasion and this stand of our client stood vindicated in the proceedings vide R.C.A: No.78 of 2010 pending before the VIII Small Causes Court, Chennai. Thus it may be inferred that our Client is not liable to any outstanding monies payable to your client and therefore any notice under section 433 and 434 of the Companies Act, 1956 is unwarranted, unsustainable and bound to fail for the simple fact that the said claim of your client is disputed and our client is not in the doldrums and continues to do reasonable and good business."

(emphasis supplied)

4. When the factum of pendency of respondent's application for fixation of standard rent was pointed out to learned counsel for the petitioner, he stated that the said defense was a sham as the said application had been filed with malafide intent after the respondent's request for reduction of agreed rental had been rejected by the petitioner. He also placed reliance upon a judgment of this Court in ***Sharda Bhandari vs. Ananya Electroniks Ltd. 1993 78 Comp Cas 167 Delhi*** wherein it has been held as under:

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"8. Next, it is contended on behalf of the company that from 1st March, 1990 it is not liable to pay contractual rent as the petition for fixation of standard rent was pending and in support reliance is placed upon the decision of a single Judge of Bombay High Court in *Re : Yashodan Chit Fund Pvt. Ltd. M/s. Goel Bros. and Co. Pvt. Ltd.*, 1979 Tax Law Report, 2118. Mr. Kanwal Narain submits that in view of the pendency of the standard rent petition the company is not liable to pay the contractual rent from 1st March 1990 and thus there is no neglect to pay and the petition for winding up is accordingly not maintainable. The Bombay High Court has not held that in every case where petition for fixation of standard rent is pending the company is not liable to pay the contractual rent but on consideration of facts involved in the case the learned Judge came to the conclusion that there was a bonafide dispute between the parties which was under adjudication before the competent Court. The Court said:-

"In these circumstances, it can be concluded unhesitatingly on the facts of this case that there exists a bonafide dispute between the parties which is under adjudication before a competent Court."

(9) In my opinion, in these proceedings, the company cannot dispute its liability to pay rent and contend that there exists a bonafide dispute simply on the ground of pendency of petition for fixation of standard rent. It may further be noticed that the company has not even placed on this record the stage of the standard rent proceedings and how the company has been procuring the said proceedings. On the facts of the present case, the company's refusal to pay the contractual rent of even Rs.17,004.40 per month on the ground of pendency of the petition for fixation of standard rent does not show the exigency of bonafide dispute and thus there is a neglect on the part of the company to pay its debt to the petitioner. In my view, *prima facie*, there does not exist any bonafide dispute and the company is commercially insolvent."

5. However, a perusal of the said judgment reveals that in that case the respondent had initially given an undertaking in the first winding up petition to pay all future rentals at the amount mentioned in the lease agreement.

6. Moreover, this Court is of the view that as in the present case respondent's application for fixation of standard rent is pending on the ground that it is a statutory tenant, it cannot be said that the defense set up by the respondent in its reply to the statutory winding up notice is a sham or moonshine. In fact, on a perusal of the papers, it also transpires that the petitioner has also filed an application in the year 2010 before the concerned court for deposit of the admitted rent mentioned in the lease agreement and the said application is still pending consideration.

7. Consequently, keeping in view the pendency of the application filed by the petitioner for deposit of an admitted rent as well as the application for fixation of standard rent by the respondent, this Court is of the view that the defense set up by the respondent in reply to the statutory winding up petition is bonafide.

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8. Accordingly, the present petition is dismissed but the petitioner is given liberty to file a petition for winding up in the event the respondent's application for fixation of standard rent is dismissed by the concerned court.


MANMOHAN, J.

APRIL 25, 2012
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