

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 230 OF 2014

G.K. Choksi & Co.

... Petitioner

Vs

Jammin Recreation Pvt. Ltd.

.. Respondent

Ms. Tanmayee Salekar, instructed by M/s. Shah & Sanghavi, for the Petitioner.

Mr. A. Daver along with Mr. Beri, instructed by M/s. Beri & Co., for the Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 22nd April, 2015

1. By the above Petition, the Petitioner seeks winding up of the Respondent Company – Jammin Recreation Pvt. Ltd. (“the Company”) under Sections 433 (e) and (f) and 434 the Companies Act, 1956 (“the Act”). The Company Petition is taken up for hearing and final disposal.

2. According to the Petitioner, by a Lease Agreement dated 1st April, 2008, the Petitioner allowed the Company to use the premises of the Petitioner upon payment of lease rental. The Company defaulted in paying lease rent since November 2012. The Petitioner therefore through its Advocate issued a statutory notice dated 26th November, 2013 to the Company calling upon the Company to pay an amount of Rs. 66,11,796/- to the Petitioner towards lease rent as on 31st

October, 2013. The Company despite having received the statutory notice failed to reply to the same. In fact, the Company tendered a letter written by the Company to the Petitioner informing the Petitioner that the Company is making loss and therefore the Petitioner should adjust security deposit of Rs. 15,20,000/- towards the lease rent and waive the balance.

3. The Petitioner therefore filed the present petition on the ground that the Company is unable to pay its debts and deserves to be wound up. The Company Petition was served on the Company. However, at the stage of admission, the Company failed to file its affidavit-in-reply or to appear before the Court to oppose the Petition. The Company Petition was therefore admitted and directed to be advertised.

4. Pursuant thereto the Company Petition has been advertised and the Petition is now taken up for hearing and final disposal. The Company has now filed its affidavit-in-reply dated 26th March, 2015. The Learned Advocate appearing for the Company has made the following submissions:

(i) That in the year 2010, the business of the Company was on a decline. The Company therefore wrote several letters/emails to the Petitioner requesting the Petitioner to reduce the said rent. The Company was unable to pay the rent because of which the electricity to the leased premises was disconnected in the month of November 2013. Due to non payment of the lease rent the Company was restrained from entering upon the premises until clearance of the lease

rentals. Due to non-payment of Corporation tax, the premises also came to be sealed by Municipal authorities in November 2013 itself. Since the premises were unused, the Company by its letter dated 22nd November, 2013 handed over “the deemed possession” of the leased premises.

(ii) That the business of the Company came to a standstill due to non-affordability of the lease rent;

(iii) That the Petitioner decided to amicably settle the dispute with the Company. However, in the meantime the Petitioner proceeded to file the present petition.

(iv) That after the filing of the present petition, the authorised representative of the Petitioner and the Director of the Respondent held discussions in order to resolve the issue amicably. Pursuant to the said discussion it was agreed to settle the claims of the Petitioner for an amount of Rs. 25 lacs over and above the adjustment of the sum of Rs. 15,20,000/- towards the security deposit. The said amount of Rs. 25 lacs was agreed to be paid as follows:

(a) Rs. 12.5 lacs to be paid immediately.

(b) Rs. 12.5 lacs to be paid over a period of 6 months.

The said amount of Rs. 12.5 lacs was paid as follows:

(a) Rs. 5 lacs on 11th November, 2014.

(b) Rs. 7.5 lacs on 10th December, 2014.

(v) That after the receipt of the payment of Rs. 7.5 lacs the Petitioner compelled the Company to sign a document to state “that the premises was now handed over”.

(vi) That the Petitioner has failed to point out the said settlement to this Court at the time of admission;

(vii) That the above Petition therefore deserves to be dismissed.

5. The Learned Advocate appearing for the Petitioner has pointed out that the Petitioner has filed a detailed affidavit-in-rejoinder wherein all the submissions made by the Company have been dealt with. It is submitted that since the Company failed and neglected to pay the electricity charges and the Municipal Corporation charges over and above the lease rentals, the electricity in the premises was disconnected in November, 2013 and the Municipal Corporation sealed the said premises. In view thereof, the Company was unable to enter the said premises and it is not that the Company was unable to enter the leased premises in view of any obstruction created by the Petitioner. The question therefore of the Company having handed over “deemed possession” of the leased premises in November, 2013 to the Petitioner also did not arise. It is submitted that since the Company wanted to remove its machinery and other fixtures from the leased premises, the Company paid an amount of Rs. 12,50,000/- out of

which an amount of Rs. 5 lacs was paid to the Ahmedabad Municipal Corporation towards taxes on 17th November, 2014 and an amount of Rs. 4,35,000/- was paid on 23rd February, 2015 to Torrent Power Ltd. It is only after these amounts were paid that the electricity could be restored, the seal removed by the Municipal Corporation and the company could remove its machinery and fixtures from the said premises. It is only thereafter i.e. on 30th December 2014 the General Manager of the Company by his letter handed over possession of the leased premises to the Petitioner. The allegation that the Petitioner compelled the Company to sign the said letter is false and incorrect. The entire story now spun by the Company that there was a settlement between the parties is false and baseless. It is submitted that admittedly the Company has made losses and has wound up its business. The Company is unable to pay its debts and the defence sought to be raised is false and mere moonshine. It is submitted that since the defence sought to be raised is not bona fide and in fact smacks of mala fides, the Company Petition be allowed as prayed.

6. I have considered the submissions advanced on behalf of the parties and have also perused the exhibits annexed by the parties to the respective affidavits. Admittedly the Company since a very long time is making losses in its business and has admitted in its emails that it is unable to pay the lease rentals. The Company has admitted that the lease rentals are not paid by the Company since December 2013 to the Petitioner. Since the electricity charges and the Municipal

taxes were also not paid in respect of the leased premises, the supply of electricity to the said premises was disconnected in November, 2013 and the Corporation sealed the leased premises also in November, 2013. In view thereof the Company failed to have access to the leased premises and not because of any objection created by the Petitioner. The Company was therefore also unable to remove its machinery and fixtures from the leased premises. In the circumstances, the Company paid an amount of Rs. 12.50 lacs out of which an amount of Rs. 5 lacs was paid to the Ahmedabad Municipal Corporation towards tax and an amount of Rs. 4,35,000/- was paid to Torrent Electricity Ltd. for restoration of electricity. It is only after the seal was removed by the Corporation and electricity restored by Torrent Power Ltd. that the Company removed its machineries and fixtures from the leased premises and has handed over possession of the leased premises to the Company on 30th December, 2014 as is clear from the possession letter issued by the General Manager of the Company. There is no evidence whatsoever produced by the Company in support of its allegation that the Company was compelled to sign the said letter of possession dated 30th December 2014. Mr. Narendra Patil, General Manager of the Company who has signed the letter has not filed any Affidavit stating that the said letter was signed by him under coercion or pressure. Since the leased premises were sealed by the Corporation and the supply of electricity was disconnected by Torrent Electricity Ltd. the Company was unable to enter the premises to carry on its business. Therefore, the contention of the Company that it had handed over the “deemed

possession” of the leased premises is baseless and untenable and cannot be accepted. There is also not an iota of evidence to show that there was a settlement arrived at by which the Company had agreed to accept an amount of Rs. 25 lacs in full and final settlement of their claim after adjusting the security deposit of Rs. 15,20,000/- and therefore the story of the purported settlement now spun by the Company is a mere afterthought. I am therefore satisfied that the Company is unable to pay its debts and deserves to be wound up. . The Company Petition is therefore allowed in terms of prayer clause (a) which is reproduced hereunder:

“(a) That the Company Jammin Recreation Pvt. Ltd., a Company incorporated under the Companies Act, 1956 and having its registered office at D/1, Vishva Kutir CHS. Shankar Ghanekar Marg, Dadar (West), Mumbai-400 028, State of Maharashtra, be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956 and Official Liquidator be appointed as Liquidator to take charge of the assets of the Company.”

The Official Liquidator is directed to forthwith act on an ordinary copy of this Order duly authenticated by the Associate of this Court without waiting for any further notification.

(S.J. KATHAWALLA, J.)