IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 158 OF 2013

Gulf Data Communication Pvt. Ltd. .. Petitioner
Vs.
Dwarka Milk & Milk Products Pvt. Ltd. .. Respondent

Mr.P.V. Nichani i/b M/s. P.V. Nichani & Co. for petitioner.

None for company.

CORAM : K.R.SHRIRAM, J.
DATE : 8TH FEBRUARY, 2016

P.C.

1 The petitioner had given on leave and licence an office premises being office No.G-12 on Ground Floor, B-110 on First Floor, B-201, i.e., entire Second Floor in a building known as BSEL Tech Park at Navi Mumbai. The monthly compensation payable was Rs.37 lacs. There was also an understanding that the company may purchase the premises from the petitioner for a consideration of Rs.44 crores. The company proposed that it would pay a sum of Rs.2 crores as advance and the petitioner would put the company in possession immediately as a licensee for a period of six months at the end of which the company would buy the premises. Accordingly a Memorandum of Understanding dated 22.11.2012 was entered incorporating therein the terms of the agreement between the petitioner and the company. The company handed over two cheques as agreed but did not pay the balance amount of Rs.42 crores to purchase the premises. The company

instead of paying the balance amount, continued to occupy the premises and did not pay any more licence fee. The petitioner, therefore, issued a statutory notice under Section 433/434 of the Companies Act, 1956.

2 On an application made by the petitioner, an order came to be passed on 6.11.2012 wherein the Court observed in paragraphs 2, 3 and 4 as under :

> *"2. In spite of delivery of statutory notice, Respondent failed and neglected to pay an amount of Rs.1,85,00,000/- (Rupees one crore eighty five lacs only) being the compensation amount for the license fees, for the months of March 2012 to July 2012. The Respondent Company has filed reply to the main Company Petition. The reference was made to the Arbitration clause, thereby contended that, there are defences raised, which need to be adjudicated before the Arbitral Tribunal. The settlement of dispute based upon the leave and license agreement before the Arbitrator Tribunal itself is a doubtful proposition. There is no specific denial to the contract in question and so also the possession of the Respondent Company of the premises, including the rent of Rs.37,00,000/- (Rupees thirty seven lacs only) per month.*
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> *3. Therefore, at this stage, considering the averments made, I am inclined to direct the Respondent company to furnish the security to the extent of Rs.1,25,00,000/- (Rupees one crore twenty five lacs only) within 4 weeks, failing which the interim order as prayed in the Application in terms of prayer clause (b) with respect to the immovable property, will follow without the Court's order.*
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> *4. The learned counsel appearing for the Respondent company, on instructions of Mr. Dinesh Jadhav, Legal Head of the Respondent company, who is*

> *present in the Court, makes statement that they shall not create any third party right or interest in the immovable property of the company till the next date."*

3 The company challenged the said order before the Division Bench and the Appeal was rejected and even the Special Leave Petition has been dismissed.

4 There is no specific denial of the contract so also the possession of the respondent-company including the rent of Rs.37 lacs per month. Neither the agreement of sale has fructified in a sale deed nor any licence fees was being paid. As the respondent-company continued to be in possession, the Court directed the company to deposit a sum of Rs.1,25,00,000/-. The company did not deposit the said amount of Rs.1,25,00,000/-. The Court in paragraphs 3 and 5 of the order dated 23.10.2013 observed as under :-

> *3 The learned counsel for the respondent company submitted that the security of Rs. 1,25,00,000/- was conditional, meaning thereby that if the deposit is not made, the interim order will follow. However, in the same order, the court has noted that the rent of the premises to the extent of Rs. 37,00,000/- is not disputed. Apart from this, if the respondent is not in a position to deposit the amount of Rs.1,25,00,000/- in the court then the claim of the respondent that it is willing to purchase the property of worth of Rs. 44,00,00,000/- becomes doubtful. It will be, therefore, necessary to ascertain the bona fides of the respondent company, especially when it has continued to occupy the premises without any payment.*

> *4 …................*
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> *5 If the respondent company does not deposit an amount of Rs.1,25,00,000/- in the court before the next date, the presumption regarding the commercial solvency of the respondent company would be drawn.*

5 By an order dated 21.12.2013, this Court came to a conclusion that the company is not commercially solvent and the petition came to be admitted on 29.01.2014. The service under Rule 28 of the Companies (Court) Rules, 1959 was waived. The counsel for the petitioner states that they have filed affidavit proving publication of admission of petition in Free Press Journal in English and Navshakti in Marathi and in the Maharashtra Government Gazette and the affidavit has been filed with the office of the official liquidator. The counsel states that the petitioner has company now got the possession of the said premises. He states that the respondent-company has not paid any compensation for the period that it was in occupation and also did not pay the electricity charges which the petitioner had to pay. The counsel states that due to non-payment of the company even electricity supply was disconnected and the petitioner had to pay all the charges and get the supply restored.

The respondent-company has not filed any reply after the admission of the petition. The advocate on record has also taken discharge. Even today, the an advocate came and informed that Shri Uday Warunjikar who had filed Vakalatnama for the company had taken a discharge in the matter as they were not getting instructions. Nobody is appearing for the company to oppose the petition.

6 In view thereof, it is quite clear that the company is unable to pay its debts, is commercially insolvent and deserves to the wound up. The company petition is, therefore, allowed in terms of prayer clauses (a) and (b) which read as under :

> *(a) That the company namely, Dwarka Milk and Milk Products Private Limited, having its last known registered office at 1307, 13th floor, Mayuresh Cosmos Tower, Sector 11, CBD Belapur, Navi mumbai – 400 614, be ordered to be wound up by and under the directions, supervision and control of this Hon'ble Court under the provisions of the Companies Act, 1956.*
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> *(b) that the Official Liquidator, High Court, Bombay or some other fit and proper person be appointed as the Liquidator of all the business, assets, properties, income and books of accounts of the Company with all the powers under the provisions of the Companies Act, 1956.*

7 The official liquidator shall forthwith act on a copy of this order without waiting for any notification.

8 The company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)