

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 209 OF 2015

Mr.Sanjay Puri

...Petitioner

vs.

M/s.Alliance Restaurants and Bar Pvt.Ltd. .

...Respondents

Ms.Rajni Iyer, Senior Advocate with Tanmayee Salekar, Ms.Rishika Jhaveri
I/b. Shah & Sanghavi for Petitioner.

Mr.Mukesh Vashi, Senior Advocate I/b. M.P. Vashi Associates for
Respondents.

CORAM : S.C. GUPTE, J.

3 MAY 2017

ORDER :

This company petition seeks winding up of the Respondent company on account of its inability to pay debts.

2. The Petitioner's claim arises out of agreements of leave and licence and for licence of amenities entered into between the parties. On or about 21 October 2011, the Petitioner, seized and possessed of premises consisting of part ground floor and part first floor together with open space in front of the ground floor of Mahalaxmi Flats Estates of Municipal Corporation of Greater Mumbai at Survey No.2728 (pt) in Mumbai ("licensed premises"), entered into a leave & licence agreement in favour of the Respondent for use of the premises. Simultaneously with this agreement, the parties entered into another agreement termed as 'Interest free Refundable Security Deposit Agreement'. The agreements were for a period of 60 months with a lock-in period of 36 months. On or about 25 March 2012, the parties also entered into an agreement for licence of amenities,

allowing the Respondent to utilize various amenities installed in the licensed premises. The Petitioner's claims arise out of these agreements. The claims are under different heads, namely, (i) service tax outstanding and payable in the sum of Rs.8,89,920/-, (ii) tax deducted at source but not deposited in the treasury being Rs.3,29,888/- (iii) licence fees for the months of September and October 2014 and compensation for amenities from August to October 2014 for Rs.23,96,640/- and (iv) interest of Rs.3,23,305/-. It is submitted that various cheques for diverse amounts (aggregating to about Rs.36,00,000/-) issued by the Respondent towards these payments were returned unpaid by its bankers. The Petitioner issued a statutory notice under Section 434 of the Companies Act, 1956, which was not complied with by the Respondent. Hence, this petition on the ground of the Respondent's deemed inability to pay its debts.

3 In its reply, the Respondent disputes the debt. It is submitted that the licensed premises were to be used by the Respondent for running of a restaurant and accordingly, needed repairs and renovation; that the Petitioner, who is an architect by profession, was engaged by the Respondent for this work of repairs and renovation; that these repairs and renovation, for which separate fees were payable by the Respondent to the Petitioner, were not carried out within the stipulated time of six months; that the Petitioner not only did not complete the work within time, but failed to provide the requisite documents including the approved plans of the property to the Respondent; that this caused a substantial delay in getting licences for running of the restaurant, the licensees being put in place finally only by October 2014; that the amenities, mentioned in the licence agreement for amenities, had actually to be spent for by the Respondent, with an assurance on the part of the Petitioner to adjust such payment

against compensation payable under the agreements of leave and licence, and amenities; that the Respondent has spent nearly Rs.2.75 crores for getting the amenities in place, for which amount it has the requisite bills, vouchers and other documents; and that a total amount of Rs.3,11,68,331/- is recoverable by the Respondent from the Petitioner if accounts are drawn up between the parties, for which the Respondent has filed a suit against the Petitioner in this court, being Suit (Lodging) No.118 of 2015. The Petitioner appears to have filed a suit in the Court of Small Causes for recovery of possession and licence fees / compensation. There is also a criminal proceeding pending between the parties in this behalf.

4 It is not disputed by the Petitioner that he was engaged as an architect by the Respondent for the work of repairs and renovation to the licensed premises. He, however, submits that this was a separate and independent transaction, in no way connected to the licence fees or compensation for amenities. The Petitioner also denies having failed to carry out the work of repairs and renovation within time or expeditiously. He raises various issues in this behalf, such as late decisions or change in decisions on the part of the Respondent, re-doing of some jobs, non-payment in time to the suppliers by the Respondent, etc. The Petitioner denies that the Respondent spent Rs.2.75 crores towards amenities on any assurance of the Respondent to adjust such expenditure against licence fees or compensation for amenities. The Petitioner claims that he was not to actually provide for any amenities, but bare premises, but that the licence fees for licensed premises were, at the Respondent's own request, split into two parts, one shown as licence fees and the other as compensation for amenities.

5 The Petitioner may or may not be right, but, in the minimum, these matters do give rise to disputes between the parties as regards the debt claimed as due by the Petitioner from the Respondent company. There are a suit and a counter-suit between the parties in this court and the Court of Small Causes in this behalf as also a criminal prosecution. The courts will, after recording evidence and hearing the parties, decide the matters. It cannot, however, be said that the Petitioner's debt is not *bona fide* disputed by the Respondent in the present case. The Respondent's case forms part of its reply to the statutory notice as well as its suit which predates the petition herein. There is, in the premises, no case for an admitted or established inability to pay on the part of the Respondent company. The deeming provision of Section 434 does not apply to the facts of the present case.

6 For all these reasons, the petition does not merit admission. The company petition is, accordingly, dismissed. No order as to costs.

(S.C. Gupta, J.)