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

COMPANY PETITON NO.952 OF 2015

Shefali Siddharth Randeria ... **Petitioner**
V/s.
M/s Naresh Deep Sea Shipping
and Manning Services Private Limited ... **Respondent**

Mr.Deepak Shukla i/by M/s Vinod Mistry and Co. for the Petitioner.
Mr.Raj Patel i/by M/s K.P.Tiwari and Co. for the Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : NOVEMBER 14, 2017.

P.C. :

1. This Petition is filed for winding of the company "Naresh Deep Sea Shipping and Manning Services Private Limited (the said Company) alleging that the company is unable to discharge its debt, commercially insolvent and that company should be wound up.

2. The company had taken on Leave and License from Petitioner an office premises being Unit No. 401, 4th floor, Morya, Landmark-II, B-17, New Link Road, Andheri (W), Mumbai

400053, ad-measuring 1120 sq.ft. built up area (the said Premises).

3. Clause (5) of the Leave and License Agreement reads as under:

> "The Licensee agrees to pay Rs.1,05,000/- (Rupees One lakh Five Thousand Rupees Only) per month as compensation to the Licensor towards use of the Licensed Premises. The said monthly compensation shall escalate by 10% after the expiry of every term of 12 months. TDS Certificate if TDS deducted, to be handed over to the Licensor, latest by the end of every month without fail. Also, according to recent Financial Budget & Central Government of India, they have proposed to levy service tax on commercial property license fees whatever it is and whenever applicable will be given by the Licensee as agreed upon."

4. According to Petitioner, in June 2014 Petitioner received a demand from the Service Tax Authorities, in response to a declaration that was filed by Petitioner under the voluntary Compliance Encouragement Scheme (VCES) for payment of

service tax. According to Petitioner, Petitioner paid a total sum of Rs.11,31,707/- as service tax for compensation received for four premises, of which a sum of Rs.3,89,007/- was relating to the said premises. Petitioner has also relied upon an affidavit of one Tejas Sodha affirmed on 20th September, 2017 to support their contention that a sum of Rs.3,89,007/- has been paid as service tax for the said property. It is the case of Petitioner that clause (5) of the Leave and License Agreement expressly provides that as and when the Government of India proposed to levy service tax on commercial property, licensee, i.e., the company shall pay the same. It is Petitioner's case that this is a crystallized amount and is a debt, which, company despite sending statutory notice as required under Companies Act, 1956 has failed to pay and hence, should be wound up.

5. Respondent in response to the statutory notice has denied its liability. It is the case of Respondent in the reply that payment of service tax is the liability of Petitioner and in any event, there is no evidence to show that service tax has been paid with respect to the said property.

6. In the affidavit-in-reply, Respondent has reiterated the defence taken in the reply to the statutory notice and has also alleged that the claim in any event is barred by limitation. There is nothing in the affidavit-in-reply to show how according to Respondent the claim is barred by limitation. At the same time, the main defence on which counsel for Respondent harped upon is that except for Chartered Accountant's affidavit to show how the amount of Rs.11,37,707/- has been distributed among the four properties that Petitioner owned, the affidavit does not even indicate whether it has been based on compensation received or area-wise. Mr. Patel also submitted that in 2011 the said premises was sold by Petitioner to Respondent and therefore, there was no reason for Petitioner to have made the alleged payment under VCES. Mr.Patel states that if at all the Service Tax Authorities had commenced any action, it would have been against the said premises, which is in the ownership of respondent and in such a situation an order to wind up respondent cannot be passed.

7. In my view the Petition raises disputed question of facts.

Therefore, I am inclined not to exercise any discretion in favour of Petitioner. Petition dismissed. No order as to costs.

(K.R.SHRIRAM, J.)

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