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

COMPANY PETITION NO.672 OF 2016

Laxmi Finance & Leasing Companies)
Commercial Premises Co-op.Society Ltd.)....Petitioner
V/s.
M/s.Hellion Finance & Leasing Pvt. Ltd.)....Respondent

Ms.Smita Sawant i/by Dave and Co. for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 4.5.2018

P.C.:-

1 The petition is filed for winding up of the respondent company -Hellion finance & Leasing Pvt. Ltd. on the grounds that the company is unable to pay its debts to petitioner and is commercially insolvent.

2 On 12.2.2018 at the time of admission, the following order came to be passed :-

> *1 The petition is filed for winding up of respondent company M/s.Hellion Finance and Leasing Pvt. Ltd. on the ground that the company is unable discharge its debt and is commercially insolvent.*
>
> *2 Petitioner is a cooperative society. Respondent company, it is stated in the petition, is duly registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 and is the member/occupant of petitioner society occupying premises No.C25, Gblock,*

Office No. 8 in C wing on 2nd floor in petitioner society. As a member of the society, the company has to contribute its share of the charges of the society such as maintenance charges, property tax, water charges, electricity charges etc. The company has been, it is stated, defaulted in payment of maintenance charges etc. from December 2010 and as per the invoice dated 1st March 2016, copy whereof is annexed to the petition at Exh.'B', the amount payable as on 1st March 2016 is Rs.1,17,73,873/. As no amounts were paid, petitioner caused a notice dated 11th March 2016 issued through their Advocate to which there has been no reply. Hence this petition.

3 In an affidavit filed by one Rancchodabhai Kalathia affirmed on 10th October 2017 for the company, in which it is stated that Union Bank of India to which premises was mortgaged, had issued a notice dated 17th October 2013 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) for sale of the said premises. Though the date on which it has been bought by Vijaya Bank is not mentioned, Ms. Mody for respondent makes a statement across the bar that Vijaya Bank who claims ownership rights over the said premises, purchased it on 25th November 2013. Ms. Mody further states that the company has challenged the sale and it is also stated so in the affidavit in reply. According to Ms. Mody, therefore the liability is of the Vijaya Bank and not of the company.

4 The other defence raised is petitioner, being a cooperative Society, has to either file a dispute before the Cooperative Court under the provisions of Section 91 of the Maharashtra Cooperative Societies Act 1990 (The MCS Act) or apply to the Registry of Societies under the provisions of Section 101 of the MCS Act for recovery of the outstanding maintenance and this Court has no jurisdiction.

5 So far as the issue of jurisdiction is concerned, the prayer in this petition is for winding up and is not for money. Petition filed under Companies Act would be to the effect that the company has become commercially *insolvent and therefore should be wound up. The power to order winding up of a company is contained under the Companies Act and is conferred on the Court. The Cooperative Court or the Registrar under the MCS Act would have no jurisdiction to order winding up of the company. Therefore, only this Court can exercise the jurisdiction of winding up a company. I find support for this view in Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd.*

6 So far as the stand of the company that Union Bank of India sold the premises to Vijaya Bank and Vijaya Bank therefore is liable, first of all company has challenged the sale. In any event, the sale has happened only on or about 25th November 2013 as stated by Ms. Mody. At least up to that date certainly the company is liable. Since the company has not been paying the society dues from December 2010 onwards, it is rather obvious that the company is unable to discharge its debts and is commercially insolvent because as a member of the society, company cannot dispute the invoices raised by the society. In any event that is not a defence raised in the affidavit in reply.
………”

3 Ms.Sawant for petitioner states that post admission, no affidavit in reply has been filed. Ms.Sawant also states that against the order of admission dated 12.2.2018 the company has preferred an appeal being Appeal No.148 of 2018. Ms.Sawant states when the appeal was listed for admission on 11.4.2018, at the request of the company (appellant) the appeal was stood over to beyond vacation. The company sought leave to amend the appeal. Ms.Sawant states that even the appeal is not admitted and no interim stay has been

granted. Ms.Sawant states that even interim stay was not prayed for.

4 On record is the affidavit of one Sanjay S.Korgaonkar affirmed on 25.4.2018 confirming advertising the petition in `Free Press Journal' and `Navshakti' on 24.3.2018 and in Maharashtra Government Gazette for the period 12.4.2018 to 18.4.2018 at Serial No.M-182.

5 Notice under Rule 28 of the Companies (courts) Rules 1959 has been waived. At the admission stage itself after considering the affidavit in reply filed by the company, the court had come to a finding that the company is unable to discharge its debts and is commercially insolvent.

6 In the circumstances, petition is allowed in terms of prayer clauses-(a) and (b) which read as under :-

> *"(a) That the Company M/s.Hellion Finance & Leasing Pvt. Ltd. be ordered to be wound up by and under the directions of this Hon'ble Court ;*
>
> *(b) That the Official Liquidator, High Court, Mumbai be appointed as Liquidator of the Company with all powers under S.457 of the Companies Act, 1956."*

7 The advocate for petitioner shall file a copy of this order, duly authenticated by the Associate of this court with the office of Official Liquidator. The Official Liquidator shall forthwith act thereupon without waiting for any notification appointing him as liquidator.

8 Registry to return the amount of Rs.10,000/- deposited by petitioner subject to deductions if any.

9 Petition disposed accordingly.

(K.R.SHRIRAM,J)