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

COMPANY PETITION NO. 441 OF 2016

Jugal Shrigopal Saraf .. Petitioner
Vs.
Putin Impex Pvt. Ltd. .. Respondent

Ms.Dolly M. Kotwani i/b Vigil Juris for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 4TH MAY 2018

P.C.

1. The petition is filed for winding up of the company Putin Impex Private Limited (the company) on the ground that the company is unable to discharge its debt and is commercially insolvent.

2. On 13th September 2017, when the petition was taken up for admission, the following order came to be passed :-

> *"1. By this petition, the petitioner seeks to wind up the respondent company for its deemed inability to pay the following:*
>
> *(a) licence fees;*
> *(b) compensation for amenities provide at premises taken on leave and licence by the respondent company;*
> *(c) shortfall in monthly licence fee for the period July 2013 to September 2014 and for the period October 2014 to December 2015;*
> *(d) amenities fee for the period mentioned in (c) above ;*
> *(e) interest on the shortfall in security deposit;*
> *(f) damages in terms of the Leave and Licence Agreement admittedly to be executed between the parties and*
> *(g) miscellaneous amounts said to be payable under the Leave*

and Licence Agreement.

2. *The respondent having omitted to pay the amounts claimed a statutory notice came to be issued on 22nd April, 2016 addressed to the registered office of the respondent. The statutory notice has described in great detail, the basis of the claim and in conclusion demanded a sum of Rs.97,81,069/- towards principal sum of licence fees and amenities fees payable etc and interest thereon and the separate claim for damages of Rs.30,000/- per day.*

3. This demand for damages cannot be a quantified demand made as a debt as a part of the statutory notice, although the particulars of claim seek to quantify it for a limited period. The company did not respond to this statutory notice, as a result, the petition came to be presented. After service of the petition upon the respondent, an affidavit in reply of one Sanjay Bindra, Director of the respondent company dated 22nd July, 2017 has been filed. In its reply, the company has contended that the claim in the statutory notice was restricted to the licence fees, amenities and shortfall in deposit due and payable for the period described as a "lock in" period under the Leave and Licence Agreement.

4. In reply, the deponent has contended that there are various bonafide disputes which are triable in nature and that these can be decided only in a suit. Apart from the usual defences of the petition being allegedly filed in order to exert pressure on the respondent, the execution of the Leave and Licence Agreement is sought to be questioned. It is contended that the agreement was arrived at by misrepresentation and that the document was one sided without an option to the respondent to terminate the same. The basis of the lock in period of 60 months is therefore disputed.

5. According to the respondent and as canvassed by the learned counsel for the respondent today, the only defence pressed into service is the fact that the company has not used the premises after October 2014 and was therefore not liable to pay either the licence fee for the remaining lock-in period upto December 2015. Likewise the amenity fee was also not payable for the remainder of the lock-in period and by the same reason, *all other charges such as shortfall in deposit etc. were not so payable. Apart from this defence, it is submitted that the respondent has handed over the possession of the premises to the petitioner who "happily received" the keys without any demur or protest. This is to be found in paragraph 21 of the affidavit in reply.*

6. It is contended that the respondent closed down their business activities from about October 2014 and since the business had closed down, the premises were not in use by the respondent. In paragraph 19 the respondent admits that keys of the premises were handed over to the petitioner only in the month of July 2015. There is no explanation as to why, despite the admission that the keys were handed over in July 2015, the claim for licence fee, amenity fee etc. for the period October 2014 to July 2015 is not payable. The affidavit is silent on this aspect. The learned counsel for the respondent relied upon the contention in paragraph 21 to state that relationship of licensor and licensee was brought to an amicable end since about July 2015 and that the petitioner commenced correspondence thereafter demanding exorbitant sums of money as outstanding dues through interest, repair charges etc.

7. The contentions of the respondents are therefore clearly contrived. In paragraph 18 of the reply they have made a categorical statement that the premises was not used after October 2014 but they were not oblige to pay licence fee for the period October 2014 till July 2015 since it was allegedly agreed that they were not bound to pay the licence fee for the said period and that the petitioner did not raise any issue about non-payment from October 2014 to July 2015. This statement seems to be incorrect when read with the fact that demands for payment of licence fee have been made as of 8th March, 2015 in Exhibit E to the petition, 4th May, 2015 Exhibit F to I and 7th May, 2015 Exhibit J to which there has been no reply from the respondent.

8. In the circumstances, the defence now taken up in the affidavit in reply and the only defence canvassed before me today, does not merit consideration inasmuch as the respondent's affidavit in paragraph 24 admits the only grievance made in the affidavit is that the petitioner has not admitted having received *back possession. In paragraph 26 of the reply, there is a statement that there are certain items of furniture and fixtures and other inventory lying in the premises and that the respondent has suffered a loss. This contention is once again lacking merit since as it is the case of the respondent that they have handed over the possession of the premises unconditionally in July 2015.*

9. The affidavit in rejoinder has annexed the balance sheet and profit and loss account of the respondent. The Director's report dated 6th September, 2014 reveals that the company has suffered a loss of Rs.1,98,540/- and a total accumulated loss of Rs.2,71,23,235/-. Furthermore, for the period dated 31st March, 2016 in the notes forming part of the balance sheet, the loss disclosed is Rs.42,309,331/-.

10. In the circumstances, there is sufficient evidence to show that the company is in considerable financial difficulty. There appears to be substance in the contention of the petitioner that the respondent is unable to pay debts as and when they arise in the usual course of business. Prima facie, it is evident that the licence fee for the period from October 2014 to December 2015 is payable by virtue of the provisions of clause (3) of the Leave and Licence Agreement dated 24th December, 2010 which sets out the obligation to pay rent upto 31st December, 2015 in respect of the lock-in period described in clause (2) of the Agreement. Likewise, in the Amenities Agreement there is an obligation to pay the amenities fee, the amounts described in paragraph 3 of the agreement for the entire licence fee upto 31st December, 2015. The Amenities Agreement is said to be co-extensive under the licence. In the circumstances, prima facie, the licence fee of Rs.28,73,776/- and amenity fee of Rs.32,54,846/- claimed in the statutory notice appears to be is due and payable and nothing in the defence set out in the affidavit in reply or the earlier correspondence indicate that these amounts are not payable.

11. In the circumstances, I find the respondent is deemed to be unable to pay its debts as and when they arise in the usual course of business. I, therefore, pass the following order:- ……………"

3. Post admission, the company has not filed any further affidavit challenging the petition. Nobody is present today, though the name of advocates for the company is also mentioned in the cause-list.

4. Affidavit of service of one Deepak B. Kadu, affirmed on 2nd May 2016 is on record confirming advertising the petition in two local newspapers, viz., Free Press Journal and Navshakti on 17th October 2017 and also in the Maharashtra Government Gazette on 12th October 2017 for the period October 26- November 1, 2017 at Sr.No.M-17223. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived.

5. Having heard the counsel, considered the petition and documents annexed thereto, I am also satisfied that the company is indebted to petitioner is unable to discharge its debts and is commercially insolvent and hence requires to be wound up. Hence the petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

> *"(a) That the said Company, viz., Putin Impex Private Limited be wound-up by and under the directions of this Hon'ble Court under the provisions of the Companies Act, 1956.*
>
> *(b) That the Official Liquidator, High Court, Bombay, or some other fit and proper person be appointed as Liquidator of the said Company together with all its assets, business, businesses, affairs, books or accounts, papers, vouchers and all other documents with all powers under the provisions of Companies Act 1956."*

6. Petitioner's advocate to forward an authenticated copy of this order, within two weeks, to the official liquidator who shall take immediate steps without waiting for any notification.

7. The company petition accordingly disposed.

8. A copy of this order also be forwarded to the National Company Law Tribunal for information.

(K.R. SHRIRAM, J.)