

(1992) 10 DEL CK 0027

In the Delhi High Court

Case No : Company Petition No. 220 of 1989 and Company Application No"s.
13340 of 1989 and 406 of 1990

Sharda Bhandari

APPELLANT

Vs

Ananya Electroniks Ltd.

RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Citation : (1993) 78 CompCas 167 : (1992) 48 DLT 723 : (1993) RLR 63

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : R.B. Bakshi and Kanwal Narain, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) Petitioner, who is a widow, claim winding up of M/s. Ananya Electronics Ltd. and for short "the Company") on the ground that the company is unable to pay its debts. Briefly, the case of the petitioner is :-

(2) The petitioner had to let out factory premises No. C-170, Okhla Industrial Area, Phase-1, New Delhi, to the Company because her husband who had built the premises for starting a factory was murdered before he could start the factory. The petitioner had a minor son to support and having no other source of income gave the premises comprising of basement and ground to the company on monthly rent of Rs. 17,004.40 with a clause for enhancement of rent by 15% after three years. The company at the time of taking the premises on rent in March 1985 paid two months rent to the petitioner in advance. Thereafter the company did not make payment of any rent to the petitioner. The petitioner had earlier filed C.P. 76 of 1987 seeking winding up of the company on the same ground alleging that the company was indebted to the petitioner in the sum of Rs. 2.89,079.80 which it had not paid inspire of the service of notice of demand being arrears of rent from 1st May 1985 till 31st March 1987. The company in C.P. 76/87, took about one year to make the said payment. After payment of the

arrears of rent for the period ending 30.4.88 C.P. 76/87 was dismissed on 2nd August 1988 and the company also assured the petitioner that she would be regularly paid the rent in future. The company again did not make any payment with the result that the widow again had to come to this Court with the present petition. Before filing this petition the petitioner served on the company a notice dated July 24th, 1989 making a demand of Rs. 4,69,366.22 from the company. It was, inter-alia, stated in the notice that the premises were let out at the rent of Rs. 7,004.40 per month; the rent was to be enhanced by 15% with effect from 1.3.88 and the company was to pay the rent at the rate of Rs. 19,555.60 from 1st March 1988. Thus a sum of Rs. 5101.32 was due from the company as balance of rent for the period 1.3.1988 to 31.5.1988 being the difference in old rates and new rates and further sum of Rs 2,93,325.90 was due as arrears of rent for the period from 1st May 1988 to 31st July 1989. The petitioner in the notice also claimed that the property tax had been enhanced by the Municipal Corporation on account of unauthorised covering of open space by the company and as such the company was also liable to pay the sum of Rs. 35,000.00 which petitioner was made to pay as additional tax property tax besides Rs. 83,164.00 as Water tax and Rs.52,975.00 as scavenging tax. In this manner in the notice demand of Rs. 4,69,566.22 was made from the Company. The company did not make the payment and ultimately on 6th December 1989 this petition was filed claiming that the company is unable to pay its debts.

(3) Notice was issued to respondent to show cause why the petition be not admitted. In response to the notice the company through its Counsel appeared in Court for the first time on 2nd March 1990. After grant of various opportunities the reply to the winding up petition was filed by the company on 22nd October 1990. The company has not disputed the receipt of the notice dated 24th July 1989. It has also not pleaded that any reply to the notice was sent. The company has, however, pleaded that after the receipt of notice parties have been negotiating for amicable settlement which has not fructified. The company has also not pleaded that any payment of rent had been made to the petitioner but it has pleaded that the following payments were made to Municipal Corporation of Delhi :-

Date	Cheque No.	Amount	15.2.89	710450	32,250.00	04.03.89	696277
			12,093.75	290.3.89	696283	37,346.88	31.05.89
			696310	37,346.78	11.12.89		
			342779	34,01,00.00	11.01.90	342789	1,02,024.00

The case of the company is that the rent had been attached by the Municipal Corporation and it has been, from time to time, making payment to the Municipal Corporation of Delhi. The company has pleaded to have shifted the registered office of the company at D-935. New Friends Colony New Delhi. It has further pleaded that the sum of Rs. 68,017.00 was lying with the petitioner as security amount and the company was entitled to adjustment of the said amount as also of Rs. 2,55,071.50 paid to the Corporation. The company has also disputed its liability to pay the other amount like the water tax, scavenging tax and enhanced

property tax. It has been pleaded that the company is liable to pay sum of Rs. 17,004.40 per month as rent only up to 28.2.90 and as the company has filed a petition for fixation of standard rent before the Rent Controller the company is not liable to pay the agreed rent of Rs. 17,004.40 from 1st March. 1990. According to the company the standard rent of the premises is liable to be fixed at Rs. 5970/- per month and from 1st March 1990 the petitioner is not entitled to payment of anything beyond the amount of Rs. 5970.00 per month.

(4) On 4th February 1991 Counsel for the respondent company stated that without prejudice to the rights and contentions of the company it is prepared to deliver vacant and peaceful possession of the premises in question to the petitioner. The Counsel for the petitioner stated that the petitioner is prepared to take possession without prejudice to her rights to claim arrears of rent and other charges like water tax etc. as also damages and also requested that a Local Commissioner may be appointed in whose presence the petitioner will take possession so that the Local Commissioner may note down the damages which are said to have been occasioned by the respondent. Without prejudice to the rights and contentions of the parties an advocate of this Court was appointed as a Local Commissioner and pursuant to the said orders the possession was delivered to" the petitioner on 6th February 1991.

(5) The parties have filed their statements of account. According to the petitioner, as per agreement between the parties, the company is liable to pay rent at the rate of Rs. 19,555.60 from 1st March 1988 till 6th February 1991 besides the amounts as detailed in notice dated 24th July 1989 and other amounts thereafter. Learned Counsel for the petitioner submits that assuming without admitting that the company is entitled to adjustment of the alleged payment made to the Corporation and the adjustment of the security amount of Rs. 60,017.50 is also given still large amounts would be due from the company to the petitioner. According to her the rent due from the company for the period from 1st May 1988 to 31st January 1991 is Rs. 6,45,315.00 and she is also entitled to recover from the company Rs.5101.00 being the difference in rent for the period 1st March 1988 to 30th April 1988 besides sum of Rs. 62,370/- as scavenging tax from 1st March 1985 to 31st March 1991 and water tax amounting to Rs. 1,26,479.00 for the period 1st March 1985 to 31st March 1990 and additional property tax of Rs. 13,800/- and electricity charges of Rs.23,534.00 and interest of Rs. 1,18,866.00 at the rate of 15% p.a. on the rent due. The sum total of these figures comes to Rs. 8,95,465.96. After giving adjustment of Rs. 2,55,071.50, namely, the amount said to have been deposited by the Company with the Corporation and Rs. 68,017.00 , namely, the amount of security deposit, according to petitioner, a sum of over Rs. 5,50,000.00 is due from the respondent. The respondent claims to have deposited another sum of Rs. 98,807.80 with the Corporation vide Cheque No. 331257 dated 13th November 1990. The petitioner submits that even if the adjustment of this deposit is also given the amount due from company would still be over Rs. 4,50,000.00 which the company has failed to pay.

(6) It is most unfortunate case. From the facts of the case one thing is absolutely clear and that is that except for making payment of rent in advance for two months in 1985 at the time of taking premises on rent, the company did not, at any time on its own, make payment of rent to the petitioner. The lady who is a widow was forced to come to Court earlier (C.P. 76/87) and again by filing this petition. It would also be useful to notice that it is not the case of the company that except for payments made by it to the petitioner during the course of C.P. 76/87 any other payment has been made to her. I have also perused the orders made from time to time in C.P. 76/87. The orders show that considerable time was taken for payment of rent which was admittedly due to the petitioner from the company. In this petition the company, of course, claims that it made payments to the Corporation because of the order of attachment. In that respect it may be noticed that though statutory notice of demand dated 24th July 1989 was served on the company and the order of attachment is dated 2nd March 1988, the sum of Rs. 34,010.00 was paid to Corporation by cheque dated 11th December, 1989, sum of Rs. 1,01,024.00 was paid by cheque dated 11th January 1990 and sum of Rs. 98,807.80 was paid on 13th November 1990. These three payments to the Corporation have been made much after the service of notice of demand dated 24th July 1989. I may also notice that without prejudice to her rights and contentions the petitioner had given an offer to settle the matter on payment to her by the company of the contractual rent of Rs. 17,004.40 per month up to the vacation of the premises by the company and she was also prepared to give up her other claims and had also no objection to the adjustment being given to the company of all the payments alleged to have been made by it to the Corporation as also of the security amount. In short, in order to end the litigation, it was stated on behalf of the widow by her learned Counsel, that on payment of rent, even without enhancement, she may be willing to forgo her all other claims. The offer was not acceptable to the company. One of the contentions of the company was that it is not liable to pay rent after February, 1990 and in support of the contention reliance was placed on the stand of the company as stated in reply to C.A. 406/90. That reply was filed by the company on 7 April, 1992. In the reply it was pleaded, for the first time that the parties had made a compromise and in terms of that compromise the company had vacated the premises in February 1990 but the petitioner in terms of the compromise did not take possession and went back on her agreement with the result that Counsel for the company had to handover the keys of the premises to the Counsel for the petitioner in Court. Thus, it is claimed that after February 1990 the company is not liable to pay any rent to the petitioner. The company has, however, not taken any such stand in reply to the winding up petition. That reply was filed on 22nd October 1990. Thus, the plea taken in reply filed in April 1992 seems to be wholly misconceived and malafide.

(7) The support of the contention that the company petition should not be admitted, learned Counsel for the company, contends that the Court should take into consideration only the amount of rent up to July, 1989 as only rent up to

July 1989 was the subject matter of the notice of demand and for payment of rent for period after July, 1989 the petitioner should serve on respondent a fresh notice of demand and file another petition. I do not agree. The acceptance of the contention would lead to multiplicity of proceedings. It would also amount to giving undue premium to dishonest tenants/debtors. This Court has to take into consideration the subsequent events particularly in a case like the present one where there is no dispute about the amount paid by the company either to the petitioner or to the Corporation. The Courts have to adopt an approach which avoids multiplicity of proceedings. Furthermore, the company did not even send any reply to the notice of demand. Assuming the company was liable to pay to the petitioner rent at the rate of Rs. 17,004.40 per month and not the enhanced rent, the full rent even at that rate was not paid either to the petitioner or even to the Municipal Corporation of Delhi. On the own showing of the company the first payment made to the Corporation, after service of statutory notice, was by cheque of 11th December 1989 and the other payment was made by cheque of 11th January 1990. The third payment was during pendency of these proceedings on 13th November 1990. The company had also made payments of certain small amounts to Corporation even before 11th December 1989, as detailed in earlier part of this order.

(8) Next, it is contended on behalf of the company that from 1st March 1990 it is not liable to pay contractual rent as the petition for fixation of standard rent was pending and in support reliance is placed upon the decision of a single Judge of Bombay High Court in *Re : Yashodan Chit Fund Pvt. Ltd. M/s.Goel Bros. and Co.Pvt. Ltd., 1979 TLR 2118*. Mr. Kanwal Narain submits that in view of the pendency of the standard rent petition the company is not liable to pay the contractual rent from 1st March 1990 and thus there is no neglect to pay and the petition for winding up is accordingly not maintainable. The Bombay High Court has not held that in every case where petition for fixation of standard rent is pending the company is -not liable to pay the contractual rent but on consideration of facts involved in the case the learned Judge came to the conclusion that there was a bonafide dispute between the parties which was under adjudication before the competent Court. The Court said:-

"IN these circumstances, it can be concluded unhesitatingly on the facts of this case that there exists a bonafide dispute between the parties which is under adjudication before a competent Court."

(9) In my opinion, in these proceedings, the company cannot dispute its liability to pay rent and contend that there exists a bonafide dispute simply on the ground of pendency of petition for fixation of standard rent. It may further be noticed that the company has not even placed on this record the stage of the standard rent proceedings and how the company has been procuring the said proceedings. On the facts of the present case, the company's refusal to pay the contractual rent of even Rs. 17,004.40 per month on the ground of pendency of the petition for fixation of standard rent does not show the exigency of bonafide

dispute and thus there is a neglect on the part of the company to pay its debt to the petitioner. In my view, prima facia, there does not exist any bonafide "dispute and the company is commercially insolvent.

(10) For the foregoing reasons the winding up petition is admitted to hearing. The citation shall be published in Statesmen, Jansatta and Delhi Gazette indicating that the petition will come up before this Court on January 28th, 1993.

(11) Having regard to the facts and circumstances of the case, the Official Liquidator attached to this Court is appointed as the Provisional Liquidator of the respondent company with directions to forthwith take over all the assets and records of the company.

(12) From May 1988 up to 31st January 1991. at the rate of Rs. 17,004.40, the amount of rent works out to Rs. 5,61,145.20. According to the company it is entitled to adjustment of Rs. 4,21,896.80, i.e. the amount paid to Corporation and the security amount. In case the company pays to the petitioner Rs. 1,39,248.40 on or before 30th October 1992, this order will not operate. On failure of the company to make this payment the order of admission of the petition, publication of citation and appointment of the Provisional Liquidator would become operative from 31 October 1992.

(13) C.A. Nos. 13340/89 and 406/90 are disposed of in above terms.