(2013) 08 DEL CK 0100

In the Delhi High Court

Case No : Co. Petition 588 of 2012

Vishnu Manglani and Another APPELLANT

Vs

M/s. Tuff Energy P. Ltd. RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Companies Act, 1956 — Section 433, 433(e), 433(f), 434, 434(1)(a)

Citation : (2013) 6 AD 717 : (2013) 179 CompCas 589 : (2013) 202 DLT 556

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Ankit Jain, for the Appellant; P.V. Dinesh and Mr. Jaimon Andrews, for the Respondent

Judgement

R.V. Easwar, J.

Co.Appl. 2442/2012 (for exemption)

Allowed subject to all just exceptions.

CO.PET. 588/2012 & Co.Appls. 2441/2012

1. This is a petition filed u/s 433(e) and 433(f) read with Section 434(1)(a) of the Companies Act, 1956 seeking winding up of the respondent-company. The respondent-company had taken the premises being Apartment No. 301, The Aralias, DLF, Phase-V, Gurgaon, admeasuring 6833 sq. ft. for rent under a lease agreement dated 29th August, 2011. The agreed rent was Rs. 3,25,000/- per month exclusive of maintenance charges payable to M/s. DLF Home Services Pvt. Ltd. and electricity charges. The maintenance charges were to be paid by the respondent-company directly to the maintenance agency.

2. The premises were occupied from 1st September, 2011 and prior inspection thereof had been taken by the respondent-company on 29th August, 2011.

3. The respondent-company paid the monthly rent for seven months but thereafter did not pay. During the period from September, 2011 to October,

2012, the respondent company paid an amount of Rs. 27,29,500/- as against the amount of Rs. 47,74,000/- being the rent and maintenance charges for 14 months calculated at Rs. 3,41,000/- per month (inclusive of electricity charges of Rs. 16,000/- p.m.). Thus an amount of Rs. 20,44,500/- was due and payable by the respondent-company. This was exclusive of the electricity charges.

4. A notice u/s 433 read with Section 434 of the Act was sent by the petitioner in the aforesaid circumstances calling upon the respondent to pay the arrears within 21 days. The notice was duly served on the respondent, which is not disputed. No reply was received to the notice from the respondent.

5. In the aforesaid circumstances, the petitioner filed the present winding up petition. On 15th January, 2013 an order was passed by this Court directing the respondent to clear the arrears by the next date of hearing and also to surrender the possession of the premises to the petitioners. When the matter was taken up on 28th February, 2013 it was noticed by the Court that the premises had not been handed over to the petitioner; accordingly a direction was issued, which was accepted by the respondent, that the possession will be handed over to the petitioner on 6th March, 2013 on 11 A.M. This direction was complied with. This Court also noticed that Mr. Vineet Yadav, Director of the respondent-company was defying the orders of this Court repeatedly. Accordingly on 9th May, 2013 he was directed to be present in Court. The matter was directed to be relisted on 30th July, 2013.

6. The learned counsel for the petitioner drew my attention to paragraph 9 of the counter where it was stated that the company was not doing any business and the expenses were being met with the personal funds of the Directors. The submission was that this itself shows that the company is commercially insolvent. In paragraph 12 of the counter, to which also my attention was drawn, it was stated that the total rent paid by the respondent was Rs. 27,29,500/- which is at the rate of Rs. 3,25,000/- per month. It was submitted that the respondent at no point of time disputed the fact that the rent payable by it was Rs. 3,25,000/- per month. It is further contended that the averment in paragraph 6 of the petition that the agreed rent was Rs. 3,25,000/- per month has not been specifically denied or contested by the respondent. My attention was also drawn to the legal notice and the reply thereto in which no dispute was raised about the rent payable and further no specific promise or assurance allegedly made by the petitioner in the matter of providing services was pointed out. It is submitted that the attempt of the respondent is to raise a dispute, which does not exist, regarding the repairs and maintenance to be carried out in the premises which is mere moonshine. It is accordingly prayed that the company petition be admitted and the respondent-company be ordered to be wound up.

7. The argument put forward on behalf of the respondent-company is that the lease deed was not registered and, therefore, it cannot be looked into. It is further submitted that the question regarding the lack of proper repair and

maintenance of the premises is one of evidence and to be proved and having regard to the allegations of the respondent-company regarding the poor maintenance of the premises, it would be unfair to force the petitioner to pay a rent of Rs. 3,25,000/- per month. It is submitted that in any case these are matters of evidence to be proved in proper proceedings and the winding up proceedings are not the answer.

8. In support of its contention that the unregistered lease deed cannot be looked into for the purposes of ascertaining the rent payable by the respondent-company, my attention was drawn to a judgment of the learned Single Judge of this Court (Sanjiv Khanna, J.) in Manju Bagai Vs. Magpie Retail Ltd.,

9. In his reply, the learned counsel for the petitioner sought to distinguish the aforesaid judgment. He also submitted that the non-denial in the reply to the legal notice regarding the amount of rent payable for the premises amounted to an admission by the respondent which cannot be retracted.

10. On a careful consideration of the matter, I am of the view that there is no merit in the defence sought to be raised by the respondent-company. Even assuming for the sake of argument that the lease deed, being an unregistered document, cannot be looked into for the purpose of ascertaining the monthly rent, since the respondent-company never disputed the amount of rent payable for the premises and in fact even admitted the same in the counter, the petition must be held to be maintainable. Firstly, in the notice issued by the petitioner, it was clearly mentioned that the monthly rent was Rs. 3,25,000/- exclusive of the maintenance charges directly payable to the maintenance agency and the electricity and water charges. In its reply sent by E-mail, the respondent-company has only stated as below:-

We have received your Notice and we are taking the steps as per the LAW of the Land.

You have cheated us for the Last one year by giving us all false Promises and assurances for the services to be provided.

You had no intentions of giving any services as promised by you and you thought that you can get away with it.

There was no denial in the reply to the statutory notice about the amount of the rent. Moreover in the counter, in paragraph 12, the respondent company admitted that the total rent paid by it was Rs. 27,29,500/- which conforms to the claim of the petitioner that the rent payable in respect of the premises was Rs. 3,25,000/- per month. There is no denial in the counter, denying the averment in paragraph 6 of the petition that the rent in respect of the premises was fixed by the parties at Rs. 3,25,000/- per month. Considering these facts, it is clear that even if the lease deed is not to be looked into, it has otherwise been proved that the rent for the premises was Rs. 3,25,000/- per month.

11. The learned counsel for the respondent submitted that the premises were not

properly maintained despite several intimations given to the landlord and it is inconceivable, and would also be unjust, that the respondent should be asked to pay for such premises the full rent of Rs. 3,25,000/-. I am of the view that this is merely a counter blast to the claim made by the petitioner. Annexure-2 of the counter is an e-mail sent by the petitioner. On 15th August, 2012, the respondent wrote to the petitioners that the latter have been talking only about the payments due to them without caring for the facilities which the respondent has to get. In this e-mail it was specifically stated that the respondent had agreed to pay monthly rental of Rs. 3,25,000/-. In reply, the petitioners sent an e-mail on 23rd August, 2012 regarding the progress made in respect of the repair works and asking the respondent not to withhold the rents any further. On 27th August, 2012 the respondent sent an email to the petitioners attaching pictures of the living room where repairs to the AC were carried out and objecting to the non-completion of the work. To this, the petitioner stated that the entire wall will be painted once the same dries up and requested the respondent to wait for some more time. Simultaneously the maintenance agency was also alerted about the request of the respondent-company. It would thus appear that these are routine requests made by the tenant of the premises to the landlord for maintenance work which was also being attended to and in the very nature of things there is likely to be some time taken to set things right. The petitioners have not been negligent in attending to the requests of the respondent-company. In any case that is not a justification for not paying the agreed rent in time. These are not substantial issues or defences which can successfully be put forth in answer to the present petition for winding up on the ground that the respondent-company is neglecting to pay the rental amounts. It may also be noted that the respondent, despite all the protests about the repairs and maintenance not being properly carried out, vacated the property only in March, 2013 and that too only under orders of this Court.

12. The judgment (supra) upon which reliance was placed by the learned counsel for the respondent deals with the question of the liability to pay liquidated damages in the form of rent for the unexpired portion of the lease period of three years. The main question examined in that case was whether the rent payable for the unexpired portion of the lease can be said to be liquidated damages. This was negatived by the Court which held that it cannot be considered as liquidated damages. No doubt in paragraph 9 of the judgment, the other issue as to whether an unregistered lease deed can be relied upon by the petitioner was also considered and it was observed that it cannot be. This however is not an impediment to the petitioner in the present case since I have earlier found that even de hors the lease deed there is an admission by the respondent that it had agreed to pay a monthly rent of Rs. 3,25,000/-. In view of the aforesaid discussion, there is no force in the defence sought to be put up on behalf of the respondent. The petition is admitted.

List the company petition and the application on 13th September, 2013 for further proceedings.