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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th July, 2023

+ **CO.PET. 446/2013 & CO.APPLs. 1053/2017, 128/2019, 382/2019, 95/2021, 617/2022, 629/2022, 17/2023, 131/2023, 223/2023, 267/2023, 268/2023, 283/2023, 521/2023 OLR 9/2022 & 61/2023**
CITICORP INTERNATIONAL LIMITED Petitioner

Through:
 versus

SHIV-VANI OIL & GAS EXPLORATION

SERVICES LTD

..... Respondent

Through: Mr. Dhruv Wadhwa, Advocate. (M: 9953598454)
 Mr. Hashmat Nabi, Ms Divya Kaur and Mr. Kunal Arora, Advocate for PNB. (M: 9911195915)
 Mr. Bheem Sain Jain, Advocate for SBI. (M: 9990669208)
 Mr. Aishvary Vikram, Mr. Tarun Gulia, Mr. V.C. Shukla, Mr. Anantha Narayana M.G., Mr. Ajay Awasthi, Mr. Sushant Bajaj, Mr. Varun Gulia, Mr. Rohit Choudhary, Advocate for Applicant in CO. APPL. 223/2023. (M: 9971450568)
 Ms Ruchi Sindhwani Sr Standing Counsel, Ms Megha Bharara, Advocate for OL. (M: 9811533510)
 Mr. Jeewesh Prakash, Mr. Sandeep Agarwal, Mr. Sankalp Srivastava, Ms. Ritu Dubey, Advocates. (M: 9999306490)
 Mr. Shobhit Narula, Ms. Priya Chhajjer & Mr. Shaantanu Devansh, Advocates. (M: 9873122945)



**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CO.APPL. 283/2023 (for delay)

2. This is an application for condonation of delay of 36 days in filing reply. For the reasons stated in the application, the delay is condoned. Application is disposed of.

CO.APPL. 521/2023 (for early hearing)

3. This is an application for early hearing of the application CA 725/2018. Early hearing is allowed. Application is disposed of.

CO.APPL. 223/2023

4. The present application has been filed by the Applicant- Vikas Balhara seeking the following prayers:

“a. Direct the Official Liquidator to handover possession of the Subject Property i.e. Property No. A-1/13 , Freedom Fighter Colony, Neb Sarai, New Delhi-110068;

b. Direct the Official Liquidator to pay the accrued rental amount for the Subject Property i.e. Rs. 7,20,000/- (Rupees Seven Lakhs Twenty Thousand) along with interest at the rate of 18% per annum till the date of Legal Notice dated 16.01.2023.

c. Direct the Official Liquidator to pay any further rent which may accrue for the Subject Property till the outcome of the present application;

d. Pass such other and further orders this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

5. The applicant claims to be the landlord of property bearing no. No. A-



1/13, Freedom Fighter Colony, Neb Sarai, New Delhi-110068 (*hereinafter 'subject property'*). The said Applicant had given the subject property to the Respondent- M/s Shiv-Vani Oil & Gas Exploration Services Limited, which is the company in liquidation vide rent agreement dated 17th September, 2016. The monthly rent was a sum of Rs.24,000/-. The company went into liquidation pursuant to orders dated 28th July, 2017 passed by this Court, and the property was sealed by the Official Liquidator (OL) on 16th September, 2021.

6. The case of the landlord is that despite repeated communications to the OL, the property is not being released, though the company has no right in respect of the subject property. The first such communication has been written by the Applicant on 2nd January, 2023. It is also submitted that the OL was well aware of the fact that the property does not belong to the company, as is evident from the OL's note when the sealing was effected.

7. On the last date of hearing, the OL was to file a report in respect of the said property. OLR 61/2023 has been received wherein in paragraph 4 to 6 the OLR has stated as under:

"4. That in this regard it is submitted that, in compliance of order dated 10.04.2023, the representatives of the applicant/landlord appeared before this office on 26.04.2023. The original documents w.r.t. the said property were produced before this office and the same were verified and returned and a copy of the same was retained. The applicant had produced the Sale-Deed of the property and Leave & License agreement entered between Mr. Dayabhai Maneklal Patel and the Company (In Lign.). Documents provided by the Applicant are in order with respect of his claim over the property. It is however submitted that there are moveable assets i.e. heavy



machinery/parts of the rigs, of the Company (In Liqn.) lying on the said property. Copy of minutes dated 26.04.2023 are annexed as Annexure-A.

5. That another application being CA No.233/2023 has been filed by Mr. Vikas Balhara, seeking directions against the Official Liquidator for handing over possession of property No. A-III3, Freedom Fighters Colony, Neb Sarai, New Delhi-110068, as also accrued rental amount alongwith interest.

6. That in this regard, the applicant/landlord was requested to appear before this office for verification of the title documents w.r.t the said property. In response to the same, Authorized representative of the Applicant appeared before the office of the Official Liquidator on 12.05.2023 alongwith original documents and copy whereof was also provided. The documents produced were General Power of Attorney executed by Smt. Krishana Balhara in the name of Vikas Balhara and Vinay Balhara. Original documents were perused and verified and found to be in order."

8. As per the above report, the documents of the Applicant have been verified by the OL and the same are found to be in order. Thus, this Court is of the opinion that the moveables or records which are lying in the subject property ought to be shifted so that the landlord is no longer deprived of the property.

9. There can be no doubt that generally when the OL seizes any immovable property, the OL ought to verify as to whether the property belongs to the company and if there is any verifiable rent agreement which the company has entered into prior to the liquidation order. In cases where properties are taken on rent by a company that is going into liquidation, the OL has a duty to ensure that the landlords/ owners of the land are not inconvenienced, unless there is some doubt as to the genuinity or credibility



of the landlord's claim. In any event, even if the sealing has been done, immediate and urgent steps need to be taken to verify the documents so that properties can be released in favour of the landlords and they are not deprived of enjoying rental incomes or put the property to their own use.

10. The Karnataka High Court in ***Company Application No. 8 of 2016*** titled ***N.R. Ravi v. The Official Liquidator of Sem India Systems Private Limited***, has held that when the Official Liquidator takes over possession of a Company's premises which is owned by a third-party land owner, the OL needs to pay the third-party land owner the rentals as costs of winding proceedings. The relevant extracts of the said judgement are extracted as under:

“19. It is a common occurrence that whenever in a winding up proceeding, the Official Liquidator is appointed, many of the properties, which are required to be taken over by the Official Liquidator are tenanted premises, which have been leased out to the Company in liquidation. In such situations, the Official Liquidator on taking over of the possession would be in possession of the premises for the furtherance of the winding up proceedings and for no other reasons. The Official Liquidator in such situation would have two options, (i) to return the premises to the landlord at the earliest or (ii) to continue to be in occupation of the premises for various reasons which would include storage of movable property of the Company in liquidation, for storage of records, etc., of the Company in liquidation.

20. The Official Liquidator in such cases would step into the shoes of the Company in liquidation and occupy the role of a tenant in respect of the said premises. As stated above, the Official Liquidator would have had two options, to return the property to the landlord or to continue in occupation. In the event



of continuing in occupation, the Official Liquidator would be required to make payment of the rentals to the landlord. In the event of returning the property, there would be no further obligation on part of the Official Liquidator to make payment of any amount to the landlord.

21. Having chosen to continue with the occupation of the premises on the ground that the premises are required for storage of the movables of the Company in liquidation, I am of the considered opinion that the purpose for such continuation is the furtherance of the Company in liquidation by safeguarding the property of the Company in liquidation. Therefore, the expenses which are incurred by the Official Liquidator in such a situation would amount to cost of the winding up/liquidation. This to be contrasted with the amounts which are due by the Company in liquidation prior to the Official Liquidator taking possession of the property.

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30. Hence, I am of the considered opinion that the Official Liquidator ought to have decided by 15.10.2014, if the Official Liquidator intended to continue in possession or not. Having chosen to continue in possession, post that date, I am of the considered opinion that the Official Liquidator would have to make payment of the rentals to the landlord as cost of the winding up since the possession, which is continued by the Official Liquidator is only in furtherance of the winding up proceedings.

31. In view of the above discussion, I answer the point to be determined by holding that upon the Official Liquidator taking possession of the premises belonging to a third party, which was in possession of the Company in liquidation, the Official Liquidator would be required to make payment of the rentals to such



third-party land owner as costs of winding p, the landlord being entitled to the rentals immediately as per the terms of the lease deed.”

11. In the present case, the compliance report of the OL dated 11th July, 2023 clearly record the receiving of a letter dated 19th September, 2021 which acknowledging the subject property as that of the landlord. The relevant extract of the said report is extracted as under:

7. It is however submitted that this office, while taking over possession of the said property, was unable to inspect the same as it was already locked and therefore no inventory was prepared. This office also received a letter dated 14.09.2021 from the ex-director Mr. Padam Singhee, requesting this office to remove the records from the said premises as the landlord had been threatening to remove the records himself. In light of the above, the records etc. lying thereat would have to be shifted from the said property to the Registered office of the Company In Liqn.) at 5th floor, Tower one, Sector 5, Pushp Vihar, Saket, New Delhi-110017, before handing over possession to the landlord Copy of letter dated 19.062021 is annexed as Annexure-B.

12. Thus, there was no justifiable cause for the OL to retain this property for the last more than 15 months when the minutes themselves state clearly that the Applicant is the landlord. The OL, in such cases, also has a duty, after sealing, to call the landlord and verify the documents and release the property.

13. The landlord has a claim for a sum of Rs.7,20,000/- which as per the landlord, was the monthly rental that was due for the entire period. However, considering the fact that the property was sealed in September, 2021 and the first letter of the landlord is of January, 2023 there has been



some delay even by the landlord in approaching the OL as also this Court.

14. Accordingly, it is directed that whatever records or other moveables are lying in the said property, which belong to the Company, shall be shifted to the registered office of the company at Tower 1, Fifth Floor, NBCC Plaza, SecV, Pushp Vihar, Saket, New Delhi-110017 within a period of two weeks from today. The landlord shall be given vacant and peaceful possession of the property. However, in the overall facts and circumstances of the case costs of Rs.50,000/- are awarded in favour of the landlord for the delay in handing over the property by the OL.

15. Insofar as the sum of Rs.7,20,000/- is concerned, the applicant-landlord is permitted to avail of his remedies in accordance with law.

16. Application is disposed of.

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17. List on 25th July, 2023.

**PRATHIBA M. SINGH
JUDGE**

JULY 20, 2023

dj/am