

THE HONOURABLE SRI JUSTICE RAJA ELANGO

COMPANY APPLICATION No.1450 OF 2016

IN

COMPANY PETITION No.126 OF 2014

ORDER:

This Company Application is filed by the applicant under Section 457(1)(e) of the Companies Act, 1956 and Rule 9 of the Companies (Court) Rules, 1959 seeking the following prayer:-

“i) direct respondents 3 to 5 herein to arrange for handing over physical possession of the property under lease of the 2nd respondent, owned by the applicant, premises of 22,500 sq.ft., built-up area in Plot No.98/1, Phase II, IDA, Cherlapalli, Hyderabad-500 051 and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. It is the case of the applicant that the building in Plot No.98/1, Phase II, IDA, Cherlapalli, Hyderabad – 500 051 belongs to the applicant company and it was given on lease to respondent No.2 for a monthly rental of Rs.1,80,000/- to an extent of 22,500 sq.ft. The applicant came to know that respondent No.2 company is under dissolution and after formal procedure, the Official Liquidator/respondent No.3 herein was entrusted with the procedure by following liquidation proceedings. Earlier, the applicant filed COMPA.Nos.8 and 9 of 2016 seeking direction and it was noticed that respondent Nos.4 and 5, who are the secured creditors, were not added as parties. The applicant filed COMPA.No.504 of 2016 and by virtue of the order passed therein, respondent Nos.4 and 5 were added as respondent Nos.16 and 17

in COMPA.Nos.8 and 9 of 2016, but at a later hearing, it was noticed that the respondents in C.P.No.126 of 2014 i.e., all the creditors were unnecessarily added in COMPA.Nos.8 and 9 of 2016 and on realizing the same, the applicant filed a memo seeking to give up respondent Nos.3 to 15 in COMPA Nos.8 and 9 of 2016. It was further noticed that some mistakes occurred in some relevant paras. Hence, the applicant did not press COMPA.Nos.8 and 9 of 2016 by taking leave from the Court to approach the Court in a proper form. Respondent Nos.4 and 5, who have taken possession of the property, are neither releasing the same nor paying any rent. Since the property do not belong to respondent No.2, the applicant gave notice to respondent No.3 herein to hand over possession of the property for which, respondent No.3 replied that respondent Nos.4 and 5 are the secured creditors and they are in physical possession of the property. The applicant issued notice to respondent Nos.4 and 5 also for which, they informed that they have no responsibility on the premises; that respondent No.2 company is under liquidation and under Court's administration and the rental due is Rs.1,80,000/- every month and neither respondent No.3 nor respondent Nos.4 and 5 should account for and pay the rents till physical possession is handed over to the applicant herein. Hence, the applicant filed the present company application.

3. Heard and perused the material available on record.

4. Learned counsel for respondent Nos.4 and 5 submitted that respondent Nos.4 and 5 have no objection for taking possession of the subject property by the Official Liquidator whereas the Official

Liquidator submitted that as the subject property was taken possession by respondent Nos.4 and 5, a direction may be given to respondent Nos.4 and 5 to remove the movable properties in the subject property and keep them in their safe custody.

5. Considering the rival contentions and also the grievance of the applicant herein, respondent No.4 – Canara Bank is directed to take out the movable properties from the premises in the presence of respondent No.3 and keep in safe custody. Thereafter, respondent Nos.3 and 4 shall hand over the vacant possession of the premises to the applicant herein on or before 15th May, 2017.

6. With the above direction, the Company Application is disposed of.

13.04.2017
AMD



JUSTICE RAJA ELANGO

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