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

+ **CO.APP. 3/2017**

**AMBIENCE DEVELOPERS &
INFRASTRUCTURE PVT. LTD.**

..... Appellant

Represented by: Mr.P.K.Agrawal, Advocate
with Ms.Mercy Hussain,
Advocate

versus

**ROCKMAN BREWERIES (TNK)LTD.
(UNDER LIQUIDATION)THROUGH
OFFICIAL LIQUIDATOR**

..... Respondent

Represented by: Mr.Rajiv Bahl, Advocate for
official liquidator.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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23.02.2017

1. Appellant owns a Mall by the name Ambience Mall on NH-8 in the City of Gurgaon. Under an agreement dated March 14, 2008, the appellant let-out space No.401 and 403 on the fourth floor to M/s Rockman Breweries (TNK) Ltd., which is under liquidation. Rent payable was ₹20,63,956/- per month + service tax. By another agreement dated April 15, 2008, the said company took on rent space No.402. Monthly rent was ₹13,69,488/- + service tax. Space on the fourth floor as also on the fifth floor on rent was given to M/s Rockman Breweries Ltd; a sister company of the respondent.
2. The respondent company and its sister company used the lease-premises by integrating the same. Equipment, fittings and fixtures were also

intertwined.

3. The official liquidator has sealed the premises taken on lease by both the companies because the official liquidator is unable to identify the premises taken on lease by the company in liquidation and is unable to segregate the fittings and fixtures and other equipment belonging to the respondent company in liquidation and its sister company.

4. It is not in dispute that the respondent company had paid ₹2,93,66,730/- by way of security deposit to the appellant. Another sum of ₹7.5 crores was paid by the respondent to the appellant, in respect of which the dispute is whether the said sum was by way of unsecured loan or as claimed by the appellant was to refurbish the leased premises and hence consumed. As regards the security deposit the appellant claims to have adjusted the same towards rent which was payable.

5. The appellant desires the official liquidator to remove the fittings and fixtures in the premises which have been sealed and thereafter de-sealed the premises and hand over possession thereof to the appellant.

6. The appellant is ready and willing to deposit ₹2,93,66,730/- and offer a bank guarantee in sum of ₹7.5 crores and another bank guarantee in sum of ₹2.5 crores towards interest liability, if any, which may be determined by the official liquidator. The appellant is also ready to provide an alternative space where the fittings and fixtures can be stored by the official liquidator.

7. The learned Single Judge has desired the security to be offered of an immovable property, which we feel is not necessary because the appellant is willing to secure the amounts by bank guarantees.

8. We dispose of the appeal directing as under:-

1. The appellant shall deposit a sum of ₹2,93,66,730/-

by means of a bank draft in favour of Registrar General of this Court which shall be kept in a fixed deposit by the Registrar General and further disbursement thereof would be subject to orders which may be passed by the learned Company Judge.

2. The appellant shall furnish a bank guarantee in the sum of ₹10 crores in favour of Registrar General of this Court. The same shall be payable on demand and without demur. It shall be invocable, if at all, the claim of the official liquidator against the appellant is decreed by the learned Company Judge.

3. The official liquidator shall file the claim against the appellant within four weeks. The bank guarantee in sum of ₹10 crores shall continue to be renewed till such time the claims of the official liquidator are adjudicated by the learned Company Judge.

4. On deposit of the bank draft and furnishing the bank guarantee, which may be furnished within a week, and upon the Registrar General accepting the bank guarantee, the property sealed by the official liquidator shall be de-sealed forthwith and the goods, fittings and fixtures within the sealed premises will be shifted to a place provided by the appellant in Ambiance Island at its own costs. Possession would be taken over by the appellant thereafter.

9. The impugned order passed by the learned Single Judge on January 20, 2017 shall be superseded by the consent directions aforenoted.
10. No costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

FEBRUARY 23, 2017
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