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

+ **CO.APP. 23/2018**

TRIAGE HEALCARE (INDIA) PVT LTD & ANR & ANR.

..... Appellants

Through Mr. Mahesh Kumar, Ms. Simran Soni
& Mr. Y. Chandra, Advocates

versus

KAMAL SPORTS PVT LTD.

..... Respondent

Through None

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 29.10.2018

CM Appl.No. 45182/2018 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CM Appl.No. 45180/2018 (delay)

2. For the reasons stated in the application, the delay in filing the appeal is condoned and the application stands disposed of.

Co.App.No. 23/2018 & CM Appl.No. 45181/2018 (stay)

3. This appeal is directed against an order dated 30th July, 2018 passed by the learned Single Judge in Company Application No.1582/2017 and 348/2018 in Company Petition No. 685/2016 (Shri Ram Grocery vs. Mitra Hospital Private Limited). It appears that pursuant to a Company Petition filed by Shri Ram Grocery against Mitra Hospital Private Limited ('MHPL'), which was settled between these parties and a joint application filed to withdraw the petition, the present Respondent intervened through

an application. Subsequently, the Company Court appointed the Official Liquidator ('OL') as the provisional liquidator on 16th August, 2017. A team from the office of the OL visited the premises at Khasra Nos. 306-M & 307-M and 312 at Village Morna, near Metro Pillar No. 199, near Sector 35, Noida and purportedly sought to take over the possession of the building situated therein. The building is admittedly owned by Kamal Sports Private Limited ('KSPL'). It admittedly was given out on lease to the present Appellant No.1 i.e. Triage Healthcare (India) Pvt. Ltd ('Triage'). Once it was realised that the owner of the building was KSPL, orders were passed for lifting the attachment. The question then arose as to whom the property should be returned. Apparently when the team of the OL went to take possession of the premises, it was the staff and doctors of 'Triage' who were in possession and two patients were also found there and it was 'Triage' which handed over the possession to the OL.

4. However, before the learned Single Judge, KSPL claimed that the property had already been handed back to it by 'Triage' by relying upon two documents. There was a dispute about the genuineness of these two documents. It was alleged by KSPL that Triage had not paid any rent for the premises as well for almost two years. Keeping in view all the above facts and with a view to balancing equities, while directing the OL to hand over possession of the two properties that were sealed by the OL back to Triage, the learned Single Judge imposed certain conditions. One of these was about the advance rent being paid within four months by Triage to KSPL and Triage also undertaking to pay the security expenses incurred by the OL for the property for the period after possession was taken over by

OL. This was only by way of an interim arrangement since the questions pertaining to the disputes between KSPL on the one hand and Triage on the other hand were permitted to be agitated by the parties in civil proceedings.

5. Needless to state that the above interim arrangement would ultimately abide by the final orders in the civil proceedings. The above interim arrangement is only to balance the equities. The Court is unable to find any legal infirmity in the order passed by the learned Single Judge.

6. Leaving all the contentions of the Appellant open to be agitated in the civil proceedings, the Court declines to interfere in this appeal.

7. The appeal and the application are dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 29, 2018

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