Company Application No.593 of 2017
in Company Petition No.255 of 2014

N.SATHISH KUMAR, J.,

This Application has been filed by the learned Official Liquidator for recovery of Rs.10,05,980.29, as interest, for the default of rental arrears.

2. According to the learned Official Liquidator, from 01.06.2014 to 14.11.2016, there was default in payment of arrears of rent. Such being a position, he is entitled to interest at the rate of 1.50 percent per month as per Clause 19 of the Lease Agreement, over and above the bank lending rates. Therefore, he is entitled for Rs.10,05,980.29 payable by the respondent.

3. Whereas, the learned counsel for the respondent submitted that, on 18.12.2015, when first request was made by the learned Official Liquidator, there was no indication as to the payment of interest. If really, there was any liability to pay the interest on the date of payment made, the same should have been indicated in the letter, which the learned Official Liquidator has not been done so. Further, the learned counsel submitted that the entire arrears have been paid and there is no need to pay the interest.

4. I have perused the Lease Agreement. Clause 19 of the Lease Agreement reads as follows;

> "19. If the Lessee shall make default in payment of an moneys or installments of moneys payable under the provisions of this Agreement, the Lessee shall pay to the Lessor on the sums or sum in interest on the moneys at a minimum rate of 1.50 percent per month over the bank lending rate, subject to change based on the cost of money chargeable at monthly rests, on the cumulative unpaid balance inclusive of interest without prejudice to the Lessee's rights under any other terms, conditions and agreements herein expressed or implied. All costs incurred by the Lessor in obtaining payment of such arrears or in endeavouring to trace the whereabouts of the Asset or in obtaining or endeavouring to obtain possession thereof whether by action suit or otherwise shall be recoverable from the Lessee in addition to and without prejudice to the Lessor's rights for breach of this lease. Interest will be subject to modification downwards / upwards during lease tenor if there is a downward / upward revision in the cost of funds to the Lessor."

5. It is seen that there were defaults from 01.06.2014 to 14.11.2016 and the payments were made only on 15.11.2016. Though the demand has been made for a sum of Rs.34,56,038.36 alone without calculating interest, the same will not relieve the petitioner from paying the interest as bound by them in the Lease Agreement. Similarly, the entire amount has been paid on 15.11.2016 itself, the Review Application has been filed by the learned Official Liquidator only in the year 2017. If the learned Official Liquidator indicated the interest as per the Lease Agreement before 2016, this confusion would not have been arisen. Hence, this Court is of the view that though the Lease Agreement provides calculation of interest at the rate of Rs.1.50 percent per month over and above the bank lending rates, such Lease Agreement cannot be strictly applied, in view of the fact that the learned Official Liquidator has not indicated the interest at the earlier point of time.

6. Therefore, this Court is of the view that interest of justice will be served, if 50% of the interest ordered to be paid by the respondent. Accordingly, the respondent shall pay a sum of Rs.5,00,000/- [Rupees Five Lakhs Only] in full quit towards interest to the learned Official Liquidator, within a period of 10 days from the date of receipt of a copy of this order. On receipt of such payment, the learned Official Liquidator shall hand over all the necessary documents to the respondent as per law as expeditiously as possible.

7. With these observations, this Application is partly allowed.

12.07.2019

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N.SATHISH KUMAR, J.,

sri

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