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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 4486 OF 2022
IN
COMPANY PETITION NO. 114 OF 2012

Vatika Limited ...Applicant
In the matter between
Etisalat Mauritius Ltd. ...Plaintiff
Versus
Etisalat DP Telecom Pvt. Ltd. & ors. ...Defendants

Mr. Ankit Lohia, a/w Ms. Chaitrika Patki, Ms. Shruti Dasani, Ms. Aditi Palnitkar, i/b Khimani & Asso., for the Applicant.
Mr. Shanay Shah, a/w Ms. Mansi Kaku, i/b Legal Advisor, for the Official Liquidator.

CORAM: N. J. JAMADAR, J.
DATED : 22nd FEBRUARY, 2023

ORDER:-

1. The applicant has preferred this application seeking a direction to the Official Liquidator to admit the applicant's balance principal claim of Rs.7,81,29,957/- and interest on delayed payment amounting to Rs.19,21,82,990/-, with further interest at the rate of 18% p.a. from the date of lodging of the claim, purportedly under Rule 164 of the Companies (Court) Rules, 1959.

2. The applicant claims to be a creditor of Etisalat DB Telecom Pvt. Ltd. - respondent No.1, Company in Liquidation.

Respondent No.1 had executed an Indenture of Lease dated 20th April, 2009 ("Lease Agreement") for taking on lease the applicants premises situated at Vatika Business Park, Block One, Sector 49, Gurgaon, Haryana ("leased premises").

3. In the wake of respondent No.1 being ordered to be liquidated, the applicant had filed Company Application No.488 of 2012 seeking, *inter alia,* directions to respondent No.1 to pay the outstanding dues towards use and occupation of the leased premises. By an order dated 22nd April, 2015 this Court directed the Official Liquidator to make an ad-hoc monthly payment of Rs.15,58,781/- to the applicant from 1st May, 2015 until possession of the leased premises was handed over to the applicant. The applicant asserts the aforesaid direction was towards partial discharge of the liability of respondent No.1 under Lease Agreement and the maintenance thereof.

4. By further order dated 5th December, 2018, Company Application No.488 of 2012 came to be disposed with a direction to the applicant to submit applicant's claim with the Official Liquidator.

5. The applicant had lodged a claim in the sum of Rs.28,94,05,793/-. By notice of admission dated 29th January, 2021, the Official Liquidator admitted the claim to an amount of

Rs.8,09,19,760/- only and the balance claim to the tune of Rs.20,84,86,033/- was unjustifiably rejected.

6. The applicant challenged the said rejection in Company Application No.783 of 2022. Upon willingness being shown by the Official Liquidator to re-adjudicate the applicant's claim, by an order dated 9th February, 2022, the Official Liquidator was directed to re-adjudicate the applicant's claim. By notice of admission dated 7th June, 2022, the Official Liquidator admitted the claim to the extent of Rs.10,57,35,580/- and again rejected the balance claim unjustifiably. Hence, this application.

7. In the application, the applicant has assailed the adjudication on a number of counts. The Official Liquidator's contention that the applicant is entitled to the contractual lease rent only till the date of winding up order i.e. 20th February, 2015, is stated to be legally unsustainable. Secondly, the direction of the Court in the order dated 22nd April, 2015 to pay a sum of Rs.15,58,781/- to the applicant has been wholly misconstrued by the Official Liquidator. The applicant contends the Court had neither adjudicated the applicant's claim nor altered the terms of the Lease Agreement. It was an ad-hoc and pro-tem arrangement. Adjudication is also assailed for refusal to award interest on the delayed payment, non-allowance of property tax and maintenance charges. The applicant further contends that the incidence of payment of service tax will fall upon to the applicant and, therefore, the rejection of the claim under the said head is also unsustainable.

8. An affidavit-in-reply is filed on behalf of the Official Liquidator. The Official Liquidator contends that the notice of admission upon re-adjudication dated 7th June, 2022 is in order. The applicant's claim that the order passed by this Court on 22nd April, 2015 was a mere ad-hoc and pro-tem arrangement is not borne out by the said order. On the contrary, the said order gives no indication that it was passed without prejudice to the rights and contentions of the applicant to claim more amount towards lease rent. The applicant not only refrained from assailing the said order but also accepted the amount under the said order. Hence, at this stage, the applicant cannot re-open the said issue.

9. The Official Liquidator contends that rent and maintenance charges have been allowed strictly in accordance with the stipulation in the contract between the applicant and respondent No.1 Company upto the date of the winding up order. The claim for property tax is wholly unsustainable since the contract explicitly provided that the rent would be inclusive of the taxes, cess etc. Whereas, the claim for interest does not find any support in the contract.

10. Mr. Lohia, the learned Counsel for the applicant, in view of the material on record, on instructions, restricted the challenge to two counts. One, the incidence of service tax which may fall upon the applicant. Two, the grant of rent from 1st May, 2015 till the date of the delivery of the possession of the leased premises.

11. On the first count, it was submitted that if the incidence of service tax falls on the applicant, he would be required to follow the entire process afresh and lodge a claim with the Official Liquidator. Instead, it be directed that upon proof of payment of the service tax, the Official Liquidator will release the payment.

12. Mr. Shah, the learned Counsel for the Official Liquidator, countered, by canvassing a submission that as and when the applicant is called upon to pay the service tax and invoices are raised, the applicant may lodge the claim with the Official Liquidator and it would be processed in accordance with law.

13. In my view, it would be in the fitness of things to grant liberty to the applicant to lodge the claim with the Official Liquidator as and when the incidence of service tax falls on the applicant. It would be suffice to thus direct that as and when such a claim is lodged, the Official Liqudator shall adjudicate the same expeditiously and, in any event, within four weeks of lodging of such claim.

14. The second count of challenge based on the quantum of the rent from 1st May, 2015, Mr. Lohia fairly submitted turns upon the construction of the order passed by this Court in Company Application No.488 of 2012 dated 22nd April, 2015. If the Court holds that the said order directed payment of Rs.15,58,781/- as and by way of ad-hoc arrangement, the applicant would be justified in seeking further amount on the said count, in accordance with the terms of the contract between applicant and respondent No.1. If the Court holds otherwise, the applicant may not have a case.

15. Mr. Shah, the learned Counsel for the Official Liquidator, submitted that the said order gives no indication that it was an ad-hoc arrangement and the issue was left open for consideration.

16. In view of the aforesaid nature of the controversy, it would be expedient to extract the order dated 22nd April, 2015 in verbatim.

> "1. The Company in liquidation is admittedly using the properties of the Applicants without paying any rent/compensation since the year 2012. The lessors/owners have therefore, filed Company Applications seeking directions from this Court to direct the Official Liquidator to either return their premises to them or to pay the agreed rent/compensation to them. The Official Liquidator has informed the Court that the machineries installed in the aforesaid premises are fixed to the flooring and if the same is removed, the said machineries may loose its value.
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> 2. In view thereof, the Official Liquidator is directed to make the following payments to the Applicants every month

starting from 01-05-2015, until possession of the premises is handed over to them :

Name of the Applicant	Amount (Rs.)
(i) Suryakiran Griha Nirman Pvt. Ltd.	4,18,402/-
(ii) Techniplex (AOP)	43,12,096.40
(iii)Purushottam Mukunddas Lohia and Anr.	4,50,000/-
(iv) Vatika Limited	15,58,781/-"

17. The aforesaid order, on its fair construction, indicates that the Court noted that those company applications were filed seeking direction to the Official Liquidator to either return their premises or pay them accrued rent/compensation. The Court further noted that the Official Liquidator had expressed a concern that since machineries of the Company in Liquidation installed in the said premises were fixed to the floor, removal of the machineries would entail loss of their value. Thus, the Court directed the Official Liquidator to make the payments to the respective applicants therein every month starting from 1st May, 2015 until possession of the premises was handed over to the applicant.

18. The aforesaid order is required to be read in the context of the provisions contained in Rule 154 of the Rules, 1959, which provides that the value of debts and claim against the company shall, as far as possible, be estimated according to the value thereof at the date of the order of the winding up of the company. The aforesaid payment was evidently for a period subsequent to the order of winding up.

19. It is imperative to note that neither parties sought liberty to agitate the issue again nor the order was qualified by providing that it was passed without prejudice to the rights and contentions of the parties to claim rent at contractual or any other rate, at a later stage. Apparently, the aforesaid direction was passed with the concurrence of the parties to those applications including the applicant.

20. In the aforesaid view of the matter, I find it rather difficult to accede to the submission of Mr. Lohia that the aforesaid order was in the nature of a pro-tem arrangement. Having neither assailed the said order nor sought its review and, in fact, derived benefit thereunder, in my view, it is not open for the applicant to re-agitate the issue of quantum of rent payable for the said period. Thus, I do not find any infirmity in the adjudication order passed by the Official Liquidator.

21. On the aspect of the property taxes claimed by the applicant (Item 3 in the statement of claims – Exhibit-K), it would be suffice to note that the Official Liquidator has rightly relied on Clause 1 of the Indenture of Lease which provided that the monthly rent was to be inclusive of rate, taxes, levies and cess etc.

22. For the forgoing reasons, subject to the directions in paragraph 13, the application deserves to be rejected.

23. Hence, the following order:

: **O R D E R** :

(i) The application stands rejected.

(ii) No costs.

[**N. J. JAMADAR, J.**]