Com.A.No.223 of 2018
in
C.P.No.255 of 2014

C.SARAVANAN, J.

This application has been filed for the following relief:

(a) To direct the respondent/debtor company to pay the debt due amount of **Rs.1,00,48,896.58** towards entire settlement along with subsequent interest @ 18% p.a. till the date of final payment.

(b) To direct the respondent/debtor to return the assets as per Clause 19 of the Lease Agreement Nos.1 and 2 to the Official Liquidator,

(c) To permit the Official Liquidator the cost of this application does come out of the funds of the company in Provisional Liquidation.

2. Paragraph 3 to 8 of report of the Official Liquidator dated 13.11.2017 reads as under:

"3. That the Official Liquidator submits that the respondent had entered into two Lease Agreement with the company in Provisional Liquidation and borrowed money

for the purpose of purchase of Fixtures, Furniture, Office Equipment & IT Equipments.

The details of agreements are mentioned here in below:-

Agreement. No.	***Nature***	***Agreement Value***	***Agreement Date***	***Tenor got over on***
1	Operating Lease	40000000.00	26.05.2011	**01.11.2016**
2	Operating Lease	17000000.00	31.08.2011	**01.12.2017**

(Copies of Operating Lease Agreements and Disbursement Report are annexed as Annexure – A & B).

4. That the Official Liquidator in the course of Liquidation proceedings has deposited the collected Post Dated Cheques (The debtor had issued post-dated cheques up to 01.12.2017 as per the repayment schedule issued at the time of Disbursement) for the period from 01.08.2014 to 01.10.2017 and to state that all the cheques got realized and there was short payment of rental due to increase in SBI PLR as the Rental have been modified as per Class 38 of the Lease Agreement entered with the Company in Provisional Liquidation which is clearly states that ***"The Company have the right to modify the installment following a change in the Lead Bank's rate".***

5. That the Ex-Director/s of the Company in

Provisional Liquidation filed the Statement of Affairs along with list of borrowers as on 21.08.2014. As per the list of borrowers, the respondent herein has been shown as debtor for a sum of Rs.93,923/- payable by them as on date of winding up order.

6. That the Official Liquidator submits that as per the Statement of Affairs filed by the Ex-Directors, the Official Liquidator has issued Demand notice dated 23-02-2015 demanding a sum of Rs.93,923/- together with interest @ 18% p.a. from the date of which the amount has fallen due i.e., 31.07.2014 to till the date of entire settlement within 21 days which was acknowledge by the respondent and made payment on 10.03.2015 by Demand Draft for Rs.93,923.00. The respondent had issued another Letter dated 12.01.2016 stating that they have paid 7% of the Agreement value as interest free security deposit which has to be adjusted against End Management Fee @ 7% of the disbursement value or to be refunded and also requested for Bills/Tax Invoice for claiming to set off the MVAT paid by them and to reduce the SBI PLR due to decrease in Lead Bank Rate from the date of Liquidation. Further the respondent has sent another letter dated 30.08.2016 requesting for Bills/Tax Invoice for claiming to set off the MVAT and had requested not to deposit the Post Dated Cheques issued by the respondent. Thereafter, based *on records maintained by the subject Company in liquidation, the Official Liquidator Office has issued* ***Letter dated 07.04.2017*** *informing the Respondent that the Hon'ble High Court, Madras, vide its Order dated 15.02.2016 had directed the Official Liquidator to engage Chartered Accountant for making payment of VAT and Service Tax and the same will be intimated to them for further action and had also directed to pay the debt due amount of Rs.44,28,021.63 as on 02.03.2017 along with interest @ 18% p.a from 31.07.2014 to 31.03.2017 for Rs.12,29,684.04, future rental from 01.04.2017 to 01.12.2017 for Rs.5,67,070.09 and End Management Fee @ 7% for Agreement Nos.1 & 2 for Rs.38,36,886.00 totaling to* ***Rs.1,00,61,661.76*** *within 15 days from the date of this letter and to return the asset as per Clause 19 of the Lease Agreements. The said letter was acknowledged by the respondent but no reply or payment was received from them till date.* ***(Copies of the Letters acknowledgement cards received from the respondent are attached and marked as Annexure -C).***

7. That the Official Liquidator further submits that since the respondent has not shown any interest on settling the debt due amount and to return the assets, the Official Liquidator has no other option except to prefer this application under Section 446(2) of the Companies Act, *1956 before this Hon'ble Court praying for an order directing the respondent to pay the outstanding amount of Rs.44,89,388.40 along with interest @ 18% p.a from 31.07.2014 to 31.10.2017 for Rs.16,98.532.86, future rental from 01.11.2017 to 01.12.2017 for Rs.24,089.32 and End Management Fee @ 7% for Agreement Nos.1 & 2 for Rs.38,36,886.00 totaling to* ***Rs.1,00,48,896.58*** *along with Subsequent Interest @ 18% p.a till date of final payment.* ***(Copy of Ledger statement along with Interest Calculation Sheet are annexed as Annexure – D).*** *The debt is well within the Limitation as per law.*

8. That Official Liquidator further submits that the Respondent have to return/surrender the assets in respect of the Agreement Nos.1 and 2 as per Clause 19 of the Lease Agreement upon expiration or earlier termination of the Operating Lease Agreement with respect to any leased item, lessee shall at its own expenses return the same to lessor in good condition and working order in which he had receive the same, normal wear and tear excepted at their own costs ***(Copy of details of assets to be returned are annexed as Annexure – E."***

3. Despite notice, there is no representation on behalf of the respondent.

4. Therefore, this application stands allowed. The Office of the Official Liquidator is permitted to take appropriate steps to recover the amount from the respondent.

22.03.2024

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C.SARAVANAN, J.

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