Comp.A.Nos.268 and 269 of 2018
in
C.P.No.255 of 2014

C.SARAVANAN, J.

There is no representation on behalf of the respondents despite the name being printed in the cause list.

2. These applications have been filed by the Official Liquidator under Sections 466(2) and 460 (4) of the Companies Act, 1956 read with Rules 9,11(b) of Companies (Court) Rules, 1959 for the following relief:-

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i. To direct the respondent/debtor Company to pay the outstanding due amount of Rs.5,93,017.76 along with subsequent interest @ 18% p.a. till the date of final payment towards entire settlement;	i. To direct the respondent/debtor Company to pay the outstanding due amount of Rs.59,66,906.59 along with subsequent interest @ 18% p.a. till the date of final payment towards entire settlement;

ii. To permit the Official Liquidator, to seize the Asset as per Schedule to the Agreement and to take possession of the same; iii. To attach the Personal Properties of the second respondent who stands as personal guarantors for default in repaying the outstanding dues; iv. To permit the Official Liquidator to meet the cost of this application comes out of the funds of the company in Provisional Liquidation.	ii. To direct the respondent/debtor to return the assets as per Clause 13 of the Lease Agreement pertain to Agreement Nos.2 & 3; iii. To permit the Official Liquidator the cost of this application does come out of the funds of the company in Provisional Liquidation;

3. In the report that has been filed by the Official Liquidator in support of the applications, it has been stated as follows:-

> *"2. That pursuant to the Order dated 31.07.2014 passed by the Hon'ble High Court in Company Petition No.255 of 2014, the Official Liquidator attached to this Hon'ble Court was appointed as the Provisional Liquidator of M/s.First Leasing Company of India Limited (In Provisional Liquidation) having its registered office at No.749, Anna Salai, Chennai – 600 002 (herein after referred to as the Company in Provisional*

Liquidation) with direction to take charge of all the assets of the effects of the company in provisional liquidation.

3. That the Official Liquidator submits that the Respondent has entered into one Hire Purchase Agreement and two Lease Agreement with the Company in Provisional Liquidation and borrowed money for the purpose of purchase of Plant & Machinery and Equipments out of which 1st Hire Purchase Agreement tenor got over before liquidation. The details of active Lease Agreements (2 & 3) as on the date of wind up order are mentioned above:-

Agreement No.	**Nature**	**Agreement Value**	**Agreement Date**	**Tenor got Over on**
1.	Hire Purchase	Rs.1,21,77,000.00	17.02.2010	**01.03.2014**
2.	Lease	Rs.1,50,00,000.00	29.12.2010	**01.04.2016**
3.	Lease	Rs.1,00,00,000.00	08.06.2011	**01.06.2015**

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

4. That the Official Liquidator submits that the 2nd respondent Shri.Bhargav Dhananjay Ambadas is Director of M/s.Radheya Machining Limited, Residing at, 3-D/17, Siddharth Nagar, Pune – 411 007 and 3rd respondent is Shri.Joshi Santosh Ambadas, Director of M/s.Radheya Machining Limited, Residing at 8, Kapish Apartment, Erandawani, Pune – 431 001 who have executed

Personal Guarantee and stands as Guarantors towards all the dues payable by the respondent Company. The details of the Personal Guarantee are mentioned herein below:-

Agreement No.	Personal Guarantee Executed by	Date of Personal Gurantee
2.	Shri.Bhargav Dhananjay Ambadas	30.12.2010
	Shri.Joshi Santosh Ambadas	30.12.2010
3.	Shri.Bhargav Dhananjay Ambadas	11.06.2011
	Shri.Joshi Santosh Ambadas	11.06.2011

(Copies of the Personal Guarantee are annexed as Annexure-C).

5. That the Official Liquidator in the course of Liquidation proceedings has deposited the collected Post Dated Cheques for the period from 31.07.2014 to 03.03.2016 and to state that all the cheques got bounced (Copy of List of Cheque Return are annexed as Annexure – D).

6. That the Official Liquidator submits that as per the Books and Records of the subject Company in Liquidation there was an outstanding of Rs.44,13,145.85 as on 04.04.2016 and hence letter dated 21.12.2016 was sent to the respondent demanding a sum of Rs.54,37,329.09 which includes outstanding amount of Rs.6,73,643.22 along with Interest @ 18% p.a for Rs.10,24,183.24 and the said notice was acknowledged by the respondent on 26.12.2016. The respondent advocate Shri.Aditya Kanetkar in his letter dated

*20.01.2017 stated that his Client has settled the entire amount with the Company in Liquidation in the month of April 2014 itself and requested to withdraw the said notice. Thereafter, the Official Liquidator has issued **FINAL NOTICE** dated 18.08.2017 informing the respondent that a sum of Rs.1,13,50,000.00 only received against claim of Rs.1,60,18,387.91 as on 31.03.2014 made by the subject Company in Liquidation and directed to pay the debt due amount of Rs.59,33,354.59 and to return the assets as per Clause 13 of the Agreement on or before for which no reply or payment was received till date. **(Copies of the Letters acknowledgement cards are Annexed as annexure – E)**.*

*7. That the Official Liquidator further submits that since the respondent has not shown any interest on settling the debt due amount, 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.44,13,145.85 as on 04.04.2016 along with Interest @ 18% p.a. from 31.07.2014 to 31.08.2017 for Rs.15,53,760.74 totaling to Rs.59,66,906.59 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 – F)**. The debt is well within the Limitation as per Law.*

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8. That Official Liquidator further submits that the Respondent have to return the asset pertain to Agreement Nos.2 & 3 as per Clause 13 of the Lease Agreement upon expiration or earlier termination of the Operating Lease Agreement in good condition in which he had received the same, normal wear and tear excepted at their own cost."

4. In view of the above and since the respondents have neither entered appearance nor filed any counter, the Court is inclined to allow these applications. Accordingly, these applications stand allowed.

13.10.2023

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