Comp.A.No.5 of 2021
in C.P.No.255 of 2014

KRISHNAN RAMASAMY, J.

This Application has been filed by the Official Liquidator seeking for the following prayers:

(a) to direct the respondent/debtor to pay a sum of Rs.13,06,378.19/- along with subsequent interest at 18% p.a on depreciation value of the asset from 01.12.2020 to till the date of making final payment for retaining the asset;

(b) to direct the respondent/debtor to return the asset in good working condition and pay a sum of Rs.7,46,901.45/- towards interest at 18% p.a. on depreciation value of the asset from 01.07.2013 to 30.11.2020 along with subsequent interest at 18% p.a on depreciation value of the asset from 01.12.2020 to till the date of returning the asset;

(c) to permit the Official Liquidator to bear the cost of this application from the funds of the company in Provisional Liquidator.

2.Learned Official Liquidator would submit that the company in liquidation is in the business of leasing activities. During the course of its business, the agreement was entered between the respondent with the company in provisional liquidation and borrowed money for the purchase of IT Equipments.

3.Learned Official Liquidator would further submit that on verification of the books and records of the company in liquidation, it was noticed that the respondent had settled all their dues along with interest and as per Clause 19 of the Lease Agreement under the head “Surrender of asset” which clearly states that “Upon the expiration or earlier termination of each asset schedule with respect to any leased item lessee should return the same to lessor in good condition and working order at their own expense”. But, the respondent has not returned the asset at the end of the tenure. Hence, the Official Liquidator has sent letter dated 31.10.2019 to the respondent directed to pay a sum of Rs.11,97,280.22/- which includes depreciation value of the asset at 60% at the end of the tenure of Rs.5,59,476.74/- and interest on depreciation value of the asset from end of the tenure i.e from 01.07.2013 to 31.10.2019 for Rs.6,37,803.48/- or return the asset immediately in good working condition along with interest on depreciation value of the asset of Rs.6,37,803.48/-.

4.Even after the receipt of the said letter, the respondent has not send any reply and therefore, final notice dated 04.06.2020 has been sent by the learned Official Liquidator directing the respondent to pay a sum of Rs.12,64,417.43/- as stated in paragraph No.7 of the affidavit. As on date of filing of the present petition, the total amount payable by the respondent is a sum of Rs.13,06,378.19/- along with interest at 18%..

5.Learned Official Liquidator would also submit that in the event the respondent wants to return the asset, the respondent is liable to pay a sum of Rs.7,46,901.45/- towards interest at 18% p.a since the respondent has not come forward to pay the amount even after the receipt of the notice. Therefore, the present application has been filed by the learned Official Liquidator.

6.This Court ordered notice to the respondent. Even after the completion of service and the name of the respondent being printed in the cause lists, none appeared on behalf of the respondent. Hence, the respondent is set exparte.

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7.Upon hearing, this Court satisfied with the submissions made by the learned Official Liquidator and therefore, inclined to allow the present application.

8.Accordingly, this application is ordered as prayed for.

03.02.2023

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