



CA No. 8 of 2016

**R**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**COMPANY APPLICATION NO. 8 OF 2016**

**BETWEEN:**

SHRI N R RAVI

...APPLICANT

(BY SRI DEEPAK & SRI RAJESH S., ADVOCATES)

**AND:**

THE OFFICIAL LIQUIDATOR OF  
M/S. SEM INDIA SYSTEMS PRIVATE LIMITED (IN LIQN.)  
ATTACHED TO HIGH COURT OF KARNATAKA,  
12<sup>TH</sup> FLOOR, RAHEJA TOWERS,  
BENGALURU-560 001.

...RESPONDENT

(BY SRI K S MAHADEVAN., ADVOCATE FOR OL;  
SRI P L VIJAYAKUMAR, ADVOCATE FOR SBI)

Digitally signed  
by POORNIMA  
SHIVANNA  
Location: HIGH  
COURT OF  
KARNATAKA

THIS COMPANY APPLICATION IS FILED UNDER SECTION 476  
OF THE COMPANIES ACT, 1956, R/W RULE 6 AND 9 OF THE  
COMPANIES (COURT) RULES, 1959, PRAYING THIS HON'BLE COURT  
TO DIRECT THE OFFICIAL LIQUIDATOR TO HAND POSSESSION OF  
THE POSSESSION OF THE SCHEDULE PREMISES TO THE APPLICANT,  
AND ETC.,

THIS COMPANY APPLICATION COMING ON FOR ORDERS, THIS  
DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

1. The Applicant is before this court seeking for the following reliefs;
  - a. *To direct the Official Liquidator to hand over the possession of the Schedule premises to the Applicant in the interest of justice and equity.*
  - b. *To direct the Official liquidator to pay the arrears of rents from 15.07.2014 to 31.12.2015 which is 14 ½ Months which amounts to Rs.13,80,995/- for the ground floor premises. Any pay future rents till handing over of possession of the premises.*
  - c. *To direct the Official liquidator to pay the arrears of rents from 15.07.2014 to 31.12.2015 which amounts to Rs.13,43,238/- for the First floor premises. And pay future rents till handing over of possession of the premises.*
  - d. *Pass such other Order as the nature and circumstances of the case may require.*
  - e. *Cost of this application.*
  
2. The Applicant claims to be the owner of the property which has been leased out to the Company in liquidation on 15.05.2008. As per the terms of the lease agreement, the Company in liquidation had deposited with the Applicant an interest free refundable security deposit of Rs.13,63,000/- and in terms of the lease agreement, certain amount was



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required to be paid as monthly lease rental for the schedule premises.

3. Though the lease period expired after a period of eleven months, the Company in liquidation did not hand over possession of the premises and continued to occupy the same. Subsequently, the Company in liquidation stopped payment of rentals and in the meanwhile, winding up proceedings being filed before this Court, this Court directed for winding up of the Company and appointed the Official Liquidator to take over the assets of the Company, which infact was taken over on 15.07.2014.
4. The grievance of the Applicant is that though the Official Liquidator took over possession of the premises on 15.07.2014, no rentals have been paid by the Official Liquidator to the land owner, i.e., the Applicant and it is in that background, the present C.A.No.8 of 2016 has been filed seeking for direction



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to the Official Liquidator to make payment of the monies as claimed therein.

5. During the pendency of the above proceedings, the possession has been handed over on 08.05.2017.
6. The claim, which is required to be considered in the above application is only regards the rentals to be paid. The Official Liquidator has filed his objections and a memo contending that the Official Liquidator cannot be directed to make payment of the rentals but the claim of the Applicant would be treated as a preferential claim with the Applicant requiring to stand in the Queue along with the other creditors of the Company.
7. This Court had directed the Applicant to file a claim before the Official Liquidator for adjudication. The same came to be adjudicated vide order dated 31.05.2022 wherein the Official Liquidator has admitted an amount of Rs.23,30,807/- as



preferential claim and an amount of Rs.29,98,319/- as an ordinary claim and rejected an amount of Rs.25,95,446/-.

8. The claim of the Applicant was Rs.79,24,572/-, out of which, an amount of Rs.32,64,820/- was claimed as past due rentals from April 2010 till 15.07.2014 after giving due deduction to the adjustment of the security deposit held by the landiord.
9. Further claim was made from 15.07.2014 to 30.04.2017 as regards the ground floor amounting to Rs.24,84,759/- after giving due deduction to a sum of Rs.1,57,826/- being the rental paid by the Official Liquidator. A further amount of Rs.25,40,494/- was claimed on account of rentals due towards the first floor from 15.07.2014 to 31.05.2017 after giving due deduction of a sum of Rs.1,54,952/- being the rentals paid by the Official Liquidator.



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10. The Official Liquidator being of the opinion that no amount was required to be paid towards the first floor as no claim was made towards the first floor till 15.07.2014 has considered that no amount for the subsequent period is also required to be paid and has rejected the claim of Rs.25,95,446/-, in so far as the 1st floor is concerned.
11. The point that would arise for consideration of this Court is whether upon the Official Liquidator taking possession of the premises belonging to a third party, which was in possession of the Company in liquidation, the Official Liquidator would be required to make payment of the rentals to such third party land owner or could the Official Liquidator contend that any claim of the landlord of the said premises would only be a preferential claim made by such landlord?
12. In the present case, there is no dispute as regards an agreement of lease entered into and the



Company in liquidation being in occupation of the premises as also the quantum of lease rentals payable. The only issue as aforesaid is captured in the point for determination.

13. The Company in liquidation was in occupation of the both ground floor and first floor, later on the company in liquidation handed over the first floor to the landlord.
14. The building had one common entrance, which is also not in dispute. As per the Minutes, which have been recorded on 15.07.2014, when the Official Liquidator took over possession of the premises, it is clear that the landlord made a request not to lock the entire premises but keep the access of the first floor open so as to enable the landlord to rent out the first floor premises to a tenant. However, both the Official Liquidator and the Secured Creditor refused the same and decided to maintain the matter in *status-quo* by locking the main entrance.



They had further stated that the landlord would be at liberty to file eviction suit against the Official Liquidator or take up the matter with the Official Liquidator in the pending *lis*.

15. The above was apparently done to safeguard the movable properties of the Company in liquidation, which was stored in the ground floor of the premises and as such, being apprehensive of any theft or otherwise of the said movable property, the entire immovable property was locked out.
16. Coming to the adjudication made by the Official Liquidator, it is seen that the demand made by the landlord for payment of the rentals for the first floor has been rejected since no rentals have been claimed until 15.07.2014 but has been claimed only thereafter.
17. Though the rental agreement was entered into for both the ground floor and the first floor, the





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Company in liquidation has handed over the possession of the first floor in the month of March, 2012. It is for that reason that the landlord had not chosen to claim any amounts from March, 2012 to July 2014. The claim now made towards the first floor is only on account of the Applicant not being able to rent out the first floor premises on account of the entire premises being locked up at the instance of the Official Liquidator and the Secured Creditor. In such circumstances, I am unable to appreciate the rejection of the claim of the landlord as regards the rentals due to the first floor, if not for the Official Liquidator and the Secured Creditor, locking of the entire premises, the landlord would have been free to let out the said property to any third party. Whether the landlord would have been successful in it or not, the question still remains that the landlord was restrained from doing so or obstructed from doing so, on account of the locking of the premises.



In view thereof, I am of the considered opinion that the rentals for the first floor from 15.07.2014 till the handing over of the said possession on 31.05.2017 would also have to be made payment of.

18. The amounts having been crystallized at Rs.79,24,572/- towards the rental of the ground floor and the first floor, the question that remains to be answered is whether the said amount has to be treated as a preferential claim or cost of the winding up.

19. It is a common occurrence that whenever in a winding up proceeding, the Official Liquidator is appointed, many of the properties, which are required to be taken over by the Official Liquidator are tenanted premises, which have been leased out to the Company in liquidation. In such situations, the Official Liquidator on taking over of the possession would be in possession of the premises for the furtherance of the winding up proceedings



and for no other reasons. The Official Liquidator in such situation would have two options, (i) to return the premises to the landlord at the earliest or (ii) to continue to be in occupation of the premises for various reasons which would include storage of movable property of the Company in liquidation, for storage of records, etc., of the Company in liquidation.

20. The Official Liquidator in such cases would step into the shoes of the Company in liquidation and occupy the role of a tenant in respect of the said premises. As stated above, the Official Liquidator would have had two options, to return the property to the landlord or to continue in occupation. In the event of continuing in occupation, the Official Liquidator would be required to make payment of the rentals to the landlord. In the event of returning the property, there would be no further obligation on part of the



Official Liquidator to make payment of any amount to the landlord.

21. Having chosen to continue with the occupation of the premises on the ground that the premises are required for storage of the movables of the Company in liquidation, I am of the considered opinion that the purpose for such continuation is the furtherance of the Company in liquidation by safeguarding the property of the Company in liquidation. Therefore, the expenses which are incurred by the Official Liquidator in such a situation would amount to cost of the winding up/liquidation. This to be contrasted with the amounts which are due by the Company in liquidation prior to the Official Liquidator taking possession of the property.

22. In the event of the Company in liquidation not making payment of the due rentals prior to the Official Liquidator taking possession, the same is only a claim of rentals by the landlord against the



Company in liquidation, which is a claim against the Company in liquidation, which would have preferential consideration in terms of Section 530 of the Companies Act, 1956, which reads as under:

**530. Preferential payments.**

*(1) In a winding up, 5 subject to the provisions of section 529A, there shall be paid] in priority to all other debts-*

*(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;*

*(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date 1 subject to the limit specified in sub- section (2);*

*(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;*

*(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the*



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*Employees' State Insurance Act, 1948 (34 of 1948 .) or any other law for the time being in force;*

*(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen' s Compensation Act, 1923 , (8 of 1923 .) rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;*

*(f) all sums due to any employee from a provident fund, a pension fund a gratuity fund- or any other fund for the welfare of the employees, maintained by the company; and*

*(g) the expenses of any investigation held in pursuance of section 235 or 237, in so far as they are payable by the company.*

23. The payment of preferential debts is subject to the provisions of Section 529-A of the Companies Act, 1956. Section 529-A reads as under:

**529A: Overriding preferential payment.**  
*Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force in the winding up of a company-*

*(a) workmen' s dues; and*

*(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso*



*to sub- section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts.*

*(2) The debts payable under clause (a) and clause (b) of sub- section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.*

24. As regards the cost of winding up, the same would be covered under Section 476 of the Companies Act, 1956, which reads as under:

**476. Power to order costs.** *The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Court thinks just.*

25. Section 476 is relatable to Rule 338 of the Companies (Court) Rules, 1959, which reads as under:

**338. Cost and expenses payable out of the assets in a winding-up by the Court.-** *(1) The assets of a company in a winding-up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets including, where the company has previously commenced to be wound-up voluntarily, such remuneration, costs and expenses as the Court may allow to the liquidator in such voluntary winding-up, shall, subject to any order of the Court and to the rights of secured creditors, if any, be liable to the*



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*following payments which shall be made in the following order of priority, namely -*

*First - the taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court; Next - the costs and expenses of any person who makes, or concurs in making, the company's statement of affairs;*

*Next - the necessary disbursements of the Official Liquidator other than expenses properly incurred in preserving, realising or getting in the properties of the company;*

*Next - the costs of any person properly employed by the Official Liquidator;*

*Next - the fees to be credited to Government under section 451(2);*

*Next - the actual out of pocket expenses necessarily incurred by the members of the Committee of Inspection, and sanctioned by the Court.*

*(2) Save as otherwise ordered by the Court, no payments in respect of bills of advocates, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the taxing officer of the Court. The Taxation Officer shall before passing the bills or charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned.*

*(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against the company which is being wound-up by the Court, are ordered by the Court in which such proceedings are pending, to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.*





26. Thus, it is clear from the above provisions that the amount payable by the Company in liquidation as rental due to the landlord until the Official Liquidator takes possession is only a preferential claim. On the Official Liquidator stepping into the shoes of the tenant and the Official Liquidator continuing in possession, the amounts payable would be cost of winding up.
27. Though the Applicant has claimed that from the date on which the Official Liquidator took possession, i.e., 15.07.2014, the Official Liquidator is required to make payment of the rentals as sought, I am of the considered opinion that whenever an Official Liquidator is appointed and takes over possession, the Official Liquidator would have to be given at least a period of three months to ascertain whether the Official Liquidator is required to continue in possession or not. This being so for the reason that as on the date on which the Official Liquidator takes



possession he is not aware of the requirement or otherwise of the property or otherwise, the inventory of the properties of the Company in liquidation and whether any storage facilities are available to store the movables and records of the Company in liquidation.

28. From the minutes of the meeting, it is clear that it is at the instance of the Secured Creditor, that the movables were retained in the property and that the entire property was locked up. The Secured Creditor going to the extent of stating that the landlord could initiate proceedings for eviction against the Official Liquidator. The Secured Creditor was also well aware of the fact that if the property was locked up, the landlord would not be capable of exercising ownership right, on both the ground floor and the first floor. Hence, the Secured Creditor would also be liable to make payment of the said amounts.



29. The Official Liquidator is granted liberty to proceed against the Secured Creditor for recovery of the amount held by the Secured Creditors for onward disbursement to the landlord.
30. Hence, I am of the considered opinion that the Official Liquidator ought to have decided by 15.10.2014, if the Official Liquidator intended to continue in possession or not. Having chosen to continue in possession, post that date, I am of the considered opinion that the Official Liquidator would have to make payment of the rentals to the landlord as cost of the winding up since the possession, which is continued by the Official Liquidator is only in furtherance of the winding up proceedings.
31. In view of the above discussion, I answer the point to be determined by holding that upon the Official Liquidator taking possession of the premises belonging to a third party, which was in possession of the Company in liquidation, the Official Liquidator



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would be required to make payment of the rentals to such third party land owner as costs of winding up, the landlord being entitled to the rentals immediately as per the terms of the lease deed.

32. In view of my answer, I pass the following:

**ORDER**

- i) C.A.No.8 of 2016 is allowed in part.
- ii) The Official Liquidator is directed to make payment of rentals from 15.07.2014 till the date of handing over, i.e., 30.04.2017 in respect of ground floor and 31.05.2017 in respect of the first floor as costs of winding up within a period of Eight weeks from day from and out of the funds available to the credit of the company in liquidation, if necessary by recovering the said amount from the Secured Creditor.



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- iii) As regards the rentals payable prior to 15.10.2014, the same would have to be treated as a preferential debt in terms of Section 530 read with Section 529-A of the Indian Companies Act, 1956 and payments made thereon depending on availability of funds.

**Sd/-  
JUDGE**

DH