



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Order reserved on: 16<sup>th</sup> April, 2024**  
**Order pronounced on: 28<sup>th</sup> May, 2024**  
+ CO.PET. 213/2012 & CO.APPL. 619/2017, OLR 279/2017,  
OLR 90/2018

HARMUNY ENTERTAINMENT PVT LTD..... Petitioner  
Through: None.

versus

MAHUAA MEDIA PVT LTD ..... Respondent  
Through: Mr. Jeevesh Mehta, Adv. for  
OL.  
Mr. R.K. Khanna, Mr. Yakesh  
Anand, Ms. Sonam Anand &  
Mr. Akshay Thakur, Advs. for  
applicant in CO. APPLs.  
517/2018 and 60/2022.  
Mr. Tanveer Singh, Adv. for  
applicant in CO. APPLs.  
373/2022 and 746/2020  
Mr. Sanjay Bajaj, Adv. for  
PNB.

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

**CO.APPL. 517/2018 & CO.APPL. 60/2022 IN CO. PET.213/2012**

1. This order shall decide the above-noted applications moved on behalf of the applicant-IIPL<sup>1</sup>, whereby, in CO.APPL. 517/2018,

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<sup>1</sup> Infinity Infotech Parks Limited



moved under Section 535 of the Companies Act, 1956<sup>2</sup>, the applicant-IIPL is praying for leave to be granted to the Official Liquidator to disclaim the office space situated on the 15<sup>th</sup> Floor of the Building ‘Infinity Benchmark’, on the land bearing No. G-1, Block No. EP & GP, Sector V, Bidhannagar District, North – 24 Parganas, Salt Lake City, Kolkata (hereinafter referred to as “the sub-demised office space”) and further to direct the Official Liquidator to hand over possession of the said sub-demised office space to the applicant-IIPL. The other application, bearing CO.APPL. 60/2022, has been instituted under Sections 446(1) and 456(1) of the Act, *inter alia* praying for peaceful, vacant and *khas* possession of the sub-demised office space to the applicant from the Official Liquidator, as also, payment of Rs. 99,34,879/- by the Official Liquidator to the applicant on account of lease, rent, electricity and other charges up to 08.05.2012, along with mesne profits payable from 09.05.2012 to the date of delivery of possession.

2. Briefly stated, the sub-demised office space was leased to the respondent/company (in liquidation) – Mahua Media Private Limited, by way of an Indenture of Sub-Lease dated 11.12.2009, executed between the applicant and the company (in liquidation) for a residual period of 90 years with effect from 02.04.2004, commencing from 01.10.2009. Further, by virtue of a Supplementary Indenture of Sub-Lease dated 24.04.2011, the company (in liquidation) was allotted a

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<sup>2</sup> The Act



parking space for twenty (20) road worthy motors cars in the compound of the building 'Infinity Benchmark', commencing from 01.04.2010, for a residual term of 90 years with effect from 02.04.2004. It is stated that the Indenture of Sub-Lease as well as the Supplementary Indenture were duly registered.

3. As per the terms and conditions of the Indenture of Sub-Lease as well as the Supplementary Indenture of Sub-Lease, the company (in liquidation) was contractually obligated to pay various monthly charges to the applicant on account of lease rent, electricity charges, air conditioning charges, common service and maintenance charges and such other charges as enumerated therein. It is stated in this regard that the applicant raised several invoices against the company (in liquidation) and the said invoices were duly accepted by the company (in liquidation) and no objections were raised against the same. However, in breach of the Indenture of Sub-Lease and the Supplementary Indenture of Sub-Lease, the company (in liquidation) did not pay the requisite monthly rents and other applicable charges.

4. In this regard, it is stated on behalf of the applicant that a sum of Rs. 84,78,292/- was due and payable by the company (in liquidation) for the period upto 30.05.2012 and the same was intimated to the company (in liquidation) *vide* letters dated 01.03.2012 and 08.03.2012 sent by the applicant, recording the failure, neglect and refusal on their part to pay the outstanding monthly charges. Further, it was stated in the letter dated 08.03.2012 that in case of failure to pay the outstanding amount within a period of (2) months, the Indenture of Sub-Lease would stand terminated. It is stated that



neither were the above-mentioned letters replied to nor were the outstanding dues paid by the company (in liquidation), and therefore, the Sub-Lease of the office space as well as the car parking stood terminated. In view of such termination, the applicant became entitled to take over possession of the sub-demised office space along with the said parking spaces, yet, the company (in liquidation) failed and neglected to deliver vacant and peaceful possession of the sub-demised office space to the applicant, despite various demands for the same. Thereafter, the applicant issued letter dated 17.07.2012 to the company (in liquidation) recording their failure to pay the outstanding amount and handing over vacant and peaceful possession of the office space, and asserting its right to exercise re-entry into the sub-demised office space.

5. Subsequent to the said letter, the applicant issued a statutory notice dated 03.08.2013 under Section 434 of the Act, calling upon the company (in liquidation) to repay the outstanding amount, along with interest @ 18% per annum. The said notice was replied to by the company (in liquidation) through its counsel, *vide* letter dated 21.08.2013, whereby it was stated that the company had closed its office in October, 2011, and further admitting that it was willing to pay the sum due on account of Lease Rent, Maintenance Charges and Car Parking Charges, however that it would not pay all other charges. Despite the said admission, the company (in liquidation) did not pay any amount to the applicant towards the Lease Rent, Maintenance Charges and Car Parking Charges. Further, on the expiry of the



statutory period of three weeks, the company (in liquidation) became liable to be wound up.

6. It is stated on behalf of the applicant that it came to know that against mortgage of the sub-demised office space, the company (in liquidation) secured certain credit limits for working capital and a Term Loan from Punjab National Bank<sup>3</sup>, and such account was classified as a 'Non-Performing Asset'<sup>4</sup> by the Bank on 31.12.2011 consequent to the default in repayment, and subsequently, a notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 07.08.2012, followed by a notice under Section 13(4) on 06.02.2013, by way of which the Bank took symbolic possession of the sub-demised office space. It is also stated that PNB sought to take over physical possession by applying for the same under Section 14 of the SARFAESI Act, before the learned District Magistrate, Barasat.

7. Subsequent thereto, PNB instituted O.A. No. 243/2013 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, before the Debts Recovery Tribunal<sup>5</sup>, New Delhi, for recovery of its outstanding dues from the company (in liquidation). In the said proceedings, *vide* order dated 21.08.2013, the learned DRT restrained the company (in liquidation) from alienating or creating any encumbrance on the sub-demised office space. It is

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<sup>3</sup> PNB

<sup>4</sup> NPA

<sup>5</sup> DRT



stated that the applicant herein was not impleaded as a party in these proceedings i.e., O.A. No. 243/2013.

8. In the backdrop of PNB taking over physical possession of the sub-demised office space on or about 06.02.2013, the applicant instituted W.P. No. 614/2014 under Article 226 of the Constitution of India and *vide* order dated 13.02.2014, the Calcutta High Court directed the applicant to move appropriate proceedings before the DRT- Kolkata and seek the remedy provided under Section 17 of the SARFAESI Act, 2002. Pursuant thereto, the applicant instituted S.A. No. 431/2014 (subsequently registered as TSA No. 288/2014), before DRT – Kolkata praying for a declaration that PNB is not entitled to take action under the SARFAESI Act, 2002 in respect of the concerned office premises and also cancellation/quashing of the Section 13(2) and (4) notices as also the Sale Notice dated 27.02.2014.

9. Subsequently, the applicant instituted a winding up petition against the company (in liquidation) bearing CO.PET. 45/2014. Said petition was accompanied by several other such winding up petitions preferred by other creditors of the company (in liquidation), and *vide* order dated 27.02.2017 passed in CO.PET. 213/2012, the company was directed to be wound up and the Official Liquidator attached with this Court was appointed as its Liquidator, with the direction to take charge and possession of the assets and properties of the said company. By the same order, the winding up petition CO.PET. 45/2014 filed by the applicant was dismissed as withdrawn, with liberty to file a claim in respect of the sub-demised office space before the Official Liquidator.



10. It is stated that the applicant also filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 bearing Arbitration Petition No. 752/2014, and in the said proceedings, the Calcutta High Court referred the matter to arbitration *vide* order dated 29.06.2015, appointing an arbitrator so as to adjudicate the disputes between the parties pursuant to the Arbitration Agreement constituted within the Indenture for Sub-Lease executed between the parties. However, it is stated that the arbitration proceedings could not proceed subsequent to the winding up order being passed by this Court on 27.02.2017 as also dismissal of its IA No. 1390/2018 *vide* order dated 28.11.2018 of this Court disallowing permission to proceed with such arbitration.

11. On a perusal of the record, it is borne out from the Status Report filed by the Official Liquidator, being OL Report No. 279/2017, that the Official Liquidator has taken possession of the sub-demised office space, and that the said premises has been locked and sealed and a security guard has been posted for watch and ward of the same.

**SUBMISSIONS:**

12. It has been submitted on behalf of the applicant that the sub-demised office space has admittedly been lying vacant since October 2011 and neither the applicant nor the company (in liquidation) has been in use, occupation or enjoyment of the said premises. It is urged that in light of the termination of the Indenture of Sub-Lease in terms of statutory notice dated 08.05.2012, the applicant has paramount rights in relation to the sub-demised office space and that the company (in liquidation) is a trespasser therein. It is further submitted that



neither attachment of the said premises under Income Tax, nor proceedings under the SARFAESI Act, 2002 instituted at the behest of the Secured Creditor - PNB, can affect the rights and remedies of the applicant as the Sub-Lessor of the sub-demised office space. It is further submitted that a substantial amount is due and payable to the applicant on account of the principal amount and interest thereon, amounting to Rs. 11,98,95,740/-

13. It has been urged that in view of OL Report No. 279/2017, the funds position of the company (in liquidation) as on 31.10.2017 stood at Rs. 75,000/- only, and further that no assets belonging to the company (in liquidation) are lying in the sub-demised office space and thus it is vehemently urged that the sub-tenancy of the said premises is onerous and burdensome on the Official Liquidator and that no fruitful purpose would be served by keeping the sub-tenancy alive.

14. The learned counsel for the applicant has referred to Section 535 of the Companies Act, 1956 and urged that the sub-demised office space is an “onerous property” and therefore bound to be disclaimed by the Official Liquidator. In this regard, reliance has been placed on the decisions **United Bank of India v. Official Liquidator**<sup>6</sup>; **Hongkong and Shanghai Banking Corporation Ltd. v. Official Liquidator**<sup>7</sup>; and **Stressed Assets Stabilization Fund v. West Bengal Small Industries Development Corporation Ltd.**<sup>8</sup>

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<sup>6</sup> (1994) 1 SCC 575

<sup>7</sup> AIR 2008 Cal 35

<sup>8</sup> (2019) 10 SCC 148





15. *Per contra*, a Reply dated 02.04.2019, as also Counter Affidavit dated 03.11.2023, have been filed on behalf PNB in response to the present applications. It is stated therein that these applications, with respect to the sub-demised office space are not maintainable and liable to be dismissed as the premises in respect of which a disclaimer is sought, already stood mortgaged by the company (in liquidation) with PNB, for itself and on behalf of the consortium of banks from which the company (in liquidation) sought certain credit facilities and Term Loans to the tune of Rs. 203.18 crores. It is submitted that in pursuance of availing such credit facilities, the borrower/company (in liquidation) had created a first *pari-passu* charge in favour of PNB and the consortium of lenders, and said mortgage was confirmed by way of a Letter of Deposit dated 27.03.2010 and submission of the Indenture of Sub-Lease dated 11.12.2009 entered into between the applicant herein and the company (in liquidation). Subsequent thereto, for want of financial discipline in repaying the amount availed by the company (in liquidation), the account of the company was declared as an NPA. Thereafter, since the company (in liquidation) did not approach the Bank after its account was declared as an NPA, the Bank was constrained to initiate appropriate proceedings under the SARFAESI Act, 2002 and also file an OA bearing No. 234/2013 before the DRT – New Delhi seeking recovery from the borrower/company (in liquidation).

**ANALYSIS & DECISION:**

16. I have given my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and



have also carefully perused the record pertaining to the instant applications.

17. In order to adjudicate upon these applications, it would firstly be apposite to consider Section 535 of the Companies Act, 1956, which is reproduced hereinbelow:

**“535. Disclaimer of onerous property in case of a company which is being wound up.-**

(1) Where any part of the property of a company which is being wound up consists of-

- (a) land of any tenure, burdened with onerous covenants;
- (b) shares or stock in companies;

(c) any other property which is unsaleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts, the Liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the [Tribunal] and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*], disclaim the property:

Provided that, where any such property has not come to the knowledge of the Liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*].

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*], before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as



a condition of granting leave, and make such other order in the matter as the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] thinks just.

(4) The Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the Liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*], given notice to the applicant that he intends to apply to the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] for leave to disclaim; and in case the property is a contract, if the Liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, [he shall be deemed to have adopted it.] [ *Substituted by Act 65 of 1960, Section 186, for " the company shall be deemed to have adopted it" (w.e.f. 28.12.1960).*]

(5) The [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] may, on the application of any person who is, as against the Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] thinks just; and any damages payable under the order of any such person may be proved by him as a debt in the winding up.

(6) The [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court"*] may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court"*.] shall not make a vesting order in favour of any person claiming under the company, whether as under-



lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person-

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or

(b) if the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the [Tribunal] [ *Substituted by Act 11 of 2003, Section 95, for " Court" .*] shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding-up.

18. A careful perusal of the aforesaid provision would show that a disclaimer of an 'onerous property' in case of a company, which is being wound up, may be claimed by any party having a right, title and interest in the property belonging to or at the disposal of the company (in liquidation). *Ex facie*, the claim of the applicant-IIPL clearly falls under Clause (a) to sub-Section (1) to Section 535 of the Companies Act, 1956. This Court *vide* Section 535(6) has to consider the respective claims of the parties in the disclaimed property so as to examine the extent of onerous covenants and may pass appropriate orders with regard thereto.



19. In the instant matter, there is no denying the fact that the applicant-IIPL had been granted lease of the parcel of land measuring 1.006 Acres by West Bengal Electronics Industry Development Corporation Limited *vide* registered indenture for a period of 90 years effective from 02.04.2004 together with right of renewal for two terms of 90 years each subject to the payment of premium, charges etc. After the construction of the building 'Infinity Benchmark' was raised over the land, the applicant-IIPL sub-leased the office space on the 15<sup>th</sup> floor of the building in question *viz.* 'Infinite Benchmark' measuring office space of 16527 sq. feet to the company (in liquidation) *vide* registered indenture of sub-lease dated 11.12.2009, and subsequently *vide* supplementary indenture of sub-lease dated 24.04.2010, a parking space for 20 motor cars in the compound was also sub-leased in favour of the company (in liquidation).

20. A careful perusal of the covenants in the registered indenture dated 11.12.2009 vis-à-vis the supplementary indenture of dated 24.04.2010 would show that said sub-lease had been executed for a consideration of Rs. 8,18,08,650/- besides payment of other charges *viz.*, municipal taxes; services taxes; duties; expenses for periodical repairs of common areas in building; air conditioning; alterations treatment; maintenance etc. The company (in liquidation) was enjoined upon to pay rent of Rs. 3305/- per month with a stipulation to enhance the rate @ 20% every five years and in addition thereto liable to pay monthly charges @ Rs. 15/- per sq. feet in respect of 16523 sq. feet area i.e. Rs. 2,47,905/- plus separate monthly charges for the car



parking space besides liability to pay charges towards consumption of electricity, air conditioning charges and several other charges.

21. It is also pertinent to mention that the sub-lease created in favour of the company (in liquidation) *vide* clause (2) under the head “Sub lessor and sub lessee further agreed and covenant with each other” as under:

“II. The Sub-Lessee shall have the right to mortgage and/or create a charge in respect of its built up sub-leasehold interest with regard to the said sub-demised space only in favour of any Bank/Financial Institution during the term of this Sub-Lease provided however the mortgagee shall observe and perform covenants, restrictions, stipulations, terms and conditions including payment of various charges of whatsoever nature as stated in this Deed of Sub-Lease and the Sub-Lessor shall not be liable in case *of* non-payment of any amount borrowed by the Sub-Lessee.

22. A careful perusal of the aforesaid covenant agreed upon between the applicant-IIPL and the company (in liquidation) would show that sub-lessee i.e., the company (in liquidation) had been conferred the right to mortgage and/or create a charge in respect of its built up sub-lease, holding interest only in favour of a bank or financial institution during the tenure of the sub-lease; and it was made clear that it would be subject to the mortgagee observing and performing the covenants, restrictions, stipulations, terms and conditions including payment of various charges of the nature as provided for under the sub-lease. It was clearly stipulated that the sub-lessor shall not be liable in case of non payment of any amount borrowed by the sub-lessee.

23. The upshot of the aforesaid stipulation of the covenant between the applicant-IIPL and the company (in liquidation) would be that any



mortgage or charge over the property in question would exist and be enforceable in law only so long as the sub-lease was subsisting in favour of the company (in liquidation) envisaging observance and performance of all stipulations as contained in the sub-lease. As the narrative unfolds, loans were taken from the consortium of the banks, including PNB, by the company (in liquidation) and evidently its account became a 'Non Performing Asset' w.e.f. 31.12.2011 and symbolic possession was taken over by PNB on 06.02.2013.

24. However, in view of the fact that the stipulations as mentioned in the registered sub-lease dated 11.12.2019 as also 24.04.2011 were not complied with in respect of payment of rental charges and other charges towards the occupation and use of the office space on the 15<sup>th</sup> floor in the same building besides other incidental charges, it is cogently brought on the record that a sum of Rs. 84.78 Lacs was due upto 30.05.2012, which was not paid by the company (in liquidation) despite notices dated 01.03.2012, 08.03.2012 and 17.07.2012. Finally, a statutory notice dated 03.08.2013 in terms of Section 434 of the Companies Act, 1956 was served, which was replied to by the company (in liquidation) *vide* letter dated 21.08.2013 acknowledging *inter alia* its liabilities as also the fact that its operations were lying closed and the office was not in use since October, 2011.

25. At the cost of repetition, the winding up order came to be passed on 27.02.2017. However, much prior to the said date, the applicant-IIPL had exercised its option of terminating the sub-lease on account of non-payment of rent and other charges. There is no gainsaying that the applicant-IIPL was within its right to seek



termination of the lease by way of forfeiture as provided under Section 111(g)<sup>9</sup> of the Transfer of Property Act, 1882 and in that event, the lessee was bound to surrender and place possession of the same back to the lessor in terms of Section 108 (q)<sup>10</sup> of the Transfer of Property Act, 1882.

26. The sum and substance of the aforesaid discussion inevitably is answered to the effect that the objections espoused by the objector - PNB to the CO. APPLs. 517/2018 and 60/2022 cannot be sustained in law. The objector-PNB cannot claim right in the property beyond what was available to the company (in liquidation) during the subsistence of the sub-lease rights. In other words, since the rights of the bank to seek forfeiture of the mortgaged property flew from the rights of the sub-lessee i.e. the company (in liquidation), on the termination of such rights at the behest of the applicant-IIPL, nothing survived in favour of the objector-PNB, so as to lay its claim over the property for the remainder of the period of the lease.

27. The aforesaid situation is aptly expressed by way of a legal maxim '*nemo dat qui non habet*' that "*no one gives what he has not*

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<sup>9</sup> **111. Determination of lease-**

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter 1\*\*\*; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; 2 [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in 1 [any of these cases] the lessor or his transferee 2 [gives notice in writing to the lessee of] his intention to determine the lease:

<sup>10</sup> **108. Rights and liabilities of lessor and lessee**

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.





got”, which is also expressed as ‘*nemo plus juris tribuit quam ipse habet*’, in other words “*no one can bestow or grant a greater right, or a better title than he himself has*”. Applying the legal maxim in the instant matter, once the rights of the sub-lessee/company (in liquidation) came to be terminated, the sub-lease came to an end, and thus no better rights or interest in the subject property could have been passed on to the secured creditor i.e., PNB.

28. Incidentally, the facts of this case are similar to what came up for consideration before Supreme Court in the case of ***Stressed Assets Stabilization Fund (supra)***, wherein the loans were obtained by the lessee on the strength of mortgage of title deeds of the leased industrial property, but subsequently, the company went into liquidation. The West Bengal Small Industries Development Corporation Limited, which was the original lessor terminated the lease as the lessee had ceased to carry on manufacturing activities beyond the stipulated acceptable period. The financial institution which had advanced certain loans raised objections to the plea of WSIDC for restoration of possession on the ground that the leased property was mortgaged to it. Rejecting such plea, it was held that the mortgagee cannot claim rights superior to that of the lessee i.e., the mortgagee can have no right greater or better than the lessee in terms of the Deed of Lease.

29. In view of the above, the CO. APPL 517/2018 deserves to be allowed.



30. That brings us to the CO. APPL. 60/2022 moved under Sections 446(1)<sup>11</sup> and 456(1)<sup>12</sup> of the Act on behalf of the applicant-IIPL, wherein the following reliefs are claimed:-

(i) The Official Liquidator attached to this Hon'ble Court and appointed as Liquidator of Mahuaa Media Pvt. Ltd. (In Liqn) be directed to restore to the Applicant forthwith peaceful, vacant and khas possession of the sub-demised office space measuring super built up area of 16,527 Sq.ft. on the 15th floor of the building named "Infinity Benchmark" constructed on the demised Plot No.G-1, Block EP & GP, Sector V, Salt Lake Electronics Complex, Kolkata-700091 by removing the padlocks and/ or seals put by him and by Punjab National Bank on the front door of the sub-demised space.

(ii) Payment of Rs.99,34,879/- by the Official Liquidator to the Applicant on account of lease rent, electricity charges, water connection and consumption charges, service tax, municipal rates and taxes, car parking charges etc. upto May 8, 2012 together with mesne profits from May 9, 20 12 as on date together with such other amount as may be due till delivery of possession of the sub-demised office space to the Applicant out of the sale proceeds of the assets of Mahuaa Media Pvt. Ltd. (In Provisional Liquidation);

(iii) The Official Liquidator be directed to remove from the demised premises all furniture, fixtures and fittings as also all books, papers, documents and records belonging to Mahuaa Media Pvt. Ltd. (In Liqn) and keep them in a secure place to be provided by the Official Liquidator.

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<sup>11</sup> **446. Suits stayed on winding up order .-**

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional Liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the [Tribunal] and subject to such terms as the [Tribunal] [ *Substituted by Act 11 of 2003, Section 61, for " Court" .*] may impose.

<sup>12</sup> **456. Custody of company's property .-**

(1) Where a winding up order has been made or where a provisional Liquidator has been appointed, the Liquidator [or the provisional Liquidator, as the case may be,] shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.



(iv) Alternatively, leave be granted to the Applicant to remove from the demised premises all furniture, fixtures and fittings and also all books, papers, documents and records belonging to Mahuaa Media Pvt. Ltd. (In Liqn) and keep them in a safe and secure place to be provided by the Applicant subsequent to restoration of possession of the demised premises to the Applicant.

(v) An order be passed restraining the Debts Recovery Tribunal-11, New Delhi, from passing any order which may affect the right, title and interest of the Applicant in respect of subdemised office space on the 15<sup>th</sup> Floor of Infinity Benchmark;

(vi) Interim interest and interest on judgment;

(vii) Costs;

(viii) Further and other relief or reliefs.”

31. In view of the totality of the facts and circumstances discussed above, leave is granted to the Official Liquidator to disclaim the entire sub-demised office space containing super built-up area of 16523 sq. feet on the 15<sup>th</sup> floor of the building ‘Infinite Benchmark’ constructed on the demised plot of land number G-1 in Block No. EP & GP, Sector V of Bidhannagar in the District of North 24-Parganas within Police Station Bidhannagar (East), Salt Lake City, Kolkata-700 091, and handover the peaceful, vacant and *khas* possession of the property to the applicant-IIPL by removing padlocks and/or seals put by the Official Liquidator or by PNB upon the same, within 45 days from today.

32. In the meanwhile, as was requested on behalf of the Official Liquidator, the Official Liquidator is directed to re-enter the premises and make an inventory of all furniture, fixtures, fittings, make necessary valuation thereof and the same be sold or be removed from the premises within four weeks so as to facilitate handing over peaceful, vacant and *khas* possession of the aforesaid property in



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favour of the applicant-IIPL. Insofar as prayer (ii) in CO. APPL. 60/2022 is concerned demanding Rs. 99,34,879/- on account of lease rent, electricity charges, water connection etc. upto 08.05.2012, together with *mesne* profit, the same is left in the domain of the Official Liquidator to be adjudicated upon and be paid in case there are left any surplus assets belonging to the company (in liquidation) in the present winding up proceedings. Lastly, it is directed that the applicant-IIPL shall remain bound to pay security as well as other incidental charges that may have been incurred by the Official Liquidator in safeguarding and protecting the subject property.

33. The applications are disposed of accordingly.

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34. Renotify on date already fixed i.e., 06.08.2024.

**DHARMESH SHARMA, J.**

**MAY 28, 2024**

*Sadiq*