
(2018) 01 DEL CK 0246

In the Delhi High Court

Case No : Company Petition No. 985 Of 2016

J Walter Thompson A Unit Of Hindustan Thompson Associates
Pvt. Ltd

APPELLANT

Vs

Getit Inforservices Pvt. Ltd

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Citation : (2018) 01 DEL CK 0246

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Anuj P.Agarwala, Anshu Bhanot, Prateek Sisodia, Anuj Midha, Ruchi Khurana, Anirudh Wadhwa, Aditya Wadhwa, Tejaswi Shetty, Sudhant Mahajan, Debopriya Moulik, Abhimanyu Bhandari, Roohina Dua, Chaitanya Madan, Sanjiv Gupta, Ajay Dignaul, Kunal Sharma

Judgement

Jayant Nath, J

CA No.1125/2017

1. This application is filed by the applicant seeking direction to the OL to de-seal the property bearing No.402, admeasuring 3411, sq.ft. and unit No.403 admeasuring 3297 sq.ft. having a combined area of approximately 6708 sq. Ft. located on the fourth floor in Block A of IRIS Tech Park situated in Sector, 48 of the revenue estate of Village Tikri, Tehsil and District Gurgaon and to hand over vacant and peaceful possession of the same to the applicant.

2. The case of the applicant is that the applicant is the lawful owner of the said premises. The same was leased out to the respondent on 24.5.2013. The applicant bought the premises by conveyance deed dated 31.5.2013. It is the case of the applicant that the respondent was unable to pay rent and voluntarily surrendered possession of the premises on 30th November 2016. It is further pleaded that on 6.4.2017 the officials of OL visited the premises and asked the applicant to surrender possession of the premises. The premises were thereafter

sealed by the OL on 6.4.2017. Hence, the present application has now been filed.

3. Learned counsel appearing for the OL states that they have no objection in handing over the possession of the premises to the applicant but there is security deposit of Rs.25 lacs which was received by the applicants from the respondent company in liquidation. It is pleaded that the said amount has to be refunded by the petitioner before the OL gives possession of the property to the applicant.

4. Learned counsel appearing for the applicant has relied upon judgments of the Single Bench of this court in Amersey Industries and Exports vs. CRB-Capital Markets Ltd./Manu DE/1629/2004 to contend that the applicant was entitled in law to adjust the security amount against unpaid dues and other liabilities of the company. It is pointed out that no rent has been received by the applicant since July 2016 which was @ Rs,5,75,000/- per month. In addition, it is urged that no rent has been paid since the OL has sealed the premises. Hence, he submits that in view of the judgments of this court the applicant is entitled to adjust the security amount received against the outstanding dues and the OL has no right to seek refund of the same.

5. Learned counsel appearing for the OL has opposed the present application saying that the status of the applicant is that of unsecured creditor and he would have to stand in line alongwith other unsecured creditors. The amount as security amount is a debt due to the respondent company and the OL is entitled to receive the same.

6. This court in Amersey Industries Ltd. Vs. CRB Capital Markets Ltd. held as follows:-

"15. Therefore, my conclusion is that landlord has right to set off the arrears of rent against the security deposit lying with him and if after the adjustment also some more amount is payable he would be entitled to prefer a claim with the O.L. for the balance and for this amount he would stand in the category of unsecured creditor and would be dealt with accordingly by the O.L. This outstanding amount can be classified in two categories, namely, (i) rent and such charges, including electricity, water etc. payable up to the date of winding-up order, and (ii) rent and such charges for the period after the winding-up order. In so far as first category is concerned, again it would not pose any problem as this aspect is covered by the judgment of this Court in Smt. Mohan Pyari Sethi and others Vs. Official Liquidator (supra) wherein this Court has unambiguously held that the landlord shall have right to adjust the outstanding rent from the security deposit with him by the company. If after this adjustment of the security deposit, still some amount is recoverable on account of arrears of rent etc., landlord can make claim with the O.L. and would be paid pari passu with other secured creditors.

....

17. Thus, the position which emerges would be as under: (i) if there is no

security deposit with the landlord and he is to put up a claim of such rental he would stand in the category of ordinary creditors for recovery of this money from the assets of the company in liquidation process; (ii) if there is some amount lying with him as a security deposit, he would have a right to set off the same there from any such arrears of rent or electricity or water and other charges payable upto the date of winding up. After this adjustment, if there is surplus, he would refund the same to the O.L. However, if still some amount is recoverable after the set off for balance outstanding he would be entitled to raise claim with the O.L. as an unsecured creditor; (iii) position would be same as (ii) above even if rentals etc. outstanding are for the period after the winding up. In view of the aforesaid discussion, I hold that it is not necessary for the landlords/applicants in all these applications to remit any amount to the O.L. at the time of vacation of the premises. Consequently, I direct that in those cases where the applicants had deposited the amount in this Court at the time of taking possession, they will be entitled to seek refund thereof. In cases of those applicants where possession is not given so far for the reason that security was not refunded, it shall be given by the O.L. without insisting on such deposit."

The above proposition has also been followed by the Bombay High Court in *Eleganza Furnishings P.Ltd.*, MANU/MH/2823/2015 wherein the Bombay High Court held as follows:-

"7. Learned counsel for the petitioner relies on the decision of the Delhi High Court in *Amersey Industries and Exports v. CRB Capital Markets Ltd.*, MANU/DE/1629/2004 : ILR 2004 II Delhi 782. Relying on this decision, learned counsel submits that as far as the security deposit is concerned, since there is no case for adjustment of it towards arrears arising for a pre-winding up order period, the applicant should be asked to make over the same to the liquidator and then wait in the queue for the arrears for the post-winding up order period. There is no substance in this contention. The Delhi High Court in *Amersey Industries and Exports v. CRB Capital Markets Ltd.*, MANU/DE/1629/2004 : ILR 2004 II Delhi 782 holds exactly to the contrary. The Delhi High Court, relying, inter alia, on *Official Liquidator, High Court of Karnataka v. Smt. V. Lakshmikutty* MANU/SC/0057/1980 : [1981] 51 Comp Cas 566 (SC) : [1981] 3 SCC 32, holds that the landlord has the right to adjust the outstanding amount of rental from the security lying with him and it would not make any difference whether the arrears of rent are for the period before or after the winding up order. In the premises, the application deserves to be allowed."

7. I am bound by the judgment of the Co-ordinate Bench of this Court. It is manifest from the abovestated judgments that the landlord has a right to adjust outstanding amount of rental etc. from the security lying with him and it would make no difference whether the arrears of rent are for the period before or after the winding up order.

8. In the present facts it is clear that the applicant was entitled to adjust the security amount of Rs.25 lacs with the outstanding rentals payable by the

respondent company. In view thereof the application is allowed.

9. In terms of the order of this court dated 3.11.2017 the applicant has already provided an area measuring about 300 sq.ft. to the OL to enable him to store the record of the respondent company. OL may shift the said records in the said designated area within three weeks from today and thereafter hand over possession of the premises to the applicant. The applicant will deposit a sum of Rs.25,000/- with the OL for the expenses involved.

10. Needless to add that for any dues that are receivable by the applicants they would be free to file an appropriate claim before the OL in accordance with law.

CA No.1103/2017

11. By this application the applicant seeks de-sealing of the property bearing Survey No.19, CTS Nos.195(pt) 220 (pt) 220/3, 220/5, 291 situated at 15 Parsi Panchayat Road, Andheri (East), Mumbai. It is the case of the applicant that they have entered into a lease and license agreement dated 8.7.2013 with the respondent. On 28.4.2017 the premises were sealed by the OL. The applicant has also filed CA No.1866/2017 where it has been pointed out that on 21.10.2017 the OL had inspected the premises and prepared the inventory of the goods, which are yet to be valued. It is also stated that the applicant company is willing to offer an alternate space of about 300 sq.ft to the OL for shifting the inventory prepared by the OL.

12. Learned counsel for the OL states that there is a security deposit of Rs.45 lacs which has been received by the applicant.

13. However, in view of the order of this court above, the applicant would be entitled to adjust the aforesaid security deposit with unpaid rentals. Learned counsel for the applicant states that unpaid rentals are to the tune of more than Rs.45 lacs. There is no dispute regarding the same.

14. In view of the above, let the applicant give a space measuring 300 sq.ft. to the OL. The OL may inspect the said space and shift the necessary goods and inventory belonging to the respondent company lying in the said premises.

15. Needful be done within six weeks from today. On shifting of the inventory, the possession of the premises be handed over back to the applicant. The applicant will pay a cost of Rs.35,000/- to the OL for shifting.

16. Applications stand disposed of.

17. Liberty is also granted to the applicants to file their claim in accordance with law before the OL for their unpaid rentals/license fee, if any.

18. A copy of this order be given dasti under signatures of the court master.

CA Nos.1412-1415/2017

Learned counsel for the ROC and learned counsel for the OL seek time to file

reply. Needful be done within four weeks.

List on 11.04.2018.