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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 84 OF 2015
IN
EXECUTION APPLICATION NO. 809 OF 2014
ALONG WITH
GARNISHEE NOTICE NO. 179 OF 2015
IN
CHAMBER SUMMONS NO. 84 OF 2015
IN
EXECUTION APPLICATION NO. 809 OF 2014**

Mitsui OSK Lines Ltd.

...Applicant / Award Holder
Judgment Creditor

In the matter between:

Mitsui OSK Lines Ltd.

...Award Holder / Judgment Cr.

Vs.

Orient Ship Agency Pvt. Ltd.

...Respondent/Judgment Dbtr.

And

Ornate Multi Modal Carriers Pvt. Ltd. ...Additional Rspdt/Garnishee

Mr. Gaurang Mehta a/w. Ms. Poorva Garg

i/b. Mulla & Mulla CB & C, Advocates for the Applicant

Mr. Mohit Arora a/w. Ms. Pooja Kshirsagar, Mr. Dipen Dixit

i/b. Kartikeya & Associates for the Respondent

CORAM : MRS. ROSHAN DALVI, J.

DATED : 12TH MARCH, 2015

P.C. :

1. The garnishee is stated to be liable to pay the award debtor Rs.21.51 crores. The award holder has taken out above garnishee notice in the above chamber summons. The garnishee was directed to pay Rs.21.51 crores by an order

dated 5th February, 2015. The Division Bench of this Court has allowed the garnishee to file the affidavit prior to the payment. The garnishee has filed the affidavit. The garnishee has admitted the precise amount of the debt due to the judgment debtor of Rs.21,05,15,631/- in paragraph six of his affidavit in reply to the above chamber summons. The garnishee is liable to pay that amount into the Court being the debt due from the garnishee to the judgment debtor under Order 21 Rule 46A of the CPC.

2. The garnishee claims to show cause to the notice even upon the admission of the debt. The garnishee claims that it is unable to pay the debt. The garnishee also claims that a writ petition has been filed by one of the creditors that the garnishee for wounding-up. The garnishee which has been admitted, but no previously liquidator has been appointed. The garnishee claims that the debt of the creditor has been denied as fraudulent and bogus. Consequently the claim that it is unable to make the payment has not been made out. The garnishee must, therefore, pay into Court the admitted amount of the debt due to the judgment debtor. The Court is, therefore, required to order the garnishee to comply the garnishee notice under Order 41 Rule 46B of the CPC which would be as though it was a decree against the garnishee. The garnishee notice to which my attention has been drawn specifically by the Counsel on behalf of account holder, his

notice to the garnishee to pay Rs.21,51,77,696/- or to show cause why the garnishee should not be ordered to pay that amount. Upon the admission of the liability to the extent of Rs.21,05,15,631/- the garnishee could not show cause why it cannot be paid. The simplicitor claim of the garnishee that it is unable to make the payment is required to be rejected. The counter claim of the garnishee that the claim of the petitioner in winding-up petition is fraudulent and bogus would also not pay the cause shown for not making payment into Court of the admitted amount.

3. Hence order under Order 21 Rule 46B is required to be passed. The garnishee notice is made absolute.
4. The chamber summons is made absolute in terms of prayer (c).
5. The garnishee shall deposit in Court Rs.21,05,15,631/- which is payable amount to the judgment debtor by the garnishee.
6. The garnishee notice as well as chamber summons are disposed off accordingly.
7. The award holder shall be entitled to proceed in execution against the garnishee upon the aforesaid order as a decree of the Court in the absence of a sealed copy of the order/decrece.

(ROSHAN DALVI, J.)