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

NOTICE OF MOTION NO. 4 OF 2015
IN
INSOLVENCY PETITION NO. 34 OF 2004

Shailendra Bansal & Ors. … Applicants/Insolvents.

Versus

Indusind Bank Ltd. & Anr. .. Respondents.

Miss Priyanka Desai, i/b K.Ashar & Co. for the Petitioning Creditors.
Shri K.J.Somane for the Applicants/Insolvents.
Shri M.D.Narvekar, Official Assignee, present.

CORAM: S.J.KATHAWALLA, J.
DATE: 3rd FEBRUARY, 2015.

P.C.:

1. By the above Notice of Motion, the Insolvents have prayed that the Order of adjudication dated 7th December, 2004 passed in Insolvency Petition No.34 of 2004 may be annulled under Section 21(2) of the Presidency Towns Insolvency Act, 1909, and all the acts, actions things done in pursuance thereto be cancelled and set aside and declared null and void. In support of this prayer, the Insolvents have relied on the decision of the Hon'ble Supreme Court of India in the case of Paramjeet Singh Patheja Vs. I.C.D.S.[1] wherein it was held that the Insolvency Notice cannot be issued under Section 9(2) of the said Act on the basis of an arbitration award.

1 AIR 2007 SC 168

2. The Official Assignee has drawn my attention to the orders passed by the Hon'ble Division Bench of this Court dated 6th January, 2010 in Appeal No. 232 of 2009 in Notice of Motion No. 46 of 2008 in Insolvency Petition No. 6 of 2001, inter alia recording that by an Order passed by the Hon'ble Supreme Court on 10th January, 2008 the view taken in Paramjeet Singh Patheja (supra) has been referred to a larger Bench. The Hon'ble Division Bench has further held in paragraph No.5 of the said Order as follows:

> *"In our considered opinion, it would be appropriate to wait for the decision of the larger Bench arising from S.L.P. (Civil) No. 23495 of 2007 and hence we adjourn this Appeal for two months. Stand over to 5th March, 2010".*

3. Thereafter, the same matter appeared before another Division Bench of this Court and by an Order dated 7th June, 2010 when liberty was granted to the parties to move the Court after the said reference made to the larger Bench was decided by the Hon'ble Supreme Court.

4. In view of the above facts, no orders are passed on the above Notice of Motion. The same is dismissed as withdrawn with liberty to the Applicants/Insolvents to file a fresh Notice of Motion if so advised after the issue raised in the said Reference is answered by the Hon'ble Supreme Court.

5. In the meantime, the Insolvents shall appear before the

Official Assignee on 12th February, 2015 at 3.00 p.m. for examination. The Official Assignee shall close the examination of the Insolvents on that day. The Insolvents through their Counsel also undertake that until further orders, they shall not dispose of, alienate, encumber, part with possession and/or create any third party rights in respect of any of their properties. The undertaking is accepted.

(S.J.KATHAWALLA, J.)