

2. Under the said Consent Terms, the Respondent Nos.1 and 2 agreed, affirmed and declared to pay a consolidated sum of Rs.4,09,01,674/- to the Petitioner as set out under the Consent Terms. Clause 9 of the Consent Terms reads as under :

“9. The parties hereby agree, undertake and declare that in the event the Respondent No.1 commits any single default or any delay in payment of amounts of mentioned in Clause 6 hereinabove :

(i) The Petitioner shall forthwith become entitled to recover total amount mentioned in Clause 4 hereinabove after deduction of amounts already paid against the said total amount with further compensation thereon @ 36% p.a., from the date of default till actual payment or realization.

(ii) Court Receiver, High Court, Bombay shall stand appointed as a Receiver under Order XL Rule 1 of C.P.C. In respect of the equipments more particularly described in Annexure III to this Memorandum of Consent Terms hereto with a direction to take forcible possession of the said equipments without giving prior notice of the visit to the Respondents and for that purpose Court Receiver shall have powers to break open the seals and/or locks of whatsoever nature or by whomsoever put on the premises where the said equipments are lying and further to take assistance of the concerned police station to render police assistance for the purpose of taking possession of the said equipments and hand it over to the Petitioners and the Petitioners shall be entitled to sell the said equipments by auction and by entering into a private treaty with the successful bidder;

(iii) The Petitioners shall also become entitled to sell the said equipments by auction and by entering into private treaty with the successful bidder and adjust the net sale proceeds thereof against the outstanding dues of the Respondents mentioned in Clause 2 hereinabove, subject to the deduction of the amount paid under this Consent Terms;

(iv) The Respondents agree that after the sale of the said equipment and adjustment of the net proceeds towards the outstanding dues, the Respondents shall be bound to pay the balance due to be calculated along with the legal and other charges to make good the loss, if any, to be suffered by the Petitioners”;

3. The Respondent has defaulted in making payments as agreed under the Consent Terms. In view thereof, the Court Receiver stood appointed as Receiver in respect of the equipment, more particularly described in Annexure III to the Consent Terms and has taken forcible possession of the said equipment. The same is in the custody of the Petitioner as Receiver's agent. The Petitioner has got the said equipment valued at Rs.1,05,00,000/-. The Petitioner has now taken out the above Chamber Summons seeking discharge of the Court Receiver in respect of the said equipment with liberty to the Petitioner to take charge of the equipment and sell the same by private treaty and appropriate the sale proceeds towards the amounts due and payable by the Respondents to the Petitioner. In the circumstances, the following order is passed :

(i) The Court Receiver, High Court, Bombay, stands discharged without

passing accounts, but upon payment of his costs, charges and expenses by the Petitioner.

(ii) The Court Receiver shall upon receipt of his charges, forthwith handover possession of the said equipment to the Petitioner.

(iii) The Petitioner shall be at liberty to sell the said equipment by private treaty and appropriate the sale proceeds towards the account of the Respondents.

(iv) The Chamber Summons is accordingly disposed of.

(v) A copy of this order shall be forthwith forwarded by the Petitioner to the Respondent Nos.1 and 2 by speed post A.D.

(S.J.KATHAWALLA, J.)