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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 56 OF 2016

IN

INSOLVENCY PETITION NO. 40 OF 1999

Anil Mithalal Shah ...Applicant/Insolvent

In the matter of :

Anil Mithalal Shah ...Petitioning Creditor

Ex-parte :

Century Consultants Ltd. ...Insolvent

And

Jaldarshan Cooperative Housing Society Ltd. ...Respondent

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Mr. Prem Gidwani, a/w. Mr. Karl Tamboly and Ms. Trisha Sarkar, i/b. DSK Legal, for Prime Securities Ltd.

Mr. Dhruv Joshi, i/b. Wadia Gandhi, for Bombay Stock Exchange Ltd.

Mr. Anil P. Bagwe, for the Insolvent.

Ms. R. Peerbhoy, for Jaldarshan Cooperative Housing Society Ltd.- Respondent.

Mr. M.D. Narvekar, Official Assignee present.

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CORAM : S.C. GUPTE, J.

NOVEMBER 15, 2016

P.C. :

. This is an application taken out by the Insolvent for permission

to travel out of India to visit his ailing daughter. The Insolvent's passport has been deposited with the Official Assignee.

2. The Insolvent applies for permission to go to Australia to meet his daughter Mrs. Avni Rajesh Iyer, who is suffering from Breast Cancer, who is being treated by Doctors at Canberra in Australia. He has referred to medical reports of his daughter in support of his application. He submits that his son-in-law, Mr. Rajesh Iyer, whose address in Australia is submitted in the application, is ready to bear the expenses of his traveling, etc.

3. This Court, vide order dated 20 September 2016, asked for various details to be furnished, such as the amount lying to the credit of the Insolvent with the Bombay Stock Exchange pursuant to the sale of his membership card as also the whereabouts of title documents in respect of his flat, namely, Flat No.47, Jaldarshan Co-operative Housing Society, Nepeansea Road, Mumbai, with view to consider final orders to be passed on this application. The Bombay Stock Exchange was directed to place on affidavit all particulars pertaining to the claims received under various arbitration awards as well as liabilities owed by the Insolvent to his clients during his dealings on the Stock Exchange. So also, M/s. Jaldarshan Co-operative Housing Society were asked to file an affidavit setting out particulars of title certificates, including share certificate in relation to Flat No. 47 held by the Insolvent under the Society.

4. Both the Stock Exchange and the Society have filed their respective affidavits setting out the particulars called for by this Court. It appears from the affidavit of the Stock Exchange that the total debt of about Rs.6.33 crores is owed by the Insolvent to his clients on account of

arbitration awards obtained by them. Adding an amount of about Rs.44.61 lakhs on account of claims already paid to some of the clients from the Investors' Protection Fund, a sum of about Rs.6.78 crores is said to be owed, according to the Bombay Stock Exchange, by the Insolvent to his various clients.

5. The synopsis prepared by the Official Assignee indicate total liabilities in the Schedule of Assets of about Rs.6.52 crores, which include the very claims which are made before the Stock Exchange and which are covered by arbitration awards. The Official Assignee has accepted proof of debts in respect of Rs.1.12 crores from out of these claims.

6. As against this, an amount of Rs.5.46 crores is held by the Stock Exchange to the account of the Insolvent.

7. The affidavit filed by Jaldarshan Co-operative Housing Society indicates that Flat No.47 in the Society is owned jointly by the Insolvent and his wife. The original share certificate in respect of this flat is in the possession and custody of Jaldarshan Co-operative Housing Society. It appears that there is an agreement entered into by the Insolvent with M/s. Prime Securities Ltd. A copy of the agreement, together with transfer forms, has also been deposited with the Society. The Society has not yet accepted the transfer or enrolled M/s. Prime Securities Ltd. as its member. In the meantime, the Official Assignee has already taken over possession of the flat from the Insolvent.

8. Learned Counsel appearing for M/s. Prime Securities Ltd. states that his client will have to consider adopting suitable proceedings for

appropriate reliefs, including restoration of possession of the flat in favour of his client.

9. In these facts and considering the emergent nature of the circumstances which require the Insolvent to leave the Country, the Insolvent's application is being considered sympathetically by this Court. The Insolvent has, in his application, furnished an undertaking on oath to return to the Country after visiting his daughter for a period of about one month.

10. The Official Assignee submits that the Court may require the Insolvent to post such security as the Court may deem fit and proper as a condition for permitting the Insolvent to leave the Country for one month. The Official Assignee also submits that the Insolvent be directed to submit his itinerary during his stay in Australia and also his contact details, including landline, cell phone, e-mail id, etc. during his stay in Australia. None of the creditors has any serious objection to the Insolvent's application being allowed subject to these conditions.

11. In the premises, the Respondent's Notice of Motion is allowed in terms of prayer clauses (a) and (b) and the Applicant Insolvent is permitted to visit Australia during 1 December 2016 and 5 January 2017 subject to the following conditions:-

(a) The Applicant Insolvent shall arrange for a cash security in the sum of Rs. 5 lakhs to ensure compliance with this order. Such security shall be furnished in the form of a pay order in favour of the Official Assignee.

- (b) The Applicant Insolvent shall furnish his entire itinerary, including the duration and location of his stay/s in Australia.
 - (c) The Insolvent shall also furnish his contact information, including landline, cell phone, e-mail id during his stay in Australia.
 - (d) The Applicant Insolvent shall immediately upon his return from Australia surrender his passport to the Official Assignee, to be retained by the Official Assignee subject to the orders of this Court.
12. The Notice of Motion is disposed of accordingly.

(S.C.GUPTE J.)