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

OFFICIAL ASSIGNEE'S REPORT NO. 16 OF 2016
IN
INSOLVENCY PETITION NO. 5 OF 2000

Kantilal R. Sheth & Ors. ...Insolvents

Ex-parte

M/s. Amit Trading Company … Petitioning Creditors
Vs
Divyes M. Shah ...Respondent

Mrs. B. Bahulayan for Applicant.
Mr. Mehul Shah for Insolvent No. 2.
Mr. M. D. Narvekar, Official Assignee present.

CORAM : R.D. DHANUKA, J.
DATE: APRIL 18, 2017

P.C. :

1] By an order dated 7th February 2017, passed by this Court, this Court recorded the statement made by the learned counsel for the applicant that applicant would deposit of 25% of the valuation amount of Garage as may be determined by the new valuer or if the amount of the earlier valuation of the Garage is higher, he may deposit 25% of the earlier valuation amount of the Garage within four weeks from the date of such valuation. Pursuant to an order passed by this Court, M/s. H Mehta & Associates have submitted a valuation report dated 27th March 2017 in respect of the said immovable property i.e. Garage No. 2 and arriving at the valuation of the said garage at Rs.35,52,002/-.

2] The applicant is thus required to deposit 25% of of the said amount of Rs.35,52,002/- which is come to Rs.8,88000/- with the official assignee towards 25% share of the insolvent in the said Garage. The learned counsel for the applicant undertakes to deposit the said amount of Rs.8,88,000/- with the Official Assignee within six weeks from today. It is submitted by the learned counsel for the applicant that the society i.e. Chandan Co-operative Housing Society Limited, Next to Golden Tobacco, S. V. Road, Vile Parle (West) has submitted a bill for maintenance charges including outgoings in the sum of Rs.7,70092/- for the period of January 2017 to March 2017. She submits that the Official Assignee be directed to pay 1/4th of the said amount in respect of the said garage or the applicant be permitted to deduct the said amount of 25% out of the 25% share of the insolvent in the said garage.

3] The learned counsel for the Insolvent No. 2 on the other hand states that the applicant has been using the said premises in which the insolvent admittedly has 25% share, for commercial use for last several years and thus applicant shall be directed to pay the compensation to the official assignee for use of the said 25% share of the insolvent in the said garage. In respect of this submission, he invited my attention to some of the averments made by him and the documents annexed in the affidavit filed by his client on 4th October 2016. He submits that in any event the applicant cannot be allowed to deduct any amount towards society outgoings, in view of the fact that the entire garage is used by the applicant exclusively.

4] A perusal of the bill submitted by the society on 16th January 2017 indicates that the principle arrears amounting Rs.2,86,703/- whereas interest is Rs.4,63,086/- charged by the society at the rate of 21% per annum. Even according to the applicant the applicant was using the said garage which included 25% share of the insolvent exclusively.

5] In my view interest of justice would be met with if the official assignee is not directed to pay 25% of the said outgoings or to permit the applicant to adjust 25% of the outgoing out of the amount required to be deposited but if applicant is directed to make the entire payment of outgoing including interest instead of paying any compensation for the use of entire premises all through out, I am not inclined to accept this submission on the part of the learned counsel for the applicant for issuing direction against the official assignee to pay 1/4th of outgoings of the society in respect of the said garage.

6] In so far as the deposit of Rs.50,000/- made by the applicant before this Court is concerned the valuer M/s. Mehta and Associates had submitted a bill for Rs.23,760/-. The Official Assignee is directed to refund the balance amount to the applicant within two weeks from today. In so far as claim of the applicant for refund of Rs.37,500/- which was deposited on 3rd March 2008 is concerned the official assignee is directed to submit a report before this Court. It is made clear that upon receipt of the 25% of Rs.35,52,002/- as directed aforesaid from the applicant, the insolvent shall issue no objection in favour of the applicant in respect of 25% share of the installment for the said garage through Official Assignee. It is also made clear that if the applicant is not able to deposit the aforesaid amount within six weeks from today the official assignee would be at liberty to seal and sell the said premises. The Official Assignee's Report No.16 of 2017 is disposed of on the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)