

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY**

OFFICIAL ASSIGNEE'S REPORT NO.21 OF 2016

IN

INSOLVENCY PETITION NO.82 OF 2002

Avinash Bansi Jaising and Anr.

....Insolvents

Ex-parte :

Suraj Prakash Khemchand

....Petitioning Creditor

WITH

NOTICE OF MOTION NO.5 OF 2017

WITH

NOTICE OF MOTION NO.16 OF 2017

WITH

NOTICE OF MOTION (L) NO.57 OF 2016

WITH

NOTICE OF MOTION NO.32 OF 2017

WITH

NOTICE OF MOTION NO.34 OF 2017

WITH

NOTICE OF MOTION NO.53 OF 2017

WITH

NOTICE OF MOTION NO.13 OF 2018

IN

INSOLVENCY PETITION NO.28 OF 2001

Dr. Birendra Saraf a/w. Ms. Soniya Putta and Mr. Aniket Kharote I/b. M/s. Solomon and Co. for Monisha Ravi Jaising, applicant in notice of motion no.5 of 2017 and notice of motion no.32 of 2017.

Ms. K.A. Shah for Official Assignee.

Mr. G.R. Mehta a/w. Ms. Rhea Mehta I/b. Dipal Mehta for insolvent no.1 in insolvency petition no.82 of 2002.

Ms. Sonam Shethia I/b. Juris Corp. for insolvent no.2 in insolvency petition no.28 of 2001.

Mr. Gul Madnani for Mr. Arun Bahirwani, auction purchaser in notice of motion no.5 of 2017.

Mr. Viraj Timble for applicant in notice of motion no.16 of 2017.

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

Ms. Monisha Jaising, applicant in notice of motion no.5 of 2017 and notice of motion no.32 of 2017 present in person.

Mr. Banshi Jaising, insolvent no.1 in insolvency petition no.28 of 2001 and insolvent no.2 in insolvency petition no.82 of 2002 present in person.

Mr. Ravi Banshi Jaising, insolvent no.2 in insolvency petition no.28 of 2001 present in person.

Mr. Avinash Banshi Jaisingh, insolvent no.1 in insolvency petition no.82 of 2002 present in person.

CORAM : K.R.SHRIRAM, J.

DATE : 17th JULY 2018

P.C.:

1 This order is passed in the presence of applicant, Monisha Jaising and the three insolvents, namely, Banshi Jaising, Ravi Jaising and Avinash Jaising.

2 Consent terms have been executed between applicant and the three insolvents. The consent terms dated 17th July 2018 signed by Monisha Jaising and the three insolvents, namely, Banshi Jaising, Ravi Jaising and Avinash Jaising and their respective advocates is taken on record and marked "X" for identification. All undertakings are accepted and so ordered. All the signatories to the consent terms are present in Court and identified by their respective advocates.

3 Mr. Avinash Jaising unconditionally withdraws his objections to the grant of reliefs in notice of motion no.5 of 2017 and notice of motion no.32 of 2017 filed by applicant.

4 For ease of reference, the consent terms is reproduced hereunder :


 IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 INSOLVENCY JURISDICTION
 NOTICE OF MOTION NO. 5 OF 2017
 IN
 INSOLVENCY PETITION NO. 28 OF 2001
 Coram :- K. R. Shriram, J.
 Date :- 17 JUL 2018
 Market as 'X' for
 Identification in
 NMIS/5/2017 ID
 INPT/28/2001
 Associate

Monisha Ravi Jaising Applicant
IN THE MATTER OF:
 Uttamchand Devichand Shah Petitioning Creditor
Versus
 Bansilal Jaising & Anr. Insolvents
And
 The Official Assignee, High Court,
 Bombay & Anr. Respondents

AND
 NOTICE OF MOTION NO. 32 OF 2017
 IN
 INSOLVENCY PETITION NO. 28 OF 2001

Monisha Ravi Jaising Applicant
IN THE MATTER OF:
 Uttamchand Devichand Shah Petitioning Creditor
Versus
 Bansilal Jaising & Anr. Insolvents
And
 The Official Assignee, High Court,
 Bombay & Ors. Respondents

CONSENT TERMS

- The Insolvents abovenamed [i.e. Bansilal Jaising and Ravi Bansilal Jaising] are the Insolvents declared as such in Insolvency Petition No. 28 of 2001. Respondent No. 2 [i.e. Avinash Jaising] is an Insolvent declared



as such in Insolvency Petition No. 82 of 2002 [along with Bansil Jaising], Ravi and Avinash Jaising are the sons of Bansil Jaising. The Applicant [i.e., Monisha Jaising] is the wife of Ravi Jaising. All the Insolvents [i.e. Bansil, Ravi and Avinash] as also the Applicant [i.e. Monisha Jaising] are part of the same family [i.e. the Jaising family]. Bansil, Ravi and Avinash Jaising are hereinafter individually referred to as Bansil, Ravi and Avinash respectively and collectively referred to as "the Insolvents".

2. Pursuant to the Orders passed by the Insolvency Court from time to time, all the properties of the three Insolvents have been sold and the sale proceeds are lying with the Respondent No. 1 being the Official Assignee of Bombay [hereinafter called "the Official Assignee"].
3. The Schedule of assets and liabilities of each of the three Insolvents reflect, inter-alia, under the caption "Preferential Creditors" a debt claimed by the Income Tax department on account of demands raised by the Income Tax Officer upon each of the three Insolvents on account of disallowance of capital losses against capital gains. The purported demand of the Income Tax Officer had been subject matter of contest and litigation since the year 2001 and had been a disputed demand in respect whereof Appeals had been filed by each of the three Insolvents with the Commissioner of Income Tax [Appeals] ("the CIT [Appeals]") circa 2014/15. All the Appeals involve common questions of fact and law.
4. During the pendency of the above Notice of Motions, the Appeals filed by Bansil and Ravi came to be allowed by the CIT [Appeals] by way of Order dated 31.3.2017, copies whereof have been filed with the office of the

Official Assignee. In view thereof, the Income Tax demand made against Banshi and Ravi stood reversed and annulled and the same have to be removed / deleted from Banshi and Ravi's Schedule of assets and liabilities. However, in the Appeal filed by Avinash, the CIT [Appeals] passed an ex-parte Order also dated 31.3.2017 dismissing Avinash's Appeal, without any notice to him of the hearing of the Appeal. Parties agree that in view of the statement of law recorded in the Order and Judgment passed by the CIT [Appeals] in the Appeals of Banshi and Ravi, an identical Judgment ought to have been rendered by the CIT [Appeals] thus also reversing and annulling the Income Tax demand made upon Avinash. With the assistance of Banshi and Ravi, Avinash has filed an Appeal dated 16th July 2018 with the Income Tax Appellate Tribunal, Mumbai ["the ITAT"], impugning the Order dated 31.3.2017 passed in his Appeal. Banshi and Ravi hereby agree and undertake to this Hon'ble Court to co-operate with Avinash and to render all assistance to Avinash to effectively prosecute the Appeal filed by Avinash with the ITAT and / or with any higher Appellate Authority or Court should the need arise.

5. In furtherance of the arrangement recorded above, all the three Insolvents hereby agree and undertake to this Hon'ble Court that all the required steps shall be taken by them to have the Order dated 31.3.2017 passed by the CIT [Appeals] in Avinash's Appeal reversed and annulled and to also file with the Insolvency Court, if found necessary at a later date, an Application for having the purported Income Tax demand against Avinash, declared void and a nullity, in view of the statement of law

already declared by the Order and Judgment of the CIT [Appeals] (dated 31.3.2017) passed in the Appeals of Bansi and Ravi.

6. All the three Insolvents agree and undertake to this Hon'ble Court that neither of them will apply to the Insolvency Court for an annulment and / or discharge till after the demand of the Income Tax against Avinash is reversed and annulled and / or declared void by the IAT or any higher Appellate Authority or Insolvency Court should the need arise; unless mutually agreed in writing, and that all the three Insolvents agree and undertake that they shall file a joint application for discharge or annulment as they may be advised.
7. Bansi and Ravi, in the interest of family amity, peace and harmony, have urged the Applicant [Monisha] and Avinash, to work together to ensure an expeditious end and disposal of the Insolvency proceedings now pending against all the Insolvents for more than 15 years particularly in the light of the arrangement recorded hereinabove and requested Avinash to give up his objections to the above Notice of Motions filed by Monisha so that matters can proceed and be disposed off in accordance with law.
8. In view of the arrangement between the three Insolvents and the Applicant recorded hereinabove who are all members of the same family, all the said family members unconditionally withdraw any and all allegations made against each other in the above proceedings.
9. In view of the arrangement between the three Insolvents and the Applicant recorded hereinabove, Avinash unconditionally withdraws all

his objections to the grant of reliefs by the Insolvency Court on the above Notice of Motion Nos. 5 and 32 of 2017 taken out by the Applicant [Monisha].

Dated this 17th day of July 2018


Applicant
[Monisha Ravi Jaising]

For M/s. Solomon & Co.,


Partner
Advocates for Applicant


Insolvent No.1
(Bansi Jaising)


For M/s. Juris Corp


Insolvent No. 2
(Ravi Jaising)


for Partner
Advocates for Insolvent Nos. 1 & 2


Respondent No. 2/ Insolvent
[Avinash Jaising]


for Advocate for Respondent No. 2/
Insolvent

5 Official Assignee, High Court, Bombay is directed to make payment to applicant of amounts aggregating to Rs.4,50,29,095/- out of the sale proceeds of the three properties namely,

(i) Residential Flat at Land Breeze in Mumbai;

- (ii) Plots of land bearing Survey No. 54/4B/21 and 54/4B/27 in Pune; and
- (iii) Office in “Sesa Ghor” in Goa

sold by Official Assignee pursuant to orders dated 25th August 2015, 28th July 2015 and 22nd July 2016, respectively passed by this Court, after deduction of amounts, if any, payable on account of share of applicant in outgoings of the said properties for the period prior to completion of sales thereof allowed by this Court along with interest accrued thereon.

6 So far as the claim of Crosscraft Private Limited, the auction purchaser of the Goa property at Sesa Ghor is concerned, the same has been rejected by this Court and notice of motion no.16 of 2017, in effect, seeking review of the order dated 7th February 2017 is pending. The statement of Dr. Saraf, on instructions from Ms. Monisha Jaising, who is present in Court, that Ms. Jaising shall bring back such amount as directed by this Court in the event of applicant in notice of motion no.16 of 2017 succeeds, is accepted as an undertaking to this Court.

7 Mr. Mehta, counsel appearing for Mr. Avinash Bansi Jaising states that on 16th July 2018, Mr. Avinash Bansi Jaising has lodged an appeal, as recorded in the consent terms, with the Hon'ble Income Tax Appellate Tribunal, Mumbai (ITAT). Mr. Mehta undertakes, on instructions from Mr. Avinash Bansi Jaising, who is present in Court that office

objections, if any, will be removed and the appeal will be made ready within two weeks from today.

8 This insolvency petition has been pending for quite some time and Official Assignee also is rather handicapped in completing the entire process in view of the appeal filed and pending in ITAT. Official Assignee has received over thousand claims from various parties against insolvents.

9 Therefore, to avoid an inordinate delay in Official Assignee completing the process and this Court disposing the insolvency petition no.82 of 2002, the Income Tax Appellate Tribunal is requested to dispose the appeal filed as soon as possible and in any event, within three months from today.

10 Dr. Saraf, on instructions from applicant – Ms. Jaising, who is present in Court, without admission of any liability and purely as a concession, states that the amount of Rs.16,27,500/- paid by Mr. Arun Bahirwani as stamp duty on the Deed of Sale dated 28th April 2016 be reimbursed to Mr. Arun Bahirwani by Official Assignee out of the amount that is payable to applicant as mentioned in paragraph 4 above.

11 It is also clarified that if any application is filed by Mr. Avinash Bansi Jaising in this Court, as noted in paragraph 5 of the consent terms, the same will be decided by this Court in accordance with law including as to

maintainability.

12 Dr. Saraf states that Ms. Jaising will also pay a sum of Rs.1 lakh as a token of appreciation to the office of Official Assignee for the efforts put in and time spent in this matter, even though, Ms. Jaising, not being an insolvent, no cost is payable by applicant to Official Assignee. Statement accepted.

13 Official Assignee to deduct this amount of Rs.1 lakh from the amount payable to Ms. Jaising and this amount to be utilised by Official Assignee towards administrative expenses.

14 Notice of motion no.5 of 2017 and notice of motion no.32 of 2017 are allowed and accordingly disposed.

15 No orders as to costs.

16 Official Assignee's Report No.21 of 2016 to be listed for directions after 12 weeks. Liberty to apply.

17 All to act on an authenticated copy of this order.

Gauri
Amit
Gaekwad

Digitally
signed by
Gauri Amit
Gaekwad
Date:
2018.07.19
19:12:31
+0530

(K.R.SHRIRAM, J.)