IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

OFFICIAL ASSINGEE'S REPORT NO.21 OF 2016
IN
INSOLVENCY PETITION NO.82 OF 2002

Avinash Bansi Jaising and
Bansi Jairamdas Jaising ....Insolvents

Ex-parte :

Suraj Prakash Khemchand ....Petitioning creditor

WITH
NOTICE OF MOTION NO.16 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
WITH
NOTICE OF MOTION NO.32 OF 2018
IN
INSOLVENCY PETITION NO.28 OF 2001

Ms. Sonam Shetia a/w. Mr. Vaibhav Wali I/b. Juris Corp. for insolvent no.2 in insolvency petition no.28 of 2001.
Ms. Reha Mehta I/b. Ms. Dipal Mehta for insolvent no.1 in insolvency petition no.82 of 2002.
Mr. M.D. Narvekar, Official Assignee present.

CORAM : K.R.SHRIRAM, J.
DATE : 16th OCTOBER 2018

P.C.:

<u>OFFICIAL ASSINGEE'S REPORT NO.21 OF 2016</u>

1 Ms. Mehta, counsel for insolvent no.1 in insolvency petition no.82 of 2002 states that further to the order dated 17th July 2018 and in particular with reference to paragraphs 3, 4, 5 and 6 of the consent terms dated 17th July 2018 and paragraphs 7, 8 and 9 of the order dated 17th July 2018, the Income Tax Appellate

Tribunal has passed an order dated 24th September 2018 disposing off the appeal and remanding the matter back to CIT (A) for deciding the appeal on merits after considering his own decisions in the case of father and brother of the assessee, viz., Bansi J. Jaising and Ravi B. Jaising, respectively, who are also insolvents. Ms. Mehta states that once CIT (A) hears the appeal and passes order, they shall communicate the order to Official Assignee within one week of receiving the same. Statement accepted.

2 Official Assignee's report to be listed on 4th December 2018 for directions. Liberty to apply.

NOTICE OF MOTION NO.32 OF 2018

1 Ms. Shetia seeks leave to withdraw the notice of motion.

2 Notice of motion dismissed as withdrawn.

NOTICE OF MOTION NO.16 OF 2017

1 Prayer clause – (a) of this notice of motion reads as under :

> *(a) That this Hon'ble High Court be pleased to review the order dated 07/02/2017 made in Notice of Motion (L) no.57 of 2016 direct that the amount of Rs.4,55,016/- (Rupees Four Lakh Fifty Five Thousand Sixteen Only) be paid to the Corporation of City of Panaji Goa towards past outstanding house tax dues for past years April 1997 to July 2015 being for the period prior to auction sale made in favor of the Applicant herein, from and out of the sale proceeds recovered from sale of premises no.3F, third floor in building "Sesa Ghor", Morombi – O – Pequen at plot no.20, Patto, Panjim – Goa bearing Municipal House No.1/293/45 sold in auction to the Applicant as the highest bidder."*

2 At first blush I thought this review application should be heard by His Lordship Hon'ble Mr. Justice R.D. Dhanuka who had passed the order dated 7th February 2017. Insolvency Registrar brought to my attention ***D.L. Chowdhury and Ors. V/s. V.E.R.M.P. Chettiyar and Anr.***[1], where it was held that "when the application for review came up for hearing before the Judge, who should have decided it, but was heard and decided by the Judge who had ceased to be the Insolvency Judge, he had no jurisdiction to deal with it in the absence of authorization by the Chief Justice as powers of Court in such matters are vested in the Judge appointed by the Chief Justice under Section 4 of the Presidency-Towns Insolvency Act, 1909".

3 Applicant is anyway absent. Moreover, His Lordship Hon'ble Mr. Justice R.D. Dhanuka in paragraphs 3,4,5 and 6 of the order dated 7th February 2017 has observed as under :

> …………….
>
> *3. It is the case of the applicant that there were past unpaid house tax dues in respect of the said premises in the sum of Rs.4,83,761/- which is required to be paid to the concerned authority before transfer of the said premises in favour of the applicant. It is not in dispute that the possession of the said premises is handed over to the applicant by the Official Assignee on 5th October 2015.*
>
> *4. Learned counsel appearing for the applicant states that various house taxes prior to auction will have to be borne by the insolvents or by the Official Assignee and not by the applicant.*
>
> *5. The Official Assignee and other contesting respondents invited my attention to the terms and conditions of Proposed Sale issued by the Official Assignee for seeking public auction of the property in question. In the said Proposed Sale, it was provided that the sale shall be by Public Auction on "AS IS WHERE IS" and "AS IS WHAT IS" basis. The liability to pay any dues including arrears or outgoings shall be that of the Purchaser and the Purchaser shall purchase the said property on "AS IS WHERE IS" and "AS IS WHAT IS" basis without any*

1. AIR 1937 Rangoon 237 (239) (DB)

liability on the Official Assignee, High Court, Bombay or the estate in the above insolvency to pay Society dues or Municipal dues or other outgoings of any nature whatsoever.

6. In my view, since the property is sold to the applicant on "AS IS WHERE IS" and "AS IS WHAT IS" basis, the respondents or the estate is not liable to pay the arrears of the house taxes to the applicant.

…………..

4 I also agree with the views of Hon'ble Mr. Justice R.D. Dhanuka. Therefore, notice of motion dismissed.

NOTICE OF MOTION NO.34 OF 2017

1 In the order of 19th September 2018, this Court had directed applicant to annex copy of the permission of employment, terms of employment, how much has been earned etc.

2 Ms. Shetia states that this notice of motion no.34 of 2017 is the notice of motion for permission to take up employment with Azzura International and since no permission has been granted yet, applicant has not taken up employment.

3 Ms. Shetia seeks leave to withdraw this notice of motion.

4 Notice of motion dismissed as withdrawn.

NOTICE OF MOTION NO.53 OF 2017
WITH
NOTICE OF MOTION NO.13 OF 2018

1 Ms. Shetia states that both these notices of motion are infructuous.

2 Therefore, both notices of motion dismissed as withdrawn.

(K.R. SHRIRAM, J.)