

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

NOTICE OF MOTION (L) NO. 16 OF 2019

IN

INSOLVENCY PETITION NO. 101 OF 1975

Shriprakash V Sardesai & Anr

...Applicants

In the matter between:

RE:

1. Sardesai & Company & Ors.

...Debtors

Ex Parte:

Vasudeo Ganesh Potdar

...Petitioner Creditor

V/s.

The Official Assignee,

High Court, Bombay

...Respondent

1) Mr. Birendra Saraf alw. Siddhesh Bhole, Niyati Shah & Krupashree Sawant i/b Siddhesh Bhole in N/M 16 of 2019 and N/M (L) 38 of 2019.

2) Adv. Y. V. Divekar alw. Adv. Sayali Gharpure i/b M/s. Divekar & co. Advo For anant Machinery Pvt. Ltd. For N/M (L) 34 of 2019.

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

4) Mr. E. B. Shivkumar, Deputy Official Assignee Present.

CORAM: R. I. CHAGLA, J.

DATE: 19TH SEPTEMBER, 2019.

PC:-

1. By an Order dated 17th September, 2019, the statement made on behalf of the Debtors was accepted by this Court and relief sought in the Notice of Motion in terms of prayer clause (d) & (e) was granted subject to payment of sum of Rs. 31,00,000/- payable by 18.09.2019. The Official Assignee was also directed to file report as to whether the payment of Rs. 31,00,000/- had been made by the Debtors on 18.09.2019. Further, since Notice of Motion had

been taken out by the heir of the Debtor No. 2, the learned counsel also appearing for the Debtor No. 3 stated that a formal Notice of Motion shall be taken out by 18.09.2019 for annulment of adjudication of the Debtor No. 3 from being an Insolvent.

2. An affidavit-cum-undertaking-cum-Indemnity Bond has been filed by the Applicants. The Applicants in the undertaking-cum-Indemnity Bond have undertaken as follows:

“NOW BY THIS DEED OF INDEMNITY, I, MR. SHRIPRAKASH SARDESAI, LEGAL HEIR OF THE DEBTOR NO. 2, I have paid the creditors. Hence, I hereby further undertake that I will deposit the additional amount towards the deficit, if any, in the matter as and when demanded by the official assignee. I also undertake that if any creditor comes forward and claims any amount in the form of an established debt from the official assignee after the passing of the order of annulment dated 17th September, 2019, I will deposit the said established debt as claimed by the creditor or such amount as directed by the Official Assignee.

I also say that I will not claim the said amount from the official assignee and / or from the assets available in the hands of the official assignee. I hereby indemnify and keep indemnified the official assignee, High Court, Bombay against all claims, costs, charges, expenses, damages, loss that may be made against him as the assignee of the estate and effects of the Insolvent, by any person or persons.”

The undertaking is accepted by this Court.

3. In the affidavit-cum-undertaking-Indemnity Bond, the Applicants have further stated that the demand draft has been paid towards the settlement of the claim including interest and fees of the Official Assignee of the Creditors totaling sum of Rs. 31,00,000/- and the Debtors have no other creditors to pay. The payment of Rs. 31,00,000/- has been made by the well wisher of the Insolvents by way of demand draft issued in favour of the Official Assignee

and which is admitted by the Official Assignee in the OAR No. 20 of 2019. Hence, it would be appropriate to dispose of the Notice of Motion No. 16 of 2019 in the above terms..

4. In the OAR the Official Assignee has sought certain direction which the Official Assignee in prayer clause (a) of the OAR i.e. permission to reopen the estate account of Insolvent No .1 viz. M/s. Sardesai & Company which was closed by the Insolvency Court's order dated 16th October, 2009 to enable the Official Assignee to deposit the sum of Rs. 31,00,000/- deposited by the well wisher of the Insolvents. Accordingly, Prayer clause (a) is granted and the Official Assignee is permitted to reopen the estate account of Insolvent No. 1 to enable the Official Assignee to deposit the sum of Rs. 31,00,000/- paid by the well wisher of the Insolvents.

5. From the other prayer clauses are concerned, prayer clause (d) is also granted permitting the Official Assignee to investigate the claims and to make payments to the creditors upon adjudication of the claims which have been lodged. The Insolvent No. 3 shall co-operate with such investigation of the claims which have been lodged with the Official Assignee. The further prayer clauses are not required to be considered in view of the undertaking cum-Indemnity Bond which has been furnished by the Applicants in the Notice of Motion. In so far as, the other undertaking-cum-Indemnity Bond which has been also furnished by Insolvent No. 3, the Insolvent No. 3 has undertaken as follows:

“NOW BY THIS DEED OF INDEMNITY, I, MR. JAYANT VITHAL ADVANT THE DEBTOR NO. 3, I have paid the creditors. Hence, I hereby further undertake that I will deposit the additional amount towards the deficit, if any, in the matter as and when demanded by the official assignee. I also undertake that if any creditor comes forward and claims any established debt from the official assignee after passing the order of annulment, I will deposit the said established debt as claimed by the creditor or such amount as directed by the Official Assignee.

I also say that I will not claim the said amount from the official assignee and / or from the assets available in the hands of the official assignee. I hereby indemnify and keep indemnified the official assignee, High Court, Bombay against all claims, costs, charges, expenses, damages, loss that may be made against him as the assignee of the estate and effects of the Insolvent, by any person or persons.”

This undertaking is also accepted by this court.

6. Notice of Motion No. 38 of 2019 has been taken out by Insolvent No. 3 pursuant to the permission granted by this Court vide order dated 21.09.1976, which is a formal Notice of Motion for annulment of the adjudication of Insolvent No. 3 Debtor as Insolvent and recalling order dated 21st September, 1976 and directing the office of Official Assignee to take steps pursuant to the order of annulment as per provision of Presidency Towns Insolvency Act, 1909. The relief sought in this Notice of Motion is also required to be granted. The Notice of Motion is made absolute in terms of Prayer clause (a) considering that an order of annulment of the adjudication has been passed in respect of the other Insolvent. Accordingly Notice of Motion Lodging No. 38 of 2019 is disposed of in the above terms.

7. The OAR is not required to consider the schedule of assets and liabilities which has been filed by the Insolvent and annexed at Exhibit ‘B’ to

the OAR by reason of the undertaking-cum-Indemnity Bond furnished as above.

8. The Official Assignee is permitted to utilize out of the sum of Rs.1,00,000/- which has been paid as commission towards the administrative charges.

(R. I. CHAGLA, J.)