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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

OFFICIAL ASSIGNEE'S REPORT NO. 13 OF 2018
IN
INSOLVENCY PETITION NO. 28 OF 2001

Uttamchand Devichand Shah ... Petitioning Creditor

Versus

Re: Bansi Jairamdas Jaising & Ravi B Jaising ...Defendant

Mr Beni Chatterjee, Senior Advocate, *with Mr Suresh Kumar, for Income Tax Department.*
Ms Sonam Shethia, *i/b Juris Corp, for Insolvent No.2 in the Notice of Motion (L) No. 3 of 2019.*
Mr EB Shivkumar, *Deputy Official Assignee present.*
Mrs SA Pagedar, *Ist Assistant to Official Assignee present.*
Ms Arju Garodia, *for JCIT 17 (2), Mumbai.*

CORAM: G.S. PATEL, J
DATED: 30th January 2019

PC:-

1. Mr Chatterjee for the Income Tax Department has instructions and Ms Garodia for JCIT 17 (2), Mumbai is present in Court. Mr Chatterjee tenders a copy of a communication dated 29th January 2019 from the Under Secretary, ITA-II, Central Board of Direct Taxes annexing a Circular No. 04/2019 dated 28th January 2019. I have considered these. I must express my appreciation of the promptness with which both agencies have responded and that they have found an appropriate solution.

2. Briefly stated, the circular clarifies that for each insolvent's estate the Official Assignee is, in law, an Artificial Juridical Person (**"AJP"**) as defined in Section 2(31)(vii) of the Presidency Town Insolvency Act 1909. The Official Assignee must, therefore, in his capacity as an AJP, for each insolvent obtain a PAN and must file a return in that capacity. Paragraph 2 of the clarificatory circular makes it clear that since the Official Assignee does not receive income or manage the property on behalf of the debtor, the Official Assignee is not a 'representative assessee' of the debtor for the purposes of the Income Tax Act 1961. It is for this purpose that the status of the Official Assignee has been clarified to be an AJP. The clarification also states that the Official Assignee must obtain a separate PAN for each insolvent's estate.

3. Anticipating a possible difficulty in the outsourcing process of PAN issuance, the covering letter dated 29th January 2019 addressed to the Principal Chief Commissioner of Income Tax, Mumbai as an instruction not only summarizes the circular but says in paragraph 3 that should there be any specific difficulty in obtaining the PAN, the Income Tax Department will render necessary assistance. This is noted and appreciated.

4. The Official Assignee will now proceed accordingly. Specifically, it will make a request for a waiver of any condition requiring the Official Assignee to provide a distinct or unique email

ID or mobile number (or both) for each PAN, since this is neither practicable nor possible.

5. The communication tendered by Mr Chatterjee is taken on record and marked "C1" for identification with today's date.

6. Obviously this clarification also means that as and when the debtor comes out of insolvency and the insolvency is annulled, there will have to be some process of cancellation or surrender of that insolvent-specific PAN issued to the Official Assignee as an AJP. Clearly, the Official Assignee cannot be responsible for filing of returns or payment of tax after an order of annulment comes; the authority of the Official Assignee ceases on that day.

7. The Official Assignee's Report is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)