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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 2196 OF 2014

WITH

THIRD PARTY NOTICE NO. 8 OF 2014

IN

SUIT NO. 173 OF 2014

National Spot Exchange Limited ... Applicant

In the matter between :

Modern India Ltd. and Ors. ... Plaintiffs

Versus

Financial Technologies (I) Ltd. and Ors ... Defendants

And

Swastik Overseas Corporation and Ors. ... Third party Noticees

Mr. S.U. Kamdar, Sr. Advocate along with Dr. Birendra Saraf and Mr. Amit Naik i/by Naik, Naik & Co. for applicant in Notice of motion/Original Defendant no. 2.

Mr. Akshay Patil along with Ms. Pooja Kothari, Ms. Hiral Thakkar i/by Federal Rashmikant for plaintiffs

None for third party noticees.

CORAM : R.D.DHANUKA J.

DATED : DECEMBER 18, 2014

P.C.

Mr. Kamdar, learned senior counsel for the applicant (original defendant no. 2) submits that all the third party noticees in this notice of motion are already served with copy of the proceedings. None appears for the third party noticees though served. No affidavit in reply is filed.

2. By an order passed by this court on 25th September, 2014 in this Notice of Motion which is filed by applicant, after rendering reason, this court has granted ad interim reliefs in terms of prayer clauses (e) and (f) of the notice of motion directing the third party noticees to disclose their assets both encumbered and unencumbered within the period of three weeks from the date of the said order by filing an affidavit and injunction. It is submitted by the learned senior counsel that though the said order has been communicated to the third party noticees, the said order has not been complied with. My attention is also invited to the affidavit filed by these third party noticees before the Committee appointed by this court pursuant to the order passed on 25th September, 2014. It is submitted that third party noticees are though appearing before the committee appointed by this court, have not complied with the order passed by this court. The learned senior counsel invited my attention to the minutes of meeting held on 28th August, 2013 between third party noticees and the applicant. It is recorded in the said minutes of the meeting that as a part of trading, the third party noticees owe an amount of Rs.101.20 Crores as pay in obligation as on 14.8.2013 to the applicant. The third party noticees agreed to pay the said amount by liquidating various assets.

3. Learned senior counsel invited my attention to the minutes of the meeting held on 24th December, 2013. It is recorded in the said minutes that the total pending liability of the third party noticees is at Rs.100.83 Crores. Mr. Rajesh Mehta has proposed to settle the entire dues at Rs.78 Crores which proposal has not been accepted by the applicant.

4. Learned senior counsel invited my attention to letter dated 1st

August, 2013 from the third party noticees to the applicant. In the said letter, the third party noticees have admitted that they are liable to pay to the applicant as against their settlement obligation Rs.9783773577.97 subject to final amount.

5. My attention is also invited to the settlement agreement dated 24th January 2014 entered into between the applicant and the third party noticees and the few others. Under the said settlement agreement amount claimed by the applicant in the recital has been mentioned at Rs.104.98 Crores. The parties to the said agreement have decided to mutually agree for an amount of Rs. 77.08 Crores as full and final settlement towards all obligations of the third party noticees towards applicant as on 31st August, 2013 subject to the terms and conditions set out therein. In the said agreement Third Party Noticees agreed to pay the said amount of Rs.77.08 Crores in twelve installments in accordance with the schedule mentioned therein.

6. Learned senior counsel submits that the Third party noticees have thereafter paid a sum of Rs. 10 Crores so far under the said terms of settlement. It is submitted that since the Third Party Noticees have failed to pay the amount in accordance with the schedule appended to the said deed of settlement, Third Party Noticees are liable to pay the entire amount to the applicant which was due prior to the date of settlement.

7. My attention is also invited to the order passed by MPID court. In paragraph 6 of the said order dated 9th July, 2014, in Bail Application No. 20 of 2014 which was filed by Rajesh Mehta, one of the Third Party Noticees,

who are parties to this proceedings, the said MPID court has recorded the submissions made by the Third Party Noticees that the said Rajesh Mehta had settled the account with the applicant herein and had agreed to pay Rs.77.08 Crores in twelve installments/tranches. The Third Party Noticees also undertook to deposit various amounts within the period of fortnight of release of Mr. Rajesh Mehta to the applicant. The MPID court has taken cognizance of the settlement arrived at between the applicant herein and the Third party noticees and in view of such settlement, took a liberal view and granted bail to the said Mr. Rajesh Mehta, one of the Third Party Noticees herein. It is submitted by the learned senior counsel that the Third Party Noticee has taken advantage of said settlement and has obtained bail from the MPID court. After obtaining the bail, the third party noticees has not complied with the terms of the settlement agreement.

8. It is submitted by the learned senior counsel that since the Third Party Noticees have admitted their liability clearly in number of documents referred to aforesaid, this court shall pass order and decree under Order 12 rule 6 of the Code of Civil Procedure, 1908 based on such admission against the third party noticees.

9. A perusal of the record indicates that in the meeting held on 28th August, 2014, the third party noticees admitted their liability to the applicant in the sum of Rs.101.20 Crores as on 14th August, 2013 as recorded in the minutes of the said meeting. In the meeting held on 24th December, 2013, as against the liability of Rs.100.83 Crores, one of the third party noticees on behalf of the other noticees proposed to settle entire dues at Rs.78 Crores. The said proposal of the Third Party Noticees to pay Rs.78

Crores, has not been accepted by the applicant. A perusal of the letter dated 1st August, 2013 from the third party noticees, it is clear that the Third Party Noticees have admitted the liability in the sum of Rs.97,87,777.47 which was subject to final amount. A perusal of the settlement agreement dated 24th January, 2014 entered into between the applicant and Third Party Noticees indicates that the parties have arrived at the settlement amount of Rs.77.08 Crores payable in twelve installments. It is clear from the perusal of the record that the Third Party Noticees have not paid the said amount as agreed under the settlement agreement. It is brought to the notice of the court that the Third Party Noticees have paid only a sum of Rs.10.01 Crores to the applicant. It is submitted that even after giving credit of the said amount, the applicant is still entitled to recover sum of Rs.91.19 Crores from the Third Party Noticees.

10. A perusal of the record clearly indicates that since the Third Party Noticees have admitted their liability in clear terms in the above referred documents, the applicants have made out a case for decree on admission under Order 12 Rule 6 Code of Civil Procedure against Third Party Noticees in the sum of Rs.91.19 Crores with interest thereon as claimed. The Third Party Noticees have failed to file any affidavit in reply to the notice of motion though served. The averments made in the affidavit in support are even otherwise deemed to have been admitted.

11. I, therefore, pass the following order :

(a) Notice of motion is made absolute in terms of prayer clause (a). It is however, made clear that the decree shall be restricted to the sum of

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Rs.91.19 Crores only with interest thereon at the rate of 18% p.a. from August, 2013 till the date of payment.

(b) Ad interim relief granted by this court in terms of prayer clauses (e) and (f) by order dated 25th September, 2014 to continue for the period of three months from today. It is made clear that the applicant would be at liberty to produce authenticated copy of this order before the Committee appointed by this court pursuant to the order dated 2nd September, 2014 for ascertaining the total assets of the Third Party Noticees and for appropriate action which would be subject to the orders passed by this court on 2nd September, 2014.

(c) It is made clear that the third party notice for the balance amount claimed by the applicant against the third party noticees is pending for adjudication.

(d) Notice of motion is disposed of in aforesaid terms. There shall be no order as to costs.

(R.D.DHANUKA, J.)

TRUE COPY

22.12.2014
Section Officer
High Court, Appellate Side
Bombay