

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 14042 OF 2021

INTERIM APPLICATION (L) NO. 17456 OF 2021

GARNISHEE (L) NO. 20243 OF 2021

INTERIM APPLICATION (L) NO. 19336 OF 2021

IN

COMMERCIAL EXECUTION APPLICATION (L) NO 13320 OF 2021

Sourav Chandidas Ganguly ... Applicant

vs.

Percept Talent Management Ltd & Anr. ... Respondents

Dr. Birendra Saraf, Senior Advocate, a/w. Mr. Ishwar Nankani, Mr. H. S. Khokhawala and Mr. Vaibhav Charalwar i/by Nankani & Associates, for the Applicant.

Ms. Mohinee Chougule i/b. Mr. Suresh Kumar for the Income Tax department.

Mr. Shardul Singh a/w. Mr. Parag Khandhar and Ms. Saloni Shah, i/by DSK Legal, for Judgment debtors.

Mr. Manoj Kumar Patra, Chief Financial Officer of Percept Limited – Garnishee no. 2 present.

Mr. Manuj Agarwal, Director of Percept Live Private Limited – Garnishee no. 3 present.

CORAM : A. K. MENON, J.

DATED : 22nd SEPTEMBER, 2021.

P.C. :

1. Yesterday 21st September, 2021 when this matter was called the court directed an email to be sent to brandon.desouza@gmail.com whose email address is provided in the Company Master Data of Tiger Sports Marketing Pvt. Ltd. ("Tiger Sports"). This was required since Mr. Singh on behalf of the judgment debtor had submitted that one Harindra Pal Singh had ceased to be a director of Tiger Sports since the last eight years.

2. Today on behalf of the applicant, Dr. Saraf has submitted a certificate issued by Chartered Accountant who has set out names of the directors as available on the portal of the Ministry of Corporate affairs which discloses that Harindra Pal Singh has been director since 2003. He continues to be a director today and his digital signature is also valid till December, 2022. Likewise in respect of other directors Mr. Shailendra Singh also continues to be director as also Brandon Cecil Desouza to whom the email was addressed. Mr. Desouza has after receipt of email issued by the applicants Advocate, responded via email this morning to the Advocates for the applicant contending that Tiger Sports will be sending the duplicate share certificate shortly. At present, due to pandemic, the "CS" (presumably Company Secretary) is working from home. Some of these persons are said to be also directors of at least one of the judgment debtors.

3. The statement made by Mr. Shardul Singh that Mr. Harindra Pal Singh was not a director is said to be made on instructions of Mr. Harindra Pal Singh. The list of directors produced today reveals an attempt, prima facie, to mislead the Court. In the circumstances the Applicants have been forced to come to court repeatedly on the basis of incorrect and misappropriate instructions and therefore make improper submissions in Court. The officers of the garnishee's have also to be called to elicit further particulars. On behalf of respondent no. 2. Mr. Shardul Singh submits today that in view of the communication received from the company Tiger Sports confirming that share certificates will be issued shortly, he will ensure that within the period of three weeks from today 1,83,600 shares of Tiger Sports held by judgment debtor no. 2 will be deposited in the Court under advise to the Advocates for the applicant.

4. Learned counsel for Percept Limited has tendered additional affidavit dated 21st September, 2021. In that affidavit it is stated that the Garnishee company now owes to the judgment debtors only a sum of Rs. 54,51,568/-. Mr. Patra, the deponent of the affidavit is present in Court and was asked when this amount will be paid, Mr. Patra states that the amount cannot be paid in lumpsum due to financial constraints but would consider the payment in instalments. He was then requested to produce bank statements of the company to ensure availability of funds and at his request the matter was kept back. On second call he has tendered some statements of account.

One of these accounts said to be held in HDFC Bank, Kamala Mills, Parel branch bearing no. 02400330001398 reflects a credit Rs. 1,76,80,674.48. Learned Advocate for the garnishee at this stage has requested that he be permitted to file additional affidavit.

5. On behalf of Garnishee Percept Live Private Limited it is stated that it holds eight bank accounts of which six are in New India Co-operative Bank Limited one of them show debit balance of Rs. 278,782,802.26, The others contain a balance of about Rs. 1 lakh. Two other accounts in private sector bank also do not show any substantial deposits.

6. The Income tax department is represented today. Learned counsel for the department states that she has been able to procure the acknowledgment issued in ITR-V for the period 2008-09 upto 2020-21. As regards computation of income and balance sheet and profit and loss account she seeks time to obtain instructions.

In view thereof for the present I pass the following order :

(i) Share certificates of Tiger Sports Marketing Pvt. Ltd. shall be deposited on or before 12th October, 2021. List on 13th October, 2021 as far as compliance is concerned.

(ii) HDFC Bank is directed not to permit withdrawal of a sum of Rs. 54,51,568/- which is disclosed in paragraph 2 of the affidavit of Shri Manoj Patra out of sums payable to the Judgment Debtor no.2.

(iii) The HDFC bank shall not appropriate sum of Rs. 54,51,568/- against any outstanding of the account holder and shall deposit the same in a separate fixed deposit in the very branch where the account is held. That amount shall not be disbursed without leave of the court by the bank. HDFC Bank shall confirm compliance to the Prothonotary and Senior Master of the Court. HDFC Bank to act on an authenticated copy of this order.

(iv) Additional affidavit on behalf of Garnishee no. 2 – Percept Limited to be filed within two weeks.

(v) The Garnishee no.3 – is directed to disclose its assets on oath by filing an affidavit of its director Mr. Manuj Agarwal setting out in detail all assets and receivables of the company within two weeks from today.

(vi) In the meantime considering the conduct of the judgment debtors in not disclosing accurate information as available to it, costs as incurred at today's hearing shall be born by judgment debtor equally.

(vii) List on 13th October, 2021.

(A. K. MENON, J.)