

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL LODGING NO.295 OF 2012****WITH****NOTICE OF MOTION LODGING NO.1448 OF 2012****IN****NOTICE OF MOTION NO.3520 OF 2011****IN****SUIT NO.2865 OF 2011**

The Bank of New York Mellon ..Appellant

Versus

Zenith Infotech Ltd. & Ors.Respondents.

Mr.Janak Dwarkadas, Senior Advocate with Mr. Navroze Seervai, Senior Advocate i/b. Mr. Ankur Kashyap i/b. AZB & Partners for the Appellant.

Mr. Rohit Kapadia, Senior Advocate l with Mr. Arif Bookwala, Senior Advocate with Mr. Zal Andhyarujina, Mr. S.V. Doijode, Mr. Parag Kabadi and Ms. Mrinalini Rajpal i/b. Doijode Associates for respondent Nos.1,5 and 6.

**CORAM: MOHIT S. SHAH, C.J. &
N.M. JAMDAR, J.**

DATED : 3 May 2012.

OPERATIVE ORDER

Having heard the learned counsel for the parties at length, we find that the interests of justice require the following directions to be given:-

(1) The defendant No.1 shall file an affidavit of a responsible officer

of defendant No.1 company by 10 May 2012 giving the particulars about the assets of the defendant No.1 company including immovable assets as well as plant, machinery and other assets like fixed deposits along with the status of such assets whether they are encumbered and if yes, the particulars of such encumbrances.

- (2) The defendant No.1 shall furnish to the appellant-plaintiff and also to M/s.Ernst & Young Pvt. Ltd., copy of their accounts for the quarter ended 31 December 2011 (if the accounts are not audited, then a copy of the unaudited accounts) and also copy of the unaudited accounts for the quarter ended 31 March 2012, by 18 May 2012.
- (3). The defendant No.1 shall also furnish to M/s.Ernst & Young Pvt. Ltd., a copy of the aforesaid affidavit of defendant No.1 along with a copy of the report dated 25 April 2012 of Grant Thornton indicating the valuation of the Cloud Computing Business of defendant No.1 company which is filed at Exhibit "H" to the present Notice of Motion Lodging No.1448 of 2012, by 18 May 2012.
- (4) M/s.Ernst & Young Pvt. Ltd., shall, after taking into consideration the accounts of defendant No.1 Company for the 3rd as well as the 4th quarter of the financial year 2011-12 and also after taking into account the aforesaid report dated 25 April 2012 of Grant Thornton and the aforesaid affidavit, submit their further report about the valuation of the Cloud

Computing Business of defendant No.1 company as on 31 March 2012 indicating the value of the assets of defendant No.1 company.

(5) It will also be open to the appellant-plaintiff to submit a further report of their valuer on the basis of the accounts of the defendant No.1 company for the 3rd and 4th quarter of the financial year 2011-12.

(6) Till the next date of hearing defendant No.1 shall not sell, transfer, alienate, dispose of or otherwise create any third party interest in, or part with possession of, the land admeasuring about 1000 sq. meters with built up area of about 3500 sq.ft., in Andheri, Mumbai, the particulars whereof shall also be mentioned in the affidavit to be filed by 10 May 2012. It is clarified that this injunction shall operate over and above the undertaking already given on behalf of the defendant No.1 company as recorded in the order dated 14/18 November 2011 and in the subsequent orders, if any.

It is directed accordingly.

It is clarified that this order is passed without prejudice to the rights and contentions of all the parties.

Stand over to 11 May, 2012.

CHIEF JUSTICE

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(N.M. JAMDAR, J.)

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