

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY
OFFICIAL ASSIGNEE REPORT NO.7 OF 2015
IN
INSOLVENCY PETITION NO.11 OF 2012**

Re :

Narayanlal Jodhavji Choudhary ... Insolvent

Ex-Parte

M/s. Ravi Steel Industries ... Petitioning Creditor

Mr. Manoj Aagre i/by Mr. G.B.Kedia, for Petitioning Creditor.

Mr. Akhileshwar Sharma i/by Mr. A.M.Saraogi, for Insolvent.

Mr. G.G.Ketkar, Dy. Official Assignee, present.

Mr. N.J.Choudhary, Insolvent, present.

CORAM: S.J. KATHAWALLA, J.

DATE: 9th APRIL, 2015

P.C.:

1. The Debtor Mr. Narayanlal Jodhavji Choudhary has been adjudicated as Insolvent by an order dated 15-01-2013. Since the Insolvent was not attending the private examination before the Deputy Official Assignee, the Official Assignee issued Rule Nisi No.11 of 2014 against the Insolvent. Since the Insolvent was avoiding service of Rule Nisi, by an order dated 15-07-2014, this Court directed the local police to render all assistance to the representative of the Official Assignee for serving the Rule Nisi on the Insolvent. The Rule Nisi was served on the Insolvent on 31-07-2014. Even after the service of the Rule Nisi on the Insolvent, the Insolvent failed and

neglected to appear for his private examination. This Court therefore, by an order dated 05-08-2014 made the said Rule Nisi absolute.

2. Thereafter, the Insolvent took out Notice of Motion No.37 of 2014 for setting aside the order passed by this Court and for other reliefs as prayed for in the said Notice of Motion. The said Notice of Motion was kept for hearing on 16-09-2014 when the Court directed the Insolvent to remain present before the Official Assignee on 17-09-2014 at 12.00 Noon for his private examination and also directed to file his Schedule of assets and liabilities within a period of two weeks from 16-09-2014. The Notice of Motion was accordingly disposed of.

3. On 16-09-2014, the Insolvent appeared before the Deputy Official Assignee for his private examination which was partly conducted. The Official Assignee fixed an appointment on 22-09-2014 for making inventory of the movables lying at the residential premises of the Insolvent. However, when the representative of the Official Assignee visited the residential premises of the Insolvent on 22-09-2014, the son of the Insolvent did not allow the representative of the Official Assignee to enter the premises and make an inventory. Thereafter, the Insolvent appeared before the Official Assignee on 30-09-2014. However, the Insolvent refused to sign his statement on the ground that his Advocate is not present and left the office without signing the

statement. Thereafter, the Insolvent did not remain present before the Official Assignee and also failed to comply with the requisitions.

4. In the meantime, the Insolvent filed Appeal (L) No. 419 of 2013 (now numbered as Appeal No. 710 of 2013) impugning the decree passed by this Court dated 28th April, 2011 in Summary Suit No. 2377 of 2009. Since the Insolvent did not pursue the said Appeal, the same was dismissed by an order dated 3rd December, 2013. The Insolvent thereafter took out Notice of Motion (L) No. 2432 of 2013 for recalling the said order of dismissal dated 3rd December, 2013 and for restoration of Appeal (L) No. 419 of 2013. However, no orders are passed on the said Notice of Motion till date. In view thereof, the Appeal continues to be dismissed till date and the Decree dated 28th April, 2011 is in force.

5. The Official Assignee has in the above circumstances filed the above Report seeking the following reliefs :

“(a) The Insolvent may be directed to attend the private examination before the Official Assignee and to comply with the requisitions raised in the private examination and to co-operate with the office of the Official Assignee;

(b) If the Insolvent fails to comply with the directions as prayed for hereinabove, the Official Assignee be permitted to issue Warrant of Committal for Contempt in the matter;

(c) for Such other and further orders that this Hon'ble Court

may deem fit and proper in the matter;”

6. On 07-04-2015, Mr. Saraogi appearing for the Insolvent informed the Court that his client is willing to settle the matter with the Petitioning Creditor and is ready to deposit the decretal amount with the office of the Official Assignee within a few months. This Court inquired from Mr. Saraogi whether his client is willing to offer any security. Mr. Saraogi on instructions informed the Court that his client will deposit in Court the title-deeds of his ownership flat which is unencumbered. In view thereof, the Insolvent was asked to produce the share certificate as well as the Agreement pertaining to the said flat on 09-04-2015 at 3.00 p.m. On 09-04-2014, the Insolvent along with his Advocate Mr. Akhileshwar Sharma i/by Mr. A.M.Saraogi appeared before this Court and informed the Court that the flat is already mortgaged to a Bank and therefore, he is unable to produce the papers of the flat. In view thereof, the above Report is allowed in terms of prayer clauses (a) and (b), which are reproduced above. The local police shall render all assistance to the representative of the Official Assignee to carry out inventory of movables lying in the residential and / or business premises of the Insolvent. The Report is accordingly disposed of.

(S.J.KATHAWALLA, J.)