

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

RULE NISI NO. 4 OF 2018

IN

INSOLVENCY PETITION NO. 15 OF 2016

WITH

OFFICIAL ASSIGNEE'S REPORT NO. 9 OF 2018

AND

OFFICIAL ASSIGNEE'S REPORT NO. 5 OF 2019

Vikas Jhunjhunwala

...Petitioning
Creditor

Versus

Northwest Enterprises & Anr

...Insolvents

Mr Ajinkya Lokare, for the Petitioning Creditor.

Mr AP BAgwe, for the Insolvent.

Mr MD Narvekar, Official Assignee, is present.

Mr EB Shivkumar, Dy OA, is present.

Mrs SA Pagedar, Ist Assistant to the OA, is present.

CORAM: G.S. PATEL, J

DATED: 5th March 2019

PC:-

Rule Nisi No. 4 of 2018:

1. I find that there are still pending at least four requisitions raised by the Official Assignee. There is no schedule of assets and

liabilities of the firm and other questions. This is to be complied with on or before the next date.

2. List the matter on 2nd April 2019.

Official Assignee's Report No. 5 of 2019:

3. The Insolvent, Vinod Maheshwari is the 2nd Judgment Debtor. The decree was obtained against him and the 1st Insolvent, Northwest Enterprises, a partnership firm, for an amount of Rs. 8,45,460/- with interest. It seems that during the private examination Vinod Maheshwari stated that there is a paper punching machine that belongs to the partnership firm but is in the custody of Girish Maheshwari, alleged to be a partner of that firm, and who is Vinod's brother.

4. It seems that by a letter dated 1st February 2019 Girish offered to buy this paper punching machine for a total amount of Rs. 3 lakhs. Previously, the valuation has already been dispensed with.

5. To my very considerable surprise, Vinod submits that his brother Girish should be made to pay more. Girish does not want to. Vinod says that before an earlier Bench Girish had offered more. To my direct question as to whether Girish is interested in the machinery or his brother, Girish chose the machinery. So be it.

6. I am inclined to accept Girish's slightly improved offer of Rs. 3,25,000/-.

7. On Girish Maheshwari's depositing an amount of Rs. 3,25,000/- within one week from today, the machine is to be handed over to him. Upon his depositing this amount with the Official Assignee the Official Assignee shall, after delivering the machine, credit the purchase price to the estate account of the Insolvent. It is then to be invested until further orders as per usual practices of that Office.

8. Vinod agrees to raise an amount of Rs. 7 lakhs, and thus the entire dues of the Petitioning Creditor will be cleared. However, the Petitioning Creditor's advocate needs time for instructions as to whether his client is agreeable to a final settlement on these terms.

9. List the matter tomorrow, 6th March 2019 for filing consent terms.

Official Assignee's Report No. 9 of 2018

10. Prayers (b) and (d) will not survive since they have already been dealt with in the order of OAR No. 5 of 2019.

11. Prayer (a) is one by which the Official Assignee seeks leave to take physical possession of the residential premises of Insolvent No. 2, Vinod Laxminarayan Maheshwari at 901, Vasant Aradhana Tower, Mahavir Nagar, Kandivali (West), Mumbai 400 067. The Insolvent lives there with his family. The next prayer (c) is for leave to sell the premises to recover his 50% share.

12. I refuse to make any such order. It is one thing to say that a person has been declared or adjudicated Insolvent and that his assets should be seized and sold. It is quite another, especially in a city like ours, to dishouse an entire family for that reason and pitch them on the road. There are other concerns that always weigh with this Court, including most especially the welfare, shelter and lives of family members. These are not to be ignored. As last advised, and by that I mean until a few minutes ago, ours are still Courts of *justice*. This court hall, in particular, lies squarely between the rooftop statues of Justice and Mercy. That tells me at least that there is no justice without mercy.

13. Prayer clauses (a) and (c) are presently rejected. However, the Insolvent must within two weeks get filed an Affidavit and Undertaking by his wife who holds the balance 50% that she will not dispose of, alienate or part with possession of her share without leave of this Court obtained after at least two weeks' notice to the Official Assignee and the learned Advocate for the Petitioning Creditor. The Insolvent himself must also file a similar undertaking in two weeks. It is clarified that the 50% right, title and interest of the Insolvent in this flat is part of his estate and is, therefore, vested in the Official Assignee and may not be transacted without an express order of the Court. The Official Assignee will communicate an authenticated copy of this order to the cooperative society in question, whose managing committee will make a note of it and act accordingly.

14. There will thus be a complete restraint on disposal or alienation or parting with possession of that flat although the family

may continue to reside in it, subject to payment of course of all dues and outgoings.

15. Liberty to the Official Assignee to renew the application if there is a change in circumstances.

(G. S. PATEL, J)