

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY

NOTICE OF MOTION NO. 4 OF 2024

IN

INSOLVENCY PETITION NO. 3 OF 2019

Kapil Puri

... Applicant

Versus

Rupendrasing Arora

... Respondent

Ms. Samridhi Lodha instructed by Ms. Keegan Almeida, Advocate for the Petitioning Creditor.

Mr. Rohaan Cama alongwith Ms. Jyoti Singh and Mr. Shakil Ansari instructed by AJA Legal, Advocates for the Applicant in NMIS-4-2024.

Mr. Nikhil Rajani instructed by M/s. V. Deshpande & Co., Advocate for the Applicant in NMIS-13-2024.

Ms. C.J. Bhatt, Official Assignee alongwith Mr. Subodh Patil, Deputy Official Assignee, Mr. D.B. Iswalkar, 1st Assistant Official Assignee and Ms. M.R. Parkar, Insolvency Registrar, present.

CORAM : ABHAY AHUJA, J.
DATE : 19 NOVEMBER 2024

PC. :

1. This matter has been argued by the learned Counsel for the parties for a period of few months, on the larger question as to whether the Official Assignee is justified in keeping the original driving license of the Insolvent as part of the documents that the Insolvent is required to submit upon having been adjudicated as an Insolvent, although Mr. Cama has submitted that he is not pressing prayer clauses (a) and (b)

to this Notice of Motion and has restricted his submissions with respect to prayer clause (c), to direct the Official Assignee to return the Insolvent's original driving licence to enable him to drive motor vehicle for commuting purposes.

2. Arguments have been canvassed on the larger question in favour as well as against the taking of the driving licence. Attention of this Court has also been drawn to the provisions of the Insolvency and Bankruptcy Code, where personal effects of an Insolvent such as a motor vehicle for personal use has been excluded and similar laws of other countries have also been brought to the notice of this Court. However, this Court has also been informed that the provisions with respect to the excluded assets under the Insolvency and Bankruptcy Code are yet to be notified.

3. This Court's attention has been drawn to order dated 25th July 2022 of this Court (Coram : B.P. Colabawalla, J.) in Notice of Motion No.1 of 2022 in Insolvency Petition No.3 of 2019 ("Order dated 25th July 2022"), where the Court after considering that the Insolvent was to be engaged for consultancy or advisory work such as a specific proposal mentioned in the Affidavit in support of the said Notice of Motion, permitted the Insolvent to take up consultancy or advisory work or work for gain during the course of his insolvency upon the

terms and conditions contained therein. The learned Counsel for the Petitioning Creditor had therein consented to the same, subject to certain conditions and safeguards and the Court had thereafter allowed the Notice of Motion, subject to the following conditions which are reproduced as under :

(i) The Insolvent shall submit the copy of the appointment letter/engagement letter issued in his favour, to the Respondent within 7 (seven) days of issuance of the same. Likewise any modification or amendment to the said appointment letter/engagement letter will also be submitted within 7 (seven) days thereof. The Insolvent undertakes to inform the Respondent about any change in the scope of consultancy or employment or any interconnected work, which shall have a direct bearing on the earnings of the Insolvent.

(ii) The Insolvent shall be permitted to travel within India for taking up assignment, engagement or for any personal reasons by intimating the Respondent by way of a letter/email of his such intention to travel atleast 48 hours prior to such travel, specifying therein (i) the purpose of travel, (ii) destination of travel, (iii) intended date of departure and return and (iv) address and contact number where the Insolvent can be reached during the period of his travel. The Insolvent shall further intimate the Respondent on the next working day of his return by way of a letter/email.

(iii) The Insolvent shall open a savings bank account in any bank approved by the Respondent and the said savings bank account will be in the joint name of the Insolvent and the Respondent. Any payment received by the Insolvent shall be deposited only in this bank account and nowhere else.

(iv) The Insolvent agrees that 30% of his net earnings (after tax) including all emoluments (after tax), on a monthly basis by way of salary/consultancy/employment fee or other emoluments shall be utilized by the Respondent for discharge of Insolvent's liability to its creditors.

(v) Any cheque or payment or remittance beyond 20% of the aggregate payment received per month by the Insolvent can be issued/signed/made only by the Respondent and not Insolvent.

(vi) The Insolvent shall not make remittance or payments or issue cheques more than three times in a month and all supporting documents shall be submitted to the Respondent within 15 days of the end of the month.

(vii) If there are any payments to be made beyond the amounts mentioned above, the Insolvent shall submit all necessary documents to the Respondent who can make payments/issue cheques based on the Respondent's satisfaction.

(viii) The Insolvent will be permitted to withdraw in cash up to 15% of his net monthly earnings/receipts in a

month.

(ix) The insolvent, on or before the 7th of every month, shall submit a report on the amounts earned and spent the previous month.

(x) The Insolvent will file the annual returns with the approval and consent of the Respondent and the liability to pay taxes on the amounts earned will also be that of Insolvent, which shall be adjusted from the amounts earned by the Insolvent.

(xi) The Insolvent shall undertake to not misuse or create any false identity documents.

(xii) As and when the Respondent requires the presence of the Insolvent for the purpose of private examination, public examination or for reasons whatsoever, the Insolvent shall make himself available for the same.

4. Mr. Cama, learned Counsel has argued that it is in pursuance of the same order and the permission granted therein that the present Notice of Motion pressing for prayer clause (c) has been filed, so that the Insolvent although does not have motor car/vehicle of his own be permitted to drive his son's motor car for commuting purposes in the course of his consultancy or advisory work.

5. It has been pointed out to this Court that as recorded in the Insolvent's public examination on 23rd August 2024, the Insolvent does not have any consultancy work and his consultancy agreement with

Millenium Automation Pvt. Ltd. has expired and the Insolvent is looking for another consultancy.

6. Mr. Cama has submitted that the Insolvent, pursuant to the order dated 25th July 2022, is looking for another assignment/ consultancy and would need his original driving license for commuting in the course of such consultancy / assignment and that this Court may permit the return of the Insolvent's original driving license, subject to the terms and conditions that this Court may want to impose, even if the larger question is not answered at this stage.

7. Upon a query from this Court to the learned Counsel appearing for the Petitioning Creditor and to the learned Official Assignee, it is submitted that this Motion could be disposed of in terms of prayer clause (c), subject to the following conditions :

- (i) That the driving license be used only for the purpose of consultancy or advisory work as permitted in paragraph 5(ii) of the order dated 25th July 2022.
- (ii) That the Insolvent abide by the Motor Vehicles Act, 1988 and the Rules framed thereunder while doing so.
- (iii) That as and when required by the Official Assignee, the Insolvent to return the original driving license.
- (iv) That the Insolvent report any untoward incident

with respect to the use of the driving license to the Official Assignee within a period of 24 hours.

(v) That the Insolvent remain present before the Official Assignee every quarter alongwith the original driving license.

(vi) That the said original driving license not to be used as an identity/identification document and to be used for only for the purposes of driving motor vehicle in India in the course of permitted travel as per paragraph 5(ii) of the Order dated 25th July 2022.

(vii) The Insolvent to continue to abide by the conditions as contained in order dated 25th July 2022.

(viii) The Insolvent to continue to remain present for the public examination as and when called for by the Office of Official Assignee.

(ix) The Insolvent to intimate in writing to the Official Assignee of the name of the owner of the vehicle and type of vehicle and registration number and certificate and insurance details of the vehicle or any change in respect thereof to the Official Assignee with a prior notice in writing of 24 hours and within 24 hours of use in case of emergency use.

(x) This permission to be read alongwith order dated

25th July 2022.

(xi) That this permission is not to be treated as a precedent by the Insolvent as well as by any other litigant.

8. Mr. Cama, learned Counsel appearing for the Applicant has no objection if prayer clause (c) is allowed with the above condition however, submitting that with respect to the prayer clauses (a) and (b), which have not been pressed, the contentions be kept open and liberty be granted to raise then in future in another application.

9. Ordered accordingly.

10. The larger question as to whether the Official Assignee is justified in keeping the original driving license of an Insolvent as part of the documents, is kept open and will be decided in an appropriate case at an appropriate time.

11. Notice of Motion stands disposed in the above terms.

(ABHAY AHUJA, J.)