

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION

NOTICE OF MOTION NO. 6 OF 2024
IN
INSOLVENCY PETITION NO. 95 OF 2021

Meena L. Shah	...Applicant
<u>In the matter between</u>	
Re : Rajesh Manmohandas Shah and Ors.	...Insolvents
And	
Ex-parte: M/s Lakhotia Udyog	...Petitioning Creditor

WITH
RULE NISI NO. 9 OF 2019
IN
INSOLVENCY PETITION NO. 95 OF 2021

Mr. Anil Bagwe for Petitioning Creditor.
Mr. Mehul A. Shah for the Applicant in NM 6/2024.
Mr. Akshay Pansare i/b Mr. Manish R. Bohra for Respondent No.1 present.
Ms. C.J. Bhatt, Official Assignee with Mr. Subodh Patil, Dy. Official Assignee, Mr. D.B. Iswalkar, 1st Assistant Official Assignee present.
Ms. M. R. Parkar, Insolvency Registrar Present.
Mr. Rajesh M. Shah, Insolvent No.1 produced before the Court.

CORAM : ABHAY AHUJA, J.
DATE : 3rd SEPTEMBER, 2024

PC. :

1. Pursuant to the order dated 20th August, 2024, today when the matter is called out, this Court is informed that the Insolvent No.1 viz. Mr. Rajesh M. Shah has been arrested under the directions of the Commissioner of Police, Mumbai on 31st August, 2024 and had been

lodged in the Byculla Civil Prison and has been produced today in the Court as per the directions of this Court.

2. On 17th February, 2023, this Court (Coram: Bharati Dangre, J.) had passed the following order:-

“1. By order dated 2/12/2019, the Insolvent Rajesh Shah was directed to appear before the Court on 21/1/2020 and a Show Cause Notice was issued to him as to why he should not be committed to jail for having failed and neglected to attend the Official Assignee’s office for his private examination, touching his estate and affairs.

2 Notice issued on 2/12/2020 was duly served upon Mr.Rajesh Shah, the Insolvent as he himself accepted the notice at his residence in Vile Parle, Mumbai. He signed an acknowledgment of service in writing on the Original Rule Nisi and the said document is placed on record.

3 Despite receipt of the notice, he has failed to comply with the order and did not mark his appearance before the Official Assignee. In the circumstances, the following order is passed :-

(i)Rule Nisi is made absolute in terms of prayer clause (a) and (b).

(ii) Insolvent no.1 is directed to be committed to jail for failure to attend the private examination touching his estate and affairs before the Official Assignee and failure to co-operate with the Official Assignee in the Insolvency proceedings.

(iii) The local police at the insolvent no.1’s last known place of residence is directed to assist the Official Assignee in complying with this order.

(iv)Meanwhile the petitioning creditor is directed to deposit diet charges of Rs.2000/- each to the office of the Official Assignee within two weeks from today”.

3. As can be seen from the proceedings, pursuant to the said order, over a period of more than one and a half years, several orders have been passed and the police authorities have been working day and night to secure the presence of the Insolvent No.1 in Court to face private examination and thereafter, public examination before the office of the Official Assignee.

4. Earlier, the Insolvent Mr. Rajesh M. Shah was on 2nd December, 2019, directed to appear before the Court on 21st January, 2020 and a show cause notice was issued to him as to why he should not be committed to jail for having failed and neglected to attend the office of the Official Assignee for his private examination, touching his estate and affairs. The notice issued on 2nd December, 2020, was duly served upon him and he himself accepted the notice at his residence in Vile Parle, Mumbai by signing an acknowledgment of service in writing on the Original Rule Nisi. However, despite receipt of the notice, he failed to comply with the order and did not appear before the Official Assignee.

5. Therefore, on 17th February, 2023, Rule Nisi was made absolute and the Insolvent No.1 viz. Mr. Rajesh M. Shah was directed to be

committed to jail for failure to attend the private examination touching his estate and affairs before the Official Assignee and for failure to cooperate with the Official Assignee in the insolvency proceedings.

6. As noted above, the local police viz. Juhu Police authorities have made several visits to his last known place of residence and have been unable to apprehend him and secure his presence before this Court and therefore, left with no choice after over one and a half years, on 20th August, 2024, this Court directed the Commissioner of Police, Mumbai to arrest him by directing issuance of a standing non bailable warrant and produce him before this Court today and that is how Mr. Rajesh M. Shah, the Insolvent No. 1 is present in Court today.

7. Looking at the elusive conduct of the Insolvent No.1, this Court has no hesitation in directing the police authorities who have arrested him and secured his presence in this Court today, to detain him in jail until his private and public examination touching his estate and the insolvency proceedings are concluded to the satisfaction of the Official Assignee of this Court.

8. Accordingly, in furtherance of the earlier orders of this Court including the order dated 17th February, 2023, this Court directs that the Insolvent no.1 viz. Mr. Rajesh M. Shah having been committed to jail be taken straight from this Court room to Jail viz. the Byculla Civil Prison or the Arthur Road Jail and the Insolvent No. 1 to remain there till his private examination touching his estate and affairs and his public examination with respect to the insolvency proceedings before the Official Assignee are concluded. The Superintendent of the concerned jail to produce the Insolvent No.1 viz. Mr. Rajesh M. Shah before the Official Assignee and this Court as and when called for along with proper police escort, so as to prevent him from escaping or fleeing or slipping away and absconding.

9. The Official Assignee to intimate the Byculla Civil Prison / Arthur Road Jail authorities where the Insolvent No.1 is to be lodged until further orders of this Court, of the dates, on which his presence is required for the private examination touching his estate and affairs and for the public examination with respect to the insolvency proceedings.

10. The Petitioning Creditor is directed to make deposit of the necessary amounts with the Official Assignee for the sustenance of the Insolvent No.1 in Jail.

11. List on **3rd December, 2024** for further consideration.

12. This Court wishes to place on record its appreciation for the services rendered by the Commissioner of Police, Mumbai and his team in arresting the Insolvent No.1 and securing his presence in Court today.

(ABHAY AHUJA, J.)