IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION
SHOW CAUSE NOTICE NO. 2 OF 2025
IN
OFFICIAL ASSIGNEE'S REPORT NO. 9 OF 2024
IN
INSOLVENCY PETITION NO. 49 OF 1996

Canbank Financial Services Ltd ..Petitioning Creditor

Versus

Pallav Sheth …Insolvent

WITH
NOTICE OF MOTION (L) NO. 13070 OF 2025
IN
INSOLVENCY PETITION NO. 49 OF 1996

Canbank Financial Services Ltd ..Applicant/ Petitioning Creditor

Versus

Pallav Sheth …Insolvent

Mr. Pradeep Sancheti, Senior Advocate, with Aarti Shah, Vatsala Toprani, i/b Mulla & Mulla And Craigie Blunt & Caroe, for the Petitioning Creditor and Applicant in Notice of Motion.
Mr. Vikramaditya Deshmukh with Ms. Priya Chaubey, i/b Sapna Rachure, for the Insolvent in OAR/9/2024 and for Respondent in SCN/2/2025.
Mr. Gandhar Raikar, with Ms. Shilpa Bhate, Ms. Aditi Pandey, for the Custodian.
Mrs. C.J. Bhatt, Official Assignee with Mrs. Rekha Rane, Insolvency Registrar with Mr. Subodh Patil, Dy. Official Assignee, present.
Mr. Pallav Sheth, Insolvent present.

CORAM : N. J. JAMADAR, J.
RESERVED ON 9th APRIL 2026
PRONOUNCED ON : 7 AUGUST 2026

JUDGMENT:

1. Since the Show Cause Notice and the Notice of Motion taken out by the Petitioning Creditor arise out of the same set of facts, the Show

Cause Notice in the Report of the Official Assignee and the Notice of Motion in Insolvency Petition No. 49 of 1996 are being decided by this common judgment.

2. The background facts leading to the OA Report and Notice of Motion can be summarized as under:

2.1 Pallav Seth, the Respondent-Noticee was notified by the Custodian vide Notification dated 6th October 2001 under Section 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ("the TORT Act, 1992"). The properties belonging to the Respondent thus stood statutorily and simultaneously attached under Section 3(3) of the TORT Act, 1992.

2.2 The Respondent was adjudged and declared as insolvent under the Presidency Towns Insolvency Act, 1909 ("the Insolvency Act, 1909") in Miscellaneous Petition No. 5 of 2022 by an order dated 5th November 2003 passed by the Special Court (hereinafter referred to as the "Insolvent").

2.3 The Insolvent had filed his schedule of assets and liabilities on 24th June 2005. There were 96 creditors with the total liability to the tune of Rs.249,15,44,595.74/-. The Insolvent was subjected to private examination by the Official Assignee; that concluded on 10th October 2013, and public examination; that concluded on 28th September 2022.

2.4 The balance position in the estate account of the Insolvent was Rs. 1106/-. The Insolvent's estate account was pending.

2.5 As things thus stood, the Petitioning Creditor, who also holds a decree against the Insolvent, moved an Application being Miscellaneous Application (L) No. 49 of 2024, before this Court to the effect that a third party had informed the Petitioning Creditor that, the Insolvent had entered into multiple financial transactions in the account maintained by the Insolvent with ICICI Bank, Nariman Point Branch, Mumbai.

2.6 On 14th August 2024, this Court by way of an ad-interim order, restrained the Insolvent from withdrawing and/or transferring any amount from the account(s) maintained with ICICI Bank, Nariman Point Branch, Mumbai. The Bank was also directed to furnish the particulars of the account number and account holders into which the amounts had been credited as reflected in tables 'A' and 'B' of the said Application.

2.7 The Official Assignee has thus filed the Report asserting that the Insolvent could not have entered into transactions, as emerged from the record, like a solvent person. The Insolvent without obtaining permission of the Insolvency Court, the Special Court or the Official Assignee has opened the accounts with ICICI Bank, Nariman Point Branch, Mumbai and carried out multiple financial transactions. The said act and conduct of the Insolvent were in breach of the duties of the Insolvent under the provisions of the Insolvency Act, 1909. The Official Assignee thus averred that, as the Insolvent had committed breach of his statutory duties and made an incorrect disclosure in the insolvency proceedings, appropriate action, including for the contempt of Court, under Section 33 of the Insolvency Act, 1909 be initiated against the Insolvent.

3. In the Notice of Motion, the Petitioning Creditor, after referring to the discovery of transactions involving large sums by the Insolvent, asserted that the ICICI Bank account, through which regular transactions were entered into, was not disclosed by the Insolvent to the Official Assignee at any point in time during the insolvency proceedings including his private and public examinations. On the contrary, in the Insolvent's memorandum at the conclusion of the public examination, the Insolvent had stated that he had made all disclosures as required under the law.

3.1 Moreover, in the Affidavit in Reply to Miscellaneous Application (L) No. 49 of 2024 filed by the Insolvent, three more bank accounts, through which the transactions were entered into, had been disclosed, namely, the bank accounts maintained with HDFC Bank, Churchgate Branch, IDFC Bank, Nariman Point Branch and Model Cooperative Bank, Fort Branch. All the three accounts were opened by the Insolvent while insolvency proceedings were underway. None of those bank accounts were disclosed by the Insolvent during his private or public examination.

3.2 The multiple transactions in large sums indicate an undisclosed source of income which the Insolvent was enjoined to explain. The explanation sought to be furnished by the Insolvent is lame and factually incorrect. Moreover, deliberate false statements have been made by the Insolvent to suit his convenience.

3.3 The Petitioning Creditor has thus prayed that the Official Assignee be directed to revive the public examination of the Insolvent and the Petitioning Creditor be permitted to participate in such public examination of the Insolvent, and that the Insolvent be held guilty of contempt for his failure/default/false statements and misdeclarations under Section 33(4) of the Insolvency Act, 1909.

4. The Insolvent has resisted the prayers in the Report of the Official Assignee and the Notice of Motion by filing Affidavits in Reply. In the first Affidavit in Reply dated 9th January 2025 filed in response to the Official Assignee's Report, the Insolvent professed to tender an unconditional apology for the acts of omission and commission, alleged against him in the Official Assignee's Report No. 9 of 2024. The alleged acts or omission, the Insolvent contends, had occurred in a bonafide manner and were not at all deliberate, as alleged.

4.1 The Insolvent has, however, stoutly contested the factual assertions, allegations of breach of duty under the Insolvency Act, 1909 and the allegations of deliberate contempt of Court. It was contended that after being declared an Insolvent on 5th November 2003, the Insolvent had not carried out any business or trade whatsoever. He claimed to have only provided his guidance and consultancy to Miss "L" to get justice in the wake of multiple proceedings between Miss "L" and her estranged husband Mr "B", the third party who sounded of the

Petitioning Creditor. The amounts which were credited to the account of the Insolvent by Miss "L" were towards the various legal expenses in relation to the proceedings to which she was a party before various Courts.

4.2 The Insolvent positively asserted that he had opened the savings bank account bearing No. 000401512920 with ICICI Bank in the first week of September 2022, after his public examination was closed on 29th August 2022. To the said account, Miss "L" had transferred the amounts towards various legal expenses. The Insolvent claimed that he was not aware that he had to move the Insolvency Court for an order to be declared solvent again and that there was a bonafide error on the part of the Insolvent in opening the account with the ICICI Bank without obtaining a declaration that he had turned solvent.

4.3 Upon consideration of the aforesaid material and affidavit in reply of the Insolvent, by an order dated 7 March 2025, notice was issued to the Insolvent as to why action should not be taken against the Insolvent for disobedience of the order of the Court and for contempt of the Court with a direction to appear before the Court in person.

4.4 On 4 April 2025, the Insolvent appeared in person. The Insolvent was put to notice that action was initiated against him for contempt of Court. Insolvent sought time to file further affidavit in reply.

5. In the further Affidavit in Reply, the Insolvent while tendering an unconditional apology contended that the action for contempt was legally unsustainable. It was collusive in nature and was initiated with a view to target the Insolvent at the instance of the third party Mr "B". The Insolvent categorically denied that there was willful breach of the duties imposed under Section 33 of the Insolvency Act, 1909. Nor the Insolvent has violated the order dated 5th November 2003, whereby he was declared Insolvent. The Insolvent contended that, the contempt jurisdiction cannot be invoked to settle collateral dispute which the third party has with his estranged wife or the Insolvent, when the Insolvent has not violated any order of the Court and/or failed to perform duties under Section 33 of the Insolvency Act, 1909.

5.1 The Insolvent was not ordered to do a particular act or refrain from doing a particular act by the Insolvency Court and thus there was no disobedience, much less any willful disobedience, by the Insolvent of any order passed by the Insolvency Court or any direction of the Official Assignee. Thus, the provisions contained in Section 33 of the Insolvency Act, 1909 are not at all attracted.

5.2 The action for contempt was contended to be barred by limitation as the alleged contempt took place in the month of September 2022 and the Official Assignee Report No.9 of 2024 came to be filed after two years in the month of November 2024.

5.3 An effort was made to meet the charge of contempt by contending that most of the deposits in the bank accounts of the Insolvent maintained with ICICI Bank and HDFC Bank were by his wife, for which there was no prohibition under any law. In fact, the credit of the amount in the account of the Insolvent by his wife does not amount to a “transaction” as alleged. It was further contended that, although the property belonging to the Insolvent at the commencement of the insolvency vests with the Official Assignee, the property acquired subsequently by the Insolvent does not vest with the Official Assignee unless the Official Assignee chooses to intervene and makes a necessary report to the Insolvency Court and obtains requisite orders. In the case at hand, the Official Assignee did not choose to do so.

5.4 In regard to the opening of the account with the ICICI Bank, the Insolvent corrected himself to state that the said account was opened in the year 1999, much prior to the Insolvent being notified under the TORT Act, vide Notification dated 6th October 2001 and years before he was adjudged as an Insolvent on 5th November 2003. Thus, the Insolvent was not required to obtain any permission. It was reiterated that the receipt of the amount in the said account from Miss “L” after the conclusion of his public examination was a bonafide error on the part of the Insolvent.

6. The response of the Insolvent to the Notice of Motion filed by the Petitioning Creditor, by and large, proceeded on the aforesaid lines. The Insolvent has denied the asseverations in the Affidavit in Support of the Notice of Motion, adverse to the interest of the Insolvent. It was contended that, the transactions in the ICICI Bank account were entered into after the conclusion of the public examination of the Insolvent. In the year 2003 when the Insolvent was adjudged Insolvent, there was zero balance in the said account.

7. It was further contended, there was no obligation on the Insolvent under the Insolvency Act, 1909 to intimate or to inform the Official Assignee as regards the amount received by the Insolvent from his family members and well-wishers. The Insolvent was never called upon to furnish any information in that regard. The bank account maintained with Model Cooperative Bank was disclosed during the course of the public examination of the Insolvent. Thus, the Insolvent had not committed any disobedience of the order passed by the Court nor wilfully failed to perform the duties under Section 33 of the Insolvency Act, 1909. There was thus no need to reopen the public examination of the Insolvent and allow the Petitioning Creditor to participate in such public examination of the Insolvent or initiate action in contempt.

8. Affidavits in Rejoinder followed.

9. In the backdrop of the aforesaid facts and pleadings, I have heard Mr. Pradeep Sancheti, the learned Senior Advocate for the Petitioning Creditor, Mr. Vikramaditya Deshmukh, the learned Counsel for the Insolvent, Mr. Gandhar Raikar, the learned Counsel for the Custodian and Mrs. C.J. Bhatt, the Official Assignee. The learned Counsel took the Court through the pleadings and the material on record.

10. Mr. Sancheti, the learned Senior Advocate for the Petitioning Creditor, submitted that the material on record manifests that the Insolvent has shown continuous disregard to the process of the Court

and failed to disclose assets and dealings in various transactions involving large sums at various stages. The Insolvent was under an obligation to provide a complete disclosure of his property, assets and financial affairs to the Official Assignee. As many as three bank accounts maintained by the Insolvent with ICICI Bank, HDFC Bank and Model Cooperative Bank were suppressed by the Insolvent.

11. Attention of the Court was invited to the account statements which indicate transactions in large sums in the accounts maintained with Model Cooperative Bank, HDFC Bank and ICICI Bank. The accounts with the ICICI Bank and Model Cooperative Bank were opened in the year 1999 and January 2003, respectively. Yet those accounts were not disclosed and the Insolvent had submitted a memorandum that he had made full disclosures. Thus the fact that the Insolvent had made a false declaration, with the intent to defraud the creditors, becomes explicitly clear.

12. Mr. Sancheti made a strenuous effort to demonstrate as to how the Insolvent has allegedly sworn Affidavits containing false statements in regard to the opening of the accounts with ICICI Bank, Nariman Point Branch, specifically with regard to the year of the opening of the bank account with ICICI Bank, the purpose for which the amounts were credited by Miss "L", and also the accounts maintained with HDFC Bank and IDFC First Bank which were suppressed throughout insolvency proceedings.

13. Mr Sancheti submitted that the statement of accounts provided by Model Cooperative Bank shows that it was opened in the sole name of the Insolvent, and, thereby, lays bare the falsity in the statement of the Insolvent that it was a joint account. Mr. Sancheti would urge that, the conduct of the Insolvent in consistently making deliberate false statements on oath, further aggravates the contumacious conduct of the Insolvent. To this end, Mr Sancheti placed reliance on the judgments of the Supreme Court in the cases of **Dhananjay Sharma Vs State of Haryana And Ors**[1] and **K.D. Sharma Vs Steel Authority of India Limited and Ors.**[2]

14. Mr. Sancheti submitted that, the action cannot be said to be barred by the law of limitation as the period of limitation would commence only upon the discovery of the fraud played by the party on the Courts/opposite party, as held by the Supreme Court in the very case of the Insolvent, **Pallav Sheth Vs Custodian and Ors.**[3] Mr. Sancheti would urge though the Insolvent has already been held guilty of contempt in the case of **Pallav Sheth (Supra),** he has not learnt his lessons and has persisted with the contumacious conduct in a similar fashion. Thus, the Insolvent deserves condign punishment and the public examination of the Insolvent is required to be reopened.

15. Mr. Gandhar Raikar, the learned Counsel for the Custodian, supplemented the submissions of Mr. Sancheti on the aspect of the

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1 (1995) 3 SCC 757.

2 (2008) 12 SCC 481.

3 (2001) 7 SCC 549.

aggravated contumacious conduct of the Insolvent. Mr. Raikar would urge that, the falsity of the explanation furnished by the Insolvent is borne out by the apparent inconsistencies in the stand of the Insolvent in regard to the opening of the account maintained with the ICICI Bank, Nariman Point Branch. The omission to disclose the account opened in the year 1999 underscores the failure of the Insolvent to disclose his assets fully. Mr. Raikar further submitted that in view of the provisions contained in Section 33 of the Insolvency Act, the resort to the provisions of the Contempt of Courts Act, 1971 is not absolutely warranted. The claim that the Contempt Petition was barred by the law of limitation was stated to be misplaced and unsustainable.

16. Placing reliance on the decision of the Supreme Court in the case of **Pallav Sheth (Supra),** Mr. Raikar submitted that, the willful breach of the duties under the Insolvency Act and the orders passed by the Court, needs to be dealt with firmly. Mr. Raikar thus submitted that, in addition to punishing the Insolvent for contempt, the Insolvent should be directed to bring back the amounts which have been transferred / withdrawn from the accounts of the Insolvent.

17. The Official Assignee advanced the submissions in consonance with the assertions in the Report. It was submitted that, by opening and operating bank accounts, the Insolvent failed to discharge his duties under Section 33 of the Insolvency Act, by willfully suppressing the said bank accounts, while submitting his schedule of assets and liabilities and in his private and public examinations.

18. Mr. Vikramaditya Deshmukh, the learned Counsel for the Insolvent stoutly resisted the submissions on behalf of the Official Assignee, Petitioning Creditor and the Custodian.

19. At the outset, Mr. Deshmukh would urge that since the Insolvent has tendered an unconditional apology and stated that the alleged acts and/or omissions have occurred in a bonafide manner, the action for contempt is required to be dropped.

20. In any event, Mr. Deshmukh would urge, there was no specific direction to the Insolvent which the Insolvent can be stated to have disobeyed. Therefore, the question of any willful disobedience of an order passed by the Court within the meaning of Section 2(b) of the Contempt of Courts Act, 1971, does not arise. Since the action for contempt is a serious matter, only such directions which are explicit in the order ought to be taken into account for the purpose of deciding whether there is any contempt or not. To buttress this submission, Mr. Deshmukh placed reliance on the judgments of the Supreme Court in the cases of **Jhareswar Prasad Paul and Anr Vs Tarak nath Ganguly and Ors**[4] and **Sudhir Vasudeva Chairman And Managing Director, Oil And Natural Gas Corporation Limited and Ors Vs M. George Ravishekaran and Ors.**[5]

21. As a second limb of his submission, Mr. Deshmukh would urge that the Official Assignee has attributed fraudulent conduct to the

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4 (2002) 5 SCC 352.

5 (2014) 3 SCC 373.

Insolvent without any pleadings. In the absence of the specific pleadings with full particulars, the charge of contempt by practicing fraud on the Court cannot be sustained. Strong reliance was placed by Mr. Deshmukh on the judgment of the Supreme Court in the case of **Vishnu Vardhan Alias Vishnu Pradhan Vs State of Uttar Pradesh and Ors,**[6] to lend support to the aforesaid submission.

22. Mr. Deshmukh further urged that, the material on record makes it unmistakably clear that the action for contempt is hopelessly barred by the law of limitation. Amplifying the submission, Mr Deshmukh would urge, the transactions based on which the contempt is alleged were effected during the period 12th September 2022 to 13th March 2023. The filing of the Report by the Official Assignee on 11th November 2024 for initiating action for contempt was thus clearly barred by the law of limitation as it was initiated beyond the period of one year as prescribed under Section 20 of the Contempt of Courts Act, 1971. Support was sought to be drawn from the judgment of the Supreme Court in the case of **S Tirupathi Rao Vs M Lingamaiah and Ors.**[7]

23. Alternatively, Mr. Deshmukh would urge, though violation of the provisions contained in Section 33 of the Insolvency Act is alleged, yet, the Official Assignee has not made any prayer for action under Section 33 (4) of the Insolvency Act. Even otherwise, there is no violation of the provisions contained in Section 33 of the Insolvency Act.

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6 2025 SCC OnLine SC 1501

7 2024 SCC OnLine SC 1764.

24. Lastly, it was submitted that the Official Assignee had failed to establish that when the Report was filed, the Insolvent was in possession of the funds and his refusal to disburse those funds to the general body of Creditors or submit to the order of the Court was willful. Reliance was placed on the judgment of the Madras High Court in the case of **P. Srinivasa Rao, In Re.**[8]

25. With regard to the prayers in the Notice of Motion taken out by the Petitioning Creditor, Mr. Deshmukh would submit that since no show cause notice was issued to the Insolvent, in the said Notice of Motion, he was not required to meet any case for alleged contempt. At any rate, Mr. Deshmukh would urge, the submissions in response to the Official Assignee's Report warrant the dismissal of the Notice of Motion as well.

26. The aforesaid submissions now fall for consideration.

27. To start with, the uncontroverted facts. It is not in dispute that the Insolvent came to be notified under Section 3(3) of the TORT Act, 1992 on 6th October 2001. Incontrovertibly, all the properties, movable and immovable, belonging to the Insolvent as of the date of the Notification stood statutorily and simultaneously attached. Since the Insolvent was notified, the Special Court assumed jurisdiction and the Insolvent was adjudged and declared as an Insolvent by an order dated 5th November 2003.

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8 1959 LW 620 Mad.

28. There is not much controversy over the proceedings that ensued in the Insolvency Petition No. 49 of 1996. The filing of the schedule of assets and liabilities, the private examination of the Insolvent, the public examination of the Insolvent and the memorandum submitted by the Insolvent at the conclusion of the public examination, are all matters of record. The statement of the Official Assignee that the undischarged liabilities of the Insolvent were to the tune of Rs. 249,18,44,594.99/- could not be controverted. Since the amount standing to the credit of the Insolvent's estate account was only Rs.1106/-, the estate account remained pending.

29. In the context of the controversy at hand, by and large, it is not in dispute that the ICICI Bank account bearing No. 000401512920 maintained at the Nariman Point Branch by the Insolvent was not disclosed either in the schedule of assets and liabilities or in the private or public examination, although the date of opening of the account and the circumstances in which the account was opened, were sought to be initially put in contest. Likewise, the credit of the amount to the said account, especially by Miss "L" in excess of Rs.6,50,00,000/-, as such, went rather uncontroverted.

30. It would be contextually relevant to note that, it progressively emerged that the Insolvent had maintained three other accounts, (i) Account No. 013110100002241 with Model Cooperative Bank, Fort Branch; (ii) Account No. 50100272134387, HDFC Bank, Churchgate Branch; and (iii) Account No. 10156352280, IDFC First Bank, Nariman

Point Branch, which were not disclosed during the examinations of the Insolvent.

31. In the backdrop of these facts, it has to be appraised whether the Insolvent has committed willful breach of his duties as an Insolvent and whether the said conduct was contumacious and, thus, warrants action under Section 33(4) of the Insolvency Act.

32. Before adverting to the contentious issues, it may be apposite to note the statutory provisions which bear upon the determination.

33. Under Section 17 of the Insolvency Act, 1909, upon an order of adjudication, all real and personal property of the Insolvent vests by operation of law in the Official Assignee and becomes divisible among his creditors. Consequently, the Insolvent is divested of all powers to deliver, sell, mortgage or otherwise dispose of his assets.

34. Section 24 of the Insolvency Act casts a duty on the adjudged Insolvent to submit a schedule verified by Affidavit, in such form and containing such particulars of, and in relation to, his affairs as may be prescribed.

35. Section 24 of the Insolvency Act reads as under: —

> **"24. Insolvents schedule**.— (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed.
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> (2) The schedule shall be so submitted within the following times, namely:—

(a) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(b) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed."

36. Once an Insolvent has submitted his schedule under Section 24, Section 25 enables the Insolvent to make an Application to the Court for the protection of the Insolvent from arrest or detention.

37. Section 27 of the Insolvency Act provides for public examination of the Insolvent. Under Sub-Section (1), the Insolvent is enjoined to attend such public examination; where he shall be examined as to his conduct, dealings and property. Sub-Section (6) of Section 27 is of significance. It reads as under.

"**27. Public examination of the insolvent**.—

… … …

(6) <u>The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination</u> as the Court thinks proper <u>shall be taken down in writing</u> and shall be read over either to or by the insolvent and signed by him, <u>and may thereafter be used in evidence against him</u> and shall be open to the inspection of any creditor at all reasonable times."

38. In plain terms, Section 27 provides that the public examination of the Insolvent shall be on oath. The Insolvent is duty bound to answer all such questions as the Court may put or allow to be put to the Insolvent, as to the Insolvent's conduct, dealings and property.

39. The provisions contained in Section 33 of the Insolvency Act, under the heading, " Control over person and property of Insolvent", are of immense salience, in the context of the prayer to punish the Insolvent for the contempt of Court. It may be advantageous to extract Section 33. It reads as under:

> **"33. Duties of insolvent as to discovery and realization of property**.— (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit, to such examination and give such information as the meeting may require.
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> (2) The insolvent shall—
>
> (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
>
> (b) submit to such examination in respect of his property or his creditors,
>
> (c) wait at such times and places on the official assignee or special manager,
>
> (d) execute such powers- of- attorney, transfers and instruments, and
>
> (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors.

> as may be required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.
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> (3) The insolvent shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.
>
> (4) If the insolvent willfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

40. The bare text of Sub-Section (1) of Section 33 indicates that the Insolvent is statutorily enjoined to attend any meeting of his creditors and furnish the information as may be required. Sub-Section (2) of Section 33 makes it peremptory for the Insolvent to give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them, respectively, and submit the affairs as to his property or his creditors to examination and, generally, do all such acts and things in relation to his property and the distribution of proceeds amongst his creditors, as may be required by the Official Assignee. The duty of the Insolvent is not restricted to mere disclosure of the information as to his property, creditors and debtors which, in a sense, is a negative duty but the Insolvent also has a positive obligation under

Sub-Section (3) of Section 33 to aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds amongst his creditors.

41. The necessary corollary is that if the Insolvent fails to make a true and faithful disclosure of his asserts and liabilities, in the manner ordained by the Sub-Sections (2) and (3) of Section 33 of the Insolvency Act, the endeavour of realization of the property of the Insolvent for the purpose of its distribution amongst his creditors would be defeated.

42. For the aforesaid reasons, Sub-Section (4) of Section 33 provides that if the Insolvent wilfully fails to perform the duties imposed upon him by that Section, or to deliver up possession to Official Assignee of any part of his property, which is divisible amongst his creditors, under Insolvency Act, 1909, and which is for the time being in his possession or under his control, the Insolvent, in addition to any other punishment which such conduct may entail, shall also be guilty of contempt of Court.

43. Keeping the aforesaid fasciculus of the provisions and the object thereof in view, the alleged breach of the duties attributed to the Insolvent and the contumacious acts or omissions are required to be appraised.

44. First, the non-disclosure of the account maintained with the ICICI Bank, Nariman Point Branch. The said account was opened by the Insolvent on 1 January 1999. However, at this stage, the initial response of the Insolvent to the Show Cause Notice assumes critical significance. As noted above, in the first affidavit in reply, the Insolvent claimed that, after the public examination of the Insolvent was closed on 29 August 2022, the Insolvent opened the savings account bearing No.000401512920 with ICICI Bank Bank in the first week of September 2022. Even a copy of the statement of account for the period 1 September 2022 to 31 August 2023 was annexed to the said affidavit in reply. It was the bold stand of the Insolvent that, since the abovenumbered account was opened after the conclusion of his public examination on 29 August 2022, unaware of the necessity to move the Insolvency Court for the declaration that he had become insolvent, it was the bonafide error on the part of the Insolvent.

45. After it emerged that the said account was opened on 1 January 1999, the Insolvent changed the stand and contended that since the said account was opened in the year 1999, much before he was notified under Section 3(3) of the TORT Act, 1992 and declared insolvent on 5 November 2003, there was no question of obtaining permission for opening the said account.

46. The aforesaid stand of the Insolvent which wavered from one end to another, reflects not only the irreconcilable inconsistency in the explanations of the Insolvent, but betrays an intent to mould the defence to suit the convenience at the given point of time.

47. The fact that the abovenumbered account was opened by the Insolvent in the year 1999, and, yet, it was not disclosed despite numerous opportunities, cannot be brushed aside lightly. The Insolvent had made statements on oath on more than one occasion to the effect that the Insolvent had not maintained any bank account other than the one disclosed. Reference to those declarations would be made a little later.

48. It has further emerged that the Insolvent had opened account No. 013110100002241 with Model Co-op. Bank Ltd., Fort Branch, on 1 January 2003. The said account was also not disclosed. In the second affidavit in reply dated 3 April 2025, the Insolvent contended that the amount which was agreed to be paid under the settlement with Canara Bank in Criminal Appeal No.1664 of 2025 in Special Case No.1 of 2002 was paid out of the amount standing to the credit of the Insolvent in the abovenumbered account maintained with the Model Co-op. Bank Ltd. Therefore, it cannot be said that there was non-disclosure of the said account, submitted Mr. Deshmukh.

49. In regard to the abovenumbered account maintained with the Model Co-op. Bank Ltd. also, the Insolvent has taken a contradictory stand. In the affidavit in reply to Misc. Application (L) No.54 of 2024, the Insolvent had made a categorical statement that the abovenumbered account with the Model Co-op. Bank Ltd., stands in the sole name of his wife. Thus, there was no question of producing any statement in respect of the said account. The statement of account in respect of the abovenumbered account, produced by the Model Co-op. Bank Ltd., shows to the contrary. The said account stands in the name of the Insolvent himself. When the aforesaid fact was brought on the record of the Court, the Insolvent attempted to wriggle out of the situation by affirming that the liability in accordance with the settlement arrived at in Criminal Appeal No.1664 of 2025 was discharged by crediting the amount to Canara Bank from the abovenumbered account maintained with the Model Co-op. Bank Ltd.

50. The third account was opened with HDFC Bank on 2 February 2019. In regard to the said account as well, in the affidavit in reply to Misc. Application (L) No.54 of 2024, it was contended that the said account with HDFC Bank was opened only on 1 September 2022. To substantiate the said claim, a copy of the statement of account maintained with the HDFC Bank, Churchgate Industry House Branch, from 1 September 2022 to 1 January 2025 was annexed to the said affidavit in reply. In contrast, the copy of the statement of abovenumbered account placed on record by the HDFC Bank, reveals that the said account was opened on 2 February 2019 and there were transactions since February 2019 therein.

51. When confronted with this situation, the Insolvent again attempted to salvage the position in the second affidavit in reply dated 3 April 2025 by asserting that, most of the deposits in the accounts maintained with the ICICI Bank and HDFC Bank were from his wife Sushma Seth.

52. The situation which thus emerges is that, three accounts, referred to above, were not disclosed by the Insolvent till the conclusion of his public examination and filing the Memorandum. The account maintained with ICICI Bank was opened on 1 January 1999, after filing of the Insolvency Petition, but before the Insolvent was so adjudged by an order dated 5 November 2003. Whereas, the account was opened with HDFC Bank on 2 February 2019, much before the conclusion of the Insolvent's public examination.

53. At this juncture, the directions issued to the Insolvent in the Insolvency Petition and the statements made by the Insolvent on oath, deserve to be noted. Mr. Deshmukh urged with a degree of vehemence that there was no specific direction to the Insolvent to do or refrain from doing any particular act. Thus, there was no disobedience, much less, willful disobedience as contemplated under Section 2(b) of the Contempt of Court Act.

54. The record in the insolvency proceedings shows to the contrary. On 15 January 2004, the Insolvent was called upon to lodge with the Official Assignee his Schedule of assets and liabilities, passport, cheque book, slip book in respect of all the bank accounts and not to operate any bank account, locker and credit card. The Insolvent was also directed not to deal with, dispose of, alienate, transfer or part with any of the properties or part thereof, or induct third parties thereunder. The said memo was received by the Insolvent on 19 January 2004. In the statement on oath before the Official Assignee, on 7 February 2005, the Insolvent made categorical assertion that he did not have any saving bank account, except the account maintained with BOI, Stock Exchange Branch, attached by the Custodian in view of the Notification under Section 3(3) of the TORT Act, 1992.

55. Indubitably, in the Schedule of assets and liabilities, the aforesaid accounts maintained with ICICI Bank and HDFC Bank, which were opened much prior to the said directions in the Memo dated 15 January 2004 and disclosure on oath dated 7 February 2005, were not disclosed. There is no explanation for the non-disclosure of the aforesaid accounts.

56. The aforesaid facts belie the submissions on behalf of the Insolvent that there was no express direction to do or refrain from doing a particular act. In any event, the provisions contained in Sections 24 and 33 of the Insolvency Act, adverted to above, cast a positive obligation on the Insolvent to make true and faithful disclosure of his assets, including the accounts. It would be rather difficult to accede to the submission of Mr. Deshmukh that the Insolvent had not committed breach of any of the duties under Section 33 of the Insolvency Act, by concealing the abovenumbered accounts from the Official Assignee. Despite directions in the Memo dated 15 January 2004, the Insolvent committed breach of duty contained in sub-Section 2(a) and (e) of Section 33 of the Act, 1909. By concealment the Insolvent impeded the realization of his property and the distribution of the proceeds amongst his creditors and thereby committed breach of the duty cast under Section 33(3) of the Insolvency Act.

57. Indisputably, the Insolvent was examined upon oath in the public examination. Even if some latitude is given to the Insolvent for non-disclosure of the above-referred accounts immediately after he was adjudged Insolvent, there was hardly any justification for the Insolvent not to disclose the above-referred accounts till the conclusion of his public examination in the month of August 2022, as claimed by the Insolvent. By that time, the Insolvent had opened the account with HDFC Bank and had also entered into transactions through the said account, as borne out by the statements of accounts furnished by the respective banks.

58. The Memorandum of Insolvent dated 28 September 2022, in a sense, seals the issue. It reads as under :

> "That, I Pallav Seth, the abovenamed Insolvent being examined upon solemn affirmation say that the notes of my public examination marked 'A' and appended hereto, were read over by me and are correct.
>
> And, I further say that at the time of this public examination, I have delivered upto the Official Assignee, all property, estate and effects, and all books, papers and writing relating thereto.
>
> And I further say that I have made a full disclosure of all assets and of all my debts and liabilities of whatever kind and that I have not removed, concealed, embezzled or destroyed any part of my estate, real or personal, nor any books of accounts, papers or writings relating thereto, with an intent to defraud my creditors or to conceal the state of affairs."

59. The Insolvent has categorically stated on oath that, he had not removed, concealed, embezzled or destroyed any part of his estate, nor any books of accounts, papers or writing relating thereto, with an intent to defraud his creditors or to conceal the state of affairs.

60. The aforesaid Memorandum of the Insolvent is in the teeth of the duties of the Insolvent under Section 27(6) of the Insolvency Act, 1909, to answer the questions put to him or allowed to be put to him. The Insolvent, as the record manifests, had the audacity to make brazenly incorrect statements on oath that he had made full disclosure of his assets, not concealed the accounts, nor suppressed the state of affairs, despite having entered into numerous transactions through the abovenumbered accounts.

61. What was the nature of the transactions entered through the abovenumbered accounts, assumes importance from the perspective of the wilful breach of the duties as the Insolvent ? As noted above, initially the Insolvent attempted to deflate the charge of willful breach of the statutory duties by contending that, both the accounts maintained with the ICICI Bank and HDFC Bank were opened after the conclusion of his public examination in the month of August 2022. The said assertion was shown to be plainly incorrect. Thereafter, a stand was sought to be taken that the transactions in the said account maintained with ICICI Bank with Ms. ‘L’ were entered into only after September 2022, and there were no transactions prior thereto. An explanation was sought to be offered that most of the amounts in the accounts maintained with ICICI Bank and HDFC Bank were credited by the wife of the Insolvent.

62. The statements of accounts demolished the explanations and bear out the nonchalance with which deliberate incorrect statements were made before the Court on oath. In the account maintained with HDFC Bank from 2 February 2019 to 27 September 2022, the day before the Insolvent submitted the Memorandum on oath, there were hundreds of transactions in the said account with multiple parties. The said account was operated with an element of continuity and repetition. On 27 September 2022, for instance, a sum of Rs.5 Lakhs was credited to the said account and the balance was Rs.8,46,595/-. After 27 September 2022 as well, there were hundreds of transactions. The statement summary for the period 2 February 2019 to 27 September 2024 indicates that there were 192 credit counts and 639 debit counts. A sum of Rs.4,67,23,692 was credited and the sum of Rs.4,67,16,627/- was debited from the said account.

63. The statement of account maintained with ICICI Bank also discloses that there were numerous transactions. For instance, on 28 September 2022, the day Insolvent filed his Memorandum on oath, there were multiple transactions and the sum of Rs.30,84,956/- was standing to the credit of the said account of the Insolvent maintained with ICICI Bank.

64. Secondly, there were transactions with parties other than Ms. ‘L’, from whom the Insolvent claimed to have received the amount for facilitating Ms. L to get justice in the proceedings between her and Mr. B. It appears that, there was a total credit of a sum of Rs.10,50,18,480/- in the account maintained by the Insolvent with ICICI Bank. The transactions in the said account had also an element of regularity. Various sums were credited in the said account by cash, much prior to the alleged credit of the amount by Ms. L.

65. The purpose for which the amounts were allegedly credited by Ms. L also appears make-believe. In the affidavit in reply filed on 9 January 2025, the Insolvent affirmed that since the date of his declaration as Insolvent, he had not carried out any trade or business. He has provided guidance and consultancy to Ms. L, purportedly in the proceedings between her and Mr. B. Two letters addressed by Ms. L were sought to be pressed into service. In the first letter dated 10 September 2022, Ms. 'L' proposed to pay the Insolvent gross consulting fees from time to time purportedly in lieu of advise and consultancy provided by the Insolvent. In a further letter dated 25 February 2023, expressing her gratitude for the guidance and support provided by the Insolvent, Ms. 'L' claimed that whatever was done by the Insolvent had been with her consent.

66. The statement of account does not sustain the defence of the Insolvent that the huge sum of Rs.6.5 Crores was credited to the Insolvent for the purpose of providing consultancy and guidance in legal matters. Neither the Insolvent claimed to be a legal professional, nor the statement of account indicates that the said amount was expended by the Insolvent to bear the legal expenses on behalf of Ms. 'L'.

67. The submission of Mr. Sancheti, learned Senior Advocate for the Petitioning Creditor, that numerous transactions in huge amounts in the accounts maintained with ICICI Bank, HDFC Bank and Model Co-op. Bank Ltd., manifest an undisclosed source of income, therefore, carries substance.

68. The situation which thus obtains is that, on the day the Insolvent submitted his Memorandum on oath, there were transactions in the accounts maintained by the Insolvent and substantial amounts were standing to the credit of those undisclosed accounts. Yet, the Insolvent made statement on oath that he had made true and full disclosure and nothing was concealed.

69. What exacerbates the situation is the persistent course of false statements on oath, even when the Insolvent was issued notice as to why action should not be taken against the Insolvent for the wilful breach of the duty and the contempt of the Court. Affidavits were filed making deliberate false statements as to the date of the opening of the accounts with a view to take advantage of the conclusion of his public examination on a particular day. The deliberateness is underscored by the fact that the statements of aforesaid accounts were sought to be filed from 1 September 2022 onwards only, selectively.

70. When it was demonstrated that the said contention was incorrect, a somersault was taken and it was urged that, since ICICI

Bank account was opened in the year 1999, there was no need to obtain the permission of the court. The stand of the Insolvent reflects the contemptuous disregard to the Court and the esteem which the Insolvent has about the judicial process. Therefore, the submissions sought to be canvassed by Mr. Deshmukh that there was no willful disobedience of the directions, on the part of the Insolvent or failure to perform his duties under Section 33 of the Insolvency Act, 1909, does not merit acceptance.

71. At this juncture the import of the provisions contained in Section 33(4) of the Insolvency Act, 1909 is required to be appreciated. If the Insolvent wilfully fails to perform the duties imposed upon him by that Section, or to deliver up possession to Official Assignee of any part of his property, Sub-Section (4) of the Insolvency Act, 1909, declares that such Insolvent shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

72. First, there must be “wilful” failure. Mere failure to perform the duties or deliver up any part of Insolvent’s property, without accompanying mental state may not constitute willful failure. The term “wilful” has, a definite juridical connotations. It implies a conscious and deliberate act in contradistinction to an unintentional, inadvertent or careless act. The term wilful is impregnated with the mental element which accompanies the act or omission.

73. In the context of the definition of contempt of Court under Section 2(b) of the Contempt of Courts Act, 1971, the Supreme Court in the case of **M/s Ashok Paper Kamgar Union and Ors Vs Dharam Godha and Ors**[9] postulated that, 'willful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

74. In the case of **Ram Kishan Vs Tarun Bajaj and Ors,**[10] the Supreme Court elucidated the import of the word wilful as under:

> "12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct

9 AIR 2004 SC 105.

10 (2014) 16 SCC 204.

> of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct". (Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman; (1985) 1 SCC 591, Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao & Anr., (1989) 4 SCC 255, Niaz Mohammad & Ors. v. State of Haryana & Ors., (1994) 6 SCC 332, Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282, Ashok Paper Kamgar Union & Ors. v. Dharam Godha & Ors., (2003) 11 SCC 1, State of Orissa & Ors. v. Mohd. Illiyas, (2006) 1 SCC 272, and Uniworth Textiles Ltd. v. CCE, Raipur, (2013) 9 SCC 753)." (emphasis supplied)

75. The second aspect which is of critical significance is the use of the words, "shall" and "may" in the same sub-section. If a case of willful failure on the part of the Insolvent is made out, then the Insolvent "shall" be guilty of contempt of court. However, the Legislature has conferred discretion on the Court by using the expression, "and may be punished accordingly". The use of the word "shall" ordinarily brings an element of imperativeness. Generally the word "shall" postulates a mandatory requirement. The use of the word "shall" ordinarily justifies an inference that the provision is imperative. However, in a given case, the presumption of imperativeness may be dispelled warranting the construction of the provision as directory. Conversely, the word, "may" signifies discretionary and directory character of the provision.

76. It is also fairly well-settled that where the legislature uses the words, "may" and "shall" in two different parts of the same provision, it implies that the legislature intended to give a mandatory character to one and directory to another. However, even such use of the two words in the same provision may not be decisive of the true intention of the legislature which is required to be ascertained after examining the statute as a whole, section by section and word by word.

77. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Ganesh Prasad Sah Kesari and Anr Vs Lakshmi Narayan Gupta,**[11] wherein the Supreme Court enunciated the legal position as under:

> "9. … … …
>
> Obviously where the legislature uses two words 'may' and 'shall' in two different parts of the same provision prima facie it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of the court still to ascertain the real intention of the Legislature by care fully examining the scope of the statute to find out whether the provision is directory or mandatory remains unimpaired even where both the words are used in the same provision. In Govindlal Chagganlal Patel v. Agricultural Produce Market Committee Godhra (1976) 1 SCR 451 :(AIR 1976 SC 263) Chandrachud, C.J., _ speaking for the Court approved the

11 AIR 1985 SC 964.

following passage in Crawford on 'Statutory Construction' (Ed. 1940 Art. 261, p. 516):

> "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design and the consequences which would follow from construing it the one way or the other."

78. If the consequence of wilful failure to perform the duties and the suppression of the property of the Insolvent, thereby impeding the recovery of the property of the Insolvent for its distribution amongst the creditors of the Insolvent are considered then the intent of the Legislature in using the word "shall" becomes clear. Conscious of the efforts that could be made to evade the duties under Section 33 with a view to conceal the property from being administered in insolvency, the legislature considered it appropriate to secure compliance of the duties at the pain of contempt of the Court in addition to any other punishment, which the wilful failure may entail.

79. Thus, the submission on behalf of the Insolvent that, since there was no wilful disobedience of the order passed by this Court, there can be no contempt of court even under sub-section (4) of Section 33 of the Insolvency Act, 1909, cannot be accepted. Therefore, reliance on the judgments in the cases of **Jhareswar Prasad Paul and Anr (Supra)**

and **Sudhir Vasudeva (Supra)** does not advance the cause of the submission on behalf of the Insolvent.

80. In the light of the facts which have been elaborately recorded, on purpose, an inference appears inescapable that the suppression of the accounts and multitude of transactions in those accounts was with a deliberate design. As noted above, not only on the 15th January 2004, the day the Insolvent made a statement on oath that there was no account than the one attached by the Custodian, there was an account maintained with ICICI Bank, Nariman Point Branch, but even on the day, the Insolvent filed his memorandum on oath that he had not suppressed any account or property and had made true and full disclosure of his assets and affairs, there were transactions running into lakhs of rupees in the suppressed accounts. I am, therefore, impelled to hold that the failure to perform the duties under Section 33 and deliver up the property, in the nature of the amounts standing to the credit of the accounts of the Insolvent, was but wilful.

81. At this juncture it is necessary to note that under the provisions of Section 11A of the TORT Act, 1992, the Special Court shall have and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of Contempt of Courts Act, 1971, shall have effect subject to the necessary modifications.

82. In the case of Insolvent himself; **Pallav Sheth (Supra),** the Supreme Court after adverting to the provisions contained in Section

11A observed that the implication of Section 11A was that just as the High Court, being a Court of record, has the power under Article 215 of the Constitution of India to punish for contempt of itself, similarly, the Special Court consisting of a Judge of the High Court can also exercise that power available under Article 215 of the Constitution of India.

83. The decision in the case of **Pallav Sheth (Supra)** has a significant bearing on the determination of this matter in many ways. First, the resemblance of facts and contumacious conduct. Second, the element of the knowledge and consequences that entail a contumacious conduct. Third, the aspect of limitation in the matter of initiation of action for contempt; which is one of the primary ground of objection of the Insolvent to the instant action. Fourth, on the aspect of the quantum of the punishment; should the Court decide to punish the Insolvent for contempt.

84. First, the facts have a striking resemblance. In the said case, the allegations of contempt were premised on the fact that, in the Execution Application No. 343 of 1994 filed, to execute a Consent Decree passed against the Insolvent, the Special Court had directed the Insolvent to disclose all his assets and also restrained the Insolvent from alienating, encumbering, selling or parting with possession or transferring his assets, including bank accounts. On the strength of an Affidavit filed by the Insolvent, the Special Court passed an interim order of attachment of the assets mentioned therein.

85. It latter transpired in the raids conducted by the Income Tax Department that, the Insolvent was, in fact, the owner of the five companies and the Insolvent admitted in the statements before the Income Tax Department that several cash deposits amounting to Rs. 2.81 Crores made in the bank accounts of those five companies were Insolvent's undisclosed income.

86. The Custodian filed Miscellaneous Application before the Special Court with a prayer that Insolvent be punished for committing contempt of the Special Court's order dated 24th August 1994, as despite the said order, the Insolvent had set up benami companies and had transferred and/or alienated his property including cash *inter alia* with a view to defeat the decree passed against him. Eventually, the Special Court by an order dated 31st January 2001 held the Insolvent guilty of contempt of Court and sentenced him to suffer one month simple imprisonment, and also imposed a fine of Rs.2000/-.

87. The *modus operandi* in the case at hand is not materially different. After having adjudged Insolvent, he was specifically directed to furnish full disclosures of his assets and liabilities, in accordance with the provisions of the Insolvency Act, 1909; the Insolvent furnished the schedule of assets and liabilities; the Insolvent made the statement on oath that he had no other account, than the one attached by the Custodian; during the private and public examinations, the subject accounts were suppressed and hundreds of transactions were entered into through the subject accounts and, eventually, the suppression of accounts, concealment of assets and diversion of funds, came to light only upon the intimation by the third party.

88. It could hardly be disputed that, the Insolvent's Appeal came to be dismissed by the Supreme Court and the Insolvent suffered the sentence imposed by the Special Court on account of the contempt. The Insolvent had a taste of the consequences of contumacious conduct.

89. On the aspect of limitation, the thrust of the submission of Mr. Deshmukh was that, as the action was initiated after one year of the alleged contempt, the action was barred by the provisions contained in Section 20 of the Contempt of Courts Act, 1971, which incorporates an interdict against initiation of any proceeding for contempt, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

90. In the case at hand, since the offending transactions were effected between 12th September 2022 to 13th March 2023, the filing of the Report on 11th November 2024 seeking to initiate contempt action, according to Mr. Deshmukh, was clearly barred by limitation. To lend support to this submission, a decision of the Supreme Court in the case of **S Tirupathi Rao (Supra)** was pressed into service by Mr. Deshmukh.

91. Suffice to note, that was the precise argument advanced by the Insolvent in **Pallav Sheth Vs Custodian (supra).** Since benami companies were set up and the funds were transferred much prior to one year of filing of the application for contempt, it was contended on behalf of the Insolvent in that case that, the action for contempt was barred by Section 20 of the Contempt of Courts Act, 1971.

92. A three-Judge Bench of the Supreme Court, after an analysis of the provisions and precedents, repelled the submission on behalf of the Insolvent. The observations in paras 46 to 48 constitute a complete answer to the submission now sought to be canvassed by Mr. Deshmukh. They read as under :

> "46. The record discloses that the Custodian received information of the Appellant having committed contempt by taking over benami concerns transferring funds to these concerns and operating their accounts clandestinely only from a letter dated 5th May, 1998 from the Income Tax Authorities. It is soon thereafter that on 18th June, 1998 a petition was filed for initiating action in contempt and notice of issue by Special Court on 9th April, 1999. <u>Section 29(2) of the Limitation Act, 1963 provides where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply insofar as, and to the extent to which, they are not expressly excluded by such special or local law. This Court in the case of Kartick Chandra Das and Ors. (supra) has held that by virtue of Section 29(2) read with</u>

Section 3 of the Limitation Act, limitation stands prescribed as a special law under Section 19 of the Contempt of Courts Act, 1971 and in consequence thereof the provisions of Sections 4 to 24 of the Limitation Act stand attracted.

47. Section 17 of the Limitation Act, inter alia, provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent (Section 17(1)(b)) or where any document necessary to establish the right of the Plaintiff or Applicant has been fraudulently concealed from him (Section 17(1)(d)), the period of limitation shall not begin to run until the Plaintiff or Applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the Plaintiff or the Applicant first had the means of producing the concealed document or compelling its production. These provisions embody fundamental principles of justice and equity, viz, that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud.

48. The provisions of Section 17 of the Limitation Act are applicable in the present case. The fraud perpetuated by the Appellant was unearthed only on the Custodian receiving information from the Income Tax Department, vide their letter of 5th May, 1998. On becoming aware of the fraud application for

initiating contempt proceedings was filed on 18th June, 1998, well within the period of limitation prescribed by Section 20. It is on this application that the Special Court by it's order of 9th April, 1999 directed the application to be treated as a show cause notice to the Appellant to punish him for contempt. In view of the abovestated facts and in the light of the discussion regarding the correct interpretation of Section 20 of the Contempt of Courts Act it follows that the action taken by the Special Court to punish the Appellant for contempt was valid. The Special Court has only faulted in being unduly lenient in awarding the sentence. We do not think it is necessary, under the circumstances to examine the finding of the Special Court that this was a continuing wrong or contempt and, therefore, action for contempt was not barred by Section 20."

(emphasis supplied)

93. Reliance by Mr. Deshmukh on the two-Judge Bench decision of the Supreme Court in the case of **S. Tirupati Rao (supra)**, is of no assistance to the case of the Insolvent, as in that case, the Supreme Court considered the question whether the alleged contemptuous action constituted a continuing wrong. The Supreme Court, in the facts of the said case, held that the nature of the offence committed by the Appellant therein, was not in the nature of "continuing wrong/breach/offence" and, therefore, the Contempt Petition was barred by law of limitation.

94. In the considered view of this Court, the three-Judge Bench judgment of the Supreme Court in the case of **Pallav Sheth (supra)**, governs the facts of the case at hand. The Official Assignee and the Petitioning Creditor came to know about the contemptuous acts only upon being apprised by the third party. Thus, the provisions contained in Section 17 of the Limitation Act, are squarely attracted. The Official Assignee filed a report for initiation of action against the Insolvent within one year of being apprised of the offending acts.

95. Having made positive statements on oath that the Insolvent had no other assets and accounts and made the Official Assignee to conclude the public examination on the strength of those statements on oath, the Insolvent cannot be now permitted to turn around and urge that since the offending transactions took place one year prior to the filing of the report by the Official Assignee, the action is barred by law of limitation. Taking such a view would give a long leash to a litigant who flouts the pristine stream of justice with impunity by resorting to all sorts of devious designs to conceal the assets from being realized by the Official Assignee and distributed amongst the creditors.

96. In the aforesaid view of the matter, I am not inclined to accede to the submission of Mr. Deshmukh that the action for contempt is barred by the provisions contained in Section 20 of the Contempt of Courts Act, 1971.

97. This takes me to the submission on behalf of the Insolvent that since the Insolvent has tendered an unconditional apology, the action for contempt deserves to be dropped. As noted above, in the affidavit in reply filed by the Insolvent, the Insolvent has initially tendered an unconditional apology, and, thereafter, went on to justify the offending acts, albeit by way of clarification. The offending acts were stated to have occurred in a bonafide manner. Those acts were not intentional, much less purposeful.

98. On first principles, the fact that the Insolvent has made an endeavour to clarify the position, in addition to tendering an unconditional apology, may not detract materially from the Insolvent's intent to tender apology, provided the Court finds that the apology is an expression of genuine remorse and contrition. In that case, the stand of the Insolvent may imply that, in the event the Court does not accept the apology, the Insolvent intended to clarify his position.

99. It is well recognized that, if the Court finds that the apology is genuine, taking a considerate and generous view of the matter, the proceeding may be given a quietus. If, however, the apology tendered does not seem to be a genuine remorse, the court may be justified in discarding the apology and proceeding against the alleged contemners. The stage at which the apology is tendered also assumes significance. An apology at the earliest stage in the proceeding indicates a genuine desire to apologize for the contumacious conduct.

100. The legislative intent manifest in the provisions contained in Sections 12 and 13 of the Contempt of Courts Act, 1971 delineates the approach to be adopted where the Court finds a person guilty of the contempt of Court. Section 12 of the Act, provides that a contempt of the court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may be extended to Rs.2,000/- or with both. Sub-section (1) of Section 12, however, begins with expression, “save as otherwise expressly provided in this Act or in any other law.” That legislative prescription which is saved by the said expression is to be found immediately in the proviso to sub-section (1). The proviso envisages that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. The explanation to sub-section (1) of Section 12 makes the legislative intent further clear. It states that an apology shall not be rejected merely on the ground that it is qualified or unconditional if the accused makes it bonafide. Thus, an unreserved, unqualified and unconditional apology is not a *sine qua non*. It is the intent with which the apology is made that matters. If the apology is bonafide, the fact that it is accompanied with an explanation does not merit its rejection.

101. Another qualifying factor envisaged by the saving expression, with which sub section (1) of section 12 begins is to be found in section 13(a) of the Act, 1971. It begins with a non obstante clause. It mandates that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under the said Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice. Before imposing a sentence for contempt, the Court is thus enjoined to record a finding that the contumacious act was of such nature that it substantially interfered or had the tendency substantially to interfere with due course of justice. The power to punish for contempt is, therefore, to be exercised sparingly to uphold the majesty of law and ensure that the stream of justice remains unpolluted.

102. In the case of **Suresh Chandra Poddar vs. Dhani Ram and Others**[12] where the Central Administrative Tribunal had refused to accept the apology and discharge the contemners, the Supreme Court observed as under : -

> 9] Section 12 of the Contempt of Courts Act, 1971 has indicated a caution that while dealing with the powers of contempt, the court should be generous in discharging the contemner if he tenders an apology to the satisfaction of the Court. In the present case the apology tendered was found to be not genuine by the Tribunal. We are dismayed, if not distressed, that despite delineating on all the steps adopted by the appellant for challenging the order of the Tribunal before the High Court and despite the fact that the appellant had implemented the order even though there was no time schedule to do so, the Tribunal has chosen to depict the apology tendered by the appellant as one without contrition.
>
> 10] Section 13 of the Contempt of Courts Act says that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence.

12 (2002) 1 SCC 766

> "unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice"
>
> 12] We have chosen to say so much in this case to give a message to the Tribunal that contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases. It is appropriate to bear in mind the adage "It is good to have the power of giant, but not good to use it always."

103. The Supreme Court has also cautioned against letting off the contemners who have committed flagrant contempt and, thereafter, offered ingenuine apology. In the case of **M.Y.Shareef and Anr. V/s. Hon'ble Judges of the High Court of Nagpur and Ors.**[13], the Constitution Bench of the Supreme Court enunciated that the proposition is well settled and self-evident that, there cannot be the both justification and an apology. The two things are incompatible. Again the apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness.

104. In the case of **Bal Kishan Giri V/s. State of Uttar Pradesh**[14], the Supreme Court again emphasised that the Court is not bound to accept the apology. The observations in para No.19 read as under :

> "19. This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the

13 (1954) 2 SCC 444

14 (2014) 7 SCC 280

punishment recording reasons for the same. The use of insulting language does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. (Vide: Baradakanta Mishra v/s. Registrar of Orissa High Court[15]; Bar Council of Maharashtra V/s. M.V.Dabholkar[16]; Asharam M. Jain V/s. A.T.Gupta[17]; Mohd. Zahir Khan V/s. Vijai Singh[18]; Ministry of Information and Broadcasting, In re[19]; Patel Rajnikant Dhulabai V/s. Patel Chandrakant Dhulabhai[20]; and Vishram Singh Raghubhanshi V/s. State of U.P.[21]."

105. In the case of **Priya Gupta and Anr. V/s. Additional Secretary, Ministry of Health and Family Welfare and Ors.[22],** the Supreme Court observed as under :

"7. Tendering an apology is not a satisfactory way of resolving contempt proceedings. An apology tendered at the very initial stage of the proceedings being bona fide and preferably unconditional would normally persuade the Court to accept such apology, if this would not leave a serious scar on the dignity / authority of the Court and interfere with the administration of justice under the orders of the Court.

8. "Bona fide" is an expression which has to be examined in the context of a given case. It cannot be

15 (1974) 1 SCC 374
16 (1976) 2 SCC 291
17 (1983) 4 SCC 125
18 1992 Supp (2) SCC 72
19 (1995) 3 SCC 619
20 (2008) 14 SCC 561
21 (2011) 7 SCC 776
22

> understood in the abstract. The attendant circumstances, behaviour of the contemnor and the remorse or regret on his part are some of the relevant considerations which would weight with the Court in deciding such an issue. Where, persistently, a person has attempted to overreach the process of Court and has persisted with the illegal act done in wilful violation to the orders of the Court, it will be difficult for the Court to accept unconditional apology even if it is made at the threshold of the proceedings….." (emphasis supplied)

106. The pivotal question that comes to the fore is whether the apology tendered by the Insolvent is an outcome of the genuine remorse or regret. Whether the offending acts were the bonafide ? What were the attendant circumstances ? Whether the Insolvent had the knowledge and understanding of the quality of offending acts and the consequences that entail ? Whether the clarification sought to be offered by the Insolvent was a frank and true disclosure of the circumstances in which the offending acts were committed ? or whether the apology is a subterfuge to wriggle out of the situation ?, are the questions, answers to which would show the character of the apology tendered by the Insolvent.

107. At this juncture, the nature of the affidavits filed by the Insolvent significantly bears upon the claim of the Insolvent that the offending transactions were bonafide. Instead of making a clean breast of the transaction, the Insolvent made an attempt to modulate the defence, disguised as clarification, by making deliberate false statements that the accounts were opened after the conclusion of the public examination and transfer of monies to and from those accounts, also took place after the conclusion of his public examination.

108. As noted above, the Insolvent in order to justify the said stand, annexed copies of the statement of accounts for the period post conclusion of the public examination. This underscores the deliberateness on the part of the Insolvent. A disingenuous effort was made to scuttle the instant action by making deliberate false statements and relying upon the documents, which were false to the knowledge of the Insolvent. Both the contentions of the Insolvent that the accounts were opened after the conclusion of his public examination and there were no transactions in those accounts prior to the conclusion of the public examination, appeared to be patently false.

109. In the second affidavit in reply also, the Insolvent again made an endeavour to sidestep the issue by contending that most of the credits in the accounts of the Insolvent were by his wife and family members. That statement also proved to be incorrect. The further contention that a huge sum of more than Rs.6 Crores received from Ms. "L" was towards the consultancy services rendered by the Insolvent in regard to the legal proceedings between Ms. 'L'. and her husband, simply does not appeal to human credulity. To sum up, the filing of the affidavits with false contentions while the Insolvent was facing action for contempt, further aggravated the situation.

110. Mr. Sancheti was fully justified in placing reliance on the judgment in the case of **Dhananjay Sharma (supra),** wherein the Supreme Court enunciated that the swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice.

111. The fact that the Insolvent was once punished by this Court for contempt of a similar nature, further exacerbates the situation. The defence of bonafide transaction, having already suffered punishment in an action for contempt, is simply not available to the Insolvent. The past conduct leading to punishment for contempt, the persistent disregard to the duties as an Insolvent, the consistent course of filing affidavits containing false statements and the audacity to file false affidavits, even while the Insolvent is facing action for contempt, all cumulatively lead to an inference that the apology is a mere subterfuge and disingenuous device to wriggle out of the situation.

112. For the foregoing reasons I am not impelled to accept the apology tendered by the Insolvent. Thus, the Insolvent deserves to be punished for Contempt of Court. The Insolvent is, thus, found guilty of Contempt of Court under Section 33(4) of the Insolvency Act, 1909.

113. At this stage, I take a pause to hear the Insolvent on the point of punishment.

114. Heard the Insolvent, who is present in court. He submitted that he has entered into transactions bonafide. He has committed mistake in entering into transactions under the bonafide belief that everything was over. Since last 30 years, he has not carried out any trade or business. The amount in question, which was transferred to his accounts was received by way of loan from a neighbour.

115. The Insolvent further submitted that he is 70 years of age and has undergone bariatric surgery and angioplasty. Therefore, leniency be shown to him.

116. Mr. Deshmukh, learned Counsel for the Insolvent, submitted that, having regard to the age of the Insolvent and the ailments he is suffering from, as well as the apology tendered by the Insolvent for the bonafide transgression of the provisions of law, the Court may take a lenient view of the matter.

117. The Insolvency Registrar and the learned Counsel for the Petitioning Creditor prayed for condign punishment.

118. Mr. Raikar, learned Counsel for the Custodian, submitted that, the Insolvent be directed to bring back the amount of more than Rs.6 Crores, which was transacted through the account of ICICI Bank, Nariman Point Branch, so that the claim of the creditors of the Insolvent can be satisfied.

119. I have given anxious consideration to the submissions canvassed across the bar as well as the statements made by the Insolvent. The material on record, as noted above, does indicate that the Insolvent has made untrue statements on oath, on multiple occasions. It is true, the Insolvent appears to be of advanced age and his claim that he is suffering from ailments, cannot be discarded. However, the Court cannot loose sight of the fact that the Insolvent was once punished by this Court for the contempt of Court in somewhat similar circumstances. The material on record also indicates that the apology tendered by the Insolvent was not out of genuine remorse and repentance. On the contrary, the Insolvent made false statements on oath, in the affidavits filed in this proceeding. The Supreme Court in the case of **Pallav Sheth (supra),** observed that, while punishing the Insolvent for contempt of Court, this Court had taken an unduly lenient view in awarding punishment.

120. However, having regard to the age of the Insolvent and the situation in life, the court is persuaded to take a lenient view in the matter of imposition of punishment. The advanced age of the Insolvent and the fact that he is suffering from ailments, are required to be factored in, despite the observations of the Supreme Court in Pallav Sheth (supra), as the situation in life of the Insolvent has materially changed. The following sentence, in the considered view of this Court, would meet the ends of justice.

121. Hence, the following order :

ORDER

(i) Mr. Pallav Sheth – Insolvent, is held guilty for the contempt of Court under the provisions of Section 33(4) of the Insolvency Act, 1909.

(ii) The Insolvent is sentenced to suffer simple imprisonment for a period of One Month and pay a fine of Rs.2,000/-. In default of payment of fine, the Insolvent shall suffer further simple imprisonment for a period of One Week.

(iii) The public examination of the Insolvent stands reopened.

(iv) The Insolvent shall appear before the Official Assignee on the date, as may be communicated by the Official Assignee, for recommencement of his public examination.

(v) The Official Assignee is at liberty to initiate requisite steps to recover the undisclosed assets of the Insolvent.

(vi) Show Cause Notice No.2 of 2025 stands disposed.

(vii) In view of the disposal of the SCN No.2 of 2025, Notice of Motion (L) No.13070 of 2025 also stands disposed.

(viii) A copy of this judgment be given to the Insolvent – Pallav Sheth, free of costs.

[N. J. JAMADAR, J.]

122. At this stage, Mr. Deshmukh, learned Counsel for the Insolvent, seeks stay to the execution and operation of this order.

123. Since the Insolvent – contemnor, has a right of appeal, this Court considers it appropriate to stay the execution and operation of this order for a period of eight weeks.

[N. J. JAMADAR, J.]