

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

No 970 of 2012 2013 EWHC 2204 (CH)

IN BANKRUPTCY

Royal Courts of Justice

The Rolls Building

110 Fetter Lane EC4A 1ES

25 July 2013

BEFORE MISS PENELOPE REED QC SITTING AS A DEPUTY JUDGE OF THE
CHANCERY DIVISION

IN THE MATTER OF CHARNESH KAPOOR (IN BANKRUPTCY)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

MR KEVIN JOHN HELLARD

(TRUSTEE IN BANKRUPTCY OF CHARNESH KAPOOR) Applicant

and

MR. CHARNESH KAPOOR (IN BANKRUPTCY) Respondent

Mr. Joseph Curl instructed by DLA Piper for the Applicant

Mr. Christopher Boardman instructed by Davenport Lyons for the Respondent

Hearing date: 10 July 2013

Judgment (as approved by the Judge)

Miss Penelope Reed QC

Background

1. This is an application by the Trustee in Bankruptcy of Charnesh Kapoor (“the Trustee”) under section 279(3) of the Insolvency Act 1986 (“the Act”) to suspend the date of discharge of Mr. Kapoor from his bankruptcy.
2. Mr. Kapoor was made bankrupt on 9 May 2012 and therefore in accordance with section 279 of the Act his discharge was due to take place on 9 May 2013. However, the Trustee made an application dated 28 March 2012 which, for reasons not wholly explained, was issued some time after that on 12 April for an order suspending the discharge. The application was not served on Mr. Kapoor until 15 April 2012 and then not the whole of the evidence. Rule 6.215(5) of the Insolvency Rules 1986 requires the evidence of the Trustee to be served on the bankrupt at least 21 days before the date fixed for the hearing. As the hearing had been fixed for 22 April 2013 there was a breach of those rules and by consent but without prejudice to the Respondent, Mr. Kapoor’s right to advance any point on failure to comply with the rules set out in rule 6.215, it was ordered that the case be adjourned for a half day hearing. Some procedural question did arise as to whether this matter ought to come before a Registrar who would normally deal with such applications but that has been resolved by Mr. Justice Newey.
3. I have set out this procedural chronology in some detail because Mr. Kapoor takes the point that the Trustee has applied too late in this case and I will turn to that submission in due course.

The Jurisdiction

4. Sub-sections 279(3) and (4) of the Act provide as follows:-

“(3) On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until—

(a) the end of a specified period, or

(b) the fulfilment of a specified condition.

(4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.”

5. The threshold requirement for the exercise by the Court of its discretion under section 279 is that it is satisfied that the bankrupt has failed or is failing to comply with an obligation under the part of the Act referred to.
6. One of the obligations of the bankrupt is under section 333(1) of the Act which provides that:-

“The bankrupt shall—

(a) give to the trustee such information as to his affairs,

(b) attend on the trustee at such times, and

(c) do all such other things,

as the trustee may for the purposes of carrying out his functions under any of this Group of Parts reasonably require.”

It is a failure to comply with this obligation on which the Trustee in this application relies.

7. The nature of the Court's power has been discussed in a number of cases to which I have been referred. In Shierson v Rastogi [2007] BPIR 891 Morritt C stated:-

“It is clear from the terms of s.279 that postponement of discharge is linked to a failure to comply with the obligations imposed on a bankrupt by Part IX. But is the purpose of the power to postpone a

discharge to provide an incentive to full compliance? Or is it that the disabilities arising from being an undischarged bankrupt should, in the public interest, continue until there has been full compliance? I doubt whether, on the facts of this case, it is necessary to reach a final conclusion on those questions. But in my view the purpose of the power is the latter, even though its effect may be to achieve the former. Were it otherwise I would have expected Parliament to have made discharge conditional on full compliance” [para 65]

8. In Bramston v Haut [2013] 1 W.L.R. 1720, having considered that passage Kitchin LJ stated:-

“A purpose of the power conferred by section 279 is therefore to extend the period of the bankruptcy and to ensure that the bankrupt continues to suffer the disabilities arising from his undischarged bankruptcy until he complies with his obligations. I accept the submission advanced by the trustee that in this sense the power is intended to be penal in character and used for purposes connected with the functions of the official receiver and the trustee and to allow the trustee to get in, realise and distribute the bankrupt's estate in accordance with the provisions of Chapter IV .”

9. It therefore seems clear from this passage that the purpose of the section is to penalise a non-compliant bankrupt but also to aid the trustee in bankruptcy in collecting in and realising and distributing the estate of the bankrupt. This suggests that the former purpose of incentivising the bankrupt referred to by Morritt C is also relevant to the exercise of the power.
10. There is also authority to the effect that the trustee in bankruptcy must not wait until the last moment to bring the application and if he does so there is a risk that the Court will not exercise its discretion in the trustee's favour, see Arden LJ in Bagnall v Official Receiver [2004] 1 WLR 2832 at para 32 and Robert Walker J in Hardy v Focus Insurance [1997] BPIR 77 at p. 81. This point was a strong influence on the Registrar

in Chadwick v Nash [2012] BPIR 70 when he refused an order for suspension of the date of discharge.

11. In order to satisfy the threshold requirement for an order under section 279(4) the Court must be satisfied that either the bankrupt has failed or is failing to comply with his obligations. It was submitted to me by Mr. Boardman acting on behalf of Mr. Kapoor that the Court should ignore evidence which had emerged after the application had been made and certainly documents which had been produced in only the last few days. This was on the basis that the evidence in support of the application is required to set out the reasons why it appears to the trustee that the Order should be made: Rule 6.215(2) of the Insolvency Rules 1986. However he accepted that the section allows the Court to look at whether the bankrupt is failing to comply and that ought to be judged at the date of the hearing. His real concern was that the Trustee should be confined to the grounds set out in his evidence filed with the application and I agree that is the correct approach. In the end I understood Mr. Boardman to accept that the Trustee had relied on the grounds set out in his witness statement in support of the application, even though further evidence in relation to those grounds had only come to light very recently.

Has Mr. Kapoor failed or is he failing to comply with his obligations under section 333 of the Act?

12. The first question therefore is whether the Trustee in this case has shown that Mr. Kapoor has failed or is failing to comply with his obligations under section 333 of the Act to provide the Trustee with information as to his affairs, attend on him and do all other such things as the Trustee reasonably requires.
13. Mr. Kapoor has been the subject of two interviews by the Trustee and his lawyers, on both occasions accompanied by his own solicitor, Mr. Goldstone. I have seen the

transcripts of both those interviews. Points emerge from those interviews which relate to the specific grounds relied upon by the Trustee to demonstrate the failure of Mr. Kapoor to provide information. The first interview with Mr. Kapoor took place on 6 July 2012 and the second on 29 May 2013. Mr. Boardman did raise some issue with the fact that the second interview post-dated the application but it seems to me for the reasons I have referred to above that it is still relevant to the application.

14. Mr. Boardman also submitted very fairly that it is difficult to assess the atmosphere of an interview from a transcript and made the point (certainly in respect of the first interview) that it was upsetting for Mr. Kapoor to be faced with questions from Mr. Fiddy of DLA Piper who had acted for the petitioning creditor (National Westminster Bank) in his bankruptcy and whom he therefore regarded as an adversary. Mr. Boardman also criticised the very general nature of the questions asked of Mr. Kapoor. It is also clear from the transcripts that Mr. Kapoor was taking medication (although I have been told no details about that) at the time of the first interview.
15. Taking all these points into account it nevertheless seems to me as a general impression, before turning to the specific grounds relied upon, that Mr. Kapoor's answers to the questions put to him at those interviews designed to ascertain what assets he had were wholly unsatisfactory. Although the questions were general, he was being asked to provide the Trustee with information about property he owned or had owned and he claimed to know little if anything about assets which could clearly be demonstrated as having been vested in his name, at least at some point in time. For example, he claimed at the first interview to have no knowledge at all about family trusts or to know where monies supporting him came from.
16. The Trustee represented by Mr. Curl of Counsel focussed his application on the following main areas:-

1. The failure of Mr. Kapoor to disclose shareholdings

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2. His failure to disclose bank accounts
 3. His failure to provide information about litigation in India
 4. Uncertainty over income payments
 5. His failure to provide information about his ownership of certain paintings
 6. His failure to provide information about his ownership of 534 Finchley Road.

The witness statement of the Applicant deals with other matters as well but those are the grounds mainly developed at the hearing.

Shareholdings

17. Mr. Kapoor is the chairman of what has been described to me as the Kapoor group of companies although I am not sure that it is a group in the technical company law sense. The chief executive of the group is a Michael Fielding, a former partner in Lawrence Graham who was also interviewed by the Trustee.
18. The first company is now called NDT Management Limited but was formerly called KGC Management Ltd (“Management”). Mr. Kapoor was the sole director of Management until 1 January 2010 when his mother (whom I am told is 85) was appointed in his place. I have been shown evidence of payments being made to Mr. Kapoor from Management. Every annual return for the company shows Mr. Kapoor as the owner of the one issued share in Management. When confronted with the latest annual return at his first interview Mr. Kapoor simply said that the Trustee would have to ask the company.
19. When Mr. Fielding was interviewed he said that Mr. Kapoor was only a director “by accident” and that the register of Management showed Mr. Kapoor’s mother and his sister Angeli Puri as shareholders holding the share on trust for a family trust known as

the Kuldip Kapoor Discretionary Trust (“KKDT”). The share certificate showing Mrs. Kapoor and Mrs. Puri as shareholders was produced by Mr. Kapoor’s solicitors on 28 May 2013 after this application had been made but it is an odd document: with no signature, no date and without seal. It has also been scored through although a version without scoring has also been produced to the Court. There has also now been produced by Helm Trust Company Limited (“Helm”) on 3 July 2013, just a few days before the hearing, the Register of members. It is now said that Helm is the registered shareholder. The Register is odd in a number of ways and was clearly created after title to the share is said to have been transferred to Helm in November 2012 . It shows the “Kuldip Kapoor Discretionary Trust” as the holder of the share up to November 2012. The Court has not been shown the trust deed establishing the KKDT but it does not seem to be disputed by Mr. Kapoor that it is a discretionary trust and therefore does not have any legal personality separate from the trustees who are said to be Mrs. Kapoor and Mrs. Puri. It would be expected that any shares held on the trusts of the KKDT would be held in the names of the trustees in the normal way. Indeed that was what Mr. Fielding stated the Register would show.

20. Just to compound the confusion surrounding the ownership of the share in Management the Court was handed during the course of the hearing correspondence between solicitors acting for Mr. Kapoor and a firm of accountants Sochall Smith Ltd who were reporting accountants to Management. The correspondence was designed to show that they had satisfied themselves the annual returns were incorrect. However, included in documents enclosed with that correspondence was a letter dated 13 August 2009 addressed to Savriti Kapoor and Angeli Puri signed by Mr. Kapoor confirming and declaring that *“I hold and shall hold all shares in the above company formed to manage the UK properties owned by the family trust companies which are now or may hereafter be registered in my name as bare nominee and trustee for you both as trustees of KKDT and that I will transfer such shares to you on your request.”* This of course is completely at odds with the information

provided by Mr. Fielding to the trustee that Mr. Kapoor was not the legal owner of the share.

21. On an application such as this the Court cannot decide questions of ownership but what is abundantly clear is that the picture is at best wholly confused and it is difficult to shy away from the conclusion that Mr. Kapoor has deliberately tried to hide whatever the true position might be from the Trustee. In my view he has failed to provide information to the Trustee which is reasonably required by him.
22. The other matters relied upon by the Trustee related to companies known as 47 Queensgate Limited and Kapoor Investments Ltd. The Trustee's case was that Mr. Kapoor had not disclosed his shareholdings in either company. There was not a great deal said about 47 Queensgate Ltd. in argument but as far as Kapoor Investments Ltd is concerned, I was shown an annual return dated 13 September 2012 showing Mr. Kapoor as owner of 50 of the 100 issued shares. Mr. Kapoor accepts that he did not disclose this shareholding but has stated through his solicitors that the company is dormant. In fact the company is registered as the proprietor of both the freehold and leasehold interests in two properties in Belsize Park and was the subject of an application to restore it to the register. Again, it is impossible not to come to the conclusion that Mr. Kapoor failed to provide information about his shareholding in what looks like a valuable as opposed to a dormant company.

Bank Accounts

23. The Trustee relies on the failure of Mr. Kapoor to disclose bank accounts in his name. These involved 11 Barclays Wealth accounts in Jersey and the Isle of Man, an account with HSBC in the UK and accounts in India with Standard Chartered (although this appears to have been included in the questionnaire and was not pursued) and HDFC. Mr. Kapoor states in relation to the Barclays and HSBC accounts that these were

linked to other accounts in his name which he did disclose in his questionnaire and he did not know how many accounts had been opened for him. I find that somewhat hard to accept as an explanation in respect of the Barclays accounts where the undisclosed accounts were offshore, but I do fully accept that Mr. Kapoor did provide to the Trustee letters of authority so that he could access all these accounts.

24. Mr. Kapoor accepts he did not disclose the account in HDFC but says it is of no importance. The Trustee disagrees with that and relies on the fact that in February 2008 monies from that account of £1,300,471 odd were transferred to Mr. Kapoor's account at HSBC. From that account there was a transfer of £900,000 to another HSBC account in Mr. Kapoor's name. Mr. Kapoor has told the Trustee that in fact the £900,000 was paid into his account by the trustees of KKDT to cover interest payments being made by him on a loan from the Co-operative bank for the benefit of KKDT. Mr. Kapoor has said that a payment of £50,000 in January 2011 to his mother was repayment of the remaining part of the £900,000. It is clear that his case on this does not appear to stand up on the documents now produced and so his failure to disclose the HDFC account was not unimportant.

Indian Litigation

25. At first sight the Trustee's case in respect of this looks as if it is a complaint that Mr. Kapoor did not disclose to him litigation in India in which he was involved. In fact it is clear and I think was accepted by the Trustee that he did provide a detailed account of that litigation in the letter which accompanied his questionnaire and the documents relating to his IVA proposals which were also included in his questionnaire.
26. The real complaint appears to be the Trustee does not really have an idea of the nature of the proceedings and their likely merits. While Mr. Kapoor is a plaintiff in those proceedings, he has described his role as nominal which does not tie in well with what

the Trustee does know about the proceedings which is that they concern borrowings by Mr. Kapoor from a company known as Crosswood Limited to make an investment in a proposed development at Ludhiana. He has spent a number of months of his bankruptcy in India and he has informed the Trustee that part of that was concerned with the litigation although in his second interview with the Trustee he said he was in fact too unwell to pursue the matter.

27. Mr. Kapoor has agreed that he will use his best endeavours to obtain the pleadings (although he seems to believe he may not be able to do so rather oddly) and has provided the names of the Indian lawyers involved. However, the position remains wholly obscure and it is hard to see why Mr. Kapoor cannot simply provide the Trustee with documents relating to the litigation in India which might enable the Trustee to have a better idea of the prospects of recovery from that litigation for the benefit of Mr. Kapoor's creditors.

Income payments

28. The Trustee has concerns about how Mr. Kapoor is funding his living expenses. He lives rent free in a flat in South Kensington, and drives luxury cars. There is as set out above some evidence of payments to him by Management. There is little doubt that during both interviews Mr. Kapoor was very vague about how he derived money. In the first interview for example, he claimed not to be a beneficiary of two family trusts (KKDT and another called the New Delhi Trust) but seemed to suggest he received payments from them or members of the family whom he described as amounting to 200 people. He suggested during the first interview that he did some consultancy work for members of the family but the implication was that this was not regular work.
29. Mr. Boardman is right in his submissions that the Court cannot simply look at Mr. Kapoor's lifestyle and draw conclusions and I accept that on its own this would not

justify a finding that Mr. Kapoor had failed or was failing to comply with his section 333 obligations. As was made clear in Chadwick v Nash the Court has to act on evidence and not suspicion.

Paintings

30. This was not a major plank of Mr. Curl's case on behalf of the Trustee but Mr. Kapoor had said that certain paintings had been purchased by him for the KKDT whereas in fact there are e-mails that suggest that they paintings were bought by him personally. It is impossible to decide the point on the basis of the e-mails which are ambiguous although they appear to lend more support to a case that the paintings were purchased by Mr. Kapoor and owned by him beneficially.
31. I do not place any great reliance on this aspect of matters in the sense that if Mr. Kapoor is right in his assertion the paintings were bought for KKDT then his failure to disclose them is more excusable. I note that Mr. Fielding suggested during his interview that Mr. Kapoor ought to have disclosed them as belonging to him but certainly of itself this would not justify a conclusion that he had failed or was failing to comply with his section 333 obligations.

534 Finchley Road

32. This property was Mr. Kapoor's formal matrimonial home. At his first interview Mr. Kapoor was asked whether he owned any of the properties in which he had lived and he said no. In fact he was the registered proprietor of this property from 2003 to 2007. During that first interview he also said at one point that it was family property.
33. The matter does not appear to go any further than the allegation that Mr. Kapoor did not inform the Trustee as he ought to have done that the property had been registered in his name. In my view this is not the most compelling point raised by the Trustee but

it does give a flavour of Mr. Kapoor's failure to provide accurate answers to the questions asked of him.

Conclusions

34. I am satisfied that Mr. Kapoor has failed and indeed continues to fail to provide the Trustee with information reasonably required by him to collect in assets for the benefit of the creditors. Therefore the threshold requirement has in my judgment been met. I particularly rely on the misleading information which has been provided to the Trustee in respect of Management and Kapoor Investments Ltd, the failure to disclose the existence of some of the bank accounts and the continued failure to provide the Trustee with the pleadings in the Indian Litigation.
35. The question is then whether the Court should exercise its discretion to suspend the period of discharge for a period of 12 months from the date when it should have taken effect. Suspending discharge is a very serious matter for the bankrupt and as Kitchin LJ said in Bramston v Haut it is penal in nature as well as providing an incentive to the bankrupt to comply with his obligations.
36. Mr. Boardman makes the point that a bankrupt continues to be under obligations to provide information to his trustee even when discharged although there are no criminal sanctions for failure to comply once discharged. He also sought in a persuasive argument to minimize Mr. Kapoor's failure to comply with his obligations but in my judgment those failures have been serious and have misled the Trustee in material respects.
37. Mr. Boardman also relies heavily on the delay in making this application and characterizes the Trustee's investigations as being "stop/start". That does not seem to me to be a justifiable criticism and the Trustee appears to have been fairly constantly involved in investigating Mr. Kapoor's affairs. I am told that in order to obtain a half

day listing before the Registrar before Mr. Kapoor's date of discharge would have required an application in January. Mr. Kapoor was in India from September 2012 and did not return until April notwithstanding that his solicitors indicated on a number of occasions that he was due to return earlier. The Trustee wished to interview him again and although Mr. Kapoor offered to make himself available by video link, I can see that dealing with documents would have been difficult and it would be a far less satisfactory process.

38. It is unfortunate that there was delay in the application being sealed and the consequent adjournment of the hearing on the basis that Mr. Kapoor had not had time to deal with the evidence in accordance with rule 6.215 is regrettable. However, I do not think that the delay such as there has been in this case militates against the Court exercising its powers under section 279(3). Mr. Boardman relied on Chadwick v Nash but in that case the trustee in bankruptcy had done little to investigate the bankrupt's affairs during the course of the bankruptcy and the Registrar's decision was undoubtedly coloured by the fact that the trustee in bankruptcy in that case was using the threat of applying to suspend discharge to obtain agreement to an income payments order from the bankrupt.

39. Mr. Kapoor's failure to comply with his obligations has resulted in at best a confusing and at worst a misleading picture being presented to the Trustee and in those circumstances he should be subjected to the penalty of his discharge being suspended. I have noted that Mr. Kapoor has been more actively engaged in assisting the Trustee since this application was launched and I therefore consider that the suspension of discharge might also provide an incentive to Mr. Kapoor to comply with his obligations under s. 333.

40. I will therefore grant the application of the Trustee and suspend discharge until 9 May 2014.