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When Startup Equity Meets Alimony: Unvested ESOPs & Cap-Table Protection

Forensic Asset Disclosures Under Rajnesh v. Neha, Contingent Stock Option Valuations, and Clean-Break Separation Decrees

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Executive Summary & Takeaway: Executive Strategy: During personal and matrimonial disputes involving tech founders, C-suite executives, and VC partners, illiquid equity holdings and unvested ESOPs frequently become weapons of tactical litigation. Opposing counsel often treat high theoretical paper valuations as liquid cash, seeking third-party subpoenas against cap-table investors. Under the Supreme Court's Rajnesh v. Neha guidelines, spousal maintenance must reflect actual real-world net cash liquidity. By presenting forensic audits of liquidation preference waterfalls, exercise costs, and tax liabilities, founders can insulate corporate continuity and achieve fair, structured clean-break settlements.

1. The Paper Wealth vs. Real Liquidity Fallacy

In matrimonial proceedings under Section 125 CrPC or Section 24 HMA, a common aggressive maneuver is submitting startup press clippings celebrating a $50M post-money valuation. Under *Rajnesh v. Neha (2020)*, the Supreme Court mandated comprehensive Affidavits of Assets and Liabilities. Courts must adjudicate on actual net disposable income, not speculative unrealized valuations. Preferred stock liquidation preferences mean founder equity carries zero cash liquidity until an exit event.

2. Valuing Unvested ESOPs: Contingent Expectancies

Unvested stock options do not constitute property in possession; they are contingent expectancies subject to ongoing employment cliffs and board discretion. Even for vested options, gross valuation must deduct exercise strike prices, perquisite tax under Section 17(2) of the Income Tax Act, and transfer lock-ins. Failing to account for these discounts inflates maintenance awards to untenable levels.

3. Hypothetical Case Study: The FinTech Unicorn Founder

Kunal Shah, co-founder of a Golf Course Road fintech venture valued at $80M, faced a maintenance claim of ₹15 lakhs/month based on his 18% cap-table holding. Opposing counsel threatened to subpoena his Series B VC investors. By submitting a forensic financial audit showing a 1x non-participating liquidation preference, transfer restrictions under the Articles of Association, and a modest net salary of ₹2.5 lakhs/month, Kunal's counsel neutralized the investor subpoenas. The parties executed a structured settlement under Section 13B HMA featuring fixed alimony and a phantom equity payout contingent strictly on an IPO.

4. Cap-Table Protection Checklist for Founders & CAs

1. **File Compliant Rajnesh Affidavits:** Fully disclose corporate directorships while distinguishing illiquid equity from cash.
2. **Produce Articles of Association (AoA):** Demonstrate that share transfers are strictly barred without prior board/investor consent.
3. **Structure Staggered / Contingent Payouts:** Tie equity-linked settlements to actual liquidity events (secondary sales/IPO) rather than fixed monthly sums.
4. **Secure Order XXIII Rule 3 Clean-Break Decrees:** Ensure irrevocable waivers of future maintenance across all jurisdictions.

About the Author & Chambers

Gaurav Arora is an Advocate (Bar Council of Delhi) and Registered Indian Patent Agent (INPA-1900), serving as Founder and Lead Arguing Counsel at Arora IP Counsel (Chambers of Gaurav Arora) in New Delhi / NCR. He holds an LL.M. in Intellectual Property Law from Benjamin N. Cardozo School of Law, New York (Dean’s Merit Scholar), a B.E. in Mechanical Engineering from Punjab Engineering College (PEC Chandigarh), an LL.B. from GLC Mumbai, and passed the USPTO Patent Bar Examination (2016). He is the author of the statutory treatise "Patently Obvious COMMA: Correct Interpretation of the Patents Act, 1970" (2023), deposited in the permanent collection of the WIPO Knowledge Center in Geneva.

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