

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Insolvency Petition No.11 of 2014

Shyamsunder Daga

...Petitioning Creditor

Vs.

1.S.Shankar, carrying on business
under the name and style of
Shankar Enterprises.

2.S.Suresh, carrying on business
under the name and style of
Shankar Enterprises.

...Debtors

PRAYER: Petition filed under Sections 9 to 13 of the Presidency Towns Insolvency Act, III of 1909 and Order III-A of the Insolvency Rules, 1958 praying (i)to adjudicate the debtors as insolvents; (ii)to direct that the estate of the debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditors of the debtors; and (iii)to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtors to the Petitioning Creditor.

For Petitioning-Creditor : Mr.T.Srikanth

For Debtor : No appearance

JUDGMENT

This Insolvency Petition is filed under Sections 9 to 13 of the Presidency Towns Insolvency Act, III of 1909 and Order III-A of the Insolvency Rules, 1958 praying (i)to adjudicate the debtors as insolvent;

(ii)to direct that the estate of the debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditors of the debtor; and
(iii)to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtors to the Petitioning Creditor.

2.In the petition, it is stated that the debtor owned money to the petitioning-creditor. Since he failed to repay the money, the petitioning-creditor filed a suit in O.S.No.3768 of 2012 on the file of the City Civil Court, Chennai. The suit was decreed on 19.10.2012. Since the debtor failed to pay the decree amount even after passing of the decree, the petitioning-creditor filed an application in I.N.No.91 of 2013 before this Court for issue of insolvency notice to the debtors. Accordingly, insolvency notices were sent by pre-paid registered post with acknowledgment due. The notices sent to the debtors were served on 01.10.2013. Even after such service of the insolvency notice, the debtors failed to comply with the said insolvency notice. The period of 35 days specified in the said insolvency notice for compliance has already expired. Therefore, the debtor has committed acts of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, III of 1909 commencing from 05.11.2013. The amount due and payable by the debtors to the petitioning-creditor as per the Insolvency Notice is Rs.34,007.50 and the same amounts to Rs.34,407.50 as on the date of Insolvency Petition. Hence, the present Insolvency Petition.

3.It is seen that this Court, by order dated 24.11.2014, set the respondents/debtors *exparte* as there was no representation for the respondents/debtors and the debtors were called absent before this Court. Hence, the matter was referred to the learned Master for recording evidence.

4.The Employee of the Petitioning Creditor viz., one Mr.Krishnakumar Rathi was examined as P.W.1 and he filed the following documents as Exs.P1 to P4:-

- (i)Ex.P.1 – Authorization letter
- (ii)Ex.P.2 – Certified copy of the decree dated 19.10.2012
- (iii)Ex.P.3 (series) – Insolvency Notices
- (iv)Ex.P.4 – Acknowledgment cards

5.Though the notices were served on the debtors/respondents, there was no representation for the respondents and the respondents were called absent and set *exparte*, as stated above.

6.Having considered the averments made in the accompanying affidavit, the exhibits marked and also the submission made by the learned counsel for the petitioning creditor/petitioner, this Court is of the view that the respondents/debtor have not chosen to appear and make payment of the amount claimed by the petitioning creditors, which is a liquidated sum payable to the petitioning creditor. It has been established that the respondents/debtors have committed an act of insolvency and therefore, the

respondents/debtors are liable to be adjudicated as insolvents, as per procedure known to law.

7. Accordingly, the Insolvency Petition is allowed and the debtors/respondents are adjudicated as Insolvents. The estate of the debtors shall vest with the Official Assignee for the benefit of the general body of creditors of the debtors. The costs of this petition shall be paid by the Official Assignee from and out of the estate of the debtors to the petitioning-creditor. The insolvents are granted 18 months time to apply for discharge.

12.01.2015

ssv

Copy to:

The Official Assignee,
High court, Madras.

R.SUBBIAH, J.,

SSV

I.P.No.11 of 2015

12.01.2015