

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.04.2015
CORAM
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Insolvency Petition Nos.15 and 35 of 2014

I.P.No.15 of 2014 :

Sundarbai Kundanmal	Vs.	...Petitioning Creditor
R.R.Gopalijee		...Debtor

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 treat this petition as urgent; (ii)to adjudicate the debtor as insolvent; (iii)to direct that the estate of the debtor be vested in the Official Assignee of Madras, for the benefit of the general body of creditor of the debtor; and (iv)to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtor to the Petitioning Creditor.

For Petitioning-Creditor : Mr.T.Srikanth
For Debtor : No appearance

I.P.No.35 of 2014 :

Sundarbai Kundanmal	Vs.	...Petitioning Creditor
1. T.S.N.Sundara Vadivel 2. S.Pyinthamil		...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 treat this petition as urgent; (ii)to adjudicate the debtors as insolvents; (iii)to direct that the estate of the debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditor of the debtors; and (iv)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 Debtors : No appearance

COMMON JUDGMENT

This Insolvency Petitions are 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 creditor of the debtors; and (iii)to order that the costs of thess petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtors to the Petitioning Creditor.

2.In these petitions, it is stated that the debtors owned money to the petitioning-creditor. Since they failed to repay the money, the petitioning-creditor filed a suit in O.S.No.12290 of 2010 on the file of the learned II Assistant Judge, City Civil Court, Chennai. The suit was decreed on

10.06.2011. Since the debtors have failed to pay the decree amount even after passing of the decree, the petitioning-creditor filed an application in I.N.No.83 of 2013 before this Court for issuance of insolvency notices to the debtors. Accordingly, insolvency notices were sent by pre-paid registered post with acknowledgment due. One of the debtor served on 07.09.2013. The said Insolvency notices could not be served on the other two debtors in I.N.No.83 of 2013. Thereafter, as per the Order of this Court, publication of the Insolvency Notice was effected in one issue of Tamil Daily 'Malai Murasu' on 11.12.2013. Even after such service of the insolvency notice, the debtors in I.N.No.83 of 2013 have failed to comply with the said insolvency notices. The period of 35 days specified in the said insolvency notice for compliance has already expired. Therefore, the debtors have committed acts of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, III of 1909 commencing from 11.10.2013 in I.P.No.15 of 2014, 15.01.2014 in I.P.No.35 of 2014. The amount due and payable by the debtor to the petitioning-creditor as per the Insolvency Notice is Rs.55,470/- and the same amounts to Rs.58,170/- as on the date of Insolvency Petition in I.P.No.15 of 2015 and the amount due and payable by the debtors to the petitioning-creditor as per the Insolvency Notice is Rs.46,093.50 and the same amounts to Rs.47,052/- as on the date of Insolvency Petition in I.P.No. 35 of 2014. Hence, the present Insolvency Petitions.

3.It is seen that this Court, by orders dated 01.12.2014 and 12.01.2015, set the respondents/debtors *exparte* as there were no representation for the respondents/debtors and the debtors were called absent before this Court. Hence, the matters were referred to the learned Master for recording common evidence.

4. One Mr.Narendrakumar, the Authorised Agent of the Petitioning Creditor was examined as P.W.1 and he filed the following documents as Exs.P1 to P5:-

- (i) Ex.P.1 – Authorisation letter given by the Petitioning Creditor to one Mr.Narendrakumar
- (ii)Ex.P.2 – Decree copy in O.S.No.12290 of 2010 dated 10.6.2011 of the II Assistant Judge, City Civil Court, Chennai.
- (iii)Ex.P.3
(4 Series) - Insolvency Notices
- (iv)Ex.P.4
(4 Series) - Returned Covers
- (v) Ex.P.5 - Copy of the Paper publication

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 ex-parte, as stated above.

6. Having considered the averments made in the accompanying affidavits, 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/debtors have not chosen to appear and make payment of the amount claimed by the petitioning creditor, 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 the procedure known to law.

7. Accordingly, the Insolvency Petitions are 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 creditor of the debtors. The costs of these petitions 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.

13.04.2015

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Copy to:

The Official Assignee,
High court, Madras.

K.RAVICHANDRABAABU, J.

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