

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **10.12.2015**

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Insolvency Petition No.10 of 2015

V.Venkatesan

...Petitioning Creditor

Vs.

G.S.Mani

...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 : Ms.P.Alli

For Debtor : No appearance

J U D G M E N T

This Insolvency Petition is filed under Sections 9 to 13 of the Presidency Towns Insolvency Act, to adjudicate the debtor as insolvent and to direct the estate of the debtor to be vested in the Official Assignee for the benefit of the general body of creditors of the debtor.

2. The debtor took money from the Petitioning-Creditor (hereinafter referred to as "Creditor"). Since he failed to repay the amount, the Creditor filed a suit in O.S.No.2517 of 2012 before the I Assistant Judge, City Civil Court, Chennai. The suit was decreed as prayed for by judgment and decree dated 11.03.2013.

3. Since the defendant in the suit, the debtor herein, failed to pay the decree amount, the Creditor filed an application in I.N.No.26/2014 before this Court. This Court issued insolvency notice to the debtor by registered post with acknowledgment due. The notice was received by the debtor on 02.08.2014. The debtor failed to comply with the requirement as indicated in the notice. In the mean time, 35 days specified in the insolvency notice for compliance expired. The debtor, therefore, has committed acts of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, commencing from 08.09.2014.

4. The amount due from the debtor to the creditor as per the Insolvency Notice is Rs.9,66,117/- and the same would come to Rs.9,88,694/- as on the date of filing the Insolvency Petition. The creditor therefore seeks an order to declare the debtor as insolvent.

5. This Court earlier passed an order on 13.04.2015 adjudicating the debtor as insolvent. The said order was subsequently recalled by order dated 12.10.2015 in Application (IP) No.148 of 2015. Thereafter, further evidence was taken on the side of the creditor.

6. Though notice was served on the debtor, there was no representation on his behalf and as such, he was set ex parte.

7. The creditor was examined as P.W.1. The following documents were marked through him:-

<i>Exhibits</i>	<i>Documents</i>
Ex.P.1	Certified copy of the order in O.S.No.2517 of 2012 dated 11.03.2013 passed by the learned I Assistant Judge, City Civil Court, Chennai.
Ex.P2	I.N.Notice in I.N.No.26 of 2014
Ex.P3	Affidavit of Service for the notice sent to the Debtor in I.P.No.10 of 2015 with receipt dated 03.02.2015 along with acknowledgment card from the debtor
Ex.P4	Affidavit of Service for the notice sent to the Debtor in I.N.No.26 of 2014 with receipt dated 02.08.2014 along with acknowledgment card from the debtor

8. In view of the averments made in the Insolvency Petition, the evidence of P.W.1 and the exhibits marked, I am of the view that the debtor has committed an act of insolvency and therefore, he is liable to be adjudicated as insolvent.

9. The Debtor is adjudicated as Insolvent. The estate of the debtor shall vest with the Official Assignee for the benefit of the general body of Creditors of the debtor. The costs of this petition shall be paid by the Official Assignee from and out of the estate of the debtor to the Creditor. The insolvent is granted 18 months time to apply for discharge.

In the upshot, I allow the Insolvency Petition.

10.12.2015

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K.K.SASIDHARAN,J.

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