

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

CORAM

The Hon'ble Mr. Justice R.SUBBIAH

I.P.No.106 of 2013

T.G.Santhanakrishnan

... Petitioning Creditor

vs

1. M/s. Haji Sattar & Sons
Rep. by its Partners, Debtors 2 to 4
 2. Siraj Ashraj
 3. Akhtar Haji Sattar
 4. Mrs.Yasmin Wahid
 - 5.
- ... Debtors

ORDER

Heard learned counsel for the Petitioning creditor.

2. This I.P has been filed by the petitioning creditor / petitioner under Sections 9, 10, 11, 12 and 13 of the Presidency-Towns Insolvency Act, III of 1909 and Order III-A of the Insolvency Rules, 1958, to declare the debtor as insolvent and to direct the estate of the Debtors to be vested with the Official Assignee, High Court of Madras at Chennai.

3. The case of the petitioning creditor is as follows :

For the amount due from the debtors, the petitioning creditor, filed a suit in O.S.No.5240 of 2012 on the file of the City Civil Court, Chennai, for a recovery of a sum of Rs.1,08,000/- together with interest. Even after passing of the decree, the debtor failed to pay the decree amount. Therefore, the petitioning creditor sought an order for Insolvency Notice in I.N.No.68 of 2013 before this Court for issue of Insolvency Notice to the debtor. Accordingly, insolvency notice was issued to the debtors / respondents, that was duly received and acknowledged by the debtor on 30.08.2013 As the debtors / respondents committed an act of insolvency within the meaning of Section 9 (2) of the Presidency Towns Insolvency Act, the above petition was filed to adjudicate the debtors / respondents as insolvent.

4. It is seen that this Court passed an order, dated 15.09.2014, whereby the respondents are set exparte and the matter was referred

to the learned Master for recording evidence.

5. The petitioning creditor / petitioner himself was examined as P.W.1 before the learned Master and he marked the following Ex.P.1 to Ex.P.3.

Ex.P.1 is the original is the certified copy of the Decree, dated 07.02.2013 made in O.S.No.5240 of 2012 on the file of the City Civil Court, Chennai.

Ex.P.2 (4 nos) are the Insolvency Notices issued by the petitioning creditor to the debtors.

Ex.P.3 (4 nos) are the acknowledgement card for service of Insolvency Notice to the debtors.

6. Though the notice was served on the debtors / respondents, there is no representation for the respondents and the respondents are called absent.

7. Having considered the averments made in the accompanying affidavit, the exhibits marked and also the submissions 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 insolvent, as per procedure known to law.

8. Accordingly, the petition is allowed, adjudicating the respondents / debtors as insolvent. Consequently, the estate of the debtor shall vest with the Official Assignee of the High Court at Chennai, for the benefit of the general body of the creditors. The cost of this petition shall be paid by the Official Assignee from and out of the estate of the debtor. The insolvent is granted 18 months time to apply for discharge. Cost of the proceedings will also come out of the estate.

23.02.2015

tsvn

R.SUBBIAH, J

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