

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Insolvency Petition No.85 of 2013

Amritlal P.Thakker

...Petitioning Creditor

Vs.

Tharmaa, also called Dharmaraj,
carrying on business under the name
and style of 'Shri Senthil Agency'.

...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 adjudicate the debtor as insolvent; (ii)to direct that the estate of the debtor 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 Debtor to the Petitioning Creditor.

For Petitioning-Creditor : Mr.T.Skandhakumar

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 debtor as insolvent; (ii)to direct that the estate of the debtor 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 Debtor to the Petitioning Creditor.

2.In the petition, it is stated that the debtor owed money to the petitioning-creditor. Since he failed to repay the money, the petitioning-creditor filed a suit in O.S.No.6272 of 2007 on the file of the City Civil Court, Chennai. The suit was decreed on 12.08.2008. 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.69 of 2011 before this Court for issue of insolvency notice to the debtor. Accordingly, insolvency notice was sent by registered post with acknowledgment due. The notice sent to the debtor was served on 24.03.2011. Thereafter, the debtor filed an application No.246/2011 to set aside the Insolvency Notice. The Debtor was permitted to pay the insolvency notice amount in equal monthly installments and the Insolvency Notice was closed. But, the debtor failed to pay the amount; therefore, the petitioner-creditor filed an Application No.132/2013 to reopen the proceedings again in Application No.246/2011. The said application was allowed and the Application No.246 of 2011 to set side the Insolvency Notice was dismissed on 05.08.2013. The period of 35 days specified in the said insolvency notice for compliance has already expired. Therefore, the debtor have committed act of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, III of 1909 commencing from 05.08.2013. The amount due and payable by the debtors to the petitioning-creditor as per

the Insolvency Notice is Rs.1,16,218/- and the same amounts to Rs.1,43,218/- as on the date of Insolvency Petition. Hence, the present Insolvency Petition.

3.It is seen that this Court, by order dated 20.10.2014, set the respondent/debtor *exparte* as there was no representation for the respondent/debtor and the debtor was called absent before this Court. Hence, the matter was referred to the learned Master for recording evidence.

4.The petitioner-creditor examined himself as P.W.1 and he filed the following documents as Exs.P1 to P4:-

- (i)Ex.P.1 – Certified copy of the decree dated 12.08.2008.
- (ii)Ex.P.2 – Insolvency Notice
- (iii)Ex.P.3 – Acknowledgment card

5.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 respondent/debtor has 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 respondent/debtor has committed an act of insolvency and therefore, the respondent/debtor is liable to be adjudicated as insolvent, as per procedure known to law.

6. Accordingly, the Insolvency Petition is allowed and the debtor/respondent 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 petitioning-creditor. The insolvent is 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.85 of 2013

12.01.2015