

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
INSOLVENCY**

**NOTICE OF MOTION (L) NO.54 OF 2016
IN
INSOLVENCY PETITION NO.41 OF 2004**

CitizenCredit Co-op. Bank Ltd. ... Applicant

In the matter between :

John Nobert Rodriques & Others ... Insolvents
Versus
CitizenCredit Co-op. Bank Ltd. ... Petitioning Creditor

**WITH
NOTICE OF MOTION (L) NO.50 OF 2016
IN
INSOLVENCY PETITION NO.41 OF 2004**

Shivarama Kunda Sapalya ... Applicant/Insolvent No.3

In the matter between :

John Nobert Rodriques & Others ... Insolvents
Versus
CitizenCredit Co-op. Bank Ltd. ... Petitioning Creditor

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Mr. Dharma Raj i/b PRS Legal for Applicant in Notice of Motion (L) No.54 of 2016.

Mr. A.P. Bagwe for Insolvent Nos. 2 and 3 in Notice of Motion No.(L) No.50 of 2016.

Mr. M.D. Narvekar, Official Assignee.

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CORAM : S.C.GUPTE, J.

DATE : 20 DECEMBER 2016.

P.C. :

. The present insolvency petition is based on an insolvency notice made absolute. The insolvency notice itself is based on a recovery certificate issued by a Divisional Joint Registrar of Co-operative Societies. A recovery certificate issued under the Co-operative Societies Act does not amount to a decree and no insolvency notice can be founded upon the same. On that basis, the order of adjudication was set aside vide order dated 5 July 2016 in case of a fellow insolvent of the present Applicant/Insolvent, namely, Insolvent No.1. A similar order is now sought by Insolvent Nos.2 and 3. The petitioning creditor also joins in the application. Infact, notices of motion on this basis have been taken out both by Insolvent Nos. 2 and 3, and the petitioning creditor. The motions are, accordingly, disposed of by setting aside the order of adjudication dated 3 August 2004, under Section 21(1) of the Presidency Towns Insolvency Act, 1909, against Insolvent Nos. 2 and 3.

2 Learned Counsel for Insolvent Nos. 2 and 3 submits that his clients shall pay the costs of the Official Assignee, which are quantified at Rs.50,000/- (Rs. Fifty Thousand Only). Insolvent Nos. 2 and 3, accordingly, shall jointly pay Rs.50,000/- towards the Official Assignee's costs. Learned Counsel submits that this amount may be adjusted by the Official Assignee from out of the funds available to the credit of the estate and the balance amount may be refunded. The amount of costs recovered by the Official Assignee shall be available to him for the general office expenses in the matter of insolvency administration.

(S.C.GUPTE, J.)