

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 23TH DAY OF NOVEMBER 2016

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

I.P. No.47 of 2016

In the matter of the Presidency
Town Insolvency Act
and in the matter of G.Eswaran

... Debtor

Mr.N.Hariram ... Petitioner

Vs

G.Eswaran ... Debtor

Insolvency Petition praying that this Hon'ble Court be pleased:-

(a) to adjudicate the respondent herein as insolvent;

(b) to direct that the estate of the respondent be vested
in the Official Assignee, High Court, Madras, to be
administered in a regular manner; and

(c) To direct the costs in this petition to come out from the estate.

This Insolvency Petition coming on this day before this Court for hearing in the presence of M/s. Sampathkumar and Associates, Advocate for the petitioning creditor herein and Mr.G.Eswaran, learned counsel appearing for the debtor and upon reading the petition and affidavit filed herein and upon perusing the evidence adduced herein and the exhibits marked thereon.

The Court made the following Order:-

This insolvency petition filed under Sections 9(2)(B), 12 and 13 of the Presidency Towns Insolvency Act, 1909 and under Order II Rule I of the Insolvency Rules, 1958 to adjudicate the respondent herein as insolvent and also to direct that the estate of the respondent be vested in the Official Assignee, High Court,Madras, to be administered in a regular manner; and

2. Though the respondent is served with notice, he has not come forward either to file a counter or to pay the debt or to oppose this petition. Hence, the respondent is called absent and is set exparte.

3 . According to the petitioning creditor, the debtor herein owed money to the petitioning creditor on a suit in O.S.No.5731 of 2013 on the file of IV Assistant Judge (Incharge of III Assistant Court), City Civil Court, Chennai, wherein the suit was decreed on 11.10.2014 in favour of the petitioning creditor. The debtor herein failed to pay the decree amount. The Debtor is liable to pay Rs.83,370.44 as on the date of filing of the petition, to the petitioning creditor. Hence, this petition.

4 . Though it is normal practice that the petitioning creditor should be asked to present himself before the Master and evidence recorded, it is seen from the records that the petitioning creditor has filed the certified copy of the decree and the Master has also recorded affidavit of service with respect to the Insolvency notice, in which, notices were returned undelivered. Thereafter, the Master had stated that service is completed. Again before this Court, the defendant had not appeared. Consequently, there is no hesitation in declaring the debtor as an insolvent.

5 . All the above aspects have been well stated by the petitioning creditor

in the affidavit filed in support of the petition and were fortified by the documents filed.

C.V.KARTHIKEYAN, J.

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6 . Thus, it is made clear that there is an existing debt, that there is notice, which has been served upon the debtor and for the pre-existing debt, the creditor have no other security. Hence, this petition deserves to be allowed and consequently, the debtor have to be adjudicated as insolvent.

7 . Accordingly, the debtor is adjudicated as insolvent. The Official Assignee is directed to take over the assets of the insolvent and administer the estate of the insolvent in a regular manner for the benefit of the creditor. The insolvent is granted 18 months time to apply for discharge.

23.12.2016

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