

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Insolvency Petition No.56 of 2015

M/s.Core Stamping Inds,
represented by its Partner Ashok L.Bajaj,
H.U.F., represented by its Manager and Kartha, Ashok L.Bajaj.

... Petitioning Creditor

Vs.

V.Kumaravel

... Debtor

PRAYER: Petition filed under Section 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; (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 : T.Srikanth

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 creditor.

2. The debtor owed a sum of Rs.1,20,000/- to the petitioning creditor, for recovery of which the petitioning creditor has filed a suit in O.S.No.7091 of 2014 for recovery of Rs.1,69,700/- with subsequent interest. The said suit was filed as summary suit under Order 37 of the Code of Civil Procedure. The debtor filed an Application in I.A.No.3285 of 2015 seeking leave to defend. The said Application was dismissed, which resulted in the suit being decreed on 08.04.2015.

3. Since the defendant/ debtor failed to pay the decree amount the creditor had filed an Application in I.N.No.22 of 2015 before this Court. Since the debtor did not appear despite service of notice in the said proceeding, an Insolvency Notice was issued by this Court in the said I.N.No.22 of 2015 on 28.07.2015. The said Insolvency Notice was received by the debtor on 04.08.2015. The debtor failed to comply with the requirements of the said notice dated 28.07.2015. The 35 days time that was granted for the said notice also expired. The debtor has not come forward with an Application to recall the Insolvency Notice. The failure to pay the decree debt despite service of Insolvency Notice amount to an act of

insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act.

4. The amount due to the creditor from the debtor as per the Insolvency Notice is Rs.1,99,907/- and the same would along with subsequent interest come to Rs.2,06,387/- on the date of filing of this Insolvency Petition. The creditor therefore seeks an order of adjudication of debtor as an insolvent.

5. Though the debtor has been served through Court in this proceeding, he has not chosen to appear either through counsel or in person. Therefore, the debtor was set *ex parte* on 27.06.2016. Thereafter, the evidence was taken before the learned Master and one Prakashlal Kiaram, the Authorized Agent of the creditor was examined as P.W.1 and the following documents were marked on behalf of the petitioning creditor:

<i>Exhibits</i>	<i>Documents</i>
<i>Ex.P1</i>	<i>Authorization letter dated 12.10.2017.</i>
<i>Ex.P2</i>	<i>Certified copy of the decree in O.S.No.7091 of 2014 dated 08.04.2015.</i>
<i>Ex.P3</i>	<i>Insolvency Notice issued by this Court in I.N.No.22 of 2015 dated 28.07.2015.</i>
<i>Ex.P4</i>	<i>Acknowledgment card received for service of Insolvency Notice.</i>

R.SUBRAMANIAN, J.

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

7. 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 creditor 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.

8. In fine, this Insolvency Petition is allowed.

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

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