

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

FRIDAY, THE 18TH DAY OF AUGUST 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

INSOLVENCY PETITION NO.6 of 2017

In the matter of Presidency
Towns Insolvency Act, III of
1909 and In the matter of
Dr.T.Arunkumar and another
... Debtors

D.Bharati Jain.
W/o.Dineshkumar,
Residing at No.55/3,
Narayana Mudali Street,
Sowcarpet, Chennai 600 079. ... Petitioning Creditor

-Versus-

1.Dr.T.Arunkumar,
S/o.Thirunarayanan,
Having his Hospital at
No.12, Conron Smith Road,
Ganapathy Colony,
Gopalapuram, Chennai 600 086.

2.A.Bhuvaneswari,
W/o.Dr.T.Arunkumar,
Residing at No.28/40,
Ranga Road, Abhiramapuram,
Chennai 600 004. ... Debtors

Insolvency Petition praying that this Hon'ble court be
pleased to (a) adjudicate the Debtors as an Insolvents (b)
to direct that the estate of the Debtors be vested in the
Official Assignee of Madras, for the benefit of the general
body of creditors of the Debtors (c) to order that the
costs of this petition be paid by the Official Assignee of
Madras, from and out of the estate of the Debtors to the
Petitioning Creditor.

The above insolvency petition coming on this day before this court for hearing in the presence of Mr.T.Skandhakumaar, advocate for the petitioning creditor herein and the debtors herein not appearing in person or by advocate and upon reading the petition and affidavit of D.Bharati Jain filed herein, it is ordered as follows:

1) That 1.Dr.T.Arunkumar, S/o.Thirunarayanan, Having his Hospital at No.12, Conron Smith Road, Ganapathy Colony, Gopalapuram, Chennai 600 086 2.A.Bhuvaneswari, W/o.Dr.T.Arunkumar, Residing at No.28/40, Ranga Road, Abhiramapuram, Chennai 600 004. be and hereby are adjudicated as Insolvents.

2) That the said insolvents do appear before the Official Assignee of this Court within one week from the date of service of this order;

3) That the said insolvents do file in this Court their schedule of affairs together with a copy thereof within thirty days from the date of service of this order;

4) That the said insolvents shall apply for their discharge within a period of 18 months from this date;

5) That the estate of the debtors shall vest with the Official Assignee of the High Court at Chennai, for the benefit of the general body of the creditor. The cost of this petition shall be paid by the Official Assignee from and out of the estate of the debtors.

6) That the said Official Assignee do from and out of the estate of the insolvents herein pay to the said Petitioning Creditor their costs of this petition, when taxed by the Taxing Officer of this Court and noted in the margin thereof, with interest thereon at the rate of six percent per annum from the date of taxation to the date of realisation.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 18th DAY OF AUGUST 2017.

SD/- (i/c)
ASSISTANT REGISTRAR
Original Side - I

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DATED THIS THE DAY OF 2017

MANAGER
INSOLVENCY OFFICE

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cns - 26.10.2017

HIGH COURT, MADRAS

I.P. No.6 of 2017

ADJUDICATION DECREETAL

ORDER DATED : 18.08.2017

THE HON'BLE MR. JUSTICE

C.V.KARTHIKEYAN

FOR APPROVAL : 27/10/2017

APPROVED ON : 03/11/2017

Copy to :

The Official Assignee
High Court, Madras.

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(IN INSOLVENCY)

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to direct that the estate of the Debtors be vested in the
Official Assignee of Madras, for the benefit of the general
body of creditors of the Debtors (c) to order that the
costs of this petition be paid by the Official Assignee of
Madras, from and out of the estate of the Debtors to the
Petitioning Creditor.

The above insolvency petition coming on this day before this court for hearing in the presence of Mr.T.Srikanth, advocate for the petitioning creditor herein and the debtors herein not appearing in person or by advocate and upon reading the petition and affidavit of D.Bharati Jain filed herein,

The court made the following order:-

Heard the learned counsel appearing for the Petitioning Creditor.

2. The present petition has been filed by the petitioning creditor 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 adjudicate the debtor as insolvent and to direct the estate of the debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditor of the debtors and 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.

3. It is the case of the petitioning creditor that the debtors owed money to the Petitioning Creditor. Since they failed to repay the money, the Petitioning Creditor filed a suit in OS.No.5187 of 2014 on the file of the City Civil Court, Chennai. The suit was decreed on 05.03.2015. Even

after passing of the decree, the Debtors failed to pay the decree amount. Since the debtors failed to pay the decree amount even after passing of the decree in the suit, the Petitioning Creditor filed I.N.No.4 of 2016 before this Hon'ble Court for issue of Insolvency Notice to the Debtors. This Hon'ble Court was pleased to order issue of Insolvency Notice to all the Debtors. Accordingly, Insolvency Notices were sent by pre-paid registered post with acknowledgement due. The said notices were served on 14.03.2017. Even after such service of the Insolvency Notice, the Debtors failed to comply with the said Insolvency Notice, by making payment of the amount mentioned therein, nor have they filed any application to set aside the Insolvency Notice, even though the period of 35 days specified in the said Insolvency Notice for compliance has already expired. Therefore, the Debtors have committed an act of insolvency, within the meaning of Section 9(2) of the Presidency-towns Insolvency Act, III of 1909, commencing from 18.04.2017. The amount due and payable by the Debtors to the Petitioning Creditor as per the Insolvency Notice is Rs.1,33,842/- and the same amounts to Rs.1,63,242.00/- as on date. The said amount is a liquidated sum, immediately payable by the Debtors to the Petitioning Creditor. The Petitioning Creditor does not hold any security whatsoever for the said amount. The Debtors have committed the acts of insolvency as stated above, commencing from 18.04.2017 and this Insolvency

Petition filed to adjudicate the Debtors as Insolvents based upon their aforesaid acts of insolvency, is well within the time. The debtor failed to comply with the said Insolvency Notice. As the debtor committed an act of insolvency within the meaning of Section 9(1) (g) of the Presidency Towns Insolvency Act, the above petition has been filed to adjudicate the debtor as insolvents.

4. Affidavit of service has been filed along with the acknowledgement cards. But there has been no representation for the debtors.

5. Having considered the averments made in the accompanying affidavit and also the submission made by the learned counsel for the petitioning creditor/petitioner, this Court is of the view that the respondent / debtor 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 respondent/ debtor have committed an act of insolvency and therefore, the respondent/debtor is liable to be adjudicated as insolvents, as per the procedure known to law.

6. Accordingly, the petition is allowed, adjudicating the respondent/debtor 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 insolvents are granted 18 months time to apply for discharge. Cost of the proceedings will also come out of the estate.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 18th DAY OF AUGUST 2017.

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HIGH COURT, MADRAS

I. P. No.6 of 2017

ORDER DATED : 18.08.2017

THE HON'BLE MR. JUSTICE

C.V.KARTHIKEYAN

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