

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

INSOLVENCY PETITION NO.40 OF 2005

Industrial Development Bank of India LimitedPetitioning creditor

Vs.

Shashi Kumar Jain and Ors.

....Respondents

**WITH
INSOLVENCY PETITION NO.78 OF 2006
WITH
INSOLVENCY PETITION NO.104 OF 2006
WITH
NOTICE OF MOTION NO.109 OF 2006
IN
INSOLVENCY PETITION NO.62 OF 2006
WITH
INSOLVENCY PETITION NO.112 OF 2006
WITH
NOTICE OF MOTION NO.112 OF 2006
IN
INSOLVENCY NOTICE NO.100 OF 2006
WITH
INSOLVENCY PETITION NO.14 OF 2007
WITH
INSOLVENCY PETITION NO.15 OF 2007
WITH
NOTICE OF MOTION NO.15 OF 2007
IN
INSOLVENCY NOTICE NO.134 OF 2006
WITH
NOTICE OF MOTION NO.29 OF 2007
IN
INSOLVENCY PETITION NO.15 OF 2007
WITH
INSOLVENCY PETITION NO.29 OF 2007
WITH
NOTICE OF MOTION NO.35 OF 2007
IN
INSOLVENCY NOTICE NO.33 OF 2007
WITH
INSOLVENCY PETITION NO.38 OF 2007
WITH**

INSOLVENCY PETITION NO.41 OF 2007
WITH
NOTICE OF MOTION NO.41 OF 2007
IN
INSOLVENCY NOTICE NO.251 OF 2006
WITH
NOTICE OF MOTION NO.42 OF 2007
IN
INSOLVENCY NOTICE NO.257 OF 2006
WITH
INSOLVENCY PETITION NO.44 OF 2007
WITH
NOTICE OF MOTION NO.50 OF 2007
IN
INSOLVENCY NOTICE NO.41 OF 2007
WITH
NOTICE OF MOTION NO.51 OF 2007
IN
INSOLVENCY NOTICE NO.41 OF 2007
WITH
INSOLVENCY PETITION NO.56 OF 2007
WITH
INSOLVENCY PETITION NO.58 OF 2007
WITH
INSOLVENCY PETITION NO.62 OF 2007
WITH
INSOLVENCY PETITION NO.66 OF 2007
WITH
NOTICE OF MOTION NO.74 OF 2007
IN
INSOLVENCY NOTICE NO.252 OF 2006
WITH
INSOLVENCY PETITION NO.83 OF 2007
WITH
NOTICE OF MOTION NO.94 OF 2007
IN
INSOLVENCY NOTICE NO.73 OF 2007
WITH
NOTICE OF MOTION NO.95 OF 2007
IN
INSOLVENCY NOTICE NO.73 OF 2007
WITH
NOTICE OF MOTION NO.99 OF 2007

IN
INSOLVENCY NOTICE NO.119 OF 2007
WITH
NOTICE OF MOTION NO.119 OF 2007
IN
INSOLVENCY NOTICE NO.121 OF 2007
WITH
NOTICE OF MOTION NO.120 OF 2007
IN
INSOLVENCY NOTICE NO.122 OF 2007
WITH
NOTICE OF MOTION NO.40 OF 2008
IN
INSOLVENCY PETITION NO.29 OF 2005
WITH
NOTICE OF MOTION NO.38 OF 2017
IN
INSOLVENCY PETITION NO.136 OF 2003

Mr. Anand Kumar a/w. Mr. Daulat Jeha for defendant in notice of motion no.50 of 2007 and notice of motion no.51 of 2007.

Ms. Bina Hemang Jariwala I/b. Auroma Law for debtor nos.1 and 2 in insolvency petition no.62 of 2007.

Mr. Namrata Shah Saurastri I/b. K Ashar and Co. for petitioning creditor in insolvency petition nos.14 of 2007, 251 of 2006, 44 of 2007 and for respondent no.3 in insolvency petition no.40 of 2005.

None for petitioning creditor and debtor in insolvency petition no.15 of 2007 and notice of motion no.29 of 2007.

CORAM : K.R.SHRIRAM, J.
DATE : 7th AUGUST 2018

P.C.:

1 On 16th January 2018 the entire group of 32 matters was adjourned sine die since civil appeal no.4211 of 2010 was still pending before the Apex Court.

2 Ms. Saurastri, counsel appearing for petitioning creditor states that the civil appeal no.4211 of 2010 is still pending before the Hon'ble

Supreme Court of India. Ms. Saurastri further states that within three weeks from today, petitioning creditor will apply to the Hon'ble Supreme Court of India to expeditiously hear the civil appeal.

3 Stand over to 4th September 2018.

NOTICE OF MOTION NO.29 OF 2007

1 Applicant is seeking condonation of delay of 28 days in filing the insolvency petition against judgment debtor no.2.

2 Section 12 of the Presidency-Towns Insolvency Act 1909 in sub section 1 (c) provides when a creditor shall not be entitled to present a insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition. The Insolvency Act does not provided for any condonation of delay. I find support in an unreported judgment of this Court in insolvency petition dated 2nd May 1997 passed on 9th October 1997 in which the Court observed that the provisional Insolvency Act does not lay down the period of three months as a period of limitation but lays down the essential pre-requisite for filing of the insolvency petition. The period of three months is not a period of limitation but a condition precedent to the filing of the insolvency petition. The Court rejected the condonation of delay application on the grounds that petitioning creditor having lodged the petition after the period of 90 days, the 90 days being a condition

pre-requisite for filing the petition.

3 In the circumstances, this notice of motion is also rejected.

Consequently, insolvency petition no.15 of 2007 also rejected.

**Gauri Amit
Gaekwad**

(K.R. SHRIRAM, J.)

Digitally signed by
Gauri Amit Gaekwad
Date: 2018.08.08
11:08:03 +0530