IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY

INSOLVENCY PETITION NO.5 OF 2018

Jayantibhai Haribhai Gadhiya and Ors. ….Judgment debtors

Ex-parte :

Anil Gulabdas Shah ….Petitioning creditor

Mr. Anil Gulabdas Shah, petitioning creditor present in person.

CORAM : K.R.SHRIRAM, J.
DATE : 21st AUGUST 2018

P.C.:

1 On 17th April 2018 the following order was passed :

> *1. Petitioning creditor claims to have provided financial help to debtors. According to petitioning creditor, he gave a sum of Rs.1 lakh to be returned within three months together with interest thereon at 18% p.a. Petitioner relies upon Exhibit "A" to the petition, which is a bill of exchange, from which it appears that the amount has been given to a company – Ethos Gems and Jewellery Pvt. Ltd. and not to debtors personally. Mr. Shah is unable to explain as to how the directors of the company can be personally liable for the liability of the company. Mr. Shah relies upon a letter dated 4th October, 2017, copy whereof is at Exhibit "D" to the petition. The same is signed by each of debtors stating that due to financial crisis they suspended the payments of all creditors, which include petitioner herein. Though it is signed by four debtors, the letter is on the letter head of the company Ethos Gems and Jewellery Pvt. Ltd. and in any event, the amount has been given by petitioning creditor to the company Ethos Gems and Jewellery Pvt. Ltd. Therefore, even if there is no opposition to the petition, which Mr. Shah states has been served on the debtors, in my view, I cannot entertain this petition. The petition also does not disclose anywhere as to how debtors can be held personally liable for the amount lent to the company.*
>
> *2. At this stage, Mr. Shah, petitioning creditor, who is appearing in person, requests the matter be stood over to enable him to see if there are any judgments which would say that a petition of this nature is maintainable.*
>
> *3. Stand over to 19th June, 2018.*

2 Today, Mr. Shah, petitioning creditor present in person, has placed four judgments and relied upon them in the following order :

(i) Abdul Khader V/s. Abdullakutty and Ors.[1]

(ii) Sultan Pillai V/s. Municipal Commissioner, Khuzhithurai Municipality[2]

(iii) Irshad Ahmed V/s. ICICI Bank[3]

(iv) Aneeta Hada V/s. Godfather Travels and Tours Private Limited[4]

3 Mr. Shah submits that all these four judgments indicate that if a money is lent to a company, the Directors of the company can be personally held liable.

4 I have considered the four judgments and in my view, none of the judgments help Mr. Shah. *Abdul Khader (Supra)* and *Sulthan Pillai (Supra)* are cases where petitioner had approached the Insolvency Court under Section 7 of the Provisional Insolvency Act 1920 and even in those matters, it was held that in view of the provisions of Section 8 of the said Act, no insolvency petition shall be presented against any company registered under any enactment for the time being in force. Similarly in *Irshad Ahmed (Supra)*, the Court held that under Section 8 of the said Act, there is a bar in filing an insolvency petition against the company.

1. 2013 SCC Online Ker 24337
2. 2002 SCC Online Ker 15
3. https://indiankanoon.org/doc/83343754/
4. (2012) 5 SCC 661

5 Mr. Shah submitted, relying on *Aneeta Hada (Supra),* that the Directors have vicarious liability for amount lent to the company and therefore, the Directors of the company can be declared insolvent. Even this judgment of the Apex Court in *Aneeta Hada (Supra)* is of no assistance to Mr. Shah because the Supreme Court in that matter was dealing with Section 141 of the Negotiable Instruments Act 1881.

6 In the circumstances, as noted in the order dated 17^{th} April 2018, this petition is not maintainable. Petition dismissed.

Gauri Amit Gaekwad
Digitally signed by Gauri Amit Gaekwad
Date: 2018.08.24 19:14:06 +0530

(K.R. SHRIRAM, J.)