

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

**OFFICIAL ASSIGNEE'S REPORT NO.3 OF 2017
WITH
NOTICE OF MOTION NO.8 OF 2018
IN
INSOLVENCY PETITION NO.39 OF 2001**

Re: Sumanth Chandar BolarInsolvent

Ex-parte :

H.K. JainPetitioning Creditor

And

Prakash Mehta (Deceased) & Ors.Debtors

**WITH
OFFICIAL ASSIGNEE'S REPORT NO.4 OF 2017
WITH
OFFICIAL ASSIGNEE'S REPORT NO.9 OF 2017
WITH
NOTICE OF MOTION NO.5 OF 2018
WITH
NOTICE OF MOTION NO.9 OF 2018
IN
INSOLVENCY PETITION NO.39 OF 2001**

Mr. Anil D'souza, Amicus Curiae present.
Mr. Anil P. Bagwe for Mr. Raj Bansi Dwivedi, debtor of insolvent.
Mr. Jay Joshi I/b. I.R. Joshi and Co. for claimant no.2.
Mr. Abhishek Tripathi for insolvent.
Mr. M.D. Narvekar, Official Assignee present.
Mr. S.C. Bolar, insolvent present in person.
Mr. Bharat Thakkar, claimant present in person.

**CORAM : K.R.SHRIRAM, J.
DATE : 17th JULY 2018**

P.C.:

1 There are three Official Assignee's Reports and three notices of motion listed today.

2 On or about 11th June 2001 one Mr. H. K. Jain (petitioning creditor) had filed insolvency petition against Mr. Sumanth Chandar Bolar (insolvent). By an order dated 5th February 2002, Mr. Sumanth Chandar Bolar was adjudicated as insolvent. On 30th July 2002, one M/s. Kiran Jain and Company, advocate for petitioning creditor lodged copies of petition and affidavit in support thereof alongwith order of adjudication with Official Assignee. One Bhupatrai A. Thakkar had filed an affidavit of claim on 2nd September 2002. On 26th November 2002, during the private examination before Official Assignee, the advocate for insolvent stated that insolvent would settle the claim of petitioning creditor through his well-wisher. On 30th March 2003, petitioning creditor stated that the well-wisher of insolvent has satisfied the claim and issued receipts towards full and final settlement to that effect. Insolvent was directed to file his Schedule of assets and liabilities and thereafter take out notice of motion for annulment on the ground of full payment. The Schedule of assets and liabilities was filed and subsequently on 18th August 2003, during the private examination before Official Assignee, insolvent stated that he has filed the Schedule of assets and liabilities and shown three unsecured creditors, one of whom was petitioning creditor – Mr. H. K. Jain. It was also noted that the claims of all the three creditors were paid. Insolvent also stated that he would take out notice of motion for annulment thereafter.

3 Insolvent thereafter, sought permission to amend the Schedule of assets and liabilities and leave to amend was granted and the Schedule of assets and liabilities was amended to show the three parties viz., R. B. Dwivedi, Prakash Mehta and Amritlal Thakkar, against whom insolvent had claim for Rs.60,00,000/-, Rs.63,00,000/- and Rs.2,29,00,000/- respectively. In the meanwhile, one Amritlal R. Thakkar also had lodged a claim for Rs.49,18,484/- and one Bhupatrai A. Thakkar filed a claim for Rs.10,60,750/-. These were the persons whose liability insolvent had not admitted and had not even mentioned in the Schedule of assets and liabilities.

4 So far as petitioning creditor and other creditors, whose liabilities had been acknowledged by insolvent, they have been paid off. The others, viz., Amritlal R. Thakkar and Bhupatrai A. Thakkar, only had a claim but that claim had not been adjudicated by any competent Court.

5 Mr. Joshi, counsel appearing for legal heirs of Amritlal R. Thakkar states that his clients could not file a suit and obtain a decree against insolvent because law did not permit them to file a suit without leave of the Court.

6 When insolvent had paid off petitioning creditor and other creditors, whose liability insolvent has acknowledged, I see no reason why insolvent should spend the rest of his life with a tag “*insolvent*” written on it.

For any person to be tagged as “*insolvent*” is not only demeaning but also is a cause of circumstances. He also loses his freedom and his rights are taken away. The claims of Amritlal R. Thakkar and Bhupatrai A. Thakkar are yet to be adjudicated and those claims, therefore, cannot be a reason for insolvent to live the rest of his life as insolvent.

7 Section 21 (1) of the Presidency-Towns Insolvency Act, 1909 reads as under :

21. Power for Court to annul adjudication in certain cases.-

(1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, ² the Court shall, on the application of any person interested,] by order annul the adjudication ³ and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub- section (2) of section 14, not entitled to present such petition].

8 Therefore, this Court has ample power when it is satisfied that the debts of insolvent are paid in full to annul the order of adjudication.

9 Since the claim of Amritlal R. Thakkar and Bhupatrai A. Thakkar are only claims, which are yet to be adjudicated, and it has not been admitted by insolvent, certainly that cannot fall in the definition of debt. Section 2(b) defines "debt" includes a judgment- debt but that certainly cannot include a disputed claim.

10 Mr. Joshi has no objection if the Court pass an order annulling the adjudication. In the circumstances, the order dated 5th February 2002 adjudicating Mr. Sumanth Chandar Bolar as insolvent is hereby annulled.

11 It is open to Mr. Joshi's clients and insolvent, when they file a suit, to rely upon Section 101 (a) of Presidency-Towns Insolvency Act, 1909 and satisfy the competent Court to exclude the time from date of the order of adjudication to the date of order of annulment. It is open to all the parties to take such legal action, as advised against any one else.

12 Mr. Joshi, on instructions from his client – Mr. Bharat Thakkar, who is present in Court, offers to pay a sum of Rs.6,600/- as commission to Official Assignee, which is 3% of Rs.2,20,000/- that insolvent had paid off to all his creditors as insolvent was not ready to pay this amount. This amount could be utilised by Official Assignee for administrative purpose.

13 In view of the above, all Official Assignee's Reports and notices of motion stand disposed.

14 Since there were voluminous documents, this Court had requested Mr. Anil D'souza to be Amicus Curiae. The Court has to note with appreciation the immense contribution of Mr. D'souza in disposing all the applications and petition.

**Gauri Amit
Gaekwad** Digitally signed by
Gauri Amit Gaekwad
Date: 2018.07.19
18:25:59 +0530

(K.R.SHRIRAM, J.)