

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 8TH DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

INSOLVENCY PETITION NO.14 of 2017

In the matter of Presidency
Towns Insolvency Act, III of
1909 and In the matter of
K.Sivakumar

.. Debtor

1.N.J.Mehra (deceased)
2.Jaichand Malhotra
3.Sureshkumar Malhotra
4.J.Bansidar Malhotra
5.Manoharlal Malhotra
6.Mahesh Kumar Malhotra
7.Kavitha G.Khanna
8.Tara Sachdev

Creditors 2 to 8 are residing at
No.150/96, Cisons Complex, Montieth Road,
Egmore, Chennai 600 008. ... Petitioning Creditor

-Versus-

K.Sivakumar,
Carrying on business
Under the name and style of
M/s.Priyadharshini Forms at
No.24, Narasingapuram Main Road,
Guindy, Chennai 60 0032
and residing at
No.10F, Newtech Satyanarayana Apartments,
Rajagopalan Street, West Mambalam,
Chennai 600 033. ... Debtor

Insolvency Petition praying that this Hon'ble court be
pleased to (a) adjudicate the Debtor as an Insolvent (b) to
direct that the estate of the Debtor be vested in the
Official Assignee of Madras for the benefit of the general
body of creditors of the Debtor. (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 Debtor 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 debtor herein not appearing in person or by advocate and upon reading the petition and affidavit of Jaichand Malhotra, Sureshkumar Malhotra, J.Bansidar Malhotra, Manoharlal Malhotra, Maheshkumar Malhotra, Kavitha G.Khanna, Tara Sachdev, filed herein;

It is ordered as follows:

1) That K.Sivakumar, Carrying on business Under the name and style of M/s.Priyadharshini Forms at No.24, Narasingapuram Main Road, Guindy, Chennai 600 032 and residing at No.10F, Newtech Satyanarayana Apartments, Rajagopalan Street, West Mambalam, Chennai 600 033 be and is hereby adjudicated as Insolvent.

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

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

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

5) That 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 creditor. The cost of this petition shall be paid by the Official Assignee from and out of the estate of the debtor.

6) That the said Official Assignee do from and out of the estate of the insolvent herein pay to the said Petitioning Creditor his 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 8th DAY OF JANUARY 2018.

SD/-

ASSISTANT REGISTRAR

Original Side - I

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2018

MANAGER
INSOLVENCY OFFICE

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cns - 22.02.2018

HIGH COURT, MADRAS

I.P. No.14 of 2017

ADJUDICATION DECREETAL

ORDER DATED : 08.01.2018

THE HON'BLE MR. JUSTICE

R.SUBRAMANIAN

FOR APPROVAL :23/02/2018

APPROVED ON :23/03/2018

Copy to :

The Official Assignee
High Court, Madras.

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Official Assignee of Madras for the benefit of the general
body of creditors of the Debtor. (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 Debtor 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 debtor herein not appearing in person or by advocate and upon reading the petition and affidavit of Jaichand Malhotra, filed herein;

The court made the following order:-

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 creditors.

2. The debtor took money from the petitioning creditor. On the failure of the debtor to repay the money, the creditors have filed a suit in O.S.No.4936 of 2011 on the file of the City Civil Court, Chennai. The suit was decreed on 29.11.2011. The appeal filed by the Debtor in A.S.No.21 of 2013 was also dismissed on 27.04.2015.

3. Even after the confirmation of the decree, the debtor failed to pay the decree amount. Hence, the creditor filed I.N.No.26 of 2016 in this Court for issuance of insolvency Notice to the debtor. The same was ordered and notice of insolvency was sent by registered post acknowledgment due to the debtor. Since the same was

returned, a publication was effected in one issue of 'Malai Murasu' dated 23.05.2017. Despite such service and lapse of 35 days period specified in the Insolvency notice, the debtor did not come forward to pay the decree amount, thus committing an act of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act.

4. The amount due to the creditors from the debtor as per the Insolvency Notice is Rs.2,15,440/-, along with the cost awarded in the appeal of Rs.4,441/-. The debtor is thus liable to pay a sum of Rs.2,19,881/-to the petitioning creditors.

5. Notice was ordered in this Insolvency Petition on 13.10.2017. Since the notices were returned with the endorsement 'Vacated', Substituted Service was ordered in one issue of 'Malai Murasu', publication has been effected by publishing a notice in one issue of 'Malai Murasu' dated 30.11.2017. Despite such service, the debtor has not chosen to enter appearance either through counsel or defend the proceedings personally.

6. In view of the above facts it is clear that the debtor has committed an act of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act commencing from 27.06.2017. The debt being the decreed debt no evidence is deemed necessary.

7. In view of the averments made in the Insolvency Petition and the fact that the copy of decree of the appellate Court has been produced. It is clear that the

debtor has committed an act of insolvency and therefore, he is liable to be adjudicated as insolvent.

8. 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 Creditors 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 Creditors. The insolvent is granted 18 months time to apply for discharge.

9. In fine, this Insolvency Petition is allowed as prayed for.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 8th DAY OF JANUARY 2018.

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