

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 12.03.2018****CORAM****THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****Insolvency Petition No.4 of 2017**

Ramesh Khatri & Son,
rep.by its Manager and
Karthi, Ramesh Khatri

... Petitioning Creditor

Vs.

K.Venkatesan,
Carrying on business under the name
and style of Southern Tyre House.

... Debtor

PRAYER: Petition filed under Section 9 to 13 of the Presidency Towns Insolvency Act, III of 1909 and Order III-A of the Insolvency Rules, 1958 praying (i) to treat this Petition as urgent; (ii) to adjudicate the Debtor as an Insolvent; (iii) 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; (iv) 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.

For Petitioning Creditor : T.Srikanth

For Debtor : No appearance

J U D G M E N T

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 creditor of the debtor.

2.The debtor had taken money from the petitioning creditor. Since he had failed to repay the amount, the petitioning creditor had filed a suit in O.S.No.3576 of 2010 on the file of the City Civil Court, Chennai. The suit was decreed on 27.09.2010. Even after the decree, the debtor had failed to pay the decree amount. Claiming that his failure to pay the decree amount would amount to an act of insolvency, the petitioning creditor has approached this Court seeking issuance of an insolvency notice in I.N.No.29 of 2016. This Court had directed issuance of insolvency notice to the debtor. Accordingly, insolvency notice was sent by the registered post with acknowledgment due to the debtor. Since the same was returned and the attempt to serve the debtor did not fructify, this Court had ordered publication of the insolvency notice in one issue of Tamil Daily 'Malai Murasu'. Pursuant to the said order the insolvency notice was published in 'Malai Murasu'

dated 08.03.2017. Even after the said publication, the debtor has not come forward to pay the decreed debt. The 35 days period specified in the insolvency notice for compliance has also expired. The amount due and payable as per the insolvency notice was Rs.88,127.50, and as on the date of this petition it works out to Rs.91,267.00. Claiming that the non payment of the decree amount after the issuance of the insolvency notice would amount to an act of insolvency, the creditor seeks adjudication of the debtor as an insolvent.

3. In this insolvency petition also notice is sent to the debtor was returned, and substituted service was ordered by publication in one issue of 'Malai Murasu' and a publication was effected on 30.01.2108. Proof of publication has also been filed. Despite such service, the debtors has not chosen to appear either in person or through counsel duly instructed. In view of the fact that this insolvency petition is based on a decreed debt, the requirement of evidence is dispensed with, and it is found that the debtor has committed an act of insolvency.

4.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. The costs of this petition shall be paid by the Official Assignee out of the estate of the debtor to the creditor. The insolvent is granted 18 months time to apply for discharge.

5.In fine, this Insolvency Petition is allowed.

12.03.2018

KP

Index : No

Internet : Yes

Non-speaking Order

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R.SUBRAMANIAN, J.

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