IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 19.03.2018
ORDER PRONOUNCED ON : 28.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Insolvency Petition No.1 of 2011

M/s. Punjab National Bank,
K.K.Nagar Branch,
No.347, Dr.A.Lakshmanaswamy Salai,
K.K.Nagar, Chennai – 600 078.

... Petitioning Creditor

Vs.

1.K.Murugapiran
2.M.Paranthaman ... Debtors

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 Debtors as Insolvents; (iii) to direct that the estate of the Debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditors of the debtors; (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 Debtors to the Petitioning Creditor.

For Petitioning Creditor : Mr.P.B.Sampath Kumar

For Debtors : Mr.A.Babu

ORDER

This Insolvency Petition is filed under Sections 9 to 13 of the Presidency Towns Insolvency Act, to adjudicate the Debtors as Insolvents and to direct the estate of the debtors to be vested in the Official Assignee for the benefit of the general body of creditor.

2. This insolvency petition has been filed by the decree holder/ Bank seeking to adjudicate the respondents as insolvents for their failure to pay the decreed debt as per Section 9(2) of the Presidency Towns Insolvency Act.

3. It is the case of the petitioning creditor that the respondents/ debtors had borrowed monies from the Bank. Upon their failure to repay the said monies, the Bank had filed a suit in O.S.No.9301 of 2006 seeking recovery and the said suit was decreed on 05.12.2007. Even after passing of the decree, the debtors herein failed to pay the decree amount which resulted in the Bank filing an application in I.N.No.29 of 2010 seeking to issue an insolvency notice to the debtors. This Court had ordered the said I.N.No.29 of 2010, pursuant to which the insolvency notice was sent to the debtors by a registered post with acknowledgment due. The said insolvency notice was served on the 1st debtor on 24.06.2010. Since the 2nd debtor

could not be served by regular mode of service, publication was effected in “Malai Murasu” on 13.09.2010. Claiming that even after such service of insolvency notice, the debtors had not come forward to pay the decreed debt, the Bank has come forward with this insolvency petition.

4. According to the claim made in the petition, the amounts due as per the decree on the date of insolvency notice is Rs.11,00,070/- and the same had swollen to Rs.12,22,513/- as on the date of filing of the insolvency petition. Contending that the failure to pay the decree amount despite service of insolvency notice and the expiry of the 35 days statutory period would amount to an act of insolvency having been committed by the debtors, the Bank/ decree holder had sought for an adjudication.

5. This application is primarily resisted by the respondents/ judgment debtors on the ground that the decree being one executable under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the insolvency jurisdiction of this Court cannot be invoked. There is no dispute on the factual aspects that the respondents had suffered a decree and had failed to discharge the same.

6. Evidence was recorded in this petition. The Chief Manager of the

Bank was examined as PW1 and he had produced Exs.P1 to P4 and he was also cross examined by the counsel for the respondents/ judgment debtors. Though the matter was posted before the learned Master for recording of evidence on the side of the respondents on several occasions, the respondents did not choose to let in evidence, hence the learned Master had closed the evidence of the respondents on 15.02.2018 and posted the matter before the Court for orders.

7. The only contention that is raised by Mr.A.Babu, learned counsel appearing for the debtors is that since, the decree amount exceeds Rs.10,00,000/-, it is a decree which becomes executable under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Claiming that Section 17 vests the jurisdiction to execute such decrees in the Tribunal formed under the said Act, Mr.Babu would contend that the insolvency proceedings are not maintainable. He would also contend that the Civil Court or the Insolvency Court looses the jurisdiction once the decree becomes one executable as per the provisions of the Act. Mr.Babu, in support of his submission would rely upon the judgment of the Division Bench in ***M/s.Lakshmi Travels Vs. Indian Bank*** reported in ***2014 (3) LW 322.***

8. Per contra, Mr.P.B.Sampath Kumar, learned counsel appearing for

the petitioner/ Bank would submit that in the case on hand, the decree is one passed by the Civil Court as the amount sought to be recovered was less than Rs.10,00,000/- and as such the Debt Recovery Tribunal did not have jurisdiction to entertain the original recovery proceedings. However, after the passing of the decree, the decree amount had due to the addition of subsequent interest, swollen to above Rs.10,00,000/-. Therefore, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 the decree becomes executable by the Debt Recovery Tribunal.

9. According to the learned counsel, the bar of jurisdiction provided under Section 18 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 will apply only in a case that falls within the scope of Section 17 of the Act. Therefore, according to the learned counsel, the fact that the decree becomes executable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, though passed by the Civil Court will not denude this Court of its jurisdiction under the Presidency Towns Insolvency Act.

10. In view of the above submissions it has become necessary to consider the scope of the bar created under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 17 of

the Act deals with the jurisdiction, powers and authority of the Tribunal. Section 17 reads as follows:

> *"(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.*
>
> *(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."*

11. Section 18 of the Act deals with bar of jurisdiction. Section 18 reads as follows:

> *"On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17. "*

12. Section 19 of the Act deals with the procedure of the Tribunal. Sub-Section 20 of Section 19 enables the Tribunal to pass an interim or final order including payment of interest. Section 22 authorizes the Presiding

Officer of the Tribunal to issue a certificate of recovery to the Recovery Officer for recovery of the amounts specified in the certificate. Section 25 deals with the modes of recovery of the debt which include attachment and sale of the immovable property, arrest and detention in prison, appointing a receiver for management of movable or immovable properties of the defendant. Section 28 of the Act provides for recovery of the debts by other modes also. Section 31-A of the Act enables the decree holder to apply to the Tribunal to pass an order for recovery of the amount and Section 31-A(2) empowers the Tribunal to issue a recovery certificate under sub-Section 1 upon application by the Bank. Section 31-A(3) enables the recovery officer to proceed to recover amount as if the certificate was issued for the debts recoverable under the Act. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is a self contained code which provides for recovery of monies due to Banks and Financial Institutions.

13. According to Mr.A.babu, learned counsel appearing for the respondents, once the amount due under the decree is over and above Rs.10,00,000/-, the only course open to the Bank is to execute the decree through the Debt Recovery Tribunal and an application in insolvency will not lie. He would rely upon the provisions of Section 18 of the Act which create a bar on the other Courts from exercising any jurisdiction, powers or

authority in relation to matters specified under Section 17. The very language of Section 18 would show that the bar created under Section 18 is not an absolute bar, the bar will apply only insofar as the jurisdiction vested in a tribunal under Section 17 of the Act. A reading of Section 17 which is already been extracted would show that the Tribunal is vested with the jurisdiction and powers to entertain and decide applications from Banks and Financial Institutions for recovery of debts due to such Banks and Financial Institutions.

14. The expression "Debt" under the Act has been given the widest possible amplitude to mean any liability which is alleged to be due from a person and it includes a decreed debt. Section 31(A) enables a Debt Recovery Tribunal to issue a recovery certificate in respect of a decreed debt. Therefore, it is open to the Bank/ decree holder to approach the Tribunal for grant of a recovery certificate based on the decree passed by the Civil Court. The Act itself makes an essential distinction between a decreed debt and an ordinary debt. A different procedure is prescribed for recovery of money due under the decreed debt which is covered by Section 31(A). The procedure for recovery of other debts are covered by Section 19 of the Act. What could be said to be barred under Section 18 is only the proceedings for recovery of a debt within the meaning of Section 17 of the

Act and not others.

15. In view of sub-Section 4 of Section 1 of the Act, it would apply only if the debt due is over and above Rs.10,00,000/-. In the case on hand the debt due as on the date of the suit and as on the date of the decree was less than Rs.10,00,000/-. However, in view of the addition of subsequent interest, the debt had become over and above Rs.10,00,000/- thus enabling the Bank to seek a remedy for recovery before the Debt Recovery Tribunal.

16. In the judgment of the Division Bench in ***M/s.Lakshmi Travels Vs. Indian Bank*** reported in ***2014 (3) LW 322,*** cited by the learned counsel for the respondents, the question that arose was whether the proceedings for execution of a decree could be levied before the Civil Court or before the Debt Recovery Tribunal in respect of a debt which had been decreed by the Civil Court. In that circumstance, the Division Bench had held that once the decree amount exceeds Rs.10,00,000/-, it is open to the Bank to file an application before the Debt Recovery Tribunal under Section 31(A) of the Act in order to obtain a certificate and seek recovery under the procedure prescribed under the said Act. Whether the jurisdiction of the Insolvency Court could be said to be barred was not considered by the Division Bench.

17. In ***Manohar Prasad vs. Kotak Mahindra Bank Ltd.,*** reported in

2012 (5) CTC 20, this Court had considered the effect of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act on the proceedings in insolvency. While rejecting an application to recall or set aside the insolvency notice, this Court had considered the scope of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act. The contention that was raised before the Court in the said case was that the insolvency notice cannot be issued in view of the fact that the executability of the decrees have been challenged before the Debt Recovery Tribunal. This Court while rejecting the said contention had held that the fact whether the decree is executable in one forum or the other cannot be a ground to challenge the insolvency notice.

18. It has been consistently held that the bar of jurisdiction of a Court cannot be readily inferred. Unless it is shown that there is an express bar or a bar of jurisdiction could be inferred by implication, the Court should not readily infer bar of jurisdiction. Insofar as the insolvency jurisdiction is concerned, it is a special jurisdiction vested in this Court by the Presidency Towns Insolvency Act. The Recovery of Debts Due to Banks and Financial Institutions Act nowhere takes away the power of this Court under the Presidency Towns Insolvency Act.

19. The basis of the insolvency proceeding is a decree passed by the

Civil Court. May be because of the fact that the decree when put in execution exceeds the ceiling of Rs.10,00,000/- prescribed under sub-Section 4 of Section 1 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the decree becomes executable through a special machinery under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

20. This in my considered opinion cannot denude this Court of the jurisdiction vested in it under the Presidency Towns Insolvency Act. Hence, the contention of the learned counsel for the respondents that this Insolvency Petition is barred under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act is rejected as being without any merit.

21. From the evidence it could be seen that the respondents have suffered a decree and they have not paid the decree amount. A copy of the decree has been marked as Ex.P1 and the insolvency notice along with the proof of service of the same on the 1st respondent has been marked as Ex.P2. Ex.P3 is the acknowledgment. Ex.P4 is the paper publication, wherein, the insolvency notice was served on the 2nd respondent. From the above documents and the oral evidence of the petitioner, it is clear that the respondents have committed an act of insolvency within the meaning of

Section 9 to 13 of the Presidency Towns Insolvency Act and as such they had rendered themselves liable to be adjudicated as insolvents.

22. Hence, the respondents 1 and 2 are adjudicated as insolvents and their assets shall vest in the Official Assignee for the benefit of the general body of the Creditors of the debtor. The costs of this petition shall be paid by the Official Assignee from and out of the estate of the debtors to the Creditor. The insolvents are granted 18 months time to apply for discharge.

23. In fine, the Insolvency Petition is allowed.

28.03.2018

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Index : Yes

Internet : Yes

Speaking Order

R.SUBRAMANIAN, J.

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Pre-Delivery Order
in
Insolvency Petition No.1 of 2011

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