

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2018

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Insolvency Petition No.38 of 2016

Praveen Kumar B.Jain,
S/o. Babulal,
No.425, Mint Street,
Chennai - 600 079

... Petitioning Creditor

Vs.

1. P.K.Dilli Babu

2. R.Karthikeyan

... 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 (a) to treat this Petition as urgent; (b) to adjudicate the Debtors as Insolvents; (c) to direct that the estate of the Debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditor of the Debtors; (d) 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 : Mr.T.Skandhakumaar

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 Debtors as Insolvents and to direct that the estate of the Debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditor of the Debtors.

2. Earlier, on 08.03.2018, paper publication has been issued to the Debtors. Today, when the matter is taken up for hearing, the learned counsel appearing for the petitioning creditor filed affidavit of service. The name of the Debtors were also printed in the cause list. Despite the same, the debtors have not entered appearance either in person or through counsel. Hence, the Debtors called absent and set exparte.

3. The Debtors borrowed money from the petitioning-Creditor. Since they failed to repay the amount, the Creditor had filed a suit in O.S.No.3953 of 2014 on the file of the XIII Assistant City Civil Court, Chennai for recovery of money and the suit was decreed on 17.12.2015 and the said decree has become final. The amount due from the debtors to the creditor as per insolvency notice is Rs.91,031/-, and the same with interest workout to Rs.99,419/- as on the date of filing of the insolvency petition.

4. Despite the decree, the Debtor failed to pay the decree amount, the Creditor had filed an application in I.N.No.9 of 2016 seeking issuance of insolvency notice and notice was also served on them. Subsequently, paper publication has also been effected. Even after that, the Debtors had failed to comply with the said notice and the 35 days period specified in the insolvency notice for compliance has also expired. The Debtors, had therefore, committed acts of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, commencing from 24.08.2017 (date

of filing of the petition). The Creditor therefore seeks an order to declare the debtors as insolvents.

5. Though, notice served on the Debtors and paper publication also effected, there is no representation on his behalf, hence the respondent/Debtors set exparte.

6. Considering the fact that the insolvency notice has not been complied with, the debtors are adjudicated as insolvents. The estate of the debtors shall vest with the Official Assignee for the benefit of the general body of the Creditor of the Debtors. 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 insolvent is granted 18 months time to apply for discharge.

7. In fine, this Insolvency Petition is allowed.

23.04.2018

mrp

Index : Yes/ No

Internet : Yes/ No

Speaking Order / Non-speaking Order

V.BHARATHIDASAN, J.,

mrp



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