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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN INSOLVENCY JURISDICTION

NOTICE OF MOTION (L) NO.40 OF 2019
IN
INSOLVENCY PETITION (L) NO.6 OF 2019

Jagdish Bhagwandas Ahuja … Applicant / Judg. Debtor No.1

In the matter between
Jagdish Bhagwandas Ahuja … Judg. Debtor No.1

Vs.
Ajay Hasmukhrai Mehta … Petitioning Creditor

NOTICE OF MOTION (L) NO.41 OF 2019
IN
INSOLVENCY PETITION (L) NO.7 OF 2019
WITH
NOTICE OF MOTION (L) NO.44 OF 2019
IN
INSOLVENCY PETITION NO.9 OF 2019
WITH
NOTICE OF MOTION (L) NO.45 OF 2019
IN
INSOLVENCY PETITION NO.10 OF 2019
WITH
NOTICE OF MOTION (L) NO.47 OF 2019
IN
INSOLVENCY PETITION NO.13 OF 2019
WITH
NOTICE OF MOTION (L) NO.48 OF 2019
IN
INSOLVENCY PETITION NO.14 OF 2019
WITH
NOTICE OF MOTION (L) NO.50 OF 2019
IN
INSOLVENCY PETITION NO.16 OF 2019
WITH
NOTICE OF MOTION (L) NO.51 OF 2019

IN
INSOLVENCY PETITION NO.17 OF 2019
WITH
NOTICE OF MOTION (L) NO.42 OF 2019
IN
INSOLVENCY PETITION NO.7 OF 2019
WITH
NOTICE OF MOTION (L) NO.43 OF 2019
IN
INSOLVENCY PETITION NO.8 OF 2019
WITH
NOTICE OF MOTION (L) NO.46 OF 2019
IN
INSOLVENCY PETITION NO.12 OF 2019
WITH
NOTICE OF MOTION (L) NO.49 OF 2019
IN
INSOLVENCY PETITION NO.15 OF 2019

Mr. Zal Andhrujina with Shrey Sacheti & Saira Mirzankar i/b Madhukar Muley for Judg. Debtor.
Mr. Girish B. Kedia, for Petitioning Creditor.
Mr. Kunal Kumbhat for other Creditor.

CORAM: R. I. CHAGLA, J.
DATE: 1ST OCTOBER, 2019

PC:-

1. The Notices of Motion have been taken out by the Applicant / Judgment Debtor No.1 seeking an enlargement of the time from 60 days which they were to pay balance amount payable under the decree dated 20th December, 2017 vide order dated 16th July, 2019 till the actual payment being made which in 8 of these Insolvency Petitions being Nos. (L) No.6 of 2019, 7 of 2019, 9 of 2019, 10 of 2019, 13 of 2019, 14 of 2019, 16 of 2019 and 17 of

2019, till today and in four Insolvency Petition Nos.7 of 2019, 8 of 2019, 12 of 2019 and 15 of 2019 till 14th October, 2019.

2. By an order dated 16th July, 2019, the Insolvency Petition was taken up for consideration and the Judgment Debtor on instructions made a statement that the balance amount payable under the decree dated 20th December, 2017 shall be paid within a period of 60 days from the date of the order i.e. 16th July, 2019. The statement was accepted by this Court. It was further made clear that if the balance amount payable under the decree was not paid within the period of 60 days from the date of this order, the Insolvency Petition will be made absolute against the Judgment Debtor. The Petitioning Creditor has also consented to the enlargement of time for making balance payment in full and final satisfaction of the decree. It is always within the inherent power of this Court to extend time particularly in the interest of justice and considering that the Petitioning Creditor and the Debtors are settling their disputes whereby the Debtors are not required to be adjudged as insolvents.

3. An objection has been raised to the Notice of Motion by one of the Creditors viz. Shilpa Deepak Parekh, wife of Deepak Parekh who claims to be a supporting creditor. An Application has been filed by the supporting creditor to be allowed to be

substituted in the Insolvency Petition in place of the Petitioning Creditor on the ground that due diligence has not been shown by the Petitioning Creditor in adjudicating the Insolvency Petition against the Debtor. Further, it is mentioned by the supporting creditor that the Petitioning Creditor may arrive or has already arrived at an understanding and / or may not prosecute the Insolvency Petition with due diligence. The supporting creditor has a consent decree against the debtors dated 3rd June, 2019 in Summary Suit No.929 of 2016 passed by the Bombay City Civil court. It is stated that the Debtors have failed to pay installments to the supporting creditor and have committed breach of the consent terms filed in the said Summary Suit.

4. The learned Counsel for the supporting creditor has submitted that the supporting creditor can invoke Section 92 of The Presidency-Towns Insolvency Act, 1909 which expressly provides that where the Petitioning Creditor does not proceed with due diligence on his Petition, the Court may substitute as Petitioner any other creditor to whom the debtor is indebted in the amount required by this Act. He has further relied upon under Section 9(2) (b) which provides that where an application of a debtor has been rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub section on the

date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance. He has further submitted that the Debtor has not complied with the Insolvency Notice within the period specified and upon expiry thereof the Debtor would be deemed to have committed an act of Insolvency. He has placed reliance upon the judgment of this Court dated 18th June, 2019 to submit that where claims have been made in respect of decrees passed by the Bombay City Civil Court or other Courts, the claims are within the perview of Section 9(2) of the said Act. It would, therefore, be appropriate for this Court to substitute the supporting creditor in place of the Petitioning Creditor and continue the insolvency proceedings under the said Act. He has, therefore, submitted that the relief sought for in the Notice of Motion should not be allowed as this Court would be allowing the Petitioning Creditor to settle with the Debtor despite the Debtor being adjudged an insolvent after the expiry of 60 days from the date of the of the Order i.e. 16th July, 2019.

5. The learned Counsel appearing for the other Creditors have not filed any proceedings in this matter and have come to know of the Notices of Motion only today. They have referred to an order passed by the Bombay City Civil Court dated 21st September,

2019, whereby the Chamber Summons taken out by the Applicant / Decree Holder in the Execution Application has been made absolute in terms of prayer clause (a) to (e). He has stated that in prayer clause (b), the Judgment Debtors or any person by or on behest of the Judgment Debtors has been restrained from selling and / or transferring or creating third party rights, title and interest in respect of the movable and immovable properties standing in the name of Judgment Debtors. He has accordingly submitted that the injunction would operate against the Debtors herein and they are restrained from paying the balance amount to the Petitioning Creditor by the orders of the City Civil Court. He has accordingly, opposed any relief being granted by permitting the Judgment Debtors to settle the claim of the Petitioning Creditor by paying the balance amount under the decree.

6. Having considered the submissions, it is to be noted that the Petitioning Creditor in the Insolvency Petitions as well as the Judgment Debtors have arrived at a settlement in which they have jointly agreed for extension of time for making the balance payment which as per the undertaking given by the Judgment Debtors was to be paid in settlement of the decree within period of 60 days from the date of order dated 16th July, 2019 till the date of payment, which in the case of 8 Insolvency Petitions being Nos.

(L) No.6 of 2019, 7 of 2019, 9 of 2019, 10 of 2019, 13 of 2019, 14 of 2019, 16 of 2019 and 17 of 2019, which is today and in the balance 4 Insolvency Petitions i.e. Nos.7 of 2019, 8 of 2019, 12 of 2019 and 15 of 2019 which is 14th October, 2019. The order dated 16th July, 2019 had made it clear that if the balance amount payable under the decree dated 20th December, 2017 is not paid within the period of 60 days from the date of the said order, the Insolvency Petitions would be made absolute against the Judgment Debtors. However, considering that the parties have arrived at a full and final settlement of the debts due to the Petitioning Creditors under the decree, it is always open for this Court to exercise its inherent jurisdiction to extend the time period for making payment of the balance amount under the decree and particularly when the Petitioning Creditor has himself agreed to accept payment of its dues in full and final settlement of the decree.

7. Considering the objection on behalf of the supporting creditor to the relief being granted in the Notices of Motion, it would be appropriate to consider Section 92 of the said Act. The said section provides that where the Petitioner does not proceed with due diligence on his Petition, the Court may substitute as Petitioner any other creditor to whom the debtor is indebted. In the

present case, the Petitioning Creditor has proceed with the due diligence on his Petition. It is only by virtue of a settlement being arrived at that the Petitioning Creditor has consented with the Judgment Debtors for dismissal of the Insolvency Petition in terms of the settlement of the decree. The submission on behalf of the supporting creditor is thus misconceived. Section 9 (2) of the said Act would apply to an application made by a debtor where the debtor who has been served with the insolvency notice makes an application for setting aside the insolvency notice and where such application is rejected under Section 9 (2) (b), the debtor shall be deemed to have committed an act of insolvency. This provision is thus not applicable in the facts and circumstances of the present case as there is no application made by the debtors. Hence, the reliance placed by the supporting creditors on the said provision is also misconceived. Further, the decision of this Court dated 18th June, 2019 on which reliance was placed by the supporting creditor had been passed in Insolvency Proceedings for recall of the order of adjudication, which had adjudged the Judgment Debtor as insolvent. Hence, this decision would be inapplicable in the present case. In that case, the Creditors had lodged their claims before the Official Assignee and it was noticed by this Court that, the Creditors claims were in respect of proceedings which were filed in the City Civil Court, Bombay and from which there was no decree or order passed. It was in this context that this Court had held that the Creditors who have not obtained a monetary decree from the City Civil Court could not step into shoes of the Petitioning Creditor. In the present case, although the supporting creditor has a decree in her favour, she has filed an application for stepping into the shoes of the Petitioning Creditor in the present Insolvency Petitions which have still to be adjudicated upon. Without any order of adjudication it will not be open for the Insolvency Court to consider such application. The supporting creditor would have to file separate Insolvency Petitions and cannot seek substitution of the Petitioning Creditor in these Petitions.

8. The objection on the part of the other creditors to the Insolvency Petitions being disposed of in terms of the settlement arrived at between the debtor and the Petitioning Creditor is also misconceived as it merely relies upon an order of the City Civil Court which was passed in Chamber Summons taken out in an Execution Application which made the Chamber Summons absolute in terms of prayer clauses (a) to (e). From a perusal of prayer (b) of the Chamber Summons, it appears that an injunction had been granted restraining the Judgment Debtors or any person

on behalf of or at the behest of Judgment Debtors from selling and / or transferring and / or creating third party right, title and interest in respect of movable and immovable property standing in the name of Judgment Debtors. This order cannot be interpreted so as to prevent either the Judgment Debtors or any person on their behalf from making payment to the Judgment Creditor towards the balance amount payable under the decree passed by the Court as has been sought to be interpreted by the other Creditors. Thus, there is no merit in the objection raised by the other Creditors.

9. It would, therefore, be appropriate to grant the relief sought for in the Notices of Motion by extending time for making payment of the balance amounts under the decrees, in the eight Insolvency Petitions being Nos. (L) No.6 of 2019, 7 of 2019, 9 of 2019, 10 of 2019, 13 of 2019, 14 of 2019, 16 of 2019 and 17 of 2019 till the date of payment by the Judgment Debtors to the Petitioning Creditor which is today. Further, in the four Insolvency Petitions viz. Insolvency Petition Nos.7 of 2019, 8 of 2019, 12 of 2019 and 15 of 2019 the time is extended from the expiry of 60 days from the said order dated 16th July, 2019 till 14th October, 2019 i.e. due date of the cheques. It is to be noted that the post dated cheques have already been handed over by the Judgment Debtors to the Petitioning Creditor.

10. In view of the above order, the twelve Insolvency Petitions are disposed of subject to the Petitioning Creditor receiving payment on the due dates of the cheques.

11. It is made clear that, in case of any default in making payments by the Judgment Debtor to the Petitioning Creditor on the due date in respect of the four post dated cheques in Notice of Motion Nos. 42 of 2019, 43 of 2019, 46 of 2019 and 49 of 2019, liberty is granted to the Petitioning Creditor to approach the Insolvency Court.

(R I. CHAGLA, J.)