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

INSOLVENCY PETITION NO. 21 OF 2019
WITH
NOTICE OF MOTION (L) NO.26 OF 2019

Ravi Kiran Aggarwal … Debtor

ALONGWITH
INSOLVENCY PETITION NO.22 OF 2019
WITH
NOTICE OF MOTION (L) NO.27 OF 2019

Pujit Ravikiran Aggarwal … Debtor

Mr.Dinyar Madon, Senior Counsel with Mr. Karl Tamboly with Ms. Kausar Banatwala with Ms. Gauri Sakhardande I/b Tushar Goradia for Objectors.
Mr. Cherag Balsara, with Mr. Gaurang Mehta, Mr.Ashish Parwani, Mr. Dikshat Mehta, Mr. Vibhor Kapoor I/b Rajani Associates for the Petitioner.
Mr. S.R. Paranjpe, Insolvency Registrar present.

CORAM: R. I. CHAGLA, J.
DATE: 22ND AUGUST, 2019

PC:-

1. These two Insolvency Petitions have been preferred by the respective debtors. In the first Insolvency Petition No. 21 of 2019, the debtor is the father of the debtor in Insolvency Petition No.22 of 2019. Both Insolvency Petitions have similar averments and a similar objection has been raised by the Decree Holder Vardhman Developers Ltd. to the grant of the Insolvency Petitions.

2. The Insolvency Petitions have referred to the Consent Decree and other connected orders passed by this Court in Suit No.345 of 2015, which concerns the objector Vardhman Developers Ltd. and was filed against the Company Orbit Corporation Ltd. of which the two debtors are the Directors. The Insolvency Petitions have referred to the several debts due apart from the decree in favour of Vardhman Developers Ltd., to other banks as well as to the Life Insurance Corporation of India and Life Insurance Corporation Housing Finance Ltd. It is stated by the two debtors that a sum of Rs.56,34,11,486/- is still owed to Vardhman Developers Ltd. Which includes the principal amount along with exorbitant interest and penalties which have become payable even after making payment of various sums in instalments and by selling of office premises to Indus Biotech Private Ltd. as well as properties of Orbit Dwelling and gold and silver bars owned by Gunjan Aggarwal. It is further stated in the Insolvency Petitions that the debtor had become heavily indebted owing to certain business losses and is unable to pay his debts. In Exhibit 'D' in both Insolvency Petitions, the amount and particulars of all pecuniary claims against the debtors with the names of their creditors have been set out. Further, the details of liabilities of the debtors have been stated in Exhibit 'D' and which it is stated has

been sourced from financial statements and trial balances of the debtors updated till 27th June, 2019. The Income Tax Returns along with statements including balance sheets, annexures thereto for last seven and six financial years respectively have been annexed at Exhibit “E” to the Insolvency Petitions. Further, the debtors have set out a list of movable and immovable assets as they appear in their respective financial statements / balance sheet as of 27th June, 2019 and which assets included fixed assets (including properties), investments, deposits and other current assets. It is further mentioned that there are recovery certificates favouring LIC of India and LIC Housing Finance Ltd dated 20th July, 2017 and 19th May, 2018 in respect of personal guarantees which had been furnished by the debtors and which were invoked. The recovery certificates issued by the DRT amount to several 100 crores and payable by the debtors to LIC of India and LIC Housing Finance Ltd. together with further interest. It is further mentioned in the Insolvency Petitions that there are other personal guarantees given by the debtors. However, most of these personal guarantees have not yet invoked since the banks have proceeded under SARFAESI Act, 2002 for enforcing their securities. The two of the personal guarantees given by the debtors in favour of the SBI and Union Bank of India (in consortium) and Axis Bank have been invoked by issuance of demand notices under Section 13(2) and / or Section 13(4) of SARFAESI Act, 2002. It is thus stated that the debtor in Insolvency Petition No.21 of 2019 is unable to pay his debts which amounts to Rs.3,31,22,26,246/- approximately inclusive of liabilities and guarantees or thereabouts and in Insolvency Petition No.22 of 2019, it is stated that the debtor thereunder is unable to pay his debts which amount to Rs.10,48,85,40,216/- approximately inclusive of liabilities and guarantees of thereabouts. In so stating, the debtors have prayed for being adjudged as insolvents.

3. The learned Counsel appearing for the respective debtors in two Insolvency Petitions have submitted that a debtors petition is required to be treated differently from a creditors petition. They have submitted that under Section 10 of the Presidency Towns Insolvency Act, 1909 ("the said Act") in particular the explanation thereof, the mere presentation of the Petition by the debtor shall be deemed an act of insolvency and that on such petition the Court "may" make an order of adjudication. They have submitted that under Section 9 of the said Act, the acts of insolvency have been provided and in 9 (1) (f), it has been provided that the debtor commits an act of insolvent if he petitions to be adjudged an insolvent. They have further submitted that in Section 14,

conditions on which the debtor may petition have been set out and under Section 14 (1) (a), it is provided that a debtor whose debts amount to Rs.500/- is entitled to present an Insolvency Petition or in Section 14(1) (c) where order of attachment in execution of a decree has been made and which attachment is subsisting against the debtors property. Further, they have referred to Section 15 of the Act, where it is provided that the debtors petition shall allege that the debtor is unable to pay his debts and where the debtor has proved that he is entitled to present the Petition under Section 14 of the said Act, the Court may make an order of adjudication and the only exception being if the Court is of the opinion that the Petition ought to have been presented before some other Court having the Insolvency jurisdiction. They have thus submitted that upon the conditions in Section 14 being satisfied, this Court is required to adjudge the debtors as insolvents.

4. They have relied upon judgment of the Privy Council in ***Chhatrapat Singh Dugar Vs. Kharag Singh Lachmiram***[1]. In that decision it was held that upon the debtor having satisfied the Court that all the conditions specified in the Act have been met the debtors are entitled as of right to an order of adjudication as an

1 Vol.XLIV Calcutta Series pg.535.

insolvent. The Privy Council has not accepted the submission of the objector that an abuse of process of the Court would entail the dismissal of the Insolvency Petitions and has held that “a debtor brings himself properly within the terms of the Act is not be deprived of that right on so treacherous a grant of decision as an “abuse of the process of the Court”.

5. They have further relied upon judgment in the case of ***Abdul Kuddus Gazi Vs. Mutual Indemnity and Finance Corporation (India) Ltd.***[2] in order to contend that where the debtor has brought his case within the four corners of the statute i.e. the said Act, he shall be entitled to an order of adjudication as a matter of right. The decision of the Calcutta High Court in the case of ***Abdul Kuddus (Supra)*** has held that there is no question of abuse of the process of the Court being considered at the stage of presenting the debtor Insolvency Petition and that this may be considered when the Petitioner applies for discharge and the conduct during the time between the date of adjudication and date of application for discharge would have to be scrutinized.

6. They have also relied upon the decision of the Madras High Court in the case of ***K.R.K.K. Krishnappa Chettiar Vs. V.V.R. Kasiviswanathan Chettiar & Ors.***[3]***,*** where it is held that a debtor

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2 1930 SCC Online Cal 143.

3 AIR 1966 Madras 331.

commits an act of insolvency if he Petitions to be adjudged an insolvent and that the conditions under Section 10 of the Provincial Insolvency Act (equivalent to Section 14 of the said Act) have been satisfied. They have thus submitted that upon the debtor filing the Insolvency Petition, and this satisfying the conditions under Section 14 of the said Act as in the present case, this would amount to an act of insolvent and that this Court shall make an order of adjudication. They have read the words “may” in the explanation to Section 10 as “shall” and that the Court shall make an order of adjudication. Accordingly, they have submitted the Insolvency Petitions be allowed and the debtors be adjudged as insolvent.

7. The Insolvency Petitions have been vehemently opposed by the learned Senior Counsel appearing for the objector. It is necessary to note that a debtor petition is a Petition which is usually heard exparte. In the present case, the objector was permitted to intervene in the Insolvency Petitions on account of a Chamber Summons having been taken out by the debtors contending that the mere filing of the Insolvency Petitions amounted to an act of insolvency and sought stay of the the Execution Proceedings. This Court by an order dated 5th July, 2019 had dismissed the Chamber Summons. The provisions of

the said Act, in particular the explanation to Section 10 was relied upon in the said order and which read that upon the Insolvency Petition being filed, this Court may make an order adjudicating the debtors as insolvent. Further, Section 18 of the said Act which deals with stay of proceedings expressly provided that the Court after making the order of adjudication may stay such proceedings which would include executing proceedings. Considering that, the objector has been allowed to be heard in the debtor petitions, his submissions would have necessarily to be taken into consideration.

8. The learned Senior Counsel for the objector has submitted that there are several misstatements as well as suppression of facts made in the Insolvency Petitions. He has submitted that the Insolvency Petitions have not set out correct facts and that the Insolvency Petitions are filed for a collateral purpose to circumvent the Execution Proceedings which had been taken out by the objector against the debtors. He has submitted that this is nothing but an abuse of the process of the Court. He has relied upon the decision of the Calcutta High Court in the case of ***Re. Prafulla Chandra Mitra***[4] which in his view has impliedly over ruled the Privy Council decision in the case of ***Chhatrapat Singh Dugar***

4 1972 SCC Online Cal 83.

(Supra). He has submitted that in the decision of the Calcutta High Court in ***Re. Prafulla Chandra Mitra (Supra)*** the Calcutta High Court has held that where there is an abuse of the process of the Court then the Court can form an opinion that a debtor by reason of abuse of the process of the Court, ought not have adjudged insolvent. He has submitted that the Calcutta High Court had considered the lack of bonafide and suppression of material facts which were material to be taken into consideration in annulling Insolvency Petitions. Accordingly, the Court held that the debtor ought not to have adjudged insolvent. He has further relied upon the case of ***Dasari Srihari Rao Vs. Talluri Harinadha Babu***[5] to contend that a suppression of fact in the debtors Insolvency Petition, would result in the debtors Insolvency Petition being rejected. The Division Bench relied upon the judgment of the Supreme Court in ***S.P. Chengalavaraya Naidu (Dead) by LRs Vs. Jagannath (dead) by LRs***[6] wherein the Supreme Court has held that "he who comes to Court must come with clean hands" which the Andhra Pradesh High Court held is squarely applicable to the facts of that case. He has submitted that in the present case also there is suppression of facts and that this Court should also reject the debtors Insolvency Petition in view of the

5 2002 (2) APLJ 150 (HC.)

6 1994(1) SCC 1

suppression as well as misstatement of facts. He has also relied upon the Judgment of the Supreme Court in case of ***K.K. Modi Vs. K.N. Modi & Ors.***[7] to contend that where the proceedings had been filed for collateral purpose this would amount to an abuse of the process of the Court and would be taken into consideration and result in dismissal of those proceedings. He has submitted that in the present case, the Insolvency Petitions had been taken out by the debtors had a time when the executing Court through the Court Receiver was executing the decree in favour of the objector and that the Insolvency Petitions were taken out only for the collateral purpose of circumventing the executing proceedings against the debtors.

9. He has relied upon various statements made in the Insolvency Petitions which he has submitted are misstatements. He has submitted that there has been suppression of certain Income Tax Returns for the assessment years 2014 – 15, 2015-16 as well as balance sheets for the year ending 31st March, 2016 and 31st March, 2017 which have not been annexed to the Insolvency Petitions. He has also submitted that certain of the assets have been shown as belongings to the wife of Pujit Aggarwal, one of the debtors in the Insolvency Petition and which

7 (1998) 3 Supreme Court Cases 573.

assets belonged to the debtors. He has thus submitted that the Insolvency Petitions are an abuse of the process of this Court and accordingly ought to be dismissed.

10. Having considered the submissions, it would be appropriate to consider certain of the provisions of the said Act. Sections 14 and 15 pertains to a debtors Insolvency Petition and these provisions have separated a debtors Petitions from the creditors Petition for which the provisions in Sections 12 and 13 of the said Act are applicable. Under Section 14(1) (a), it is clear that a debtor shall be entitled to present an Insolvency Petition where his debts amount to Rs.500/- or under 14(1) (c) where there is an order of attachment in execution of a decree and which attachment is subsisting against the debtors property. Further, under Section 15 of the said Act, the debtors Insolvency Petition shall allege that the debtor is unable to pay his debts and upon the debtor proving that he is entitled to present the Petition i.e. by satisfying the conditions under Section 14 of the said Act, this Court may make an order of adjudication unless it is of the opinion that the Petition ought to have been presented before some other Court having insolvency jurisdiction. It is further provided under Section 9 (1) (f) of the said Act that the debtor commits an act of insolvency if he Petitions to be adjudged an insolvent as more particularly

provided for in Section 9(1) (f) of the said Act. The explanation to Section 10 also makes it clear that, the presentation of an Insolvency Petition by the debtor shall be deemed to be an Act of insolvency within the meaning of this section. It is there upon that the Court may make an order of adjudication.

11. From a plain reading of Section 7 of the said Act it is clear that this provision would apply when the Court is to decide all questions arising in insolvency Petition and that would be necessary in cases where there has been an adjudication in Insolvency. Thereafter the Court shall have the power to decide all questions of priorities of creditors and all other questions whatsoever, whether of law or fact, which may arise in the case of insolvency within the cognizance of the Court.

12. The debtors would thus necessarily have to satisfy this Court of the conditions in Section 14 viz. that the debts amounting to Rs.500/- or an order of attachment in execution of the decree has been obtained and which attachment is subsisting against the debtors property are met to present a debtor Petition. There is no dispute insofar as the debtors being unable to pay their debts. In the two Insolvency Petitions, it has been averred that the debts of the two debtors i.e. in Insolvency Petition No.21 of 2019 is a sum of Rs.3,31,22,26,246/- approximately and in Insolvency Petition

No.22 of 2019 is a sum of Rs. 10,48,85,40,216/- approximately and that they are unable to satisfy their debts. It is thus clear that the condition in Section 14(1) (a) has been satisfied. Further, Section 14 (1) (c) has also been satisfied in the present case as the objector has obtained an order of attachment in execution of the decree which is subsisting against the debtors property. Thus the debtors are entitled to present the Insolvency Petitions.

13. In the Privy Council decision in the case of ***Chhatrapat Singh Dugar (Supra)***, it has been held thus:-

> ***"The dismissal of Chhatrapat's petition by the District Court does not purport to rest on any failure to comply with the express terms of the Act. What was held was that the application was an abuse of the process of the Court and so must be dismissed. Presumably it was on this ground, too, that the High Court dismissed the appeal; no other reason is indicated. It is to be regretted that the Courts in India allowed themselves to be influenced by this plea instead of being guided to their decision by the provisions of the Act. In clear and distinct terms the Act entitles a debtor to an order of adjudication when its conditions are satisfied. This does not depend on the Court's discretion but is a statutory right, and a debtor who brings himself properly within the terms of the Act is not to be deprived of that right on so treacherous a ground of decision as an "abuse of the process of the Court." This case illustrates the peril of this doctrine in India, for what has been treated by the Courts below as such an abuse appears to their Lordships in no way to merit this censure. It may, perhaps, give rise to a contest for priority between competing creditors, but that will be, if necessary, a matter for decision***

> ***hereafter in the course of the insolvency. Be that, however, as it may, their Lordships are now concerned only with the debtor's position; and as to that they are satisfied that he has complied with all the conditions specified in the Act, and is entitled as of right to an order adjudging him an insolvent".***

14. It has thus been held that a debtor who brings himself properly within the terms of the said Act cannot be deprived of that right by merely on the ground of having been guilty of abuse of process of the Court. The other judgments relied upon by the debtors of the Calcutta High Court and the Madras High Court both squarely hold that, where a debtor has satisfied the conditions under the said Act for maintaining Insolvency Petition and proves that he is entitled to present the Petition, an order of adjudication shall follow as a matter of course. It is thus clear from the decisions that the debtors Petition will have to be allowed where the conditions under Section 14 read with Section 15 of the said Act have been satisfied.

15. The decisions relied upon by the learned Senior Counsel for the Objector do not disturb the settled position laid down by the Privy Council as well as in the decisions of the Calcutta High Court and Madras High Court. The decision of the Calcutta High Court in ***Re. Prafulla Chandra Mitra (Supra)*** has been decided on the facts of that case and that was in a Petition for annulment

of the insolvency and not at the stage of presenting the debtors Insolvency Petition. Further, in that case the Calcutta High Court appears to have been satisfied that the debtor had not filed the Insolvency Petition in conformity with the Rules of the Court, in particular the Rule which provides that, if the debtor petition is not the first Petition for adjudication of insolvency, the debtor is obliged to say so. Further, the Rules provided that the debtor must state that he never kept any books of accounts and in whose custody the books of accounts have been kept and if not produced, he must give reasons. It was in this context that the Calcutta High Court held that the debtor was not a honest debtor and had by not placing true facts in the Insolvency Petition got an exparte order of adjudication. The decision of the Andhra Pradesh High Court in the case of ***Dasari Srihari Rao (Supra),*** which had been relied by the learned Senior Counsel is under the Provincial Insolvency Act, 1920 and in particular Section 13(1) (e) of the Act which has been held to be a mandatory provision and imposes an obligation on the debtor filing the Insolvency Petition to furnish particulars of all his properties in the Petition. This provision is absent in the said Act and thus this decision is inapplicable to the present Insolvency Petitions which have been filed under the said Act. Further, the decisions of the Supreme Court in ***S.P.***

Chengalavaraya Naidu (Dead) (Supra) and ***K.K. Modi (Supra)*** have been relied upon by the learned Senior Counsel in support of his submission that abuse of the process of the Court should be taken into consideration in adjudicating the debtors Petition for insolvency. The first of the decisions of the Supreme Court is in the context of preliminary decree having been obtained by playing fraud on the Court and it was in this context that the Supreme Court had held that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. In the second decision of ***K.K. Modi (Supra),*** the Supreme Court has held that, it is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him, it has further been held that proceedings filed for collateral purpose or a spurious claim made in the litigation would also amount to an abuse of the process of the Court. It was in the drastic facts of those cases that the Supreme Court held that on account of abuse of the process of the Court the proceedings would not be entertained. These decisions of the Supreme Court do not in any manner disturb the decision of the Privy Council in ***Chhatrapat Singh Dugar (Supra)*** which holds the field in cases of presentation of debtors Insolvency Petitions and is squarely applicable in the present case, where abuse of the process of the Court cannot deprive the debtor who brings himself properly within the terms of the said Act from being adjudged an Insolvent.

16. The learned Senior Counsel for the Objector has prepared statements alleging misstatements and suppression of facts and in response to which the learned Counsel for the debtors has in turn prepared a statement dealing with these allegations. However, it would not be necessary for this Court at this stage to go into these allegations of misstatements and suppression. This would be a matter for the Insolvency Court to consider in proceedings for discharge as laid down by the Privy Council in ***Chhatrapat Singh Dugar (Supra)*** and the ***Madras High Court K.R.K.K. Krishnappa Chettiar (Supra)***.

17. In view of the above findings, it would be necessary to allow the Insolvency Petitions and adjudge the debtors as insolvents. Accordingly, the following order:-

(i) The Insolvency Petitions are allowed in terms of prayer clause (a);

(ii) The Official Assignee is hereby appointed of the properties of the Insolvents wherever situated which shall vest in the Official Assignee;

(iii) The Official Assignee is directed to take necessary steps in accordance with the Circular dated 14th October, 2011 issued by the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes), New Delhi and to invest the amount so realised from the Insolvents with any of the Nationalised Banks;

(iv) In the above terms the Insolvency Petitions are disposed of. With the disposal of the Insolvency Petitions, the Notices of Motion filed therein will not survive and are disposed of.

(R I. CHAGLA, J.)