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

**INSOLVENCY RULE NISI NO.6 OF 2018
IN
INSOLVENCY PETITION NO.6 OF 2017
WITH
NOTICE OF MOTION NO. 8 OF 2019
ALONGWITH
INSOLVENCY RULE NISI NO.7 OF 2018
IN
INSOLVENCY PETITION NO.9 OF 2017
WITH
NOTICE OF MOTION NO. 9 OF 2019**

Amarpreet Kaur Chadha	... Applicant
<i>In the matter between</i>	
Amarpreet Kaur Chadha & Anr.	... Debtors
V/s.	
Kulwant Singh Prehlad Singh Kohli	... Petitioning Creditor

Ms. K.S. Lalwani for the Petitioning Creditor.
Mr. Rohan Cama with Shanay Shah with Ranjit Shinde, i/b Rajeev Sawant and Associates.
Mr. M.D. Narvekar, O.A. present.
Mr. E.B. Shivkumar, Deputy O.A. present.
Ms. S.A. Pagedar, 1st Asstt. O.A. present.

CORAM:	R. I. CHAGLA, J.
DATE:	18TH JUNE, 2019

PC:-

1. Heard the learned Counsel for the Applicant and the learned Counsel for the Petitioning Creditor. The Applicant by these Notices of Motion filed in Insolvency Petition Nos. 6 of 2017 and 9 of 2017 are seeking recall and / or setting aside of orders dated 6th September, 2017 passed in the Insolvency Petitions adjudicating the Applicant as insolvent. The Applicant is also

seeking discharge of the Official Assignee, High Court, Bombay who had been appointed of the estate and effects of the Applicants by order dated 6th September, 2017. The facts are similar in the two matters and facts in Notice of Motion No.8 of 2019 are set out for the sake of convenience. The Petitioning Creditor had advanced a sum of Rs.25,00,000/- in favour of the company M/s. Tornado Motors Pvt. Ltd. ("**the said Company**"). In the Affidavit of the Judgment Debtor it is stated that the Judgment Debtor was a Director of the said Company and has thereafter resigned from the Directorship on 29th December, 2014. It is stated that the Petitioning Creditor had advanced a sum of Rs.25,00,000/- in favour of the said Company in lieu of two bills and exchange of Rs.12,50,000/- each signed by the husband of the Judgment Debtor. It is stated that Petitioning Creditor has alleged that the said two bills of exchange of Rs.12,50,000/- each were also signed by the Judgment Debtor as second acceptor. She has disputed her signature on the two bills of exchange and has stated that she was not aware of any transaction taking place between the said Company and the Petitioning Creditor till the year 2016. She has stated that when the letter dated 18th April, 2016 was sent by the Petitioning Creditor to her as also to her husband (Judgment Debtor No.2) wherein 48 hours notice had

been given on receipt of the said letter to repay the amount due to the Petitioning Creditor, the Judgment Debtor had already resigned as Director of the said Company. It is stated that the Petitioning Creditor had filed Summary Suit No.514 of 2016 in the City Civil Court against the said Company as also the judgment debtor and her husband, judgment debtor No.2 in their personal capacity praying for an order directing the judgment debtors to pay the amounts to the Petitioning Creditor under the two bills of exchange along with interest. Further, it is stated that by an order dated 18th August, 2016 passed by the City Civil Court in the said Summary Suit No.514 of 2016, the Suit was decreed in favour of the Petitioning Creditor *exparte*. The judgment debtor could not defend herself in the in the said Suit and the Suit was decreed without hearing her contentions. She has further stated that she was not aware of any such proceedings pending against her in the City Civil Court and hence was unaware of the *exparte* order.

2. The Petitioning Creditor has filed the Insolvency Petition *inter alia* against the judgment debtor on the basis of the *exparte* order dated 29th September, 2016. It is stated in the Affidavit of judgment debtor that it was by a letter dated 15th November, 2017 addressed by the Official Assignee, High Court to the judgment debtor and her husband judgment debtor No.2 that she learnt

about the Summary Suit No.514 of 2016 as well as the exparte order dated 18th August, 2016, passed against her. The judgment debtor has further stated that she has filed First Appeal (L) No.15429 of 2018 in this Court on 5th June, 2018 which Appeal had been admitted and is pending. Further it is stated that on 5th June, 2016, the Civil Application No.2858 of 2018 was taken out in the First Appeal praying for stay of the execution of the order dated 18th August, 2016 passed in Summary Suit No.514 of 2016. By an order dated 26th September, 2018 passed by this Court in the said Civil Application the operation of the exparte order dated 18th August, 2016 was stayed on the condition that the decretal amount of Rs.26,98,750/- along with interest be deposited in the City Civil Court. Accordingly, the judgment debtor has deposited the entire decretal amount by demand draft dated 9th October, 2018 in the City Civil Court, Bombay within time in compliance with order dated 26th September, 2018. The operation of the exparte order dated 18th August, 2016 came to be stayed till final hearing and disposal of the First Appeal.

3. In the present case, there are orders of adjudication holding the judgment debtors including the judgment debtor who has filed this application as insolvents, which orders are both dated 6th September, 2017. By the said orders, the Official Assignee has

been appointed with the usual directions and accordingly, the Official Assignee has sought requisitions from the judgment debtor pursuant to the said order dated 6th September, 2017. On failure to comply with requisitions, the Official Assignee has filed Rule Nisi application which is also before this Court. The present Notices of Motion seek recall and / or setting aside of the orders of adjudication.

4. The learned Counsel for the Applicant has stated that the Petitioning Creditor can only be concerned with the Petitioning Creditor's debt. It is provided under Section 9(2) of the Presidency Towns Insolvency Act, 1909 (for short "the said Act") as to when a debtor can be held to have committed an act of insolvency. Further, he has relied upon Section 13 of the said Act which provides for Insolvency proceedings and order on creditor's petition. Further under sub clause (4b) of Section 13, it is provided that if the debtor appears and specifically agreed to pay his debt for which he is stated to have committed an act of insolvency and shows sufficient cause, then the Court would not pass the order of insolvency under Section 13 (5). However, a Court may make an order of adjudication of Insolvency if it is provided with proof that the debtor does not appear despite service of the Petition being effected.

5. The learned Counsel for the Applicant has submitted that the order dated 6th September, 2017 passed by the learned Judge of this Court declaring *inter alia* the judgment debtors to be insolvent is passed prior in point of time of the order dated 26th September, 2018 passed by the learned Judge of this Court in the First Appeal which had directed deposit of the entire decretal amount and had stayed execution of the decree on that condition. Thereafter, the judgment debtor has deposited the entire decretal amount and complied with the order dated 26th September, 2018. He has submitted that this Court can annul Insolvency in certain cases as provided in Section 21 of the said Act. This section provides for two cases where orders of annulment can be passed. One where it is in the opinion of this Court that the debtor ought not to have been adjudged insolvent and the other case where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full. He has relied upon the judgment of the Supreme Court in ***Sarat Chandra Roy Vs. Harak Chand Damani & Anr.***¹ where the Supreme Court has held in paragraph 1 as under:-

This appeal by special leave arises from insolvency proceedings initiated by the first respondent Petitioning Creditor on the original side of the Calcutta High Court against the appellant. No other

1 AIR 1972 SC 2127.

creditor had either joined the proceedings or was a party thereto. Excepting the fact that the petitioner alleged that some other debts were also due from the insolvent there is no satisfactory proof about those debts. At any rate, there is no satisfactory proof to show that the insolvent was unable to discharge the debts due from him. The prayer for adjudicating the appellant as an insolvent had primarily proceeded on the basis of the failure of the appellant to discharge the decree debt due to the petitioning creditor. At the hearing of the appeal the appellate Bench of the High Court determined on September 23, 1964 that the balance amount due from the insolvent to the petitioning creditor was Rs. 46,623.49 paise. The court directed the appellant that if he paid to the petitioning creditor Rs. 28,186.40 p. by 2nd December, 1964 and balance with interest by June 30, 1965, the order of adjudication would be set aside. On the same day i.e. September 23, 1964 the appellant paid to the petitioning creditor Rs. 28,186.49 paise. The balance amount was not paid within the time fixed. For that reason the appellate court confirmed the adjudication of the insolvent by its judgment dated July 12, 1966. There after on July 30, 1966 the appellant's solicitors sent a cheque for Rs. 23,466.06 paise to the solicitors of the petitioning creditors in full satisfaction of the balance due to the petitioning creditor. That cheque was returned by the solicitors of the petitioning creditor on August 1, 1966 on the sole ground that the amount in question had not been paid within the time fixed by the court. There was no justification in doing so. After the tender in question the appellant applies to the appellate court to review its order. That application was dismissed mainly on the ground that the petitioning creditor opposed the same and that there was differences between the two. We fail to see how the creditor was interested in the adjudication of the appellant as an insolvent even after the entire amount due to him was tendered. The court was not justified in maintaining case. From the records we are satisfied that there was no justification for initiating the insolvency

proceedings in question. Non-payment of a decree promptly by itself is no ground to adjudicating a person insolvent: Appellant appears to be a person of substantial means. In this case insolvency proceedings appear to have been initiated as an alternative to execution proceedings.

6. It is thus clear from the above decision that the creditor cannot be interested in adjudication of the party as an insolvent even after the entire amount due to him was tendered. Accordingly, the Court would not justify in maintaining adjudication of the insolvent in cases where the debts have been satisfied. He has submitted that in the present case the judgment debtor has deposited the entire decretal amount in the City Civil Court and that after taking instructions from the judgment debtor, he has stated that the judgment debtor is agreeable to have the sum deposited in the City Civil Court to be released and paid over to the Petitioning Creditors in full satisfaction of the debts of the insolvent. He is further agreeable to have a well wisher, one Mr. Charan Singh Gujral, as well wisher of the judgment debtor furnishing an undertaking cum indemnity bond to the effect that in the event that the creditor, if any, obtains a decree or order of a court against either of the judgment debtors for payment of money (from a decree or order which has become final or execution whereof has become final or execution whereof has not been stayed), and subject to the judgment debtors rights and remedies

in law to challenge the said order or decree, Mr. Charan Gujral will make payment of the decreed sum where the same attains finality.

7. He has submitted that this undertaking cum indemnity bond furnished by the well wisher of the judgment debtors as well as the application which will be made by the judgment debtors to have the sums deposited with the Registry of the City Civil Court released to the Petitioning Creditors shall be without prejudice to their rights and contention and may not be construed as an acceptance of the decrees passed by the City Civil Court, Mumbai in Special Civil Suit No.514 of 2006 and Special Civil Suit No.224 of 2016.

8. He has submitted that in so far as the other claims are concerned and which have been filed before the Official Assignee, these claims have not been proved and are only in respect of summary suits which are pending before the City Civil Court and where there is no order of payment and / or decree passed by the City Civil Court for these claims to come within the purview of Section 9 (2) of the said Act. Hence there can be no insolvency proceedings with respect to these claims which are still to be established and hence the claimants cannot step into the shoes of the Petitioning Creditor and continue the insolvency proceedings

under the said Act. He has accordingly, applied for annulment of the adjudication of the judgment debtors as insolvents.

9. The learned Counsel for the Petitioning Creditor although agreeable to having the Petitioning Creditor's debts settled in terms of the settlement proposed by the Applicant and which would be in full payment of the debts due to the Petitioning Creditor, has vehemently opposed the closure of the insolvency by recall of the order of adjudication passed by this Court dated 6th September, 2017. She has stated that there are several claims which have been filed with the Official Assignee and which require determination and that merely by settling the debts of the Petitioning Creditor, this does not divest the Official Assignee from adjudicating these claims. She has stated that this Court should take into account the conduct of the judgment debtors who have defaulted in the past and orders have been passed against the judgment debtors including suo motu show cause notice issued by this Court in the proceedings of ***Fullerton India Credit Company Ltd. Vs. Jitendrapal Singh Chadha***. She has stated that in the event of this Court directing the well wisher of the judgment debtors to merely furnish an undertaking cum indemnity bond to the Official Assignee, this would be insufficient and in fact would not secure the claims of the other creditors. She has submitted

that only a deposit of these claims with the Official Assignee by the judgment debtor would secure their interest. She has relied upon orders of this Court passed from time to time where this Court has secured the interest of the creditors who have filed claims before the Official Assignee. She has stated that this Court has directed the debtors to deposit the claim amounts and then only put an end to the insolvency. She has stated that the Notices of Motion have only been filed by one of the Judgment Debtor viz. Amarpreet Kaur Chadha and the application is not one of annulment but only for recall and or setting aside the order of adjudication dated 6th September, 2017. She has submitted that there is nothing wrong in the order of adjudication dated 6th September, 2017 and in fact the learned Judge of this Court had noticed the conduct of the judgment debtors, including their non-appearance and held that the decree passed against the said Company was no ground for the judgment debtors to avoid payment. In fact, the decree had been passed against the judgment debtors as well. She has further submitted that this Court had noticed that at that stage the decree had not been challenged and thus it was appropriate to declare the judgment debtors as insolvent. She accordingly submitted that the Notices of Motion be rejected.

10. I have considered the rival submission. I have also noticed that the Petitioning Creditor is agreeable to settle his debts with the judgment debtors upon an appropriate application be made by the judgment debtors to the Registry of the City Civil Court for releasing the full decretal amount deposited by them in favour of the Petitioning Creditor. The real grievance of the learned Counsel appearing for the Petitioning Creditor is that the adjudication order dated 6th September, 2017 adjudicating the judgment debtor as insolvent should not be recalled and / or set aside as once an order of insolvency is passed it is an order in rem and would accordingly operate in favour of the other claimants who have filed their claims before the Official Assignee. She has admitted that she is holding a brief for the other claimants as well who seek to adjudicate their claims before the Official Assignee. It is also apparent that the Petitioning Creditor although having this entire claim settled / debts paid in full is unwilling to agree to the annulment of the adjudication of the judgment debtor as insolvent. The learned Counsel for the Petitioning Creditor appears to be also canvassing the case of the other claimants by stating that merely by having their well wisher of the judgment debtors file an undertaking cum indemnity bond would not secure the claims of other creditors. The learned Counsel for the Petitioning Creditors

also relies on an order of *Suo Moto* Show Cause Notice issued by the learned Judge of this Court. This was stated to have been issued against judgment debtor No.2. who failed to comply with orders of this Court and / or satisfy the debts. However, it appears from subsequent orders passed by the very same Judge of this Court referred to by the learned Counsel for the judgment debtor that this Court held that there was no point in pursuing the *suo moto* show cause notice against the judgment debtor No.2 and in fact by order dated 21st August, 2018, this Court recorded that as regards judgment debtor No.2, the learned Counsel has stated that no notice was ever issued to him. Therefore, these proceedings have been dropped.

11. It is clear from the order of the Supreme Court in ***Sarat Chandra Roy (Supra)*** that the Petitioning Creditor cannot be interested in adjudication of a party as insolvent even after the entire amount due to him has been tendered. It is therefore, inappropriate for the learned Counsel for the Petitioning Creditor to take up the case of the other claimants who have filed their claim before the adjudicating authority viz. Official Assignee when the Petitioning Creditors claim has been agreed to be settled in full. Further, it is clear from the orders passed by this Court that an order of annulment of adjudication of a party as insolvent can

always be passed by this Court, when debts of the insolvent are paid in full to the Petitioning Creditor. It is further clear from Section 9(2) of the said Act that a debtor can be adjudged to be insolvent provided a creditor has obtained a decree or order against him for payment of money and thereafter served a notice of insolvency upon him which has not been acted upon. In the present case the claimants have merely filed their claims before the Official Assignee and which claims arise from summary suits filed in the City Civil Court and from which there are no decrees or orders for payment of money. Hence, these claims before the Official Assignee cannot be continued when the Petitioning Creditor debts are settled in full by the judgment debtor. The Claimants cannot step into the shoes of the Petitioning Creditor.

12. One of the orders which have been relied upon by the learned Counsel for the Petitioning Creditor is an order passed by the learned Judge of this Court (S.J.Kathawalla,J.) on 24th December, 2013 of annulment of adjudication of the insolvent subject to a well wisher executing an undertaking cum indemnity bond in favour of the Official Assignee to settle the claim of the creditors, if any, lodged subsequently with the Official Assignee. One can take support from this order which in fact protects the interest of the claimants who at a future point of time, i.e. after

obtaining decrees or orders for payment of money from the City Civil Court in their Summary Suits and such decrees ultimately being made final, the claimants would then be Petitioning Creditors and their debts secured by such undertaking cum indemnity bond. In fact, the judgment debtor has agreed to have such undertaking cum indemnity bond being filed by Mr. Charan Singh Gujral, well wisher of the judgment debtors to the Official Assignee, High Court, Bombay undertaking that in the event a creditor, if any, obtains a decree or order of the Court against judgment debtors for payment of money (from a decree or order which has become final or execution whereof has become final or execution whereof has not been stayed), and subject to the judgment debtors right and remedies in law to challenge the said order or decree, Mr. Charan Gujral will make payment of the order or of the decreed sum if the same attains finality. Accordingly, in my view, the claimants who have filed their claims with the Official Assignee will be secured by such undertaking cum indemnity bond. It would further be appropriate for the judgment debtor to pay costs to the Official Assignee for non compliance of the requisitions and / or non appearance in the proceedings before the Official Assignee and for which rule nisi is filed.

13. The order which is under challenged in the Notice of Motion viz. Order dated 6th September, 2017, was correctly passed at that relevant point of time since there was no challenge to the decree passed by the City Civil Court and hence the order of adjudication of the judgment debtor as insolvent was made absolute. However, in light of the subsequent events, including the deposit of the decretal amount with the City Civil Court and the judgment debtors agreeing to have the entire decretal amount released to the Petitioning Creditor in full and final settlement of the Petitioning Creditor's debts, it would be necessary to have the order of adjudication dated 6th September, 2017 recalled and the adjudication of the judgment debtors as insolvents annulled. In view thereof, the following order is passed:-

ORDER

i) Both orders dated 6th September, 2017 are recalled and the adjudication of the judgment debtors as insolvents are set aside; upon the judgment debtors applying before the Registrar of the City Civil Court and having the sums of Rs.30,52,300/- and Rs.30,22,500/- deposited with the Registry as per the directions of this Court dated 26th September, 2018 and 25th October, 2018 in First Appeal (L) No.15454 of 2018 and First

Appeal (L) No.15429 of 2018 respectively released in favour of the Petitioning Creditor in Insolvency Petition No.6 of 2017 and Insolvency Petition No.9 of 2017. Further the well wisher of the judgment debtors, one Mr. Charan Singh Gujral, shall furnishing an undertaking to the Official Assignee, High Court, Bombay within one week from uploading of this order as follows:-

“In the event that a creditor, if any, obtains a decree or order of a court against either Amarpreet Kaur Chadha or Jitendrapal Singh Chadha for payment of money (from a decree or order which has become final or execution whereof has become final or execution whereof has not been stayed), and subject to Amarpreet Kaur Chadha and Jitendrapal Singh Chandha's right and remedies in law to challenge the said order or decree, Mr. Charan Gujral will make payment of the order or of the decreed sum if the same attains finality”.

- ii) The judgment debtors are directed to pay costs which is quantified in the sum of Rs.5 lacs to the Official Assignee within a period of one week from the uploading of this order; which sum the Official Assignee is entitled to utilize towards administration expenses;
- (iii) Rule Nisi is discharged subject to payment of costs as directed in (ii) above;

(iv) The Insolvency Petition Nos.6 and 9 of 2017 along with Notices of Motion Nos.8 and 9 of 2019 respectively are disposed of in the above terms and the Official Assignee is discharged of the estate and effects of the judgment debtors.

(R I. CHAGLA, J.)