

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Insolvency Petition No.15 of 2018

Miss.Sunitha .. Petitioning Creditor

Vs.

1. S.Buddhan, carrying on
business under the name and
style of Growell Pharmaceuticals

2. B.Bharathi .. Respondents/Debtors

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Prayer : Petition filed under Section 9 to 13 of the Presidency Towns Insolvency Act, 1909 and Order III-A of the Insolvency Rules, 1958 praying (i) to treat this Petition as urgent ; (ii) to adjudicate the Debtors as an Insolvents ; (iii) to direct that the estate of the Debtors be vested in the Official Assignee, Madras, for the benefit of the General Body of Creditors of the Debtors ; and (iv) to order that the costs of this petition paid by the Official Assignee, Madras, from and out of the estate of the Debtors to the Petitioning Creditor.

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For Petitioning Creditor : Mr.T.Srikanth

For Respondents/Debtors: Served – No Appearance

J U D G M E N T

The Petitioning Creditor instituted this Insolvency Petition 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 Creditors of the debtors.

2. The debtors had received loan from the petitioning creditor. Since they failed to repay the amount, the petitioning creditor had filed a suit in O.S.No.3062 of 2016 on the City Civil Court, Chennai, for recovery of money, which was decreed on 04.07.2017. Even after the decree, the debtors failed to pay the decree amount. The petitioning creditor has stated that as the failure to pay the decree amount by the debtors would amount to an act of insolvency, he sought for issuance of an insolvency notice before this Court in I.N.No.6 of 2018. This Court had directed issuance of insolvency notices to the debtors. Accordingly, insolvency notices were sent by registered post with acknowledgment due to the debtors and the same were served on them on 26.02.2018. However, when this Court ordered notice in this petition on 11.06.2018, the same were returned unserved. Since the same were returned and the attempt to serve the debtors did not fructify, substituted service via paper publication of the insolvency notice in one issue of Tamil Daily 'Malai Murasu' was ordered by this Court. Pursuant to the said order the insolvency notice was published in 'Malai Murasu' dated 17.05.2019.

3. The petitioning creditor stated that even after the said publication, the debtors have not come forward to pay the decreed debt. The 35 days period specified in the insolvency notice for compliance has also expired. The amount due and payable as per the insolvency notice was Rs.64,039/- and as on the date of the filing the present petition, the same comes to Rs.76,895/-. In such circumstances, claiming that the non-payment of the decreed amount after the issuance of the insolvency notice would amount to an act of insolvency, the petitioning creditor seeks adjudication of the debtors as insolvents.

4. From the above, it is clear that notices in this insolvency petition were sent to the debtors and the same were returned, and the substituted service was also ordered by publication in one issue of 'Malai Murasu' and publication was effected on 17.05.2019. Proof of publication has also been filed. Despite such service, the debtors have not chosen to appear either in person or through counsel. Having regard to the fact that this insolvency petition is based on a decreed debt, the requirement of evidence is dispensed with, and it is found that the debtors have committed an act of insolvency.

PUSHPA SATHYANARAYANA, J.

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5. Accordingly, the debtors are adjudicated as Insolvents. The estate of the debtors shall be vested with the Official Assignee for the benefit of the General Body of Creditors. The costs of this petition shall be paid by the Official Assignee out of the estate of the debtors to the creditor. The insolvents are granted 18 months time to apply for discharge.

6. In the result, this Insolvency Petition is allowed.

09.08.2019

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