

IN THE HIGH COURT OF JUDICATURE AT MADRASDATE : **07.01.2019**

CORAM

THE HONOURABLE Mr.JUSTICE **R.SURESH KUMAR****I.P.No.29 of 2018**

R.L.Siva Subramani ... Petitioning/Creditor

Vs

K.Umapathy ... Respondent/Debtor

Insolvency Petition is filed under Section 9(1)(g), 10, 11, 12, 13 of PTI Act of 1909 and Order III of Insolvency Rules 1958, praying to (i) adjudicate the Respondent/Debtor as insolvent and direct administration of the estate in a regular manner(ii) Provide costs to the Petitioner from and out of the estate.

For Petitioner : Mr.S.Arivazhagan

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ORDER

This Insolvency Petition has been filed by the petitioning Creditor. According to the petitioning Creditor, the respondent/Debtor borrowed a sum of Rs.5,00,000/- (Rupees Five lakhs only) from the petitioning Creditor, on 20.11.2016, and executed a Promissory Note in his favour, promising to repay the said sum, with interest, at the rate of 24% per annum. On

30.06.2018, the Creditor has made demand, to repay the said sum with interest, however, the respondent/Debtor failed to repay the amount. Therefore, the petitioning Creditor had issued a notice to the respondent, on 10.07.2018, demanding repayment of the said amount of Rs.5,00,000/- with interest at 24% per annum. However, on receipt of the notice on 11.07.2018, the respondent/Debtor has sent a reply on 20.07.2018, admitting the borrowal, and further stating that, since, he has incurred heavy loss in his business, he is not in a position to mobilise the funds to meet his debts, and specifically stated that, he had suspended the payment of amounts to his various Creditors, including the petitioning Creditor.

2. Thereafter, the Debtor has also sent a reply, through his lawyer's notice, dated 04.08.2018, wherein, once again, he has stated that, he has suspended the payment of amounts to various Creditors, including the petitioning Creditor, and has further asked the petitioning Creditor to wait for sometime. Since, the reply given by the respondent/Debtor clearly shows that, he has already suspended the repayment of the debts to various Creditors, including the petitioning Creditor, he has been in insolvent circumstances. Therefore, he has to be adjudicated, within the meaning of Section 9(1)(g) of the Presidency Towns Insolvency Act,

1909. Therefore, this petition has been filed with a prayer, to adjudicate the respondent/Debtor as Insolvent and direct the Official Assignee to take charge of the administration of the estate of the Debtor.

3. Though notice has been served on the respondent/debtor, since he has not appeared before this Court, by order dated 17.12.2018, the respondent/debtor has been set ex-parte.

4. On behalf of the petitioning creditor, he has been examined as P.W.1 and four documents i.e. Exs.P1 to Ex.P4 were marked through him.

5. Ex.P1 is the pro-note dated 20.11.2016, executed by the respondent/debtor in favour of the petitioning creditor for a sum of Rs.5,00,000/- with interest at the rate of 24% per annum. Ex.P2 is the notice sent by the petitioning creditor to the respondent/debtor on 10.07.2018 demanding the debtor to repay the said amount of Rs.5,00,000/-, borrowed by him with interest at the rate of 24% per annum from the date of the pro-note i.e. 20.11.2016. Ex.P3 is the reply letter given by the respondent/debtor on 20.07.2018 to the petitioning creditor,

whereby, it is stated, since he has incurred a loss in his business, he was not in a position to repay the debt payable to the debtor. Ex.P4 is a detailed reply notice to his lawyer given by the debtor to the petitioning creditor on 04.18.2018, wherein, he has admitted the borrowal of Rs.5,00,000/-, by executing a pro-note from the petitioning creditor with interest at the rate of 24% per annum. He has further stated in Ex.P4 that, the respondent debtor has incurred heavy loss in his business and was not in a position to arrange the amount to settle the dues to his lenders. He further stated that, he has suspended the amount in his books of accounts including petitioning creditor.

6.On perusal of the aforesaid documents, it discloses the fact that, the respondent/debtor having the receipt of Rs.5,00,000/- loan from the petitioning creditor has not repaid the same though it was demanded with interest at the rate of 24 % per annum and when the same was taken up through legal notice, it was replied by the debtors directly under Ex.P3 and subsequently through his lawyer under Ex.P4, stating that, since he incurred heavy loss in his business, he was not able to repay the same and he was not in a position to pay various creditors including the petitioning creditor.

7. Therefore, from the said date of Ex.P3 i.e. dated 20.07.2018, the respondent debtor has been in a Act of Insolvency, thereby, he has to be adjudicated within the provisions of the Presidency Towns Insolvency Act III of 1909 (hereafter referred to as the Act).

8. Since, the debtor's position has been made clear through the documents marked by the side of the petitioning creditor, where the debtors has candidly admitted that, he is not in a position to repay loan and he has suspended the payment of amount to various creditors including the petitioning creditor and thereby, he has committed the Act insolvency and therefore, he has to be adjudicated as insolvent.

9. Since these documents have shown that the debtors/respondents have committed the Act of Insolvency and they are residing within the jurisdiction of this Court for the invocation of the provisions of the Presidency Towns Insolvency Act of 1909, this Court is satisfied that, that the respondent has to be adjudicated and declared as insolvent within the provisions of the said Act. In the result, this petition is ordered as follows:

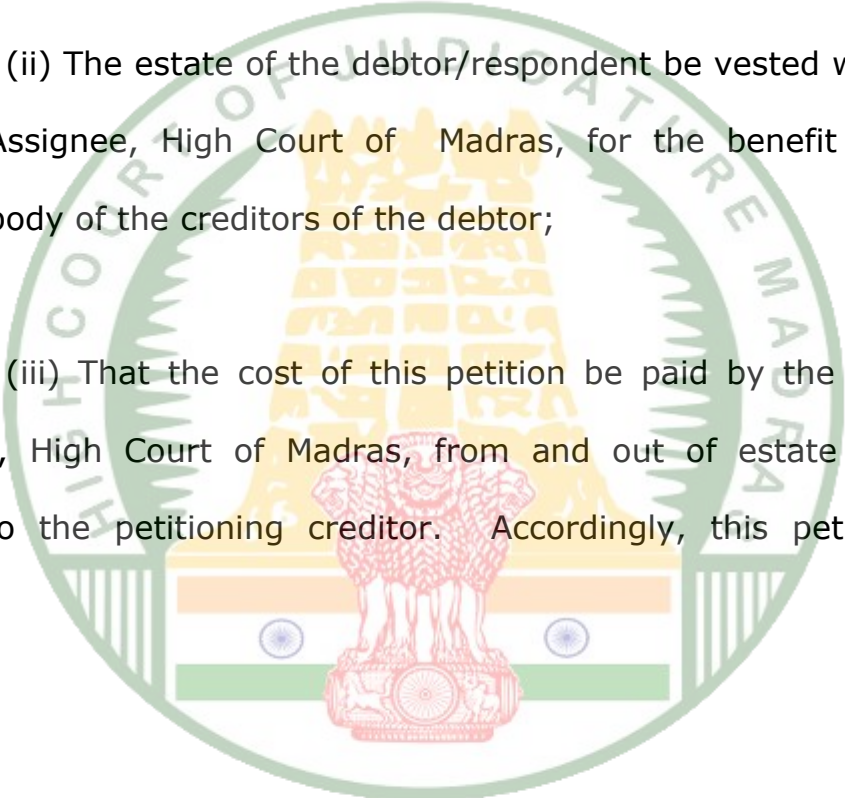
R.SURESH KUMAR, J.

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(i) That the debtor/respondent herein are adjudicated and declared as insolvents;

(ii) The estate of the debtor/respondent be vested with the Official Assignee, High Court of Madras, for the benefit of the general body of the creditors of the debtor;

(iii) That the cost of this petition be paid by the Official Assignee, High Court of Madras, from and out of estate of the debtor to the petitioning creditor. Accordingly, this petition is ordered.

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with intricate carvings. Below the gopuram is a red lion capital of Ashoka, which is part of the State Emblem of India. The emblem is set against a background of horizontal stripes in orange, white, and green, with a blue wheel in the center of each stripe. The words "HIGH COURT OF MADRAS" are written in a circular border around the central image. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is inscribed in Devanagari script.
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