

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

I.P.No.28 of 2018

M.Ravi

... Petitioning Creditor

Vs

1.K.Murali
2.M.Kalayani

... Debtors

Insolvency Petition is filed under Section 9, 10,11,12 and 13 of the Presidency Towns Insolvency Act, III of 1909 and order III-A of the Insolvency Rules 1958, praying to a) to treat this petition as urgent; b) to adjudicate the Debtors as Insolvents c) to direct the estate of the Debtors be vested in the Official Assignee of Madras, for the general body of creditors of the Debtors; d) to order that the costs of this petition be paid by the Official Assignee of Madras, from the out of the estate of the Debtors to the Petitioning Creditor.

For Petitioning Creditor : Mr.T.Skndhakumaar

ORDER

This Insolvency Petition has been filed by the petitioning Creditor. According to the petitioning Creditor, the Debtors borrowed a sum of Rs.1,50,000/- from the Creditor, on 18.04.2017, and they had executed a Promissory Note, in favour of the petitioning Creditor, with a promise to repay the same, on demand, together with interest at the rate of 18% per annum. Subsequently, when the petitioning Creditor made the demand, the said amount was not repaid by the Debtors. On 21.09.2018, the Debtors informed through a letter, addressed to the petitioning Creditor that, they are not in a position to repay the money, rupee per rupee, to the petitioning Creditor, as they were heavily indebted to various Creditors. They also stated that, they have informed all the Creditors about their inability to repay the debts, which amounts to suspension of payment.

2. Therefore, the petitioning Creditor had sent a legal notice on 04.10.2018. Having received the same, the Debtors have issued a reply, through their counsel, on 12.10.2018, whereby, they had stated that, the Debtors have already informed the petitioning Creditor that, they cannot repay the amount to the petitioning Creditor.

3. Therefore, the petitioning Creditor has filed this petition, as the Debtors have committed an act of Insolvency, within the meaning of Section 9(1)(g) of the Presidency Towns Insolvency Act III of 1909, commencing from the said date i.e. 21.09.2018, which is evidenced and confirmed by the reply notice by the Debtors, through their counsel, on 12.10.2018.

4. According to the petitioning Creditor, the principal amount is Rs.1,50,000/- and the interest is Rs.41,325/-, altogether, there has been a debt of Rs.1,91,325/-, payable to the petitioning Creditor by the Debtors. Therefore, this petition has been filed by the petitioning Creditor, seeking for adjudication of the Debtors as Insolvents.

5. In spite of the notice having been served on respondents/debtors, they did not appear before this Court, when the case was called. Accordingly, by order dated 17.12.2018, both the respondents/debtors were set *ex-parte*.

6. On behalf of the petitioner, the petitioner himself was examined as a witness i.e. PW.1, through him Exs.P1 to P4, had been marked. Ex.P1 is the pro-note dated 18.04.2017, executed

by the respondents/debtors to the petitioning creditor. Ex.P2 is the letter issued by the respondents/debtors to the petitioning creditor, whereby, they express their inability to pay the amount, thereby, they suspended the payment of the debt, accordingly, from that date onwards, the Act of Insolvency arose. Ex.P3 is the legal notice issued by the creditor/petitioner to the respondents/debtors on 04.10.2018. However, having receipt of the same, the respondents had sent a reply of 12.10.2018, which was marked as Ex.P4, stating that due to business loss, the respondents could not pay any amount to the petitioning creditor and the said fact has already been informed to the creditor on 21.08.2018 itself.

7. The aforesaid document, i.e. Exs. P1 to P4 disclose the fact that, there had been a debt, which was not paid by the respondents/debtor, in spite of the demand made by petitioning creditor and in this regard, by Ex.P2, the debtors on 21.09.2018 had stated that, they would not pay the amount, thereby, they committed the Act of insolvency and the same has however been reiterated in Ex.P4, i.e. the reply notice given by the debtors to the petitioning creditor on 12.10.2018.

8. 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 respondents have to be adjudicated and declared as insolvents within the provisions of the said Act. In the result, this petition is ordered as follows:

(i) That the debtors/respondents herein are adjudicated and declared as insolvents;

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

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

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R.SURESH KUMAR, J.

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