

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY JURISDICTION**

INSOLVENCY PETITION NO. 21 OF 2019

Ravikiran Aggarwal

...Debtor

AND

INSOLVENCY PETITION NO. 22 OF 2019

Pujit Ravikiran Aggarwal

...Debtor

Mr.Vekatesh Dhond, Senior Counsel with Kausar Banatwala with Ms.Gauri Sakhardande i/b. Tushar Goradia for Objectors.

Mr.Cherag Balsara with Mr.Vibhor Kapoor i/b. Rajani Associates for the Petitioner.

Mr.Gaurang Mehta with Mr.Ashish Parwani with Dikshat Mehra with Vibhor Kapoor with Ms.Ruta Shah for Petitioner.

Mr.Rakesh Singh with Mrunmayee Kolpalliwar i/b. M.V. Kini Law Firm for LIC Creditor.

Ms.M.P Kunte, Insolvency Registrar.

CORAM : S.C. GUPTE, J.

DATE : 26 MAY 2020

JUDGMENT :

These two insolvency petitions are debtors' petitions filed by a father and son duo. Both are on a similar footing and contested by the objectors on similar grounds. Both are accordingly being disposed of by this common order.

2 The debtors claim to be heavily indebted, both Petitioners

claiming to be indebted under a consent decree dated 12 June 2015 in Suit No.345 of 2015 (read with another additional consent terms dated 29 September 2016 in Execution Application (Lodging) No.2034 of 2016 and consent minutes of order dated 30 October 2018) in a principal sum of over Rs.56 crores to the plaintiff, Vardhaman Developers Ltd., together with interest and penalties. In addition, both Petitioners have disclosed particulars of various other debts owed by them to other creditors. The particulars of these liabilities have been reflected in their financial statements including balance sheets and income tax returns. The debtors are directors of Orbit Corporation Ltd., a company ordered to be wound up by this court on 12 April 2018. The debtors are personal guarantors of various banks and financial institutions against facilities obtained by this company. Recovery Certificates have been issued against them by DRT, Mumbai, under which sums of Rs.278 and Rs.106 crores with further interest are payable by them, respectively, to Life Insurance Corporation of India and LIC Housing Finance Ltd. So far as other banks and financial institutions are concerned, proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") are under way against the company, whereafter the banks and financial institutions are likely to invoke the personal guarantees of the debtors. The claims of the consortium of State Bank of India and Union Bank of India, and of Axis Bank, for which SARFAESI proceedings have been issued, are to the tune of over Rs.135 crores and Rs.161 crores, respectively. In these circumstances, both debtors apply for an order of adjudication of insolvency.

3 The petitions are opposed by objectors, including the decree holder, M/s.Vardhaman Developers Ltd., on various grounds. It is submitted

that the debtors have made various false statements and even sought to create fictitious liabilities. It is submitted that the debtors have not made full and complete disclosure. It is submitted that the deeds of guarantee referred to are not genuine and, in any event, there is no certainty as far as the debtors' liabilities thereunder are concerned. It is submitted that the debtors are guilty of committing breach and wilful disobedience of various orders passed by this court and also of contempt. The sum and substance of what the objectors submit is that the insolvency petitions are an abuse of the process of law; the debtors are thereby using the machinery of this court for extraneous purposes and for frustrating orders passed earlier by this court.

4 In their additional affidavit in reply filed by Vardhaman Developers Ltd., further objections have been raised. These are to the effect that the debtors have not complied with the provisions of Sections 14 and 15 of the Presidency Towns Insolvency Act, 1909; they have not disclosed that they had systematically siphoned away assets, both movable and immovable; they were holding these assets, which far exceed their debts, in the names of various fronts, bogus companies, partnerships and individuals; the debtors have not given any reason or produced any material to show why they were unable to pay their debts. Various false statements purportedly made by the debtors in the petitions have been particularized in this additional affidavit.

5 The scheme of the Presidency Towns Insolvency Act, 1909 ("PTI Act"), firstly, provides for acts of insolvency on the part of a debtor which call for an adjudication in insolvency (Section 9). Clause (f) of Section 9 provides that petitioning to be adjudged an insolvent is itself one

such act of insolvency. (Clause (f) of Section 9 is in *pari materia* with its counterpart in the Provincial Insolvency Act, 1920, namely, Clause (f) of Section 6 of that Act.) Section 10 provides for the power of the court to adjudicate a debtor as an insolvent. Subject to the conditions specified in the PTI Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor himself under Section 10. The court may, on such petition, make an order adjudging the debtor an insolvent (“order of adjudication”). Explanation to Section 10 makes it clear that presentation of a petition by a debtor shall be deemed to be an act of insolvency within the meaning of that section and on such petition the court may make an order of adjudication. The conditions subject to which such petition, so far as the debtor is concerned, can be presented are provided for in Section 14 of the PTI Act. The section is quoted below :

“14. Conditions on which debtor may petition.-

(1) A debtor shall not be entitled to present an insolvency petition unless--

- (a) his debts amount to five hundred rupees, or
- (b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or
- (c) an order of attachment in execution of such a decree has been made and is subsisting against his property.

(2) A debtor in respect of whom an order of adjudication, whether made under this Act or under the Provincial Insolvency Act, 1920, has been annulled owing to his failure to apply or to prosecute an application for his discharge shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that petition is founded on facts substantially different from those contained in the petition on which the

order of adjudication was made.”

Section 15 of the PTI Act, which deals with proceedings and order on the debtor’s petition, provides as follows :

“15. Proceedings and order on debtor's petition.-

(1) A debtor' s petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(2) A debtor' s petition shall not, after presentation, be withdrawn without the leave of the Court.

(3) On the making of the order admitting his petition, a debtor shall-

(a) unless the Court otherwise directs, produce all his books of account, and

(b) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed,

failing which the Court may dismiss his petition.”

6. The scheme of the provisions noticed above makes it clear that if a debtor’s debt amounts to five hundred rupees, or an order of attachment in execution of a decree of any court for payment of money has been made and is subsisting against his property, a petition may be made by him; such petition in itself is an act of insolvency and an order of adjudication may be made thereon. Such petition must allege that he is unable to pay his debt. The debtor must also prove his entitlement to present the petition. The court may thereupon make an order of adjudication unless it is of the opinion that the petition ought to be presented before some other court having insolvency jurisdiction.

7 The above scheme gives rise to three crucial questions on which there was much debate at the hearing. These are -

(i) Does the debtor, on his petition, have to prove his inability to pay his debts or is it enough for him to simply allege such inability?;

(ii) What is meant by the proof of his entitlement to present the petition?; and

(iii) What is the extent of the Court's discretion in making an order of adjudication on such petition, if the above two conditions (i.e. allegation of inability to pay debts and proof of entitlement to present the petition) are satisfied by the petitioning debtor?

8 Mr.Mehta and Mr.Balsara, learned Counsel for the debtors, submit that it is sufficient for petitioning debtors to simply allege their inability to pay; the only proof to be tendered is of their entitlement to present the petition, namely, satisfaction of either of the three conditions in Section 14 of the PTI Act; and once such allegation is made and proof tendered, an order of adjudication should follow almost as a matter of course unless the court finds that some other court has insolvency jurisdiction in the matter. Learned Counsel rely on the cases of **Uday Chand Maiti vs. Ram Kumar Khara**¹, **Kali Kumar Das vs. Gopi Krishna Ray**², **Girwardhari vs. Jai Narain**³, and the case of **Chatrapat Singh Dugar vs. Kharag Singh Lachmiram**⁴ decided by Calcutta High Court and in appeal by

1 **1910 SCC OnLine Cal 120 :(1910-11) 15 CWN 213**

2 **1911 SCC OnLine Cal 89 : (1910-11) 15 CWN 990**

3 **VOL.XXXII ILR All 645**

4 **VOL. XL ILR Cal 685**

the Privy Council⁵, and **Re : Gopaldas Aurora**⁶ in support.

9 Mr.Dhond, learned Senior Counsel appearing for the objectors, on the other hand, contends that the court has power to refuse an order of adjudication, where the presentation of the insolvency petition amounts to an abuse of the process of the court. Learned Counsel submits that if the petition is wanting in bona fides or is frivolous, vexatious or oppressive, it is an abuse of the process of the court. Learned Counsel relies on the case of **Re : Prafulla Chandra Mitra**⁷ and **Re : Ballav Chand Serowgee**⁸ decided by Calcutta High Court. Learned Counsel submits that an insolvency petition is liable to be dismissed, if there is suppression or non-disclosure of facts. Learned Counsel relies on the cases of **Kanshi Ram vs. Jugal Kishore**⁹, **Chittineni Mohana Rao vs. Jagarlamudi Subbarao**¹⁰, and **Dasari Srihari Rao vs. Talluri Harinadha Babu**¹¹, in support. Learned Counsel submits that the insolvency court is a court of conscience and every adjudication has to be made by applying its judicial mind. He relies on the cases of **J.P. Tiwari vs. Bhimraj Harlalka**¹² and **Re : Krishnendu Sircar**¹³ for this proposition. It is submitted that genuineness of the debt and the debtor's inability to pay the same are matters to be inquired into by the insolvency court at the stage of adjudication. Learned Counsel relies on the cases of **Pinnamshetty Kavitha vs. Gajelli Gangadhar**¹⁴ and **Malga Somiah vs. P. Padma Bai**¹⁵ in support. Learned Counsel, in particular reference to

5 VOL.XLIV ILR Cal 535

6 VOL. XXX CWN 173

7 1972 SCC OnLine Cal 83 : AIR 1973 Cal 99

8 VOL.XXVII CWN 739

9 MANU/LA/0402/1933

10 MANU/AP/0521/2010

11 MANU/AP/0410/2002

12 1958 BLR VOL.LX 963

13 2010 SCC OnLine Cal 2342 : (2010) 1 Cal LJ 116 : (2011) 2 CHN 254

14 MANU/AP/0036/2007

15 1967 SCC OnLine AP 240 : (1969) 2 An WR 274

some of the judgments cited by the Petitioners' Counsel, submits that decisions under other Insolvency Acts such as the Provincial Act are not useful in deciding an adjudication case under the PTI Act. Learned counsel refers to the Supreme Court decision in **RM. NL. Ramaswami Chettiar vs. Official Receiver, Ramanathapuram at Madurai**¹⁶ to buttress his submission. Learned Counsel submits that applying this law, the petitions deserve to be dismissed.

10 On the first two of the three questions posed in paragraph 7 above, as the provision of Section 15 plainly stands, it bears notice that as far as the debtor's inability to pay his debts is concerned, the section uses the expression "*A debtor's petition shall allege*" in contradistinction to his entitlement to present the petition where the section uses the words "*if the debtor proves*". The plain meaning conveyed is, thus, that whereas for the debtor's inability to pay, a mere allegation is sufficient, his entitlement to present the petition must be proved. The relevant provision concerning such entitlement is Section 14. It is couched in negative terms. It says, there is no entitlement unless either of the three conditions specified in Sub-section (1) of section 14 is satisfied. These three conditions are : (i) the debtor's debt of five hundred rupees; (ii) his arrest or imprisonment in execution of a decree of a court for payment of money; and (iii) subsistence of an order of attachment made in execution of such decree against his property. Sub-section (2) of Section 14 introduces one more element bearing on the debtor's entitlement to present an insolvency petition. There is no entitlement except by leave of the court on the part of an adjudicated debtor, whose adjudication has been annulled owing to his failure to apply, or to prosecute an application, for his discharge. (A debtor,

16 (1960) 1 SCR 616 : AIR 1960 SC 70

at any time after the order of adjudication, may apply for an order of discharge. The court usually fixes time within which he must so apply. If he either fails to appear on the day appointed for hearing of his application or does not apply for an order of discharge within the time prescribed, the court may annul the adjudication.) The court, accordingly, passes an order of adjudication of insolvency upon the debtor **tendering proof** of satisfaction of either of the three conditions by him and **alleging** inability to pay his debt. So far as the act of insolvency is concerned, as we have already seen above, the very presentation of a debtors' petition is an act of insolvency and on such petition, the court may make an order of adjudication. In this scheme, there is no occasion for the court to test the correctness of the debtor's allegation about his inability to pay the debt. A debtor's petition is usually heard *ex parte*; no creditor is noticed; none normally joins issue with the allegation; and there is no decision of the court on such inability. On the other hand, so far as his indebtedness in a sum of five hundred rupees or arrest or imprisonment, or subsistence of an order of attachment, as the case may be, is concerned, the debtor must produce material before the court and satisfy it about existence of either of the three conditions. For this purpose, under Rule 83 of the Presidency Towns Insolvency Rules, Bombay, the debtor has to lodge in the office of the Official Assignee all books, papers, writings, accounts and vouchers relating to his estate and a statement of his movable and immovable properties. On the debtor complying with this requirement, Official Assignee issues a certificate of compliance. No order of adjudication is made by the court without such certificate. It is, thus, clear that unlike in the case of his entitlement to present the petition, the debtor's inability to pay his debt/s is not required to be proved; the debtor's own statement in his petition about such inability is sufficient, for the purposes of

adjudication.

11 I am supported in this view by the decision of a division bench of Calcutta Court in **Kali Kumar Das** (supra). Calcutta High Court in that case held that the mere fact that the Judge was unable to satisfy himself that the petitioning debtor was unable to pay his debts was not a ground for dismissal of the petition.

12 On the third question, namely, the extent of the Court's discretion in making an order of adjudication on a debtor's petition, on which there was much debate in court, it bears to note that beside the use of the word "may" in Section 15, there is nothing in the scheme of Sections 9, 10, 14 and 15 of the PTI Act to indicate that the court has to apply its mind or probe further for making of an order of adjudication on a debtor's petition, once it finds proof of the debtor having satisfied either of the three conditions of Section 14 and made an allegation in the petition about inability to pay his debt. Unlike in the case of a creditor's petition, where the debtor has an opportunity to appear and satisfy the court that he is able to pay his debt, the question of his actual ability or inability to pay the debt does not fall for the consideration of the court in a debtor's petition. The acts of bad faith, if any, on the part of the debtor in obtaining an order of adjudication have no consequence for any of his creditors. The effect of an order of adjudication, for everyone other than the debtor, after all, is nothing but vesting of his properties in the Official Assignee for the benefit of all creditors. The debtor thereby neither evades his liabilities nor prejudices any creditor. Acts of bad faith on his part, if any, are relevant only when he, as an insolvent, applies for a discharge. A creditor may, of course, have something to say about the priority of his claim against any

particular property of the debtor; but that is a matter to be debated in insolvency, i.e. after the adjudication, and not before.

13 Learned Counsel for the objectors lay emphasis on the word “may” used in Section 15 suggesting retaining of a discretion in the court whether or not to order adjudication. The use of the word “may” is not necessarily decisive in every case. Ordinarily, it is true, it is an enabling word; it confers a power or authority and implies a discretion. As observed by Lord Cairns in **Julius vs. Lord Bishop of Oxford**¹⁷, “there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done..... which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercised that power when called upon to do.” Thus, when permissive words (such as “may”) are employed by the legislature to confer a power on a court to be exercised in the circumstances mentioned in the statute, having regard to the very object and nature of the provision and conditions of exercise of that power, it may become the duty of the court to exercise that power on proof being tendered of existence of those circumstances. This law should squarely apply in a debtor’s petition. Having regard to the very object and nature of an order of adjudication on a debtor’s petition, upon the conditions in Sections 14 and 15 being satisfied, it is the duty of the court to make such order.

14 There is ample authority for the proposition noted above. Calcutta High Court in the case of **Uday Chand Maiti** (supra) made it clear that an order of adjudication follows almost as a matter of course upon

17 H.L.(E.) 1880 Vol. V 214

presentation of a debtor's petition (after satisfying the conditions of such presentation); the question of his conduct becomes material only when he asks for a discharge. So also, Allahabad High Court in the case of **Girwardhari** (supra) held that Section 15 of the Provincial Insolvency Act, 1907 exhausts the grounds on which an insolvency petition can be dismissed; the court cannot dismiss a debtor's insolvency petition on the ground that he has suppressed his accounts or contracted debts recklessly or continued to trade after knowing himself to be insolvent or on any similar ground. These cases along with other cases on the point decided by Indian High Courts were considered by the Privy Council in the well-known case of **Chhatrapat Singh Dugar** (supra). The Privy Council in that case held as follows “

“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. This conclusion, apart from the decision under appeal, is in agreement with the current of authority in India, where it has been rightly held that the stage at which to visit with its due consequences any misconduct of a debtor is when his application for discharge comes before the Court, and not on the initial proceeding.”

15 No doubt, all three cases referred to above were under the Provincial Insolvency Act, 1907. But so far as the PTI Act is concerned, there is really no distinction between it and the Provincial Act so far as a debtor's petition and an order of adjudication to be passed thereon are concerned. Section 5 and Sub-section (3) of Section 6 of the Provincial Act are exactly the same, respectively, as Sections 10 and Sub-section (1) of Section 14 of the PTI Act providing for the debtor's act of insolvency by presentation of a petition and the three conditions either of which must be satisfied by the debtor for his entitlement to present an insolvency petition. The decision of the Privy Council in **Chhatrapat Singh Dugar** (supra) was, accordingly, applied by Calcutta High Court in **Gopaldas Aurora** (supra) in a case involving a debtor's petition under the PTI Act. The observations of the court were as follows :

“R.71 of the Rules of this Court provides that where a petition is filed by a debtor, the Court shall forthwith make an adjudication order thereon, and the rule appears to contemplate that if the petition is in form in the sense that the Court has jurisdiction and the conditions prescribed by the Act have been fulfilled, the order shall go as a matter of course. This would appear to be in accordance with the view expressed by the Judicial Committee of the Privy Council in *Chatrapat Singh Dugar v. Kharag Singh Lachmiram*. That was a case under the Provincial Insolvency Act, but for the present purpose no distinction need be drawn between that and the Presidency Towns Insolvency act. It is pointed out in the judgment of the Board, which was delivered by the late Chief Justice of this Court, that the Act entitles a debtor to an order of adjudication when its conditions are satisfied. His Lordship continued :-

“This does not depend on the Court's discretion, but 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.’ ”

16 Mr.Dhond, for the Objectors, relies on the cases of **In Re : Prafulla Chandra Mitra** (supra) and **Re : Ballav Chand Serowgee** (supra) decided by Calcutta High Court. The judgment in **Prafulla Chandra Mitra** was on an annulment application filed by a creditor under Section 21 of the PTI Act. (The debtor was originally adjudged an insolvent on his own application.) The relevant portion of Section 21 reads as follows :

“Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court shall, on the application of any person interested, by order annul the adjudication.”

The court was of the view, on the basis of the facts appearing from the record of the case, that not only was there suppression of materials by the debtor but the debtor had also not made the petition in conformity with the rules of the court. (The rules provided that if it was not the debtor’s first petition for adjudication, he ought to say so. So also, the debtor was required to either state that he had not kept any books of accounts or if books had been kept and not produced, he ought to give reasons for not doing so and state in whose custody they were for the time being. None of these provisions was complied with by the petitioning debtor in that case.) The Court, thus, came to a conclusion that the debtor ought not to have been adjudged insolvent and, in the premises, exercised powers under Section 21 and annulled the adjudication. These facts and the proposition stated there are clearly distinguishable. There cannot possibly be any doubt that if peremptory requirements for a debtor’s petition are not fulfilled, the debtor ought not to be adjudged an insolvent. Section 15 of the PTI Act itself provides in sub-Section (3) that the debtor shall, on making of an order admitting his petition, produce all books of

accounts and also file lists of creditors and debtors and afford assistance to the court as may be prescribed, failing which his petition may be dismissed.

17 In **Ballav Chand Serowgee** (supra), the insolvent was adjudicated on his own petition but having failed to apply for discharge within the time provided by the Act, his adjudication was annulled. Subsequently, on another application but on the same facts and materials as in his earlier petition, he applied again for adjudication, which was granted. On a creditor's application, that adjudication was annulled, holding that the second insolvency petition was an abuse of the process of the court. Once again, these facts are clearly distinguishable and the decision has no bearing on our case.

18 The cases of suppression and non-disclosure cited by Mr.Dhond, namely, **Chittineni Mohana Rao** (supra), **Dasari Srihari Rao** (supra), **Kanshi Ram** (supra) and **Pinnamshetty Kavitha** (supra) were under the new Provincial Act, i.e. the Provincial Insolvency Act, 1920. The new provisions, namely, Sections 10 and 24 of that Act, are materially different from the corresponding provisions of the PTI Act, namely, Section 14 and Section 15 of the PTI Act. Section 10 of the new Provincial Act requires as a condition that the petitioning debtor must be unable to pay his debts and Section 24 of that Act *inter alia* requires a proof, before an adjudication order may be passed, of his entitlement to present the petition and for the purpose of proving his inability to pay his debts, he is required to furnish such proof as to satisfy the court that there are *prima facie* grounds for believing the same; the court, if and when so satisfied, is then not bound to hear any further evidence thereon. These provisions are materially different from the corresponding provisions of the PTI Act which are in *pari*

materia with the old Provincial Act. As the Supreme Court in **RM. NL. Ramaswami Chettiar** (supra) has explained, the decisions under the Provincial Insolvency Act cannot be applied to situations under the PTI Act, unless the concerned provisions are in *pari materia* with those under the PTI Act. The respective provisions not being in *pari materia*, these cases under the new Provincial Insolvency Act have no application in our case.

19 The reference in the case of **J.P. Tiwari** (supra) to the position of the Insolvency Court as a court of conscience is too general to apply to our facts as suggested by Mr.Dhond. In that case, the plaintiffs had taken out an insolvency notice upon a judgment and decree passed by the court in their favour. The defendant had moved a motion for setting aside that insolvency notice. The motion was dismissed by the trial court. On appeal, a division bench of this court confirmed that order. One of the arguments of the appellant judgment debtor before the appeal court was that the insolvency court being a court of conscience, a decree passed by a civil court was not binding on it; it could go behind that decree. The appeal court held that for the purpose of the insolvency notice, the court must accept the decree as final and binding upon the judgment-debtor. What was meant by going behind the decree in such a case was that notwithstanding such decree, nothing might be due to the judgment-creditor under that decree; the decree might have been satisfied or adjusted; in cases like these, it was open to the judgment-debtor at the stage of the insolvency notice to urge that there was no debt under the decree which he might be called upon to pay and in respect of which it could be said that he had committed an act of insolvency. It was, however, not open to the judgment-debtor to challenge the very validity of the decree. These observations have no bearing on the facts of our case. The ratio of the case is clearly

inapplicable.

20 The case of **Malga Somiah** (supra) referred to by Mr.Dhond on inability to pay debts was under the new Provincial Insolvency Act. The learned Judge of Andhra Pradesh High Court deciding that case has himself distinguished the facts of the Privy Council case of **Chhatrapat Singh Dugar** (supra) by observing that the words “unless he is unable to pay his debts” inserted by the legislature in the new Provincial Act were not found in the old Act of 1907 which was construed by the Privy Council in **Chhatrapat Singh Dugar**. The case, thus, has no application in our case.

21 The case of **Re : Krishnendu Sircar** (supra) referred to by Mr.Dhond involved completely different and peculiar facts. What the court found in that case was that a number of debtors had been driven by some corrupt persons, who had devised a scheme to subvert the system, to present debtor’s petitions. There were open advertisements, complete with telephone numbers, that invited debtors to rid themselves of their debt burden by abusing the legal machinery of the insolvency court. The court was of the view that such proliferation of debtor’s petitions, unthinking manner in which orders of adjudication had been made thereon and failure of the system to protect the interests of creditors, warranted annulment of all orders of adjudication passed on debtors’ petitions instituted on or after April 1, 2008 with liberty to individual debtors to apply afresh for adjudication, if they so desired. These are very special facts; the judgment based on these cannot be used as a precedent for the present petition.

22 In sum, none of the objections of the objectors has any merit.

The debtors in the present petitions have complied with all requirements of law for presentation of their petitions. There is an indisputable act of insolvency on their part. This court is satisfied that the debtors fulfill the condition of Section 14. They owe debts of well over the statutory minimum amount. There is a subsisting attachment order of court in pursuance of a decree of court in respect of their property. They have both clearly alleged inability to pay their debts, which are huge, to say the least. They are, in the premises, entitled to an order of adjudication.

23 In the premises, the petitions are disposed of in terms of the following order :

(a) Both Insolvency Petitions are allowed in terms of prayer clause (a) thereof;

(b) Official Assignee is appointed of the properties of the Insolvents wherever situate;

(c) Official Assignee is directed to take steps in insolvency including realisation of properties and making of investments;

(d) In view of the disposal of the petitions, the notices of motion do not survive and are disposed of.

24 Mr.Dhond, for the objectors, applies for stay of this order. The adjudication is for the benefit of all creditors, most of whom are not noticed for those applications are not represented. It would not be in the interest of justice to stay an order of adjudication, once passed. The order

does not *per se* create any prejudice to the objectors herein. It is, however, directed that the adjudication order shall be advertised by the Assignee after four weeks from today.

(S.C. GUPTE, J.)

Sanskruti
A.
Thakur

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signed by
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Thakur
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