

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

I.P.No.26 of 2015

Mr.S.Suresh .. Petitioning Creditor
vs.
1.Mr.T.Manoj
2.Mr.M.Thavamani .. Debtors

This Insolvency Petition filed under Sections 9, 10, 11, 12 and 13 of the Presidency-Towns Insolvency Act, III of 1909 and Order III-A of the Insolvency Rules 1958 to adjudge the debtors as Insolvents; to direct that the estate of the debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditors of the Debtors; to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtors to the Petitioning Creditor and to pass such other or further orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Petitioning Creditor/
Petitioner

: Mr.T.Srikanth

For Respondent/debtors

: Ms.M.Vijayalakshmi
for Mr.L.K.Manjunath
Mr.M.Vasanth Kumar
Deputy Official Assignee.

ORDER

Read this in conjunction with and in continuation of earlier proceedings dated 31.01.2020 being common order/proceedings made in three insolvency petitions including the instant insolvency petition, which reads as follows:

'All these three insolvency petitions have been filed against two respondents. This Court is informed that the second respondent is father of the first respondent. In other words, the respondents are son and father duo.

2. All the three insolvency petitions have been filed by three different creditors inter alia under Section 9(2) of 'The Presidency Towns Insolvency Act, 1909 (Act No.3 of 1909)' hereinafter 'PTI Act' for brevity.

3. All three petitions are predicated on different decrees obtained from Civil Courts, which according to the petitioner, have neither been carried in appeal nor satisfied.

4. Mr.Srikanth, learned counsel for petitioner submits that instant 'Insolvency Petitions' (hereinafter 'IPs' in plural and 'IP' in singular for brevity) were laid after issuing insolvency notices after obtaining orders of this Court.

5. Mr.L.K.Manjunath, learned counsel for both the respondents, who is before this Court, submits that there is no dispute or contestation that the window available for the noticees/ respondents under sub-Section (5) of Section 9 of PTI Act has elapsed.

6. Respondents have not taken recourse to Section 12 and filed any objections. On the contrary, it is submitted by respondents that part payment has been made qua decrees on which instant IPs are predicated.

7. Therefore, it comes to light that respondents are 'debtors' who have committed acts of Insolvency is learned petitioner counsel's say.

8. Be that as it may, both the learned counsel, on instructions,

submit that the parties are exploring the possibility of a settlement. It is submitted by both sides that they are hopeful of concluding the proceedings within a fortnight.

9. It is also submitted by both sides that if these IPs are not settled in a fortnight, they will proceed in accordance with law and procedure under PTI Act.

10. List under the caption 'FOR REPORTING SETTLEMENT' on 14.02.2020.'

2. Today, Mr.T.Srikanth, learned counsel on record for petitioner in instant IP is before this Court. Ms.M.Vijayalakshmi, learned counsel representing Mr.L.K.Manjunath for respondents is before this Court.

3. It is submitted by learned counsel for petitioner that no settlement has been arrived at and no payments have been made.

4. Learned counsel for petitioner drawn the attention of this Court to paragraph 9 of earlier proceedings, which reads as follows:

'9. It is also submitted by both sides that if these IPs are not settled in a fortnight, they will proceed in accordance with law and procedure under PTI Act.'

5. In the light of the earlier proceedings, more particularly in the light

of time period under sub-section (5) of Section 9 of PTI Act having lapsed and in the light of respondent not having taken recourse to Section 12, learned counsel drawing the attention of this Court to Sections 10 and 13(5) of PTI Act submits that respondents having been adjudicated as insolvents, as the Civil Court decree on which instant IP is predicated viz., decree dated 28.11.2012 in O.S.No.3266 of 2012 on the file of City Civil Court, Chennai is before this Court, and as the notice under the prescribed rules has also been duly served (acknowledgment card also is before this Court). Viewed in the light of there being no dispute or contestation that the decree has not been satisfied, the respondents can be adjudicated as insolvents. It is also pointed out that instant IP is pending and virtually languishing in this Court for half a decade.

6. This Court has carefully considered the powers of this Court under Sections 10 and 13(5) of PTI Act. This Court has also carefully perused the copy of the aforementioned civil decree on which instant IP is predicated, statutory notice and acknowledgment of the same. This Court has also taken into account the earlier proceedings dated 31.01.2020.

7. In the light of the narrative thus far, this Court is left with the considered view that the respondents are clearly debtors, who have committed acts of insolvency under the PTI Act. Respondents are adjudicated as

insolvents.

8. Official Assignee and Deputy Official Assignee, who are before this Court shall now commence further proceedings as the estate of respondents now vests in the Official Assignee.

9. Instant IP is disposed of.

14.02.2020

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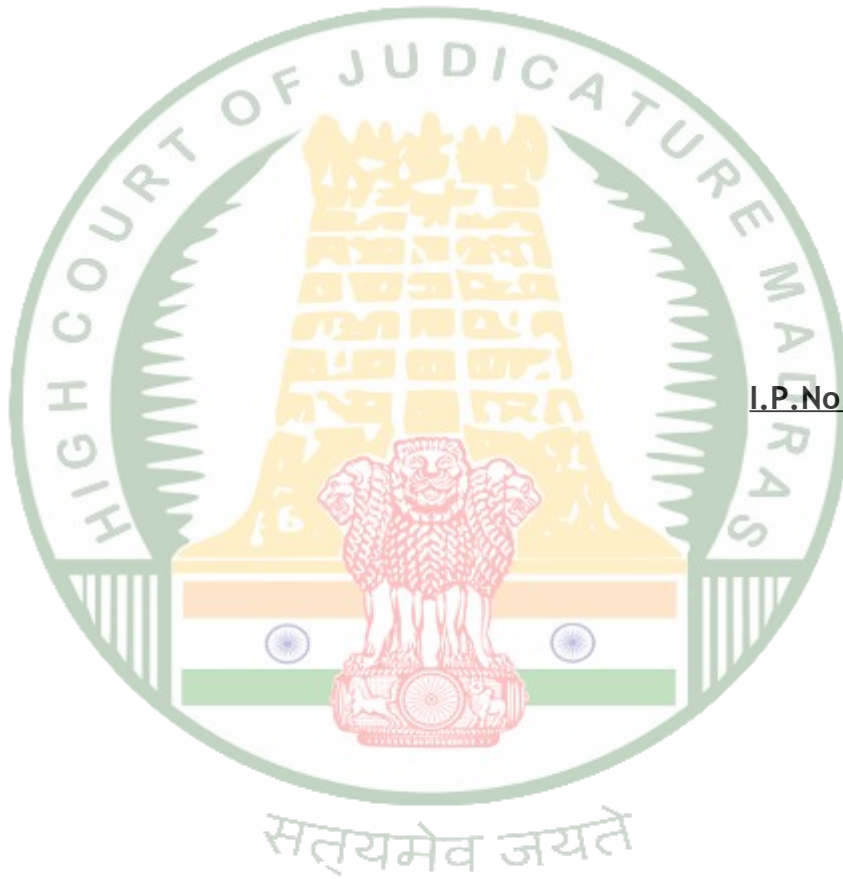


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