

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION
APPEAL NO. 56 OF 2021
IN
INSOLVENCY PETITION NO. 38 OF 2018**

SP Builders & Ors

...Appellants/
Judgment
Debtors

Ex-Parte:

Creation Publicity Pvt Ltd

...Respondent/
Petitioning
Creditor

**WITH
INTERIM APPLICATION NO. 1670 OF 2020
WITH
INTERIM APPLICATION NO. 1669 OF 2020
WITH
INTERIM APPLICATION NO. 2471 OF 2020**

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**Mr Vivek Kantawala, with Amey Patil, Amit Sheth & Kailas Surve,
i/b Amit Sheth, for Appellants.**

Ms Shreya Parikh, with Uttam S Rane, for the Respondent.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 9th December 2021**

PC:-

1. No settlement is possible. We take up the appeal itself.
2. This Appeal is from an order dated 5th November 2019 of the learned single Judge. The appeal has been assigned to this Court. The Respondent was the Petitioning Creditor. It claimed an amount of Rs. 41,75,505.12/- and further interest on Rs. 15 lakhs at 9% per annum from 23rd February 2017 till payment. This was the subject of the Insolvency Notice dated 10th March 2017. The Insolvency Notice was served. The debtors then took out a Notice of Motion to set aside the insolvency notice. That Motion was dismissed by an order of 4th October 2019. The debtors did not pay any amount or then take any further proceeding in regard to the Insolvency Notice. Consequently, the Petitioning Creditor filed Insolvency Petition No. 38 of 2018. This was served on the Judgment Debtors. They filed an Affidavit in Reply opposing the Petition. Essentially the Judgment Debtors claimed a set off.
3. By the impugned order dated 5th November 2019 the learned Single Judge held that the defence raised by the Appellant/Judgment Debtor would not absolve it from the act of insolvency which was complete. The Petition was allowed and Appellants Nos. 2, 3 and 4 were adjudicated insolvents.
4. We are told that after the order under appeal, nothing substantial has happened in the Insolvency proceedings, viz., the private examination is not yet concluded, no filings of assets etc

have been made before the Insolvency Registrar and the public examination has not commenced. Hence, on record, the Respondents' claim is even now the only one against the Appellants.

5. Mr Kantawala for the Appellants on instructions states that the entire claim of the Petitioning Creditor with interest computed until tomorrow will be deposited with the Insolvency Registrar by 5 pm on Monday, 13th December 2021. The Appellants also agree to deposit the entire amount of costs of Rs.50,000 previously ordered by Mr Justice KR Shriram.

6. Upon that deposit being made, and without any assessment on merits, the Appeal will stand allowed and the order of 5th November 2019 of the learned Single Judge will stand set aside. The Insolvency Petition will then stand dismissed.

7. The Petitioning Creditor/Respondent in the Appeal will be entitled to withdraw the entire amount deposited in full and final satisfaction of its decretal or judgment debt. The decree will then stand marked fully satisfied. Upon that being done, all execution proceeding initiated by the Respondents will also stand dismissed as infructuous and all attachments will stand raised.

8. In the event that the amount is not deposited by that date, and there will be no extension of time, this Appeal will stand summarily dismissed without further reference to the Court. Further, on a failure to make the deposit in full, execution will continue unaffected by this order.

9. Lastly, it is made clear that if the original Petitioning Creditor has any other as-yet unadjudicated claim against the Appellant it is fully at liberty to pursue all its remedies in that regard. All contentions in that regard are kept open. We say this because Ms Parikh candidly states that the Respondents have another claim against the Appellants on a cause of action that is said to have arisen in 2020, but which claim has not yet been adjudicated in any court of law. The Respondents have not yet filed a suit or obtained a decree. The claim is said to be based on an admission. But the present Respondents must still get that claim adjudicated first. The pendency of a mere claim cannot and will not bar the Appellants from coming out of insolvency by paying the entire claim of the Respondents/Petitioning Creditors.

10. All IAs are disposed of in the same terms.

11. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)