

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INSOLVENCY PETITION NO. 32 OF 2019

Poonam Sandeepkumar Saraf ..Petitioning Creditor
Vs.
Jagdish Bhagwandas Ahuja & Ors. ..Debtors/Insolvents

**AND
INSOLVENCY PETITION NO. 33 OF 2019**

Sandeepkumar Vinod Saraf (HUF) ..Petitioning Creditor
Vs.
Jagdish Bhagwandas Ahuja & Ors. ..Debtors/Insolvents

**AND
INSOLVENCY PETITION NO. 34 OF 2019**

Sharad Narayan Adurkar ..Petitioning Creditor
Vs.
Jagdish Bhagwandas Ahuja & Ors. ..Debtors/Insolvents

**AND
INSOLVENCY PETITION NO. 35 OF 2019**

Pranav Sharad Adurkar ..Petitioning Creditor
Vs.
Jagdish Bhagwandas Ahuja & Ors. ..Debtors/Insolvents

**AND
INSOLVENCY PETITION NO. 36 OF 2019**

Sharad Narayan Adurkar ..Petitioning Creditor
Vs.
Jagdish Bhagwandas Ahuja & Ors. ..Debtors/Insolvents

**AND
INSOLVENCY PETITION NO. 38 OF 2019
WITH
NOTICE OF MOTION (L.) NO.15625 OF 2022**

Asiatic Gases Limited ..Petitioning Creditor
Vs.
M/s. Ahuja Properties & Associates & Ors. ..Debtors/Insolvents

AND
INSOLVENCY PETITION NO. 4 OF 2020

Sandeepkumar Vinodkumar Saraf	..Petitioning Creditor
Vs.	
Jagdish Bhagwandas Ahuja & Ors.	..Debtors/Insolvents

AND
INSOLVENCY PETITION NO. 5 OF 2020

Nirmaladevi Vinodkumar Saraf	..Petitioning Creditor
Vs.	
Jagdish Bhagwandas Ahuja & Ors.	..Debtors/Insolvents

AND
INSOLVENCY PETITION NO. 6 OF 2020

Kanta Harish Aswani	..Petitioning Creditor
Vs.	
Ahuja Properties and Developers & Ors.	..Debtors/Insolvents

AND
INSOLVENCY PETITION NO. 7 OF 2020

Ashok Gobindram Aswani	..Petitioning Creditor
Vs.	
Ahuja Properties & Ors.	..Debtors/Insolvents

AND
INSOLVENCY PETITION NO. 1 OF 2021

Deepenkarkumar Jitendra Ghosh	..Petitioning Creditor
Vs.	
Ahuja Properties & Associates & Ors.	..Debtors/Insolvents

Ms. Preeti Gada for Judgment Creditor in INPT 32/19, 33/19, 34/19, 35/19, 36/19, 4/20 and 5/20.

Mr. P. B. Kapadia for Supporting Creditors in INPT 32/19.

Mr. Mukul Taly with Ms. Sayali Gharpure i/b. S. Mahomedbhai & Co. for Petitioner/Judgment Creditor in INPT 38/19.

Mr. Bhavin Gada for Applicant in INPT 6/20, 7/20 and 1/21.

Mr. Rajesh Shah with Mr. Rohit i/b. Legal Juris for Judgment Creditor in NMISL 20090/21 in INOT 8/21.

Mr. Girish Kedia for Applicant in NMISL 25591/21 in INOT 10/21, NMISL 7118/22, 7119/22, 7120/22, 7121/22, 7122/22, 7123/22 and 7303/22.

Mr. Naved Chawdhary for Respondent in all matters.

Mrs. Kanchan Rane, OA, Mr. D.R. Talekar I/C Insolvency Registrar, Mr. Subodh Patil, 1st Asstt. to O.A. present.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 24, 2022.

P.C.:

1. This is a batch of insolvency petitions filed by the petitioning creditors against the judgment debtors who are common in all the proceedings. The facts in all these proceedings are more or less similar, except for the amounts of the different decrees, which have been passed in the summary suits filed by the petitioning creditors against the judgment debtors.

2. Briefly the facts are :- The judgment debtors are respondent Nos.1 and 2 who are partners of M/s. Ahuja Properties and Developers (respondent No.3) who is also arrayed as a judgment debtor. The judgment debtors are stated to be engaged in the business of real estate. It is the common contention on behalf of the petitioning creditors that the judgment debtors had received huge amounts from the petitioning creditors as loans, which were to be utilised in the real estate business of the judgment debtors and repaid to the petitioning creditors with interest. The judgment debtors defaulted in making repayment of the amounts to the petitioning creditors, much less the interest on such amounts. Consequently, in all these proceedings, the petitioning creditors had filed summary suits under the provisions of Order 37 Rule 2 of the Code of Civil Procedure. The summary suits instituted by all the petitioning creditors came to be decreed in terms of the consent terms as

entered between the parties. The following statement would indicate the details of the present petitions, the date of the decree and the decretal amounts.:-

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Sr. No.	Insolvency Petition	Suit No. and the date of the Decree	Decretal Amount
1.	INPT 36/2019 Jagdish Bhagwandas Ahuja Gautam Jagdish Ahuja M/s. Ahuja Properties and Associates (For Short: Judgment Debtors) V Sharad Narayan Adulkar	Commercial Summary Suit No. 185 of 2018 (High Court of Bombay) Consent Decree dated 3 September 2018	Rs. 1, 51,28,225/-
2.	INPT 34/2019 Judgment Debtors V Sharad Narayan Adulkar	Commercial Summary Suit No. 186 of 2018 (High Court of Bombay) Consent Decree dated 3 September 2018	Rs. 1,35,61,429/-
3.	INPT 35/2019 Judgment Debtors V Pranav Sharad Adulkar	Commercial Summary Suit No. 139 of 2018 (High Court of Bombay) Consent Decree dated 3 September 2018	
4.	INPT 5/2020 Judgment Debtors V Nirmala Devi Vinodkumar Saraf	Commercial Summary Suit No. 906 of 2017 (City Civil Court, Dindoshi) Consent Decree dated 21 August 2018	Rs.1,09,86,660/-
5.	INPT 4/2020 Judgment Debtors V Sandeepkumar Vinodkumar Saraf	Commercial Summary Suit No. 907 of 2017 (City Civil Court, Dindoshi) Consent Decree dated 21 August 2018	Rs. 1,04,13,754/-
6.	INPT 33/2019 Judgment Debtors V Sandeepkumar Vinodkumar Saraf HUF	Commercial Summary Suit No. 914 of 2017 (City Civil Court, Dindoshi) Consent Decree dated 21 August 2018	Rs. 37,23,880/-
7.	INPT 32/2019 Judgment Debtors V Poonam Sandeepkumar Saraf	Commercial Summary Suit No. 913 of 2017 (City Civil Court, Dindoshi) Consent Decree dated 21 August 2018	Rs. 75,12,527/-
8.	INPT 38/2019 Judgment Debtors V Asiatic Gases Ltd.	Commercial Summary Suit No. 437 of 2018 (High Court of Bombay) Consent Decree dated 25 September 2018	Rs. 4,72,00,000/-

9.	INPT 6/2020 Judgment Debtors V Kanta Harish Aswani	Commercial Summary Suit No. 487 of 2018 City Civil Court, Dindoshi) Consent Decree dated 6 September 2018	Rs. 21,21,419/-
10.	INPT 1/2021 Judgment Debtors V Deepankerkumar Jitendra Ghosh	Commercial Summary Suit No. 489 of 2018 City Civil Court, Dindoshi) Consent Decree dated 6 September 2018	Rs.14,19,085/-
11.	INPT 07/2020 Judgment Debtors V Ashok Gobindram Aswani	Commercial Summary Suit No. 488 of 2018 (City Civil Court, Dindoshi) Consent Decree dated 6 September 2018	Rs. 14,19,081/-
		Total Amount	Rs. 10,55,44,277/-

3. There is no dispute whatsoever that the above decrees subject matter of the debts due and payable by the judgment debtors to the judgment creditors have attained finality, as there are no subsequent proceedings adopted by the judgment debtors, after such consent decrees are passed. It is contended by the learned counsel for the petitioning creditors that in pursuance of the consent decrees, the judgment debtors purported to issue cheques to some of the petitioning creditors which came to be dishonoured.

4. As the facts in all these proceedings are common (except for the amounts) illustratively it would be appropriate to refer the facts in the lead matter i.e. Insolvency Petition No.32 of 2019. The consent decree is dated 21 August, 2018. There was a default on the part of the judgment debtors in honouring the decree, despite being called upon to

make payments under the decree. The petitioning creditors, hence, issued an insolvency notice to the judgment debtors on 09 September, 2019 within the statutory period as permissible. However, although such notice was received, the judgment debtors failed to pay the decretal amount.

5. In such circumstances, on 23 October, 2019, the present insolvency petition came to be filed. The petition was served on the judgment debtors on 29 November, 2019. On 17 December, 2019, this Court (S.C.Gupte J.) passed the following order:-

“ . This petition has been filed on the basis of a decree passed on 20 December 2017 and an insolvency notice issued in pursuance thereof. The petition has been duly served on the Judgment Debtors. Learned Counsel appearing for the Judgment Debtors seeks time to file a reply. Reply, if any, to be filed within four weeks. Stand over to 21 January 2020. To be placed on the next date along with Insolvency Petition Nos.33, 34, 35 and 36 of 2019.”

6. At such hearing, the judgment debtors were represented by Ms. Archana Tiwari i/b. Ms. Sabita Bhowmik. The learned counsel for the petitioning creditors have stated that the date of decree as mentioned in the said order as 20 December, 2017 is an inadvertent error and the decree is dated 21 August, 2018 as annexed to the petition at Exhibit “A” as rightly pointed out by learned counsel for the petitioning creditors.

7. Thereafter the proceedings appeared before this Court (S. C.

Gupte, as his Lordship then was) on 04 February, 2020, when, at the request of learned counsel for the judgment debtors, the proceedings were adjourned to 18 February, 2020 with a direction that no further accommodation would be given to the judgment debtors, on the adjourned date of hearing, granting an opportunity to the judgment debtors to file a reply. The said order reads thus:-

“ At the request of learned Counsel for the Judgment Debtors, stand over to 18 February 2020. It is made clear that no further accommodation will be given to the Judgment Debtors on the next date. In case Judgment Debtors propose to file any reply, a copy must be served on the Petitioning Creditor latest by 14 February 2020.”

8. In the intervening period, the proceedings were sought to be moved by the petitioning creditors before this Court on praecipe/ applications at which point of time, the judgment debtors were represented. On every such occasion, the judgment debtors purported to take a position that they intended to settle all the decrees by making payments to the petitioning creditors. However, all such assurances were empty assurances. On 17 June, 2022, to ascertain as to whether there was a real intention on the part of the judgment debtors to honour the decrees and make payments, the Court directed the judgment debtors to remain present before the Court. However, consistently the judgment debtors have failed to remain present before the Court, albeit showing utter disregard to the orders passed by this Court. This more particularly as it is a case of not one of the petitioning creditors, but of

all of the petitioning creditors who are before the Court to contend that the decrees passed in their respective suits are being rendered paper decrees, by such conduct of the judgment debtors. It is a common contention that in fact, this is a case of a serious financial fraud being practiced by the judgment debtors on the petitioning creditors not only in all these cases, but concerning several others who had lent money to the judgment debtors, which in fact, requires a serious action to be taken even under the criminal law. However, such is not the concern and jurisdiction of this Court in the present proceedings.

9. Reply affidavits are placed on record by the judgment debtors. Learned counsel for the petitioning creditors submit that the theme of the reply affidavit and the contents thereof in all the proceedings is identical. Thus a reference to the reply affidavit (dt. 24 February 2020) in Insolvency Petition No. 32 of 2019 can be made.

10. The reply affidavit admits that the amounts were received by the judgment debtors from the petitioning creditors. It is also admitted that the judgment debtors are not in a position to repay such amounts including the interest on such amounts. It is stated that the judgment debtors had all intention to pay the judgment creditors. It is stated that the judgment debtors had approached various investors to invest in their business and in pursuance thereto in October 2017, the judgment

debtors began their negotiations with a Chinese group “Fosun Hive” for investment in their business. That Fosun Hive had agreed to invest in the business of other entities of the judgment debtors. It is stated that the judgment debtors were of the view/belief that the investment transaction would have materialized prior to December, 2018 and accordingly, had executed the consent terms. However, such transaction with the foreign entity could not materialize although the documents were executed to that effect in May, 2019 and some amounts were received under the said transaction from Fosun Hive in September, 2019. It is stated that the amount is to be received from Fosun Hive and after receipt of such amount which is stated to be an amount of Rs.100 Crores, the debts due and payable to the petitioning creditors and other unsecured creditors would be settled. It is also stated that an advance was demanded by the judgment debtors from Fosun Hive and a part advance of Rs.30 Crores was received, however, the judgment debtors could not pay the petitioning creditors in the manner as agreed in the consent terms. It is stated that so far an amount of Rs.60 Crores was paid to some of the unsecured creditors. It is stated that in these circumstances, the judgment debtors had demanded the petitioning creditors to accept a revised schedule of payment, to which some of the unsecured creditors had agreed, however, none of the petitioning creditors have entered into any revised schedule of payment.

11. It is thus seen from the reply affidavit that the reply affidavit is not confined to the case of the petitioning creditors but some other unsecured creditors. In paragraph 13 of such affidavit, the judgment debtors have stated that the Court needs to grant an opportunity to the judgment debtors to comply and pay the outstanding payment in the manner as what is placed on record as per the revised schedule for repayment.

12. It is contended by the petitioning creditors that although the affidavit is filed on 24 February, 2020 and almost a period of more than 2 and ½ years has lapsed after filing of the said affidavit, it was proved that the assurances which were made in the affidavit were absolutely false and hollow and put up as a sham defence to the present proceedings. Also it is a common contention on behalf of the petitioning creditors that at all material times there was no intention whatsoever, on the part of the judgment debtors to make payment and honour the decrees.

13. It needs to be observed that this Court on 22 April, 2022 had heard the learned counsel for the parties. It was then brought to the notice of the Court that there was a likelihood that the judgment debtors intend to leave the country and defeat not only the decrees, and the present insolvency proceedings as also several other proceedings which

are pending against the judgment debtors. Accordingly, this Court on 22 April, 2022 had passed an order recording the statement as made by learned counsel for the judgment debtors that the judgment debtors intend to settle all claims and that they shall not leave the country without permission of the Court. Thereafter it appears that a notice of motion was filed by the judgment debtors seeking permission of this Court to travel abroad, however, no order was passed on the said notice of motion.

14. It is informed by learned counsel for the judgment debtors that in some criminal proceedings, the judgment debtors were arrested and were subsequently released on bail and as on date, they are on bail. It is contended that despite the judgment debtors being on bail, they have not honoured the orders of this Court passed in the present proceedings to remain present and show any of their bonafides, hence, a consistent impression is that the judgment debtors intend to avoid making their stand clear and are avoiding the orders passed by the Court.

15. Learned counsel for the judgment debtors was put to notice on the earlier occasion that the Court would now take up the proceedings and pass appropriate orders on these insolvency petitions. Reply affidavits being filed as noted above, submissions are made by learned counsel for the judgment debtors. His submissions are to the effect that the

proceedings be adjourned to enable the learned counsel for the judgment debtors to take proper instructions. It appears that except what has been contended by the judgment debtors in the reply affidavit, there is no other contention. Learned counsel for the respondents/judgment debtors is not in a position to argue any plea which can weigh with the Court not to proceed to pass the appropriate orders as the law would require this court to pass on these proceedings. This more particularly when the judgment debtors and their different advocates who had appeared from time to time are aware that the petitioning creditors for quite sometime are not agreeable for the proceedings to be adjourned any further at the behest of the judgment debtor.

16. Ms. Gada and Mr. Taly have appeared for the petitioning creditors and have made detailed submissions. Learned counsel for the petitioning creditors have drawn the Court's attention to the various decrees which are passed and the absolute failure on the part of the judgment debtors to honour the decrees as also to respond to the insolvency notices. It is their contention that it is crystal clear that the judgment debtors have no means whatsoever to satisfy the decrees, hence, an order needs to be passed in the present proceedings, adjudging the judgment debtors as insolvents. It is their contention that enough opportunity was granted to the judgment debtors to show their bonafides. It is also their contention that as the proceedings are pending for almost more than three years

and they ought not to be delayed any further as during the intervening period, the judgment debtors are dealing with their assets to defeat the decrees and orders which may be passed by this Court. Learned counsel for the petitioning creditors would also contend that all the amounts due and payable by the judgment debtors were received for commercial ventures.

17. Having heard learned Counsel for the parties and having perused the record of the present proceedings, it is apparent from the record that the judgment debtors for a long period of time, as noted above, have failed to make payments of the petitioning creditors of the legitimate decretal amounts. They also did not reply to the insolvency notices. The judgment debtors have also failed to comply and honour the insolvency notices. A defence as put up by the judgment debtors in their reply affidavit, in no manner whatsoever, is acceptable to be any defence in the present proceedings. Only a paper assurance to clear the debt due towards the petitioning creditors, is no good. It clearly appears that the judgment debtors are unable to make payments of their debts to the claimants-petitioning creditor. Thus, all essentials for the judgment debtors to be declared as insolvent, is clearly made out.

18. It needs to be observed that Ms. Gada, learned counsel for the

petitioning creditors has invited the Court's attention to an advertisement which is found on the front page of "The Times of India" dated 30 November, 2019 whereby despite the decrees, a new venture appears to have been advertised by the judgment debtors along with Fosun Hive. The said advertisement is taken on record and marked "X" for identification. It is her contention that the project which is advertised is of "Premium 2, 2.5 & 3 bed residences starting Rs. 1.55 Crores. It is her contention that such issuance of advertisement is also suppressed from the reply affidavit which was filed.

19. Mr. Taly has also brought to the notice of the Court a reply affidavit filed on behalf of the judgment debtors in the execution proceedings as filed by one of the petitioning creditors (Asiatic Gases Limited Vs. M/s. Ahuja Properties & Associates & Ors.) being Commercial Execution Application (L.) No.11069 of 2021. The Court's attention is drawn to a contention of the judgment debtors as contained in the disclosure affidavit dated 15 September, 2021 wherein the judgment debtors have stated as under:-

"4. I say that the Judgment Debtors are not in the ownership and possession of any other moveable and immoveable assets, jewellery, fixed deposits, units, bonds, securities, bank accounts, mutual fund investments, other than those mentioned in the Exhibits "A", "B", "C" and "D" hereto.

5. I say that there are no receivables from FOSUN Group by the Judgment Debtors. I say that there are no unsold

flats, shops, unsold residential flats and shops, units owned or belonging to the Judgment Debtors. I say that the Judgment Debtors do not have any other rights (including any leasehold, tenancy or possessory rights) to the immoveable properties. I say that the Judgment Debtors are not in the ownership and/or possession of any other assets other than those mentioned in the Exhibits "A", "B", "C" and "D" hereto."

20. It is Mr. Taly's contention that such fact has not been brought to the notice of the Court in the present proceedings by way of any subsequent affidavit. It is thus quite clear that the assurances as made to this Court in the present proceedings on behalf of the judgment debtors were brazenly false. The judgment debtors could not have taken a contrary stand that amounts are likely to be received from the investors and on such receipt, the debts would be settled in the light of a categorical statement made on affidavit by the judgment debtors as far back as on 15 September, 2021, before the executing Court that there are no receivables from FOSUN Group by the Judgment Debtors. It, therefore, clearly appears from the said stand taken by the judgment debtors in the execution proceedings and the stand taken in the present proceedings that there is a clear attempt on the part of the judgment debtors to misguide the Court and in fact file false affidavit. In any event there is no defence whatsoever on record which can be said to be acceptable and persuade the Court not to pass any order in the present proceedings.

21. This is not a case of the judgment debtors who are illiterate; as they are hard core business persons/entity, who are involved in large scale business activity who have indulged in substantial borrowings and who have defaulted on the repayment commitments to large number of investors. This is alleged to be a larger fraud and a systematic *modus operandi* by the petitioning creditors, be that as it may, the Court would be required to confine itself to the proceedings in hand.

22. For the above reasons, I am certainly not satisfied on the defence as raised on behalf of the judgment debtors which appears to be untenable, and practically a moonshine. Thus, this is a fit case where an order under Section 13(5) read with Section 10 is required to be passed to hold the judgment debtors to be insolvents. Hence, the following order:-

ORDER

- i. The judgment debtors are adjudged to be insolvent.
- ii. The petitions are accordingly allowed in terms of prayer clause (a) which reads thus:-

“(a) As Order of adjudication may be made by this Hon’ble Court against the Debtors.”
- iii. The properties of the insolvents wherever situated shall vest in the Official Assignee and shall become divisible among the insolvent’s creditors.

iv. The Official Assignee to take necessary steps to realize the assets of the insolvents as per law.

23. At this stage, it is informed by learned counsel for the petitioners that the order dated 22 April, 2022 whereby the insolvents have been directed not to leave the country, needs to be continued. The submission is required to be accepted.

24. The insolvents are directed not to leave the jurisdiction of this Court unless and until the claimants of all the petitioning creditors as also of any other creditors in respect of any claims as received by the Official Assignee are satisfied. The insolvents are directed to deposit their passports with the Official Assignee. The Official Assignee shall take further appropriate steps as per law.

25. Disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]