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I.P.No.17 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

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THE HON'BLE MR. JUSTICE M.SUNDAR

I.P.No.17 of 2021

G.Nagarajan

... Petitioning Creditor

Vs.

K.Baskaran

... Respondent

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 for adjudicating the debtor as insolvent, to direct the estate of the debtor be vested in the Official Assignee of Madras, for the benefit of the general body of creditors or the debtors and to order that the cost of this petition be paid by the Official Assignee of Madras, from and out of the estate of the debtor to the petitioning creditor.

For Petitioning Creditor : Mr.T.Srikanth

ORDER

This order will now dispose of captioned 'main Insolvency Petition' ('main IP' for the sake of convenience and clarity).



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2. Mr.T.Srikanth, learned counsel for petitioning creditor who is before this Court advertent to the pleadings in the main IP, the proceedings in the case file which capture the trajectory the matter has taken and the deposition before learned Master by the petitioning creditor submits that the respondent after being duly served with notice has not chosen to come before this Court and therefore, learned Master has recorded *ex parte* evidence on 16.06.2022. The lone petitioning creditor deposed as PW1 and four exhibits i.e., Exs.P1 to P4 were marked is learned counsel's say.

3. As regards the pleadings, suffice to say that captioned main IP is predicated on a borrowing of Rs. 2 lakhs by the respondent on the basis of a promissory note dated 16.06.2020 (Ex.P1) and the respondent's response that he cannot pay the amount vide a reply dated 07.07.2021 (Ex.P4) in response to a letter from the petitioning creditor dated 15.06.2021 followed by a legal notice from the petitioner (Exs.P2 and P3 respectively). This Ex.P4 reply from the respondent makes it clear that he has suspended payment of his debt within the meaning of Section 19(1)(g) of 'Presidency-towns Insolvency Act 1909' (hereinafter 'PTI Act' for convenience) is learned counsel's say.



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4. This Court has carefully perused the *ex-parte* evidence i.e., deposition before learned Master and the aforesaid exhibits marked thereat. This Court also perused the pleadings, the main IP and heard learned counsel for petitioning creditor.

5. This Court finds that the plea of the petitioner that the respondent/debtor has to be adjudicated as an insolvent for having committed an act of insolvency under Section 9(1)(g) of PTI Act deserves to be acceded to. This Court therefore, makes an order of adjudication acceding to the prayer of the petitioner adjudicating the respondent as an insolvent. This means that Section 17 of PTI Act will kick in and properties of the insolvent wherever situate shall vest in the Official Assignee and become divisible among his creditors.

6. Learned Official Assignee is present in Court. Learned Official Assignee is directed to take note of this order and proceed in accordance with PTI Act and the Rules thereunder. Though obvious it is made clear that it is open to the respondent to seek discharge *inter alia* under Section 38 of PTI Act (if so advised, if so desired and if that be so) within 18 months in accordance with Rules thereunder.



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7. Accordingly, this petition is allowed adjudicating the respondent/debtor as insolvent and estate of the respondent shall vest with the Official Assignee, Chennai. As already delineated supra, the respondent/debtor shall apply for discharge within 18 months time. There shall be no order as to costs.

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Index: Yes/No

Speaking order/Non-speaking order

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