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I.P. No. 24 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

CORAM

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

I.P. No. 24 of 2022

G.Janakiraman

... Petitioning Creditor

Vs.

1. R.Jayakumar

2. R.J.Usha

... Debtors

Prayer:- Insolvency Petition filed under Sections 9(g), 10, 11, 12 and 13 of the Presidency Towns Insolvency Act, 1909 and Order III-8 of the Insolvency Rules, 1958, praying:-

- (a) to treat this petition as urgent;
- (b) to adjudicate the debtors as insolvents;
- (c) 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; and
- (d) 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.

For Petitioning Creditor : Mr. T.Srikanth

For Debtors : Set exparte



I.P. No. 24 of 2022

ORDER

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This petition has been filed under Sections 9(g) and 10 to 13 of the Presidency Towns Insolvency Act, 1909 (hereinafter referred to as 'the Act' for short) to declare the debtors as insolvents.

2. The case of the petitioning creditor is that the debtors have borrowed a sum of Rs.3,00,000/- from him and executed a promissory note in his favour. As the petitioning creditor has made repeated demand to return the said sum of Rs.3,00,000/- along with 18% interest, the debtors have sent a notice dated 12.08.2022 expressing their inability to settle the said amount due to the heavy loss in their business. Therefore, the learned counsel for the petitioning creditor submits that it is a clear case of admission of their inability to pay the debt. He further submits that the debtors have committed the act of insolvency in terms of Section 9(1)(g) of the Act, which reads as follows:-

“9.(1) A debtor commits an act of insolvency in each of the following:-

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;”



I.P. No. 24 of 2022

WEB COPY

In the present case, the debtors have informed the petitioning creditor by virtue of the notice dated 12.08.2022 about their inability and thereby, they have suspended the payment of their debts. Therefore, the act of the debtors is squarely covered under Section 9(1)(g) of the Act.

3. Notice has been served on the debtors and the learned counsel has also entered appearance for the debtors. After completion of service on the debtors, the matter was listed before the learned Master for recording of evidence, wherein the evidence of the petitioning creditor was recorded, but none appeared on behalf of the debtors as witness and therefore, the debtors were set exparte by virtue of the order of this Court dated 05.12.2022.

4. On consideration of the submissions made by the learned counsel for the petitioning creditor and on a perusal of the averments and exhibits, it is very clear that the debtors have committed an act of insolvency from making payment in terms of Section 9(1)(g) of the Act. Therefore, the debtors are adjudicated as insolvents.



I.P. No. 24 of 2022

WEB COPY

5. The learned Official Assignee is directed to take charge of the assets and liability of the debtors following the provisions set out under the Act and discharge the entire liabilities of the debtors to their creditors.

Accordingly, this petition is ordered. No costs.

19.12.2022

vjt

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order



WEB COPY



I.P. No. 24 of 2022

KRISHNAN RAMASAMY, J.

vjt

I.P. No. 24 of 2022

19.12.2022