

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
INSOLVENCY JURISDICTION**

**INSOLVENCY PETITION NO. 10 OF 2018
WITH
NOTICE OF MOTION(L) NO. 17779 OF 2023
IN
INSOLVENCY PETITION NO. 10 OF 2023**

Naresh Manekchand Agarwal. .. Petitioning Creditor.
v/s.
Rahul Vipanchander Aggarwal. .. Debtor.

...
Mr. Girish Kedia a/w. Mr. Krushang Kedia, for the Petitioning
Creditor.

Ms. M.R. Parkar, I.R. present.

...

CORAM : KAMAL KHATA, J.

DATED : 28TH JULY, 2023.

P.C. :

1. The Petitioning Creditor has filed present Petition for order of adjudication against the debtor. It is the case of the Petitioning Creditor that a sum of Rs. 2,13,80,516/- and further interest at the rate of 18% per annum on principal amount of Rs. 1,32,21,492/- as set out in the particulars of claim are due from 11/1/2023 till the payment or realization under the exparte decree dated 14/12/2022 read with 6/1/2023 granted in favour of the Petitioning Creditor. The same amount is due and called for under the Insolvency Notice No. N/4 of 2023 dated 15th February,

2023.

2. It is submitted that the Petitioning Creditor expired on 25th May, 2023 and the applicants being the heirs and legal representatives have been brought before the Court.

3. Learned Counsel for the Petitioning Creditor submitted that the Insolvency notice was issued against the debtor on 24th February, 2023 by hand delivery. The debtor was required to pay the amount claimed in the notice within a period of 35 days after service of notice on 24th February, 2023 i.e. on or before 1st April, 2023. The debtor has failed to pay any amount as stated in the notice or taken out any proceedings for setting aside the notice. The debtor has failed to comply with the requisitions of the notice and therefore, committed an act of insolvency as of 1st April, 2023. It is submitted that the exparte decrees dated 14th December, 2022 read with 6th January, 2023 are not stayed nor any execution application is pending in the Hon'ble High Court, Bombay or any other court. It is stated that neither Petitioning Creditor nor does anyone on their behalf hold any security on the debtor's estate or any part thereof. It is submitted that the debtor has within 3 months before the date hereto committed an act of insolvency, that is failed to have complied with the requisitions of the said notice served upon the debtors on 24th February, 2023.

4. The learned Advocate points out that the affidavit of service dated 25th July, 2023 has been filed. It is submitted that inspite of service, no one has appeared on behalf of the insolvent even today. He therefore, submits that the Petition be made absolute.

5. In my view, in view of what is stated hereinabove, the Petition is made absolute in terms of prayer clauses (a) and (b).

6. Official assignee to take necessary steps in accordance with law and procedure and to invest the amounts so realized from the estate of the insolvent with any Nationalised Bank as per the circular issued by the office of the Prothonotary and Senior Master of this order.

7. This order of adjudication shall be served by the Advocate for Petitioning Creditor on the Judgment Debtor and shall file Affidavit of service to that effect within two weeks from today.

8. Petitioning Creditor to lodge the copy of the adjudication order with the office of the Official Assignee within two weeks from the date of this order.

9. The Judgment Debtor is directed to comply with all requisitions of Section 33 of the Presidency Towns Insolvency Act, 1909.

10. The Official Assignee is authorised to take the assistance of the local police authorities at the time of taking physical

possession of the movable or immovable properties of the Judgment Debtor.

11. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)