

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

**RULE NISI NO. 6 OF 2024
IN
INSOLVENCY PETITION NO. 5 OF 2019**

1. Mr. Bhagchand Tikamchand Jain (Deceased)
2. Mr. Dinesh Tikamchand Jain
3. Rishabh Textile (Firm) ...Insolvents

Ex-parte:

Advance Synthetics ...Petitioning Cr.
V/s.
The Official Assignee of Bombay
High Court, Bombay ...Petitioner

Mr. J.P. Dhanuka for Insolvents
Ms. C. J. Bhatt, Official Assignee with Mr. Arun Kesarkar, Deputy
Official Assignee and Mr. Subodh Patil, 1st Assistant Official Assignee
present.
Ms. M. R. Parkar, Insolvency Registrar present.
Mr. Dinesh Jain, Insolvent No. 2 present in person.

**CORAM : ABHAY AHUJA, J.
DATE : 16th APRIL, 2024**

PC. :

1. This Rule Nisi which had been issued earlier and directed to be
served upon the Insolvent No.2, has been served and today Insolvent
No.2 is present in Court.

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2. Mr. Dhanuka, learned Counsel appears for the Insolvent No. 2 and submits that the well-wisher has made payment of the outstanding debt and therefore, the order of adjudication dated 5th November, 2019 be annulled. In this regard, Mr. Dhanuka, learned Counsel submits that the aforesaid Notice of Motion has been taken out. Although the said Notice of Motion is not on board, the same is taken on board.

3. Mr. Dhanuka, refers to the affidavit in support of the Notice of Motion to submit that the Petitioning Creditor who is the only claimant against the firm, had obtained decree against the partnership firm and the Insolvent No.2 and his deceased brother, who was the Insolvent No.1. That during the course of their private examination, their well-wisher has paid of the Petitioning Creditor in full and final satisfaction and has also obtained receipt from him towards the said payment, which has been lodged in the office of the Official Assignee. Learned Counsel submits that since the well-wisher has paid of the Petitioning Creditor and the well-wisher has also given an undertaking to the Official Assignee for any future claims which may be made against the Insolvent No.2 or his late brother for the period on or before the date of annulment of the order of adjudication, this Court annul the adjudication order dated 5th November, 2019.

5. Learned Official Assignee is present in the Court and has also submitted a response to the Notice of Motion. It has been submitted therein that the well-wisher has settled the claim of Rs. 4,50,000/- by making payment to the Petitioning Creditor and the partner of the Petitioning Creditor has also issued No Dues Certificate dated 30th January, 2023 in favour of the Insolvent No.2, which has also been perused by this Court.

6. It is also submitted in the response of the learned Official Assignee that the well-wisher has also submitted an undertaking-cum-indemnity bond for future claims of the Insolvents and that therefore, this Court may allow the Notice of Motion, subject to payment of Rs. 13,500/- being the 3% Official Assignee Commission on settled claim amount.

7. Mr. Dhanuka, learned Counsel for the Insolvent No.2 seeks to tender a Demand Draft for a sum of Rs. 13,500/-to the learned Official Assignee, which the learned Official Assignee has accepted. It is also brought to the notice of this Court that the Insolvent No.2 has not filed the schedule of assets and liabilities.

8. Having heard the learned Counsel for the Insolvent No.2 as well as the learned Official Assignee and having perused the affidavit in support and submission of the learned Official Assignee, this Court is of the view that even though the schedule of assets and liabilities has not been filed on behalf of the Insolvent No.2, in view of the undertaking-cum-indemnity bond given by the well-wisher Mrs. Ruchita Dinesh Jain, wife of the Insolvent, in respect of future claim of the Insolvents, the Notice of Motion be allowed. Ergo, the order of adjudication dated 5th November, 2019, is hereby annulled under Section 21(1) of the Presidency Towns Insolvency Act, 1909. The public examination of the Insolvents be dispensed with.

9. Accordingly, the Notice of Motion is made absolute in terms of prayer Clauses (a) and (b), which read thus:-

(a) That the order of adjudication passed against the Insolvents above named by the Hon'ble the Insolvency Court on 5th day of Nov 2019 may be annulled under Section 21 (1) of the Presidency Towns Insolvency Act, 1909 on the ground of full payment;

(b) That the Public Examination, of the Insolvents abovenamed, yet not commenced, be ordered to be dispensed with the Hon'ble court;

10. In view of the above and the presence of the Insolvent No.2 in this Court today the Rule Nisi stands discharged.

11. Mr. Dhanuka, learned Counsel for the Insolvent No.2 seeks expedition of the certified copy. Certified copy is expedited.

(ABHAY AHUJA, J.)