A(IP).Nos.44, 45, 46, 47, 48, 74, 75, 76, 79, 80, 81, 82 of 2020,
and
A(IP).Nos.11 and 12 of 2023
in
IP.No.94 of 2011

Reserved On	27.08.2024
Pronounced On	02.09.2024

C.SARAVANAN, J.

By this Common Order, all the above mentioned applications are being disposed of. There are three sets of applications that have been filed before this Court in **IP.No.94 of 2011.**

2. **IP.No.94 of 2011** was field by the Petitioning Creditor **M/s.Kotak Mahindra Bank Limited,** under Section 9 of the Presidency-Towns Insolvency Act, 1909 to declare **Mr.A.Ravishankar Prasad** as an Insolvent.

3. **Mr.A.Ravishankar Prasad** was eventually adjudicated as an undischarged insolvent posthumously on **09.08.2017** after his demise on **13.07.2013.**

4. **A.(IP)Nos.44, 45, 46, 47, 48, 74, 75, 76, 79, 80, 81, 82 of 2020** have been filed by the Petitioning Creditor namely **M/s.Kotak Mahindra Bank Limited. A.(IP)No.11 of 2023, A.(IP)No.12 of 2023** have been filed by the Legal Representatives (hereinafter also referred to as **LR's)** of the deceased Insolvent Late **Mr.A.Ravishankar Prasad**.

5. **A.(IP)Nos.11 and 12 of 2023** have been filed by the wife and daughters of the deceased Insolvent **Mr.A.Ravishankar Prasad** under **Section 21** of the **Presidency-Towns Insolvency Act, 1909.** The applicants in **A.(IP)Nos.11 and 12 of 2023** shall also be collectively referred to as the **LR's**. **A.(IP)Nos.11 and 12 of 2023** have been filed for the following reliefs:-

Table-IV

A(IP)No.	Prayer	Provision
11 of 2023	To stay the order of adjudication in IP.No.94 of 2011 dated 09.08.2017.	Order II Rule 1 of Insolvency Rules, 1958 read with Section 94 of the Presidency Towns Insolvency Act, 1909. [Sections 9(2), 9(3)(a), 12(2), 21 of the

A(IP)No.	Prayer	Provision
		Presidency Towns Insolvency Act, 1909, Section 13 of the SARFAESI Act, 2002, Section 19 of the Recovery of Debts Due to Banks Financial Institutions Act, 1993, Sections 433(e) and 434 of the Companies Act, 1956, Right to Information Act, 2005]
12 of 2023	To pass an order annulling the order of adjudication dated 09.08.2017 in IP.No.94 of 2011 adjudicating A.Ravishankar Prasad the first applicant deceased husband as insolvent and directing the re-vesting of the assets to the applicants.	Order II Rule 1 of Insolvency Rules, 1958 read with Section 21 of the Presidency Towns Insolvency Act, 1909. [Sections 9(2), 9(3)(a), 12(2), 21 of the Presidency Towns Insolvency Act, 1909, Section 13 of the SARFAESI Act, 2002, Section 19 of the Recovery of Debts Due to Banks Financial Institutions Act, 1993, Sections 433(e) and 434 of the Companies Act, 1956, Right to Information Act, 2005]

6. **A.(IP)Nos.44, 45, 46, 47 and 48 of 2020** have been filed by the Petitioning Creditor namely **M/s.Kotak Mahindra Bank Limited** for the following reliefs:-

Table-I

A(IP)No.	Prayer	Provision
44 of 2020	To declare the Settlement Deed dated 28.01.2019 executed by the sixth respondent registered as Doc.No.183 of 2019 on the file of Sub-Registrar of Adyar as Null and Void and not binding on the Estate of the deceased Insolvent Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Order II Rule 1 of Insolvency Rules read with Sections 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
45 of 2020	To declare the Settlement Deed dated 29.01.2019 executed by the third respondent registered as Doc.No.190 of 2019 on the file of Sub-Registrar of Adyar as Null and Void and not binding on the Estate of the deceased Insolvent Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Order II Rule 1 of Insolvency Rules read with Sections 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
46 of 2020	To declare the	Order II Rule 1 of

A(IP)No.	Prayer	Provision
	Rectification Deed dated 18.03.2019 registered as Doc.No.643 of 2019 on the file of Sub-Registrar of Adyar as Null and Void and not binding on the Estate of the deceased Insolvent Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Insolvency Rules read with Sections 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
47 of 2020	To declare the Mortgate Deed without possession dated 11.04.2019 registered as Doc.No.938 of 2019 on the file of Sub-Registrar of Adyar in favour of the ninth respondent as Null and Void and not binding on the Estate of the deceased Insolvent Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Order II Rule 1 of Insolvency Rules read with Sections 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
48 of 2020	To pass an order of Permanent Injunction restraining the second to tenth respondents from in any manner dealing with the property mentioned in the Schedule and/or acting on the documents referred to creating interest on the property which vest with	Order II Rule 1 of Insolvency Rules read with Sections 7 and 90 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]

A(IP)No.	Prayer	Provision
	the first respondent pending disposal of the applications.	

7. **A.(IP)Nos.74, 75, 76, 79, 80, 81 and 82 of 2020** have also been filed by the Petitioning Creditor namely **M/s.Kotak Mahindra Bank Limited** for the following reliefs:-

Table-II

A(IP)No.	Prayer	Provision
74 of 2020	To declare that the Power of Attorney Deed dated 06.12.2019 executed by the Legal Heirs of the deceased Insolvent, Mr.A.Ravishankar Prasad, registered as Doc.No.3332 of 2019 on the file of Sub-Registrar Office, Adyar, as Null and Void and not binding on the Estate of the Legal Heirs of the deceased Insolvent, Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Order II Rule 1 of Insolvency Rules read with Sections 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
75 of 2020	To pass an order of Permanent Injunction restraining the second to	Order II Rule 1 of Insolvency Rules read with Sections 7, 44, 45,

A(IP)No.	Prayer	Provision
	tenth respondents from in any manner dealing with the property mentioned in the Schedule and/or acting on the documents referred to creating interest on the property which vest with the first respondent pending disposal of the applications seeking for remedies against the void transactions.	55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
76 of 2020	To grant Permanent Injunction restraining the second to tenth respondents from in any manner dealing with the property described in the Schedule to the Judge's Summons detrimental to the interest of the Estate of the Insolvent.	Order II Rule 1 of Insolvency Rules read with Sections 7, 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
79 of 2020	To grant an order of Interim Injunction restraining the second to tenth respondents from in any manner dealing with the property mentioned in the Schedule and/or acting on the documents referred to creating interest on the property which vest with the first respondent pending disposal of the applications seeking for	Order II Rule 1 of Insolvency Rules read with Sections 7, 44, 45, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]

A(IP)No.	Prayer	Provision
	remedies against the void transactions.	
80 of 2020	To declare that the Settlement Deed dated 14.01.2020 executed by the third respondent, mother of the Insolvent Mr.A.Ravishankar Prasad, registered as Doc.No.125 of 2020, in favour of the fourth, fifth, seventh and eighth respondents on the file of Sub-Registrar Office, T.Nagar, as Null and Void and not binding on the Estate of the Legal Heirs of the deceased Insolvent, Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Order II Rule 1 of Insolvency Rules read with Sections 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]
81 of 2020	To declare that the Sale Deed dated 08.10.2020 executed by the fourth, fifth, seventh and eighth respondent as Doc.No.1548 of 2020, on the file of Registrar Office, T.Nagar, as Null and Void and not binding on the Estate Legal Heirs of the deceased Insolvent, Mr.A.Ravishankar Prasad, in the hands of the first respondent.	Order II Rule 1 of Insolvency Rules read with Sections 7, 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]

A(IP)No.	Prayer	Provision
82 of 2020	To consequential Permanent Injunction restraining the ninth respondent from in any manner dealing with the property described in the Schedule to the Judge's Summons detrimental to the interest of the Estate of the Insolvent.	Order II Rule 1 of Insolvency Rules read with Sections 7, 44, 55 and 56 of the Presidency Towns Insolvency Act, 1909. [Sections 16 and 17 of the Presidency Towns Insolvency Act, 1909]

8. The executants are the respondents in these applications who have settled/mortgaged their respective shares in the property after **Mr.A.Ravishankar Prasad** (since deceased) was adjudicated as an Insolvent in **IP.No. 94 of 2011** on **09.08.2017**.

9. The **LR's** of **late Mr.A.Ravishankar Prasad** have effected transfers though the estate of **late Mr.A.Ravishankar Prasad** stood vested with the Official Assignee pursuant to adjudication of **late Mr.A.Ravishankar Prasad** as an insolvent on **09.08.2017** in **IP.No.94 of 2011.** In this endevour, the children of **Mr.A.Manohar Prasad (insolvent in IP.No.98 of 2011)** have also executed some of the documents.

Mr.A.Manohar Prasad (insolvent in **IP.No.98 of 2011)** is the brother of **late Mr.A.Ravishankar Prasad (insolvent** in **IP.No.94 of 2011).** The details of the property transferred by them which are subject matter of the applications filed by the Petitioning Creditor are as follows:-

Table-III

Sl. No.	Document No.	Date	Nature of Doc.	Name of the Executant (s)	Name of the Beneficiary/ Beneficiaries	A(IP) No.
1.	Doc.No.183 of 2019	28.01.2019	Settlement Deed	6th respondent (Sai Siva Jyoti W/o Ravishankar Prasad)	8th respondent (Anjali Krishna D/o Ravishankar Prasad)	44 of 2020
2.	Doc.No.190 of 2019	29.01.2019	Settlement Deed	3rd respondent (Indrani Anand M/o Ravishankar Prasad)	7th respondent (Lakshmi Anand D/o Ravishankar Prasad)	45 of 2020
3.	Doc.No.191 of 2019	29.01.2019	Settlement Deed	3rd respondent (Indrani Anand M/o Ravishankar Prasad)	4th and 5th respondent (son and daughter of Manohar Prasad)	
4.	Doc.No.643 of 2019	18.03.2019	Rectification Deed	6th respondent (Sai Siva Jyoti W/o Ravishankar Prasad)	8th respondent (Anjali Krishna D/o Ravishankar Prasad)	46 of 2020
5.	Doc.No.938 of 2019	11.04.2019	Mortgage Deed	4, 5, 7, 8 respondents (son and daughter of	9th respondent (**M/s. Paceman**	47 of 2020

Sl. No.	Document No.	Date	Nature of Doc.	Name of the Executant (s)	Name of the Beneficiary/ Beneficiaries	A(IP) No.
				Manohar Prasad and daughters of Ravishankar Prasad)	**Finance India Pvt. Ltd.**)	
6.	Doc.No.3332 of 2019	06.12.2019	Power of Attorney Deed	Legal Heirs of the deceased Insolvent, Mr.A.Ravishankar Prasad-R5, R6, R7 + R2 and his Legal Heirs-R3, R4 of 7.69 Acres)	9th respondent (**M/s. Paceman Finance India Pvt. Ltd.**)	74 of 2020
7.	Doc.No.125 of 2020	14.01.2020	Settlement Deed	3rd respondent, mother of the Insolvent Mr.A.Ravishankar Prasad	4th, 5th, 7th and 8th respondents (son and daughter of Manohar Prasad and daughters of Ravishankar Prasad)	80 of 2020
8.	Doc.No.1548 of 2020	08.10.2020	Sale Deed	4th, 5th, 7th and 8th respondents (son and daughter of Manohar Prasad and daughters of Ravishankar Prasad)	9th respondent (**M/s. Paceman Finance India Private Limited**)	81 of 2020

10. The executants and beneficiaries named in the above applications are **Mrs.Indrani Anand** (mother of late **Mr.A.Ravishankar Prasad**), **Mrs.Sai Siva Jyoti** (wife of late **Mr.A.Ravishankar Prasad**), **Ms.Lakshmi Anand** and **Ms.Anjali Krishna** (daughters of late **Mr.A.Ravishankar Prasad (**the **Insolvent** in **IP.No.94 of 2011)**). **Ms.A.Chandini** and **Mr.Anand Prasad** are the daughter and son of **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011**).

11**. Mr.A.Manohar Prasad (Insolvent** in **IP.No.98 of 2011**) is the brother of the deceased **Mr.A.Ravishankar Prasad (Insolvent** in **IP.No.94 of 2011**) whose children have executed **Document No.938 of 2019** and **Document No.1548 of 2020** along with children of the deceased insolvent **Mr.A.Ravishankar Prasad** who are also the beneficiaries in **Document No.190 of 2019, Document No.191 of 2019** and **Document No.125 of 2020**.

12. If **A.(IP)No.11 of 2023** and **A.(IP)No.12 of 2023** are allowed, rest of the applications filed by the Petitioning Creditor "secured creditor"

namely M/s.Kotak Mahindra Bank Limited may have to be dismissed. I shall deal with the same towards the end of this Order.

13. By an **Adjudication Order** dated **09.08.2017 in IP.No.94 of 2011**, this Court had posthumously declared late **Mr.A.Ravishankar Prasad**/1st Respondent therein as an Insolvent in **IP.No.94 of 2011** with the following observations:-

> "7. *This Insolvency Petition is concerned only with the payment of the amounts in accordance with the Compromise Decree dated 11.12.2000. The respondents have played a fraud on the Court by entering into a Compromise and obtaining a seal of approval, when there was no intention to honour the commitment. This Court had observed in parallel proceedings, which the respondents now want to rely on that "we are dealing with a chronic defaulter, who has evaded payment by using the judicial process for more than a decade". In these circumstances, I have no hesitation in holding that the deceased debtor had committed the act of insolvency commencing from the date of expiry of 35 days from the date of service of the Insolvency Notice dated 29.08.2011 ordered by this Court in I.N.No.110 of 2011 and served on 02.09.2011. Consequently, this Insolvency Petition is allowed with the following directions:-*
>
> > i. *The deceased first debtor is adjudicated as an Insolvent under the provisions of the Presidency Towns Insolvency Act, 1909.*

ii. The estate of the deceased first debtor is vested with the Official Assignee with powers to administer the same for the benefit of the general body of creditors of the deceased first debtor.

iii. The Official Assignee has to take charge of the entire estate of the deceased first debtor and proceed with the same under the provisions of the Presidency Towns Insolvency Act, 1909.

iv. The cost of this petition shall be paid by the Official Assignee from and out of the estate of the debtors."

14. The challenge to the **Adjudication Order** dated **09.08.2017** by the **LR's** of the deceased **Mr.A.Ravishankar Prasad** in **A.(IP)Nos.11 and 12 of 2023** is primarily on the ground that requirements of Section 9(2) read with Section 9(5) of the Presidency-Towns Insolvency Act, 1909 were not complied with at the stage of issuance of **IN.No.110 of 2011 in C.S.No.225 of 1999** issued by the Respondents/**Petitioning Creditors** in **A.(IP)Nos.11 and 12 of 2023**.

15. It is the case of the **LR's** of the deceased **Mr.A.Ravishankar Prasad** (**Insolvent** in **IP.No.94 of 2011**) that Section 12(2) of the

Presidency-Towns Insolvency Act, 1909 was also not complied with by the Petitioning Creditor.

16. Specifically, it was submitted that the Petitioning Creditor being a "**secured creditor**" ought to have stated in **IP.No.94 of 2011** that the Petitioning Creditor was either willing to relinquish the security for the benefits of the creditors in the event of debtors namely **Mr.A.Ravishankar Prasad** was adjudged as an Insolvent or had given an estimate of the value of the security for the balance amount as is contemplated in Section 12(2) of the Presidency-Towns Insolvency Act, 1909.

17. It is submitted that only if the Petitioning Creditor had given an estimated value of the security for the balance amount, the Petitioning Creditor's petition in **IP.No.94 of 2011** could have been admitted to the extent of balance of debt due from the debtors and only after deducting the value, the Petitioning Creditor could file **IP.No.94 of 2011** like an unsecured creditor.

18. It is submitted that in **IP.No.94 of 2011**, there was also no whisper regarding compliance to Section 9(2) of the Presidency-Towns Insolvency Act, 1909 and therefore on this ground also Adjudication Order dated **09.08.2017** was liable to be annulled under Section 21 of the Presidency-Towns Insolvency Act, 1909.

19. That apart, it is submitted that requirements of Section 93 of the Presidency-Towns Insolvency Act, 1909 was also not complied with before Adjudication Order dated **09.08.2017** was passed as **Mr.A.Ravishankar Prasad** (**Insolvent** in **IP.No.94** of **2011**) died on **13.07.2013**.

20. It is submitted that if a debtor against whom a proceeding is initiated for declaring him/her as an Insolvent, proceeding in the matter can be continued only if the Court directs it to be continued. It is submitted that no such order was passed by the Court before declaring late **Mr.A.Ravishankar Prasad** as an insolvent.

21. Mr.J.Balagopal, learned counsel for the applicants in **A.(IP)Nos.11 and 12 of 2023,** i.e., the **LR's** of late **Mr.A.Ravishankar Prasad** (**Insolvent** in **IP.No.94 of 2011**) would further submit that pursuant to a direction of the Hon'ble Supreme Court in **SLP(Civil).No.23569 of 2011** dated **05.02.2013**, a sum of **Rs.21,00,00,000/-** was also deposited by **M/s.Ravishankar Industries Pvt Ltd.,** and that a further sum of **Rs.4,00,00,000/-** was deposited by way of RTGS transfer by **Mr.A.Manohar Prasad** (**Insolvent** in **IP.No.98 of 2011**).

22. It is therefore submitted that the adjudication of late **Mr.A.Ravishankar Prasad** as an Insolvent vide **Order** dated **09.08.2017** by this Court is therefore liable to be annulled under Section 21 of the Presidency-Towns Insolvency Act, 1909.

23. It is submitted that an amount of **Rs.21,00,00,000/-** was deposited in two installments on **19.04.2013** by the 1st Defendant/1st Judgment Debtor **M/s.Ravishankar Industries Private Limited** in **C.S.No.225 of 1999** and by way of RTGS a further sum of

Rs.4,00,00,000/- by **Mr.A.Manohar Prasad** (insolvent in **IP.No.98 of 2011)** on **08.07.2013,** the 3rd Defendant in **C.S.No.33 of 1999.**

24. It is submitted that pursuant to the **Consent Decree** dated **11.12.2000** against **M/s.Ravishankar Industries Private Limited** represented by **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011) in C.S.No.225 of 1999**, an equitable Mortgage Deed was executed by **M/s.Prasad Properties and Investments Private Limited** which is a sister Company of **M/s.Ravishankar Industries Private Limited.**

25. It is submitted that as mentioned above in the collateral proceedings arising out of **C.S.Nos.33 of 1999** and **C.S.No.52 of 1999**, the Judgment Debtor had deposited a sum of **Rs.25,00,00,000/-** pursuant to order passed by the Hon'ble Supreme Court in **SLP.(Civil).No.23569 of 2011 dated 05.02.2013** and therefore, the continuation of Insolvency Proceedings against Late **Mr.A.Ravishankar Prasad (Insolvent** in **IP.No.94 of 2011)** was contrary to Section 12(2) of the Presidency-Towns

Insolvency Act, 1909. It is therefore submitted that this is a good case for annulling the Order of Adjudication dated **09.08.2017**.

26. Mr.J.Balagopal, learned counsel for the applicants has placed reliance on the following four decisions of this Court:-

i. **S.Neela Kanta Sharma** Vs. **K.Govindarajulu and another**, AIR 1982 Madras 18.

ii. **S.A.Ramalinga Mudaliar** Vs. **T.K.Ratna Mudaliar and another**, AIR 1963 Madras 181.

iii. **P.K.Venkateswaran and others** Vs. **R.Shanmugam**, AIR 1987 Madras 143.

iv. **B.Srinivasan** Vs. **N.Jambulingam**, 2010 (6) CTC 54.

27. Mr.H.Karthik Seshadri, learned counsel for the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023,** has explained long history chronologically.

28. It is submitted that none of the grounds that has been raised before this Court for annulling the order under Section 21 of the Presidency-Towns Insolvency Act, 1909 are present here.

29. It is submitted that the Petitioning Creditor is the assignee of the debt owed by the defendants in **C.S.No.225 of 1999** to the plaintiff **M/s.Indbank Merchant Banking Services Limited**.

30. The said bank had earlier filed **C.S.No.225 of 1999** against **M/s.Ravishankar Industries Private Limited**, represented by **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011).** It is submitted that **C.S.No.225 of 1999** was filed to recover a sum of **Rs.1,64,27,003.57/-** together with interest at 24% per annum from the date of institution of **C.S.No.225 of 1999** till the date of payment.

31. In the aforesaid proceedings, a **Memorandum of Compromise** dated **25.07.2000** was signed between **M/s.Indbank Merchant Banking Services Limited**, the plaintiff therein (the predecessor through whom the Petitioning Creditor claims rights) and the defendants namely **M/s.Ravishankar Industries Private Limited**, the 2nd defendant **Mr.A.Ravishankar Prasad (Insolvent** in **IP.No.94 of 2011)** and the 3rd

defendant **Mr.A.Manohar Prasad (Insolvent** in **IP.No.98 of 2011).** Late **Mr.A.Ravishankar Prasad (Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad (Insolvent** in **IP.No.98 of 2011)** were the Directors of the 1st Defendant namely **M/s.Ravishankar Industries Private Limited** who had guaranteed the repayment.

32. On **30.11.2000**, the defendants submitted to a **Compromise Decree** by agreeing to pay a sum of **Rs.4,21,70,008/-** as of **25.07.2000** to **M/s.Indbank Merchant Banking Services Limited** through whom the Petitioning Creditor claim rights.

33. It is submitted that similar proceedings were also initiated against sister Companies of **M/s.Ravishankar Industries Private Limited** as detailed below:-

Sl. No.	C.S.No.	Name of the Defendant	Principal Amount	Compromise Amount
1.	1023/1998	M/s.Mahalakshmi Properties and Investments Private Limited and others	Rs.6,18,91,289/- along with future interest at the rate of 20% per annum	Rs.29,18,59,531/- (as on 26.03.2007)
2.	33/1999	M/s.Green Gardens	Rs.6,19,54,752/-	Rs.29,49,81,355/-

Sl. No.	C.S.No.	Name of the Defendant	Principal Amount	Compromise Amount
		Private Limited and others	along with future interest at the rate of 20% per annum	(as on 26.03.2007)
3.	52/1999	M/s.Gemini Arts Private Limited and others	Rs.6,15,17,512/- along with future interest at the rate of 20% per annum	Rs.29,00,96,918/- (as on 26.03.2007)

34. It is submitted that each of the above mentioned cases were compromised and thus **Consent Decrees** came to be passed in the respective suits for the amounts as mentioned above.

35. It is submitted that as per the respective **Consent Decrees**, each of the defendants are to pay the amounts as per the deadlines prescribed.

36. It is submitted that despite the respective **Consent Decrees** in the respective suits, none of the defendants which included the 2nd Defendant **Mr.A.Ravishankar Prasad** (**Insolvent** in **IP.No.94 of 2011**) and **Mr.A.Manohar Prasad** (**Insolvent** in **I.P.No.98 of 2011**) came forward to discharge the liability under the respective **Consent Decrees**.

37. It is in this background, Insolvency Notice in **Form No.14-A** in **IN.No.110 of 2011** dated **29.08.2011** came to be issued to the 2nd Defendant and the 3rd Defendant in **C.S.No.225 of 1999,** the insolvent **Mr.A.Ravishankar Prasad (Insolvent** in **IP.No.94 of 2011**) and the **Mr.A.Manohar Prasad (Insolvent** in **I.P.No.98 of 2011)**.

38. It is submitted that on **01.09.2009, Insolvency Notice** was issued under 9(2) of the Presidency-Towns Insolvency Act, 1909 in **IN.No. 11 of 2009** for the dues under **C.S.No.33 of 1999** and **C.S.No.52 of 1999** against both **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)** (who were incidentally the 2nd defendant and the 3rd defendant in **C.S.No.225 of 1999**).

39. It is submitted that as per the **Insolvency Notice** in **IN.No.11 of 2009** were issued to the debtors therein i.e., **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011),** they were called upon to pay the amount.

They were liable to pay the amount in terms of the **Consent Decree** recorded in **C.S.No.33 of 1999** and **C.S.No.52 of 1999** and/or furnish security for payment for the aforesaid sum i.e., **Rs.29,49,81,355/-** and **Rs.29,00,96,918/-** or pay a settlement amount of **Rs.91,52,01,296/-** as due on **27.01.2009** to the Petitioning Creditor.

40. It is submitted that Insolvency Notice in **IN.No 11 of 2009** was matters of a challenge under Section 9(5) of the Presidency-Towns Insolvency Act, 1909 in **A.No.435 of 2009** by **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)**. It is submitted that this Court by order dated **16.07.2012** dismissed the application in **A.No.435 of 2009**.

41. It is submitted that while dismissing **A.No.435 of 2009,** this Court holds that both **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)** did not satisfy any of the grounds available under Section 9(5) of the Presidency-Towns Insolvency Act, 1909. It is

submitted that similar challenge was not made to Insolvency Notice in **IN.No.110 of 2011.**

42. It is submitted that while dismissing **A.No.435 of 2009** on **16.07.2012**, this Court had considered the plea of the debtors with respect to:

a) discharge of debt;

b) inexecutability of the decree;

and repelled the said contention specifically, stating that the debtors were not entitled to question the assignment of debts as such a contention was not raised when the Consent Decrees were passed; and that the challenge to jurisdiction of Debt Recovery Tribunal would not affect the executability of the Decrees.

43. Dismissal of **Application No.435 of 2009** on **16.07.2012**, led to filing of **IP.No.5 of 2013 and I.P.No.6 of 2013** against **Mr.A.Manohar Prasad** (insolvent in **IP.No.98 of 2011**) and **Mr.A.Ravishankar Prasad** (insolvent in **IP.No.94 of 2011**) respectively.

44. That apart, Mr.Karthik Seshadri, learned counsel for the Petitioning Creditor would further submit that the amount of **Rs.25,00,00,000/-** which was deposited was in the collateral proceedings arising out of the Consent Decree passed in **C.S.No.33 of 1999** against **M/s.Green Gardens Private Limited,** represented by the Managing Directors namely **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)**.

45. The learned counsel for the Petitioning Creditor would further submit that there is no violation of Section 12(2) of the Presidency-Towns Insolvency Act, 1909. It reads as under:-

"**12.Conditions on which creditor may petition**.-

(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

[Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court reopens].

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor."

46. The learned counsel for the Petitioning Creditor would further submit that as per the **Deed of Assignment** dated **13.10.2006**,

(a) **M/s.Ravishankar Industries Limited**;

(b) **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011);**

and

Mr.A.Manohar Prasad (the **Insolvent** in **IP.No.98 of 2011)** and;

(c) other sister companies are indebted to the Petitioning Creditor.

47. The learned counsel for the Petitioning Creditor would further submit that as per the definition "**secured creditor**" to Section 2(g) of the Presidency-Town Insolvency Act, 1909, the Petitioning Creditor namely **M/s.Kotak Mahindra Bank** is not a secured creditor/debtor.

48. It is submitted that Section 12(2) of the Presidency-Towns Insolvency Act, 1909, has no application at all to the facts of the present case. Further, the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023** is unsecured as there is no security for the decretal amount under **C.S.No.225 of 1999**.

49. The learned counsel for the Petitioning Creditor would further submit that **M/s.Prasad Properties and Investments Private Limited** is under liquidation and the assets of the said Company are the subject matter of proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016. The learned counsel for the Petitioning Creditor would further submit that the debtors have committed acts of insolvency under Section 9 of the Presidency-Towns Insolvency Act, 1909.

50. The learned counsel for the Petitioning Creditor would further submit that pursuant to **Consent Decree** dated **11.12.2000** and the Deed of Assignment dated **13.10.2006**, on **29.08.2011**, the Petitioning Creditor/1st Respondent issued Insolvency Notice to **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)** to pay a sum of **Rs.15,14,19,212/-** within 35 days. They however did not make any application before the Court under Section 9(5) of the Presidency-Towns Insolvency Act, 1909 to set aside **IN.No.110 of 2011**.

51. The debtors however failed to pay aforesaid amount to the Petitioning Creditor/1st Respondent and thus committed acts of Insolvency under Section 9(2) of the Presidency-Towns Insolvency Act, 1909 on the expiry of 35 days as mentioned in **IN.No.110 of 2011**.

52. The learned counsel for the Petitioning Creditor/1st Respondent would submit that under Section 21 of the Presidency-Towns Insolvency Act, 1909, the debtors have neither proved that they ought not to have

been adjudged as Insolvents nor have they satisfied the debts owned to the Petitioning Creditor.

53. It is submitted that the debtors have failed to show that any security is available to discharge the debts owed to the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023.** He would further submit that as the debtors have not satisfied the requirements of Section 21 of the Presidency-Towns Insolvency Act, 1909, the Adjudication Order dated **09.08.2017** cannot be annulled.

54. The learned counsel for the Petitioning Creditor/1st Respondent would further submit that the Valuation Report dated **25.01.2021** has been produced to mislead the Court and there is no change in circumstance from the date on which the debtors were adjudged as an Insolvent vide Adjudication Order dated **09.08.2017** which entails the debtors to seek annulment after six years. Hence, prays for dismissal of **A.(IP)Nos.11 and 12 of 2023**.

55. That apart, it is submitted that there have been large scale encroachments/irregularities and till date, the Petitioning Creditor/1st Respondent was unable to recover any amount after the **Consent Decree** was passed by this Court on **11.12.2000** in **C.S.No.225 of 1999** and in the other three suits namely **C.S.No.1023 of 1998, C.S.No.33 of 1999** and **C.S.No.52 of 1999**.

56. The learned counsel for the Petitioning Creditor/1st Respondent has relied upon the following Judgment in support of the applications filed by the Petitioning Creditor and in defense of the applications filed by the **LR's** of the deceased **Mr.A.Ravishankar Prasad** (**Insolvent** in **IP.No.94 of 2011**):-

i. **Sharad R. Khanna and others** Vs. **Industrial Credit and Investment Corporation of India Limited & others.,** (1993) 1 Bom CR 546.

ii. **Akshay D. Thakkar** Vs. **Kotak Mahindra Bank Limited & Another,** (2021) 4 Bom CR 655.

iii. **Enforcement Directorate, Represented by its Deputy Director** Vs. **T.T.V.Dhinakaran**, 2023 SCC OnLine Mad 6659.

57. By way of Rejoinder, Mr.Balagopal, learned counsel for the Applicants in **A.(IP)Nos.11 and 12 of 2023** would submit that two properties which were offered as security namely one property measuring about 5 acres situated in Survey No.11, Guttala Begampet Village, Serilingam Pally Mandal and Municipality, Ranga Reddy District, Andhra Pradesh and the other property namely a residential flat admeasuring 800 sq.ft., situated at Flat No.8/006 (B006), Atlantic Apartments, Lokhandwala Complex, 1st Cross, Andheri West, Mumbai – 400 053 and that the Petitioning Creditor has not proceeded against them till date.

58. It is submitted that the first security was offered and the security for all the four suits, as detailed above.

59. It is submitted that although Insolvency Notice was issued under Section 9(2) of the Presidency-Towns Insolvency Act, 1909 and Counter was filed as required under Section 9(5) of the Presidency-Towns Insolvency Act, 1909, the adjudication of **Mr.A.Ravishankar Prasad** as Insolvent on **09.08.2017** was unwarranted as the amount of **Rs.25,00,00,000/-** was deposited pursuant to the direction of the Hon'ble

Supreme Court in **SLP.(Civil).No.23569 of 2011** dated **05.02.2013** and further direction pursuant to order of the Hon'ble Supreme Court dated **08.07.2013**.

60. It is submitted that payment of **Rs.25,00,00,000/-** pursuant to order of the Hon'ble Supreme Court dated **08.07.2013** shows that the Debtors were having sufficient means and the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023**, who are the secured creditor did not say that they are ready to relinquish the security for the benefit of the creditors in the event of being adjudged as Insolvent or give an estimate value of the security as is required under Section 12(2) of the Presidency-Towns Insolvency Act, 1909.

61. I have considered the arguments advanced by the learned counsels for the applicants in A(IP).Nos.11 and 12 of 2013, A(IP).Nos.44 to 48 of 2020, 74 to 76, 79 to 82 of 2020 and A(IP).No.96 of 2021 and the learned Official Assignee. The deceased **Mr.A.Ravishankar Prasad** was adjudicated as an Insolvent in **IP.No.94 of 2011** on **09.08.2017** posthumously after his death on **13.07.2013**.

62. Application in **A.(IP).No.11 of 2023** has been filed under Section 21 of the Presidency-Towns Insolvency Act, 1909 to stay the adjudication order dated **09.08.2017** while A.(IP).No.12 of 2023 has been filed to annul the adjudication order dated **09.08.2017**. They have been filed under Section 21 of the Presidency-Towns Insolvency Act, 1909.

63. Section 21 of the Presidency-Towns Insolvency Act, 1909, reads as under:-

> **"*Section 21*. *Power for Court to annul adjudication in certain cases*.**
>
> *Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, [the Court shall, on the application of any person interested,] by order annul the adjudication [and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub- section (2) of section 14, not entitled to present such petition]*
>
> *For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be*

> *recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court."*

64. Under Section 21 of the Presidency-Towns Insolvency Act, 1909, the Court can annul an order of adjudication under the circumstances specified in the Table below, either on an Application by any of the three named persons as in column 1 to the Table below or iiby the Court suo moto.

<table>
<tr><th colspan="3">Column-1</th><th>Column-2</th></tr>
<tr><th colspan="3">On an Application by any of the following persons, namely:-</th><th>Suo Moto by the Court:-</th></tr>
<tr><td>a)</td><td>b)</td><td>c)</td><td rowspan="3">On the ground that the debtor was not entitled to present such petition in view of Section 14(1) of the Act.</td></tr>
<tr><td>An interested Person; or</td><td>A creditor;or</td><td>The Official Assignee.</td></tr>
<tr><td>i. If in the opinion of the Court the debtor ought not to have been adjudged as insolvent; (or)

ii. If it is proved to the satisfaction of the Court that the debts of the insolvent have</td><td colspan="2">On the ground that the debtor was not entitled to present such petition in view of Section 14(1) of the Act.</td></tr>
</table>

Column-1		**Column-2**
been paid in full.		

65. Section 14(2) of the Presidency-Towns Insolvency Act, 1909, deals with cases where an adjudication has been annulled either under Section 41 of the Presidency-Towns Insolvency Act, 1909 or under Section 43 of the Provincial Insolvency Act, 1920 owing to the debtor's failure to apply for his discharge.

66. Under Section 21 of the Presidency-Towns Insolvency Act, 1909 and Section 35 of the Provincial Insolvency Act, 1920, power has been given to Insolvency Courts to annul an order of adjudication made upon a petition presented without the leave of the Court.

67. Under Section 21 of the Presidency-Towns Insolvency Act, 1909, the Court can on an application filed by any "interested person" may annul the order of adjudication adjudicating a debtor as an Insolvent.

68. Such discretion can be exercised by the Court also on its own motion or on an application made by the Official Assignee or any creditor, if such adjudication was made on the petition of a debtor under the provisions of Sub-Section (2) of Section 14 of the Presidency-Towns Insolvency Act, 1909.

69. When an adjudication has been annulled owing to the Insolvent's failure to apply or to prosecute an application for his discharge, leave to present another petition on the same facts will not be granted to an insolvent unless the Court is satisfied that the Insolvent was prevented by some reasonable cause from presenting or prosecuting his application.

70. Thus, **A.(IP).No.11 of 2023** and **A.(IP).No.12 of 2023** have been filed by the Legal Representatives of Late Ravishankar Prasad (the insolvent in I.P.No.94 of 2011) in their capacity as interested persons.

71. It has been held by the Lahore High Court that there is nothing in the Provincial Insolvency Act, 1920 nor any other provisions of law which debars either a creditor or a debtor from proceeding further by filing a fresh application.

72. Prior to Adjudication Order dated **09.08.2017** adjudicating deceased **Mr.A.Ravishankar Prasad** as Insolvent in **IP.No.94 of 2011**, collateral proceeding was also initiated under the provisions of the Presidency-Towns Insolvency Act, 1909 by the Petitioning Creditor herein namely **M/s.Kotak Mahindra Bank Limited** pursuant to the default committed by both the Insolvents namely **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and his brother **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)** in respect of the amounts due under a Consent Decree passed in **C.S.No.33 of 1999** initiated against **M/s.Green Gardens Private Limited and others**. There were similar proceedings against other sister companies of the both the insolvents.

73. In these aforesaid collateral proceedings, a sum of **Rs.25 Crores** was deposited in two tranches on **19.04.2013** by the 1st Defendant in **C.S.No.225 of 1999** namely **M/s.Ravishankar Industries Private Limited** and by **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011),** the 3rd Defendant therein in respect of dues under Consent Decree in **C.S.No.33 of 1999** initiated against **M/s.Green Gardens Private Limited and others** pursuant to the Orders of the Hon'ble Supreme Court in **SLP(Civil).No.23569 of 2011.**

74. The first defendant Company in C.S.No.33 of 1999 was one **M/s.Green Gardens Private Limited** whose Directors were late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and his brother **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)**.

75. **Contempt Petition No.1183 of 2009** filed before this Hon'ble Court was however dismissed by this Hon'ble court and was therefore carried in **SLP(Civil).No.23569 of 2011.**

76. Before the Hon'ble Supreme Court, both the brothers i.e., late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)** were directed to show their *bona fides* by depositing a sum of **Rs.45 Crores**.

77. Later the Hon'ble Supreme Court was pleased to modify the amount to **Rs.25 Crores.** The Petitioning Creditor/1st Respondent in A.(IP)Nos.11 and 12 of 2023 had earlier filed contempt proceedings against both late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011**) and his brother **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011**) in **C.P.No.1183 of 2009** for the breach of undertaking tendered before this Court and recorded in a Memorandum of Compromise being the judgment and decree's dated **27.03.2007** in **C.S.No.33 of 1999**, **C.S.No.1023 of 1998** and **C.S.No.52 of 1999**.

78. The fact is that in 2013, pursuant to the direction of the Hon'ble Supreme Court in SLP(Civil).No.23569 of 2011 dated 05.02.2013, a sum

of **Rs.21,00,00,000/-** was also deposited by **M/s.Ravishankar Industries Pvt Ltd.**, and that a further sum of **Rs.4,00,00,000/-** was deposited by way of RTGS transfer made on behalf of Mr.A.Manohar Prasad (Insolvent in IP.No.98 of 2011) by his father-in-law Mr.K.Bapaiah. The said sum of **Rs.25 Crores** was paid on the following dates:-

i. Rs.21 crores was paid on 19.04.2013 by way of RTGS by **Ravishankar Industries Private Limited** (now in liquidation)

ii. Rs.4 crores was paid by Mr.K.Bapaiah on 08.07.2013 on behalf of Mr.A.Manohar Prasad by his father-in-law Mr.K.Bapaiah.

79. Under these circumstances, by an order dated **08.07.2013**, the Hon'ble Supreme Court disposed of **SLP(Civil).No.23569 of 2011** with the following observations:-

> ***" During the pendency of this Special Leave Petition, by our Order dated 05.02.2013, we had directed the respondents to deposit a sum of Rs.25 Crores with the Petitioner- Bank. We are informed by Shri Basava Prabhu Patil, Learned Senior Counsel appearing for the respondents that the respondents have complied with the aforesaid directions issued by us.***
>
> ***In view of the above, we are of the opinion that, as of now, nothing survives in this***

> ***petition for our consideration and decision. Therefore, while disposing of the Special Leave Petition, we direct that the respondents shall not make any demands to the Petitioner-Bank for refund of the amount deposited by them pursuant to our orders and directions. We clarify that the deposit so made shall be subject to final result of the lis between the parties.***
>
> ***We further direct the parties to co-operate with the Debt Recovery Tribunal for early disposal of Case Nos.46-48 of 2008."***

80. The said amount has also been appropriated by the Petitioning Creditor towards the dues in respect of **C.S.No.33 of 1999** with which this Court is not concerned. Therefore, payment of **Rs.25 Crores** is not relevant to the fact of the present case.

81. As far as the present case is concerned, it emanates in the background of the failure of the defendants in **C.S.No.225 of 1999** before this Court of Madras namely **M/s.Ravi Shankar Industries Private Limited** and its Directors namely **Mr.A.Ravishankar Prasad** (the **Insolvent in IP.No.94 of 2011**) and **Mr.A.Manohar Prasad** (the **Insolvent in IP.No.98 of 2011**) to pay the suit amount and the failure

to honor the commitment under the Consent Decree passed therein to the plaintiff namely **M/s.Indbank Merchant Banking Services Limited**. **M/s.Indbank Merchant Banking Services Limited** assignment the rights to the petitioning creditor.

82. Similar suits which were also filed by **M/s.Indbank Merchant Banking Services Limited** in **C.S.No.1023 of 1998, C.S.No.33 of 1999** and **C.S.No.52 of 1999** against group companies of **M/s.Ravishankar Industries Private Limited** and were compromised.

83. After **C.S.No.225 of 1999** was compromised on **30.11.2020** and a Decree was passed **11.12.2000**, the Judgment debtors offered a property in Hyderabad as a security belonging to a group company namely **M/s.Prasad Properties and Investments Private Limited** and a Residential flat admeasuring 800 sq.ft., situated at Flat No.8/006 (B006), Atlantic Apartments, Lokhandwala Complex, 1st Cross, Andheri West, Mumbai – 400 053 of **Mr.A.Manohar Prasad** (the **Insolvent in IP.No.98 of 2011**).

84. The rights were thus assigned in favour of the Petitioning Creditor namely **M/s.Kotak Mahindra Bank Limited** along with stamped receipts and Letter dated **27.05.2004** creating second charge by way of equitable mortgage by comprising of land admeasuring an extent of 5 acres situated in Survey No.11, Guttala Begampet Village, Serilingam Pally Mandal and Municipality, Ranga Reddy District, Andhra Pradesh with first charge held by **M/s.Indbank Merchant Banking Services Limited**.

85. By letter dated **10.10.2006,** a second charge by way of equitable mortgage was created by **Mr.A.Manohar Prasad** (**Insolvent** in **IP.No.98 of 2011**) comprising of residential flat admeasuring 800 sq.ft., situated at Flat No.8/006 (B006), Atlantic Apartments, Lokhandwala Complex, 1st Cross, Andheri West, Mumbai – 400 053. The first charge was held by **M/s.Indbank Merchant Banking Services Limited**.

86. Thus, equitable mortgage created in favour of **M/s.Indbank**

Merchant Banking Services Limited is not relevant. The Decree Holder namely **M/s.Indbank Merchant Banking Services Limited** had also filed **E.P.Nos.45, 46 and 47 of 2004** to execute decree in **C.S.No.225** of **1999**.

87. **E.P.Nos.45, 46 and 47 of 2004**, filed to consent execute decree in **C.S.No.225 of 1999** were however prosecuted. Efforts to sell the property offered as a security by the group company namely **M/s.Prasad Properties and Investments Private Limited** turned futile purportedly due to Development Control Restrictions then prevailing.

88. **W.P.No.954 of 2008** is said to be instituted by M/s.**NAM Hotels Private Limited** is said to be instituted **W.P.No.954 of 2008** before the High Court of Judicature of Andhra Pradesh at Hyderabad. The Petitioner therein had reportedly challenged the steps taken by the Petitioning Creditor herein under **Section 13** of the **Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)**.

89. The Petitioning Creditor insisted on the validity and

enforceability of the security interest in favour of the Bank and accordingly opposed such a Writ Petition by filing a Counter Affidavit. In the Counter Affidavit, the Petitioning Creditor had confirmed the validity of the mortgage in favour of the Petitioning Creditor herein in respect of the said property admeasuring 5 acres at Hyderabad. The relevant Paragraph 5 of the said Affidavit is extracted as below:-

> *"In the aforesaid four Suits, this Respondent entered into Consent Terms dated 23rd October 2006 (Ex-R5) with the Principal Borrowers and Respondent No.5 herein who inter-alia stood as Confirming Party. By the said Consent Terms, Respondent No.5 herein agreed, declared and confirmed that the amounts due in the said Suits were secured by a valid, enforceable and subsisting mortgage of the immovable property more particularly described in EXHIBIT "A" thereto. The property described in Exhibit "A" to the said Consent terms is the same property which is the subject matter of this Writ Petition. I crave leave to refer to and rely upon copies of the other Consent Terms dated 23rd October, 2006 filed in the three suits. It is relevant to submit that the defaulters did not honour the consent terms."*

> *"The Petitioners, on enquiry, came to know that the Government has passed order* G.O.Ms.No*.128 dt. 8.2.2006 (Ex-R12), exempting the said land from the provisions of Chapter III of the Urban Land Ceiling Act, 1976 and allotted the subject land in favour of 5th Respondent U/23(4) of the Urban Land Ceilings Act and Regulations Act, 1976. Further, the G.O. also says that the name of the allottee namely M/s. Prasad Properties and Investment Private Limited, shall be incorporated in revenue*

registration and survey records. The endorsement dt. 16.3.2006 (Ex. R13) issued by Special Officer and Competent Authority, Urban Land Ceiling, also was issued Private Limited i.e. the 5th Respondent herein. There is nothing stated in the said G.O. dated 08.02.2006 or endorsement dated 16.03.2006 in favour of conferring any right, title or interest in the subject property in favour of Prasad Properties and Investments any of the Writ Petitioners. To be precise, there is not even a reference to any of the Petitioners to be of the said documents ie. (Ex-Plotted Ex-R13). Therefore, in the either of claim that the land had been allotted to them in terms of Section 23(4) of ULC Act is nothing but a myth. Thus, the claim of the Petitioners is liable to be rejected, as it is nothing but a figment of imagination."

90. These proceedings are however irrelevant to the facts of the case.

91. The Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023** had then approached this Hon'ble Court in **Application No.487 of 2011** seeking substitution in place of the original Decree Holder for enforcement of the decree in **C.S.No.225 of 1999**.

92. The **Application No.487 of 2011** was disposed of by this Court vide Order dated **01.04.2011.** The Court held that that the Bank was

entitled to make a claim as a person which obtained the assignment of the decreed debt and for appropriate remedies before the appropriate forum as an assignee of the decreed debt.

93. The Petitioning Creditor did not seek execution of the decree as the assignor. Rather the Petitioning Creditor filed a fresh application for adjudication of the debt and chose to prove its debt in terms of **Section 19** of the **Recovery of Debts Due to Banks And Financial Institutions Act, 1993**.

94. It is thereafter Consent Decrees were passed on the following dates in the following suits:-

Sl. No.	Date	C.S.No.
1.	26.03.2007	33 of 1999
2.	26.03.2007	1023 of 1998
3.	26.03.2007	52 of 1999

95. These rights under Consent Decrees dated **26.03.2007** in **C.S.No.1023 of 1999**, **C.S.No.33 of 1999** and **C.S.No.52 of 1999** and in

C.S.No.225 of 1999 were assigned to the Petitioning Creditor under **Deed of Assignment dated 13.10.2006** by **M/s.Indbank Merchant Banking Services Limited**.

96. It is stated that the Petitioning Creditor came forward to fund the balance under OTS consideration of Rs.24.50 Crores to complete the OTS transactions with **M/s.Indbank Housing Limited** and **M/s.Indbank Merchant Banking Services Limited**. It is stated that accordingly the Petitioning Creditor paid the aforesaid amount on behalf of the Borrower Companies:–

i. Rs.18.85 Crores to M/s. Indbank Housing Limited.
ii. Rs.5.65 Crores to M/s.Indbank Merchant Banking Services Limited totalling to Rs.24.50 Crores.

97. Under the **Assignment Deed** dated **13.10.2006** entered between the Petitioning Creditor and M/s.Indbank Housing Limited**,** to transfer rights/ownership of the property measuring about 5 acres situated in Survey No.11, Guttala Begampet Village, Serilingam Pally Mandal and Municipality, Ranga Reddy District, Andhra Pradesh and the other

property namely a residential flat admeasuring 800 sq.ft., situated at Flat No.8/006 (B006), Atlantic Apartments, Lokhandwala Complex, 1st Cross, Andheri West, Mumbai – 400 053.

98. The **Assignment Deed** dated **13.10.2006** was executed at Mumbai by **M/s.Indbank Merchant Banking Services Limited** for the Consent Decree passed in **C.S.No.225 of 1999, E.P.Nos.45, 46 and 47 of 2004** filed by **M/s.Indbank Merchant Banking Services Limited**.

99. Since no payments were made in pursuance of the **Consent Decree** passed in **C.S.No.225 of 1999,** Insolvency Notice in **IN.No.110 of 2011** was issued on **29.08.2011** to recover a sum of **Rs.15,14,19,212/-** from late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)**. Similar proceedings were also initiated by the Petitioning Creditor for breach of the **Consent Decree** in **C.S.No.1023 of 1998.**

100. Thereafter, **IP.No.94 of 2011** was filed in the light of breach of the **Consent Decree** dated **11.12.2000** in **C.S.No.225 of 1999** filed by

M/s.Indbank Housing Limited against late **Mr.A.Ravishankar Prasad.**

101. Insolvency Notice in **IN.No.11 of 2009** which was issued in the light of breach of Consent Decree dated **26.03.2007** in **C.S.No.33 of 1999** and **C.S.No.52 of 1999**, was challenged in **A.No.435 of 2009** by the debtor namely late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011**) and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011**). **A.No.435 of 2009** was dismissed vide Order dated **16.07.2012**.

102. Details of Insolvency Notices issued by the Petitioning Creditor namely **M/s.Kotak Mahindra Bank Limited,** against late **Mr.A.Ravishankar Prasad** (**Insolvent** in **IP.No.94 of 2011**) and **Mr.A.Manohar Prasad** (**Insolvent** in **IP.No.98 of 2011**) and the group companies are as under:-

TABLE-IV

Sl. No.	I.N.No.	Amount (Rs.)	C.S.No.	Liability of the Insolvent (Rs.)
1.	11 of 2009	29,49,81,355	33 of 1999	91,52,01,296
		29,00,96,918	52 of 1999	
2.	110 of 2011 *	4,21,70,008	225 of 1999	15,14,19,212

* Both **IP.No.94 of 2011** and **IP.No.98 of 2011** were filed against **Late Mr.A.Ravishankar Prasad** and **Mr.A.Manohar Prasad** emanate from **IN.No.110 of 2011**.

103. Ideally, while filing IP.No.94 of 2011, the petitioning creditor ought to have complied with the requirement of Section 12(2) of the Presidency Towns Insolvency Act, 1905. I shall refer to the same in due course. However, such requirement is not to be considered fatal to the facts of the case.

104. The Petitioning Creditor also filed **O.A.No.84 of 2011** before the **Debt Recovery Tribunal-II** at **Chennai** on **12.05.2011** for issuance of Recovery Certificate against the defendants in **C.S.No.225 of 1999** to recover a sum of **Rs.15,14,19,212/-** together with interest at **24% per annum** pursuant to **Consent Decree** dated **11.12.2000**.

105. By an order dated **19.11.2012** in **O.A.No.84 of 2011**, the **Debt Recovery Tribunal-II, Chennai** held that it need not adjudicate the claim

afresh in view of **Consent Decree** dated **11.12.2000** in **C.S.No.225 of 1999** and ordered issuance of Recovery Certificate under Section **19(2)** of the **Recovery Of Debts Due to Banks And Financial Institutions Act, 1993**. There, the **Debt Recovery Tribunal-II, Chennai** had also issued **Interim DRC.No.50/2012** earlier on **02.04.2012**.

106. In view of the Final Order dated **19.11.2012**, **Interim DRC.No.50/2012** was terminated and fresh recovery notice was directed to be issued. Thus, the Recovery Certificate in **DRC.No.5/2013** was issued vide order t in **O.A.No.84 of 2011**. Thus, a sum of **Rs.20,72,92,541/-** together with interest and cost [Rs.15,14,19,212/- + Rs.5,55,57,525 + Rs.3,15,804/-] was ordered to be paid to the Petitioning Creditor.

107. Not being satisfied with the receipt of payment of the Decreetal debt of **Rs.20,72,92,541.91/-** as per **DRC No.5 of 2013** in **O.A.No.84 of 2011,** it is stated by the **Legal Representatives of Late Ravishankar Prasad** the Petitioning Creditor suppressed the payment received from

M/s.Ravishankar Industries Private Limited, a corporate debtor resorted to winding up of **M/s.Ravishankar Industries Private Limited** under Section 433(e) and Section 434 of the Companies Act, 1956.

108. During the Interregnum, the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023** caused **IN.No.110 of 2011** dated **29.08.2011** under Section 9(2) of the Presidency-Towns Insolvency Act, 1909 for the unpaid decree in **C.S.No.225 of 1999**. In other words, instead of resorting to the agreed methods for enforcement of debt in terms of the **Memorandum of Compromise/Consent Terms in C.S.No.225 of 1999** dated **23.10.2006**, the First Respondent/Petitioning Creditor had instead resorted to the following:-

i. Kotak Mahindra Bank reported to CIBIL that the borrowers and Directors as "Wilful Defaulters"

ii. Kotak Mahindra Bank initiated contempt proceedings before the Hon'ble High Court at Madras.

iii. Kotak Mahindra Bank as the petitioning creditor initiated proceedings as against the Deceased Insolvent and Mr.A.Manohar Prasad under the Presidency-Towns Insolvency Act and Rules for adjudicating them as insolvents.

iv. Kotak Mahindra Bank initiated proceedings for liquidation of the Companies under the Companies Act, 1956 before the Hon'ble High Court at Madras.

v. Kotak Mahindra Bank initiated proceedings before the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act 1993.

109. In the event of fresh action for adjudication of debt in terms of the **Recovery of Debts Due to Banks And Financial Institutions Act**, **1993** is necessary as such debt could be claimed only within 3 years from the date when such debt became payable. The argument that this Court in **Application No.487 of 2011** enlarged the limitation is irrelevant. Hence, the argument that the claim in **O.A.No.84 of 2011** before the **Debt Recovery Tribunal-II, Chennai** was hopelessly barred by limitation is also irrelevant for the disposal of these applications. In any event, this is not the forum to challenge the Order passed in **O.A.No.84 of 2011**.

110. Similarly, **O.A.Nos.46 to 48 of 2008** were also filed before the **Debt Recovery Tribunal-II at Chennai** to recover the debt under the **Consent Decrees** dated **26.03.2007** in **C.S.No.1023 of 1998** (**M/s.Mahalakshmi Properties and Investments Private Limited and others**) **C.S.No.33 of 1999** (**M/s.Green Gardens Private Limited and others**) and **C.S.No.52 of 1999** (**M/s.Gemini Arts Private Limited and others**).

111. **O.A.Nos.46 to 48 of 2008** which arise out of decree of this Court in the consent decree of this Court in the following suit were allowed on the following days by the Debt Recovery Tribunal:-

Defendants	C.S.No.	Order Date in O.A.No.	DRC.No.
M/s.Gemini Arts Private Limited and others.	52 of 1999	31.03.2017 in O.A.No.46 of 2008	145 of 2017
M/s.Green Gardens Private Limited and others	33 of 1999	30.06.2017 in O.A.No.47 of 2008	251 of 2017
M/s.Mahalakshmi Properties and Investments Private Limited and others	1023 of 1998	Orders not passed in O.A.No.48 of 2008	----

112. Simultaneously, the Petitioning Creditor had issued Insolvency Notice in **IN.No.110 of 2011** during August 2011 to recover a sum of **Rs.15,14,19,212/-** for the due arising out of Consent Decree in **C.S.No.225 of 1999** out of which eventually led to filing of **IP.No.94 of 2011**.

113. It is in this background, late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011**) was adjudged as an Insolvent on **09.08.2017** in **IP.No.94 of 2011**.

114. In **IP.No.5 of 2013**, late **Mr.A.Ravishankar Prasad** and **Mr.A.Manohar Prasad** also filed **Application Nos.312 and 313 of 2015** after they were set *ex parte* on **28.09.2015** in **IP.No.5 of 2013**. These applications were filed to set aside order dated **28.09.2015** and stay the same. These applications were dismissed vide order dated **19.10.2016** holding Late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011**) and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011**) were chronic defaulters.

115. After Insolvency Petition in **IP.No.5 of 2013** was filed by the Petitioning Creditor herein, **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011)** had filed **A.No.298 of 2018** and **A.No.299 of 2018**.

116. By an order dated **14.06.2021 in A.No.298 of 2018** and **A.No.299 of 2018** this Court had interfered with the order of Adjudication and had set aside the order of Adjudication with the following observations, in Paragraphs 61 and 62 is extracted below:-

> "61. *Let us now examine if the non compliance of the provisions of Section 12(2) of the PTI Act would be a ground for annulling the Order adjudicating the Applicant as an Insolvent. In a Judgment reported in S.* ***Neelakanta Sarma*** *v.* ***K. Govindarajulu and another****, AIR 1982 Mad. 18, one of the grounds for seeking annulment was that the Petitioning Creditor, a Secured Creditor has failed to comply with the provisions of Section 12(2) of the PTI Act. This plea was upheld.*
>
> *Section 21 of the PTI Act empowers the Insolvency Court to annul the adjudication for the following reasons:*
>
> *i. In the opinion of the Court, a Debtor ought not to be adjudged an Insolvent.*
>
> *ii. where the debts have been paid in full.*
>
> *Therefore, on the happening of the above, the adjudication can be annulled.*
>
> *62. The following reasons would clearly demonstrate that the Applicant / ought not to have wine adjudged an Insolvent:*
>
> *(a) The 1st Respondent-Bank has filed this Insolvency Petition, since the Applicant had not complied with the Notice of Insolvency as provided under Section 9(2) of the*

PTI Act claiming the Decree amount. Therefore, the proceedings have been initiated only on the strength of the Decree obtained by the 1st Respondent-Bank in C.S. Nos.33 and 52 of 1999. Considering the earlier discussion with regard to the Decree and is validity, the Insolvency proceeding having been initiated on the basis of a Decree which is a nullity the adjudication has to fail and the Applicant ought not to have been adjudged as Insolvent.

(b) The 1st Respondent-Bank has not complied with the provisions of Section 12(2) of the PTI Act by not divulging the security held by them but also by alienating and appropriating the proceeds realised from the sale of one of the Secured Assets pending these proceedings.

(c) The 1st Respondent-Bank without taking recourse to the agreed procedure under Clause 12 of the Compromise Deed has proceeded to sell one of the securities viz; the property at Mumbai pending these proceedings.

(d) The objections of the 1st Respondent-Bank that the instant Applications are barred by the Principles of Res judicata also fails considering the fact that the Decree based upon which the Insolvency proceedings has been initiated is a nullity.

In Fine, Application Nos.298 & 299 of 2019 is allowed and the adjudication is annulled. Consequently, connected applications are closed."

117. Almost on similar lines, A.No.11 of 2023 and A.No.12 of 2023 have been now filed by the LR's of the deceased Mr.A.Ravishankar Prasad (the Insolvent in IP.No.94 of 2011). These applications have been

filed by the LR's primarily on the ground that IP.No.94 of 2011 was filed ignoring the mandatory requirement of Section 12(2) of the Presidency-Towns Insolvency Act, 1909.

118. Once the debtor has been adjudicated as an Insolvent under the provisions of the Presidency-Towns Insolvency Act, 1909 or and for that matter under the provisions of the Provincial Insolvency Act, 1920, all the assets of the Insolvent stands vested with the Official Assignee. Therefore, the documents executed after the adjudication of **Late Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** on **09.08.2017** by this Court in **I.P.No.94 of 2011** are null and void in terms of Section (9)/Section (55) of the Presidency-Towns Insolvency Act, 1909.

119. The argument that the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023** also did not act in a *bona fide* manner by choosing to confer territorial jurisdiction on **Debt Recovery Tribunal-II, Chennai** while the entire transaction in question between the Petitioning Creditor/1st Respondent and the Judgment Debtors appear to have been in

respect of their Montieth Road, Egmore Branch, is irrelevant as **O.A.No.84 of 2011** was ordered by the **Debt Recovery Tribunal-II, Chennai** vide Order dated **19.11.2012**.

120. Further argument that in **O.A.No.84 of 2011**, the Petitioning Creditor/1st Respondent in **A.(IP)Nos.11 and 12 of 2023** had failed to disclose the factum of security interest offered by the Judgment Debtors of Properties at Hyderabad and at Bombay are also irrelevant. Submissions that the Petitioning Creditor obtained Interim Orders of Attachment of other properties belonging to the deceased Insolvent and his brother by suppressing these facts are also irrelevant as the debts remain unpaid till date.

121. Once the debtor has been adjudicated as an Insolvent under the provisions of the Presidency-Towns Insolvency Act, 1909 or and for that matter under the provisions of the Provincial Insolvency Act, 1920, all the assets of the Insolvent stands vested with the Official Assignee. Therefore, the documents executed after the adjudication of **Late Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011)** on

09.08.2017 by this Court in **I.P.No.94 of 2011** are null and void in terms of Section (9)/Section (55) of the Presidency-Towns Insolvency Act, 1909.

122. As per Section 9(1) of the Presidency-Towns Insolvency Act, 1909, a debtor commits an act of insolvency in each of the following cases, namely;-

> (a) if, in the States or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
>
> (b) if, in the States or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
>
> (c) if, in the States or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
>
> (d) if, with intent to defeat or delay his creditors,--
>
> i. he departs or remains out of the States,
>
> ii. he departs from his dwelling- house or usual place of business or otherwise absents himself,
>
> iii. he secludes himself so as to deprive his creditors of the means of communicating with him.
>
> (e) if any of his property has been sold or attached for a period of not less than twenty- one days in execution of the decree of any Court for the payment of money;
>
> (f) if he petitions to be adjudged an insolvent;

(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;

(h) if he is imprisoned in execution of the decree of any Court for the payment of money.

123. Sub-Section 2 to Section 9 of the Presidency-Towns Insolvency Act, 1909 was inserted by Act 28 of 1978. For the purpose of disposing of these applications, it would be useful to refer to Section 9(2) and Section 9(5) of the Presidency-Towns Insolvency Act, 1909:-

Presidency-Towns Insolvency Act, 1909	
Section 9(2)	Section 9(5)
Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein: Provided that where a debtor	Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the Court to set aside the insolvency notice on any of the following grounds, namely: a) that he has a counter-claim or set off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed; b) that he is entitled to have the

<table>
<tr><th colspan="2">Presidency-Towns Insolvency Act, 1909</th></tr>
<tr><td>makes an application under sub-section (5) for setting aside an insolvency notice-

a) In a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and

In a case where such application is rejected by the Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later: Provided further that no insolvency notice shall be served on a debtor residing. whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor.</td><td>decree or order set aside under any law providing for the relief of indebtedness and that-

i. he has made an application before the competent authority under such law for the setting aside of the decree or order; or
ii. the time allowed for the making of such application has not expired;

c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.]

Explanation. —For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.</td></tr>
<tr><td>Section 12(2)</td><td rowspan="2"></td></tr>
<tr><td>If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in</td></tr>
</table>

Presidency-Towns Insolvency Act, 1909	
the event of the debtor being adjudged insolvent or give an estimate of the value of the security.	

124. None of the grounds specified in Section 9(5) of the Presidency-Towns Insolvency Act, 1909 is attracted in the facts of the case. In fact, the **LRs** of the deceased Insolvent **Mr.A.Ravishankar Prasad** [In I.P.No.94 of 2011] have also not pleaded that Section 9(5) of the Presidency-Towns Insolvency Act, 1909 is attracted.

125. Under Section 9(5) of the Presidency-Towns Insolvency Act, 1909, any person who has been served with an Insolvency Notice may, within the period specified therein for its compliance, apply to the Court to set aside the Insolvency Notice on any of the following three grounds:-

a. that he has a counter-claim or set off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed.	b. that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that- i. he has made an application before the competent authority under such law for the setting aside of the decree or order; or ii. the time allowed for the making of such application has not expired;	c. that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application. Explanation.- For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

126. Therefore, various documents executed as mentioned in **Table-I** and **Table-II** in respect of which **A.Nos.44 to 48 of 2020** and **A.Nos.74 to 76, 79 to 82 of 2020** are null and void. Unilateral execution of documents after the estate of the Insolvents stood vested with the Office of the Official Assignee is non-est in law. Therefore, **A.Nos.44 to 48 of 2020** and **A.Nos.74 to 76, 79 to 82 of 2020** filed by the Petitioning Creditor have to be allowed.

127. The point that still remains to be decided is whether adjudication of late **Mr.A.Ravishankar Prasad** as an Insolvent in **IP.No.94 of 2011** on **09.08.2017** is liable to be annulled under Section 21 of the Presidency-Towns Insolvency Act, 1909 and if so whether the deeds executed by the **LR's** of late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011**) can be said to be irregular and/or can be condoned for the failure to comply with the requirements of Section 12(2) of the Presidency -Towns Insolvency Act,1909.

128. Under the Statute there is no express statutory limitation for filing applications to set aside the Insolvency Notice. However, such an application has to be made within the period prescribed in the notice which is seven days of date of service of notice. If the debtor does not responded to the same, it is deemed that the debtor has committed an Act of Insolvency. Therefore, insolvency proceedings can be initiated and proceeded.

129. In this case, admittedly, neither the Insolvency Notice was challenged within such time nor any of the above circumstances specified are attracted for challenging the Insolvency Notice.

130. Further, none of the grounds stated by the applicants in **A.(IP)Nos.11 and 12 of 2023** indicate that requirements of Section 9(5) of the Presidency-Towns Insolvency Act, 1909 are attracted in the facts of the present case.

131. As far as Section 12(2) of the Presidency-Towns Insolvency Act, 1909 is concerned, there are two parts to Section 12(2) of the Presidency-Towns Insolvency Act, 1909. The secured creditor/Petitioning Creditor in his petition has to state that he is either willing to:-

i. relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security; and

ii. for balance of the debt due to him after deducting the value so estimated, he stands in the same way as if he were an unsecured creditor.

132. Section 12(2) of the Presidency-Towns Insolvency Act, 1909 reads as under:-

> "***Section 12**. **Conditions on which creditor may petition**.-*
>
> *(1)*
>
> *(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.*

133. The embargo under Section 12(2) of the Presidency-Towns Insolvency Act, 1909, that if the Petitioning Creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged as Insolvent or give an estimate of the value of the security, is therefore not fatal to the adjudication of insolvency to the facts of the present case.

134. The purpose of giving two options to a secured creditor under Section 12(2) of the Presidency-Towns Insolvency Act, 1909 is to ensure that the secured creditor will claim no rights over that part of the debt which is secured under the Presidency-Towns Insolvency Act, 1909. However, if a secured creditor still chooses to initiate insolvency proceeding, he has to relinquish his rights over the security and will stand like any ordinary creditor, in case, the debtor is adjudicated as an Insolvent.

135. On the other hand, if the secured creditor estimates the value of the security, he can still file a petition to declare the debtor as an Insolvent for the balance amount, and such petition can be admitted, he will stand in que with ordinary debtor.

136. There are authority to state a secured creditor, who omits in his petition either to state that he is willing to give up his security or to give an estimate of its value does not thereby forfeit the benefit of his security. The only result is that an adjudication made on such a petition can be declared to be bad in view of the decision of the Calcutta High Court in

The Bank of Upper India Vs. **Administrator-General of Bengal** (1918) 45 Cal. 653.

137. There is also an authority to state that inadvertent omission, the Court has jurisdiction to give leave to amend the petition and the proof by valuing the security (**In re Spratt: Westminster Bank** Vs. **Trustee (1934) 1 Ch. 541**). An omission through inadvertence to mention the security which is of little or no value has been held not to be fatal, and the petition can be allowed to be amended even after the order of adjudication is made (**In re A Debtor** (1922) 2 K.B.109. See P.t. I.A.s.118). It was held that there is no such Section in the Provincial Insolvency Act, 1920 and the proceedings need not be wholly set aside (**Ahamed Mohammad** Vs. **Praphullanath** (1934) 61 Cal. 294, 154 I.C.524, (35) A.C.84).

138. It has been held that the omission of a statement in the petition that the creditor is willing to give up his security has been held to be merely a formal defect, and the petition may be amended at the hearing (See **Ex parte Vandelinden** (1882) 20 Ch.D.289).

139. There is also an authority to the effect that a creditor to whom the insolvent owes both secured as well as unsecured debts cannot be held to be a secured creditor of the unsecured debts and is entitled to file a petition for insolvency without valuation of the security or its abandonment as contemplated by Section 9(2) of the Presidency-Towns Insolvency Act, 1909.

140. If this was not so, the equity of redemption would operate as security for the unsecured debts due to the secured creditor i.e., a situation which is the very opposite of what is envisaged by the Presidency-Towns Insolvency Act, 1909.

141. The object of proceedings in insolvency is to render the assets of the Insolvents as at their inception available undiminished, if not augmented for liquidation of their liabilities (See **Guruswami Pillai** Vs. **Shri Chitra Cordamom Co-operative Society Bank Ltd**., I.L.R.1954, Tr-Cochin 93, (‘54) A.Tr.Co.419).

142. It is stated that during the year 2006, the original Borrower Companies and the lenders (Indian Bank and its Subsidiaries) had mutually agreed for an One Time Settlement (OTS) to the tune of **Rs.25 Crores**. Accordingly, the Borrower Company had paid a sum of **Rs.50 Lakhs** towards confirmation of the said OTS arrangement.

143. In **S.Neela Kanta Sharma** Vs. **K.Govindarajulu and another**, AIR 1982 Madras 18, this Court relying on the decision of the Full Bench of this Court in **Periakaruppan Chettiar** Vs. **Arunachala Chettiar** ILR (1940) Mad 441: (AIR 1940 Mad 375), held that the Court can annul an order of adjudication if it could be demonstrated that the order of adjudication itself was without jurisdiction. In Paragraphs 12 and 13 it was observed as under:-

> ***"12. In so far as Presidency Towns Insolvency Act is concerned, under S. 8(1) of the Act, the court may review, rescind or vary any order made by it under its insolvency jurisdiction. By claiming that the applicant had acquiesced in the proceedings and thereby disentitled himself to file the present application, can the first respondent insist that the insolvency proceedings be further continued, even though he had not complied with the requirements of S. 12(2) of the Act?***

13. A Full Bench of this Court in Periakaruppan Chettiar v. Arunachala Chettiar ILR (1940) Mad 441: (AIR 1940 Mad 375), had taken the view that S. 15 of the Provincial Insolvency Act empowers the court to annul the adjudication, if in the opinion of the court, a debtor ought not to have been adjudged insolvent. This section is identical to S. 21 of the Presidency Towns Insolvency Act. It was held in the above said decision that this section contains no restriction on the power of the court to set aside the adjudication, where it is shown that the debtor ought not to have been adjudged insolvent, and the fact that a debtor does not object to an order of adjudication being passed against him is not a, bar to the granting of an application for an order setting aside the adjudication under the provisions of Section 35 and that when an adjudication has taken place under the Provincial Insolvency Act, and it has been shown that no act of insolvency has been committed, the Court has no discretion in the matter and it must annul the adjudication, and that the word used is 'shall' and the section in this differs from S. 21 of the Presidency Towns Insolvency Act where the word 'may' is used (S. 21 as it stands now. uses the word 'shall'.)

14. Therefore, even though the applicant herein had been aware of what had been pleaded in the main petition and he had also filed an application for discharge, while filing applications for annulment, it is well open to him to demonstrate before Court that the order of adjudication itself was without jurisdiction. It is the bounden duty of the first respondent herein to satisfy the Court even now, that he could have filed the petition for adjudication. If it be shown that he had no right to institute the petition under S. 21 of the Act, an order of annulment has to be necessarily granted, when one of the circumstances contemplated therein is for the debtor to show that "he ought not to have been adjudged insolvent. Hence on the first point about applicant having been

> ***fully aware of the first respondent being a secured creditor, and whether because of acquiescence, he can not maintain the present application, it has to be held, following the Full Bench decision that, as and when it is shown to Court that the petition itself was filed without jurisdiction, an order of annulment is the only proper order that may be passed."***

144. In **S.A.Ramalinga Mudaliar** Vs. **T.K.Ratna Mudaliar and another**, AIR 1963 Mad.181, a Bench of this Court held that 'other sufficient cause' occurring in Section 13(4)(b) of the Presidency-Towns Insolvency Act, 1909 held that Insolvency Court can dismiss the Petition filed by the Creditors to adjudge the Debtor as insolvent. The Bench has held as follows:-

> *"This Court has further held that the fact that the Debtor had been a recalcitrant Debtor and was unable to pay his debts could not justify the Creditor, purely out of spite and with no other object in view to adjudge him bankrupt."*

145. Relevant portion of the order in **S.A.Ramalinga Mudaliar's case** (referred to supra) reads as under:-

> *"The words 'other sufficient cause' in Section 13(4)(b) should be interpreted in the widest possible manner and not ejusdem generis in relation to the earlier clauses in Section. Adjudication of a Debtor as insolvent changes his*

status, vests his entire property in the Official Assignee and limits his capacity to do business or even acquire property. ***Under Section 12 of the Presidency-Towns Insolvency Act, a Debtor would be liable to be adjudicated insolvent by an unsecured Creditor having a claim for more than Rs. 500/-, if the former had committed an act of insolvency within three months of the Petition. But, the right of such a Creditor to adjudicate the Debtor a bankrupt, is not a weapon available to him to be used to serve any ulterior purpose or to be used vindictively. If the object of the adjudication is not the result of a genuine desire to have the property of the Debtor administered in insolvency, but one solely with a view to disgrace him or to utilise the machinery of Court for other purposes, the Petition cannot be said to be a bona fide one. Section 13 gives power to the Court in those cases to dismiss it..... It cannot be said that adjudication of a Debtor as Insolvent is one of the remedies open to a Creditor and it will be for him to choose whether he is to take the thorny path of execution of the decree or adopt a short cut of adjudicating the Debtor an insolvent. An adjudication of a Debtor as a bankrupt is not a method of collecting a debt, though as a result of it, the Creditor may get paid. Essentially, an adjudication brings about a change in the status of a Debtor and enables the Official Assignee or receiver, in whom the property of the Debtor gets vested, to administer or sell it to pay off his Creditors. It is only a particular class of Creditors that can file a Petition for adjudication. And no absolute right is given to them to obtain an adjudication as the Court will dismiss the Petition if the conditions laid down in Section 13 are satisfied."***

146. In **P.K.Venkateswaran and others** Vs. **R.Shanmugam**, AIR 1987 Madras 143, this Court observed as under:-

"22. Keeping the above laid down principles in mind, if we consider the facts of the case on hand, we find that the Creditors have satisfied that the Debtor-Respondent owes them nearly rupees two lakhs. Though the Creditors cannot claim the entire interest as recited in the promissory notes, which is certainly exorbitant and usurious in nature, the Creditors will be entitled to interest at a reasonable rate. The principal amount due to the Creditors is more than rupees two lakhs. The property of the Respondent still available with him is sufficient to satisfy the debts of the Creditors. No doubt, the conduct of the Debtor-Respondent in denying the liability of the Creditors-Petitioners and selling his properties with a false recital that such a sale is to discharge the debts due to the Petitioning Creditors is that of a vexatious and recalcitrant Debtor and also with a view to delay the payment to the Petitioning Creditors. But that by itself will not give a right to the Petitioning Creditors to choose a remedy available under the Insolvency Act instead of proceeding against the available property of the Debtor-Respondent. Knowing the behavious (sic) and conduct of the Debtor-Respondent, still the 2nd Petitioner has chosen to advance a further sum of Rs. 20,000, even after the Respondent-Debtor has not chosen to discharge his earlier debts by selling one of his properties under Ex. P.15. As already pointed out, the 2nd Petitioner has planned to purchase the house property which was sold under Ex. P. 15, and also made an advance of Rs. 50,000 but that transaction did not go through. Therefore, it appears that the Petitioning Creditors had chosen to the present adjudication proceedings more to disgrace the Debtor-Respondent rather than to recover the amount due to

> ***them, which could have been done under the normal process of law. In the circumstances, even assuming that the Debtor-Respondent has committed an act of insolvency, which actually has not been established, the Petition is liable to be dismissed, under Section 13(4)(b) of the Act, both on the ground that the Debtor-Respondent is liable to pay his debts and also for other sufficient cause.***"

147. In **B.Srinivasan** Vs. **N.Jambulingam**, 2010 (6) CTC 54, this Court followed the views in **P.K.Venkateswaran's case** (referred to supra) and in **S.A.Ramalinga Mudaliar's case** (referred to supra) and observed that no proper explanation was given by the Petitioning Creditor for not proceeding against the mortgaged property and therefore it held that it cannot be said that a secured creditor who had not fulfilled the requirements of Section 12(2) of the Presidency-Towns Insolvency Act, 1909 before instituting the Petition could maintain the proceedings.

148. Argument that the Petitioning Creditor fully relied on the Decree in its favour for the purpose of asserting its rights but would not comply with such Decree in the matter of enforcement/remedies agreed by the parties cannot be countenanced.

149. The amounts under **Consent Decree** dated **11.12.2000** in **C.S.No.225 of 1999** has not been admittedly fully paid by either **M/s.Ravishankar Industries Private Limited** the first defendant in the said suit or either by its directors namely Late **Mr.A.Ravishankar Prasad** (the **insolvent** in **IP.No.94 of 2011)** and or by **Mr.A.Manohar Prasad** (the **insolvent** in **IP.No.98 of 2011).**

150. The Insolvency Notice in **IN.No.110 of 2011** on **29.08.2011** which was the precursor for initiating insolvency proceedings in **IP.No.94 of 2011** against Late **Mr.A.Ravishankar Prasad** were in accordance with the requirements of Section 9(2) of the Presidency-Towns Insolvency Act, 1909. There cannot be any complaints that the Petitioning Creditor has violated the procedure under Section 9(3) of the Presidency-Towns Insolvency Act, 1909.

151. The Petitioning Creditor was fully aware of the estate of the deceased Insolvent. The argument that the 1st Respondent/Petitioning Creditor has secured assets in excess of the decree also cannot be

countenanced. The argument that the 1st Respondent/Secured Creditor has willfully suppressed the existence of security available with it and has caused the Insolvency Notice in utter violation of the Presidency-Towns Insolvency Act, 1909 is also not correct. It is also incorrect to state that Insolvency Notice was issued by the Petitioning Creditor claiming a sum of **Rs.15,14,19,212/-** towards decree obtained in **C.S.No.225 of 1999** was without jurisdiction.

152. The Insolvency Notices issued to demand the debtors i.e., Late **Mr.A.Ravishankar Prasad** (the **Insolvent** in **IP.No.94 of 2011**) and **Mr.A.Manohar Prasad** (the **Insolvent** in **IP.No.98 of 2011**) to furnish security to the satisfaction of the decreetal debt amount as claimed in the Insolvency Notice. The Insolvency Notice was filed along with the sworn affidavit of the Petitioning Creditor. The Petitioning Creditor in its affidavit in Paragraph 10 has stated that the debtors does not have sufficient means and sources to discharge their liability and hence were liable to be declared as Insolvent.

153. The Petitioning Creditor further stated that the debtors have not satisfied the decree. At the time of the filing of **IN.No.110 of 2011** for the debts due to the Petitioning Creditor in **C.S.No.225 of 1999**, the debtors had merely created an equitable mortgage of the valuable immovable properties as security towards the liability which was also incorporated in the **Assignment Deed** dated **13.10.2006** executed into between **M/s.Indbank Merchant Banking Services Limited** and **M/s.Kotak Mahindra Bank Ltd.,** the Petitioning Creditor herein.

154. The argument that the proceedings were continued even after the death of **Mr.A.Ravishankar Prasad** contrary to Section 93 of the Presidency Towns Insolvency Act, 1909 also cannot be countenanced. As per Section 93 of the the Presidency Towns Insolvency Act, 1909, proceedings have to be continued even after the death of the debtor, unless the Court otherwise orders. Thus, the proceedings have to be continued as if debtor was still alive. Section 93 of the Presidency Towns Insolvency Act, 1909, reads as under:-

> "93. **Continuance of proceedings on death of debtor**.–
> If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive ."

155. In **Sushiladevi and others** Vs. **Sheetalprasad and others,** AIR 2004 MP 143, the Division Bench of the Madhya Pradesh High Court dealt with the issue as to whether the insolvency proceedings after the death of one of the debtors, his legal representatives would be entitled to be joined as the respondents. A bare perusal of Section 93 of the Presidency Towns Insolvency Act, 1909 makes it clear that on death of adjudication with regard to insolvency of a debtor shall be continued till it comes to a logical end. The Division Bench of the Madhya Pradesh High Court in **Sushiladevi and others** (cited supra) observed that where reading a perusal of Section 17 of the Presidency Towns Insolvency Act, 1909 which is *pari materia* with Section 93 of the Provincial Insolvency Act, 1920 makes it clear that on the death of the debtor, proceedings shall not be abated and shall neither come to an end.

156. If a debtor dies after an Insolvency Petition has been presented, whether by or against him, the insolvency proceedings do not abate. Such proceeding may be continued against his estate, unless the Court otherwise orders. In England, it has been held that where a debtor himself presents an insolvency petition, but dies before the order of adjudication, the Court may adjudge him bankrupt (See **Rewalker** (1896) 54 LT 682). Same view has been followed in India in **Venkatarama Aiyar** Vs. **Official Receiver, Tinnevelly** (1928) 51 Mad 344.

157. That apart, as per Rule 13(A) of Order III of the Insolvency Rules, 1958 framed under Section 112 of the Presidency-Towns Insolvency Act, 1909, the Court may as it think order service to be effected on the legal representative of the debtor or on such other person where if a debtor or any person upon whom an insolvency notice to be served dies before service thereof. Order III Rule 13(A) of the Insolvency Rules, 1958 reads as under:-

> "13(A) : If a debtor or any person upon whom an insolvency is to be served dies before service thereof, the order service to be effected on his legal representative or on such other person as the Court may think".

158. As per Order III Rule 11, if the petitioner's-creditor is a secured creditor, he shall give full particulars of his security and value the same. The Report of the Official Assignee indicates that the debtor has failed to file and prepare his Schedule as is contemplated under Order III Rule 20 of the Insolvency Rules, 1958 in Form No.6. Similarly, further a debtor is also required to bring into the Court, a notice each of creditor's in Form No.-7 unless in the mean time, a creditor who claim before the assignee and shall also pay the prescribed fee for services. It is noticed that none of the procedure has been followed by the deceased insolvent.

159. That apart, no proceedings were initiated by the deceased insolvent namely **Mr.A.Ravishankar Prasad (Insolvent in IP.94 of 2011)** to set aside the Insolvency Notice in IN.No.110 of 2011 as is contemplated under Rule 9 and Order III(A) of the Insolvency Rules, 1958.

160. As per Rule 9 of the Insolvency Rules, 1958, these grounds are available in Section 9/9(5)/12 of the Presidency-Towns Insolvency Act,

1909. In fact, as per Rule 25 Order III of the Insolvency Rule 1958, if the insolvent fails to prepare and submit his Schedule in the manner prescribed by the Act and these rules, the Official Assignee, if he considers that there are sufficient funds for distribution among the creditors, shall take the order of the Court within a view to such advertisement for creditors as may be necessary and he shall likewise from the materials in his possession prepare and submit to the Court a schedule of the insolvent's affairs as near as may be in Form No.6.

161. Therefore, it cannot be said that the Petitioning Creditor has approached this Court with unclean hands or that its intentions were *mala fide*. The present annulment application *inter alia* on grounds of a defective and illegal Insolvency Notice, violation of the Statutory Mandate under Section 9(2) of the Presidency-Towns Insolvency Act, 1909 and also due to failure of the secured creditor i.e., the Petitioning Creditor to comply with Section 12(2) of the Presidency-Towns Insolvency Act, 1909, was spiteful to benefit a single creditor and to harass the legal heirs of the deceased Insolvent cannot be countenanced.

162. In the light of the above discussion, **A(I.P.)Nos.11 & 12 of 2023** are liable to be dismissed and are accordingly dismissed. The rest of applications filed by the Petitioning Creditor in **A(I.P.)Nos.44 to 48, 74 to 76** and **79 to 82 of 2020** are therefore allowed. No costs.

02.09.2024

rgm/arb

C.SARAVANAN, J.

rgm/arb

Pre-Delivery Judgment in
A(IP).Nos.44 of 2020 etc batch
in
I.P.No.94of 2011

02.09.2024