Application Nos. 77, 78, 79, 105 to 108 of 2024
in
I.P. No. 50 of 2023

K.KUMARESH BABU, J.

The application had been filed seeking to pass an order to sustitute the applicant in the place of the petitioning creditor, on whose instance the insolvency petition had been filed and to grant leave to the applicants to prosecute the insolvency application.

2. Heard Mr. J.Balagopal, learned counsel for the applicant and Mr. Umiyal Muthiah, learned counsel for the respondent.

3. From the Court records, it could be seen that originally, an Insolvency Petition had been filed by one P.G.International HUF seeking to adjudicate the second respondent as an insolvent and to direct the estate of the debtor viz., second respondent to be vested in the Official Assignee for the benefit of the General Body of Creditors.

4. Pending the said petition, it is also brought on record that the second respondent /insolvent had settled the dues of the petitioning creditor. These applicants also have benefit of Court decrees in their favour and hence, they have also filed these applications to substitute themselves as a petitioning creditor as they apprehend that the original pettitioner in view of the settlement made to him may not proceed to press his claim.

5. The learned counsel appearing on behalf of the second respondent would submit that pursuant to the promulgation of the Insolvency and Bankruptcy Code, 2016, under Section 243-Repeal of certain enactments and savings, repeal of the Presidency Towns Insolvency Act, 1909 had taken place and therefore, the Petition filed under the said Act cannot be proceeded with. The same had been objected to by the learned counsel appearing for the respective applicants by contending that with regard to the category of persons, particularly, individuals the Presidency-Towns Insolvency Act cannot be held to have been repealed as the said category of persons has not been notified by the Central Government to be proceeded under the Insolvency and Bankruptcy Code, 2016, till date. He would submit that only with regard to the categories of persons, who have notified to be proceeded under the under the Insolvency and Bankruptcy Code, 2016, the said provision of repeal would have effect and not otherwise.

6. I have considered the rival submissions made by the respective learned counsels.

7. The only objection raised by the learned counsel appearing for the second respondent/ insolvent /Debtor is that the statute, namely, the Presidency-Towns Insolvency Act, 1909 have been repealed by Section 243 of Insolvency and Bankruptcy Code, 2016.

8. As rightly pointed out by the learned counsel appearing for the applicants, the repeal could only take place in respect of categories of persons, who had been notified by the Central Government for application of the Insolvency and Bankruptcy Code, 2016. It is not disputed that the second respondent Debtor does not fall under any of the categories, which has been notified. In respect of the category under which the second respondent debtor falls has still not been notified by the Central Government.

9. In such view of the matter, the provisions of the Insolvency and Bankruptcy Code, 2016, cannot be said to have been repealed in its entirity. Hence, the contention of the second respondent Debtor deserves no consideration is could be only held as fallacy.

10. In fine, the applications are ordered as prayed for and the respective applicants are substituted as petitioning creditors in the place of the Original Petitioner viz., M/s. PG International HUF and they are granted leave to prosecute the above Insolvency Petition.

27.08.2024

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K.KUMARESH BABU, J.

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