

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

INSOLVENCY PETITION NO.9 OF 2024

RE :
NAVINKUMAR MISHRIMAL JAIN)
AND ANR)... JUDGMENT DEBTORS

EXPARTE :
HEENA AMIT JAIN)...PETITIONING CREDITOR

Mr. Ramesh Jain, Advocate for the Petitioning Creditor.
Ms. M.R. Parkar, Insolvency Registrar, present in Court.

CORAM : ABHAY AHUJA, J.

DATE : 18th FEBRUARY, 2025

PC. :

1. This Insolvency Petition seeks to adjudicate the Judgment Debtors viz. Navinkumar Mishrimal Jain and Ajitkumar Kasturchand Jain, as Insolvents.

2. Earlier, in Summary Suit No.246 of 2022 which was filed by the Petitioning creditor, an *ex-parte* decree was passed on 8th December 2022 by Bombay City Civil Court at Mumbai in a Suit for Rs.15,82,360.69 with simple interest at the rate of 12 percent per annum on Rs.10,00,000/- from 11th May 2023 till payment and/or realization as

per the particulars of claim annexed to the plaint. Since no payment had been received under the said decree at the instance of the Petitioning creditor, Insolvency Notice No.N/10 of 2023 dated 11th July 2023 for recovery of Rs.15,82,360.69 due and payable under the decree was issued against the Judgment Debtors. The Insolvency Notice was served upon the Judgment Debtors on 26th October 2023. As per the said notice, the Judgment Debtors were required to pay the Petitioning creditor the amount claimed therein or to take out proceedings for setting aside the Insolvent Notice within thirty-five days from the date of service of the Insolvent Notice upon the Judgment Debtors, excluding the date of such service. It is submitted that the Judgment Debtors have not complied with the Insolvency Notice, and therefore, committed an act of insolvency on 1st December 2023.

3. Mr.Jain, learned Counsel, appears for the Petitioning creditor and submits that although the service of the Insolvency Notice had been effected on 26th October 2023, no Notice of Motion had been taken out for setting aside the Insolvency Notice nor any payment has been made. It is submitted that the time to comply with the Insolvency Notice and for adopting the proceedings for setting aside the Insolvency Notice has

expired on 30th November 2023 and that the act of insolvency has been committed on 1st December 2023..

4. Mr.Jain would submit that the Insolvency Petition has been served personally through bailiff of the Sheriff's office. Despite opportunity having been granted to the two Judgment Debtors, none appears for the two Judgment Debtors though served. It is submitted that, therefore, this Court pass appropriate orders, as despite an opportunity, neither the decree has been set aside nor any payment has been made.

5. The Judgment Debtors no.1 and 2 have committed an act of insolvency within the three months prior to the date of presentation of this Petition by not complying with the requisitions of the Insolvency Notice No.N/10 of 2023 nor have paid any amount to the Petitioning creditor under the said Insolvency Notice within the statutory period of 35 days or at any time nor any proceedings for or an order setting aside the said Notice of Motion has been brought to my notice.

6. It is submitted that the Petitioning Creditor nor any person on its behalf holds or has held any security of the Judgment Debtors' estate or

any part thereof for the payment of decretal amounts due to the Petitioning Creditor under the judgment and decree dated 8th December 2022 passed against the Judgment Debtors.

7. In view of the above discussion, an act of insolvency having been committed, I am inclined to allow the Insolvency Petition in terms of prayer clause (a), which reads thus :

“(a) An order of adjudication be passed by this Honourable Court against the Debtors abovenamed.”

8. The Official Assignee to take necessary steps in accordance with law and procedure and to invest the amounts so realized from the estate of the Insolvents with any nationalized Bank as per the circular issued by the office of the Prothonotary & Senior Master of this Court.

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

10. The Judgment Debtors are directed to comply with all requisitions under Section 33 of the Presidency Towns Insolvency Act, 1909.

11. The Official Assignee is authorized to take assistance of the local police authorities at the time of taking physical possession of the immovable property of the Judgment Debtors.

12. The Insolvency Petition, accordingly, stands allowed and disposed as above.

(ABHAY AHUJA, J.)