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I.P. No.31 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.01.2025**

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

I.P. No.31 of 2024

Mr.Harikrishnan

... Petitioning Creditor

vs.

1.S.D.Arun Raghavendar

2.S.Hema

... Respondent/Debtors

PRAYER: This Insolvency Petition filed under Section 9 (g), 10,11,12 and 13 of the Presidency Towns Insolvency Act, 1909 and Order III, Rule 8 of the Insolvency Rules 1958, to

(i) to treat this petition as urgent;

(ii) to adjudicate the Debtors as Insolvents;

(iii) to direct that the estate of the Debtors be vested in the Official Assignee of Madras, for the benefit of the general body of creditors of the Debtors;

(iv) to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtors to the Petitioning Creditor.

For Petitioner : Mr.T.Srikanth

For Respondents : No Appearance



ORDER

The Insolvency Petition has been filed under Section 9 (g), 10, 11, 12 and 13 of the Presidency Towns Insolvency Act, 1909, seeking to adjudicate the debtors, viz., the Respondents 1 and 2 as insolvents, and to direct their estate to vest with the Official Assignee of Madras, for the benefit of the general body of their creditors and for costs.

2. It is the case of the Petitioning Creditor that the Respondents borrowed a sum of Rs. 3,00,000/- from him on 03.06.2023 and executed a promissory note in his favour, evidencing the said borrowing and undertaking/promising to repay the said amount on demand, together with interest at 18%. However, the Respondents committed default despite several demands made.

3. It is the further case of the Petitioning Creditor that the debtors, viz., the Respondents by letter dated 16.09.2024 addressed a communication to the Petitioning Creditor stating that they are not in a position to repay even one rupee in view of their being already heavily indebted to various creditors.



4. The Petitioning Creditor issued a lawyer's notice on 19.10.2024 to which a reply notice was sent on 26.10.2024 reiterating their inability to repay the money borrowed. The Petitioning Creditor has examined himself as P.W.1 before the learned Master. Ex.P1 is the original promissory note dated 03.06.2023 executed by the Respondents in favour of the Petitioning Creditor; Ex.P2 is the original letter dated 16.09.2024 sent by the Respondents to the Petitioning Creditor, Ex.P3 is a copy of the lawyer's notice dated 19.10.2024 issued by the Petitioning Creditor to the Respondents through his counsel and Ex.P4 is the original reply dated 26.10.2024 issued by the learned counsel for the Respondents.

5. I have also gone through the proof affidavit filed by the Petitioning Creditor in lieu of Chief Examination, reiterating the averments and allegations in the Insolvency Petition. I have also heard Mr. T. Srikanth, learned counsel for the Petitioning Creditor, who would submit that the Respondents by their act of replying to the Petitioning Creditor by communication dated 16.09.2024 and again through their learned counsel on 26.10.2024 have clearly evidenced that they are not in a position to discharge their debts and that the Petitioning Creditor has proved beyond all reasonable doubt that the Respondent-debtors are



unable to pay their debts and therefore, he would seek for adjudication of the Respondents as insolvents.

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6. On going through the petition, proof affidavit, and exhibits marked on the side of the Petitioning Creditor, I am satisfied that the Petitioning Creditor has made out a case for adjudicating the Respondents as insolvents. The Respondents themselves have expressed their inability to pay any amount and have also come on record stating that they are heavily indebted to various creditors. They have not chosen to appear even before this Court to contest the above Insolvency Petition. I am satisfied that the Respondents have committed that acts of insolvency, entitling the Petitioner to relief as prayed for.

7. For all the foregoing reasons, I am inclined to pass the following order:-

- (i) This Insolvency Petition is allowed.
- (ii) The Respondents-debtors are adjudicated as insolvents
- (iii) The estate of the Respondents/debtors shall vest with the learned Official Assignee of Madras.
- (iv) The Petitioning Creditor shall deposit a sum of Rs.5,000/- with



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the learned Official Assignee and the said amount shall be paid by the
learned Official Assignee, out of the estate of the Respondents/debtors to
the Petitioning Creditor at the time of conclusion of adjudication process.

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Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes/No

P.B.BALAJI, J.,

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