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I.P. No.32 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.32 of 2024

B.Manikumar

... Petitioning Creditor

vs.

R.Pandian

... Respondent/Debtor

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 Debtor as Insolvent;

(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 Debtor;

(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

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The Insolvency Petition has been filed under Section 9 (g), 10, 11, 12 & 13 of the Presidency Towns Insolvency Act, 1909, seeking to adjudicate the debtor, viz., the Respondent as insolvent, and to direct his estate to vest with the Official Assignee of Madras, for the benefit of the general body of his creditors and for costs.

2. The Petitioning Creditor submits that the Respondent borrowed a sum of Rs.5,00,000/- from him on 07.03.2023 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% per annum. However, the Respondent committed default despite several demands made.

3. It is the further case of the Petitioning Creditor that the Respondent/Debtor by letter dated 27.09.2024 addressed a communication to the Petitioning Creditor stating that he is not in a position to repay even one rupee in view of the fact that he has already heavily indebted to various creditors.



4. The Petitioning Creditor issued a lawyer's notice on 20.10.2024 to which a reply notice was sent on 25.10.2024 reiterating his 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 07.03.2023 executed by the Respondent in favour of the Petitioning Creditor; Ex. P2 is the original letter dated 27.09.2024 sent by the Respondent to the Petitioning Creditor; Ex.P3 is the original legal notice dated 20.10.2024 issued by the Petitioning Creditor to the Respondent through his counsel and Ex.P4 is the original reply dated 25.10.2024 issued by the learned counsel for the Respondent.

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 heard Mr. T. Srikanth, learned counsel for the Petitioning Creditor, who would submit that the Respondent by his act of replying to the Petitioning Creditor by communication dated 27.09.2024 and again through his counsel on 25.10.2024 have clearly evidenced that he is not in a position



to discharge his debts and that the Petitioning Creditor has proved beyond all reasonable doubt that the Respondent-debtor is unable to pay his debts and therefore, he would seek for adjudication of the Respondents as insolvent.

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 Respondent as insolvent. The Respondent himself has expressed his inability to pay any amount and has also come on record stating that he has heavily indebted to various creditors. He has not chosen to appear even before this Court to contest the above Insolvency Petition. I am satisfied that the Respondent has 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 Respondent-debtor is adjudicated as insolvent



(iii) The estate of the Respondent/debtor shall vest with the learned
Official Assignee of Madras.

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(iv) The Petitioning Creditor shall deposit a sum of Rs.5,000/- with
the learned Official Assignee and the said amount shall be paid by the
learned Official Assignee, out of the estate of the Respondent/debtor to
the Petitioning Creditor at the time of conclusion of adjudication process.

20.01.2025

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



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P.B.BALAJI, J.,

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