

2012 CLD 1945

[Sindh]

Before Nadeem Akhtar, J

NAVAID AHMED SIDDIQUI and 2 others --- Petitioners

Versus

OFFICIAL ASSIGNEE---Respondent

Three Insolvency Petitioners Nos. Nil of 2012, decided on 3rd August, 2012.

(a) Insolvency (Karachi Division) Act (III of 1909) ---

Ss. 9 & 15(3) --- Sindh High Court Rule (Original side) Rr.586(2) & 586(1)---Insolvency petitions—Petitioners claimed to be agents working at. a car showroom and having taken huge investments front different persons-Contention of the petitioners was that Having incurred huge losses and after selling all their movable and immovable properties they were unable to settle their liabilities to the investors and accordingly they should, be adjudged as insolvent and discharge certificate be issued in respect of their liabilities—Validity-Petitioners admitted before the court that there was no record of import of vehicles, manner of sales proceeds appropriation and claimed that they did not maintain any bank account or books of accounts and did not produce bank statements or income tax assessments-Petitioners had therefore, not complied with the provisions of the "Insolvency (Karachi Division) Act, 1909—Specific grounds must have been stated in an application for declaring insolvency and under 8.15(3) of the Insolvency (Karachi Division) Act, 1909; when a debtor's application was admitted, he shall unless the court otherwise directed, produce all his books of accounts—Petitioners had admittedly not given any specific grounds/details and had admittedly not complied with mandatory requirements of 15(3) of the Act—

Petitioners could not be adjudged as insolvent unless they obtained a certificate from the Official Assignee under Rule 586(2) of the Sindh High Court Rules (Original Side) which could not be granted under the said Rule 586(2), unless mandatory requirements of Rule 586(1) were fulfilled by the petitioners-Statements of the petitioners before the Official Assignee as well as the reports submitted by the Official Assignee established that the mandatory requirements of Rule 586(1) of the Sindh High Court Rules (Original Side) had not been complied with by the petitioners-Reports of the Official Assignee or contents thereof had not been denied by the petitioners and it appeared that they Had not come to the court with clean hands as genuine debtors—Petitioners' had filed the petitions in a mala fide manner to save themselves from legal actions which their creditors may initiate against them—Petitioners had, therefore, failed to Justify their inability to pay their debts, their Insolvency petitions were dismissed in circumstances, [p. 1950] B & C

(b) Insolvency (Karachi Division) Act (III of 1909) ---

—Ss. 26, 15(3) & 9—Sindh High Court Rules (Original Side), Rr.586(2) & 586(1)--- Insolvency petition-Meeting of creditors before adjudication as insolvent— Scope- Petitioners had not submitted documents which were required to be produced under 8.15(3) of the Insolvency (Karachi Division) Act, 1909— Contention of the petitioners was that the required information/documents could be produced by. the petitioners in a meeting of the petitioners creditors to be called under 8.26 of the Insolvency (Karachi Division) Act, 1909--Validity—8aid contention was without any force as meeting of creditors under 8.26 of the Insolvency (Karachi Division) Act, 1909 could only be called after an order of adjudication against an insolvent was passed and on application of a creditor before the Official Assignee under the Sindh High Court Rules (Original Side)—If no such order of adjudication as insolvent had been passed against the petitioners, no meeting under 8.26 of the Act could be called, [p. 1949] A

Hussain Bux Balouch for Petitioners.

Kadir Bakhsh Umrani, Official Assignee.

Date of hearing: 19th July, 2012.

JUDGMENT

NADEEM AKHTAR, J.—These three petitions have been filed by the above named three petitioners under section 9 of the Insolvency (Karachi Division) Act, 1909, praying that they should be adjudged as insolvents and discharge certificates may be issued in respect of their liabilities without any condition. Since' the case of all the three petitioners, the facts pleaded by them in these petitions and the prayers made by them in these petitions are identical, this common Judgment shall dispose of all these three petitions.

1. The petitioners are real brothers. Their case is that they are working as agents at a car show room known as Chassis Motors' situated at M.A. Jinnah Road, Karachi, where huge investments were made by a large number of Investors through the petitioners for sale and purchase of cars and the petitioners used "to receive commission on every such sale and purchase. It is the case of the petitioners that in order to return the amounts of investors, they sold out all their moveable and immoveable properties and issued a number of cheques to the investors, but due to heavy losses incurred by them they could not settle the liabilities of the investors/their creditors who are now pressurizing them for payments. The petitioners have stated in their petition that they do not own any moveable or Immoveable property in their own name or in the names of their spouses, and that they are unable to pay their debts.

2. Along with their petitions, the petitioners have filed Schedules of Affairs, which are actually lists of petitioners creditors and the amounts payable to them. The said schedules/lists show that cheques for Rs. 15,000,000.00 were issued by the petitioner Navaid Ahmed Siddiqui to 13 different creditors, cheques for Rs.9,000,000,00 were issued by the petitioner Rehan Ahmed Siddiqui to 10 different creditors, and Cheques, for Rs. 10,060,000.00 were issued by the petitioner Masroor Ahmed Siddiqui to 13 different creditors.

3. Upon filing of these petitions, the petitioners were directed on 7-3-2012 by the Additional Registrar (O.S.) to appear before the Official Assignee for obtaining Certificates under Rule 586(2) of the Sindh Chief Courts Rules (O.S.). Accordingly, all the petitioners appeared before the Official Assignee on 14-3-2012 when their statements were recorded by the Official Assignee. After recording statements of the petitioners, the learned Official Assignee submitted his separate detailed reports dated 31-3-2012, 6-4-2012 and 10-4-2012 in these petitions along with petitioners statements for consideration of this Court. As the learned Official Assignee has recorded the statements of the petitioners and has filed his detailed reports in these petitions, the office was directed by me on 6-7-2012 to issue notices to the learned Official Assignee for appearance on the date of hearing so that, before parsing any order /Judgment, I could hear him also. In pursuance of such notices, the learned Official Assignee has appeared and has strongly opposed these petitions.

4. Learned counsel for the .petitioners submitted that the petitioners are not the owners of the car show room business, but are only car sale agents working on commission-basis. The business was/is owned by some other person. He further submitted that from the investments received by' the petitioners. ;they and their business owner imported many expensive vehicles which were ultimately bold through auction by Customs Authorities as import duty and other charges In respect thereof could not be paid by the petitioners and their business owners. He contended that due to this big setback, the petitioners suffered huge financial losses from which they have not been able to recover themselves. He further contended that cheques were issued by the petitioners as they had every Intention to settle the liabilities of their creditors and they are still willing to settle all such liabilities, but at present they are not in a position to do so because of the losses suffered by them. The learned counsel, submitted that the petitioners have come to Court with clean hands, and that they are entitled to be adjudged as Insolvents. Mr. Kadir Bakhsh Umrani, the learned Official Assignee, has strongly opposed these petitions by relying upon the statements recorded before him by the petitioners and the reports filed by him in pursuance thereof. He pointed out from his reports and also from petitioners' statements recorded by him that no agreement or other written document was produced by the

petitioners showing any arrangement between¹ the petitioners and their creditors regarding investment by creditors and import of vehicles by the petitioners from such investment; that all the cheques were issued by the petitioners without any agreement of written document; that no proof was produced before him showing payments to creditors by the petitioners on account of the alleged profit and other part payments; and that no bank accounts or books of accounts were maintained by the petitioners. The learned Official Assignee has contended that all the aforementioned irregularities clearly show that the petitioners have not come to this Court with clean hands. He particularly emphasized on Rule 586 of the Sindh Chief Courts Rules (O.S.) and submitted that the petitioners are not entitled to certificates under Rule 586(2) as they have neither maintained the books of accounts and other related documents/record mentioned in section 15(3) of the Insolvency (Karachi Division) Act, 1909, nor the same were produced before the Official Assignee by the petitioners, which is a mandatory requirement under Rule 586(1) the learned Official Assignee prayed for dismissal of all these petitions.

6. In his rebuttal, learned counsel for the petitioner contended that all the above mentioned required information and data can be produced by the petitioners in a meeting of petitioners' creditors which should be called, under section 26 of the Insolvency (Karachi Division) Act, 1909, by the Official Assignee. He further contended- that by virtue of the said section 26, such meeting is necessary in order to consider the circumstances of insolvency of the petitioners. This contention of the learned counsel is without any force as the meeting of creditors under the said section 26 is called only after passing of an order of adjudication against an insolvent, and on the application of a creditor or of the Official Assignee. In these cases since order of adjudication against petitioners has not yet been passed, no such meeting can be called. In any event, it was the duty of the petitioners to produce all their books of accounts and other relevant details before the learned Official Assignee under section 15 of the Insolvency (Karachi Division) Act, 1909, and Rule 586(1) of the Sindh Chief Court Rules (O.S.).

7. After hearing the learned counsel for the petitioners and the learned Official Assignee and after examining the statements recorded by the petitioners, I asked several questions from petitioners' counsel, which in my opinion were necessary to arrive at an

equitable decision. In reply to such questions, learned counsel for the petitioners frankly conceded that no record of import of vehicles is available with the petitioners, nor any such document has been filed; that the petitioners are totally unaware about the amount which was realized by the Custom Authorities through auction of vehicles, or how and in what manner such auction sale proceeds were appropriated; that the petitioners never received any amount from the Custom Authorities on account of auction sale proceeds; that the petitioners never filed any claim or objections before the Custom Authorities regarding the auction sale proceeds that the petitioners never maintained any bank account, books of account, ledgers, etc., that bank statements of those accounts have not been produced from which the cheques were issued by the petitioners and that the petitioners are not Income tax payers/assesses.

8. I would like to highlight, here some important provisions of the Insolvency (Karachi Division) Act, 1909, which the petitioners ought to have complied with. In the explanation contained in section 9 of the said Act, specific grounds must be stated In an application for declaring insolvent Section 15(3) (a) of the said Act provides that when a debtor's application is admitted, he shall, unless the Court otherwise directs, produce all his books of account. In these petitions, the petitioners have admittedly not given the specific grounds/details, as mentioned in paragraph 7 above, and they have admittedly also not complied with the mandatory requirement of section 15(3)(a) of the said Act Section 15(3) of the said Act specifically provides that a petition which does not fulfill the mandatory requirements of this section may be dismissed. Moreover, a person cannot be adjudged as an Insolvent unless he obtains a Certificate from the Official Assignee under Rule 586(2) of the Sindh Chief Courts Rules (Q.S.). Certificate from the Official Assignee cannot be granted under the said Rule 586(2)' unless the petitioner/debtor fulfills all the mandatory requirements of Rule 586(1). Statements of the petitioners recorded by the learned Official Assignee and the reports submitted by the learned Official Assignee have established that the mandatory requirements of Rule 586(1) have¹ not been complied with by the petitioners.

9. It would not be out of place to mention here that no objections were filed by any of the petitioners to the reports submitted by the learned Official Assignee, nor the contents thereof have been denied by the petitioners. In these cases, petitioners Issued cheques of heavy amounts indiscriminately one after the other to different persons knowing fully well that they did not have sufficient funds in their bank accounts and that their cheques will be dishonored upon presentation. From the above discussion and from petitioners' own statements and conduct, it appears that they have not come to this Court with clean hands as genuine debtors. On the other hand, it is clear that these petitions have been filed by the petitioners in a mala fide manner to save themselves from legal actions which their creditors may have initiated against them or may initiate against them in future.

10. In the absence of the books of accounts, etc., which the petitioners were obliged to produce before the Official Assignee under section 15 of the Insolvency (Karachi Division) Act, 1909, and Rule 586(1) of the Sindh Chief Court Rules (O.S.), the petitioners have failed to justify their inability to pay their admitted debts. Therefore, the petitioners have miserably failed to .make out a case for being adjudged as insolvents. All these three petitions being without any merit are dismissed.

Office is directed to communicate to the learned Official Assignee a copy of this Judgment for his information and record.

KMZ/N-18/K

Petitions dismissed