

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) No.163/2004**

% **Date of decision:17th February, 2010**

S. DALIP SINGH **Petitioner**
Through: Mr. Daljinder Singh, Advocate

Versus

THE U.P.F.C. & ORS. **Respondents**
Through: Mr. A.K. Singh with Mr. Shiv Khanna,
Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 227 of the Constitution of India has been preferred with respect to the order dated 22nd November, 2003 of the Additional District Judge allowing the appeal of the respondent Uttar Pradesh Financial Corporation (UPFC) against the order dated 31st March, 2001 of the Insolvency Judge, Delhi. The Insolvency Judge had overruled the objection of the respondent/UPFC to the petition for insolvency under

the provisions of the Provincial Insolvency Act, 1920 filed by the petitioner and allowed the petition and adjudged the petitioner as insolvent in terms of Section 7(1) of the Insolvency Act. The Additional District Judge on appeal, finding that the only debts owed by the petitioner were to the respondent/UPFC and the State of UP to which arrears of sales tax were owed, held an insolvency petition to be not maintainable qua the debts owed to the government and dismissed the petition. This Court vide ex parte order dated 4th February, 2003, while issuing notice of the petition, stayed the operation of the order of the Additional District Judge. The effect of the interim order of this Court is that the petitioner during the pendency of the petition before this Court remained adjudged as an insolvent.

2. The petitioner applied under Section 7 of the Insolvency Act for being adjudged as an insolvent. It was inter alia the case of the petitioner that he owed monies to UPFC and which had issued a certificate for recovery of Rs.2,53,595.45 against him; that the Assistant Collector was demanding the said amount from the petitioner and upon non-payment, threatening to arrest the petitioner. It was also stated in the petition that besides the aforesaid debt to UPFC, a certificate for recovery of Rs.24,000/- has also been issued by the State of UP towards arrears of sales tax. Thus, the only debts owed by the petitioner were to UPFC and State of UP and which the petitioner claims to be unable to pay. UPFC and state of UP only were impleaded as respondents to the said insolvency petition.

3. UPFC opposed the aforesaid insolvency petition on the ground of the same being barred by Section 8 and Section 44 of the Insolvency Act.

Section 8 of the Insolvency Act prohibits insolvency petitions from being presented against any corporation or against any association or company registered under any enactment. Both, the Insolvency Judge and the Additional District Judge in appeal have rightly held the said provision to be inapplicable. No error can be found with the said reasoning. An insolvency petition can be presented by the debtor as well as the creditor. Section 8 is intended to prevent the creditors of a corporation from presenting a petition for having a corporation adjudged as insolvent. Section 8 has application where the debtor is a corporation and has no application where the creditor is a corporation, as in the present case.

4. The argument of respondent/UPFC was/is that since Section 44 of the Insolvency Act saves the government dues even upon discharge of insolvent, insolvency petition cannot be presented when the only dues owed are to the government. The counsel for UPFC has pointed out that by amendment of the Section 44 of the Insolvency Act as applicable to UP w.e.f. 10th December, 1976, the discharge of an insolvent does not release the insolvent also from any debt or liability recoverable from him as arrears of land revenue under the Uttar Pradesh Public Monies (Recovery of Dues) Act, 1972. The Insolvency Judge held that the provisions of Section 44 do not show that insolvency petition is not maintainable when the debts owed are to the government. Reliance was placed on *Aswini Kumar Pramanik Vs. Dominion of India* AIR 1952 Calcutta 251 where also protection under the Insolvency Act was sought qua the dues of income tax and the Division Bench held that no distinction could be made in the debts owed to the government and others and the protection under the Provincial Insolvency

Act extended to the debts to the government towards income tax also. However, the Additional District Judge on appeal differed with the said reasoning and interpreted Section 44 of the Insolvency Act as excluding the application of the Insolvency Act qua the debts to the government and which was held to include UPFC which had been declared to be a State by the Supreme Court in *Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd.* AIR 1983 SC 848. The counsel for UPFC before this Court also relied on *Shiv Parshad Vs. Punjab State* AIR 1957 P&H 150 where the Division Bench of that Court has held that Section 44 is designed to carry out a public purpose and for government dues insolvent does not get any discharge.

5. This Court is unable to read Section 44 of the Provincial Insolvency Act as laying down that no claim of insolvency can be made vis-à-vis debts owed to the government. Rather, when Section 44 of the Insolvency Act provides that an order of discharge (which otherwise absolves the insolvent from all dues) shall not release the insolvent from any debt due to the government and in UP from any debt recoverable as arrears of land revenue, it means that insolvency can be claimed against government dues and dues recoverable as arrears of land revenue also. Had it not been so, there would have been no occasion to save the same on discharge of the insolvent. There is no provision in the Insolvency Act to distinguish the government debts from other debts or to show that a petition claiming insolvency cannot be filed when the debts due are to the government only.

6. However, though not agreeing with the reasoning of the Additional District Judge, this Court is still of the view that the insolvency petition did

not lie vis-à-vis the debts owed to respondent/UPFC. UPFC is a creation of the State Financial Corporations Act, 1951 and is covered by the provisions thereof. Section 46 B of the said Act provides that the provisions of the said Act and of any rules and orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The State Financial Corporations Act is later to the Insolvency Act. Section 31 of the State Financial Corporations Act permits a State Financial Corporation, as UPFC is, to apply to the District Judge inter alia for enforcing the liability of any surety, as the petitioner is. Section 32 G of the State Financial Corporation Act further provides that where any amount is due to the Financial Corporation, without prejudice to its other remedies, it may make an application to the State Government for recovery of amount due to it and if the State Government is satisfied after following such procedure as may be prescribed, that the amount is so due, it may issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as arrear of land revenue. The said provisions of the State Financial Corporation Act i.e. Sections 31 & 32 G (supra), will in terms of Section 46 B have effect notwithstanding anything inconsistent therewith contained in the Provincial Insolvency Act. The provisions of Section 31 of the Provincial Insolvency Act which entitle a person adjudged as insolvent, to apply for protection from being arrested or detained in prison for any debt to which the order applies, are found to be inconsistent with those of Sections 31 & 32 G of the State Financial Corporation Act. The provisions of the State Financial Corporation Act appear to have escaped the attention of the learned Additional District Judge.

7. I thus find that though the objection of UPFC to the insolvency petition preferred by the petitioner on the basis of Section 8 and Section 44 of the Insolvency Act was misconceived and there is nothing in the Insolvency Act to bar an insolvency petition being preferred qua the debts owed to a State Financial Corporation but owing to the precedence given by Section 46 B of the State Financial Corporation Act, the adjudication of the petitioner as insolvent would still not be a bar to the recovery from him of the amounts owed to respondent/UPFC under the provisions of Section 32 G of the Act as arrears of land revenue. The petitioner cannot under Section 31 of the Insolvency Act claim direction / protection qua the same. Since the major debt owed is to respondent/UPFC only and the only other debt being of arrears of sales tax and further since no arguments have been addressed qua the said debt towards sales tax, no purpose would be served in adjudging the petitioner as insolvent and the order of the Additional District Judge dismissing the petition of the petitioner under Section 7 of the Insolvency Act is upheld. The petition is accordingly dismissed with costs of Rs.11,000/- payable to the respondent/UPFC.

**RAJIV SAHAI ENDLAW
(JUDGE)**

February 17, 2010

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