P L D 2021 Supreme Court 913

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

Mrs. SAMINA MEHR-UN-NISA MAZARI---Appellant

Versus

PUBLIC AT LARGE and others---Respondents

C.A. No. 184-L of 2010, decided on 3rd August, 2021.

(Against the order dated 02.04.2007 passed by the Lahore High Court, in C. R. No.716 of 2007).

(a) Provincial Insolvency Act (V of 1920)---

----S. 7 & Preamble---Provincial Insolvency Act, 1920 (the 1920 Act)---Scope and application---Said Act dealt with the insolvency of an individual, while corporate insolvency was dealt with separately under the company law---Therefore, insolvent companies were not amenable to the law of insolvency but underwent a separate process known as liquidation, or winding up, administered under separate law. (b) Provincial Insolvency Act (V of 1920)---

----Ss. 7 & 8---Insolvency petition---Exemption of corporation, etc., from insolvency proceedings---Scope---Appellant-lady filed an insolvency petition under S.7 of the Provincial Insolvency Act, 1920 ("the 1920 Act") to be declared insolvent; she arrayed all her institutional creditors as respondents in the petition---Petition was dismissed by the Trial Court on the basis of S.8 of the 1920 Act holding that no insolvency petition could be filed against any corporation or association or company registered under any enactment for the time being in force---Question as to whether S.8 of the 1920 Act barred an insolvency petition to be filed by the debtor seeking his own insolvency by arraying corporate banks as creditors to the petition---Held, that S.8 of the 1920 Act exempted corporations and companies from any insolvency proceedings against them, however, in the present case the insolvency petition filed by the appellant was not an insolvency petition filed against any corporate person but instead, was filed by the debtor (the appellant) to get herself adjudged as an insolvent---Arraying the creditor banks (corporations or companies) as respondents in the insolvency petition did not mean that an insolvency petition had been filed against corporate persons to seek their insolvency---Exemption contained in S.8 of the 1920 Act had no application to the present case---Orders of courts below were set-aside and Supreme Court directed that insolvency petition would be deemed to be pending before the Trial Court, which shall decide the same in accordance with law---Appeal was allowed.

Kazim Ali Shah v. United Bank Limited 1988 CLC 913 ref.

Muhammad Azeem Malik, Advocate Supreme Court for Appellant.

M. Naveed Sheikh, Advocate Supreme Court for Respondent No.2.

Ashar Elahi, Advocate Supreme Court for Respondent No.3.

Mian Azhar Saleem, AHC for Respondent No.7.

Shahnawaz Khan and Umer Qureshi Bank representatives for Respondent No.6.

Nemo for Respondents Nos. 4 and 8.

Date of hearing: 3rd August, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that the petitioner filed an insolvency petition under section 7 of the Provincial Insolvency Act, 1920[1] ("Act") to be declared insolvent. The petitioner arrayed all her institutional creditors as respondents in the petition. The petition was dismissed by the trial court on the basis of section 8 of the Act. According to the trial court no insolvency petition could be filed against any corporation or association or company registered under any enactment: for the time being in force. The appeal of the petitioner before the lower appellate court was also dismissed and the Civil Revision filed by the petitioner before the High Court also met the same fate vide impugned order dated 02.04.2007. The sole question before us is whether Section 8 of the Act bars an insolvency petition to be filed by the debtor (petitioner) seeking his own insolvency by arraying corporate banks as creditors to the petition? Leave was granted vide order dated 30.04.2010 to examine this question.

2. The essence of the concept of insolvency consists in debtor's ultimate inability to meet his financial commitments. The central character of the Act is the "debtor" who is an individual. Acts of insolvency" under the Act[2] refer to different acts of the debtor which constitute acts of insolvency. Under section 6(f), filing of an insolvency petition by the debtor to be adjudged as an insolvent, is an act of insolvency. A debtor can file an insolvency petition if he commits an act of insolvency and be adjudged as an insolvent by obtaining an "order of adjudication." It is important to distinguish that the Act deals with the insolvency of an individual, while corporate insolvency is dealt with separately under the company law. Therefore, insolvent companies are not amenable to the law of insolvency but undergo the separate process known as liquidation, or winding up, administered under separate law. Hence from the point of view of an unsatisfied creditor wishing to initiate insolvency proceedings, the question of whether his debtor is an individual or an incorporated company assumes vital significance.[3]

3. Section 8 of the Act provides as under;

> No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

In the instant case, the courts below have concurrently held that section 8 exempts corporations and companies from any insolvency proceedings against them. This is the correct interpretation of law. The courts below have, however, failed to appreciate that the insolvency petition filed by the appellant was not an insolvency petition filed against any corporate person but instead was filed by the debtor (the appellant) to get herself adjudged as an insolvent. Arraying the creditor banks (corporations or companies) as respondents in the insolvency petition does not mean that an insolvency petition has been filed against corporate persons to seek their insolvency. The exemption contained in section 8 has no application to the present case. The courts below have missed out on this important aspect of the case. The opinion expressed by Lahore High Court in Kazim Ali Shah[4] (1988) is correct and is fully endorsed.

4. We, therefore, set aside the orders of the courts below. The insolvency petition will be deemed to be pending before the trial court with the direction to the trial court to decide the same, in accordance with law, preferably within a period of three months, from the receipt of this order. Resultantly this appeal is allowed in the above terms. Office shall dispatch a copy of this order to the respondents, as well as, the trial court concerned for information and necessary action.

MWA/S-45/SC Appeal allowed.

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1 Act V of 1920 dated 25.02.1920

2 See Section 6.

3 Ian F. Fletcher, The Law of Insolvency. 4th edition, Sweet and Maxwell.

4 Kazim Ali Shah v. United Bank Limited 1988 CLC 913. As per Abaid Ullah Khan, J.