

INSOLVENCY CASE. 58 of 2024 (CIS No.58/2024)

CNR NO. WBSP01-004161-2024

Present: Sri Subhra Som Ghosal (J.O Code: WB00984)

Order no. 02, dated 05-04-2024

The record is put up today by a petition praying for passing necessary order in respect of the application filed by the creditor/petitioner under section 5 read with section 5 of the Provincial Insolvency Act, 1920. It appears from the order sheet that the case has been filed on 28-03-2024 and summons is yet to be issued.

At the time of hearing, it has been submitted by the Ld. Advocate for the creditor / petitioner that debtor / OP-1 executed a promissory note on 12-02-2023 in favour of the creditor/petitioner and received a sum of Rs.1,95,000/- as an accommodation loan without interest with a promise to repay the amount on demand before his retirement i.e. on 31-03-2024. The photocopy of the said promissory note has been annexed with the application. As on repeated demands, the debtor / OP-1 failed to pay the amount, the creditor / petitioner filed this case for realization of the amount.

By filing a petition under section 5 of the Act, it has been submitted that the said debtor / OP-1 has retired from his service on 31-03-2024 and therefore prayed to pass necessary direction upon the Disbursing Authority i.e. **THE DEPUTY GENERAL MANAGER, Pay Roll, Treasury Officer, C.E.S.C. Ltd., Victoria House, Chowringhee Square, Kolkata-700001** under whom the debtor / OP-1 namely **Apal Dasgupta** is working for gain as Assistant Chief Meter Inspector, Employment I.D Card No.304418, Designation – Assistant Chief Meter Inspector, EPS No.-WB/933/P10990, PAN No.ACNPD1468J at the office of the Deputy General Manager Meter Inspection Section, Commercial Department, C.E.S.C. Home, Chowringhee Square, P.O-Dharmatalla, P.S-Hare Street, Kolkata-700001 for withholding a sum of 1,95,000/- out of salary arrears, commutation money, leave wages, exgratia in lieu of bonus and other retirement benefit till further order. It has been submitted further that until and unless the direction of withholding the amount is given to the Disbursing Authority, the filing of the case will be infructuous. Be it mentioned here that the petition filed under section 5 of the Act has been filed supported with affidavit.

At this stage I must hasten to add that the prayer of the petitioner cannot be allowed in its present form as in view of the provisions of clause (g) to Section 60(1) of Code of Civil Procedure the pension and gratuity amounts of a retired employee cannot be attached. I am emboldened to hold this in view of the decision of the Hon'ble Supreme Court in the case of **Radhey Shyam Gupta Vs. Punjab National Bank** reported in **(2009) 1 SCC 376**, wherein it has been held by the Hon'ble Supreme Court that the pension and gratuity of the petitioner cannot be attached and

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cannot be withheld for appropriation of a decree of any Civil Court. However after hearing the Ld. Advocate for the creditor / petitioner and after going through the materials of the case record and section 5 of the Act I find a prima facie case in favour of the petitioner/ creditor and as the debtor / OP-1 has retired on 31.03.2024, I am of the opinion that for protection of the interest of the creditor / petitioner, a direction is required to be passed.

Accordingly, the Disbursing Authority i.e. **THE DEPUTY GENERAL MANAGER, Pay Roll, Treasury Officer, C.E.S.C. Ltd., Victoria House, Chowringhee Square, Kolkata-700001** under whom the opposite party No. 01 namely **Apal Dasgupta** is working for gain as Assistant Chief Meter Inspector, Employment I.D Card No.304418, Designation – Assistant Chief Meter Inspector, EPS No..-WB/933/P10990, PAN No.ACNPD1468J at the office of the Deputy General Manager Meter Inspection Section, Commercial Department, C.E.S.C. Home, Chowringhee Square, P.O-Dharmatalla, P.S-Hare Street, Kolkata-700001, is directed to withhold a sum of Rs.1,95,000/-if not already disbursed, from payment towards encasement of leave, arrears of salary, commutation money, leave wages, exgratia in lieu of bonus if any; of the debtor / OP namely **Apal Dasgupta** until further order.

Let a copy of this order be sent to the **THE DEPUTY GENERAL MANAGER, Pay Roll, Treasury Officer, C.E.S.C. Ltd., Victoria House, Chowringhee Square, Kolkata-700001** for necessary compliance and to file a report to that effect.

Requisite at once.

To date (12.04.2024) for awaiting report and S/R and A/D.

Dictated and corrected by me.

Sd/-Subhra Som Ghosal
Additional District Judge
01st Court, Alipore,
South 24-Parganas.

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Additional District Judge
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South 24-Parganas.