

INSOLVENCY CASE. 81 of 2024 (CIS No.81/2024)

CNR NO. WBSP01-006051-2024

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

Order no. 02, dated 14-05-2024.

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 of Provincial Insolvency Act, 1920. It appears from the order sheet that the case has been filed on 07-05-2024 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 22.03.2022 in favour of the creditor/petitioner and received a sum of Rs.2,00,000/- as an accommodation loan without any interest and the debtor / O.P -1 due to urgent needs of money again received another sum of Rs.2,30,000/- on 14.08.2022 by executing promissory note in favour of the Creditor/petitioner as an accommodation loan without any interest and altogether the debtor/ O.P-1 received a total sum of **Rs.4,30,000/- (Rupees Four Lakhs Thirty Thousand) only** with a promise to repay the amount before his retirement. 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 taken V.R.S from his service on 30.04.2024 and therefore prayed to pass necessary direction upon **the Adam Commandant, Class-1, Station Cell Kolkata, Ministry of Defence, H.Q, Bengal Area, 246, A.J.C, Bose Road, Alipore, Kolkata-700027** under whom the debtor / OP-1 namely **Manoj Kumar Gill, Son of Dutta Ram was working for gain as an employee of Station Cell, HQ BSA, Alipore Kolkata, Ministry of Defence, Designation / Rank – SC-492 C/S at 246, A.J.C Bose Road, Kolkata-700027, District South 24 Parganas** for withholding a sum of Rs.4,30,000/-- 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**

INSOLVENCY CASE. 81 of 2024 (CIS No.81/2024)

CNR NO. WBSP01-006051-2024

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

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 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 / O.P-1 has taken V.R.S from his service on 30.04.2024, 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 Adam Commandant, Class-1, Station Cell Kolkata, Ministry of Defence, H.Q, Bengal Area, 246, A.J.C, Bose Road, Alipore, Kolkata-700027** under whom the opposite party No. 01 namely **Manoj Kumar Gill, Son of Dutta Ram was working for gain as an employee of Station Cell, HQ BSA, Alipore Kolkata, Ministry of Defence, Designation / Rank – SC-492 C/S at 246, A.J.C Bose Road, Kolkata-700027, District South 24 Parganas** is directed to withhold a sum of Rs.4,30,000/--if already not disbursed, from payment towards encashment of leave, arrears of salary, commutation money, leave wages, exgratia in lieu of bonus if any; of the debtor / OP-1 namely **Manoj Kumar Gill** until further order.

Let a copy of this order be sent to **the Adam Commandant, Class-1, Station Cell Kolkata, Ministry of Defence, H.Q, Bengal Area, 246, A.J.C, Bose Road, Alipore, Kolkata-700027.**

Requisite at once.

To date (21.05.2024) 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.

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