performing their supervisory function and judicial review proceedings[27] and

(xxi) Considerations underlying the actions under review need a thorough scrutiny of the recorded reasons[28] and also set up precedents for future adjudications.

(7) The ratio in *Kranthi Associates Private Ltd*., case and the guidelines serve as a reference for all administrative and judicial (including quasi-judicial authorities) to exercise their powers of decision-making judiciously – judicial application of mind and the decisions rendered may receive public appreciation. It is suggested that the copy of the judgment may be circulated to all decision-making authorities which may ultimately contribute to transparency in all spheres of administration.

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WHETHER DECISION OF A.P. HIGH COURT IN GUNAPATI RADHA KRISHNA REDDY V. CHEEMALA VENKATA RAMANA IN CRP NO.327 OF 2010 (REPORTED IN 2010 (3) ALD 721) UNDER SECTION 9 OF INSOLVENCY ACT IS CORRECT IN VIEW OF THE DECISION OF SUPREME COURT IN STATE OF PUNJAB V. RATTAN SINGH, IN CIVIL APPEAL NO.6/ 1962 (REPORTED IN AIR 1964 SC 1223) ?

By

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(1) The point for consideration is "whether a creditor, who has not obtained a decree against a debtor or in case wherein the debtor has not made unequivocal admission of his debt in favour of the creditor, can file petition under Section 9 of Provincial Insolvency Act, to adjudge the debtor as insolvent ?

(2)(a) It was held in Para 6 of judgment in 2010 (3) ALD 721 "that before the creditor invokes the jurisdiction of the insolvency Court, there must exist the adjudication of the debt or debts against the proposed insolvent in his favour. That can be done in the form of a decree passed by the competent Court of civil jurisdiction or an unequivocal declaration on the part of the proposed insolvent, before the proceedings are initiated. To put it differently, a creditor cannot institute proceedings under Section 9 of the Act in the absence of any adjudication, as to the debts, or unequivocal admission thereof, by a person, proposed to be declared as insolvent" (Underling is mine).

(2)(b) The facts in that decision are that creditor has not filed suits on the promissory notes executed by the debtor in his favour. The debtor pleaded that the said promissory notes are not supported by consideration.

(2)(c) In view of those facts, it was held in Para 7 of that judgment "In a way the petitioner wanted to establish his claim under the promissory notes in the I.P. itself. Such a course is totally impermissible in law."

27. *Cullen v. Chief Constable of the Royal Ulster Constabulary*, (2003) 1 WLR P.1763 Para 7 and Page 1769.

28. *John T. Dunlop v. Walter BNachowki*, (1975) 44 Law Ed. P.377.

(2) (D) After quoting, Section 4 of the Act in Para 8 of that judgment, it was held "No where from the text of the section, it is evident that the insolvency Court is conferred with the power to determine the liability of a proposed insolvent towards the creditor. Such an adjudication is supposed to exist before the proceedings under the Act are initiated" (underlining is mines).

(2)(E) It was also held in Para 9 of that judgment that it is not at all the function of an insolvency Court to deal with the truth, legality or other matters, in relation to a promissory note.

(2)(F) In Para 10 of that judgment, it was held that creditor can pray for adjudication only if he makes an effort to recover the amount due to him and failed to do so due to inadequacy of properties of debtor. It was also therein held that filing of an Insolvency petition cannot be maiden effort on the part of a proclaimed creditor a and that an individual would answer the definition of creditor only – if the person against whom he claims rights, was declared as debtor. This naturally must take place in a different set of proceedings and not in the I.P. itself (underlining is mine).

3. In "*Kanshi Ram and others (Creditors) Appellants v. Jugal Kishore and another* (J.D. Rs – Respondents") (Reported in AIR 1933 Lah. 629) in which the debtors filed I.P. the creditors opposed the petition alleging that several of the debts mentioned by the debtor were fictitious and the debtor was in a position to pay his debts. The District Judge refused to take evidence of the creditors to prove the fictitious nature of the some of the debts of the debtor. It was held that the District Judge was not justified in refusing to examine any of the witnesses of creditors in support of their allegation that several of the debts were fictitious.

4. In *Manicka Nair v. Murugesa Goundan* (DB) (reported in 1947 (1) MLJ 50), it was held that admission of an insolvent that he owes a debt does not in itself constitute proof of the debt, although, the admission may be used against him, and that an insolvent might falsify his schedule of debts for ulterior purposes.

5. In "*The Central Bank of India, Ltd. v. Kaluva Chenchayya*" (Reported in 1964 (2) An.WR 75) quoting a portion of commentary in the Law of Insolvency in India" by Mulla, 2nd Edition at Page 405 which is as follows". "Just as the Court has power before making an order of adjudication to enquire into the consideration of the petitioning creditor's debt, so it has power to enquire into the consideration for the debts for the purposes of proof. For this purpose, the Insolvency Court, may go behind a judgment and Will enquire into the consideration for the debt, even if the debt was admitted by the insolvent in his statement of affairs or schedule, and even where he has consented to the judgment. Similarly, the Court may go behind a judgment obtained on a compromise, and refuse to admit a proof founded upon it, if the original claim was not *bona fide*, but was made for purposes of extortion. The Court has a right and duty to go behind any accounts stated or covenant or judgment and in the interests of other creditors get to the real character of the transaction and ascertain. Whether the debt on which proof is founded is a real debt".

The Court held that it is well settled that the scope of an enquiry by the Insolvency Court under Section 34 of the Act is very wide indeed and further held that even in a case where the liability of the insolvent is embodied in a decree, it is open to the Insolvency Court to enquire and go behind it and get to the real character of the transaction.

6(A) In "*State of Punjab (Appellants) v. Rattan Singh (Respondents)*" (Reported in AIR 1964 SC 1223). Our Supreme Court, referring to Section 4 of the Provincial

Insolvency Act in Para 22 of the said judgment held

> "It is well settled that the Insolvency Court can, both at the time of hearing the petition for adjudication of a person as an insolvent and subsequently at the stage of the proof of debts re-open the transaction on the basis of which the creditor he had secured the judgment of a Court against the debtor. This is based on the Principle that it is for the Insolvency Court to determine at the time of the hearing of the petition for Insolvency whether the alleged debtor does owe the debts mentioned by the creditor in the petition and whether, if he owes them, what is the extent of those debts. A debtor is not to be adjudged an insolvent unless he owes the debts equal to or more than a certain amount and has also committed an act of insolvency. It is the duty of the Insolvency Court therefore to determine itself the alleged debts owned by the debtor irrespective of whether those debts are based on a contract or under a decree of Court. At the stage of the proof of the debts, the debts to be proved by the creditor are scrutinized by the official Receiver or by the Court, in order to determine the amount of all the debts which the insolvent owes as his total assets will be utilised for the payment of his total debts and if any debt is wrongly included in his total debts, that Will adversely affect the interests of the creditors other than the judgment creditor in respect of that particular debt, as they were not parties to the suit in which the judgment debt was decreed. That decree is not binding on them and it is right that they be in a position to question the correctness of the judgment debt. It is on their behalf that the Insolvency Court or the official Receiver is to scrutinize the proof of debts to be proved and can even demand proof of the debts on which the judgment debt has been decreed. The decree is binding only on the parties. The debtor sought to be adjudged is bound by it and so is the creditor. But this binding effect of the decree is only to be respected by the Insolvency Court in circumstances where nothing is reasonably alleged against the correctness of the judgment debt. The Insolvency Court has the jurisdiction to re-open such debts and will do so ordinarily when such judgments have been obtained by fraud, collusion or in circumstances indicating that there might have been miscarriage of justice".

6(B) Again after quoting Section 4 of the Act our apex Court held in Para 24 "It is to be noticed that the Insolvency Court has full power to decide all questions of any nature whatsoever which arise in any insolvency case before it. It can also decide all questions which it may consider expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. Nothing could be more expedient or necessary for exercising its jurisdiction in adjudicating a person insolvent or in distributing the assets of the insolvent than to probe into the question of the genuineness of the debts said to be owed by the debtor. The decisions of the Insolvency Court in view of sub-section (2) of Section 4 are final and binding for all purposes despite what is contained in any other law for the time being in force. This finality and binding nature of the decisions for all purposes are between the debtor and the debtor's estate on the one hand (and ?) all claimants against him or it. The binding nature of such decisions is clearly not just between the individual creditor and the debtor but is between all the creditors on one side and the debtor and his estate on the other. The jurisdiction of the Insolvency Court is therefore much larger than that of any ordinary civil Court deciding a particular claim between the claimants and the other party."

6(C) It is held in Para 25 that the Court has to be provided with proof about the existence of the debt and its amount, even

though it is a judgment debt and in Para 27, it is held that it is the duty of the Insolvency Court and therefore clearly within its jurisdiction to require proof to its satisfaction of the debts sought to be proved at the stage of hearing of the insolvency petition or subsequent to the adjudication (Underlining is mine).

7. Therefore, in order to prove debts, either before or after adjudication, it is not necessary that either the debt must be decreed or the debtor must unequivocally admit it. The debt can be proved under Sections 33 and 49 of the Act otherwise than by way of decree or admission of debtor.

8. It appears that the decision reported in AIR 1964 SC 1223 was not brought to the notice of the Hon'ble Court at the time of hearing case in 2010 (3) ALD 721.

9. Hence, I humbly opine that the decision reported in 2010 (3) ALD 721 to the effect that Insolvency Court cannot decide the liability of debt in favour creditor and that a person cannot file creditor I.P. if he does not obtain decree or if the debtor denies the relationship of creditor and debtor before filing I.P. is not correct in view of the decision of apex Court reported in AIR 1964 SC 1223.

CONSUMER PROTECTION AND RIGHT TO INFORMATION**

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"Consumer is the king of market, if he is getting exploited than the market will be ruined."

In every moment of life, every individual is a consumer irrespective of his race, creed, religion, sex, age. Consumer Protection and right to information are now an integral part of the life of an individual and we all have made use of them at some or the other point in our daily routine. In the present era of Globalization, the role of consumer is very wider and relevant legislations should safeguard the interest of consumers.

Now it is universally accepted that the consumer has a right to be provided with all relevant information in order to avoid exploitation and made a considered choice in availing of products and services. The Consumer Protection Act, 1986 provides the meaning of "consumer"[1].

The Act envisages the promotion and protection of the rights of consumers[2] namely 1. Right to Safety, 2. Right to be Informed, 3. Right to Choose, 4. Right to be Heard, 5. Right to Seek Redressal, 6. Right to Consumer Education.

Thus, the concern of consumer protection is to ensure fair trade practices, quality of goods and efficient services with information to the consumer with regard to quality, quantity, potency, composition and price for

** This is Modified Paper by *V.G. Ranganath* working as Faculty Member, IFHE University, Hyderabad and Research Scholar (part-time), Dr. B.R. Ambedkar College of Law, Andhra University, Visakhapatnam and presented in National Seminar on "Consumer Protection and Welfare" organized by Dr. B.R. Ambedkar College of Law, Andhra University, Visakhapatnam and Indian Institute of Public Administration, New Delhi and presented a paper entitled "Consumer Rights and Right to Information".

1. See Section 2(d) of the Consumer Protection Act, 1986.
2. See Sections 6, 7 and 8 of the Act