Application (IP) No.240 of 2012

in

I.P.No.74 of 2005

R.SUBBIAH, J

This petition has been filed under Order II Rule 1 of Insolvency Rules read with Section 38 of the Presidency Towns of Insolvency Act, seeking an unconditional discharge to the applicant / insolvent.

2. The applicants have been adjudicated as an insolvent on his own petition, by an order dated 16.06.2005. Subsequent to the order of declaration declaring them as an insolvent, they filed their schedule of affairs dated 13.07.2005 disclosing the liabilities to 17 creditors including one secured creditor, namely HDFC Bank Ltd, T.Nagar, Chennai, to the extent of Rs.27,74,015/-

3. After service of notice of adjudication to all the creditors, the insolvency petition was filed for public examination. Notice to all the creditors was sent and public examination of the insolvent was completed on 23.12.2009. Notices were sent to all 17 creditors on 19.08.2015 and also by Registered post with

Acknowledgement due on 02.01.2013 So far, four creditors have filed their claims before the Official Assignee for a sum of Rs.4,60,000/-, including one secured claim filed by HDFC Bank Ltd., T.Nagar, Chennai-17 for a sum of Rs.9,369/- against the vehicle. In this estate, the amount available is as Rs.18,751/-. Hence, notice in this application in A.No.240 of 2012 was sent to 17 creditors on 30.07.2012 by registered post with acknowledgement due, in which, 12 notices were served and acknowledgements were received. Eight notices were returned unserved. But, none of the creditors have sent their objection against the discharge till date.

4. The Official Assignee, in his report, has raised an objection stating that in the event of admission of four claims for Rs.4,60,000/-, no dividend is possible from Rs.9,382/- It is lesser than that of 25 paise in a rupee. The insolvency estate is not in a position to provide a dividend of 25 paise in a rupee as provided under Section 39(2)(a) of Presidency Towns Insolvency Act, 1909, which is a pre requisite for granting a discharge.

5. The objections raised by the official assignee against the grant of absolute discharge are directly dealt with by this Court in the judgments reported in **AIR (30) 1943 Madras 26 (DB)**

(C.D.Desikachari v. Official Receiver, Chingleput and another) and 1995 LW page 442 (T.P.Kunhiraman, Proprietor, International Typewriter Emporium v. the Official Assignee, Madras).

6. The principles laid down by our High Court in the judgments referred to above are that --

> (i) The proceedings in insolvency shall be dealt with as expeditiously as possible and the creditors shall be satisfied as expeditiously as possible from the property of the insolvent and that the insolvent shall then be free to start life again unburdened by his debts.
>
> (ii) The law of bankruptcy does not expect that the debtor should always be the slave of the creditors, but he has to be released at the appropriate time by taking into consideration several factors referred to in Section 39 of the Presidency Towns Insolvency Act.
>
> (iii) It is the discretion of the court to refuse discharge or suspend discharge for a specified time or grant conditional discharge, having regard to totality of all the factors enumerated in Section 39(2).
>
> (iv) The absolute order of discharge does not put an end to the administration of the insolvent's property.

(v) It is for the Court to decide whether the property should, even after annulment of adjudication, continue to vest with the official receiver or not. Whether the administration of the particular insolvency is brought to an end by the Court's order of granting the absolute order of discharge and is depending upon the nature of the order made.

(vi) Once there is an unconditional absolute order of discharge, the official receiver has no longer power to bring any of the properties of the ex-insolvent to sale and any dealing of the property by the official receiver in a given situation is against law and is liable to be set aside.

The relief sought for herein, if viewed in the light of the principles drawn from the authorities cited above, the same would compel this Court to grant the relief as sought for herein.

7. Here is the case wherein the report of the official assignee is to the effect that nothing remains to be done on the part of the debtors insolvent and the insolvent did not commit any act which dis-entitle him to seek any order of discharge. Most of the creditors are not interested in making any claim till date. The four creditors whose claims are pending disposal before the official

assignee is likely to get dividend of one paise in a rupee. The relevant provisions of law does not lay down that until the dividend available is minimum 25 paise in one rupee to be paid to the creditor, no order of discharge can be sought for.

8. That being so, this Court, by applying the views of this Court in the earliest judgments referred to above, is inclined to relieve this stigma attached to the insolvent and unconditionally discharge the insolvent to lead afresh life unburdened by his debts.

9. The application is hence, ordered as prayed for.

23.02.2015

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