**Application (IP) No.34 of 2015**

**in**

**I.P.No.4 of 2009**

**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 applicant has been adjudicated as an insolvent on his own petition, by an order dated 22.01.2009. Subsequent to the order of declaration declaring him as an insolvent, he filed his schedule of affairs dated 21.04.2009 disclosing the liabilities to unsecured creditors to the extent of Rs.4,68,71,143/-, property for Rs.1,20,05,000/- and thus, leaving a deficiency of Rs.3,48,66,143/-.

3.Public Examination of the insolvent was commenced on 03.08.2011 and completed on 21.09.2011. Claim Notices were sent to all eight creditors on 21.11.2013. The insolvent has disclosed in his schedule of affairs house property at No.4A, Ganga Nagar, Jafferkhanpet, Chennai, to the extent of 1265 sq.ft and the house property was mortgaged with the Federal Bank, Mylapore Branch, Chennai. The said property was sold for a sum of Rs.86 lakhs and the sale was confirmed by this Court by order dated 14.02.2001 in Application No.20/2011. So far, 12 claims were received from the creditors for a sum of Rs.81,00,387/-, out of which 8 claims were admitted for Rs.31,60,944/- and 4 claims were dismissed. Totally a sum of Rs.86,33,000/- was realised from the sale of immovable and movable properties. M/s.Federal Bank, Mylapore Branch, Chennai, has filed a secured claim for Rs.38,56,995/- in Claim No.15/2010 and the same was admitted for Rs.42,43,898/- and was paid on 28.03.2011. Now, a sum of Rs.22 lakhs is an available amount in the estate of the insolvent and after deducting all expenses including 7% Government Commission and after making a provision for Capital Gain Tax. Earlier, the applicant/insolvent had filed an application being A.No.155/2012, but the same was dismissed by this Court by order dated 15.02.2013.

4.In the present discharge application, notices were sent to 59 creditors on 11.02.2015 by registered post with acknowledgement due in which 26 notices were served and acknowledgements were received. Seven notices were returned with postal endorsement as 'No

Such Person. Five notices were returned with postal endorsement as 'Left'. One notice was returned as 'Unclaimed'. One notice was returned as 'Not Known'. One notice was returned as 'Insufficient Address'. Service of notices is awaited for the remaining 18 notices. But, none of the creditors have sent their objection against the discharge till date.

5.The Official Assignee, in his report, has raised an objection stating that from the available amount of Rs.22 lakhs, a dividend at the rate of 0.69 paise can be paid. 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.

6.The objections raised by the official assignee against the grant of absolute discharge are directly dealt with by our High 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)**.

7.The principles laid down by our High Court in the judgments referred to above are as follows_

(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.

8.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 debtor 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 creditors, whose claim is pending disposal before the Official Assignee are likely to get dividend of 0.69 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.

9. That being so, this Court, by applying the views of our High 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.

10.Hence, the application is ordered as prayed for.

**02.03.2015**

ssv

**R.SUBBIAH, J.**

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**DATED: 02.03.2015**