

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

FRIDAY, THE 28TH DAY OF JULY, 2017

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

APPLN.NO.77 OF 2017

IN

IP. NO.142 OF 2009

I.P. No.142 of 2009:-

In the matter of the Presidency
Towns Insolvency Act, III of
1909 and In the matter of
Nizar Ahemed
... Petitioner/Debtor

A.L.Nizar Ahemed,
S/o.A.L.Hakeem,
No.7, Venkata Maisthry Street,
2nd Floor, Chennai 600 001. ... Petitioner/Debtor

Appln. No.77 of 2017

A.L.Nizar Ahemed,
S/o.A.L.Hakeem,
No.60/44, Venkata Maisthry Street,
2nd Floor, Chennai 600 001. ... Applicant/Insolvent

-Versus-

The Official Assignee,
High Court, Madras - 104. ... Respondent/Respondent

Application praying that this Hon'ble Court be pleased
to grant unconditional discharge to the applicant.

On the application of A.L.Nizar Ahemed, S/o.A.L.Hakeem,
No.60/44, Venkata Maisthry Street, 2nd Floor, Chennai 600
001 adjudged as insolvent on 19th day of November 2009
and upon taking into consideration of the report of the
Official Assignee as to the insolvent's conduct and affairs

and upon hearing the Official Assignee and Mr.J.Balagopal,
advocate for the Applicant / Insolvent.

And whereas it has not been proved that the insolvent has committed any act constituting an offence under Section 421-424 of the Indian Penal Code or under the Presidency Towns Insolvency Act 1909 and proof has not been made of any of the facts and circumstances mentioned in sub section (2) of Section 39 or Section 44 of the said act, or that the insolvent has been guilty of any misconduct in relation to his affairs, **it is ordered:-**

That A.L.Nizar Ahemed,, the insolvent herein be and is hereby discharged unconditionally from all debts provable in this insolvency except such as are mentioned in sub-section(1) of Section 45 of the Act aforesaid.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 28TH DAY OF JULY 2017.

sd/-

ASSISTANT REGISTRAR(O.S.I)

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2017

MANAGER
INSOLVENCY OFFICE

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cns-22.08.2017

HIGH COURT, MADRAS

APPLN.No.77 OF 2017
IN

I.P.NO.142 OF 2009

THE HON'BLE MR.JUSTICE
C.V.KARTHIKEYAN

DECREE DATED:28.07.2017

FOR APPROVAL: 28/08/2017

APPROVED ON : 28/08/2017

COPY TO:-

THE OFFICIAL ASSIGNEE

HIGH COURT, MADRAS.

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The Official Assignee,
High Court, Madras - 104. ... Respondent/Respondent

Application praying that this Hon'ble Court be pleased
to grant unconditional discharge to the applicant.

The above application coming on this day before this
court for hearing in the presence of Mr.J.Balagopal,
Advocate for the Applicant/Insolvent and the Official
Assignee of this court, the respondent herein, and upon

reading the Judges Summon and Affidavit of A.L.Nizar Ahemed filed herein, and the report of Official Assignee dated 06.07.2017 filed herein;

The Court made the following order:-

This petition has been filed under Order II Rule 1 of the Insolvency Rules, 1958 read with Section 38 of the Presidency Towns of Insolvency Act, seeking to grant an unconditional discharge to the applicant / insolvent.

2.The applicant has been adjudicated as an insolvent on his own petition, by an order dated 19.11.2009. Subsequent to the order of declaration declaring him as an insolvent, he filed his schedule of affairs disclosing the liabilities to unsecured creditors to the extent of Rs.8,87,055/-.

3.After service of notice of adjudication to all the creditors, the insolvency petition was posted for public examination. Notice to all the creditors was sent and public examination of the insolvent was held on 08.02.2017 and completed on 08.02.2017. Notices were sent to all creditors to attend a creditor meeting. The creditors have filed claims before the Official Assignee for the debt provable in insolvency of a total sum of Rs.7,58,410/-. Discharge notices were sent to the Creditors who have proved the debt / or filed claim petition before the Office of the Official Assignee to their last known address, out of which, two notices were served; one notice returned

unserved and awaiting service for the remaining one notice. It is the contention of the learned Official Assignee that in the event of admission of two claims for Rs.7,58,410/- from out of the amount available in the estate, no paise could be given to the unsecured creditors, who have filed their claims.

4. 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 1943 Madras 26 (DB) (C.D.Desikachari Vs. Official Receiver, Chingleput and another)** and **1995 LW 442 (T.P.Kunhiraman, Proprietor, International Typewriter Emporium Vs. the Official Assignee, Madras)**.

5. The principles laid down by this 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.

(i) The proceedings in insolvency shall be dealt with as expeditiously as possible and

(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.

6. 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. In view of the principles laid down in the above said decisions, this application stands allowed.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 28TH DAY OF JULY 2017.

sd/-
ASSISTANT REGISTRAR(O.S.I)

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