IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

FRIDAY, THE 13TH DAY OF JULY 2018
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
APPLN. NO.316 of 2017
in
I.P. No.77 of 2002
AND
APPLN. NO 317 of 2017
in
I.P. No.134 of 2002
AND
I.P.D.NO.115 OF 2018
IN
IP.NOS.77 & 134 OF 2002

I.P. No.77 of 2002:-

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of T.L.V.Estates and others ... Debtors

Jayesh N. Parekh,
residing at No.28,
Mookkathal Street,
Chennai-600 007. ... Petitioning Creditor

-Versus-

1. M/s.T.L.V.Estates,
   carrying on business at
   No.142/9, Purasawakkam High Road,
   Akshaya Flat Basement, Chennai-600 010.

2. Mrs.T.R.Bhuvaneswari,
   residing at No.142/9, Purasawakkam High Road,
   Akshaya Flat Basement, Chennai-600 010.

3. Murugan,
   residing at No.G-103, 9th Street,
   Behind Chinthamani, Anna Nagar East,
   Chennai.

4. T.R.Srinivasan,
   residing at No.G-103, 9th Street,
   Behind Chinthamani,
   Anna Nagar East, Chennai. ... Debtors

(2nd Debtor representing herself and
the estate of the deceased Ranganathan
and Debtors 3 & 4 representing the
estate of the deceased Ranganathan)

Appln. No.316 of 2017

Mrs.T.R.Bhuvaneswari,
180-A, First Floor, 3rd Main Road,
Natesan Nagar,
Virugambakkam,
Chennai 600 092. ... Applicant/2nd Respondent/Insolvent

- vs -

1.Jayesh N. Parekh,
No.28, Mookkathal Street,
Chennai-600 007. ... 1st Respondent/ Petitioning Creditor

2.The Official Assignee,
High Court, Madras. ... 2nd Respondent

Application No.316 of 2017 praying that this Hon'ble Court be pleased to discharge from the above insolvency proceedings in I.P.No.77 of 2002.

IP.NO.134 OF 2002

In the matter of the Presidency Towns Insolvency Act III of 1909 and In the matter of T.R. Bhuvaneswari ... Debtor

G.R. Bansal
carrying on business at
No.17, Rajarathinam Street,
Chennai - 600 010. ... Petitioning Creditor

-VS-

Mrs. T.R. Bhuvaneswari
Carrying on business at No.142/9,
Akshaya Flat Basement,
Purasawakkam High Road,
Chennai - 600 010
residing at No.G-103, 9th Street,
Behind Chinthamani,
Anna Nagar East, Chennai. ... Debtor

Appln. No.317 of 2017

Mrs.T.R.Bhuvaneswari,
180-A, First Floor, 3rd Main Road,
Natesan Nagar,

Virugambakkam,
Chennai 600 092. ... Applicant/2nd Respondent/Insolvent

- vs -

1.G.R.Bansal,
S/o.R.L.Bansal,
Carrying on business at
No.17, Rajarathinam Street,
Chennai-600 010. ... 1st Respondent/
Petitioning Creditor

2.The Official Assignee,
High Court, Madras. ... 2nd Respondent

Application No.317 of 2017 praying that this Hon'ble Court be pleased to discharge from the above insolvency proceedings in I.P.No.134 of 2002.

XX APPLN.D.NO.115 OF 2018
IN
IP.NOS.77 & 134 OF 2002

Application D.No.115 of 2018, Report of the Official Assignee praying that this Hon'ble Court be pleased to permit the Official Assignee to declare the dividend of Rs.1,37,494.25p. to two claimants viz., J.Yasoda and K.S.RadhaBai respectively. XX

The above applications coming on this day before this Court for hearing in the presence of Mr.P.L.Narayanan, advocate for the Applicant/2nd Respondent/Insolvent in both Applications; Mr.T.Srikanth, advocate for the 1st Respondent/Petitioning Creditor in both Applications, Mr.J.Balachander, advocate for the Official Assignee, the 2nd respondent in both Applications; and Mr.M.Swaminathan,

Standing Counsel for Income Tax; and upon reading the Judges Summon and common affidavit of T.R.Bhuvaneswari, filed herein and the Counter Affidavit of Jayesh N.Parekh filed in Appln.No.316 of 2017 and the report of the Official Assignee filed in Appln.D.No.115 of 2018,

THE COURT MADE THE FOLLOWING ORDER :

These applications by the Insolvent have been filed seeking discharge.

2. The report of the Official Assignee shows that after deducting all the payments to be made by the Official Assignee as well as the reserves made for future Income Tax liabilities, there is a surplus of about **XX Rs.5,77,31.364/- XX** in the estate. In view of the fact that the estate is actually a surplus estate there cannot be any reason to continue the insolvency proceedings. Hence, the insolvent is discharged.

3. Along with the affidavit filed in support of the Application in Appln. No.316 of 2017, the insolvent has given a list of creditors who are to be paid certain amounts by the Official Assignee. There are 3 lists appended to the affidavit.

4. The 1st list contains about 56 creditors to whom

the amount payable is shown as Rs.62,17,158/-. It is stated that the claim of one Mrs.Yeshoda in Claim No.41 of 2015 was admitted subsequently to the tune of Rs.40,000/-. The Official Assignee has made a reserve of Rs.37,494/- towards the said claim. Therefore, the money payable to the creditors in list 1 work out to Rs.62,19,664/-. The Official Assignee shall send creditor summons to the respective creditors in the list 1 annexed to the affidavit and J.Yeshodha whose claim has been admitted to the tune of Rs.40,000/- and make payment of amount specified in the list 1 to the creditors directly.

XX 4a.It is submitted that one claim being Claim No.163 of 2008 was omitted to be included in List 1. The Official Assignee is directed to include the said claim in List 1 and issue a cheque in favour of the creditor in the said claim also.

4b.It is made clear that all cheques in favour of the claimants in List 1 shall be issued to Mr.T.Srikanth, learned counsel appearing for the claimants. The receipt of Cheques by Mr.T.Srikanth will constitute a full discharge of duty of the Official Assignee to the creditors found List 1.XX

5. List 2 appended to the affidavit contains of

about 146 creditors to whom the total sum of Rs.12,23,622/- is payable. As per the understanding reached between these 146 creditors and the Insolvent the creditors agreed to take payment from the Insolvent directly.

6. List 3 contains a list of about 121 creditors. The total amount payable to them is Rs.9,95,514/-. Insofar as these creditors are concerned their claims have been settled by the Official Assignee paying them with 6% interest. The difference is due to the claim for contractual interest since the estate is found to be in surplus. The Official Assignee shall also make payment of the said sum of Rs.9,95,514/- to the creditors found in the list 3.

7. The payments to the creditors shall be made by the Official Assignee by issuing creditor summons. It is not in dispute that these amounts were reserved by the Official Assignee while calculating the amount available in the estate. **XXX The amount that is reserved for payment of Income Tax viz., a sum of Rs.3,02,27,764/-, out of the said amount, a sum of Rs.2,42,27,764/-, which is kept in deposit, XXX** is for payment of interest due on Income Tax which is subject matter of SLP before the Hon'ble Supreme Court, the same has been kept in separate fixed deposit.

8. Now that the insolvent has been discharged, the

interest that accrues to that deposit shall be paid to the Insolvent on maturity by the Bank on quarterly basis.

9. The said deposit shall be renewed till the Hon'ble Supreme Court decides the question of law relating to payment of interest. Now that the insolvent has been discharged and the question of payment of interest under Section 234 A, B, C pending before the Hon'ble Supreme Court. It is for the insolvent to prosecute the proceedings, it is made clear that no further civil or criminal liability could be attached to the Official Assignee in respect of done or to be done regarding payment of Income Tax.

10. It is also stated that the insolvent has been adjudicated in other IPs also and those creditors have been settled in this IP. In view of the same the Insolvent will stand discharged in those IPs also. The disbursement of amount to the creditors shall be made within three weeks and surplus amount shall be made within three weeks.

XX 10.a.It is also made clear that the Official Assignee after paying the creditors as per the list annexed and after setting apart the amounts which are reserved for payment of Income tax and other liabilities shall pay he balance amount to the Insolvent (Discharged). Even though

the insolvent has been discharged on 13.07.2018, the Official Assignee is permitted to file Income tax returns for the Assessment Year 2018-19 within the time allowed by the department.

10.B.The time granted for disbursal of the amounts to the creditors is extended by three more weeks. XX

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 13TH DAY OF JULY 2018.

SD/-(01/08/2018)
ASSISTANT REGISTRAR(O.S.I)

XX ORDER PORTION CORRECTED AS PER ORDER DATED 11.08.2018 MADE IN APPLN. NOS.316/2017 IN IP. NO.77/2002 & 317/2017 IN IP.NO.134/2002 & APPLN. D.NO. 115/2018 IN IP. NOS.77 & 134/2002 BY RSMJ XX

sd/-(23/08/2018)(I/C)
ASSISTANT REGISTRAR(O.S.I)

XXX ORDER PORTION CORRECTED AS PER ORDER DATED 07.09.2018 MADE IN APPLN. NOS.316/2017 IN IP. NO.77/2002 & 317/2017 IN IP.NO.134/2002 BY RSMJ XXX

sd/-(17/09/2018)(I/C)
ASSISTANT REGISTRAR(O.S.I)

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2018

MANAGER

INSOLVENCY OFFICE

cns 21.08.2018

HIGH COURT, MADRAS

APPLN. No.316 of 2017
IN
I.P.NO.77 of 2002
and
APPLN. No.317 of 2017
IN
I.P.NO.134 of 2002
AND
I.P.D.NO.115 OF 2018
IN
IP.NOS.77 & 134 OF 2002

THE HON'BLE MR.JUSTICE

R.SUBRAMANIAN

ORDER : 13.07.2018 /

CORRECTED ORDERS DATED:
11.08.2018 / 07.09.2018

FOR APPROVAL: 01/08/2018

APPROVED ON : 01/08/2018

COPY TO:-

The Official Assignee,
High Court, Madras.