IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION

DISCHARGE APPLICATION NO. 2 OF 2018
IN
INSOLVENCY PETITION NO. 182 OF 2004

Shreeniwas Heeralal Agarwal & Anr. ... Applicants/Insolvents

In the matter between
Shreeniwas Heeralal Agarwal & Anr. ... Debtors
Ex-parte :
SICOM Limited ... Petitioning Creditor
And
Small Industries Dept. Bank of India & Ors. ... Other Creditors

Mr. Simit Purohit a/w Mr. Gauraj Shah a/w Amir Ali Shaikh for the Applicants.
Mr. M.D. Narvekar, Official Assignee, present.
Mr. E.B. Shivkumar, Deputy Official Assignee, present.

CORAM : R.I. CHAGLA, J.
DATED : 20th AUGUST, 2019.

P.C. :

1 This application has been filed for discharge of the Applicants who were adjudged as Insolvents from insolvency. In view of my order passed today in Discharge Application No.1 of 2018, Applicant No.1 has

been discharged from Insolvency. Therefore, it would be necessary to only consider the Discharge Application of Applicant No.2.

2 Applicant No.2 is the wife of Applicant No.1. In fact the Applicant No.2's case is on higher footing than the Applicant No.1 in the above mentioned Discharge Application as the present Discharge Application of Applicant No.2 is unopposed. The Applicant No.2 was like Applicant No.1, a guarantor in respect of the loan granted by Sicom Limited, the Petitioning Creditor. The Companies i.e. Chemox Chemical Industries Limited and Chemox Laboratories Limited are public limited Companies who had taken loan from the financial Institutions and banks which are the Petitioning Creditor and the Creditors in the Discharge Application. Since the said companies were facing severe financial problems due to the financial situation in the international markets as well as internal problems, they could not repay the institutions and bankers the amounts borrowed from them.

3 The Applicant No.2 whom this Court is concerned with, was not a Director of the said Companies. It is stated by the Applicant No.2 that as wife of Applicant No.1, the Applicant No.2 had given her guarantee of repayment. The Petitioning Creditor had filed a Miscellaneous Petition No.51 of 2000 against interalia Applicant No.2 in her capacity as guarantor

for recovery of the amounts which had been unpaid. Pursuant to decree obtained, the Petitioning Creditor No.1 issued insolvency notice dated 28.06.2004 against the Applicants and for non-compliance with the insolvency notice, Petitioning Creditor No.1 filed Insolvency Petition No.182 of 2004 wherein the Applicants were adjudged as insolvents on 15.03.2005. It is stated that the private examination was commenced on 12.09.2005 and closed on 16.01.2012 by the Official Assignee. Thereafter, the public examination was conducted by the Insolvency Registrar which commenced on 13.07.2015 and closed on 17.10.2016. The Petitioning Creditor had not put any questions during the public examination. It is stated that the said companies viz. Cemox International Limited had been defunct since 1997 and Cemox Chemical Industries Limited has gone into liquidation. The prior Insolvency Petition No.138 of 2004 has been referred to in the Discharge Application wherein the Applicant No.1 had been adjudged as an insolvent vide order dated 19.07.2005. It is in these proceedings that by a separate judgment passed today, the Applicant No.1 has been discharged from insolvency.

4 The learned Counsel for the present Applicant No.2 states that due to the old age as well as illness suffered by the Applicant No.2 and considering that the insolvency proceedings have been going on since 2004, i.e. over 15 years, the Applicant be discharged from insolvency. He

further states that the Applicant has co-operated with the Official Assignee as well as with the Insolvency Registrar during the private and public examination and have duly comply with all her obligations.

5 Having considered the Application, the Official Assignee Report must be considered. The Official Assignee in the Report dated 08.02.2019 has opined that the facts mentioned in Sub-sections (a) and (e) of Section 39(2) of the Presidency Towns Insolvency Act, 1909 (for short 'the said Act') exists. The Report records that the insolvents claim that they have disclosed all their properties, estate and effects and the Official Assignee being satisfied, has closed the public examination on 17.10.2016. It has, therefore, been found that the insolvents are not having any assets of the value equal to 4 annas in a rupee Thus, the Official Assignee has in the said report submitted to the orders of this Court.

6 Considering that there is no opposition to Discharge Application and taking into account the report of the Official Assignee as well as the findings in my order in Discharge Application No.1 of 2018, a necessary finding will have to be arrived at that the Applicant No.2 has satisfied the Court that under Sub-Section 2(a) of Section 39 the assets are not being of a value equal to four annas in the rupee has arisen from

circumstances for which he cannot justly be held responsible. The Insolvent has been able to make out a sufficient case for discharge from Insolvency under Sections 38 and 39 of the said Act. The Petitioning Creditor has failed to establish any of the cases in which the Court must refuse an absolute discharge under Section 39 of the said Act. Thus, it would be appropriate to make the Discharge Application absolute by granting prayer clause (a).

7 The Discharge Application is disposed of in the above terms.

(R.I. CHAGLA, J.)