A.No.250 of 2018
in I.P.No.52 of 2009

PUSHPA SATHYANARAYANA, J.

This application is filed under Section 38 of the Presidency Towns Insolvency Act, 1909 seeking discharge unconditionally from the insolvency proceedings, pursuant to the order of adjudication dated 26.03.2009.

2. The applicant/debtor had been adjudicated as an insolvent in his own petition by the order dated 26.03.2009. The applicant filed schedule of affairs on 17.03.2009 listing out 25 unsecured creditors who have to be repaid loan amount running to Rs.38,48,481.67 p. There was one secured creditor who had to be settled a sum of Rs.93,396/-. The applicant handed over his estate worth Rs.83,000/- to the Official Assignee.

3. The Official Assignee in the report dated 18.01.2019 has stated that they only questioned the insolvent concerning his affairs and the causes of his failure and no other creditor questioned his conduct. It is also stated that claim notices have been sent to all the creditors and only two of the unsecured creditors filed claims to the tune of Rs.14,99,462/-, which are pending for enquiry. It is stated in

the said report that the secured creditor, i.e., HDFC Bank Limited, Thiruvanmiyur, sold the secured asset for a sum of Rs.80,000/- and still there is a shortfall of Rs.60,809.17p. However, they have not chosen to file any claim petition with the Official Assignee. The Official Assignee in the said report further stated that pursuant to the order of this Court dated 03.10.2018, discharge notices were sent to all the 25 unsecured creditors to their last known addresses, wherein, 4 notices were served and 13 notices were returned unserved and with respect to 9 notices service was awaiting. As on the date, none of the creditors have opposed the discharge petition, as contemplated under Order VIII, Rule 7 of the Insolvency Rules. It is further stated that consequent to the order dated 26.11.2018 some more unsecured creditors were served. Further, the learned Official Assignee stated in the report dated 18.01.2019 that a sum of Rs.1,19,813/- has been realized from the surrender value of three LIC policies and also from the sale of the household articles.

4. In the report dated 08.02.2019, it is stated by the Official Assignee that there were two claims to the tune of Rs.14,99,462/- one from the CITI Bank for a sum of Rs.7,12,094.96p. and the another from ICICI Bank Limited for a sum of Rs.7,87,368/- and those two

claims have been dismissed for non-production of the original documents. A perusal of the Additional Report of the Official Assignee reveals that out of the two unsecured creditors, Axis Bank was served and notice sent to the M/s.ABN AMRO Bank, New Delhi, was returned unserved and so far there is no claim made by M/s.ABN AMRO Bank.

5. The applicant owes a sum of Rs.1,76,098/- to Axis Bank, which he admitted in the schedule of affairs. However, the Official Assignee submitted in her report dated 12.07.2019 that a sum of Rs.1,39,716/- alone is available as on that date for disbursement.

6. Excepting the above referred instance, for which, the monies is with the Official Assignee, there is nothing that remains to be done on the part of the debtor/insolvent and he also had not committed any act, which would disentitle him to seek any order of discharge. As stated earlier, none of the other unsecured creditors, despite notices have responded to the same.

7. At this stage, it is relevant to note that this Court in **N.M.Rajesh V. The Official Assignee, High Court, Madras, (2014) 6 CTC 423,** following the earlier judgments in **C.D.Desikachari v.**

Official Receiver, Chingleput and another, AIR (30) 1943 Madras 26 (DB) and **T.P.Kunhiraman, Proprietor, International Typewriter Emporium v. the Official Assignee, Madras, 1995 LW page 442,** has culled out the principles for grant of absolute discharge of an insolvent:

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

8. Applying the above said principles, this Court is inclined to relieve the stigma attached to the insolvent and discharge the insolvent to lead a fresh life unburdened by his debts.

9. Accordingly, the Official Assignee is permitted to settle the claim of Axis Bank from and out of the sum of Rs.1,39,716/- against the outstanding amount of Rs.1,76,098/-, after deducting statutory charges/commissions, if any, in full quit.

10. In the result, the applicant is discharged and this Application is allowed.

06.08.2019

Index : Yes / No
Internet : Yes
Speaking Order

PUSHPA SATHYANARAYANA, J.

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