

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 25TH DAY OF NOVEMBER 2019

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

APPLN. No.149 of 2019

in

IP. No.37 of 2003

In the matter of the Presidency
Towns Insolvency Act, III of 1909
and In the matter of
P.Anthony Anandan

...Petitioner/Debtor

P.Anthony Anandan,
S/o.A.Packiam,
Residing at No.55,
4th Cross Road, 1st Floor,
M.K.B.Nagar,
Vyasarpadi,
Chennai 600 039.

... Petitioner/Debtor

Appln. No.149 of 2019

P.Anthony Anandan,
S/o.A.Packiam,
No.55, 4th Cross Road, 1st Floor,
M.K.B.Nagar,
Vyasarpadi,
Chennai 600 039.

... Applicant / Insolvent

-Versus-

The Official Assignee,
High Court,
Madras - 600 104.

... Respondent

Application praying that this Hon'ble Court be pleased
to discharge the applicant from the insolvency.

On the application of P.Anthony Anandan, S/o.A.Packiam, No.55, 4th Cross Road, 1st Floor, M.K.B.Nagar, Vyasarpadi, Chennai 600 039 adjudged as insolvent on 14th day of February 2003 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 of this Court herein and M/s.T.K.S.Bharathy Anandraj, advocate for the Applicant/Debtor herein; and the Judges Summon and affidavit of P.Anthony Anandan, herein; and the Reports of the Official Assignee dated 15.11.2019 & 22.11.2019 herein;

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 and the learned Official Assignee has got no objection in allowing this discharge application and

It is ordered:-

<https://hcservices.ecourts.gov.in/hcservices> That P.Anthony Anandan, S/o.A.Packiam, 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 THIRU AMRESHWAR PRATAP SAHI,
CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE
25TH DAY OF NOVEMBER 2019.

SD/-

ASSISTANT REGISTRAR(OS-I)

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DATED THIS THE DAY OF 2020

MANAGER
INSOLVENCY OFFICE

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HIGH COURT , MADRAS

APPLN. No.149 of 2019
in
I.P No.37 OF 2003

THE HON'BLE MRS.JUSTICE

PUSHPA SATHYANARAYANA

DECREE DATED: 25.11.2019

FOR APPROVAL: 03/01/2020

APPROVED ON : 03/01/2020

COPY TO:

THE OFFICIAL ASSIGNEE
HIGH COURT,MADRAS.

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... Applicant / Insolvent

-Versus-

The Official Assignee,
High Court,
Madras - 600 104.

... Respondent

Application praying that this Hon'ble Court be pleased
to discharge the applicant from the insolvency.

This above application coming on this day before this
court for hearing in the presence of M/s.T.K.S.Bharathy
Anandraj, advocate for the Applicant/Debtor and the

Official Assignee of this Court, the respondent herein; and upon reading the Judges Summon and Affidavit of P.Anthony Anandan, filed herein and the Reports of the Official Assignee dated 15.11.2019 & 22.11.2019 filed herein and

The Court made the following order:-

This application has been filed under Order II Rule 1 of Insolvency Rules read with Section 38 of the Presidency Towns of Insolvency Act, seeking an order to discharge the applicant/insolvent from the insolvency proceedings.

2.It is stated that all the claim petitions against the insolvent were withdrawn by the concerned creditors and they have also made endorsement before the learned Official Assignee. Therefore, the applicant/insolvent seeks to discharge him from the insolvency proceedings.

3.The learned Official Assignee has filed his reports dated 15.11.2019 and 22.11.2019, wherein, it is stated that the applicant has been adjudicated as an insolvent on his own petition, by an order dated 14.02.2003. Consequently, all the properties of the insolvent are vested with the learned Official Assignee for its realisation and distribution among the general body of creditors. The insolvent was running a pawn broker business and as he was unable to make payment of debt, he was adjudicated as Insolvent. The total liability of the insolvent as per the insolvency petition is Rs.31,51,000/-.

4.It is further stated in the reports that the insolvent has disclosed 23 unsecured creditors for a total sum of Rs.28,24,000/-, two secured creditors for a sum of Rs.3,27,000/-, four debtors for a total sum of Rs.1,96,500/-. Claim notices were sent to all the creditors and three unsecured creditors have filed their claim petitions for a total sum of Rs.2,05,000/- and all the claim petitions were dismissed as withdrawn. Further, a meeting of the creditors was held by the learned Official Assignee, which reveals that there is no immovable property standing in the name of the insolvent. The learned Official Assignee also furnished the list of 25 creditors including two secured creditors and notices of discharge were sent to them. There were three unsecured claims have been received and they were also dismissed as withdrawn by orders dated 28.06.2019, 10.06.2019 and 10.06.2019 in Claim Nos.597 of 2003, 598 of 2003 and 67 of 2004 respectively. The Insolvent has also deposited a sum of Rs.30,000/- (Rs.25,000/- towards Government Commission on 7% of the total claim filed before the Office of the Official Assignee and Rs.5,000/- as publication charges and administrative expenses) before the Official Assignee.

5.Learned counsel for the applicant has also placed reliance upon the order of this Court in **N.M.Rajesh Vs. The Official Assignee, High Court, Madras (2014 (6) CTC 423)**, wherein it has been held as under:

6. The principles laid down by our High 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.

(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.

6.The learned Official Assignee has got no objection in allowing this discharge application,

7.Considering the law laid down in the aforesaid decision and applying the same to the facts of the case, this Court is inclined to relieve the stigma attached to the insolvent and unconditionally discharge him.

8.The application is hence, ordered as prayed for.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI,
CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE
25TH DAY OF NOVEMBER 2019.

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ORDER DATED: 25.11.2019

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