

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 8TH DAY OF JULY 2019

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

APPLN. No.320 of 2018

in

IP. No.18 of 2015

I.P. No.18 of 2015

In the matter of Presidency
Towns Insolvency Act 1909

and

In the matter of B.Suresh

B.Suresh,
S/o.K.Bhuvanendiran,
No.1093, 33rd Cross Street,
Tiruvalluvar Nagar, Tiruvanmiyur,
Chennai-41.

... Petitioner / Debtor

Appln. No.320 of 2018

B.Suresh,
S/o.K.Bhuvanendiran,
No.1093, 33rd Cross Street,
Tiruvalluvar Nagar, Tiruvanmiyur,
Chennai-41.

... Applicant / Insolvent

-Versus-

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

... Respondent

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

On the application of B.Suresh, S/o.K.Bhuvanendiran, No.1093, 33rd Cross Street, Tiruvalluvar Nagar, Tiruvanmiyur, Chennai-41 adjudged as insolvent on 12th day of March 2015 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 Mr.R.S.Jain-Le-Sadmar, advocate for the Applicant/Debtor herein; and the Judges Summon and affidavit of B.Suresh herein; and the Additional Report of the Official Assignee dated 04.07.2019 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

It is ordered:-

That B.Suresh, S/o.K.Bhuvanendiran,, the insolvent herein be and is hereby discharged unconditionally from all

<https://hcservices.ecourts.gov.in/hcservices/insolvency> in this insolvency except such as are

mentioned in sub-section(1) of Section 45 of the Act
aforesaid.

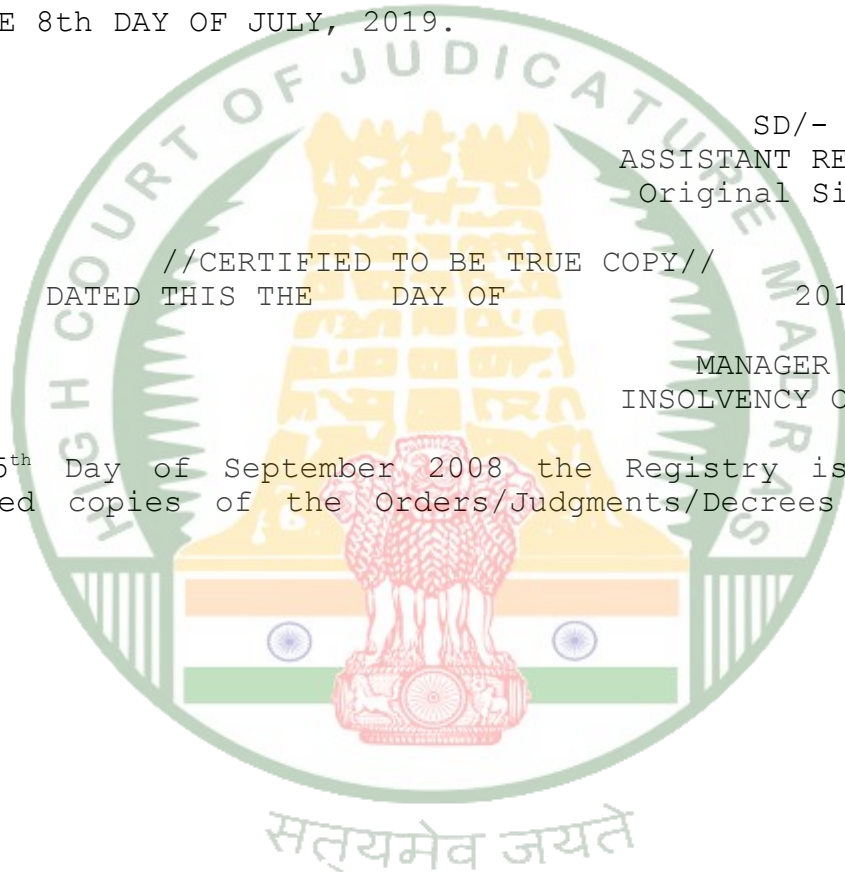
WITNESS, THE HON'BLE SHRIMATI, VIJAYA KAMLESH
TAHILRAMANI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID
THIS THE 8th DAY OF JULY, 2019.

SD/-
ASSISTANT REGISTRAR
Original Side - I

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DATED THIS THE DAY OF 2019

MANAGER
INSOLVENCY OFFICE

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HIGH COURT , MADRAS

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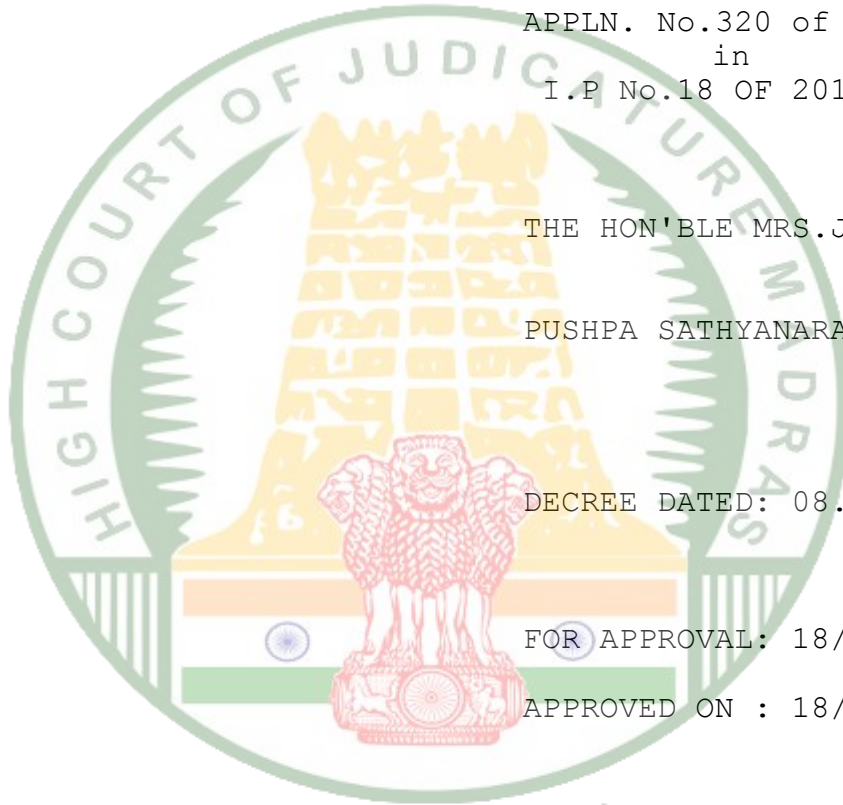
THE HON'BLE MRS.JUSTICE

PUSHPA SATHYANARAYANA

DECREE DATED: 08.07.2019

FOR APPROVAL: 18/07/2019

APPROVED ON : 18/07/2019



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COPY TO:

THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.

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

This above application coming on this day before this
court for hearing in the presence of Mr.R.S.Jain-Le-
Sadmar, advocate for the Applicant/Debtor and the Official
Assignee of this Court, the respondent herein; and upon

reading the Judges Summon and Affidavit of B.Suresh, filed herein and the Additional Report of the Official Assignee dated 04.07.2019 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 unconditional discharge to the applicant / insolvent.

2. The applicant has been adjudicated as an insolvent on his own petition, by an order dated 12.03.2015. Subsequent to the order of declaration declaring him as an insolvent, he has filed the schedule of affairs.

3. The learned Official Assignee has filed his Additional Report dated 22.03.2019 and 04.07.2019, wherein, it is stated that this Court directed the learned Official Assignee to send Enquiry notice and Discharge notice to the claimant M/s.Kantilal Electronics, rep by its Prop.Srish K.Mehta in Claim No.74 of 2016. The claimant had appeared before the learned Official Assignee and an enquiry was conducted by the Deputy Official Assignee on 04.07.2019. In the said enquiry, there were negotiations and the insolvent had come forward to settle the claim in Claim No.74 of 2016

<https://hcservices.ecourts.gov.in/hcservices> a sum of Rs.50,000/- even though the claim was more than Rs.3,00,000/-. The claimant's representative had

also agreed for the said settlement and gave a written consent and accordingly, a sum of Rs.6,500/- was paid by the insolvent and the remaining amount of Rs.43,500/- was also paid on 06.07.2019. In the report, the learned Official Assignee has stated that besides the claimant, there is also a secured creditor, namely, Indian Bank, Thiruvannamalai Branch, who had opted to stand outside the jurisdiction of the insolvency and also enforce the secured asset to realise the liability. It is also stated that a sum of Rs.21,500/- is available in the estate of the insolvent after defraying the Government commission and administrative expenses.

4. Notices were served on the secured creditor and unsecured creditors. Paper publication was also effected on the unserved creditors. Till now, none of the secured creditors have filed their objections.

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. 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.

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

WITNESS, THE HON'BLE SHRIMATI, VIJAYA KAMLESH
TAHILRAMANI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID
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