

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(IN INSOLVENCY)

FRIDAY, THE 13TH DAY OF MARCH 2020

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

APPLN.NO.15 OF 2019

IN

IP.No.109 OF 2013

AND

APPLN.Nos.272 to 276 OF 2017

AND

APPLN.NO.216 OF 2018

AND

APPLN.NOS.10,11,12 OF 2019

In the matter of Presidency Towns
Insolvency Act, III of 1909 and In
the matter of Easwari Enterprises &
Asokan

... Debtors

I.P.NO.109 OF 2013

Utkal Steels Limited

Rep.by its Managing Director

Mr.Surendra Agarwal

Udit Nagar, Rourkela

Orissa-769 012

... Petitioning Creditor

-Versus-

1. Easwari Enterprises

P II 2nd Cross St., Turnbolls Road

Nandanam, Chennai-600 035

2. Mr.Asokan

Managing Parter-Easwari Enterprises

P II 2nd Corss St., Turnbolls Road

Nandanam, Chennai-600 035

... Debtors

(a) adjudicate the debtors as Insolvents (b) to direct the business of the debtors be vested with Official Assignee of Madras for the benefit of the general body of creditors of the debtors (c) to order that the costs of this petition be paid by the Official Assignee of Madras from and out of the business of the debtors to the Petitioning Creditor.

Appln.No.15 of 2019

United Bank of India,
SAM Branch, Rep.by Chief manager,
No.27, Whites Road,
Chennai – 14.

... Applicant/3rd Party Creditor

-Versus-

1.The Official Assignee,
High Court, Madras

... 1st Respondent

2.Utkal Steels Limited
Rep.by its Managing Director
Mr.Surendra Agarwal
Udit Nagar, Rourkela
Orissa-769 012.

... 2nd Respondent/Petitioning Creditor

3. Easwari Enterprises
P II 2nd Cross St., Turnbolls Road
Nandanam, Chennai-600 035

4. Asokan
Managing Parter-Easwari Enterprises
P II 2nd Corss St., Turnbolls Road
Nandanam, Chennai-600 035

... Respondents 3 & 4/Debtors

Application No.15 of 2019 praying that this Hon'ble Court be pleased to set aside the order dt.11.01.2019 made in Claim No.249 of 2018,

circumstances of the case.

Appln.Nos.272 to 276 of 2017

The Official Assignee,
High Court, Madras

... Applicant

-Versus-

1.Utkal Steels Limited
Rep.by its Managing Director
Mr.Surendra Agarwal
Udit Nagar, Rourkela
Orissa-769 012

...1st Respondent/
Petitioning Creditor

2. Easwari Enterprises
P II 2nd Cross St., Turnbolls Road
Nandanam, Chennai-600 035

... 2nd Respondent/1st Insolvent

3. Asokan
Managing Parter-Easwari Enterprises
P II 2nd Corss St., Turnbolls Road
Nandanam, Chennai-600 035

... 3rd Respondent/2nd Insolvent

4.Dr.S.Chandralekha
W/o.Dr.Velusamy,
13, 1st Main Road, Kasturibai Nagar,
Adyar, Chennai 600 020.

... Purchaser/4th Respondent

Application No.272 of 2017 praying that this Hon'ble Court be

pleased to declare that the sale deed executed by the insolvent in favour of the 4th respondent Dr.S.Chandralekha in Document No.1518 of 2015 on the file of Sub Registrar, Neelankarai shall be void against the Official Assignee by setting aside the sale and all subsequent sale, if any.

Application No.273 of 2017 praying that this Hon'ble Court be

pleased to grant a warrant of seizure in favour of the Official Assignee to

seize the property from the custody and possession of 4th respondent herein or any other person and with a view to such seizure to break open the doors of the said building of the schedule mentioned property with a further direction to the area police officer to render necessary assistance for such seizure in case of necessity.

Application No.274 of 2017 praying that this Hon'ble Court be pleased to direct the 4th respondent to deliver all the title deeds such as Document No.1518 of 2015 dated 27.02.2015 and other related parent documents on the file of Sub Registrar, Neelankarai from their possession relating to the property to the Official Assignee.

Application No.275 of 2017 praying that this Hon'ble Court be pleased to permit the Official Assignee to sell the schedule mentioned property in public auction.

Application No.276 of 2017 praying that this Hon'ble Court be pleased to grant an interim injunction restraining the 4th respondent from alienating the Schedule mentioned property till the disposal of this Application.

SCHEDULE OF PROPERTY

(APPLN.NOS.216/2018 & APPLN.272 TO 276/2017)

All that piece and parcel of land of an extent of 4.357 grounds bearing Plot No.4, comprised in survey No.12/3C(part) situate at No.4/211

(part) M.G.R.Road, Palavakkam Village, Sholinganallur Taluk,

Kancheepuram District bounded on the

North by : Land in survey No.11 (part)

South by : Villa No.5 and Service area

East by : Land in Survey No.12 (part)

West by : Villa No.3 and Service area

Together with the 0.384 grounds (to about 921.6 square feet) undivided share in the road measuring 2.92 grounds and 0.0573 grounds (to about 137.52 square feet) undivided share in the service area measuring 0.44 grounds, said areas comprised in parts of survey Nos. 12/3B and 12/3C which is part of the larger land bearing old Plot Nos.9 and 10, comprised in old survey Nos.12/D (part) (later 12/3A3) 12/E (part) New survey Nos.12/3B and 12/3C, situated at No.4/211, M.G.R.Road, Palavakkam together with a residential Building / Villa having a plinth area measuring to an extent of 7,900 square feet with all fixtures and fittings of electrical, plumbing and sanitation etc., situated within the Registration District of Chennai South and the Registration sub-district of Neelankarai.

Appln.No.216 of 2018

Dr.S.Chandralekha

Rep.by POA,

Dr.Velusamy,

13, 1st Main Road, Kasturibai Nagar,

Adyar, Chennai 600 020.

... Applicant/3rd Party

-Versus-

1.The Official Assignee,
High Court, Madras

... Applicant

2.Utkal Steels Limited
Rep.by its Managing Director
Mr.Surendra Agarwal
Udit Nagar, Rourkela
Orissa-769 012.

3. Easwari Enterprises
P II 2nd Cross St., Turnbolls Road
Nandanam, Chennai-600 035

4. Asokan
Managing Partner-Easwari Enterprises
P II 2nd Corss St., Turnbolls Road
Nandanam, Chennai-600 035

... Respondents

Application No.216 of 2018 praying that this Hon'ble Court be
pleased to pass an order to release the property morefully described in the
schedule to the Judges Summons from administration of the Estate by the
Official assignee in the Insolvency Petition.

Appln.No.10 of 2019

United Bank of India,
SAM Branch, Rep.by Chief manager,
No.27, Whites Road,
Chennai – 14.

... Applicant/Proposed 5th Respondent

-Versus-

1.Dr.S.Chandrakleha
Rep.by POA,
Dr.Velusamy,
13, 1st Main Road, Kasturibai Nagar,
Adyar, Chennai 600 020.

... 1st Respondent/ Applicant

2.The Official Assignee,

High Court, Madras ... 2nd Respondent/1st Respondent

3. Utkal Steels Limited
Rep. by its Managing Director
Mr. Surendra Agarwal
Udit Nagar, Rourkela
Orissa-769 012. ... 3rd Respondent/Petitioning Creditor

4. Easwari Enterprises
P II 2nd Cross St., Turnbolls Road
Nandanam, Chennai-600 035

5. Asokan
Managing Partner-Easwari Enterprises
P II 2nd Corss St., Turnbolls Road
Nandanam, Chennai-600 035 ... Respondents 4 & 5/Debtors

Application No.10 of 2019 praying that this Hon'ble Court be
pleased to implead the applicant/proposed 5th respondent as 5th respondent
in Application bearing No.216 of 2018 on the file of this Hon'ble Court.

Appln.No.11 of 2019

United Bank of India,
SAM Branch, Rep. by Chief Manager,
No.27, Whites Road,
Chennai – 14. ... Applicant/Proposed 5th Respondent

-Versus-

1. The Official Assignee,
High Court, Madras ... 1st Respondent/1st Applicant

2. Utkal Steels Limited
Rep. by its Managing Director
Mr. Surendra Agarwal
Udit Nagar, Rourkela
Orissa-769 012.

... 2nd Respondent/Petitioning Creditor

3. Easwari Enterprises

P II 2nd Cross St., Turnbolls Road
Nandanam, Chennai-600 035

4. Asokan

Managing Parter-Easwari Enterprises
P II 2nd Corss St., Turnbolls Road
Nandanam, Chennai-600 035 ... Respondents 3 & 4/Debtors

5.Dr.S.Chandralekha

Rep.by POA,
Dr.Velusamy,
13, 1st Main Road, Kasturibai Nagar,
Adyar, Chennai 600 020. ... 5th Respondent/4th Respondent

Application No.11 of 2019 praying that this Hon'ble Court be
pleased to implead the applicant/proposed 5th respondent as 5th respondent
in Application bearing No.272 of 2017 on the file of this Hon'ble Court.

Appln.No.12 of 2019

United Bank of India,
SAM Branch, Rep.by Chief Manager,

No.27, Whites Road,
Chennai – 14. ... Applicant/Proposed 5th Respondent

-Versus-

1.The Official Assignee,
High Court, Madras

... 1st Respondent/1st Applicant

2.Utkal Steels Limited

Rep.by its Managing Director
Mr.Surendra Agarwal
Udit Nagar, Rourkela
Orissa-769 012.

... 2nd Respondent/Petitioning Creditor

3. Easwari Enterprises

P II 2nd Cross St., Turnbolls Road
Nandanam, Chennai-600 035

4. Asokan

Managing Parter-Easwari Enterprises
P II 2nd Corss St., Turnbolls Road
Nandanam, Chennai-600 035 ... Respondents 3 & 4/Debtors

5.Dr.S.Chandralekha

Rep.by POA,
Dr.Velusamy,
13, 1st Main Road, Kasturibai Nagar,
Adyar, Chennai 600 020. ... 5th Respondent/4th Respondent

Application No.12 of 2019 praying that this Hon'ble Court be pleased to implead the applicant/proposed 5th respondent as 5th respondent in Application bearing No.275 of 2017 on the file of this Hon'ble Court.

The above applications coming on this day before this court for hearing in the presence of Mr.F.B.Benjamin George, Advocate for the Applicant in Appln.Nos.15, 10,11 & 12 of 2019; the Official Assignee and the Deputy Official Assignee, the 1st respondent in 15,10,11 & 12 of 2019 and Appln.No.216/2018; and the applicant in Appln.Nos.272 to 276 of 2017; and Mr.R.Ravi, advocate for the 2nd Respondent/Petitioning Creditor in Appln.No.216/2018 and 1st Respondent/petitioning creditor in Appln.Nos.272 to 276 of 2017 and for 3rd respondent/petitioning Creditor in

and the judges Summon and affidavit of Dr.Velusamy, filed in Appln.No.216 of 2018, M.Ravishankar filed in Appln.Nos.10,11,12 & 15 of 2019; and the Report of the Official Assignee filed in Appln.Nos.272 to 276 of 2017 and Common Report filed in Insolvency Petition and all applications; and the order of this Court dated 18.11.2019 herein,

THE COURT MADE THE FOLLOWING ORDER :

This application has been filed as against the order of the Official Assignee and now, the matter has been settled between the parties.

2. There are only two creditors, one is the secured creditor, namely United Bank of India and another is the petitioning creditor. The matter has been referred to Mediation and both the creditors have settled and reached a consensus and took the money in 60:40 ratio. The secured creditor namely, the bank has agreed to receive 60% ratio and the petitioning creditor has agreed to receive 40%. The only dispute between the parties is with regard to the payment of charges to the Official Assignee. According to the Official Assignee, as per the rules, the Official Assignee is entitled to 7% plus 2% towards contingent expenses. Whereas, the contention of the learned counsel for the other respondents is that since the amount has not been collected by the Official Assignee and only on voluntary deposit by the subsequent purchaser, the rule demanding 7%

3. The compromise entered between the parties is taken on record and it is not disputed that Rs.5.15 Crores is lying in the bank as per the statement of the either side. Rule 10 Insolvency Rules provides for charging commission at the rate of 7% on the principal amount and the value has been collected in each estate, compensation of scheme of the arrangement. In the case of **K.Dhanalakshmi Ammal and another v. T.Radha and another** reported in **2017 SCC OnLine Mad 30703**, the Division Bench of this Court had held that such commission at the rate of 7% can be insisted only when the value of assets collected by the Official Assignee and paid to the creditors. Though in this case, an application has been filed by the Official Assignee for annulment of the sale, the fact remains that the purchaser has deposited the entire amount before this Court. Such situation cannot be said that the entire amount has been collected by the Official Assignee. At the same time, but, for the Official Assignee intervention, the amount would not have come into the account. Such view of the matter, as the matter has been settled between the parties and the amounts have been deposited by the parties themselves, the Official Assignee is directed to deduct a sum of Rs.10,00,000/- towards commission. That apart, a sum of Rs.1,64,209/- and also expenses towards contingent fund. Totally, the Official Assignee is directed to take a sum of Rs.11,64,209/- and the remaining amount shall be disbursed as per the

agreement raised between the parties namely 60% to the bank and 40% to the petitioning creditor.

4. In view of the same, the order of the Official Assignee is set aside and connected applications are closed.

5. Since closure of financial year, the Official Assignee is directed to pay the amount before 30.03.2020.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 13TH DAY OF MARCH 2020.

sd/-

ASSISTANT REGISTRAR
Original Side – I

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2020

सत्यमेव जयते

MANAGER
INSOLVENCY OFFICE

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

ak.19.03.2020

HIGH COURT, MADRAS

APPLN.NO.15 OF 2019

IN

IP.No.109 OF 2013

AND

APPLN.Nos.272 to 276 OF 2017

AND

APPLN.NO.216 OF 2018

AND

APPLN.NOS.10,11,12 OF 2019

THE HON'BLE MR.JUSTICE

N.SATHISH KUMAR

ORDER DATED: 13.03.2020

FOR APPROVAL: 19/03/2020
20/03/2020

APPROVED ON : 20/03/2020

COPY TO:-

THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.