IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.01.2025	Pronounced on:17.02.2025

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

A.Nos.190 & 191 of 2022
in IP.17 of 2019

1.K.Madasamy
2.M.Prema

... Applicants in both Applications

vs.

Narendra Kumar Genmalji,
HUF, A Hindu Undivided Family Firm,
rep by its Manager and Karta,
Narendra Kumar, No.14,
Vinayaga Maistry Street,
Chennai – 600 079.

... Respondent in both Applications

PRAYER in A. No.190 of 2022: This Application has been filed under Order II Rule 1 of the Insolvency Act and read with Section 7 of the PTI Act, to stay all proceedings in pursuant to the Order of this Court dated 08.08.2022 on the file of this Court till pending disposal of the set aside Application.

PRAYER in A. No.191 of 2022: This Application has been filed under Order II Rule 1 of the Insolvency Act and read with Section 7 of the PTI Act, to set aside the Ex-parte Order dated 08.08.2022 made in Insolvency Petition No.17 of 2019 on the file of this Court.

I.P. No.17 of 2019

Narendra Kumar Genmalji,
HUF a Hindu Undivided Family Firm
rep. by its Manager and Karta Narendra Kumar
No.14, Vinayaga Maistry Street,
Chennai - 600 079

... Petitioning Creditor

Vs.

1. Mrs.K.Madasamy
2. Mrs.M.Prema

... Debtors

PRAYER: Insolvency Petition filed under Sections 9, 10, 11, 12 and 13 of the Presidency Towns Insolvency Act III of 1909 and Order III-A of the Insolvency Rules, 1958 for adjudicating the debtors as insolvents, to direct the estate of the debtor be vested in the Official Assignee of Madras, for the benefit of the general body of creditors or the debtors and to oder that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the debtors to the petitioning creditor.

For Applicants/
Debtors : Mr.P.Jesus Moris Ravi

For Respondent/
Petitioning Creditor: Mr.T.Srikanth

Official Assignee : Mrs.C.B.Meena

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COMMON ORDER

The Applications (IP) Nos.190 & 191 of 2022, have been filed for stay of the further proceedings in I.P. No. 17 of 2019 pursuant to the order of this Court dated 08.08.2022 and for setting aside the ex-parte order dated 08.08.2022 in I.P. No.17 of 2019.

2. I have heard Mr.Jesus Morris Ravi, learned counsel for the Applicants and Mr.T.Srikanth, learned counsel for the Petitioning Creditor and Mrs.C.B.Meena, the learned Official Assignee. I have also gone through the records.

3. The learned counsel for the Applicants would invite my attention to the various orders passed and contend that the order of adjudication was passed ex-parte and despite the said order of adjudication, pending the above proceedings the Applicants had settled all the Creditors. In fact, as seen from the earlier adjudications in these proceedings, the Applicants have been taking time for settling the claims of the creditors and were also making part payments. On 16.12.2024, a Demand Draft to the tune of

Rs.30,58,872/- was handed over to the learned counsel for the Petitioning Creditors. Thereafter, the matter has been posted for reporting settlement and on 20.01.2025.

4. The learned counsel for the Petitioning Creditor, Mr.T.Srikanth would submit that all the claims of the Petitioning Creditors had been settled in full and he has no objections for the claims being discharged.

5. The learned Official Assignee would submit that, pursuant to the adjudication, the Official Assignee has taken steps to value the property by engaging a Chartered Engineer and in that connection substantial amounts to a tune of Rs.1,22,720/- has been spent. She would also submit that in terms of Order XVII Rule 10 (i) of the Insolvency Rules, the Official Assignee is entitled to charge Commission at the rate of 7% on the Principal amount or value of assets collected by him in each state and on the amounts paid to the creditors in pursuance of composition or scheme of arrangement. The learned Official Assignee would therefore submit that after adjusting the amounts paid to the Valuer and 7% Commission, the Applicants are still due and payable, a sum of Rs.1,57,000/- to the Official Assignee. The learned Official Assignee would also fairly submit that Rs.5,42,200/-

deposited by the Insolvent (Rs.5,30,000/- in a Fixed Deposit) has grown by Rs.43,328/- on account of interest being accrued to the Principal amount. The learned Official Assignee would therefore seek for directions to be issued to the Applicants to pay the said sum of Rs.1,57,000/- to the Official Assignee.

6. Meeting the said submissions of the learned Official Assignee, the learned counsel for the Applicants would submit that the order of adjudicating the Applicants as Insolvent was passed ex parte and further all the claims were settled directly with the Petitioning Creditors and therefore, the Applicants should not be mulcted with expenses incurred by the Official Assignee and also the Government Commission which is payable under Order XVII, Rule 10(i) of the Insolvency Rules, 1958.

7. I have carefully considered the submissions advanced by the learned counsel for the parties and the learned Official Assignee.

8. With regard to the 23 claims against the insolvent, there is no difficulty as the learned counsel for the Petitioning Creditor has reported full satisfaction of all the claims and he has no objection for the claims to be

discharged. The only issue that has to be decided is in respect of whether the Applicants are liable to pay a further sum of Rs.1,57,000/- as arrived at the by the Official Assignee, after factoring the initial amount deposited by the Insolvents, towards expenses incurred by the Official Assignee who has valued of the property and 7%, Government Commission which is payable as per the Insolvency Rules.

9. Admittedly, even after the adjudication of the Applicants as Insolvents, the claims of the Petitioning Creditor, viz., 23 claims have all been settled by private negotiation and not through the Official Assignee. No doubt the Official Assignee has expended monies for valuing the property and other miscellaneous expenses. Insofar as the question of entitlement of the Government Commission, the Hon'ble Division Bench of our Court in *K.Dhanalakshmiammal and another vs T.Radha and another in OSA.Nos.26 to 28 and 183 of 2017 dated 06.10.2017* dealing with a similar circumstance, where the settlement of Creditors was without the aid of the Official Assignee, the Hon'ble Division Bench held that when a matter is settled between the Insolvent and the Creditors without the intervention of the Official Assignee, then Order XVII, Rule 10(i) of the Insolvency Rules, 1958 would not be applicable.

10. This decision was followed by another Division Bench decision of this Court in one, OSA.Nos.295 & 301 of 2019 dated 05.03.2024, where the Hon'ble Division Bench held that the Official Assignee was not entitled to deduct 7% Government Commission, since the claims were settled directly between the Petitioning Creditor and the Insolvent. In view of the settled position of law, I have no hesitation in applying the ratio laid by the above Hon'ble Division Benches to the facts of the present case.

11. Here also, the Petitioning Creditor and the Insolvents have settled their disputes without the intersection of the Official Assignee. Therefore, the Official Assignee is not entitled to 7% Government Commission. However, the expenses to the tune of Rs.1,22,720/- for valuation of the Estate of the Insolvents and a sum of Rs.10,000/- towards advertisement which have been already incurred can be adjusted from the deposit of Rs.5,42,200/- made by the Insolvents and the balance amount is liable to be refunded by the Official Assignee to the Insolvents. The details of the calculation as hereunder:-

Head	*Amount*
Insolvent Claim Deposit	Rs.5,42,200/-
Official Assignee Deposit (FD)	Rs.5,30,000/-
Interest accrued from the FD	Rs.43,328/-
(Total- Rs.5,73,328/-)	
Valuation Fees	Rs.1,22,720/-
Advertisement Fees	Rs.10,000/-
Estate Amount in total at the hands of OA	Rs.5,84,453/-

12. In fine,

(i) All the claims against the Insolvents are discharged.

(ii). The order dated 08.08.2022 is set aside and the Insolvency Petition is closed.

(iii) The learned Official Assignee shall refund the excess amount available viz., the amount deposited by the Insolvents plus interest accrued, less Rs.1,22,720/- towards valuation of the Engineer and Rs.10,000/- towards advertisement expenses.

(iv). The excess amount shall be refunded by the learned Official Assignee within 4 weeks from today.

17.02.2025

rkp
Index : Yes / No
Internet : Yes / No

P.B.BALAJI, J.,

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Pre-delivery Order in
A.Nos.190 & 191 of 2022
in IP.17 of 2019

17.02.2025