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A.(IP) No.41 of 2025
in I.P.No.65 of 2014

In the High Court of Judicature at Madras

Reserved on 08.9.2025	Delivered on : 10.9.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Application (IP) No.41 of 2025
in I.P.No.65 of 2014

N.Jayalakshmi

...Applicant

Vs

The Official Assignee,
High Court, Madras

...Respondent

APPLICATION under Order II Rule 1 of the Insolvency Rules read with Section 38 of the Presidency Tows Insolvency Act, 1909 praying to grant an unconditional discharge to the applicant.

For Applicant	:	Mr.J.Balagopal
Respondent	:	Mrs.C.B.Meena, Official Assignee
For Creditor - Mr.S.V.Subramanian	:	Ms.M.Meenatchi



*A.(IP) No.41 of 2025
in I.P.No.65 of 2014*

WEB COPY

ORDER

This is an application filed by the applicant seeking to grant an unconditional discharge as per Section 38 of the Presidency Towns Insolvency Act, 1909 (for short, the Act).

2. Heard the learned counsel for the applicant, the Official Assignee and the learned counsel appearing for the creditor.

3. The facts leading to filing of this application are as follows :

(i) The applicant was adjudicated as an insolvent in the above insolvency petition by order dated 27.11.2014 under Section 10 read with Sections 14 and 15 of the Act. Accordingly, the estate of the applicant vested with the Official Assignee to be administered in a regular manner.

(ii) The notice of adjudication was served on the creditor for filing his claim before the Official Assignee. The public examination commenced on 17.2.2016 and there was only one unsecured creditor to the tune of Rs.21 lakhs and there was no secured creditor in the estate and assets to the tune of Rs.20,000/-. The administration of the estate has been completed and after adjudication, the applicant has



*A.(IP) No.41 of 2025
in I.P.No.65 of 2014*

WEB COPY

not contracted any debt nor committed any offence under the provisions of either the Act or the Indian Penal Code (IPC).

(iii) Since the proceedings are going on from 2014 onwards and the public examination was completed even in the year 2016 and also in view of the fact that there was only one unsecured creditor, whose claim was considered by the Official Assignee, the above application has been filed by the applicant seeking to grant unconditional discharge.

4. The creditor to the applicant filed his objections stating as follows :

(i) The applicant had obtained a bank loan, to which, the objector gave his property as a collateral security. Since the applicant failed to repay the loan amount, the guarantor had to repay back the entire amount and has a right of subrogation to enforce the money claim against the applicant. However, the applicant did not make good the loss. Therefore, the creditor approached the City Civil Court, Chennai for recovery of money by filing O.S.No.7927 of 2010 and it was decreed.



*A.(IP) No.41 of 2025
in I.P.No.65 of 2014*

WEB COPY

(ii) This decree was put to execution before the City Civil Court, Chennai by filing E.P.No.2386 of 2014. Ultimately, the said execution petition was disposed of on 23.12.2024. According to the creditor, there are various movable properties available with the applicant and this fact was not denied by the applicant. The applicant is evading payment and therefore, the creditor sought for dismissal of this application.

5. The Official Assignee filed a report wherein it has been stated as follows :

(i) The public examination was held on 17.2.2016 and the sole unsecured creditor filed Claim Petition No.272 of 2015 for a sum of Rs.21,78,629/-. The notices that were sent to the unsecured creditor were returned and the unsecured creditor did not take any steps to prosecute the claim petition. Ultimately, after the above application came to be filed, pursuant to the order passed by this Court on 28.2.2025, the notification of application for discharge was sent by the Official Assignee on 16.4.2025 to the sole unsecured creditor and it was acknowledged.



A.(IP) No.41 of 2025
in I.P.No.65 of 2014

WEB COPY

(ii) At paragraph 17 of the report, it has been stated as follows :

"It is further submitted that the above said only one unsecured claim received for a sum of Rs.21,78,629/- was admitted by the Official Assignee on 27.11.2024 for a sum of Rs.31,27,226/-. To grant discharge, the pre-requisite statutory provisions under Section 39(2)(a) of the Presidency Towns Insolvency Act, 1909 to declare a dividend of 25 paise in a rupee, even at the rate of 0.01 paise in a rupee, is also not possible for disbursement with the available amount of Rs.25,000/-. Hence, the application filed by the applicant/insolvent praying to grant an unconditional discharge is not maintainable at this stage. In this circumstances, this petition is liable to be dismissed with costs."

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and also the report of the Official Assignee along with the objections filed by the creditor.

7. What becomes evident from the above materials is that there is only one unsecured creditor, who made a claim for a sum of



*A.(IP) No.41 of 2025
in I.P.No.65 of 2014*

WEB COPY

Rs.21,78,629/-. The Official Assignee, in her report, stated that to grant discharge, the pre-requisite statutory provision under Section 39(2)(a) of the Act to declare a dividend of 25 paise in a rupee, even at the rate of 0.01 paise in a rupee, is not possible for disbursement with the available amount of Rs.25,000/-.

8. The law on the scope of Section 39 of the Act is now too well settled. This Court has repeatedly held that the law of bankruptcy does not expect that the debtor should always be the slave of the creditors and that the object is to release the debtor at the appropriate time taking into consideration several factors referred to in Section 39 of the Act, which states that the Court has no discretion to reject the discharge if the insolvent has not committed any offence either under the Act or under the IPC.

9. In so far as the second limb of Section 39 of the Act is concerned, it is left to the discretion of the Court to refuse discharge or suspend discharge for a specified time or grant conditional discharge. While exercising this discretion, the Court must take into consideration several factors set out under Section 39(2) of the Act. The objection



A.(IP) No.41 of 2025
in I.P.No.65 of 2014

WEB COPY

raised by the Official Assignee, by itself, is not a deciding factor and it is one of several circumstances, the Court has to take into consideration while dealing with an application for discharge.

10. In the case in hand, the applicant continues to be an undischarged insolvent for more than 10 years and the applicant has completed her 67th year and probably, it is high time that she is relieved of this stigma viewed with utmost contempt by the society at least in the evening of her life.

11. This Court had an occasion to deal with the scope of Section 39(2)(a) of the Act in the case of **N.M.Rajesh Vs. Official Assignee, High Court, Madras [reported in 2014 (6) CTC 423]** wherein the principles were carved out at paragraph 6, which is extracted as hereunder :

"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



WEB COPY



A.(IP) No.41 of 2025
in I.P.No.65 of 2014

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



WEB COPY



A.(IP) No.41 of 2025
in I.P.No.65 of 2014

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."

12. As was held by this Court in the said decision, the applicant did not commit any act, which disentitles her to seek for an order of discharge. Considering the age of the applicant, the status of the applicant need not be continued until the dividend available is minimum 25 paise in a rupee to be paid to the creditor. That situation may never arise in this case considering the report of the Official Assignee.

13. In the light of the above discussions, this application is ordered as prayed for.

10.9.2025

Index : Yes
Neutral Citation : Yes

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9/10



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*A.(IP) No.41 of 2025
in I.P.No.65 of 2014*

N.ANAND VENKATESH,J

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Appln.(IP) No.41 of 2025
in I.P.No.65 of 2014

10.9.2025