

CHAPTER 5

ADMINISTRATIVE INSTRUCTIONS IN INSOLVENCY
CASES

1. Insolvency cases should not be treated as disposed Insolvency of when an order of adjudication has been passed, but should be treated as pending till all the realizable assets have been collected and the proceeds divided among creditors. It is important to note that an order of discharge does not necessarily terminate the proceedings in insolvency and the file of each case must be kept pending even after discharge if the actual winding up of the estate is still incomplete.

Insolvency case should be treated as pending till complete winding up of the debtor's estate.

The Court should fix dates at suitable intervals for the Receiver to report the progress in the realization of the insolvent's assets and produce his accounts. On the dates so fixed, the Receiver's report and the accounts should be seen and the objections of the parties concerned (if any) should be heard and proper orders passed thereon. No insolvency cases should be adjourned *sine die*.

2. (i) When an application for discharge is made, the Court should fix a date for hearing it and issue notices (ordinarily by Registered post) to the creditors at the addresses furnished by them.

Period for application for discharge should not ordinarily exceed one year.

(ii) The period fixed for an application for discharge should not ordinarily be more than one year in the first instance.

(iii) This period should not be extended without sufficient grounds. The following remarks in the Report of the Civil Justice Committee appointed in 1924-25 deserve the attention of Courts :

"We incline to think that the time within which application for discharge should be made is either being extended with undue frequency or that this matter is being ignored by Receivers and by Courts. Possibly too, there is some misunderstanding, by reason of which creditors, who have compromised with the insolvent, are

being allowed some say in the matter. It cannot be too strongly emphasised that unless an insolvency is in due form annulled, the insolvent should in every case be proceeded against unless he applies for his discharge within the time limited. It may be that Receivers postpone or agree to postponement of the date for application for discharge, because the discharge, when granted, terminates the time during which any property accruing to the insolvent ensure for the benefit of his creditors. In such case, however, the proper course, as a rule, is not to postpone the application for discharge but to make the application; the Court being able to suspend the discharge for such period as is proper." (Vide pages 234-35 of the Report).

Separate file to be kept for all High Court letters and instructions about insolvency.

3. The Insolvency Courts should maintain a separate file for the letters and instructions issued by the High Court about insolvency work and Official Receivers.

Register No. 15 of adjudicated insolvents should be properly maintained.

4. The attention of Courts is drawn in particular to the necessity for the proper and regular maintenance of a register in form No. 15 (Register of persons adjudicated insolvents) given at the end of Chapter 4-C. This Register, if maintained properly, can give a very useful picture of the proceedings taken in each case for the administration of the Estate. It has been noted that the second part of the Register (which is to contain an abstract of the Receiver's Reports) is either not maintained properly or omitted altogether. The Courts should see that this Register is maintained properly.

Causes of delay in disposal of Insolvency cases.

5. It has been found as a result of inspections that disposal of insolvency cases is due chiefly to one or more of the following causes : —

- (i) Failure on the part of the Court to scrutinize the petitions carefully at the time of their institution to see if the provisions of section 13 of the Provincial Insolvency Act as to the contents of the petition have been complied with or not.

- (ii) Failure of the petitioner to put in the initial deposit within the time specified by the Court and repeated adjournments granted for the purpose. The Courts in case of default should decline to entertain the petition and return it with this objection.
- (iii) Failure of the debtor to furnish security in time as ordered by the Court.
- (iv) Failure of the Court generally to fix any period within which the requisite process-fees should be put in (*vide* paragraph 2, Chapter 1-K, Rules and Orders, Volume I).
- (v) Delay on the part of the Court establishment in issuing notices promptly.
- (vi) Delay in service of notices on creditors.
- (vii) Failure to name in the first instance all the persons capable of acting as guardians *ad litem* for the minor respondents (*See* Order 32 rules 3 and 4 as amended by the Punjab High Court).
- (viii) Frequent and unnecessary adjournments for compromise which never materialize.
- (ix) Failure to continue the recording of evidence from day to day.
- (x) The hearing of Insolvency petitions is some times adjourned repeatedly and quite unnecessarily in order to give time to the creditor's witnesses who naturally exaggerate the value of the debtor's property to buy up the Property at their own valuation. They never, of course, do buy the property usually, and the only result generally is the prolongation of the proceedings.
- (xi) The cases are frequently adjourned for arguments only which should be really unnecessary except in case of unusual difficulty.

- (xii) *Ex-parte* proceedings are taken without a careful examination of the process-server's report and when taken are set aside too readily on payment of costs without any other reason being sought or assigned.
- (xiii) Adjournments are granted unnecessarily for the putting in of written replies to miscellaneous applications of a petty nature.
- (xiv) Adjournments are granted too frequently by some courts at the request of unready counsel who do not come prepared with their cases. These and other fruitful causes of delay in the disposal of ifrisolvency work should be checked assiduously.

SUPERVISION AND CONTROL

Annual inspection.

6. Insolvency Judges and District Judges should inspect the Official Receiver's work once a year.

Annual remarks.

7. Annual remarks should be recorded on the work and character of Official Receiver by Insolvency Judges and District Judges.

Cash book should be put up daily before the Judge.

8. The cash book (form 15) should be put up before the Insolvency Judge at the beginning of each day with the counterfoils of all receipts issued during the previous day, except when the Official Receiver is away from headquarters, in which case he should put up the Cash Book on the day following that of his return to the headquarters.

Cash book receipt side should be checked by the Judge.

9. The Insolvency Judge should check each entry on the receipt side with the corresponding counterfoil in the Receipt Book or the relevant entry in the Sale List (No. 8) and append his signatures at the end of the day's entries in the Cash Book as token of his having carried out the check.

Cash book Expenditure side should be checked by the Judge.

10. The Insolvency Judge should similarly check the entries on the expenditure side of the Cash Book with the the payment vouchers and counterfoils of cheques and sign at the end of the day's entries on this side of the book also as a token of his check.

11. The Demand and Collection Register (Form No. 7) should be inspected by the Insolvency Judge on first working day of each month and it should then be signed and dated by him.

Monthly inspection of Demand and Collection Register.

12. The Dividend Register No. 19, shall be put up before the Insolvency Judge when each dividend is declared and the entries shall then be examined, signed and dated by him at the end.

Dividend register should be checked by the Judge whenever dividend is declared..

13. The Insolvency Judge should also compare the Pass-Book entries with the Cash-book at the beginning of each month and note the fact of his having done so in the Cash-book.

Monthly comparison of Pass-book with cash-book by the Judge.

14. The practice by which all Records are allowed to remain in the hands of the Official Receiver himself and to be treated more or less like personal property should be given up. These records relate to proceedings of a public nature and must be treated as public documents.

Records are public records and should not be left with the receiver when no longer required.

15. The practice by which the Insolvency Courts in some Districts hand over their record to the Official Receiver and allow him to record his proceedings also in it is very objectionable as the Court cannot keep in close with the progress of administration when it makes over whole of its own record to the Official Receiver and nothing itself.

Court not to make over its own record to Receiver.

16. The Official Receiver should not send for the records of decided cases from the Record Room freely or frequently as they are liable to damage in transit and use. The object in most cases should be served by calling upon the parties concerned to produce certified copies of the relevant documents and the tendency to send for the whole record should be discouraged in all cases except when it is essential to prove any documents in original.

The production of records of decided cases from the Records Room should not ordinarily be allowed.

LEASE

17. The practice of giving out leases orally is objectionable. It is imperative that Official Receiver should in all cases obtain a regular lease-deed from the lessee concerned.

Oral leases not allowed.

Lease in favour of insolvent not approved.

18. The practice of leasing out the land to the insolvent himself for a cash consideration to be paid by him is not approved. It is seldom that the insolvent can pay the lease money in such cases. The result is that the insolvent, in effect left entirely undisturbed in the enjoyment of his property without paying anything to the creditors.

SALES

Court officials not to bid at sales held by Receiver.

19. The Officials of Insolvency Courts are strictly prohibited from bidding for or purchasing anything at sales held by Official Receivers.

Sales by Receiver require no confirmation by court. Sales to be conducted personally by Receiver except as provided.

20. Official Receivers have full powers to sell all or part of insolvent's property without confirmation by the Court. Any person aggrieved by the Official Receiver's action may appeal to the District Judge as prescribed by law. Such sales should be conducted by Official Receivers personally. On no account should such sales be carried out by Official Receiver's clerks except in cases where the property to be sold is situated at a place difficult of access then it may be sold by the Official Receiver's clerks, provided that :—

- (a) the estimated value of the property does not exceed Rs. 250; or
- (b) the Judge of the Insolvency Court certifies that for the Official Receiver to conduct the sale in person would involve an expenditure of time and money incommensurate with the importance of the sale.
- (c) the Official Receiver himself remains responsible for the proper carrying out of the proceedings.

On sale Receiver should execute a deed of sale and not issue a sale certificate.

21. When a sale has been held the correct procedure is not for the Official Receiver to issue a certificate (as in the case of a Court sale) but to execute a proper deed of conveyance conforming with the requirements of the law regarding stamp duty and registration.

22. The Official Receivers should submit to the Statement of Court a statement of sales conducted by them on the first working day of each month for the sales conducted during Court the previous month. It shall be the duty of the Court to check this statement with the entries in the Cash Book and the Demand and Collection Register in order to satisfy itself that the amounts realized have been brought to account and that the balances are being watched through the Demand and Collection Register. The statement of sales shall be submitted in Form No. 1 given at the end of this Chapter.

Statement of sales to be submitted to Court every month.

PROGRESS REPORTS

23. Each Official Receiver must, after six months from the date of which an order of adjudication is made, submit to the Court a report in Form No. 2 showing what progress has been made by him to realize and distribute the assets of the insolvent estates entrusted to him.

Receiver to submit to court after six months progress report of the administration of estate.

24. All estates should ordinarily be wound within one year from the date of the order of adjudication. After a year the case must be reported to the District Judge with a special note to explain why the case could not be finished within the period mentioned above.

An estate should be wound up within a year.

HISTORY SHEETS

25. The Official Receivers shall in addition to the progress reports mentioned above submit to the District of old cases. Judge, each month through the Insolvency Judge, a detailed history sheet in Form No. 3 given at the end of this Chapter for the six oldest cases under administration.

History sheet of old cases.

ENGAGEMENT OF LAWYERS

26. The sanction of the Insolvency Judge to the appointment of Pleader and his remuneration shall be obtained under section 59 of the Provincial Insolvency Act before any counsel is engaged by an Official Receiver.

Engagement of a counsel by a Receiver subject to previous sanction of Court.

27. The Official Receivers cannot charge any fees themselves whenever they appear in Court cases entrusted to them as Official Receivers.

Official Receivers not allowed any fees for cases conducted to them.

MISCELLANEOUS INSTRUCTIONS

Pay of insolvent Government Servant should be attached through the Head of Department.

28. The pay of a Government servant who has been adjudged an insolvent must be attached through his Head of Department so that his superior officers may not be kept in ignorance of his insolvency.

Receiver to guard against entry of bogus creditors in the Schedule.

29. It has come to notice that a common trick resorted to by some insolvents is to include the names of several near relatives in the schedule as creditors so as to reduce the amount available for the genuine creditors. The Official Receivers should remain on guard against this practice.

Balance of one estate not to be used for administration of another estate.

30. The practice of spending money out of the general balance of other estates in hand for the administration of any estate which has no balance of its own, is objectionable and should not be resorted to.

Receiver cannot use the service of process-server.

31. The Official Receivers are not entitled to use the service of the process serving establishment.

Channel for correspondence.

32. The Official and Special Receiver shall correspond in matters relating to his duties and office with the higher authorities only through the Insolvency Judge.

GENERAL IRREGULARITIES

List of common irregularities noticed in the work of Receivers.

33. The attention of all Official Receivers is drawn to the following defects which are generally observed in their accounts and procedure :—

- (a) The sale price of property sold is not always realized promptly and in some cases no part of the price is received at all on the date of sale, with the result that purchasers frequently go back on their bids and fresh sales have to be held.
- (b) The Administration of the Estates is kept pending even when the amount in hand is not sufficient to declare any practical dividend. Steps should be taken to have the amounts

lapsed to Government in such cases and the estate wound up.

- (c) The documents produced in proof of debts are not marked or exhibited with the result that sometimes the same document is used by the creditor to prove the same debt more than once.
- (d) Official Receivers retain undelivered cheques in their hands for long periods. All such cheques should be cancelled if the creditors concerned do not turn up within the normal period of three months during which a cheque remains current.
- (e) The permanent advance is not recouped regularly at the end of each month.
- (f) Applications for the sanction of the High Court of the entertainment of the Official Receiver's Establishment are not submitted in time.

FORM No. 1

STATEMENT OF SALES

Serial No.	Name of estate	Description of property	Amount realised	Reference to page of Cash Book	Balance due	Reference to page of Demand and Collection Register
			Rs.		Rs.	

FORM No. 2

(PROGRESS REPORT OF INSOLVENTS' ESTATES)

District _____

Period of report _____

Serial No. _____

Name of Insolvent _____

Date of Adjudication _____

Assets

1. Total estimated value of assets
2. Assets realized hitherto.
3. Assets realized during period of report.

4. Estimated value of assets yet unrealized Proof of debts
 1. Amount of debts in petition.
 2. Debts proved hitherto.
 3. Debts proved during period of report. Distribution
 1. Total liabilities.
 2. Amount distributed as divided hitherto.
 3. Amount distributed during period of report.
 4. Balance in hand.

Remarks

1. Official Receivers explanation as to delay, etc.,
2. Remarks of Insolvency Judge.

FORM No. 3
HISTORY SHEET

Name of Estate _____

Date of adjudication _____

Date	Abstract of Proceedings

Signature of the Official Receiver.

(Inserted *vide* Notification dated 8-12-77 of High Court)