

CHAPTER XL

RULES UNDER THE BANKING REGULATIONS ACT, 1949 (ACT No. 10 OF 1949)

719. Application relating to Banking Companies within Greater Bombay – An application under Part III-A of the Banking Regulation Act, 1949, (hereinafter in this Chapter referred to as “the Act”) in respect of a Banking Company having its registered office, or in the case of a Company incorporated outside India, its principal place of business, within the State of Maharashtra excluding the districts of Akola, Amravati, Bhandara, Buldana, Chandarpur, Nagpur, Wardha and Yawatmal shall be filed in the Office of the Prothonotary and Senior Master.

720. General Headings – An application under Part III or Part III-A of the Act shall be intituled in the matter of the Act and in the matter of the Banking Company and, where necessary in the matter of the Act under which the Banking Company has been ordered to be wound up.

721. Presentation and hearing of petitions under Part III or Part III-A of the Act - An application under Part III or Part III-A of the Act shall be made by petition and shall be signed and verified in the same manner as a plaint. The petition shall be presented to the Judge taking company winding up matters or to such other Judge as the Chief Justice may direct. The Judge may reject the application summarily or pass such orders and give such directions as he may deem proper, including directions for notice of the petition being given to such person or person as may seem to him likely to be affected by the proceedings.

722. Notice of petition – Where notice is directed to be given to any party, it shall be served together with a copy of the petition and the petition shall not be heard until fourteen days after the service of the notice, unless the Judge otherwise directs.

723. General duties and power of the Special Officer – Without prejudice to the generality of the powers of the Court under section 37(3) of the Act:-

- (a) A Special Officer appointed under section 37(3) of the Act shall furnish security such amount as may be ordered by the Court.

- (b) He shall generally have all the powers and shall take all the steps necessary or expedient to protect the rights and interests of all the creditors and share-holders of the Banking Company and to conserve and ensure the proper disposition according to law of the assets of the Banking Company.
- (c) The Special Officer may be empowered to represent the Banking Company in proceedings before any Court, Tribunal or Public Officer.
- (d) The Special Officer may apply to the Court of such directions as he may deem necessary.
- (e) The Special Officer shall, where his duties so require, maintain proper accounts.
- (f) The Special Officer shall be paid such remuneration as may be determined by the Court. The said remuneration shall be paid, unless the Court otherwise directs, from the assets of the Banking Company.
- (g) The Special Officer shall continue to supervise the affairs of the Banking Company until he is removed from office, or the term of his appointment expires or until the Banking Company resumes business or until a Liquidator is duly appointed to wind-up the business of the Banking Company.

724. Inspection of the Report of the Reserve Bank of India – No person, other than the parties to the proceedings and the Official Liquidator, shall be entitled to inspection of any report made by the Reserve Bank of India or be entitled to receive a copy thereof without an order of the court.

725. Application in winding up to be by petition – Applications for the determination of all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a Banking Company, shall be made by petition. The petition shall contain a statement of facts relied on and the nature of the relief asked for. The petition shall be signed and verified in the same manner as a plaint.

726. Notice of petition - Petitions mentioned in the last preceding rule shall be presented to the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or to such other Judge as the Chief Justice may direct. The Judge shall direct notice of the petition to be given to the respondent or such person or persons as may seem to him likely to be affected by the proceedings. Such notice shall be served together with a copy of the petition and the petition shall not be heard until fourteen days after service of the notice, unless the Judge otherwise directs.

727. Affidavit in answer – An answer to the petition mentioned in rule 725 shall be made by filing an affidavit and a copy thereof shall be furnished to the petitioner or his Advocate on record at least four clear days before the returnable date of the notice.

728. Directions at the hearing of the petition – On the date fixed for the hearing of the petition, the Court may proceed to hear the petition or give such directions as it may think proper as to discovery and inspection, examination of witnesses in Court or in Chambers, taking of evidence by affidavit or otherwise and generally for the speedy determination of the petition.

729. Transfer of suits and proceedings to the High Court – When the Official Liquidator submits to the Court a report under section 45-C(2) of the Act, he shall apply to the Judge for the times being dealing with the proceedings for the winding up of the Banking Company or to such other Judge as the Chief Justice may direct, for directions as to the parties to whom notice may be given and the date and time for holding an inquiry whether or not the suits and proceedings mentioned in the report should be transferred to the High Court. The notice shall contain particulars of the suit or proceedings in which the party may be concerned and require him to appear and show cause why it should not be transferred to the High Court. The notice shall be served fourteen days before the date appointed for holding the inquiry.

730. Affidavit in reply – Any party desiring to oppose the transfer to the suit or proceedings to the High Court shall file an affidavit and furnish a copy thereof to the Official Liquidator or his Advocate on record at least four clear days before the returnable date of the notice.

731. When proceedings not transferred, Court may request expedition of the same – If any suit or proceedings pending in any Court is not transferred to the High Court under section 45-C(23), the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or such other Judge as the Chief Justice may direct, may direct the Prothonotary and Senior Master to write a letter of request to the Court in which the suit or proceeding is pending, requesting that suit or proceeding may be disposed of as expeditiously as possible.

732. List of debtors - When the Official Liquidator files in the Court a list of debtors under section 45-D(2) of the Act, he shall obtain an appointment from the Judge for the time being with the proceedings for the winding up of the Banking Company or from such other Judge as the Chief Justice may direct, to settle the same and shall give notice in writing of such appointment to every person mentioned in such list. The notice shall contain such of the particulars mentioned in the list of debtors as are applicable to such person. In case any variation or addition to such list is made by the Official Liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four weeks before the date appointed to settle such list, variation or addition.

733. Service of notice – Service of notice upon the debtors shall be effected by sending the notice through the post by a registered letter or if the Judge so directs under certificate of posting. The notice shall be addressed to the party to his last known address or place of residence and unless otherwise ordered by the Court such notice shall be deemed to be served at the time the same ought to be delivered in due course of delivery by the post office and notwithstanding the same may be returned by the post office.

734. Affidavit in reply - If the debtor desires to show cause against the inclusion of his name in the list of debtors, he shall file an affidavit and furnish a copy thereof to the Official Liquidator or his Advocate on record at least seven clear days before the day appointed for the settlement of the list.

735. Settlement of the list of debtors – On the date fixed for settlement of the list of debtors, the Judge may settle the list or such part thereof as he may think proper. If the Judge is of opinion that it is not immediately possible to adjudicate upon any particular debt mentioned in the list, he may give such directions as he may think proper as to discovery and inspection, examination of witnesses in Court or in Chambers, taking of

evidence by affidavit or otherwise and generally for the speedy adjudication of the debt. The Judge may in a special case refer the Official Liquidator to a regular suit.

736. Official Liquidator to report if he contests claims of depositors - If the Official Liquidator desires to contest a claim shown in the books of the company as due to a depositor on the ground that there is reason for doubting the correctness of any particular entry in the books, he shall make a report to the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or to such other Judge as the Chief Justice may direct, stating his reason for doubting the correctness of such entry; and if, upon such report the Judge is satisfied that there is *prima facie* reason for doubting the correctness of the entry, the Judge may cause notice to be given to the depositor concerned to come in and prove his claim.

737. Register of suits in winding up matters - Suit in respect of claims made by or against any banking company in liquidation, including claims by or against any of its branches in India, which are filed in the High Court or transferred to it under the Act shall be entered in a separate list to be maintained by the office of the Prothonotary and Senior Master and shall be treated as expedited suits. If such suits have been filed before the date of the order for winding up, the Official Liquidator shall furnish to the Prothonotary and Senior Master a list of such suits.

738. Hearing of suits and matters – All suits referred to in the preceding rule and all matters and proceedings connected with the suits shall be heard by the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or by such other Judge as the Chief Justice may direct.

739. Procedure in such suits – Where the suit is filed as a summary suits, the procedure prescribed for summary suits shall be followed. In all other cases, the suits shall be filed as an ordinary suit and the procedure laid down for such suits shall be followed.

740. Application for inspection of records – The Reserve Bank of India may apply to the Judge for the time being dealing with the proceedings for the winding up of a banking company or to such other Judge as the Chief Justice may direct, for permission to inspect the records of the banking

company or of the High Court in the matter of the banking company or of the High Court in the Matter of the banking company, and such permission may be granted by the Judge in his discretion.

741. Recovery of dues as arrears of land revenue – When the Court grants leave under section 45-T(3) of the Act for recovery of any amount found due to the company, the Official Liquidator may apply to the Proper Revenue Authorities to recover the said amount as arrears of land revenue.

742. Supervision of the carrying out of compromise or arrangement – Where an order under section 153 of the Indian Companies Act, 1913 (Act VII of 1913), or under section 391 of the Companies Act, 1956 (Act 1 of 1956) sanctioning a compromise or arrangement in respect of a Banking Company is passed, the Judge may direct the Official Liquidator or any other person to supervise the carrying out of the compromise or arrangement and to make a report to the Court in regard thereto.

743. These rules to be in addition to Companies (Court) Rules of the Supreme Court – These rules shall be in addition to and not in derogation of companies (Court) Rules, 1959, framed by the Supreme Court of India.

CIVIL APPEALS

744. Appeals to the High Court to be heard by Division Bench -
(a) Subject to the provision of section 45-N(1) of the Act, an appeal shall lie from an order or decision of a Judge in a Civil proceeding under the Act to the High Court.

(b) The appeal shall be heard by a Division Court consisting of two Judges or more than two Judges, if the Chief Justice so directs, other than the Judge whose decision is appealed from

745. Period within which appeal should be filed – The appeal shall be filed within thirty days from the date of the decree or order appealed from.

746. Appeals - Rules relating to appeals contained in Part II, Chapter LII shall, with any necessary modification, apply to appeals under section 45-N(1) of the Act

CRIMINAL COMPLAINTS

747. Presentation of complaints and issue of process – Proceedings under section 45-J of the Act shall commence with a complaint being presented by the Official Liquidator to such Judge as the Chief Justice may direct. On presentation of the complaint the Judge may direct a summons or a bailable or non-bailable warrant to be issued against the accused and may fix a date for the trial, or may, if he thinks fit. Postpone the issue of process and direct an inquiry or investigation to be made by the Commissioner of Police or by such other person as he thinks fit, or may dismiss the complaint.

748. Process in criminal cases – All complaints shall be filed in the office of the Prothonotary and Senior Master and all process shall issue from his office.

749. What offences to be tried summarily – Offences punishable under the Indian Companies Act, 1913 (Act VII of 1913) or under the companies Act, 1956 (Act I of 1956) or under the Banking Regulation Act, 1949 (Act X of 1949) with imprisonment for a term which does not exceed two years or with fine which does not exceed one thousand rupees may be tried in a summary way.

An offence triable under section 45-J(2) of the Act jointly with the offences mentioned in this rule may also be tried summarily, provided that it is punishable with imprisonment for a term which does not exceed two years or with fine which does not exceed one thousand rupees.

750. Procedure in summary trials – (1) Where an offence triable under section 45-J (1) is tried summarily, the procedure provided in the Code of Criminal Procedure for the trial of summons case shall, so far as it is not inconsistent with the provisions of the Act, be applicable. Where, however, the offence to be tried summarily under section 45-J (1) is tried jointly with an offence under section 45-J(2), the procedure provided in the code of Criminal Procedure for the trial of warrant cases shall be applicable, provided that it shall not be necessary to adjourn the case under section 256(1) of the code of Criminal Procedure before requiring the accused to enter upon his defence or inquiring of him whether he wishes to further cross-examine any witness whose evidence has been taken.

(2) Procedure in non-summary trials – Where the offence triable under section 45-J are not tried summarily, the procedure provided in the code of Criminal Procedure for the trial of warrant cases shall, so far as it is not inconsistent with the provisions of the Act, be applicable.

751. Bail – The Court may at any time grant bail to the accused on such terms as it thinks proper.

752. Accused person to be competent witness – Any person against whom a complaint is filed by the Official Liquidator under the Act shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged along with him at the same trial:

Provided that –

- (a) he shall not be called or examined as a witness except with his consent;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution nor give rise to any presumption against himself or any person charged along with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless -
 - (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
 - (ii) he has personally or by his Advocate asked question of any witness for the prosecution with a view to establish his own good character or has given evidence of his good character or the nature or conduct of the defence is such as to involve imputations on character of the prosecutor or of any witness for the prosecution, or

- (iii) he has given evidence against any other person charged with the same offence.

753. Compounding of offences – All offences triable under Part III A of the Act may be compounded with the leave of the Court.

CRIMINAL APPEALS

754. Appeal against conviction - (a) Any person convicted on a trial held by the High Court in the exercise of its jurisdiction under section 45-J of the Act may appeal to the High Court

- (i) against the conviction on any ground of appeal which involves a question of law only.
- (ii) with the leave of the Appellate Court or upon the certificate of the Judge who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a question of fact only or mixed question of law and fact, or any other ground which appears to the Appellate Court to be a sufficient ground of appeal; and
- (ii) with the leave of the Appellate Court, against the sentence passed unless the sentence is one fixed by law.

Appeal against acquittal – (b) The Official Liquidator may appeal to the High Court against any order of acquittal on any ground of appeal which involves a question of law only.

755. Period of limitation – An appeal under the last preceding rule shall be filed within thirty days from the date of the order appealed from.

756. Application to the trial Judge for a certificate - An application to the Judge who tried the case for a certificate that it is a fit case for appeal may be made either orally at the end of the trial or by petition giving the grounds on which such certificate is sought and showing that the period of limitation for the appeal has not expired.

757. Appeals to be filed with the Prothonotary and Senior Master– Appeals shall be filed in the office of the Prothonotary and Senior Master.

758. Memorandum of Appeal - The memorandum of appeal shall be made in the form of a petition giving the grounds of objection numbered consecutively, and the grounds upon which the leave, if any, of the Appellate Court is sought. It shall also show that the appeal is within time, and shall be accompanied by a certified copy of the judgment and sentence or order of the Court, and also of the certificate of the Judge who tried the case that it is a fit case for appeal, when such certificate has been given.

759. Procedure on presentation of appeal – On presentation of an appeal, the date of such presentation shall be marked thereon, and if it is within time it shall be accepted and entered in the register of appeals to be kept for the purpose. When an appeal appears to the Prothonotary and Senior Master to be beyond time, it shall be returned to the party or his Advocate, unless the party or his Advocate applies that it be placed before the Court for orders. An application for excusing the delay in presenting the appeal may be made to the Prothonotary and Senior Master within a fortnight of the date of such return, and such application shall be placed before the Court for orders.

760. Admission of appeals – Applications referred to in the preceding rule, together with the memorandum of appeal in question and appeals which have been accepted by the Prothonotary and Senior Master being within time, shall be placed for admission before a Division Bench constituted by the Chief Justice and composed of not less than two Judges excluding the Judge by whom the original trial was held.

761. Application for bail in appeals – Application for bail shall ordinarily be made to the Appellate Court at the time of admission. The provisions of rules 980 and 982 to 984 shall, with any necessary modifications, apply to such applications.

762. Application for notes of evidence - Upon admission of an appeal, the appellant shall apply with due diligence for a certified copy to the notes of evidence and of the requisite documentary exhibits, and shall pay the usual charges, unless the Prothonotary and Senior Master in his discretion thinks fit to dispense with such payment in whole or in part.

763. Paper books to be prepared by appellant and to be typed or cyclostyled – The appeal paper books shall be prepared by the appellant and shall be typed or cyclostyled, but the Prothonotary and Senior Master may, on the application of any party, direct the paper books to be printed.

764. Paper books to be typed or cyclostyled on durable foolscap paper – When an appeal paper book is typed or cyclostyled, it shall be legibly typed or cyclostyled on durable foolscap paper or other paper similar to it in size and quality and with an inner margin of about three and a half centimeters wide. It shall be typed or cyclostyled on both sides on each leaf with double spacing.

765. Style and size of appeal paper book when printed – When the appeal paper book is directed to be printed, it shall be printed in accordance with the following directions:-

- (a) The paper book shall be printed in the form known as Demi Quarto (i.e. 54 cms. in length and 42 in width) and on both sides of each leaf with single spacing.
- (b) The size of the paper used shall be such that the sheet, when folded and trimmed, will be about twenty-eight centimetres in height and twenty-one and half centimetres in width;
- (c) The type to be used in the text shall be Pica type; but Long Primer shall be used in printing accounts, tabular matter and notes. Every tenth line shall be numbered in the margin.

766. Contents of Paper Book - The appeals book shall consist of two parts and shall contain the following documents arranged in the following order: -

PART I

- (1) Complaint,
- (2) Charge or charges against the accused in the trial Court,
- (3) Notes of evidence including statement of the accused,
- (4) Judgment including sentence or order,
- (5) Certificate of the Judge who tried the case, if any,
- (6) Order of the Appellate Court granting leave, if any,
- (7) Memorandum of appeal,
- (8) Order admitting the appeal,
- (9) Such other papers as may be deemed necessary by the Prothonotary and Senior Master.

PART II

EXHIBITS

767. Filing of Paper Book – Within six weeks of the admission of an appeal, except where the time has been extended by the Court, the appellant shall file two or more copies of the appeal paper book as may be required by the Prothonotary and Senior Master in his office, and shall also furnish two copies to the respondent.

768. Hearing of appeals – After the appeal paper books have been filed, the appeal shall be set down for hearing and final disposal before a Division Bench constituted by the Chief Justice and composed of not less than two Judges, excluding the Judge by whom the original trial was held.

769. Procedure in default of filing of paper books – Where the appellant, after admission of an appeal, does not diligently prosecute the appeal and does not file copies of the appeal paper book as required, the appeal shall be placed before the Appellate Court for dismissal. The Appellate Court may dismiss the appeal or pass such order as it may think fit.

MISCELLANEOUS

770. Section 5, Limitation Act, applicable – The provisions of section 5 of the Limitation Act, 1963, shall apply to appeals Civil or Criminal under the Act.

771. Code of Civil Procedure, High Court Original Side Rules and Code of Criminal Procedure to apply – The provisions of the Code of Civil Procedure, the rules of the Court in suits and matters on the Original Side of the Court and the provisions of the Code of Criminal Procedure, unless inconsistent with the rules contained in this chapter shall, with any necessary modification, apply to the civil or criminal proceedings and appeals under the rules in this chapter, as the case may be. In case of inconsistency between the provisions of the Code of Civil Procedure and the rules of the Court referred to herein, the said rules of the Court shall prevail.
