

CHAPTER XXI

Rules under the Banking Regulation Act, 1949 (Act X of 1949) Applicable to Applications filed in the Office of the High Court at Nagpur.

1. Definitions. — In these rules, unless the context or the subject-matter otherwise requires, —

(a) "Act" means the Banking Regulation Act, 1949 (Act X of 1949), as amended from time to time;

(b) "Company" means a Company to which the provisions of the Act apply;

(c) "Registrar" means the Registrar of the High Court, Appellate Side, for the time being;

(d) "Liquidator" means the Court Liquidator appointed under section 38-A(1) of the Act, or any person duly performing his functions.

1A. The Rule in this Chapter shall apply only to the applications filed in the office of the High Court at Nagpur.

2. Presentation and hearing of application under Part III or Part III-A of the Act. — An application under Part III or Part III-A of the Act in respect of a Banking Company having its Registered Office or, in the case of Company incorporated outside India, its principal place of business outside the territorial limits of Greater Bombay, shall be filed in the Office of the Registrar. The application shall be signed and verified in the same manner as a plaint and shall be supported by an affidavit. It shall be heard by a Single Judge, who may reject it summarily or pass such orders and give such directions as he may deem proper, including directions for notice of the application being given to such person or persons as may seem to him likely to be affected by the proceedings.

3. General Headings. — Applications under Part III or Part III-A of the Act shall be intitled 'In the matter of the Act' and 'In the matter of Banking Company' and where necessary in the matter of the Act under which the Banking Company has been ordered to be wound up.

4. Application of rules under the Act. — Save as otherwise provided for in these rules, the rules framed by this High Court under the Indian Companies Act, 1913, and the Companies (Courts) Rules, 1959, framed by the Supreme Court, shall, with necessary modifications and adaptations, apply to proceedings under the Act.

5. General duties and powers of 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 in such amount as may be ordered by the Court.

(b) He shall generally have all the powers and shall take all the steps to do all the things necessary or expedient to protect the rights and interest of all creditors and share-holders of the Banks, and to conserve and ensure the proper disposition, according to law, of the assets of the Bank.

(c) The Special Officer may be empowered to represent the Company in proceedings before any Court, Tribunal or Public Officer.

(d) The Special Officer may apply to the Court for 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, which shall be paid, unless the Court otherwise directs, from the assets of the Company.

(g) The Special Officer shall continue to supervise the affairs of the Bank until he is removed from Office, or the term of his appointment terminates or until the Company resumes business or until a Liquidator is duly appointed to wind up the business of the Company.

6. Inspection report of Reserve Bank of India. — No person, other than the parties to the proceedings and the 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.

7. Notice of application. — Where a notice is directed to be given to any party, it shall be served together with a copy of the application, and the application shall not be heard until 14 days after the service of the notice, unless the Judge otherwise directs. The applicant shall supply the requisite number of copies of the application for service.

8. Applications 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 the 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 and shall be supported by an affidavit.

9. 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 Company, or to such other Judge as the Chief Justice may direct. That 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 14 days after service of the notice, unless the Judge otherwise directs. The petitioner shall supply the requisite number of copies for service.

10. Affidavit in answer. — An answer to the petition mentioned in rule 9 shall be made by filing an affidavit and a copy thereof shall be furnished to the petitioner or his attorney or his Advocate at least two clear days before the returnable date of the notice.

11. Direction for hearing of 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.

12. Transfer of suits and proceedings to High Court. — When the Liquidator submits to the Court a report under section 45-C(2) of the Act, he shall apply 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, 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 ordinarily be served 14 days before the date appointed for holding the inquiry.

13. Affidavits in reply. — Any party desiring to oppose the transfer of the suit or proceeding to the High Court shall file an affidavit and furnish a copy thereof to the Liquidator or his Attorneys or Advocate at least two clear days before the returnable date of the notice.

14. List of debtors. — When the 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 dealing with the proceedings for the winding up of the 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 Liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notice shall be served four weeks before the date appointed to settle such list, variation or addition.

15. 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 abode and such notice shall be considered as 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.

16. 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 Liquidator or his Attorneys or Advocate at least seven clear days before the day appointed for the settlement of the list.

17. Settlement of list of Debtors. — On the date fixed for settlement of the list of debtors, the Court may settle the list or such part thereof as it may think proper. If the Court is of opinion that it is not immediately possible to adjudicate upon any particular debt mentioned in the list, it may 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 adjudication of the debt. The Court may in a special case refer the Liquidator to a regular suit.

18. Liquidator to report if he contests claims of Depositors. — If the 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 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 Court 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.

19. Registrar of suits in winding up matters. — Suits in respect of claims made by or against any Company in Liquidation including claims by or against any of its Branches in India, which are filed or transferred to the High Court under the Act, shall be entered in a separate list to be maintained by the Office of the Registrar and shall be treated as expedited suits. If such suits have been filed before the date of the order for winding up, the Liquidator shall furnish to the Registrar a list of such suits.

20. Hearing of suits and connected matter. — 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 proceeding for the winding up of the Company or by such other Judge as the Chief Justice may direct.

21. Procedure in such suit. — The Judge, shall, save as otherwise provided in these rules, follow the procedure prescribed having regard to the nature of the suit. Summary procedure shall be followed for summary suits and regular procedure for other suits, provided that in regular suits the following procedure shall be followed :—

Within 10 days of the service or the writ of Summons of such longer period as the Judge may direct on the application of the plaintiff in that behalf, the plaintiff shall take out a summons directions, and the Judge shall give such directions, as he may think proper, as to filing the written-statement, set-off or counterclaim, if any, or points of defence, discovery, inspection, examination of witnesses in Court or in Chambers, taking of evidence by affidavit or otherwise and generally for the speedy determination of the suit.

22. When proceedings not transferred, Court may request expedition of the same. — If any proceeding pending in any Court is not transferred to the High Court under section 45-C(3), 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 issue directions to the Registrar to write a letter of request to the Court in which the proceedings is pending, requesting that the proceeding may be disposed of as expeditiously as possible.

23. 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 the Company or to such other Judge as the Chief Justice may direct, for permission to inspect the records of the Company or of the High Court in the matter of the Company, and such permission may be granted by the Judge in his discretion.

24. Presentation of complaint and issue of process. — Proceedings under section 45-J of the Act shall commence with a complaint being presented by the Liquidator to such Judge as the Chief Justice may direct. On presentation of the complaint, the Judge may issue a summons or a bailable or non-bailable warrant against the accused and shall fix a date for the trial, or may, if he thinks fit, postpone the issue of process for compelling the attendance of the person complained against and may direct an inquiry or investigation to be made by the Inspector-General of Police or by such other person as he thinks fit, or may dismiss the complaint as he may, in his discretion, think fit.

25. Process in criminal cases. — All complaints shall be filed in the Office of the Registrar and all processes shall issue from his office.

26. Offences triable summarily. — (i) Offences punishable under the Indian Companies Act, 1956 (Act I of 1956), or under the Act 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.

(ii) An offence triable under section 45-J(1) 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.

27. (i) Procedure in summary trials. — 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 cases 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 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 246(4) 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.

(ii) Procedure in non-summary trials. — Where the offences 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.

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

29. Accused person to be competent witness. — Any person against whom a complaint is filed by the 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 together 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 be the prosecution or give rise to any presumption against himself or any person charged together 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 –

(1) 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,

(2) he has personally or by his Advocate, asked questions 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 the character of the prosecutor or of any witness for the prosecution, or

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

30. Summoning of witnesses. — (i) The party applying for the summons to a witness in civil or criminal proceedings shall, before the summons is granted, pay into Court such a sum of money as will be sufficient to defray the travelling and other expenses of the persons summoned in passing to and from the Court and for one day's attendance in accordance with the scale prescribed in the Criminal Manual.

(ii) The witness shall, if obliged to attend for more than one day, be entitled before giving his evidence, to claim from the party by whom he shall have been summoned, his expenses at the rates specified in sub-rule (i) for each additional day that he may be required to attend.

(iii) Applications for the issue of summons may be granted by the Registrar.

31. Recording of evidence. — Upon the hearing of any suit or proceeding transferred to this Court or proceedings whether civil or criminal under the Act, in this Court, the evidence of the witnesses shall be taken down in writing in the language of this Court by, or in the presence and under the superintendence of the Judge or one of the Judges, not ordinarily in the form of question and answer, but in that of a narrative, and the notes so taken shall be sufficient for all purposes and shall form part of the record.

32. Compounding of offences. — All offences triable under Part- III-A of the Act may be compounded with the leave of the Court.

33. Supervision of Compromises 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 (I of 1956), sanctioning a compromise or arrangement in respect of a Company is passed the Judge may direct the 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.

34. Recovery of dues as arrears of 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 Liquidator may apply to the proper Revenue Authorities to recover the said amount as an arrear of land revenue.

Civil Appeals

35. Appeal to High Court to be heard by Division Court. — (i) Subject to the provisions of section 45-N(1) of the Act, an appeals shall lie from an order or decision of a Judge in a civil proceeding under the Act to the High Court.

(ii) 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.

36. Form and applicability of High Court Appellate Side Rules. — (i) Except in so far as otherwise provided in these rules, the appeal shall be in the form prescribed for regular First Appeals; and the High Court Appellate Side Rules with regard to the First Appeal shall, with necessary modification and adaptations, apply to the Civil Appeals under the Act.

(ii) In addition to the printing charges prescribed, the appellant shall within 14 days from the date of the admission to the Register of the appeal deposit the typing charges for the preparation of five paper books, as estimated by the Office, The rate chargeable for typing will be Re.1 per page inclusive of five copies, in addition to the charges at the rate of three Paise per foolscap paper. Any amount in excess of the estimated cost deposited by the Appellant shall be paid when the paper- books are ready.

(iii) The office shall give intimation to the appellant, or his Advocate or Attorney, when the paper-books are ready stating, where necessary, the additional amount which he is required to pay.

37. Period within which appeal and copies should be filed. — The appeal shall be filed within 20 days from the date of the decree or order appealed from. The memorandum of appeal need not be accompanied by a copy of the judgment, decree or order appealed from, but such copies of the judgment decree or order must be filed before the date fixed for hearing.

38. Short notice matters. — All appeals under the Act shall classified and dealt with as short notice matters under the High Court Appellate Side Rules.

Criminal Appeals

39. Appeal against any order made under section 45-J. — (i) 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 —

(a) against the conviction on any ground of appeal which involves a matter of law only,

(b) 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 matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the Appellate Court to be a sufficient ground of appeal, and

(c) with the leave of the Appellate Court, against the sentence passed unless the sentence is one fixed by law.

(ii) The Liquidator may appeal to the High Court against any order of acquittal on any ground of appeal which involves a matter of law only.

40. Appeal to be disposed of by Division Bench. — An appeal under the preceding rule from the decision of a single Judge shall be heard and disposed of by a Division Court consisting of at least two Judges, other than the Judge whose decision is appealed from.

41. Period within which appeal to be filed. — An appeal under the last preceding rule shall be filed within 30 days from the date of the order appealed from.

42. Application for certificate. — An application to the Judge who tried the case for a certificate that it is a fit case for appeal shall ordinarily be made orally at the end of the trial, or for special reasons to be stated in the petition, by petition giving the grounds on which such certificate is sought and showing that the period of limitation for the appeal has not expired.

43. Contents of memorandum of appeal. — The memorandum of appeal shall be made in the form of a petition in writing 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 the 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.

44. Paper-books. — (i) Appeal paper-books shall be typewritten, and the appellant shall supply five copies of the paper-book within four weeks from the date of admission of the appeal or within such time granted by the Court.

(ii) The appeal paper-book shall contain the following papers:—

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 Registrar.

PART II

Exhibit. — Within six weeks of the admission of 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 Registrar in his Office, and shall also furnish two copies to the respondent.

45. Applicability of High Court, Appellate Side Rules. — Save as otherwise provided in these rules, the rules of the High Court, Appellate Side in respect of criminal appeals shall apply to criminal appeals under the Act.

46. Application for bail. — Application for bail shall ordinarily be made to the Appellate Court at the time of admission, provided that a copy of the application shall be served on the Prosecutor at least 48 hours before the motion for bail is made.

Miscellaneous

47. Section 5, Limitation Act applicable. — The provisions of section 5 of the Indian Limitation Act, shall apply to appeals—civil or criminal — under the Act.

48. Filing of appeals. — All appeals — civil or criminal — shall be filed in the Office of the Registrar and shall be accepted, if within time, and are otherwise in conformity with the rules.

49. Procedure regarding appeals which are beyond time. — When an appeal — civil or criminal — appears to the Office to be beyond time, it shall be returned to the party or his Advocate, unless it is accompanied by a separate application for excuse of delay or the party or his Advocate applies for it to be placed before the Court for orders.

50. Application for excusing delay. — An Application for excusing the delay in presenting the appeal shall be filed within a fortnight of such return. Such application shall be placed before the Court for orders as soon as practicable.

51. Removal of office objection. — All other office objections shall be removed by the party or his advocate within 14 days from the date of the service of the office objections.

52. Removal of office objection within specified time. — (i) Where any party is required under these rules to do anything in regard to an application, appeal or otherwise within a specified time and he fails to do so the Registrar may on sufficient cause shown, excuse any delay not exceeding one month.

(ii) Any delay exceeding one month shall be treated prima facie as failure to prosecute diligently, and the delay may be excused only by order of the Court.

53. Appeal not prosecuted diligently to be placed before Court. — Where an appellant, after the admission of an appeal, does not prosecute the appeal diligently,

the appeal shall be placed before the Appellate Court for orders. The Appellate Court may dismiss the appeal or pass such orders as it may deem fit.

54. Applicability of Civil Procedure Code, Criminal Procedure Code and High Court Appellate Side Rules. — The provisions of the Code of Civil Procedure, the Code of Criminal Procedure and the High Court Appellate Side Rules, unless inconsistent with these rules, shall apply mutatis mutandis to civil and criminal proceedings or appeals under these rules.

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