

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION
OFFICIAL ASSIGNEE'S REPORT NO. 4 OF 2016
IN
NOTICE OF MOTION NO. 4 OF 2016
IN
RULE NISI NO. 7 OF 2015
IN
INSOLVENCY PETITION NO. 16 OF 2014**

Re: 1. Mrs. Anjana Vinod Kumar
2. Mr. R. B. Vinod Kumar

...Insolvents

Rajkumar M. Bajaj

...Petitioning
Creditor

Mr. K. S. Lalwani, *for the Petitioning Creditor.*

Mr. R. C. Jain, *for Insolvent.*

Mr. M. D. Narvekar, **Official Assignee**, *present.*

CORAM: G.S. PATEL, J

DATED: 15th March 2016

PC:-

1. Mr. Jain relies on an order dated 20th October 2015 in Notice of Motion No. 40 of 2015. He does this apparently to justify his submission that the commission of Rs. 90,000/- paid till date is

sufficient and he need not pay the difference of approximately Rs. 50,000/- claimed by the Official Assignee.

2. I am unable to agree with Mr. Jain. Mr. Justice Gupte's order of 20th October 2015 is one that was made in the facts of that case. It does not lay down as a matter of law that any such case the commission is to be paid on the amount settled. In the present case, the settlement was in the sum of Rs. 30 lakhs. An amount equivalent to 3% of this has been paid as commission. However, the total claims were Rs.46,94,429.20, and 3% of this would amount to Rs. 1,40,832. The shortfall is Rs.50,842/-. Rule 180(b)(iv) of the Presidency Town Insolvency Rules provide for payment of 3% of the **total** of such debts. The explanation to that Rule makes it clear that the term 'debts' includes the debts showed by the Insolvent in the schedule and the debts proved before the Official Assignee. The Commission, therefore, cannot be calculated on the amount of Rs. 30 Lakhs.

3. The order of annulment must be made subject to the payment of commission. Mr. Jain says that the amount will be deposited within a period of four weeks from today.

4. The Official Assignee's Report No. 4 of 2016 is made absolute in terms of prayer clauses (a) and (b) subject to the above.

(G. S. PATEL, J.)