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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION
OFFICIAL ASSIGNEE REPORT NO. 4 OF 2021
IN
INSOLVENCY PETITION NO. 27 OF 2003**

Pravinkumar B Jain

...Petitioning
Creditor

S Bhagwandas Alias Mahesh Bhagwandas

...Erstwhile
Insolvent

Mr KK Trivedi, *Official Assignee present.*

Mr EB Sivakumar, *Deputy Official Assignee present. .*

Mr Subodh Patil, *1st Assistant to Official Assignee present.*

Ms MP Kunte, *IR present.*

CORAM: G.S. PATEL, J

DATED: 21st September 2021

PC:-

1. The Report is placed at the instance of the Official Assignee. It asks for directions in regard to a matter of procedure in the office of the Official Assignee. This relates to insolvency matters where the adjudication of an individual as insolvent is annulled by the Insolvency Court. In those cases, the party concerned is required to lodged a “certified copy” of the Court’s order of annulment with the Official Assignee. When that happens, the Registry, i.e. the

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Official Assignee's office, prepares a journal memo to charge the Official Assignee's commission, and to make payment of any surplus lying to the credit of the estate account to the petitioning creditor, other creditors and the erstwhile insolvent as directed by the Insolvency Court. Once that is done, the estate account is closed. On a recent reverification or verification of the records, the Official Assignee found that although there were several annulment orders under Section 21(1) or Section 23(1) of the Presidency Town Insolvency Act 1909 and under Rule 136, the estate accounts were not closed *only* for want of a certified copy of the annulment order being lodged by one or the other of the parties concerned.

2. At Exhibit "A" , referenced in paragraph 4 of this Report, is a list of the matters where there is an annulment and all of which are pending only for want of certified copies. There are at least 82 such matters.

3. Where the journal memos are not prepared, the account section cannot remit the Official Assignee's commission to the Government. The reason is self-evident. Without the certified copy, the journal memo cannot be prepared. Without the journal memo, the Official Assignee's commission cannot be computed and deducted from the estate account. Without that being done, nothing can be remitted to the State Government. The estate account cannot be closed.

4. In consequence, and again only on account of non-submission of certified copies, the Official Assignee's office has continued

needlessly with investments in fixed deposits in various nationalised banks for two to five years. The surplus amounts have not been refunded. The estate accounts of the erstwhile Insolvent remain unclosed. The Official Assignee's commission is also invested in fixed deposits. These need to be encashed for remittance to the State Government. That has also not been done.

5. Paragraph 6 of the Report says that neither the petitioning creditor(s) nor other creditors nor the erstwhile insolvents have come forward to claim the surplus. Paragraph 8 points out the sole reason for all this is the non-submission of a certified copy. The practice of the Official Assignee's office is to wait — apparently indefinitely — for one of the parties to submit a certified copy of the annulment order. But there is surely a point beyond which patience ceases to be a virtue. This is all the more surprising because at the time when the Court makes an order of annulment the Official Assignee's office representatives are present in Court itself. So, the Official Assignee knows full well the date on which an order of annulment is made.

6. To my mind, this is a wholly unviable situation. It is entirely unacceptable. It is the sort of bureaucratic nightmare that might have made Kafka gleeful. Here is an office of the High Court itself awaiting — possibly until the end of time — a certified copy from the High Court itself, insisting that this certified copy that has to be brought from the certified copy branch to the Official Assignee by one of the parties. If that is not done, this office will continue to retain the funds and will not close estate accounts. It will not make the remittance to the government. To quote Shakespeare in

Macbeth, Act V, Scene 5: *Tomorrow, and tomorrow, and tomorrow, creeps in this petty pace from day to day to the last syllable of recorded time.* That seems to me to fairly accurately describe this practice in the Official Assignee's office.

7. This absurdity must stop. The Official Assignee must immediately issue directions along these lines:

- (a) First, if within 30 days of the order of annulment, a certified copy has not been lodged by the petitioning creditor, erstwhile insolvent or any other creditor, the Official Assignee must obtain a certified copy from the department.
- (b) Second, the Official Assignee does not, in this digital age, need to await a certified copy at all. It is entirely possible and permissible for the Official Assignee to proceed on the basis of an authenticated copy or a digitally signed copy. That, after all, is the very purpose of affixing digital signatures to these orders.
- (c) Third, within 30 to 60 days of obtaining a copy of the order of annulment, the Official Assignee must intimate the petitioning creditor and the erstwhile insolvent that the Official Assignee proposes to close the estate account within the next 45 days and that those parties must come forward with their claims, if any. The notice must also state that in accordance with Rule 178 of the Presidency Insolvency Town Rules, if no claim is made within the time stipulated, all

unclaimed amounts and dividends will be remitted to the State Government.

8. The Official Assignee, who is present in Court, is requested to prepare a revised practice note and have the same placed in draft in Chambers for approval in accordance with this order.

9. Mr Trivedi points out that there is very likely to be a problem regarding the old matters because parties may have shifted and the addresses on the record of the Official Assignee's papers are old addresses.

10. I do not want the Official Assignee to incur the expenses of the public advertisement in the newspapers. Instead, what the Official Assignee will do as regards all the old matters annexed to the Report is to issue a public notice in soft copy to be uploaded on the Bombay High Court website and for which he will coordinate with Mr Bobade, Deputy Registrar (IT). That notice and its link have to remain on the front page of the High Court website for at least 30 days.

11. Mr Trivedi will place a draft of the notice that is proposed to be issued regarding the previous matters, a list of which is annexed to the Report. That list will have to be included in the online notice

12. The Report is disposed of in these terms.

13. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)