**Application (IP) No. 51 of 2025**
**IN**
**I.P.No. 25 of 2014**

**DR.G.JAYACHANDRAN, J.**
and
**C.V.KARTHIKEYAN, J.**

This Application has been filed by the Official Assignee, seeking a direction against the respondents, the Registrar General Office of the Pay and Accounts Officer, Madras High Court to refund a sum of Rs.4,00,29,594/- remitted to the Government as 7% commission in I.P.No. 25 of 2014 and credit the said amount to the estate of Arjunlal Sunderdas, the insolvent in I.P.No. 2014 and for a direction against the Official Assignee not to make any further deduction from any collection of money or debt and not to remit then to the account of the second respondent including the amount set apart in I.P.No. 2014.

2. In the report of the Official Assignee, it had been stated that Arjunlal

Sunderdas had been adjudicated as insolvent on 21.04.2014 on a creditor petition. His rights and claims arising in and out of insolvency vested with the Official Assignee. The Official Assignee took out 103 applications to collect he debts due from debtors in respect of the estate of the insolvent / Arjunlal Sunderdas. The Official Assignee had collected a sum of Rs.114,10,58,405/- from the debtors and the sale of properties. Consequent to the recovery of the amounts, a total of 70% dividend had been disbursed towards the claims of creditors which had been admitted by the Official Assignee and expenses of Rs.30,45,62,010/- had also been incurred. The statement of funds as on 17.12.2024 had also been annexed with the petition.

3. It had been stated that Section 115 of the Presidency Towns Insolvency Act, 1909 provides exemption from payment of stamp duty whenever a transfer of insolvency property is effected by the Official Assignee. This is done to encourage buyers to buy the properties of the insolvent in public auction which usually carry and stigma. It had been further stated that the High Court exercising powers conferred under Section 112 of the said Act read with

Section 7 framed Insolvency Rules 1959. The object of the Act is to administer the estate of insolvents towards the interest of the general body of creditors to receive and collect the monies and to declare dividend to the creditors.

4. It had been further contended that whenever there has been recovery of money for any estate, Government commission of 7% is collected and deducted on the principal amount collected by the Official Assignee as provided under Order XVII Rule 10(i) of the Insolvency Rules 1958 and the amount is remitted to the Government / Pay and Accounts Office, Madras High Court.

5. It had been further contended that the Government Commission can be charged only on the amounts paid to the creditors in respect of the composition scheme or arrangement but however, it had been stated that there has been a deduction of 7% commission invariably on all the recoveries of debts made with respect to the estate of the insolvent. It had been stated that this deduction defeats the very object of the Act. It reduces the dividend

payable to the creditors to a large extent.

6. It had been contended by the applicant that this commission of 7% should not be deducted from the principal amount but only charged on payment of principal amount to creditors on compromise or settlement or discharge. It had been stated that substantial amount had been deducted from the collection made from the debtors and also from the sale consideration when properties are put to auction.

7. It had been further stated that the office of the Official Assignee, has been deducting 7% commission on every amount collected from the debtors or every sale consideration received. It had been stated that a letter had been addressed to the Official Assignee on 25.09.2023 protesting against such deduction. However, the office of the Official Assignee continued to deduct the amounts.

8. With respect to all the estates, from 2007 till the date of filing of the

application, a sum of Rs.7,97,96,318/- had been deducted towards Government commission. In so far as the estate of Arjunlal Sunderdas is concerned, a sum of Rs.4,00,29,594/- had been deducted as on 17.12.2024 and credited to the office of Pay and Accounts Officer in the Madras High Court with head of Account No.6184510001-00/001501-AC0103 to the Reserve Bank of India.

9. It had been stated that to avoid further deduction, amounts had been set apart on subsequent collections made and on sale consideration received. A sum of Rs.3,36,00,000/- which had been deducted had been set apart without remitting the same into the Government account. It had been stated that if this is added to the amount already deducted, the total amount of commission with respect to the estate of the insolvent / Arjunlal Sunderdas would come to Rs.7,36,29,594/-. It had been stated that the respondent must be directed to refund the amount of Rs.4,00,29,594/- which had already been remitted to the Government account. It was under those circumstances that this application has been filed.

10. Notice had been directed to the respondents and learned counsel had entered appearance on behalf of the Registrar General. It had been contended by the learned counsel for the first respondent that the deduction of 7% towards Government commission had been provided under Order XVII Rule 10 of the Insolvency Rules 1958 which Rules had been framed by the High Court. It had been contended that even when amendment were introduced to the said Rules, this particular Rule was not amended but rather the commission was increased gradually from 3% to 5% and then to 7%. It had thus been contended that the deduction had been made lawfully and only under authority of the High Court which had framed the Insolvency Rules 1958.

11. The learned counsel further contented that this deduction of the commission is permissible and stated that it could be deducted on the principal amount or the value of assets collected by the Official Assignee in each estate and on the amounts paid to the creditors in pursuance of composition of scheme of arrangement. The learned counsel therefore contended that there cannot be a direction issued for refund of the amount already deducted and stated that the

application should be dismissed.

12. The learned Special Government Pleader appearing for the second respondent contended that the commission is deducted as Government commission on amounts collected towards the estate of the insolvent from the debtors and through sale consideration whenever properties are put to auction. The learned Special Government Pleader contended that the Government also has to budget for expenses towards judicial administration and in every judicial proceedings court fees are payable on the value of the suit but in insolvency, when amounts are collected from debtors or when there is sale of property, from the amounts collected and from the sale consideration received, the Government has a right to deduct commission. The learned Special Government Pleader therefore contended that the application should be dismissed.

13. We have carefully considered the arguments advanced and perused

the relevant records.

14. This application had been taken out by the Official Assignee raising a protest against deduction of Government commission at 7% on all amounts recovered by the Official Assignee from the debtors to the estate of the insolvent and also from every sale consideration received on sale of properties.

15. The Presidency and Town Insolvency Act, 1909 repealed the Indian Insolvency Act 1848 granting powers to the Courts to compel discovery of the property of the insolvent and further granting authority to the Official Assignee under Section 19 to investigate the conduct of the insolvent and to report any application for discharge. The Official Assignee will also have to put forth reasons to believe that the insolvent had committed an insolvency offence which would justify the Court to refuse suspend or qualify an order of discharge. It also provides that the report of the Official Assignee is to be prima facie evidence and the Court may presume the correctness of any statement contained therein. It was also further provided under Section 17 of

the Act that on the passing of an order of adjudication, the property of the insolvent, wherever it may be situated, would vest in the Official Assignee.

16. Section 7 of the Presidency Towns and Insolvency Act, 1909 is as follows:-

> *"7. Power of Court to decide all questions arising in insolvency.— Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case: "*

17. It provides that the Court shall have full power to decide that all

question whether on law or on facts which may arise in cases of insolvency and also necessary to decide the purpose for doing complete justice.

18. Section 112 of the Act gives the power to the Court to frame rules for putting into effect the objects of the Act. The provision is in exhaustive listing out the various subjects on which rules could be framed. It would only be appropriate that the said provision is extracted in entirety.

> ***112. Rules.****— (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act.*
>
> *(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—*
>
> *(a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;*
>
> *(b) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to*

*the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;*

*(c) the proceedings of the official assignee in taking possession of and realising the estates of insolvent debtors;*

*(e) the receipts, payments and accounts of the official assignee;*

*(f) the audit of the accounts of the official assignee;*

*(g) the payment of the costs of the audit of his accounts out of the proceeds of the investments in his hands;*

*(h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;*

*(i) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court;*

*(j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;*

*(k) the intervention of the official assignee at the hearing of applications and matters relating to insolvent*

*debtors and their estates;*

*[(kk) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor;]*

*(l) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors;*

*(m) the service of notices in proceedings under this Act;*

*[(mm) the form of the insolvency notice under clause(a), and the manner in which such notice may be served under clause (b), of sub-section (3) of section 9; ]*

*(n) the appointment, meetings and procedure of committees of inspection;*

*(o) the conduct of proceedings under this Act in the name of a firm;*

*(p) the forms to be used in proceedings under this Act;*

*(q) the procedure to be followed in the case of estates to be administered in a summary manner;*

*(r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act; 5*

*(s) the distribution of work between the official assignee and his deputy or deputies ;*

*[and, in the case of the High Court at Madras, may also provide for and regulate the remuneration of the official assignee and the payment of the costs, charges and expenses of his establishment].*

19. Clause 18 of the Letters Patent relates to the Civil Jurisdiction of the High Court specifically with respect to the Insolvency Court. Clause 18 of the Letters Patent is as follows:-

***"18. Provision with respect to the Insolvent Court:***

*- And we do further ordain that the Court for relief of insolvent debtors at Madras shall be held before one of the Judges of the said High Court of Judicature at Madras, and the said High Court, and any such Judge thereof, shall have and exercise within the presidency of Madras, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India."*

20. The Madras High Court exercising the authority provided under

Section 112 of the Presidency Town Insolvency Act, 1909 read with Clause 18 of the Letters Patent had framed the Insolvency Rules 1958.

21. Order XVII Rule 10 of the Insolvency Rules 1958 is as follows:-

*"10(i) – The Official Assignee shall charge commission at the rate of 7 percent on the principal amount or value of assets collected by him in each estate and on the amounts paid to creditors in pursuance of composition or scheme of arrangements.*

*(ii) The Official Assignee shall also charge a commission at the rate of 7 percent on the gross collections made by him as interim Receiver. In cases where Official Assignee has made no collection as interim Receiver but to perform other duties, he Insolvency Court may fix such remuneration as it may deem fit, subject to a minimum of Rs.250/-. "*

22. Under the said provision, the Official Assignee was authorised to

charge commission at the rate of 7% on the princpal amount or value of assets collected in each estate and on the amounts paid under a composition of scheme of arrangement.

23. The grievance raised in this application is that the office of the Official Assignee is deducting Government commission at 7% on all amounts collected from the debtors and of sale consideration received on auction of the properties of the insolvent. It had been contended that such deduction could be done only on the amounts paid to creditors in pursuance of composition of scheme of arrangements.

24. The learned counsel for the applicants placed stress on the words *"in pursuance of composition or scheme of arrangement"*. It is thus contended that there could be deduction only when either the collection or the payment was in pursuance of a composition of scheme of arrangement. It had however been contended that the office of the Official Assignee had been deducting government commission at 7% on each and every amount received and this had

directly affected the dividend payable to the creditors.

25. The learned counsel for the first respondent however brought to the notice of this Court the fact that the Government Commission has been deducted as a practice and the only amendments which have been made were with respect to the rate of commission and not with the concept of deduction. It had thus been stated that the respondents have been lawfully and with authority deducting the commission and there is no requirement to revisit the said Rules.

26. In the connection, it may also be appropriate to examine a report given by the Master on Special Duty in the Madras High Court on 27.03.1937. This was consequent to a letter by the High Court to the Government that there was due a reorganisation and financial reform of the office of the Official Assignee. Accordingly, the then Master on Special Duty was assigned to enquire into the working of the office of the Official Assignee. He had forwarded a report dated 27.03.1937 to the High Court.

27. A perusal of the said report reveals that the office of the Official Assignee was originally a separate establishment with a separate staff structure. It had been stated that for collection of the debts from the debtors, the Official Assignee had been engaging agents. A few of them were on fixed pay but the rest were paid remuneration on commission basis. It had been observed that since the insolvency section was a separate section set apart from the High Court, the salary and other expenses of the Insolvency Section were paid from the amounts so deducted towards Government commission. This appears to be the basis on which Government commission as a concept came to be introduced in the Insolvency Rules, 1958. Though a Single Judge of the High Court presided over the Insolvency Court, the Insolvency Section was still a separate establishment. To administer the said Section in a proper manner, commissions were deducted from the amounts collected by the Official Assignee from the debtors and additionally, it was also collected from the sale consideration of the properties sold by the Official Assignee.

28. This fact was also reiterated in a Division Bench Judgment of this

Court reported in ***1943 ILR 338 [C.R.Subramania Ayyar Vs. the Official Assignee, Madras***], wherein it had been observed that the *"settled"* practice of the Madras High Court has been to allow commission to the Official Assignee on funds paid into his hands in pursuance of a scheme of composition.

29. The appeal before the Division Bench raised a question whether the Official Assignee was entitled to a charge on the commission when funds had been paid pursuant to a scheme of composition. It had been held as follows:-

> *"4. It has throughout been the practice of this Court to allow the Official Assignee a commission of five per cent, on all monies paid out by him under a scheme of composition. Form 21 of Appendix I to the rules, which is the form used when there is a proposal for a composition mentions the commission payable to the Official Assignee, and the debtor in making the proposal has to state what provisions are to be made for its payment. Rule 21 of Order 17 provides for, the payment of commission to the Official Assignee upon the balance*

*remaining in his hands upon, the dismissal of a petition or the annulment of an order of adjudication. It is the practice of other High Courts and in England to allow commission on amounts paid under a scheme of composition. The Insolvency Rules of the Calcutta and Bombay High Courts make express provision for this, and to prevent the present question arising in future it is advisable that the position should be made perfectly clear by a suitable amendment in our rules. Rule 218 of the Bankruptcy Rules, 1915, relates to payments under a composition scheme, and in the margin there is this note: "Dividends under composition or scheme". Therefore, according to the English practice a payment made under a composition is regarded as a dividend.*

*5. We are not prepared to read rule 19 of Order 17 of our rules differently from the way in which it has hitherto been read. We have already indicated that it has been the settled practice of this Court to allow the Official Assignee to charge commission on payments made under a composition and we hold that the rule is* *wide enough drawn to permit of this, but to save trouble in future we advise that it should be recast.*

*6. The appeal will be dismissed."*

30. Even when the amendments had been brought about to the Insolvency Rules, the only amendment introduced was with respect to the rate of commission and not to the concept of commission.

31. In ***Justia Legal Dictonary***, "*Commission*" has been defined as *"refers to a payment given to an individual or agent for executing a business transaction or supplying a service."*

32. It must be however pointed out that subsequently the office of the Official Assignee had been merged with the High Court. The Official Assignee no longer employs agents for collection of debts. There is therefore no requirement to deduct any commission from the amounts collected to be paid as remuneration to the agents. The Officers and staff in the office of the Official

Assignee are Officers and Staff of the High Court. They could be posted in any section of the High Court and the Insolvency Section is just one among many sections. The earlier concept of the office of the Official Assignee being distinct and not connected with the High Court had been done away with and for the past more than a decade, it has been functioning only under the High Court. The staff are paid salary like any other staff of the High Court. The pay scale is the same as that of other equal ranked Staff or Officer of the High Court. There is no distinction at all and they are all Officers and Staff of the High Court. This alteration in administration had not been taken note of while bringing in amendments to the Insolvency Rules.

33. The Notification in R.O.C.No. 9404 /92/C1 had been published in the Tamil Nadu Gazettee dated 02.07.1997. The Notification in entirety is given below:-

*"R.O.C. No. 9404/92/C1*

*NOTIFICATION*

*I.Consequent on the recommendations of this Hon'ble Court in its Judgment dated 19.1.96 in Writ Petition No. 1/93 and in the decision taken by the Committee of Hon'ble Judges, including the then Hon'ble the Chief Justice (Hon'ble K.A.S. C.J.) in the Office Note in R.O.C.N..9404/92/C1, the Hon'ble the Acting Chief Justice is pleased to integrate the Madras High Court Official Assignee Service with the Madras High Court Service.*

*II. Consequent the integration of the Madras High Court Official Assignee Service with the Madras High Court Service, the Hon'ble the Acting Chief Justice, in exercise of the powers conferred by Article 229 (1) and (2) of the Constitution of India and of all other powers connected thereto, is pleased to make the following amendments to the Madras High Court Service Rules .*

*AMENDMENTS*

*In the Madras High Court Service Rules,*

***I***

*In Rule 3, under the heading "Division-I',*

*(1) after the existing entries under Category-1, entries" 1B Official Assignee";*

*(ii) after the existing entries under Category-4, the entries, "4 B. Deputy Official Assignee";*

*(iii) after the existing entries under category-the entries "6 B. Sub-Assistant Registrar (Insolvents/)" shall be added;*

*(iv) after such addition under Category-6," the following expression shall be added "The post of Sub-Assistant Registrar (Accounts) in the Office of the Official Assignee is redesignated Accounts as Sub-Assistant Registrar (Insolvents) and shown as Category-6 B in the Madras High Court Service Rules"*

***II***

*In Rule 3, under the heading 'Division-II', i) after Category-1 (deleted), entries "1 A. Section Officer (Property)" shall be added.*

*ii) after the existing note under Division II, the following expression shall be added "The posts of Section Officers (Administration, Dividend and Accounts), Assistant Section Officers (Debt, Collector, court, Property, Dividend, Accounts and Cash) in the office of the Official Assignee have been included with the posts of Section Officers."*

*and 'Assistant Section Officers respectively in the Madras High Court Service. Hence the said posts have not been specifically shown.*

*The posts of Assistants, Typists and Steno-Typists that are common categories in the Madras High Court Official Assignee Service have been included with the posts of Assistants, Typists and Steno-typists in the Madras High Court Service. Hence the said posts have not been specifically shown.*

*Provided that this amendment shall take effect from the date on which it is published and shall not affect the interests of persons who were already appointed as Section Officers (Administration, Dividend and Accounts) and Assistant Section Officers (Debt Collector, Court, Property, Dividend, Accounts and Cash), Typists and Steno-Typists in the Madras High Court*

*Official Assignee Service prior to the date of issuance of this amendment."*

**_III_**

*In Rule 3, under the Heading "Division III", after the existing entries under Section II,..*

*the following expression shall be added, -*

*"NOTE: The posts of Attenders including searcher in the Madras High Court official Assignee Service is redesignated as 'Record Clerks and have been included with the said post in the Madras High Court Service. Hence the said posts have not been specifically shown.*

*The post of Office Assistants in the Madras High Court. Official Assignee Service is a common category. The said post has been included with the post of 'Office Assistant' in the Madras High Court Service. Hence this post has also not been specifically shown."*

**_IV_**

*i) in sub-rule (3) of Rule 5, the expression "Categories 1 to 5 and 6 A." shall be renumbered After suer. as "Categories 1 to 5, 6 A". renumbering, the expression "and 6 B" shall be added.*

*ii) in sub-rule (a) of Rule 5, after the expression "Appointment to the*

*Service in Division-II may be in category", the expression "A", shall be added.*

*iii) in sub-rule (a) of Rule 5, after the existing entries, the following proviso shall be added.*

*"Provided that appointments to Categories 6 B of Division-I and 1 A of Division-II may be made either by direct recruitment or recruitment by transfer, only if no qualified and suitable member of the service is available for promotion in the feeder categories"*

***V***

*1) In sub rule (b) of Rule 6, after the existing last paragraph, the following shall be added. "No person shall be eligible for appointment to the post of Sub-Assistant Registrar Accounts (Insolvents by direct recruitment, recruitment by transfer and promotion unless he is qualified in law degree examination and Chartered Accountant Examination (either intermediate or final) or B.Com., Degree Examination."*

*ii) In sub rule (c) of Rule 6, after paragraph "1(A)" the following shall be added. "1(B) in Category 1 A. of Division-II by direct recruitment,*

*recruitment by transfer or by promotion unless he -*

*i) is a practising advocate or attorney or is duly qualified for admission as an advocate or an attorney of the High Court; or*

*ii) holds the B.A., or B.Sc., or B.Com., or B. Sc (Hons) or B.Com. (Hons) or B. A., (Hons), degree of a University in the Indian Union and holds a degree, in law of any of the Universities in the Indian Union and has also passed the examination in Law of Practice and Procedure, civil and criminal."*

***VI***

*i) In Rule 7, the existing sub-rule (a)(1) may be renumbered as "sub rule (a)(1)(i)" and after such renumbering the following shall be added.*

*ii) No person shall be eligible for appointment as a full member in Category 6 F. of Division-I unless he qualifies himself in the Civil and Criminal Judicial Test Parts I to III for Members of the Judicial Department and Account Test for Subordinate Officers Part-I."*

*iii) In the Schedule to Rule 7, before the existing entries in Column (1) and (2) the following shall be added.*

| 1. | 2 |
|---|---|
| Category-1 A. | (1) Account Test for Subordinate Officers Part-I.<br>(2) Civil and Criminal Judicial Test Parts I to III for Members of the Judicial department. |

**VII**

*In Rule 7, after the existing entries under sub rule (d)(1), the following shall be added:*

*(iv) Official Assignee – A bond for Rs. 10,000/- with two sureties in favour of the Chief Justice.*

*(v) Deputy Official Assignee – A bond for Rs. 5,000/- with two sureties in favour of the Chief Justice.*

*(vi) Assistant Section Officer dealing with Cash in the Office of the Official Assignee: Rs. 2,500/-*

## *VIII*

*i) In the first proviso to sub-rule (b) of Rule 8, after the expression "in the same division,"*

*the expression "and to Category 6-B in Division I from Division-II" shall be added.*

*ii) In the second proviso to sub rule (b) of Rule 8, before the entries "2,3,5 to 9, " the entries "1 A." shall be added.*

## *IX*

*In Rule 14-*

*i) in the third proviso, for the expression, "Category- 6 A. of Division-I and Category-2 of Division-II", the expression "Categories 6 A. and 6 B. in Division-I and Categories-1A and 2 in Division II" shall be substituted.*

*ii) after the proviso clause for promotion/to Category in Division-I, the following shall be added. "Promotion to Category 6 B. in Division-I shall be from Categories-1 A, 2 and 3 of Division-II"* *iii) after the heading "Promotion in Division-II shall be as follows" the following expression shall be added.*

*"Category-1 A. from Category-5.*

***X***

*In the APPENDIX-I to Rule 17, under the heading Division-II in column (1) for the expression "Categories 2 to 4", the following shall be substituted.*

*"Categories-1 A. to 4."*

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*These amendments shall take effect from 3rd June, 1997.III Consequent on the aforesaid amendments to the Madras High Court Service Rules, the Madras High Court Official Assignee Service Rules shall stand rescinded.*

*HIGH COURT, MADRAS.*

*DATED: 14-06-1997.*

*Sd/- M.SUBRAMANIAN,*

*REGISTRAR."*

34. The statistics given by the Official Assignee are quite shocking.

35. It is contended that in so far as the estate of Arjunlal Sunderdas, the insolvent in I.P.No. 25 of 2014 is concerned, in which this application has been filed, the Official Assignee had collected a sum of Rs.114,10,58,505/- to be disbursed to the creditors whose claims had been admitted by the Official Assignee. A sum of Rs.4,00,29,594/- had been deducted as commission as on 17.12.2024 and credited to the second respondent account. The details regarding the same are as follows:-

| | | |
|---|---|---|
| "A) Commission deducted at 7% from collection of debt from debtors | = | Rs.2,42,22,332/- |
| B) Commission deducted at 7% from Collection of amount including cost | = | Rs.1,58,07,262/- |
| As on 17.12.2024 the total 7% commission remitted to the Government | = | Rs.4,00,29,594/-" |

36. It had been further stated that since this deduction of 7% commission has caused a deep dent into the payment of dividend to the creditors. A decision had been taken to set apart a sum of Rs.3,36,00,000/- without depositing it though the second respondent to the Reserve Bank of

India. The total amount in this one estate alone which either been deducted or had been set apart for deduction of 7% Government commission is Rs.7,36,29,594/-. If this amount had been plowed back to the estate of the insolvent then the creditors who have been waiting to receive the monies which they had lost owing to the acts of insolvency by the insolvent would have received a larger percentage of dividend than the 70% dividend now declared by the Official Assignee.

37. The concept of *composition of scheme of arrangement* has been provided under Section 28 of the Presidency Town Insolvency Act 1909 wherein on submission of a proposal made by the insolvent, the same will first have to be accepted by the creditors. Thereafter, under Section 29, the proposal must be approved by the Court. If there is default by the insolvent in payment of any installment due in pursuance of the composition of scheme approved by the Court, he may be readjudicated as an insolvent under Section 31 of the Act. Section 32 provides a restriction that the insolvent would not be discharged unless the creditors accepts to the composition or scheme.

38. Order XVII Rule 10(i) of the Insolvency Rules 1958 which had been relied on for deduction of Government commission provides for the Official Assignee to charge a commission of 7% on the principal amount or value of assets collected by him and on the amount paid to creditors in pursuance of composition of scheme of arrangement.

39. Therefore, only in proposals put forward under Section 28 of the Act, would the commission be deductable. The other aspect is the deduction of commission of assets collected by the Official Assignee. This relates back to the earlier position when the Official Assignee had appointed agents to collect the debts due to the estate and commission was deducted to be paid to the agents for the collection of debts. But the Office of the Official Assignee has now merged with the High Court and it is not anyone a separate establishment requiring agents to be appointed. This merger took place on 02.07.1997 and on and from that date, the Government is not providing any service for commission to be deducted on monies collected by the Official Assignee.

40. Order XVII Rule 10(i) has therefore become redundant and is oppressive in nature and defeats the purpose of the Act. The deduction towards Government commission erodes into the dividend declared payable to the creditors and owing to the deduction, there is compulsion to declare a lesser dividend.

41. In view of these reason, we allow the application and direct that the amount deducted towards Government commission for a sum of Rs.4,00,29,594/- from the estate of the insolvent, Arjunlal Sunderdas in I.P.No. 25 of 2014 must be forthwith refunded to the office of the Official Assignee and credited to the estate of Arjunlal Sunderdas, the insolvent in I.P.No. 25 of 2014.

42. We also make it clear that this is an order in rem and is not restricted only to the estate of the insolvent in I.P.No.25 of 2014 but to every insolvency petition and to every amount collected by the Official Assignee either from the

debtors of every insolvent in every estate or through sale of property and would also apply to every composition and scheme of arrangement submitted by the insolvents and accepted by the creditors and approved by the Court.

43. The Application stands allowed. No order as to costs.

**(DR.G.J.J.,)** & **(C.V.K.J.,)**

28 .08.2025

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**DR.G.JAYACHANDRAN, J.**
and
**C.V.KARTHIKEYAN, J.**

vsg

**Pre-Delivery Order made in**

**Application (IP) No. 51 of 2025**
**IN**
**I.P.No. 25 of 2014**

28.08.2025