

Rules under section 36

PROOF OF DEBTS RULES

20 of 1956,
2nd Sch.

ARRANGEMENT OF RULES

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CAP. 67

Bankruptcy

[Subsidiary]

Rule

26. Creditor may apply to Court if dissatisfied
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28. Powers of Official Receiver before appointment of trustee

Commencement: 1st January 1957

Citation

1. These rules may be cited as the Proof of Debts Rules.

Interpretation

2. In these rules "the Act" means the Bankruptcy Act.

Debts to be proved without delay

3. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

Method of proving debts

4. A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Receiver, or if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

Proving by affidavit

5. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor and having knowledge of the facts. If made by a person so authorised, it shall state his authority and means of knowledge.

Contents of affidavit

6. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Receiver or trustee may at any time call for the production of the vouchers.

Affidavit to state whether or not debt secured

7. The affidavit shall state whether the creditor is or is not a secured creditor, and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the Official Receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider just.

Cost of proving debt

8. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

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9. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times on payment of the prescribed fee.

Fees for examination of proofs of debts

10. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall be compelled to deduct any discount, not exceeding 5 per cent on the net amount of his claim, which he may have agreed to allow for payment in cash.

Deduction of trade discounts

Proof by secured creditors

11. If a secured creditor realises his security he may prove for the balance due to him, after deducting the net amount realised.

Secured creditor may realise security

12. If a secured creditor surrenders his security to the Official Receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

Secured creditor may surrender security

13. If a secured creditor does not either realise or surrender his security he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

Secured creditor may value

14. (1) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

Redemption of valued securities

(2) If the trustee is dissatisfied with the value at which a security is assessed he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time by notice in writing require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not within 6 months after receiving the notice signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued.

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Amended valuations

15. Where a creditor has so valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the Court that the valuation and proof were made in good faith on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor and upon such terms as the Court shall order, unless the trustee allows the amendment without application to the Court.

Refund of surplus dividend

16. Where a valuation has been amended in accordance with rule 15 the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Procedure when valued security is realised

17. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of rule 14, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

Secured creditor must comply with rules

18. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

Maximum amount creditor may receive

19. Subject to the provisions of rule 14, a creditor shall in no case receive more than the full amount of his debt, and interest as provided by the Act.

Proof in respect of distinct contracts

Proof of distinct contracts

20. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of 2 or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

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Periodical payments

21. When any rent or other payment falls due at stated periods and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment became due from day to day.

Proportional payments

22. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding 8 *per cent per annum* to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Proving for interest

*Interest**Debt payable at a future time*

23. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of 5 *per cent per annum* computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Interest on debts payable in future

Admission or rejection of proofs

24. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

Admission and rejection of proofs

25. If the trustee thinks that proof has been improperly admitted the Court may, on the application of the trustee, after the notice to the creditor who made the proof, expunge the proof or reduce its amount.

Expunging of proof

26. If a creditor is dissatisfied with the decision of the trustee in respect of a proof the Court may, on the application of the creditor reverse or vary the decision. The Official Receiver or trustee shall not be personally liable for any costs in respect of the rejection by him in whole or in part of any proof unless it is proved to the satisfaction of the Court that he has acted in bad faith or with gross negligence.

Creditor may apply to Court if dissatisfied

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Creditor may
apply to
Court if trustee
takes no
action

27. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or in the case of a composition or scheme, upon the application of the debtor.

Powers of Official Receiver
before
appointment
of trustee

28. The Official Receiver before the appointment of a trustee shall have all the powers of a trustee with respect to the examination, admission and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.
