
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 21

ANNULMENT OF BANKRUPTCY ORDER

Application for annulment

6.206.—(1) An application to the court under section 282(1) for the annulment of a bankruptcy order shall specify whether it is made—

- (a) under subsection (1)(a) of the section (claim that the order ought not to have been made), or
- (b) under subsection (1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) The application shall, in either case, be supported by an affidavit stating the grounds on which it is made; and, where it is made under section 282(1)(b), there shall be set out in the affidavit all the facts by reference to which the court is, under the Act and the Rules, required to be satisfied before annulling the bankruptcy order.

(3) A copy of the application and supporting affidavit shall be filed in court; and the court shall give to the applicant notice of the venue fixed for the hearing.

(4) The applicant shall, not less than 28 days before the hearing, give to the official receiver and (if other) the trustee notice of the venue, accompanied by copies of the application and the affidavit under paragraph (2).

Report by trustee

6.207.—(1) The following applies where the application is made under section 282(1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) Not less than 21 days before the date fixed for the hearing, the trustee or, if no trustee has been appointed, the official receiver shall file in court a report with respect to the following matters—

- (a) the circumstances leading to the bankruptcy;
- (b) (in summarised form) the extent of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the present application;
- (c) details of creditors (if any) who are known to him to have claims, but have not proved; and
- (d) such other matters as the person making the report considers to be, in the circumstances, necessary for the information of the court.

(3) The report shall include particulars of the extent (if any) to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured.

In so far as debts and expenses are unpaid but secured, the person making the report shall state in it whether and to what extent he considers the security to be satisfactory.

(4) A copy of the report shall be sent to the applicant at least 14 days before the date fixed for the hearing; and he may, if he wishes, file further affidavits in answer to statements made in the report. Copies of any such affidavits shall be sent by the applicant to the official receiver and (if other) the trustee.

(5) If the trustee is other than the official receiver, a copy of his report shall be sent to the official receiver at least 21 days before the hearing. The official receiver may then file an additional report, a copy of which shall be sent to the applicant at least 7 days before the hearing.

Power of court to stay proceedings

6.208.—(1) The court may, in advance of the hearing, make an interim order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Application for an interim order under this Rule may be made ex parte.

Notice to creditors who have not proved

6.209. Where the application for annulment is made under section 282(1)(b) and it has been reported to the court under Rule 6.207 that there are known creditors of the bankrupt who have not proved, the court may—

- (a) direct the trustee to send notice of the application to such of those creditors as the court thinks ought to be informed of it, with a view to their proving their debts (if they so wish) within 21 days, and
- (b) direct the trustee to advertise the fact that the application has been made, so that creditors who have not proved may do so within a specified time, and
- (c) adjourn the application meanwhile, for any period not less than 35 days.

The hearing

6.210.—(1) The trustee shall attend the hearing of the application.

(2) The official receiver, if he is not the trustee, may attend, but is not required to do so unless he has filed a report under Rule 6.207.

(3) If the court makes an order on the application, it shall send copies of the order to the applicant, the official receiver and (if other) the trustee.

Matters to be proved under s.282(1)(b)

6.211.—(1) This rule applies with regard to the matters which must, in an application under section 282(1)(b), be proved to the satisfaction of the court.

(2) Subject to the following paragraph, all bankruptcy debts which have been proved must have been paid in full.

(3) If a debt is disputed, or a creditor who has proved can no longer be traced, the bankrupt must have given such security (in the form of money paid into court, or a bond entered into with approved sureties) as the court considers adequate to satisfy any sum that may subsequently be proved to be due to the creditor concerned and (if the court thinks fit) costs.

(4) Where under paragraph (3) security has been given in the case of an untraced creditor, the court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it thinks fit.

If advertisement is ordered under this paragraph, and no claim on the security is made within 12 months from the date of the advertisement (or the first advertisement, if more than one), the court shall, on application in that behalf, order the security to be released.

Notice to creditors

6.212.—(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall forthwith notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

Other matters arising on annulment

6.213.—(1) In an order under section 282 the court shall include provision permitting vacation of the registration of the bankruptcy petition as a pending action, and of the bankruptcy order, in the register of writs and orders affecting land.

(2) The court shall forthwith give notice of the making of the order to the Secretary of State.

(3) The former bankrupt may require the Secretary of State to give notice of the making of the order—

- (a) in the Gazette, or
- (b) in any newspaper in which the bankruptcy order was advertised, or
- (c) in both.

(4) Any requirement by the former bankrupt under paragraph (3) shall be addressed to the Secretary of State in writing. The Secretary of State shall notify him forthwith as to the cost of the advertisement, and is under no obligation to advertise until that sum has been paid.

(5) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (3) and (4) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Trustee's final account

6.214.—(1) Where a bankruptcy order is annulled under section 282, this does not of itself release the trustee from any duty or obligation, imposed on him by or under the Act or the Rules, to account for all his transactions in connection with the former bankrupt's estate.

(2) The trustee shall submit a copy of his final account to the Secretary of State, as soon as practicable after the court's order annulling the bankruptcy order; and he shall file a copy of the final account in court.

(3) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that he has reconciled his account with that which is held by the Secretary of State in respect of the bankruptcy.

(4) The trustee is released from such time as the court may determine, having regard to whether—

- (a) paragraph (2) of this Rule has been complied with, and
- (b) any security given under Rule 6.211(3) has been, or will be, released.