

Insolvency Petition

Following queries are frequently asked by advocates

1. What is the procedure for filing Insolvency Petition.

A: (i) Party should be presented the petition before Insolvency Manager (debtor petition).

(ii) Creditor petition should be filed in IP Section.

(iii) Rs.1500/- to be paid before office of the Official Assignee as per order III Rule 16 of the Insolvency Rules.

(iv) Rs.10/- to be paid in Accounts Section for gazettee publication.

2. What are all the documents to be filed along with petition.

A: For Creditor petition - Petition, Affidavit, Insolvency Vakalat, Memo, Notice copies, Lodgment Schedule, Coding sheet.

For Debtor petition – Petition, Copy of petition(for Official Assignee), Insolvency Vakalat, Lodgment Schedule for gazettee publication, Coding Sheet, ID proof, statement of accounts.

3. Whether the Party presentation must for filing.

A: Yes, party presentation is must for filing Debtor petition.

4. Where should we produce account books.

A: Original account books should be produced before office of the Official Assignee.

5. What is the court fee, and provision of law.

A: For Debtor Petition : Rs.20/-

For Creditor Petition : Rs.100/-

For Debtor Petition : Sec. 9(1)(f), 10, 11, 14, 15 of the PTI Act, 1909 and Order III Rule 1 of Insolvency Rules, 1958.

For Creditor Petition : Sec. 9, 10, 11, 12 and 13 of the PTI Act, III of 1909 and Order III-A of the Insolvency Rules, 1958.

6. What is the jurisdiction limit.

A: Within Chennai city limit.

7. After numbering what is the procedure to be followed.

A: In case a debtor petition, the debtor should appear before Master court and on adjudication of debtor, the same day he has to appear before the Official Assignee and record his statement.

Within 30 days thereafter he shall file schedule of debtors affairs.

If it is in order, notice to all creditors is ordered by master.

After service of notice the case will be posted before JR(OS) for Public Examination for cross checking by Official Assignee and others creditors if he owns any other property in his name or his spouse or other relatives.

Within 18 months from date of Adjudication he has to file discharge application before Hon'ble judge. If he fails to do in time he has to file it with delay application.

Even if he fails to file discharge application, the Hon'ble Judge has powers to annul the Adjudication order.

8. How many copies of Schedule to be filed.

A: 2 copies of schedule to be filed.

9. Where should we get the Notice of Adjudication forms.

A: It's available on stationery stores i.e. M/s.Seetharaman & Co., Chennai.

10.How much amount court fee- to be affixed on batta memo.

A: Within Chennai city : Rs.2/- for each respondent.

Out of city : Rs.10/- for each respondent.

11.What is the limitation for filing insolvency notice.

A:Within 12 years from the date of Decree.

12.For Public Examination (P.E) Notice, Whether counsel should send notice to creditors or should the Registry send it?

A: Registry should send P.E Notice to the Insolvent, counsel for the insolvent and official assignee.After receiving notice from registry, counsel for the insolvent to send notice to all the creditors mentioned in the schedule.

13.Whether the Court fee to be affixed on vakalat or not.

A: No, only welfare stamps should be affixed.

14. What are all the details to be given in debtor petition.

A: Details of the petitioner, his business, cause of insolvency and list of creditors, debtors, assets to be given as per Order III Rule 20 of the Insolvency Rules.

15. What is the limitation for set aside the insolvency notice.

A: Within 35 days as mentioned in the insolvency notice.

16. What is the limitation for filing discharge application.

A: 18 months from the date of Adjudication (for Debtor petition), 18 months from the date of receipt of copy of the adjudication order)

17. What is the procedure for third parties to obtain certified copies of documents.

A: Third party application should be filed which is posted for orders before Hon'ble Master and orders certified copies can be obtained from the Insolvency Section.

18. If there is default in filing discharge application, what is the next stage of the petition.

A: Discharge application to be filed along with delay application.

19. If the insolvent dies after the adjudication, what is the procedure to be followed.

A: Death certificate should be produced in the Insolvency Section and Official Assignee's Office.

20. Finally, when and where should we get the surplus amount from the estate of the insolvent.

A: After disbursement of final dividend, if any surplus amount is available in the estate of the insolvent, it should be collected from the office of the Official Assignee after getting order from the Hon'ble Court.