कसूली नियम पुस्तिका
RECOVERY MANUAL

(केवल कार्यालय प्रयोग हेतु)
(Strictly for Official use)

सितंबर - 2011
SEPTEMBER - 2011

मुख्यालय
कर्मचारी राज्य बीमा निगम
(आई.एस.ओ. 9001:2008 प्रमाणित)

Headquarters
EMPLOYEES’ STATE INSURANCE CORPORATION
(ISO 9001:2008 Certified)
FOREWORD

I am happy to learn that ESI Corporation is bringing out the 2nd edition of its Recovery Manual in a comprehensive and improved form. The Corporation has come a long way since setting up of its own Recovery Machinery way back in 1991-92. Hence revision of its Recovery Manual, published in the 1990s was long overdue.

I extend my compliments to the serving and retired officers / staff of the Corporation who have undertaken this task, under the leadership of the Director General and the Insurance Commissioner, during the Diamond Jubilee Year of the Corporation.

I hope that this revised and improved version of the Manual would help the Revenue Recovery Machinery of the Corporation in functioning more effectively to recover the outstanding dues of defaulting units.

(Dr. Mrutyunjay Sarangi)

December 29, 2011
FOREWORD

The updated version of Recovery Manual incorporating the laws, procedures and related court judgements is self-contained guidelines for the officials of the Corporation engaged in recovery of outstanding revenue from defaulting employers. Revision of this Manual, which was first published in the year 1992 when the Corporation was in the learning process of creating it’s own Recovery Machinery, was long overdue.

I congratulate Insurance Commissioner and the dedicated band of officers / retired officers and staff. I believe this would go a long way in gearing up our revenue recovery activities in ESI Corporation.

(Dr. C.S. Kedar)
Director General
PREFACE

The ESI Corporation has been providing comprehensive social security to the workers and their families in the contingencies of sickness, maternity, disablement and death for over six decades. The Corporation has been continuously striving to improve and upgrade the facilities for delivery of benefits as well as the quality of benefits. As the Scheme is mainly financed by contribution from employees and employers, it is necessary to maintain a steady flow of revenue to meet the rising expectations of the beneficiaries.

In order to speed up the pace of recovery of arrears of contribution from defaulting employers, the Corporation established its own Revenue Recovery Machinery in 1991. As the process of Revenue Recovery involves a complex procedure, need was felt to have a comprehensive Revenue Recovery Manual incorporating the provisions of law, procedure and related court ruling to provide self-contained guidelines for the officials involved in revenue recovery. I congratulate the team comprising of S/Shri B.K. Vankatesh, Retd. Addl. Commissioner, B.N. Samant, Retd. Joint Director, L.K. Pattanaik, Additional Commissioner, Gujarat, S. Ravichandran, Joint Director and other field officers and officers of Insurance Division, Headquarters for bringing out this comprehensive Revenue Recovery Manual covering all aspects of revenue recovery.

(B.K. SAHU)
Insurance Commissioner
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CHAPTER - I

RECOVERY MACHINERY IN THE ESI CORPORATION

1.1 Introduction:

In a Scheme that provides a vast spectrum of assured benefits both in cash and in kind to its beneficiaries and that runs mainly on the funds generated by the contributions of the employers and employees, the most indispensable pre-requisite is to have a powerful machinery in place, that systematically monitors the collection of revenues and also effectively enforces the recovery of the arrears of revenue that might have become due to it. For several years the recovery of the arrears of revenues due to the corporation was entrusted to the respective State Government Machinery. But year after year its performance in this area was dismal and there was a gross mismatch between the mounting arrears and the inability of the State Machinery in attending to this task. The State Government apparatus could not accord top priority and undivided attention required for achieving tangible results. This attracted lot of adverse criticisms and strong reprimands from all corners like the Standing Committee, Corporation, Auditors, and Parliamentary Committees etc.

Faced with such an alarming situation of phenomenally increasing revenue arrears which needed to be recovered systematically on a top priority basis, and the total dependence on the State Government machinery to accomplish this task proving to be its biggest undoing what with the state machinery failing to match its rising expectations, the ESI Corporation was driven to contemplate and conceptualize a more effective and accountable body to play a decisive role to establish its own machinery for a focused and determined performance.

Incidentally, even the Income Tax arrears also were recovered through the State Machinery before the Income Tax Department established its own independent machinery for recovery and enacted Schedule – II & III of the Income Tax Act, 1961 and the ITCP Rules, 1962. This example helped to serve as a guideline for the Corporation to conceptualize an independent recovery machinery of its own.

Then came the most revolutionary and a historic measure which resulted in establishing its own independent Recovery machinery armed with all the powers available to the Income Tax authorities. A whole new set of new sections from 45C to 45H were introduced through amendment to the Act in the year 1991 vide section 16 of Amendment Act 29 of 1989 and these provisions were designed to provide ample functional and independent powers required to recover the arrears of Revenue to the officers of the
Corporation without any dependence on any other Government Departments. All the coercive modes of enforcement of recovery to the Income Tax authorities were also made applicable to the ESI authorities. The application of certain provisions of the Income Tax Act, viz: the Second and Third Schedules to the I.T.Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time with necessary modifications were made statutory to make the recovery proceedings more effective.

1.2 Role and responsibilities of Recovery Officers:

The Recovery machinery in the offices of the Corporation has now taken deep roots and has already made a very significant and impressive impact on the defaulters. The Recovery officers have been using every known and possible technique to recover the certificate amount. Even so, huge arrears belonging to old periods are yet to be recovered. The total arrears position, pace of recovery, progress made in each month and the underlying causes for any slackness are reviewed, analyzed and are monitored very scrupulously. This undoubtedly would always be a top priority item. All the Senior Officers like RD, IC, DG would very meticulously take stock of performance of each Region and individual Recovery Officer would be called upon to justify his performance and any short fall or inadequacy would be highlighted, communicated and responsibilities are fixed. Besides, targets are fixed for recovery and they are expected to be unfailingly achieved and overhauled. Thus, the recovery officer carries huge accountability and massive responsibilities on his shoulders.

1.3 Duties of Recovery Officer:

The task of recovery officer is, therefore, highly challenging. The key word is extreme diligence and lightening speed in planning and executing the action. A very important pre-requisite is a thorough knowledge of the governing Rules, Regulations application of provisions of Schedules II and III of Income Tax Act, related provisions of IPC, application of statutory provisions, collating all the required information by tapping all sources of information and eliciting all the related information and obtaining the documents of all the properties etc.

The chapters II to XXI provide a detailed insight into the various provisions of the statutes governing the recovery and the procedures to be followed for recovery the dues.
CHAPTER - II
DEFINITIONS AND PROVISIONS FOR RECOVERY
UNDER THE ESI ACT, 1948

2.1 Definitions:

In this manual, unless the context otherwise requires:-


ii) “Authorised Bank” means the Reserve Bank of India or the State Bank of India or any of its subsidiaries or a Nationalised Bank as specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings ) Act, 1970 (5 of 1970) and 1980 (40 of 1980).

iii) “Authorised Officer” means the Director General, Insurance Commissioner, Regional Director or such other officer as may be authorized by the Central Government, by notification in the Official Gazette.

(The Government of India, Ministry of Labour vide notification dated 28/9/1992 and 15/10/1992 in file no S-38025/27/90-SSI authorized Joint Regional Director/ Deputy Regional Director/ Assistant Regional Director in different States to function as “Authorized Officers”. ) But, after changing the designation of these officers and creation of the post of Additional Commissioner / Director, in the regions, the Additional Commissioner, Director, Joint Director, Joint Director (Incharge), Deputy Director & Assistant Director dealing with the Revenue Branches are to function as “Authorized Officers”.

iv) “Certificate” means the certificate received by the Recovery Officer from the Authorized Officer, for recovery of Arrears under the Act. [Except the word “certificate” mentioned in Para 5.14 (Rule 7 of Second Schedule), Para 6.21 (Rule 44(2) of Second Schedule – Certificate of sale of Movable Property in form ESICP 19), Para 7.18 (Rule 65 of Second Schedule–Certificate of sale of Immovable Property in form ESICP 23) and Para 7.19 (Rule 66 (2) of Second Schedule - Certificate to defaulter authorizing him to mortgage, lease or sell property in form ESICP 20)]

v) “Defaulter” means a factory or an establishment or the principal or immediate employer, under the ESI Act from whom the arrears due to the corporation, as mentioned in the certificate, are to be recovered.
vi) “Execution” in relation to a certificate means recovery of arrears in pursuance of the certificate.

vii) “Form” means a form appended to this Manual (which in fact is derivative, with suitable modifications of the form appended to the Income Tax (Certificate Proceeding) Rules, 1962).

viii) “Immovable Property” includes the land, benefits that arise out of land, a thing attached to the earth, or permanently fastened to anything attached to the earth, but does not include growing crops.

ix) “Movable property” means property of every description except immovable property.

x) “Public Officer” shall have the same meaning as in the code of Civil Procedure, 1908 (5 of 1908).

xi) “Social Security Officer (Recovery)” means a person authorized to make an attachment or sale under this procedure.

xii) “Recovery Officer” means any officer of the Central Government, State Government or the Corporation, who may be authorized by the Central Government, by notification in the Official Gazette to exercise the powers of a Recovery Officer under this Act.

(The Government of India, Ministry of Labour vide notifications dated 28/9/1992 and 15/10/1992 in file no S-38025/27/90-SSI authorized Deputy Director, in different States to exercise the powers of “Recovery Officer”. However, vide subsequent notification no: S-38025/25/2010-SSI dated 23/03/2011 the Central Government have notified “Assistant Director” to exercise the powers of “Recovery Officer”)

xiii) “Share in Corporation” includes stock, debentures –stock, debentures and bonds.

The following provisions have been created under the ESI Act for speedy recovery of the Arrears that is due to the Corporation. Section 45B was in force w.e.f.17.06.1967 vide Act No.44 of 1966 and the new provisions from 45C to 45I was introduced w.e.f. 01-09-1991 vide Amendment Act of 29 of 1989.

2.2 Section 45B. Recovery of Contributions:

Any contributions payable under this Act may be recovered as an arrear of land revenue.
2.3 Section 45C. Issue of Certificate to the Recovery Officer:

(1) Where any amount is in arrear under this Act, the authorized officer may issue, to the Recovery Officer a certificate under his signature specifying the amount of arrears and the Recovery Officers on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below:

a) attachment and sale of the moveable or immoveable property of the factory or establishment or, as the case may be, the principal or immediate employer;

b) arrest of the employer and his detention in prison;

c) appointing a receiver for the management of the moveable or immovable properties of the factory or establishment, or, as the case may be, the employer;

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachments and sale is insufficient for recovering the whole of the amount of the arrears specified in the certificate, the recovery officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorized officer may issue a certificate under sub section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

2.4 Section 45D. Recovery officer to whom certificate is to be forwarded:

(1) The authorized officer may forward the certificate referred to in section 45C to the recovery officer within whose jurisdiction the employer –

a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situated; or

b) resides or any moveable or immovable property of the factory or establishment or the principal or immediate employer is situated.

(2) Where a factory or establishment or the principal or immediate employer has property within the jurisdiction of more than one recovery officer and the recovery officer to whom a certificate is sent –
a) is not able to recover the entire amount by the sale of the property, moveable or immovable, within his jurisdiction; or

b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do.

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the recovery officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that recovery officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorized officer.

2.5 Section 45E. Validity of certificate and amendment thereof:

(1) When the authorized officer issues a certificate to a Recovery Officer under section 45C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorized officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending intimation to the Recovery Officer.

(3) The authorized officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under subsection (2) or any amendment made under subsection (4) of section 45F.

2.6 Section 45F. Stay of proceedings under certificate and amendment or withdrawal thereof:

(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorized officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorized officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.
(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorized officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorized officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

2.7 Section 45G. Other modes of recovery:

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 45C, the Director General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Corporation:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Director General or any other officer authorised by the Corporation in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or, as the case may be, the
principal or immediate employer, to pay to the Director General either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being) before the money becomes due or is held so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director General or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Director General or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such
person shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer’s liability for any sum due under this Act, whichever is less.

(vii) The Director General or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Director General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub-section shall be personally liable to the Director General or the officer so authorized to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer’s liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Director General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realization of the amount as if it were an arrear due from him in the manner provided in sections 45C to 45F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45C.

(4) The Director General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Director General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount
due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961).

2.8 **Section 45H. Application of certain provisions of the Income Tax Act, 1961:**

The provisions of the Second and Third Schedules to the Income Tax Act, 1961 (43 of 1961) and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the Income Tax: Provided that any reference in the said provisions and the rules to the “assesses” shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

2.9 **Section 45 I. Definitions:**

For the purpose of sections 45C to 45H:

(a) “Authorised officer” means the Director General, Insurance Commissioner, Joint Insurance Commissioner, Regional Director or such other officer as may be authorized by the Central Government by notification by the Official Gazette;

(b) “Recovery officer” means any officer of the Central Government, State Government or the Corporation, who may be authorized by the Central Government, by notification in the official gazette, to exercise the powers of a recovery officer under this Act.

2.10 **Section 39 (5) (b) of the Act read with Regulation 31–B of the ESI (General) Regulations, 1950. - Recovery of Interest:**

Any interest recoverable under the Act may be recovered as arrears of Land Revenue or under Section 45 C to Section 45 I of the Act.

2.11 **Section 85 B (2) of the Act – Recovery of Damages:**

Any Damages recoverable under the Act may be recovered as arrears of Land Revenue or under Section 45 C to Section 45 I of the Act.
CHAPTER - III
JURISDICTION OF RECOVERY OFFICERS AND TRANSFER OF CERTIFICATES

3.1 Jurisdiction of Recovery Officers:

Recovery Officers, authorized to function as such, by the Central Government shall exercise his powers in such areas as may be authorized by the Central Government by notification in the official gazette.

3.2 Transfer of Proceedings from one Recovery Officer to other (Rule 8 of ITCP Rules 1962):

Where any proceedings for execution of a certificate pending before a Recovery Officer stands transferred to any other Recovery Officer, the Recovery Officer to whom the proceeding stands transferred or is transferred, may continue the proceedings from the stage at which they stood immediately before such transfer and such transfer shall not render necessary the re-issue of any notice, warrant, proclamation, order or certificate already issued.

3.3 Procedure to be followed while sending certificate to another Recovery Officer (Rule 9 of ITCP Rules 1962):

When a certificate is sent by a Recovery Officer to another Recovery Officer under Section 45B of the Act, he shall:

i) keep a copy of the certificate in his office, and
ii) inform the Authorised Officer of his having sent the certificate.

3.4 Procedure to be followed while sending a certified copy of certificate to another Recovery Officer (Rule 9A of ITCP Rules 1962):

(1) Where only a part of the amount in respect of which a certificate has been received by a Recovery Officer is to be recovered by any other Recovery Officer under sub section (2) of Section 45D of the Act, the Recovery Officer before sending a certified copy of the said certificate to the other Recovery Officer, endorse on such copy, a certificate in form ESICP 1.

(2) When a copy of the certificate is sent by a Recovery Officer to another Recovery Officer under sub section (2) of Section 45D of the Act, he shall:

i) keep the certificate in his office, and
ii) inform the Authorized Officer of his having sent a copy of the certificate.

3.5 Procedure to be followed on receipt of a certificate from a Recovery Officer (Rule 10 of ITCP Rules 1962):

When a certificate or the certified copy of a certificate is sent by a Recovery Officer to another Recovery Officer under sub section (2) of Section 45D, such other Recovery Officer shall follow the same procedure as is applicable to a certificate received by him from the authorized officer including the issue of notice in form ESICP 2.

3.6 Intimation by first Recovery Officer (Rule 11 of ITCP Rules 1962):

The Recovery Officer shall intimate the details of all amounts recovered in respect of a certificate from time to time to the authorized officer and also to any other Recovery Officer, to whom the certificate or the certified copy of the certificate has been sent by him under sub section (2) of Section 45 D of the Act.

3.7 Intimation by other Recovery Officer (Rule 12 of ITCP Rules 1962):

When a certificate or the certified copy of the certificate is sent by a Recovery Officer to another Recovery Officer u/s 45D of the Act, such other Recovery Officer, shall communicate to the first mentioned Recovery Officer and to the Authorised Officer, who issued the certificate, the details of all amounts recovered by him in respect of such certificate from time to time.

3.8 Intimation by Authorised Officer:

Where a certificate has been issued by an authorized officer he shall keep the Recovery Officer to whom the certificate has been forwarded by him under sub-section (1) of section 45 D of the Act and any other Recovery Officer to whom the certificate or a certified copy of the certificate has been sent under sub-section (2) of section 45 D of the Act, informed of any contributions, interest, damages or other sum as the case may be paid or about any time granted for payment subsequent to the issue of such certificate.

3.9 When certificate may be executed (Rule 3 of Second Schedule)

No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of actual service of the notice in form ESICP 2.

Provided that if the Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would
be liable to attachment in execution of a decree of a Civil Court and that the realization of the amount of the certificate would, in consequence, be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property.

Provided further, that if the defaulter whose property has been so attached, furnishes security to the satisfaction of the Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Recovery Officer.

3.10 Mode of Recovery (Sec.45C of the ESI Act read with Rule 4 of Second Schedule to the Income Tax Act, 1961)

If the amount mentioned in the notice is not paid within the time specified therein or within further time as the Recovery Officer may grant in his discretion, the Recovery Officer shall proceed to realize the amount by one or more of the following modes:

a) by attachment and sale of the defaulter’s movable property.

b) by attachment and sale of the defaulter’s immovable property.

c) by arrest of the defaulter and his detention in prison.

d) by appointing a receiver for the management of the defaulter’s movable and immovable properties.
CHAPTER - IV

SERVICE OF NOTICES FOR RECOVERY

Introduction:

As soon as the Recovery certificate is received by the Recovery Officer from the Authorised Officer or from other Recovery Officer, the Recovery Officer, after making entries in various Registers and records and after incorporating the details in the system, shall cause to issue a demand Notice in ESICP 2. This is the Notice of demand to defaulter directing him to pay the recoverable amount including the accrued interest and all the incidental expenses within 15 days from the date of receipt of the said Notice. All such Notices, warrants and other communications have to be meticulously and systematically issued to his all the known addresses and ensure that it is properly delivered to the addressee. It is imperative that all the relevant documents are systematically maintained for producing them to the courts if need so arises. The statutory compulsions to follow fool-proof procedure to stand the scrutiny of the courts must be strictly adhered to. The following aspects are relevant:

Under the ESI Act, 1948, no specific mode or manner of service of Notice has been prescribed. For the purpose of recovery of ESI dues it was earlier provided that the dues may be recovered as if it were an arrear of Land Revenue. Hence the procedure to be followed for recovery and issuance of Notices was under the various Public Demands Recovery Acts. However, with the introduction of sections 45C and 45I in the ESI Act, the procedure laid down in the Second and Third schedules to the Income Tax Act and the Income Tax (Certificate Proceedings) Rules would be applicable for recovering ESI Dues. Thus, the procedure for issue and service of Notice for the purpose of recovery of the ESI dues by the Recovery Officer would be governed by the Second and Third Schedules and the IT (CP) Rules, 1962. It is to be noted that these provisions for service of Notice in the Second Schedule of the Income Tax Act are inter-linked with order V of the Civil Procedure Code relating to service of summons and in case of doubt these provisions could be referred to.

Under the Income Tax Act, it is provided that Notice for the purpose of the Act shall be served in the same manner as the summons issued by a Court under the CPC. This step is very important as the proceedings under any Law can be validly initiated only with a valid service of Notice.

4.1 Issue of Notice (Rule 2 of the Second Schedule):

When a certificate in form C-19, C-19(I) & D-19 has been received by the Recovery Officer from the Authorised Officer for the recovery of arrears, the Recovery Officer
shall cause to be served upon the defaulter a Notice in form **ESICP2** requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of issue of the Notice, and intimating that in default steps would be taken to realize the amount in accordance with the provisions of Section 45C to 45I of the Act.

### 4.2 What is service of Notice?

Service of Notice legally refers to a proper delivery of a Notice (or any other similar communications like warrants, court orders or orders of statutory authorities) to the right addressee. It further implies a communication of an order of an authority authorized under the law to the person from whom compliance is expected or a decision taken by such authority is communicated. Notice is also issued requiring a person to show cause as to why a particular action against such person should not be taken. The principle of natural justice that “party must be heard before any action is taken” is the guiding spirit behind the requirement of service of Notices.

### 4.3 General Principles of service of Notice:

1. Service of Notice is a legal requirement and not a mere formality. It is the foundation for any valid legal proceedings.
2. Mere issuance of a Notice is not enough. The Notice must be served on the party within the prescribed time limit, if any.
3. Mere knowledge about issuance of a Notice cannot be substitute for service of a Notice.
4. Any follow-up action pursuant to the knowledge of issuance of Notice taken by any person in aid of the proceedings would be sufficient to bind the party.
5. The burden of proving that a proper Notice has been served is on the authority who exercises the power under the law.

### 4.4 On whom the Notice is to be served:

The Income Tax Act has clearly laid down as to the person who should be served with the Notice in different contexts. Under the ESI Act, no such provision clearly exists. Payment of ESI contributions being a responsibility cast on the principal employer, the Notice must be obviously served on him. In the event of recovery of contribution from an Immediate Employer the Notice has to be served on the Immediate Employer also. A Principal Employer has been defined under section 2(17) of the ESI Act and the Immediate Employer is defined under Section 2(13) of the Act. Hence the Notice
requires to be issued on the persons who are covered within the definition of Principal Employer or the Immediate Employer, as the case may be, and a copy of the said Notice may also be issued to the factory or the establishment to which such arrears relate to. In case the Principal Employer has changed in the meantime, the Notice may be served on both the present as well as the past principal employers keeping in view the provisions of Section 93A of the Act.

4.5 Modes of Service of Notice:

The procedure relating to the service of Notices issued by the Recovery Officer under Schedule II is governed by the provisions of section 282(1) of the I.T.Act, 1961, which provides that a Notice or requisition under the Act may be served on the person (defaulter) named therein either by post, or as if it were summons issued by the Court under the code of Civil Procedure. Further, Rules 10 to 20 under order V of the CPC lay down the manner of Issue and Service of Summons which have been adopted by Income Tax. The Summons may be served in the following manner:

1. Service by post
2. Service on the person or his authorized agent
3. Service by affixture
4. Substituted Service

As regards the modes of service, a Notice or requisition under the Act may be served on the person named therein.

i) either by post
ii) or as if it were a summon issued by a Court under the Civil Procedure Code.

4.6 Service by Post:

1. Section 27 of the General Clauses Act, 1897 enjoins upon the sender to get the service effected by Registered Post Acknowledgment due.

2. Even while a summons is served as per order V of the Civil Procedure Code, service by registered post additionally is now necessary according to Rule 19A of the said Order V of the code.

3. Service by registered post on a person other than the addressee raises a rebuttable presumption of valid service. Thus, it is very important to ensure that the Notice in question is served only on the person in question properly and necessary proof should be preserved.
4. When the letter or Notice is returned with the postal remark ‘refused’, normal presumption would be that it was received by the addressee but actually refused by him.

5. The postal remark “left” on the returned cover itself means that there was no service.

6. The endorsement of the postal authorities “Not known” means that the defaulter (factory/establishment or the principal or Immediate employer) could not be traced at the given address, whereas “Not found” indicates that the addressee was not available at the time the postman/messenger went to deliver.

Note: Non delivery of Notices – Follow up Action thereon: The main problem could be that of non delivery of Notices by Regd. Post. The following clarification will help solving the problem:

i) Section 27 of the General Clauses Act reads as :- Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by Post, whether the expression “serve” or either of the expression “give” or “sent” or any expression is used , then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by Registered Post, a letter containing the document and unless the contrary is proved, to have been effected at time at which the letter would be delivered in the ordinary courses of post.

ii) When a letter is posted it is presumed that it has reached its destination and has been delivered to the defaulter. If letter is sent by registered post, that presumption is still stronger (Commissioner of Hazari Bagh Muncipality vs Fulchand Agarwal, AIR 1966)

iii) In a case where Notices were sent by Registered Post to the proper address, it was held that their non-receipt by the defaulter (addressee) will not invalidate the assessment (Bhopal Trading Co Vs CIT UP, 28 ITR, 478)

iv) If a properly addressed registered letter is received back in endorsement “Refused” made by the post man it may be presumed ( as a rebuttable presumption) that the letter was refused by the assesses, even without examination of the postman or other evidence regarding tender and refusal (Balbahadur Malkuthalia vs CIT, 31 AIR 930)
v) In the case of factory or establishment being closed, the Regional Director / Joint Director I/c can arrange the delivery of Notice through SSO/Branch Manager by way of affixing the Notice at prominent place of the premises of the said defaulter. This process may be witnessed by someone and report of service sent to Regional Office / Sub-Regional Office.


4.7 Service other than by post:

This mode of service can be divided broadly under 3 heads, namely (i) service on person, (ii) service by affixture, and (iii) substituted service.

4.8 Service on Person:

Wherever practicable, a Notice shall be served by the process server (or any other officer authorized to do so) on the defaulter in person, or on his agent authorized to accept the service of Notices on his behalf (Order-V, IT 12 and 13 C.P.C). Again, where the defaulter is absent from his residence at the time when the Notice is sought to be served on him at his residence, and there is no likelihood of his being found at the residence within a reasonable time, and he has no agent to accept service of the Notice on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. Previously, service of Notice could be affected only on an adult male member of the family, but now after the amendment introduced in the C.P.C. by the Amendment Act, 1976; service made on an adult female member of the family will also be equally valid (Order V, Rule 15 of CPC). It is noteworthy that a servant is not regarded as a member of the defaulter’s family.

When the serving officer delivers a copy of the Notice to the defaulter or any other person on his behalf, he shall obtain on the original Notice the signature of the person to whom the copy of the Notice is so delivered in acknowledgment of the service thereof as provided in rule 16 of Order V. In the alternative, the serving officer may take the signature of the person on tear off acknowledgment slip (ITNS 50) in token of the service of the Notice. Simultaneously with the service of the Notice personally on the defaulter or his authorized agent, the Recovery Officer may if he considers it necessary to do so, also direct that the Notice be served by Registered Post Acknowledgment Due, as prescribed in rule 19 A of Order V inserted by the C.P.C. (Amendment) Act, 1976.

Here a word of caution is necessary. At times a defaulter may be busy with a religious ceremony like marriage, etc. On such occasions, the Recovery Officer should not insist
upon the Immediate service of the Notice. Instead, he should ascertain when the defaulter is likely to be free from his obligatory duties, and act tactfully in serving the Notice without causing avoidable offence or harassment. If the defaulter happens to be a lady, greater care and courtesy should be exercised.

4.9 Service by Affixture:

Rule 17, 18 & 19 of Order V of the CPC provide for the contingency when the defaulter or his agent refuses to take the Notice or when the serving officer, after using all due and reasonable diligence, cannot find the defaulter, and there is no agent or any other person on whom the service can be made. In such circumstances, service can be made by affixture. The Serving Officer can effect service by affixing a copy of the summon/Notice on the outer door or some conspicuous part of the house in which the defaulter ordinarily resides or carries on business or personally works for gain in the following circumstances:

i) where acknowledgement of service is refused or

ii) (a) where after all due and reasonable diligence the defaulter cannot be found at his residence.

(b) there is no likelihood of his being found at his residence within a reasonable time and

(c) there is no agent empowered to accept service on his behalf nor any other person on whom service can be made.

After so serving by affixation, the Serving Officer is duty bound to return the original to the issuing Court/Office of the Recovery Officer with a report stating-

i) the time and manner of service

ii) the circumstances under which he did so and

iii) the name and address of the person (if any) who identified the house and in whose presence affixation was done.

On receipt of the report, the Recovery Officer should, in cases where the report of the process server or the serving officer is not verified by an affidavit, examine the official concerned, and record on the order sheet a declaration as to whether, in his view, the Notice was duly served or not, and, in the latter event, order such service as he thinks fit. Even where the serving officer’s report is accompanied by his affidavit, the Recovery
Officer may, if he so likes, examine the serving officer regarding the circumstances of the service of the Notice (Rule 19, Order V)

4.10 Substituted Service:

There may be occasions when the defaulter is keeping away for the purpose of avoiding service, and the Notice cannot be served in the ordinary way on any other person. In such circumstances, the Recovery Officer has to pass an order under rule 20 of Order V of the CPC to that effect and order substituted service of the Notice by affixing a copy of the Notice at some conspicuous place in the Recovery Officer’s office and also upon some conspicuous part of the house (if any) in which the defaulter is known to have last resided, or carried on business, or personally worked for gains. “Or in such manner as the Recovery Officer thinks fit. (This could cover, for instance, advertisement in the public press)”. The main difference in procedure between service by affixture and substituted service is that in the latter a copy of the Notice should be affixed to the Notice board of the Recovery Officer’s Office in addition to other formalities to be observed in the case of service by affixture.

The service of Notice has to be made on the defaulter mentioned in the certificate. Such service does not present any problem where the defaulter happens to be an individual. However, the service of the Notice may pose some problems when the defaulter happens to be a Hindu Undivided Family, Firm, and Artificial Juridical Person (e.g. a deity) etc. Where the person is not an “Individual”, the service of the Notice has to be made on the person(s) specified in sections 282(2), 283 and 284 of the Income-Tax Act, 1961 viz:

<table>
<thead>
<tr>
<th>Status of the default</th>
<th>The person on whom service is to be made is</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Hindu Undivided Family</strong></td>
<td></td>
</tr>
<tr>
<td>a) When the family is either in existence or partially partitioned or whose business is discontinued at the time of issuing the Notice.</td>
<td>The Manager (Karta) or any adult (not necessarily a major) member (not necessarily male) of the family. [S.282(2)(a) &amp; 284]</td>
</tr>
<tr>
<td>b) Where the family is totally partitioned and is not in existence.</td>
<td>The person who was the last manager (Karta) or if such person is dead, the all adults (not necessarily major) who were members of the family Immediately before partition. [S.283(1)]</td>
</tr>
<tr>
<td>Status of the default</td>
<td>The person on whom service is to be made is</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>2. Firm</strong></td>
<td></td>
</tr>
<tr>
<td>a) Where the firm is in existence.</td>
<td>Any member of the firm {S-282(2)(a)}</td>
</tr>
<tr>
<td>b) Where the firm is dissolved.</td>
<td>Any person who was partner of the firm immediately before its dissolution. {S-283(2)}</td>
</tr>
<tr>
<td>c) Where the firm discontinued its business.</td>
<td>Any person who was Member of the firm at the time of its discontinuance. {Sec.284}</td>
</tr>
<tr>
<td><strong>3. Other Association of Persons (A.O.P) or Body of Individuals :</strong></td>
<td></td>
</tr>
<tr>
<td>a) Where the AOP is in existence.</td>
<td>The Principal Officer or other member thereof. {S-282(2)(C)}</td>
</tr>
<tr>
<td>b) Where the AOP is dissolved.</td>
<td>Any Person who was a member of the AOP immediately before its dissolution. {S-283(2)}</td>
</tr>
<tr>
<td>c) Where the AOP discontinued its business.</td>
<td>Any Person who was a member of the AOP at the time of its discontinuance {Sec.284}</td>
</tr>
<tr>
<td><strong>4. Company or local authority</strong></td>
<td></td>
</tr>
<tr>
<td>a) Where the Company or local authority is in existence.</td>
<td>The Principal Officer thereof {S-282(2)(b)}</td>
</tr>
<tr>
<td>b) Where the company discontinued its business (This is not applicable to a Limited Company).</td>
<td>The Principal Officer thereof at the time of its discontinuance. {S.284}</td>
</tr>
<tr>
<td>c) Where the Company is in Liquidation.</td>
<td>The Official Liquidator.</td>
</tr>
<tr>
<td><strong>5. Any other person (not being an individual) as in the case of an artificial juridical person e.g. a deity.</strong></td>
<td>The person who manages or controls its affairs, say, a shebait or a Mutawali [S.282(2)(d)]</td>
</tr>
<tr>
<td><strong>6. Other cases</strong></td>
<td></td>
</tr>
<tr>
<td>a) Deceased person.</td>
<td>Legal representative, which term includes an administrator or executor of the deceased.</td>
</tr>
<tr>
<td>b) Insolvent person.</td>
<td>Official Assignee or Official Receiver.</td>
</tr>
<tr>
<td>c) Minor, Lunatic or Idiot.</td>
<td>Guardian or Manager.</td>
</tr>
<tr>
<td>d) Beneficiaries.</td>
<td>Court of wards or Administrator General or Official Trustees, or Receiver or Manager or Trustee, as the case may be.</td>
</tr>
</tbody>
</table>
The Recovery Officer / SSO (Recovery) should guard against any irregularity in the service of Notices. They must scrupulously follow the Rules of Service, as the validity of the recovery proceedings depends on the correct service of the initial Demand Notice in form ESI CP2 under Rule 2 Schedule II.

A common defect that one usually comes across is that after the Notices are served by affixure, there is no compliance with the procedure laid down under Rule 19 of Order V of CPC i.e. neither any affidavit is secured from the process server or the SSO (Recovery) regarding the circumstances under which he was obliged to serve the Notice by affixure, nor is a declaration made by the Recovery Officer as to validity or the lack of it of the service by affixure. Although such irregularity does not amount to an illegality vitiating all further proceedings, one should always be on the guard to follow the Rules of Service strictly, so that legal complications may not arise at a later stage.

4.11 Service of Summons within the jurisdiction of another court:

A summons may be sent by the issuing Court, whether within or outside the State; either by an Officer of the Court or by post to any Court (other than a High Court), having jurisdiction where the defaulter resides.

Rule 22 of CPC: If the summons is sent to Calcutta, Madras or Bombay for service, it should be sent to the Court of small causes within whose jurisdiction it is to be served.

Similarly, the Recovery Officer’s jurisdiction is within his state. To serve Notices outside the state, the certificate has to be transferred to the Recovery Officer of that state.

4.12 Service in Prison:

Rule 24 of CPC: If the defaulter is confined in a prison, the summons should be delivered or sent by post or otherwise to the Officer-in-Charge of the prison for service on the defaulter.

4.13 Service in Foreign Territory:

Rule 25 of CPC: Where the defaulter resides outside India and has no agent in India, the summons should be sent to him by post, if there is postal communication. Service can also be effected through political agent or Court.

4.14 Service on a Public Officer:

Rules 27 & 28 of CPC: Where the defaulter is a Public Officer (other than an Officer of the Indian Military, Navy or Air Force) the Court may send the summons for service
on the defaulter to the head of Office in which he is employed. In case of a soldier, Naval Officer or Airman, the service may be effected through his Commanding Officer.

4.15 Substitution of letter for summons:

Rule 30 of CPC: A letter, containing the particulars of the summons may be sent in lieu of a formal summons as a mark of consideration of the rank of the defaulter. Such a letter may be sent by post or by a special messenger or in any other manner as the Court may think it fit.

Note: In the discharge of his functions as Recovery Officer under the ESI Act, he may have to issue a number of Notices, warrants etc. in connection with recovery proceedings in a case. In order to avoid disputes regarding the validity of certain actions on his part, it is necessary that due care is taken while preparing the Notices. All such Notices, warrants, etc. must be duly signed by the Recovery Officer or any other Officer exercising his power and must bear the seal of his office. Service of Notice is a legal necessity. Due evidence must, therefore, be available with the Recovery Officer to show that the requisite Notice/warrant has been properly served and it has duly reached the defaulter or his authorized agent. In the case of a service by affixation or substituted service, the original Notice with necessary endorsements must be carefully preserved. The action of Recovery Officer may be subject to challenge in appellate proceedings or in writ on the ground of improper or invalid service.
CHAPTER - V

ATTACHMENT AND SALE OF PROPERTIES – GENERAL ISSUES AND CONCEPTS

With the service of Notice of demand by the Recovery Officer in form ESI CP-2 (Rule 2 of Second Schedule) on the defaulter, the stage is set for further action in recovery proceedings. Quite often, the service of the Notice itself induces the defaulter to pay up the arrears, obviating the necessity to take further steps. In the case of recalcitrant defaulters, however, attachment and sale of their properties, both movable and immovable, becomes necessary. At this stage, the Recovery officer should gather complete information regarding the assets of the unit, movable, immovable properties, Bank deposits, details of Accounts held in various Banks, etc through the employer’s files, Balance Sheets or by sending his recovery SSOs to the company. The Recovery Officer can commence recovery proceedings for attachment and sale of both movable and immovable properties only after expiry of 15 days from the date of service of the Notice unless he is satisfied that the defaulter is likely to conceal, remove or dispose off the whole or any part of the movable property as would be liable to attachment (Rule 3 of Second Schedule). The Recovery Officer & the Social Security Officer (Recovery) have a crucial role to play at this stage of the proceedings and a clear understanding of the issues and concepts relating to attachment of property in general will help in the efficient handling of the task which is assigned to them. The most essential key requirement is speedy and well planned pre-emptive follow up action to beat court stays or any other extraneous forces that might thwart the recovery process.

5.1 What is Property?

Property defined: - Neither the I.T. Act, 1961 and it’s Schedules, nor the CPC, nor the General Clauses Act, 1897, nor does even the Transfer of Property Act, 1882 contain a comprehensive definition of the term ‘Property’. They do, however, contain definitions of certain types of properties which enable one to comprehend the connotations and denotations of the term ‘property’. Movable and immovable property is defined in various statutes in “exclusive terminology”, i.e. trying to convey the meaning by what are excluded from the ambit of the term.

Section 22 of the I.T. Act, 1961, which brings to charge income from house property, talks of “Property consisting of any building or lands appurtenant(auxiliary/adjunct) thereto of which the assessee(defaulter) is the owner”. Rule 1(d) of the Schedule II to the Act, echoing Section 2(13) of the C.P.C., states that “movable property includes growing crops” According to section 3(26) of the General Clauses Act, immovable
property includes “land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth”, and according to Section 3(6), movable property means “property of every description except immovable property.” The Transfer of Property Act simply states that immovable property “does not include standing timber, growing crops, or grass”.

5.2 Movable property: -

According to Rule 1(d) of II Schedule of the I.T. Act, movable property includes growing crops. This definition is identical with section 2(13) of the Civil Procedure Code. According to section 3(36) of the General Clauses Act, movable property has been defined as, “all property other than immovable property”,

Examples of Movable property:-

Movable Property is intended to include corporeal (physical) property of every description except land and things attached permanently to the earth or permanently fastened to anything which is attached to earth. However, things attached to the land may become movable property by severance from the earth like:

➢ Growing or standing crops.
➢ Cart loads of earth or stones quarried and carried away from the land.
➢ A partner’s interest in partnership property is movable property, even though the firm’s property may consist of immovable property.
➢ Machinery and tents used by a touring cinema, collapsible and capable of being removed, though fastened to the earth when in use. The machinery or the poles may be embedded when in use but they are not permanently embedded. If they are permanently embedded they are not a part of the touring cinema.
➢ A deed of simple mortgage.
➢ All kinds of chattel.
➢ Negotiable instruments;
➢ Bank Accounts- Saving, current, fixed etc.;
➢ Money, Securities, insurance policies, security deposits, debts, jewellery, furniture, antiques, all machinery, Vehicles of all types, computers, utensils, Goods of all types (house hold articles, raw material, finished or semi-finished goods, stores etc.), and all other moveable items belonging to the defaulter except that of personal use, which has monetary value. Refer to Para 4.6 and 4.8 for detailed list of properties eligible/not eligible for attachment.
5.3 Immovable property:-

According to section 3(26) of the General Clauses Act, immovable property “shall include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth “.

Examples of immovable property:-

➢ Lands, houses or other buildings, or saleable property belonging to the defaulter over which he has disposing power, whether it is in his name or not.
➢ Tenancy rights where the tenant has disposing power.
➢ Equity of redemption in mortgage.
➢ Machinery embedded in the building for being beneficially used
➢ Interest for life of income from immovable property under a will with obligation to maintain children
➢ A vested remainder.
➢ The interest of a member in the undivided property of the HUF.
➢ A mortgage in a *usufructuary mortgage. (*a legal right to use and derive profit from property belonging to someone else)
➢ Flats owned by a defaulter in a Co-operative Housing Society.

5.4 Criteria to judge whether property is immovable:-

Generally speaking, immovable property carries with it the implication that it is attached to the earth or permanently fastened to anything attached to the earth.

Attached to the earth means:-

➢ rooted in the earth as in the case of trees and shrubs.
➢ embedded in the earth as in the case of walls and building.
➢ attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

However, while the factum of the attachment to the earth is an important consideration, it is by no means the sole consideration. One should look to the degree and nature of the attachment as well. If a thing is permanently and deeply attached to the earth, e.g. a building or a pucca shed, and then it is immovable property. If, on the contrary, a thing is removable and it is necessary to imbed it into or fix it on the earth only when it is in use, it should not be regarded as immovable property, merely because
it is attached to the earth. Machinery and tents used by a touring cinema will fall under this category. Similarly, standing timber, growing crops or grass is not considered immovable property.

A few more decided cases are given below for getting clearer ideas.

An engine stood mounted on cement base and fastened to it by bolt and nuts and it was held to be movable property.

A tenant of a building erected an ice factory in the premises. Later on, he sold the property with all the movable parts. It was held the machinery was movable property.

The main machinery was installed on a small cement platform to which it was fixed by means of bolts at four corners. It was also held in position by being attached to iron pillars fixed in the ground to a depth of nearly 6 or 7 feet. This was held to be immovable property.

Hence, the question whether a particular item of property is immovable or not will have to be answered in the light of the facts and circumstances of each case and the decision of the Recovery Officer is final.

Another important aspect of the concept of property is that, in law, property does not merely connote full ownership or proprietorship, but also includes any right or power in respect of the same, e.g. the right to the occupation of a flat in a tenant co-operative housing society under the Maharashtra Co-operative Society Act.

5.5 What is Attachment?

Attachment defined: – Neither the I.T. Act, 1961 and its Schedules, nor the I.T.C.P. Rules, nor the CPC defines the term ‘attachment’. Wharton’s Law Lexicon gives the following meaning to the word ‘attach’:

“To take or apprehended by commandment or a writ or precept. It differs from arrest because it takes not only the body but some times the goods, whereas an arrest is only against the person, besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person in the custody of higher power, to be forthwith disposed of”

In the context of recovery proceedings, and particularly in relation to attachment of property, ‘attachment’ would mean a seizure by legal process. The power of seizure and sale by legal process is invoked in order to force one to fulfill one’s obligations which one has failed to fulfill of one’s own accord. Thus in executing a decree, the
property of the judgment-debtor can be attached and sold. Or the arrears of contribution etc. due from defaulting factory/establishment can be collected by attaching and selling the property. Essentially, then, attachment is a coercive process sanctioned by law. And the power of seizure by legal process is incorporated in the Second Schedule to the I.T. Act, 1961, and it could be exercised by officers specifically empowered in this behalf by the said Schedule, and in the manner detailed therein. Needless to add, the coercive process can be applied both to immovable and movable property. Attachment of movable property other than agricultural produce involves in physical and actual seizure of the property and the custody of the property would be with the Recovery Officer or any person authorized by him and the attachment would result in the sale of the property in case the amount in question is not paid even after attachment. Where, however, moving the property is not practicable the recovery officer can sanction its maintenance and custody at the place of attachment. Rules 20 to 36 of the Second Schedule of the I.T. Act, 23 to 35 of I.T.C.P. are relevant.

5.6 Property which can be attached:-

Section 3(26) of the General Clauses Act, Section 2 of the Registration Act and Section 3 of the Transfer of Property Act define Immovable Property. Section 60 of the CPC lays down that the following properties are liable to attachment:

➢ Land
➢ Houses or other Buildings and the land immediately appurtenant thereof
➢ Goods
➢ Money
➢ Bank Notes
➢ Cheques
➢ Bills of Exchange
➢ Hundies
➢ Government Securities
➢ Bond or other security for moneys
➢ Debts
➢ Shares in a corporation
➢ All other ‘saleable property’, movable or immovable belonging to the defaulter, or over which or the profit of which he has a disposing power, which he may exercise for his own benefit, whether the same be held in his name or in the name of any other person in trust for him or on his behalf.
➢ Equity of redemption,
➢ Right to claim specific performance of a contract to sell land;
➢ Security deposits ;
➢ Compensation for land acquisition
➢ Insurance policies which are not assigned
➢ Promissory notes
➢ Goods in the hands of an agent
➢ Money payable by a purchaser where a contract of sale has been executed.
➢ Utensils used for preparing sweetmeats by a shop keeper
➢ Motor tractors
➢ Engines, etc for running flour mill and for drawing water
➢ Priest’s share in the offerings
➢ Money due from a managing agent
➢ Provident fund amount after its payment to the defaulter
➢ Compensation for jagirdari abolition
➢ Private pensions
➢ Arrears of salary but not future salary
➢ Allowances of government servants which are not specifically exempt
➢ A vested remainder
➢ The interest of member in the undivided property of a HUF
➢ A life interest taken by a Parsi widow under her husband’s will in the income from immovable property
➢ A mortgage’s interest in a unsufructory mortgage.
➢ Arrears of maintenance allowances
➢ Goods hypothecated by a defaulter to another party but which after hypothecation continue to be in the possession of the defaulter can be attached by the Recovery Officer.

**Note:**

1. It may be noted that the term ‘property’ is used in a very wide sense. Even if a property does not belong to the defaulter, any right or power of the defaulter in respect of the same which the defaulter may have acquired for his benefit can
be seized and sold. The criterion to be applied in this regard is that the defaulter must possess ‘independent disposing power’ over property which is to be attached. The disposing power must be exercisable for the defaulter’s own benefit over the tenancy rights both under the local law and the contract for tenancy. A registered cover containing currency notes and addressed to the judgment debtor was held to be attachable property, because before delivery of the envelope the post-master was supposed to be holding it in trust for the benefit of the addressee. Disposing power can be exercised only where a vested interest is present, e.g. an auctioneer will have no disposing power with regard to the entire sale proceeds of the auctioned goods, but his disposing power will be confined to the portion of the sale proceeds relatable to his commission.

Similarly, bonus or gift will not become the property of the donee until actually paid or the gift is completed, for until this is done the donee will not have disposing power over it. Thus, a preliminary mortgage decree or a preliminary decree for the dissolution of the partnership and rendition of accounts is property capable of attachment. A right to purchase shares or an option to do so is attachable. So also a Court decree can be attached and sold.

2. Meaning of the term ‘saleable property’ - The expression ‘saleable property’ means saleable at a compulsory court sale and not merely transferable by acts of parties, e.g. a partner’s share in the partnership is saleable property, whereas a nomination in an endowment policy does not constitute property in the hands of the nominee, as the nominee does not become the owner of the money payable under the policy till death of insured.

3. Meaning of the ‘debts’ - the term ‘debts’ means actual money claim that has already become due though it may be payable on a future date, and also includes a share of ‘debts’. Money standing to the credit of a subscriber to a Provident Fund is not an actually existing debt so long as it does not become payable under the rules. Life insurance policy is debt though payable on the death of the insured. The only thing to be seen is that the ‘debt’ should be a perfect and absolute one and not dependent on a certain contingency to occur. A debt in order to be attachable, however, need not become payable at once.

5.7 Attachment of property claimed to belong to a third party-

Normally, property found at the premises of the defaulter is presumed to belong to the defaulter himself. There may be circumstances, however, where some property claimed to belong to some third party is attached by the Recovery Officer under the
bona fide belief that the property in question belongs to the defaulter. It is, however, incumbent upon the Recovery Officer to decide the objections of the parties, “When claims and objections by the defaulter to action of Recovery Officer relating to attachment or sale of movable property or immovable property while executing the certificates is raised, then he is duty bound to investigate into such claims and objections under Rules 11(1) and 11(2) to Second Schedule of Income Tax Act 1961.

The objections must relate to ground that the property is not liable to attachment or sale. The defaulter must be shown to have disposing interest in the property on the date of issue of ESICP 2 in case of immovable property and on the date of issue of ESICP 8 in the case of movable property of attachment.

The Recovery Officer can disallow the claim, reject the objections or release the property, wholly or partly, from attachment, depending upon the outcome of the investigation.

The Recovery Officer need not conduct any investigation if, in his opinion, the claim or objection was delayed intentionally or unnecessarily.

If the claimant or Objector feels aggrieved by the order of the Recovery Officer, a civil suit by him can be filed by him can be filed by him as he has exhausted the remedy available under Rule 11, before continuing with the attachment of the property in question. In such cases, the third party concerned has, however, no remedy against the Recovery Officer’s decision to attach it, except through a suit filed in the court for a declaration that the plaintiff was the owner of the property which had been wrongly held to be belonging to the defaulter. However attachment of property of alleged benamidar where the Recovery Officer has not led evidence to prove benami nature of property is invalid.

5.8 Property which cannot be attached –

Properties which are exempted from attachment are detailed in the proviso to Sec. 60 of the CPC. It has to be noted that the exemptions are mandatory. Such properties cannot be subjected to attachment even with the consent of the defaulter. This position has been clarified statutorily by the insertion of sub-sec (1A) in sec.60 of the CPC by the CPC Amendment Act of 1976.

The following types of properties are not attachable.

(1) Immovable Properties

➢ Houses and other building with the material and sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment, and
belonging to an agriculturist or a labourer or domestic servant and occupied by him.

(“Agriculturist” means a person who cultivates land personally and depends for his livelihood mainly on income from agricultural land whether as owner, tenant, partner, or agricultural labourer (Explanations V & VI to Sec. 60 CPC). Labourer includes a skilled, unskilled, or semi skilled labourer (Explanation IV to Sec 60 CPC). The house or the building should be in physical possession of the person concerned and used for agricultural purpose. A dilapidated building cannot be said to be in occupation. Only houses used by agriculturists for agricultural purpose are exempt. A house belonging to an agriculturist situated about 8 miles away from his agricultural land and not needed for keeping agricultural implements will not be so exempt. Buildings, however, include tiled house of agriculturist.)

➢ An expectancy of a succession by survivorship or other merely contingent or possible right or interest as in the case of an auction purchaser before the auction is confirmed

➢ The interest of a lessee in respect of residential building to which rent control laws are applicable.

(2) Movable Properties:

➢ The necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, his wife and children, and such personal ornaments as in accordance with religious usage cannot be parted with by any woman. Cooking vessels would include not only those in which food is actually cooked but also include items like thali, gagra etc. The Mangalsutra or other ornaments on the person of the defaulter’s wife which constitute her stridhan cannot be attached. It may be noted that all articles of personal use, whether or not actually brought into use, are exempt.

➢ Tools of artisans, implements of husbandry used by an agriculturist or are exempt from attachment. The essential point to remember in such cases is, whether the defaulter necessarily requires the tools or implements in question for actually earning his livelihood. If he does so need them, such tools or implements cannot be attached. Cattle used in agriculture are not exempt unless the court has declared that they were necessary for the agriculturist concerned to earn his living. A firm is not an artisan, though individual members thereof may be artisans. A goldsmith is an artisan but a person
employing a goldsmith is not. A halwai is not an artisan and his utensils are not tools of an artisan. It has been held that musical instruments or a surgeon’s or a doctor’s instruments are not tools and are, therefore, not exempt from attachment.

➢ Books of account

➢ A mere right to sue for damage. This includes a right to sue for Mesne profits (Mesne profits are profits derived from land while in wrongful possession.) which cannot be attached. Insolvent’s right to sue for contribution is not exempt

➢ Any right of personal service, right of shebiat to perform service and right to receive offering at a temple is exempt. Money due to a firm of Managing Agents from the company does not, however, constitute a right of personal service

➢ Stipends and gratuities allowed to pensioners of the Government or of a local authority, or of any other employer payable out of any service, family pension funds notified in the Official Gazette by the Central Government, or State Government in this behalf, and political pensions.

(Pension implies periodical payment of money by Government to pensioners. Privy-purse is political pension. Annual fixed payment for commutation of service lands is, however, not political pension. Money received by retired Government servants in commutation of pension is not exempt.)

➢ Wages of labourers and domestic servants whether payable in money or kind

(Where the doing of personal manual labour by the jobber is a condition of his employment, he is said to be a labourer and the remuneration earned by him will be categorized as wages. Labourers would include skilled, unskilled, or semi-skilled workers and wages would include bonus. A weaver in a textile mill is a labourer. Wages include gratuity paid to a workman on the termination of his employment.)

➢ Salary to the extent of the first four hundred and two thirds of the remainder in execution of any decree other than a decree for maintenance (in the case of decree for maintenance only one third of the salary is exempt)
(Salary of public servant is attachable both before and after it has become payable. Salary means gross salary including any amounts which may be required for the payment of taxes or payments or repayments to the Provident Fund even though these may be deductible from the salary. Arrears of salary and allowances are not subject to the exemption under this clause.)

➢ Pay and allowance of a person to whom the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act 1950 or the Navy Act, 1957 applies

➢ All compulsory Deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 for the time being applies in so far as they are declared by the said Act not to be liable to attachment.

(The words mean subscriptions or deposits in a Provident Fund. Even unpaid amounts after retirement would constitute Compulsory Deposits, Government being a trustee for such sums which are not liable to attachment and in regard to which no receiver can be appointed. Provident Fund or Compulsory Deposit moneys remain unattachable as long as they are in custody of the Government but once such moneys are paid out they can be attached. Exemption, however, is not available to compulsory deductions like payment to co-operative Societies or re-payment by instalments of loans taken from the Provident Fund)

➢ All deposits and other sums in or derived from any funds to which the Public Provident Fund Act, 1968 for the time being applies in so far as they are declared by the said Act as not to be liable to attachment.

➢ All money payable under a policy of insurance on the life of the defaulter.

➢ The interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply.

➢ Any allowance forming part of the emoluments of any servant of the Government or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension.

(This exemption is not available to persons in the services of private employers)
➢ An expectancy of succession by survivorship or other merely contingent or possible right or interest.

(The interest of a reversionary expectant on the death of a Hindu is not attachable or saleable. It is only a vested interest as distinguished from a contingent interest which can be attached. A Hindu Coparcener’s interest in joint family property is not exempt.)

➢ A right to future maintenance

(The prohibition does not apply to arrears of maintenance but only to attachment of prospective right of maintenance. Rights of beneficiary under a wakf deed to receive certain amounts periodically for maintenance are not attachable. Maintenance allowance which has already fallen due is a debt and can be attached. The exemption should be restricted to maintenance pure and simple and any amount in excess thereof can be attached.)

➢ Any allowances, declared by any Indian Law, to be exempt from liability to attachment or sale in execution of a decree and

➢ Where the defaulter is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrears for such revenue.

➢ Money payable in relation to matters mentioned in clauses (g), (h), (i), (j), (l) & (o) of section 60 (1) of C.P.C.-1908 is exempt from attachment or sale whether before or after that is actually payable, and in the case of salary, the attachable portion thereof is liable to attachment whether before or after it is actually payable (Explanation-I)

➢ Interest for life does not give disposing power and is not attachable. Anticipatory attachment of the rights and interest under an inchoate (not fully formed or developed) award is, however, not property. So also doors and windows fixed to the walls of a house having no separate existence are not property and cannot be attached.

Other moveables which are not attachable:

Right to worship; right of residence; articles with the auctioneer; life policy assigned; future rent; future salary; money falling due on a future date; money due from purchaser before registering the documents; defaulter’s wife’s stridhan; sewing machine of a tailor; paraphernalia of a soap factory; rewards for personal
service; salary of M.P’s and M.L.A’s; compensation paid to the heirs, namely, widow and children, of a deceased defaulter killed in a motor accident cannot be attached since it was not a claim for damages which the deceased would have pursued in his own life time but was compensation paid to his family after his death.

**Note:** (i) Wherever an item of movable property is inseparably connected with immovable property, the whole lot should be attached and sold as an item of immovable property. There is no need to order two attachments one for movable and another for immovable. As for instance, where a house property owned by the defaulter consists of fixtures and fittings such as geysers, ceiling fans etc., the “house property together with fixtures and fittings” must be attached as immovable property and sold as one unit.

(ii) The Recovery Officer’s decision as to what property is so entitled to exemption is conclusive vide Rule 10(2) of the Second Schedule to the Income Tax Act 1961.

5.9 Interest, Costs and Charges Recoverable (Rule 5 of Second Schedule):

There shall be recoverable, in the proceedings in execution of every certificate:-

(a) Such accrued interest up to date of Recovery together with the amount of contribution, damages or other sum to which the certificate relates as is payable in accordance with the provisions of the ESI Act.

(b) All the charges incurred in respect of:-

(i) The service of Notice on the defaulter to pay the arrears and of warrants and other processes, and

(ii) All other proceedings taken for realizing the arrears.

**Note:** The Recovery officer should carefully add all the incidental expenses incurred and recover the entire amount. Generally the following types of expenditures would fall under “Cost and Charges”, to be recovered:-

- Regd. AD cost for issue of Notice
- TA/DA incurred for personal service of Notices
- Cost of hiring of vehicles to travel to employer premises, bank for attachment
■ Cost of Advt. for proclamation in newspaper of attachment/ sale etc.
■ Hiring of licenced lock breaker, drum beater cost
■ Cost of transporting neutral witnesses for attachment / supurdnama
■ Cost of hiring of transport for shifting of movable property
■ Cost of hiring valuers/ auctioneers
■ Cost of engaging police assistance
■ Cost of imprisonment
■ Cost of engaging security for safekeeping of property.

5.10 Purchaser’s Title (Rule 6 of the Second Schedule):

(1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser’s right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

5.11 Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff (Rule 7 of the Second Schedule):

(1) No suit shall be maintained against any person claiming title under a purchase certified by the Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

5.12 Disposal of proceeds of execution (Rule 8 of Second Schedule):

(1) Whenever assets are realized by sale or otherwise in execution of a certificate, the proceeds shall be disposed of in the following manner, namely:
(a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realized and the costs incurred in the course of such execution;

(b) if there remains a balance after the adjustment referred to in clause (a), the same shall be utilized for satisfaction of any other amount recoverable from the factory/establishment under the ESI Act which may be due on the date on which the assets were realized; and

(c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (b) of sub-rule (1), the Recovery Officer shall determine the dispute.

5.13 General bar to jurisdiction of civil courts, save where fraud alleged (Rule 9 of Second Schedule):

Except as otherwise expressly provided in this Act, every question arising between the Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Recovery Officer before whom such question arises.

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

5.14 Property exempt from attachment (Rule 10 of Second Schedule):

(1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

5.15 Investigation by Recovery Officer (Rule 11 of the Second Schedule):

(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Recovery Officer shall proceed to investigate the claim or objection.
Provided that no such investigation shall be made where the Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that:

(a) In the case of immovable property: at the date of the service of the Notice issued under this Schedule to pay the arrears, he had some interest in, or was in possession of, the property in question.

(b) In the case of movable property: at the date of the attachment, he had some interest in, or was in possession of, the property in question.

(4) Where, upon the said investigation, the Recovery Officer is satisfied that, for the reason stated in the claim or objection such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that being in the possession of the defaulter at the said date, it was so in his possession not on his own account or as his own property, but partly on his own account and partly on account of some other person, the Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him or in the occupancy of a tenant or other person paying rent to him, the Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute, but subject to the result of such suit (if any), the order of the Recovery Officer shall be conclusive.
5.16 Removal of attachment on satisfaction or cancellation of certificate (Rule 12 of Second Schedule):

Where:

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Recovery Officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

5.17 Officer entitled to attach and sell (Rule 13 of Second Schedule):

Section 45C of the ESI Act, 1948, empowers the Recovery Officer to recover the arrears by way of attachment and sale of the moveable or immovable property of the factory or establishment or, as the case may be, the principal, or immediate employer. Further, Section 45G (5) states that the Director General or any officer of the Corporation may, if so authorized by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-Tax Act, 1961.

However, the attachment and sale of movable and immovable property may be made by such person (Social Security Officer (Recovery)) as the Recovery Officer may from time to time direct (Rule 13 of Second Schedule).

5.18 Defaulting purchaser answerable for loss on resale (Rule 14 of Second Schedule):

Any deficiency of price which may happen on a resale by reason of the purchasers default, and all expenses attending such resale, shall be certified to the Recovery Officer by the officer holding the sale, and shall, at the instance of either the Recovery Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.
5.19 Adjournment or stoppage of sale (Rule 15 of Second Schedule):

(1) The Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment.

Provided that, where the sale is made in, or within the precincts of, the office of the Recovery Officer, no such adjournment shall be made without the leave of the Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Recovery Officer who ordered the sale.

5.20 Private alienation to be void in certain cases (Rule 16 of Second Schedule):

(1) Where a Notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease, or otherwise deal with any property belonging to him except with permission of the Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or any interest therein and any payment to the defaulter of any debt, dividend or other money contrary to such attachment, shall be void as against all claims enforceable under the attachment.

5.21 Prohibition against bidding or purchase by officer (Rule 17 of Second Schedule):

No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

5.22 Prohibition against sale on holidays (Rule 18 of Second Schedule):

No sale under this Schedule shall take place on a Sunday or other general holiday recognized by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.
5.23 Assistance by police (Rule 19 of Second Schedule):

Any officer authorized to attach or sell any property or to arrest the defaulter or charged with any duty to be performed in this regard may apply to the officer in charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

5.24 Inventory (Rule 33 of Second Schedule):

In the case of attachment of property by actual seizure, the Social Security Officer (Recovery) shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Recovery Officer and a copy of the inventory shall be delivered by the Social Security Officer (Recovery) to the defaulter.

5.25 Attachment not to be excessive (Rule 34 of Second Schedule):

The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant (in case of movable property).

Note:- Though in case of movable property the value of attached items should not be disproportionately higher than the default amount, the same is not applicable to immovable property. In case of immovable property, though attachment can be of higher value, sale shall be restricted limited to the dues outstanding (only portion of land/building equivalent to dues should be disposed).

5.26 Seizure between sunrise and sunset (Rule 35 of Second Schedule):

Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

5.27 Power to break open doors etc. (Rule 36 of Second Schedule):

The SSO (Recovery) may break open any inner or other door or window of any building and enter any building in order to seize any movable property if the SSO (Recovery) has reasonable grounds to believe that such buildings contain movable property liable to seize under the warrant and the SSO (Recovery) has notified his authority and intention of breaking open if admission is not given. He shall, however, give a reasonable opportunity to women to withdraw.
5.28 Frivolous Claims:

The proviso to sub-rule (1) of Rule 11 of the Second Schedule to the Income Tax Act, 1961 is designed to put a stop to frivolous claims which are made with the ulterior motive of delaying the proceedings, as also where the claims/objection has the effect of unnecessarily delaying the proceedings. In either case, it is mandatory that the Recovery Officer shall not make any investigation to the claim.

5.29 Postponement of sale:

When the Recovery Officer decides to investigate the claim, and the property in the meantime has been put up for sale, he may postpone the sale pending the investigation, upon such terms of security or otherwise, as the Recovery Officer may deem fit. The security obviously has to be furnished by the claimant (objector).

Where a proclamation for the sale of a property has been made, the Recovery Officer may postpone it pending investigation of the claim. The words “may postpone” have been interpreted differently by the High Courts. (The Madras High Court held that the Tax Recovery Officer is bound to postpone the sale. In the case of Baldev Prasad vs Union of India, the Allahabad High Court however, held, that the TRO in a property case can decline to postpone the sale in respect of the claim or objection if circumstances so warrant. But the discretion conferred on the Recovery officer by Rule11(2) of the Second Schedule to postpone the sale does not authorize him to reject the claim on the ground that the terms to which he put the claimant (objector) for postponing the auction have not been complied with. Under the Rule, he has to investigate the claim and decide on the basis of evidence adduced by the claimant.

5.30 Objection to attachment or sale - when to be raised?

The defaulter or his representative can raise an objection that properties are exempt from attachment under Rule 10 of the Second Schedule to the Income Tax Act 1961 at any time before the sale. But once the sale is confirmed it is not open to any body to raise objection, except in the case where the defaulter or his representative is not aware of attachment or sale proceedings.

5.31 Question to be decided by Recovery Officer:

The Recovery Officer is ultimately to decide as to whether any item of property is or is not exempt from attachment or sale, and his decision in this regard shall be final. An application for review also cannot be filed against such order.
CHAPTER - VI

ATTACHMENT AND SALE OF MOVABLE PROPERTY

Section 45C of the ESI Act provides for recovery of arrears of contribution, interest & damages by several modes of recovery. One such mode is the Attachment and sale of movable property. Section 45G (5) provides for recovery by distraint and sale of movable property in the manner laid down in the Third Schedule to the Income Tax Act, 1961. (The mode of recovery entailing the Attachment and sale of movable property is also known as recovery by distraint.)

Governing Provisions:

The Rules for Attachment and sale of movable property are provided in Part II of the Second Schedule to the Income Tax Act 1961, viz: Rules 20 to 36 deals with Attachment and Rule 37 to 47 deals with the sale of movable property attached. Besides, the IT (CP) Rules, 1962, viz: Rule 15 to 19, 23 to 35 and 36 to 38 provide the Rules for implementation of the Second and Third Schedule, including the Rules relating to maintenance and custody of attached movable property, sale of the same, disposal of sale proceeds, delivery of property sold and execution of document or endorsement of Negotiable Instrument or share in a Corporation.

A. CASES COVERED BY WARRANT PROCEDURE:

6.1 Warrant of Attachment: (Rule 20 of the Second Schedule)

The Recovery Officer shall issue a warrant of Attachment of movable property in form No ESICP-3 authorizing the SSO (Recovery) to serve a copy of the warrant on the defaulter and after such service if the defaulter fails to pay the amount due, to proceed to attach the movable property of the said defaulter until further orders from him/her.

The warrant:

– should be in writing,
– should be signed by the Recovery Officer,
– should specify the name of the defaulter and the amount to be realized,
– should state the place where the movables should be attached,
– should contain the name and designation of the person who is to execute the warrant and also the date by which it is to be executed.
If the movables to be attached lie in different places, the addresses of all such places should be specified in the warrant. A blanket warrant is invalid. The SSO (Recovery) should carefully examine the warrants and ensure that they do not suffer from patent infirmities.

6.2 Service of copy of warrant on the defaulter: (Rule 21 of the Second Schedule)

Service of copy of the warrant is a condition precedent to the Attachment of the properties in question. The officer (generally, the SSO attached to Recovery) authorized to execute the warrant is required to serve it on the defaulter. As far as possible, the warrant should be served on the defaulter himself. However, in case the defaulter is available but refuses to receive it, service by affixture as per Civil Procedure Code may be adopted. But if the defaulter is not present, it may not be advisable to effect service on any adult male member; since coercive process is being taken and it is better that the warrant is served on the defaulter alone as far as practicable. However, if the adult male member is one who usually attends to the business of the defaulter, or is otherwise closely connected with him, the Notice may be served on such member. But on no account service by affixture should be resorted to at the very first instance. If the defaulter or any other male member is absent from the premise, the SSO (Recovery) must make a couple of attempts before he takes recourse to service by affixture.

6.3 Attachment: (Rule 22 of the Second Schedule)

If, after the service of the warrant, the defaulter pays the arrears forthwith, there is no need to continue to attach the movable property of the defaulter. The word ‘forthwith’ has been described as “as expeditiously as possible” in the Code of Civil Procedure. If the defaulter wants to pay the amount, say, in an hour or two or any period of time that appears short and reasonable, by borrowing necessary amounts, he must be given time to do so. If he does not pay the amount within a reasonable time, say one or two hours after the service of the warrant, the SSO (Recovery) shall attach the movable property in the possession of the defaulter by Actual Seizure.

6.4 Attachment of property in defaulter’s possession: (Rule 23 of the Second Schedule)

Where the movable property (other than agricultural produce) is in the defaulter’s possession, the Attachment is to be made by “Actual Seizure” and the property will be kept in the custody of the officer himself or his subordinate. The rule also provides for immediate sale where the property is one which may be subject to speedy decay or where the cost of keeping it in custody is likely to exceed its value. Where the
property is not capable of physical seizure, the same is attached by “constructive seizure,” i.e. by affixing the warrant to the entrance door of the godown where the property is kept. The custodial officer is liable for damages if the goods are damaged/destroyed due to negligence, but not otherwise. Under the IT (CP) Rule 26, the attaching officer or custodial officer may, with the previous approval of the Recovery Officer, entrust, subject to his right of supervision, the attached movable property to the defaulter on his executing duly stamped bond in form No ESICP 13. Thereafter, the defaulter has no right whatsoever to handle or use the property without the express permission of the recovery officer.

(“Actual Seizure” explained: The movable properties (other than agricultural produce) covered by warrant procedure are attached by ‘Actual Seizure’. In its technical sense, the term ‘Actual Seizure’ simply means taking physical possession, i.e. dispossessing the defaulter of the movable property, and nothing more. It does not mean application of force or violence on either the defaulter’s property or his person. Actual Seizure includes constructive seizure also. Where a warrant of Attachment is executed by affixing it to the outer door of the warehouse in which goods belonging to the judgment debtor are stored, a case of “Constructive seizure” arises.)

Procedural guide-line for Attachment of movable property (other than agricultural produce) covered by warrant procedure.

1. When the defaulter tenders the cash (Coin or Currency Notes) available with him, the question of Attachment of cash does not arise. A receipt for the amount must then be given to the defaulter and the other movable property proceeded against for the recovery of the balance of arrears. If the cash is not tendered, the cash also should be attached and the Recovery Officer shall issue an order in Form ESI CP-15 for payment to the Authorized Officer for credit to ESI account. The attached Govt. or other securities shall also be sent for the safe custody to the nearest branch of the authorized Bank.

2. Attachment should be commenced only after sunrise and completed before sunset.

3. SSO(Recovery) may, in order to effect Attachment, break open any inner or outer door, or window of any building, and enter any building to seize any movable property, if he has reasonable grounds to believe that such building contains movable property liable to seizure. He should, however, give sufficient opportunity to the women in the household to withdraw.
4. Before commencing Attachment, the SSO (Recovery) should call two witnesses and also the defaulter to his side and state that he is commencing the Attachment. The preliminary portion of the Panchnama (Appendix 2) must then be got written up, preferably, by one of the witnesses. Thus, the Panchnama will record the time at which the proceedings have been commenced. In making the actual Attachment of the articles, the Recovery Officer should be careful not to attach the articles which are exempt under section 60 of the Civil Procedure Code.

5. Powers of SSO (Recovery) under Rule 23 of the Second Schedule are only limited to Actual Seizures of movable properties, and he has no power to search. The Attachment should be made to the extent of covering the amount mentioned in the warrant, since under Rule 34 of the Second Schedule, the Attachment by seizure should not be excessive.

6. The powers conferred on the SSO (Recovery) is limited to breaking open the doors and windows of the building, in order to seize movable property if the officer has reasonable grounds to believe that such building contains movable property that can be seized but it does not extend to the doors of almirahs, etc. found in the premises. If necessary, he may attach a locked almirah, but cannot break open its doors.

7. Prepare an Inventory (Appendix 3) of the articles attached by Actual Seizure. As far as possible, a complete description of the articles must be given in the inventory. A copy of the inventory should be delivered to the defaulters and another copy to the Recovery Officer as mentioned under Rule 33 of the second schedule. It is advisable to make the inventory an integral part of the panchnama.

8. Where valuables like diamond and gold jewellery and silver articles are attached, it is necessary to get them valued by a reputed goldsmith or jeweller. The valuation may be in the form of a certificate. The fact that the articles were got valued, and the value assigned to each of the article must invariably be mentioned in the panchnama. The attached bullion, jewellery or other valuables shall be sent for the safe custody to the nearest branch of the authorized Bank.

9. The attached articles have then to be removed either to the Office of the Recovery Officer or to a place for safe custody as deemed fit by the department. The expenses incurred on transportation are to be paid by the defaulter and in case he fails to pay the same, the department may defray the expenses and recover the same from the defaulter by adjustment from out of the money realized on sale of the attached articles.
10. Where heavy articles such as iron safes, steel almirahs are attached, it may not be economical to transport them to the office. In such cases, the SSO (Recovery) may, with the permission of the Recovery Officer, leave the attached articles in the custody of the defaulter till they are sold for this purpose, and a duly stamped Bond (Supurdnama) must be got executed by the officer as provided under Rule 26 of the IT (CP) Rules and form No ESI CP 13. The stamp duty to be paid varies according to the value of the property, the minimum being Rs.250/-. In case where the articles are very valuable, it will be advisable to require the defaulter to also furnish a Surety Bond executed by two different persons. Once the articles are left in the custody of the defaulter on his executing Supurdnama, the Recovery Officer has no power to lock up the doors of the room in which the articles are deposited.

11. The SSO (Recovery), as the attaching official, is personally responsible for the safe custody of the articles attached by him. He should, therefore, personally ensure that the articles are safely brought to the Office of Recovery officer or to the place where the Department has made arrangements for their safe keeping. Articles subject to speedy and natural decay, milk, egg, vegetables, etc., should be sold at once. If necessary, these articles if precious they can be thought of, to be insured to ensure the safety of the attached property.

12. Sometimes, the defaulter may refuse to receive a copy of the warrant or, to evade service of the warrant he may run away from the premises. In such cases it is better to affix a copy of the warrant on a conspicuous part of the house of the defaulter or the business premises as the case may be and to proceed with the Attachment.

13. Sometimes, the SSO (Recovery) may meet with resistance when he tries to remove the attached articles from the premises of the defaulter, for e.g. the defaulter may lock the outer door or gate, thus preventing the SSO (Recovery) from going out. In such cases, the SSO (Recovery) has the powers to break open the door or the gate. This, he should do after giving Notice to the defaulter, either orally or in writing. Wherever the SSO (Recovery) apprehends danger, he should seek Police assistance (Appendix 4). It is always prudent to give advance intimation to the nearest jurisdictional Police Station before reaching the location of Attachment, especially when breaking open of the premises is contemplated. In all such cases, a panchnama should be got drawn by two respectable witnesses of the locality. In case of physical resistance, a complaint should be lodged with the Police.
14. Normally, there is a presumption that all the articles found inside the premises where the defaulter lives, belong to him, and hence they can be attached. Even here, if a defaulter is a male member, only articles which would belong to a male person can be seized. There is a presumption that the jewels found in the premises belong to the woman folk. Hence as far as possible, unless the defaulter is a lady, Attachment of jewellery should be avoided.

15. Sometime, a person other than the defaulter may claim to be the owner of the article attached. The SSO (Recovery) has no authority to decide such claims, and no discretion to release the article. The SSO (Recovery) should record the fact that such a claim was made, and direct the claimant to file an objection petition. The Panchnama should invariably reflect the above development.

16. While attaching movable property, the SSO (Recovery) may come across some property in the illegal possession of the defaulter, viz: stolen property, gold, antiquities & art treasures, etc. After Attachment, the concerned authorities - Custom & Excise department for gold, Director General Archaeological Survey of India & the Superintending Archaeologist for antiques & Art treasures will have to be contacted. Whether or not the Department can attach and sell the articles will be determined by those authorities. If they decide to confiscate the articles under the respective enactments, the question of attaching them does not arise. The Archaeological Department, particularly, may decide to acquire the articles on payment of compensation, in which event the compensation will have to be attached u/s 31 (ITCP 10). Needless to add, stolen articles, if attached, must be reported to the Police authorities for further action. There is no question the Corporation realizing anything towards arrears in such cases.

17. The SSO (Recovery) should be methodical & meticulous in his work. It is very important to know the location of the jurisdictional police station and the phone number of the police station should be available with him. A check-list of things which the SSO (Recovery) has to carry with him is given below:-

➢ File of the defaulter
➢ Warrant of Attachment
➢ Panchnama
➢ Inventory form
➢ Supurdnama bond
➢ Requisition to Police
➢ Writing Paper, CardBoard, Pins, Ink & Pen, Rubber Stamp of the SSO (Recovery)
➢ Ink Pad
➢ Cash Receipt Book
➢ Gum bottle
➢ Vehicles and other modes of transporting the attached movables
➢ Sufficient amount of cash to meet incidental expenses
➢ Requisite number of persons to assist him in the job, but the number should be small.

6.5 Attachment of agricultural produce and growing crops: (Rule 24 and 25 of the Second Schedule)

Rule 24: where the property to be attached is agricultural produce, the Attachment shall be made by affixing a copy of the warrant of Attachment:

a) On the land where the crop is being grown.

b) On the threshing floor where such produce has been cut or gathered.

c) On the outer door or other conspicuous part of the house in which the defaulter resides.

d) If necessary, and with the permission of the Recovery Officer at the business premises or place where known to have last resided or carried on business or worked for gain.

Rule 25: Where agricultural produce is attached:

1) Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient.

2) The Recovery Officer in the order of Attachment or in any subsequent order may permit the defaulter to tend to the crop and, if the defaulter fails to do all or any of the acts necessary for maturing or preserving, any person appointed by the Recovery Officer in this behalf may, subject to like conditions, do all or any of the acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

3) Agriculture produce attached as a growing crop shall not be deemed to have ceased to be under Attachment or require reAttachment merely because it has been severed from the soil.
4) The execution of an Attachment order may be suspended if there is considerable time between the date of Attachment and when the crop is likely to be fit for being cut and gathered.

5) Where a growing crop by its nature cannot be stored, it should not be attached at any time less than 20 days before the time it is likely to be fit for being cut or gathered.

Note: Prior to Attachment of agricultural produce and growing crops, the S.S.O. (Recovery Officer) should first contact the Karanam (Patwari) of the village, obtain from him the full particulars of the defaulter’s land and locate the land, if need be, with the help of the village map. The Karanam (Patwari) could be made a witness in the Panchnama.

B. ATTACHMENT OF MOVABLE PROPERTY BY ISSUING PROHIBITORY ORDER

6.6 Attachment of Debt not secured by Negotiable Instrument, Share in a corporation and other movable property not in the possession of the defaulter, excepting property in the custody of any Court (Rule 26 of the Second Schedule):

(1) In the case of:

   (i) a debt not secured by Negotiable Instrument;

   The Recovery Officer has to make the Attachment by a prohibitory order in form ESICP 4 (separate ESICP 4 may be issued to the Bank in the name of the defaulting unit and the proprietor/partner of the unit) prohibiting the creditor from recovering the debt and the debtor from making payment thereof until further order of the Recovery Officer.

   A copy of such order may be sent to the creditor, another copy to the debtor and the third copy of such order shall be affixed on some conspicuous part of the Recovery Officer’s office.

   A debt may be attached under this rule only if the defaulter is the full owner of the same and not if he is co-owner in which case the Attachment is to be made under Rule 28

   In respect of a life insurance policy, there is no debt in the legal sense unless the policy is matured or the defaulter is dead and the amount is then payable to the nominees.

   The situs of the debt will determine which Recovery Officer has jurisdiction over it and only the Jurisdictional Recovery Officer can attach it. In the mean time, a prohibitory order can be issued to the defaulter only.
The Attachment of a debt does not prevent the defaulter from taking steps for its recovery, but he cannot receive payment until the arrears are cleared.

On Attachment, the Recovery Officer’s title to the debt is no better than the creditors. The Recovery Officer is entitled to recover only that much which the creditor himself could have recovered under normal circumstances.

Where the garnishee denies his liability, the Recovery Officer may investigate the truth or otherwise of the denial.

(ii) **share in a corporation/company:**

In the case of shares held by the defaulter in a company, the Recovery Officer shall issue a prohibitory order in form **ESICP 5** to the defaulter in whose name the share may be standing, prohibiting him/her from transferring the same or receiving any dividend thereon. A copy of such order shall be affixed on the Notice Board of the Recovery Officer and another copy of the prohibitory Order shall be sent to the Principal Officer of the company.

It is not necessary that the corporation or the company in which the defaulter holds shares must be located within the jurisdiction of the Recovery Officer issuing the prohibitory order. What is essential is that, at the time of the Attachment, the share should stand in the name of the defaulter in the books of the company. A Deed of transfer executed by a defaulter will have no effect on the Attachment, if the Deed is defective in that it does not comply with the formalities prescribed in that regard by the Indian Companies Act and the Articles of Association of the company.

(iii) **Other movable property not in the possession of the defaulter:**

In the case of movable property of the defaulter not in his possession, e.g. pledged articles, etc., the Recovery Officer shall issue a prohibitory order in form **ESICP 6** to the person who is in immediate possession of the property prohibiting him from delivering the said property to any person. A copy of the order should also be served on the defaulter, prohibiting him from receiving the property. Another copy of the order shall also be affixed on the Notice Board of Recovery Officer,

Certain limitations on the application of Rule 26 may be noted. It has been held that there is no justification for sealing a third person’s warehouse in which the goods of the defaulter are stored. The same principle may be applicable to the lockers (in a Bank or a safe deposit company) operated
by the defaulter. In such case, constructive seizure under Rule 23 may be made, followed, of course, by Actual Seizure as early as possible.

(2) Copies of the prohibitory orders in form ESICP 4, 5 and 6 shall be served/ affixed as detailed under each sub head above.

(3) A debtor prohibited under clause (i) of sub-rule (1) of Rule 26 of the Second Schedule of the I.T.Act, 1961 may pay the amount of his debt to the Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

C. ATTACHMENT IN OTHER CASES.

6.7 Attachment of Decree: (Rule 27 of the Second Schedule)

A Decree of a Civil Court for the payment of money, or for sale in enforcement of a mortgage or charge passed in favour of the defaulter can be attached by the issue of a Notice of Attachment by the Recovery Officer in form ESICP 7 to the Civil Court requesting it to stay the execution of the Decree. Where the Recovery Officer has attached the defaulter’s money-Decree or mortgage Decree, the Recovery Officer or the defaulter can apply to the Court, which passed the Decree, for the execution thereof. As soon as the Court receives the application, the Court shall proceed to execute the attached Decree, and apply the net proceeds in satisfaction of the certificate. The attached Decree can be realized by execution only, and cannot be sold in execution.

Under sub rule (3) of Rule 27, the Recovery Officer is deemed to be the representative of the defaulter (holder of the attached Decree). He shall, therefore, be entitled to execute such attached Decree in the same manner as the Decree holder can. It should be understood that the Recovery Officer is not the legal representative of the defaulter. He is the representative only for the execution of the Decree. He is entitled to receive payments from the judgment debtor out of Court as that is one of the recognized modes of execution, but he cannot accept in settlement less than what is due. He cannot adjust the Decree in any manner he likes. If the attached Decree is reversed on appeal, the Recovery Officer has to make restitution to the defaulter if he has already realized the money due under the Decree.

6.8 Attachment of share of interest of the defaulter in movable property: (Rule 28 of the Second Schedule)

The Rule provides for Attachment of defaulters’ share of interest in movable property belonging to the defaulter and others in co-ownership, since such a share cannot be
attached by Actual Seizure. The Recovery Officer is required to serve a Notice of Attachment to the defaulter in form **ESICP 8** prohibiting him from transferring in any manner his share of interest in such jointly owned movable property.

**Note:** If, in any case, the property which is otherwise attachable under Rule 28 is wrongly attached under Rule 23, such a wrong Attachment ought to be released under sub rule (4) of rule 11 of Second Schedule, and a fresh order of Attachment of such property should be made under Rule 28.

**6.9 Attachment of salary of employees of Government and Local Authorities: (Rule 29 of the Second Schedule)**

The rule applies to the Attachment of salary of employees of government and local authorities, subject to the limitations provided in Section 60 of the Code of Civil Procedure. This rule is not applicable to the salary received by private employees; such salaries are not “debt” and cannot, therefore, be attached before they become due and payable. As stated earlier, salary to the extent of Rs.400 and one-third of the remainder is exempt from Attachment. The Attachment of salary will be effected by issue of an order by the Recovery Officer in form **ESICP 12-A** to the disbursing officer requiring him to withhold the salary subject to the aforesaid limit, and remit the amount to the Recovery Officer in pursuance of the Attachment order. A copy of this order may also be served on the Government servant concerned so that he can also know that his salary has been kept under Attachment.

**6.10 Attachment of Negotiable Instruments: (Rule 30 of the Second Schedule)**

The rule prescribes the procedure for Attachment of Negotiable Instruments, e.g. promissory notes, bills of exchange including hundi or cheques. Since Negotiable Instruments can change hands merely by delivery or endorsement, Attachment has to be made by Actual Seizure. Once the Negotiable Instrument is seized, Notice of the fact of the Attachment to the debtor or promisor is sufficient protection against his paying the amount due to the promise or anyone else. The order of Attachment is issued by the Recovery Officer in form **ESICP 9** authorizing the SSO (Recovery) to see and seize the Negotiable Instruments and prepare an inventory. A copy of the inventory should be handed over to the defaulter. Panchnama must also be drawn up. Copy of the order of Attachment should be served on the defaulter and also on the concerned debtors, so that they may not pay the amount to the promisee or anyone else excepting the Recovery Officer.
6.11 Attachment of property in the custody of a Court or a Public Officer: (Rule 31 of the Second Schedule)

Property in the custody of a Court or a Public Officer has to be attached by issue of a Notice of Attachment by the Recovery Officer in form ESICP 10 to the Court or, to the Public Officer as the case may be. The term Public Officer has been defined in section 2(17) of the Civil Procedure Code. The Court or the Public Officer need not necessarily be within the jurisdiction of the Recovery Officer attaching the property. What is essential is that, at the time of Attachment the defaulter’s property must be in the custody of the Court or the Public Officer. Once a Notice is sent to Court, Attachment of the property of the defaulter in custody of Court takes effect and Court is required to hold property subject to further orders from Recovery Officer.

Note:
(i) An anticipatory Attachment made before the money has reached the Public Officer is invalid.
(ii) Where the Court has already passed a rateable distribution order, property cannot be attached, but it can be issued only after it reaches the hands of the Public Officer.
(iii) Attachment of property in the hands of a Receiver or Official Assignee cannot be done without the leave of the Court.
(iv) The amount standing to the credit of the subscriber in a provident fund by way of compulsory deposit cannot be attached (by virtue of section 60 of the Civil Procedure Code). But, where a cheque for the credited amount is issued on a specified Bank at the instructions of the subscriber, the amount loses its character of compulsory deposit and can be attached.
(v) Money deposited by a contractor with Public Works Department as security for due performance of the contract and sums due for work done but retained till completion of contract is debts due to the contractor and may, therefore, be attached under this rule.
(vi) A Court, as compared to a Public Officer, may go into the question of title or priority but a Public Officer cannot do so.

6.12 Attachment of Partnership property: (Rule 32 of the Second Schedule)

(1) The interest of a partner in partnership business is movable property, although part of the partnership property may consist of immovable property. An order of Attachment is issued by the Recovery Officer in form ESICP 11 ordering that
the share of the defaulter partner in the partnership property and profits are charged with the payments of the arrears in the certificate. A copy of this order is to be served upon the defaulter partner. A receiver may be appointed in respect of the share of this partner in the profits and any money which may become due to him from the partnership. This appointment may be made either in the Attachment order by which the share is charged or by a separate order. The Recovery Officer may further direct that the accounts and enquiries be made in respect of the partnership.

(2) The Recovery Officer may make an order for the sale of the defaulter partner’s interest in the partnership business. Sub-rule 32(2) gives the “other persons (other partners)” a right to redeem at any time the interest of the defaulter partner, which has been charged. In case, the shares of the defaulter partner are put up for sale, the other partners are given the option to purchase the same.

6.13 Procedure for Attachment: (Rule 33 to 36 of the Second Schedule)

(a) Rule 33: Where an Attachment is being made by Actual Seizure, the Officer shall prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Recovery Officer. A copy of the inventory is to be given to the defaulter.

(b) Rule 34: The Attachment made is expected to be as near as possible in value to the amount specified in the warrant and should not be excessive.

(c) Rule 35: Attachment by seizure may only be made between sunrise & sunset.

(d) Rule36: It gives the authority to the SSO (Recovery) to break open any inner or outer door or window of any building and enter any building in order to seize any moveable property if the Officer has reasonable grounds to believe that such building contains movable property liable to seizure and the officer has notified his authority and his intention of breaking open if admission is not given. Female occupants must be given all reasonable opportunity to withdraw.

Sale of movable properties.

With the Attachment of the movable properties of the defaulter, the stage is set for issuing a Proclamation of sale.

6.14 Issue of warrant of sale of property (Rule 37 of the Second Schedule):

The next step the Recovery Officer takes is to proceed with the sale of property attached. This can be done through the SSO (Recovery) or through a professional
auctioneer like a Government auctioneer who is well versed with the procedure and fix the remuneration for the services rendered. The remuneration paid should be added to the costs of the sale (Rule 17 of ITCP, Rules 1962). The Recovery Officer shall, first, issue a warrant of sale of property in form ESICP 16 authorizing the SSO (Recovery) to sell the property by Public Auction. In case it is decided to appoint a private person like a Government auctioneer to conduct the auction, the warrant is to be issued in the name of the said auctioneer.

A sale, however, cannot be made independent of Attachment. In fact it presupposes Attachment and as such any sale made without Attachment having first been made will be ab-initio void.

**6.15** Issue of Proclamation of sale: (Rule 38 of Second Schedule)

The Recovery Officer shall issue a Proclamation of sale of movable property in form ESICP 17. The Proclamation shall be in the language of the district of the intended sale, specifying the time and the place of sale and whether the sale is subject to confirmation or not. A copy of the Proclamation shall be served on the defaulter.

For the purpose of ascertaining the matters to be specified in a Proclamation of sale, the Recovery Officer may summon any person whom he thinks necessary to summon and may examine him in respect of any matters relevant to the Proclamation and require him to produce any document in his possession or power relating thereto (Rule 16 of ITCP, Rules 1962).

**6.16** Proclamation how made: (Rule 39 of Second Schedule)

(1) The Proclamation of sale of movable property shall be made by beat of drum or other customary mode. This apart, announcements are to be made through loudspeakers in public places, advertisements in local vernacular newspapers, etc.

(a) In the case of property attached by Actual Seizure:

(i) In the village in which the property was seized, or if the property was seized in a town or city, in the locality in which it was seized; and

(ii) At such other place as the Recovery Officer direct; and

(b) In the case of property attached otherwise than by Actual Seizure, in such place as the Recovery Officer may direct.
(2) A copy of the Proclamation shall also be affixed in a conspicuous part of the office of the Recovery Officer.

6.17 Sale after fifteen days: (Rule 40 of the Second Schedule)

The date of sale of movables should be so fixed that there is an interval of at least 15 days between the date of affixture of a copy of the Proclamation in the office of the Recovery Officer and the date of sale. The time interval can be shortened in the following cases:

(a) The defaulter gives his consent thereof in writing; or

(b) The property is subject to speedy and natural decay, i.e. perishable items; or

(c) The expenses of keeping the property in custody is likely to exceed its value, e.g. livestock.

6.18 Sale of Agricultural produces: (Rule 41 of the Second Schedule)

(1) Where the property to be sold is agricultural produce, the sale shall be held:

   (a) If such produce is a growing crop, on or near the land on which such crop has grown, or

   (b) If such produce has been cut or gathered, at or near the threshing floor or place of treading out grain or the like, or fodder-stack or in which it is deposited.

Provided, that the Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of the opinion that the produce is likely to sell to a greater advantage.

(2) Whereon the produce being put up for sale:

   (a) A fair price, in the estimation of the person holding the sale, is not offered for it, and

   (b) The owner of the produce, or a person authorized to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.
6.19 Special Provisions Relating to Growing Crops: (Rule 42 of the Second Schedule)

(1) If the growing crop is such that it can be stored after its harvest, the date of sale shall be fixed only after the crop has been cut or gathered and is ready for storing.

(2) If the crop is such that it is not capable of being stored after it is cut, or it would be more advantageous, if it is sold in an unripe stage, the crop may be sold before it is harvested, and the purchaser shall be entitled to enter on the land and do all that is necessary to tend, cut or gather the crop.

6.20 Mode of sale – Sale to be by auction: (Rule 43 of the Second Schedule) Movable property shall be sold by Public Auction in one or more lots as the officer conducting the sale may consider being feasible. The Recovery Officer may authorize any of the following persons to conduct the sale:-

(i) Any person including his subordinate in office (under Rule 13 of I.T.C.P.Rules 1962). The SSO (Recovery) is delegated powers by the Recovery Officer to attach and sale movable and immovable property in the course of recovery proceedings.

(ii) Any person (other than his subordinate) through whom the Recovery Officer feels it would be more advantageous to get the auction conducted (under Rule 17 of I.T.C.P.Rules 1962). The remuneration payable to such person shall be fixed by the Recovery Officer and the same shall be deemed to be the costs of the sale.

(iii) A broker for selling Negotiable Instruments or share in companies. The remuneration payable to such person shall be fixed by the Recovery Officer and the same shall be deemed to be the costs of the sale.

Where selling only a part of the property satisfies the certificate amount together with interest and all costs, charges etc., the sale of the remaining lots should be immediately stopped.

Nothing in the Second Schedule requires a bid to be accepted by the Recovery Officer before a contract of sale can be held to be complete.

In fact, Rule 18 of the I.T.C.P.Rules, 1962, empowers the Recovery Officer to fix a ‘Reserve Price’ in respect of any property other than agricultural produce, to be sold, and to order that any bid shall be accepted only on condition that it is not less than the Reserve Price.
The Proclamation of sale (in form **ESICP 17**) also makes it clear that the highest bidder shall be declared to be the purchaser of any lot only in the following circumstances, namely:-

(i) The highest bidder should be legally competent to bid; and

(ii) The Recovery Officer in his discretion has not rejected the bid on the ground that:-

   (a) Such bid is less than the Reserve Price, if any; or

   (b) It is clearly apparent that the price offered is so **inadequate** that it is advisable to reject the bid

**6.21** Sale by Public Auction: (Rule 44 of the Second Schedule)

1) Where movable property is sold by Public Auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold. (in other words, the amount for which the property is auctioned should be paid at the place and time of sale lest the sale becomes invalid and the property can be resold)

2) On payment of the purchase money, the officer holding the sale shall grant/issue a certificate of sale in form **ESICP 19** specifying the property purchased, the price paid and the name of the purchaser and the sale shall become absolute.

3) Where the movable property to be sold is a share in goods belonging to a defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

**Note:** (i) Where the purchaser defaults in payment and any loss arises in resale, the defaulting purchaser is answerable for such loss. (Rule 14 of the Second Schedule).

(ii) Under Rule 19 of the ITCP Rules, 1962, the officer conducting sale shall pay the entire amount received by him from the (bidder) purchaser of the property to the “ESI FUND A/C N0.1” forthwith and submit a full report of the sale proceedings to the Recovery officer.
6.22 Irregularity not to vitiate sale, but any person injured may sue: (Rule 45 of the Second Schedule)

No irregularity in publishing and conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person* may institute a suit in a civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

(*at the hands of any other person: where the movable property not belonging to the defaulter is sold, the real owner may sue the Recovery Officer under this rule.)

6.23 Negotiable Instruments and shares in a corporation: (Rule 46 of Second Schedule)

Notwithstanding anything contained in this Schedule, where the property is to be sold is a Negotiable Instrument or a share in a corporation, the Recovery Officer may, instead of directing the sale to be made by Public Auction, authorize the sale of such instrument or share through a broker i.e an authorized broker can be entrusted with the task of selling the shares.

6.24 Order for payment of coin or currency notes to the ‘Authorised Officer’:(Rule 47 of the Second Schedule)

Where the property attached is coin or currency notes, the Recovery Officer may, at any time during the continuance of the Attachment, issue an order for payment to the Authorized Officer the coins and currency notes attached in form ESICP 15 inter alia that such coins or notes shall be credited to Corporation (ESI-Fund A/c No1).

Note:(i) Materials needed by SSO (Recovery) for Proclamation: The SSO should carry the following materials while setting out to make a Proclamation;

➢ Proclamation Notices;
➢ Gum bottle;
➢ Panchnama forms for issue of Proclamation;
➢ Drum beater with drum; and
➢ Two witnesses.

(ii) Steps to be taken by SSO (Recovery) while actually making a Proclamation: First the drum must be beaten or announcement made through a loudspeaker, and then the Proclamation of sale read out. Thereafter, a panchanama, in
evidence of the fact that the Proclamation has been duly made must be recorded with the help of the witnesses. The panchnama should show that:

➢ A copy of the Proclamation (in the local language) was served on the defaulter;
➢ Drum was beaten or announcement made through loudspeaker;
➢ The contents of the Proclamation Form were read; and
➢ A copy of the Proclamation Form was affixed on a conspicuous part of the property.
➢ The panchnama should also record all significant incidents that took place during the Proclamation.

After the Proclamation has been made, the SSO (Recovery) should return to the office and affix a copy of the Proclamation on the Notice Board of the office of the Recovery Officer and submit a detailed report to the Recovery Officer.

Check List for SSO (Recovery):

➢ ESI CP 16 to be filled up;
➢ ESI CP 17 to be filled up;
➢ Reconciled and Updated arrears together with interest and costs to be shown;
➢ Name of the SSO (Recovery) to be given;
➢ Place of auction must be given;
➢ Date of auction must be given;
➢ Time of auction must be given;
➢ Approximate value of the property must be given;
➢ The serial order in which the property to be auctioned must be the same as shown in the Proclamation;
➢ Auction date must be beyond 15 days except in certain cases as explained under Para 6.17.
➢ Description of the articles must be accurate;
➢ Value to be given to each article separately.
CHAPTER - VII

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

Section 45C of the ESI Act provides for recovery of arrears of contribution, interest and damages by several modes of recovery. One such mode is by Attachment and sale of the Immovable property of the factory or establishment or, as the case may be, the principal or immediate employer.

Governing Provisions:

The Rules for Attachment and sale of Immovable property are provided in Part III of the Second Schedule to the Income Tax Act 1961, viz: Rule 48 to 51 deals with Attachment of Immovable property and Rule 52 to 68 A deals with the sale of Immovable property. Besides, the IT(CP) Rules, 1962, viz: Rule 15 to 21 and 39 to 47 provide the Rules for implementation of the Second and Third Schedule, including the Rules relating to maintenance and custody of attached immovable property, sale of the same, disposal of sale proceeds, delivery of property sold and execution of document /registration of sale etc. This process of attaching and selling the immovable property starts when the defaulter fails to pay the arrears as specified in the Notice issued in Form ESICP 2 even after expiry of 15 days from the date of service of such Notice.

7.1 Attachment: (Rule 48 of the Second Schedule)

Before proceeding for Attachment of an immovable property of the defaulter the Recovery Officer will cause to make enquiries through SSO(Recovery) to ascertain full details of the property, its location its boundaries etc., encumbrances, mortgages, municipal tax due, land revenue arrears etc.,

The concept of “Actual Seizure” which is appropriate to certain types of movable properties is totally inapplicable to Immovable properties. Apropos, Rule 48 of the Second Schedule recognizes this fact and provides for Attachment of Immovable property by an order issued by the Recovery Officer in Form ESICP 12 thereby:

(i) prohibiting the defaulter from either transferring the property, or charging it in any way, and

(ii) prohibiting all persons from taking any benefit under such transfer or charge.

Note: (1) Rule 16 of the second schedule of the IT Act comes into play as soon as the Notice in ESI CP 12 is served. Not only the defaulter is prohibited from encumbering any of his properties by mortgage, charge, lease or otherwise
deal with the property even the Civil courts cannot issue any process against such property in execution of a Decree for payment of money.

(2) Rule 16(2) further amplifies that once an Attachment has been made any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such Attachment shall be void as against all claims enforceable under the Attachment.

7.2 Service of Notice of Attachment: (Rule 49 of the Second Schedule)

A copy of the order of Attachment must be served on the defaulter.

7.3 Proclamation of Attachment: (Rule 50 of the Second Schedule)

(i) The order of Attachment should be proclaimed by drum beat at some place on or adjacent to the property attached. (Omission to make proclamation by drumbeat would amount to material irregularity). This also has to be witnessed by two persons as laid down in the CPC. The order of Attachment should also be proclaimed by other customary mode (advertisement in local dailies etc.).

(ii) A copy of the order must be affixed on a conspicuous part of the property, as well as on the Notice board of the office of the Recovery Officer. In case where several properties are sought to be attached under one order, affixture of the copy of the order of Attachment on one or some of the properties would not be sufficient to effect a valid Attachment of all the properties. In such cases, a copy of the order should be affixed on each separate property.

(iii) Panchanama (Appendix 5) in evidence of the proceedings prepared should specifically highlight the facts of the copies of Attachment orders having been served on the defaulter, a copy of it having been affixed on the property and drum beaten while proclamation done in the local vernacular language should be prepared and formalities completed.

7.4 Attachment to relate back from the date of service of Notice: (Rule 51 of the Second Schedule)

Where any Immovable property is attached under this Schedule, the Attachment shall relate back to, and take effect from, the date on which the Notice to pay the arrears, issued under this Schedule, was served on the defaulter.
**Sale of Immovable Properties:**

7.5 **Sale and Proclamation of sale: (Rule 52 of the Second Schedule)**

The Recovery Officer shall issue a Notice for setting a sale proclamation in form **ESICP 18** informing the defaulter as under:-

1. that the immovable properties which have been attached or such portion thereof as may seem necessary to satisfy the Certificate, shall be sold.

2. to disclose the encumbrances, charges, claims and liabilities if any attached to the properties intended for sale.

**Note:**

(i) The Recovery Officer shall simultaneously issue a warrant of sale in form **ESICP 16** authorizing the SSO (Recovery)/Government Auctioneer to Auction the property after giving 30 days Notice by affixing the same in the Office of the Recovery Officer, and after making due proclamation.

(ii) The Notice for setting a sale proclamation shall be in the local language of the district.

7.6 **Contents of Proclamation: (Rule 53 of the Second Schedule)**

The Recovery Officer shall issue a proclamation of sale of immovable property in Form **ESICP 17**. The proclamation should be in the local language and a copy should be served on the defaulter. The proclamation shall state the time and place of sale, and shall specify as accurately as possible:-

(a) the property to be sold. The exact description of the property must be given, viz. in case of land, the description will include the survey no., the area, the revenue, if any, assessed on it, etc. In the case of a building, the door no., the plinth area, type of construction, number of rooms, the rent it fetches must be supplied so that a lay man must be able to judge the nature and value of the property intended for sale. Only the defaulter’s properties should be described in the proclamation;

(b) the revenue, if any, assessed upon the property or any part thereof;

(c) the amount for recovery (arrears including interest, costs and expenses) of which the sale is ordered;

(cc) the Reserve Price, if any, below which the property may not be sold (also see Para 18.4(d))
(d) any other thing which the Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

**Note:**
(i) The name of the SSO (Recovery)/Auctioneer authorized to conduct the Auction must also be indicated.
(ii) The Recovery Officer may fix the Reserve Price in respect of any property, other than agriculture produce, to be sold and order that any bid shall be accepted only on condition that it is not less than the said Reserve Price (Rule 18 of IT (CP) Rules, 1962).

**7.7 Mode of making Proclamation:** (Rule 54 of the Second Schedule)

1. every proclamation for the sale of immovable property shall be made on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the Office of the Recovery Officer.

2. where the Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or both and the cost of such publication shall be deemed to be the cost of the sale.

3. where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper Notice of the sale cannot, in the opinion of the Recovery Officer, be given.

It is not statutorily necessary to give a copy of the proclamation to the defaulter. It will, however, be prudent to give a copy to him so that he is induced to clear the arrears to save his property from being sold by public Auction.

**7.8 Time of Sale:** (Rule 55 of the Second Schedule)

No sale of Immovable Property under this schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the Office of the Recovery Officer, whichever is later. This means there should be at least 30 days gap between the date of affixture of the proclamation and the actual date of proposed sale.

**7.9 Sale to be by Auction:** (Rule 56 of the Second Schedule)

i) The sale shall be by public Auction in favour of the highest bidder and subject to confirmation by the Recovery Officer. The Reserve Price is to be specified as
mentioned under Rule 53(cc) of the Second Schedule to the Income Tax Act. If the highest bidder does not reach the Reserve Price fixed, the sale is not to be finalized. The Recovery Officer is competent to fix the Reserve Price in respect of all assets except growing crops or agricultural produce.

ii) A bidding sheet showing the name of each bidder and his bid amount is to be maintained. (A bidders’ list indicates the names of the bidders, their age & profession, & the amounts deposited by them. The bidder’s signatures are obtained on the list & the particulars of the public Auctions are stated at top of the list). If the Auction does not come to an end, it can be adjourned to another day. If the property is knocked down, the S.S.O. (Recovery) should make an open announcement to the bidders and record an endorsement along with the signatures of two witnesses, preferably the two bidders who were not successful.

iii) If the Auction sale of property for which the Reserve Price is not reached by any of the bids and therefore sale has to be postponed, the Authorised Officer or any officer authorized by the Director General, ESIC., in this behalf may accept at subsequent sale, bid for property on behalf of the Corporation under Rule 59(1) of the Second Schedule. Where the Authorised Officer or any other officer authorized by the Director General, ESIC., under Rule 59(1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in Rule 57 shall apply to the case & the amount of the purchase price shall be adjusted towards the amount specified in the Certificate. This is with a view to thwarting the defaulters’ attempt to manage that adequate bids are not forthcoming by bidders in the Auction (Rule 68A of the Second Schedule).

iv) The successful (highest) bidder should deposit 25% of the purchase price to the officer conducting the sale. Failure to do so could result in its resale at once. The balance purchase price should be paid to the Recovery Officer within 15 days of the date of Auction sale [Rule 57(2)]. Failure would entail forfeiture of the deposit paid at the Auction and resale of the property in question. The Auction sale is subject to confirmation by the Recovery Officer to be made after a period of 30 days.

v) Possession regarding immovable property is more elaborate, in the sense that the claim petitions, if any, have to be disposed off first. The claims may be regarding encumbrances etc. or that a third party had a valid title by earlier purchase, being bona fide purchase for valuable consideration etc. If on consideration of all the facts and circumstances of the case and appreciation of
the evidence let in, the Recovery Officer rejects the claim, the defaulter may seek his legal remedies by institution of a suit in the appropriate Civil Court. Subject to the result of such civil suit, if any, the Recovery Officer’s order shall be conclusive. The possession of the immovable property sold by Auction together with the Recovery Officer’s Sale Certificate is to be handed over to the purchaser on the sale becoming final, after crossing of the hurdles mentioned above, with a copy of Sale Certificate being sent to the Registration Department to have the effect of registration and noting the transaction of the Auction sale.

vi) When the Auction is over, the SSO (Recovery) shall forthwith pay the entire amount received by him/her to ESI fund A/C No.1 and submit a full report of the entire proceedings, indicating the highest bidder and bid amount. (Rule 19 of ITCP Rules, 1962)

7.10 Deposit by purchaser and resale on default: (Rule 57 of the Second Schedule)

1. on every sale of immovable property, the person declared to be purchaser shall pay, immediately after such declaration, a deposit of twenty five per cent of the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

2. the full amount of purchase money payable shall be paid by the purchaser to the Recovery Officer on or before the fifteenth day from the sale of the property.

Note: According to section 10 of the General Clauses Act, 1897, if the fifteenth day happens to be a closed holiday, the payment can be made on the next day on which the office of the Recovery Officer is open.

7.11 Procedure in default of payment: (Rule 58 of the Second Schedule)

In default of payment within the period mentioned in the preceding rule, the deposit (25%) may, if the Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Corporation, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

7.12 Authority to bid (Rule 59 of the Second Schedule) for the ESI Corporation:

(1) where the sale of a property, for which a Reserve Price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such Reserve Price, it shall be lawful for the Authorised Officer, if so
authorized by the Director General of the Corporation in this behalf, to bid for the property on behalf of the Corporation at any subsequent sale.

(2) all persons bidding at the sale shall be required to declare if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority (file the authority), and in default their bids shall be rejected.

(3) where the Authorised Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the (recovery of the) amount specified in the Certificate.

7.13 Application to set aside sale of immovable property on deposit: (Rule 60 of the Second Schedule)

1) Where immovable property has been sold in execution of a Certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Recovery Officer to set aside the sale, on his depositing :-

   a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of 9% per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

   b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

2) Where a person makes an application under Rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Note: The words ‘date of sale’ means the date on which the property is knocked down to the highest bidder and not the date on which the sale is confirmed by the Recovery Officer under Rule 63.

7.14 Application to set aside sale of immovable property on ground of non-service of Notice or irregularity: (Rule 61 of the Second Schedule)

Where immovable property has been sold in execution of a Certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty
days from the date of the sale, apply to the Recovery Officer to set aside the sale of the immovable property on the ground that Notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale.

Provided that :-

(a) no sale shall be set aside on any such ground unless the Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the Certificate.

**Note:** In order to set aside a sale of immovable property under this Rule, the following conditions have to be satisfied, namely-

(i) the defaulter would not have been served with a Notice under Rule 2 to pay the arrears or

(ii) there must be a ‘material irregularity’ in publishing or conducting the sale;

(iii) the applicant must have sustained substantial injury as a result of such non-service of Notice or irregularity and

(iv) in case the applicant happens to be the defaulter, he should have deposited the amount recoverable from him in executing of the Certificate.

**7.15** Setting aside sale where defaulter has no saleable interest: (Rule 62 of the Second Schedule)

(i) Rule 62 enables the purchaser who innocently and ignorantly has purchased valueless property to get the sale set aside on the ground that the defaulter has no saleable interest in the property within thirty days of the sale.

(ii) Conditions for setting aside sale:

A purchaser of property at an execution sale can get the sale set aside under this Rule only if the following conditions are fulfilled namely –

(a) He should make an application to the Recovery Officer for setting aside the sale, within the prescribed time; and
(b) Such an application must be made within thirty days of the sale.

(c) Such application is based on the ground that the defaulter has no saleable interest at all in the property. It, therefore, follows that the Rule does not apply if the defaulter has even a partial interest in the property, however small that interest may be.

(iii) Sale void or voidable:

Where a person purchases property in which the defaulter has no saleable interest at all, the sale is not void, but is only voidable. He can move the Recovery Officer to get it set aside.

(iv) Limitation:

The application under this Rule should be prescribed at any time within 30 days from the date of the sale. If the purchaser fails to do so, he is also barred to file an application under Rule 9 of the Second Schedule.

(v) Compensation to purchaser:

A purchaser at an execution sale gets only the right, title and interest of the defaulter, and nothing more. The Recovery Officer who sells the property does not guarantee the title. The purchaser has to be aware of the property he is buying, and the maxim ‘caveat emptor’-buyer beware applies to him. He is, therefore, not entitled to any compensation for loss of the property bought at all such sales.

7.16 Confirmation of sale: (Rule 63 of the Second Schedule)

(1) A sale of immovable property, made in execution of Certificate, becomes absolute when the Recovery Officer makes an order in Form ESICP22 confirming the sale. It is mandatory upon the Recovery Officer to make an order confirming the sale when the following conditions are fulfilled, namely:-

(i) when no application is made for setting aside the sale under Rule 60, 61 or 62 of the Schedule; or

(ii) (a) when such an application has been made and the same is disallowed by the Recovery Officer, and

(b) the full amount of the purchase money has been paid.
Note: Without an order confirming the sale, the sale is not absolute. An order confirming the sale made within 30 days from the date of sale is illegal. Similarly, an order, confirming the same while an application under Rule 60 is pending, is illegal and void.

(2) Where an application is made under Rule 60, 61 & 62 to set aside the sale on deposit of the amount alongwith penalty and charges, and the deposit is made within thirty days from the date of the sale; the Recovery Officer shall make an order setting aside the sale.

Provided that no order shall be made by the Recovery Officer unless a Notice of the application has been given to the persons affected thereby and to the interested parties to show cause as to why the sale should not be set aside, be issued in form ESICP 21.

7.17 Return of purchase money in certain cases: (Rule 64 of Second Schedule)

(i) Conditions for return of purchase money : A suit for refund of purchase money, on the ground that there is no saleable interest of the defaulter in the property does not lie at the instance of the purchaser. He has to get the sale set aside under Rule 62 before becoming eligible for refund under this rule.

It has been held that where the sale is set aside on the ground of fraud on the part of the Auction purchaser, he is not entitled to a refund of the amount deposited by him as purchase money.

Under this Rule, the Recovery Officer shall return the amount deposited together with penalty, if any, to the purchaser where a sale of immovable property is set aside under Rule 63(2) of the Schedule.

(ii) What amounts are to be returned?

The following amounts have to be returned to the purchaser under the provisions of this Rule, namely-

(a) Any money paid or deposited by the purchaser under Rule 57, on account of the purchase;

(b) Any penalty, if deposited by the defaulter under Rule 60(1)(b) of the Schedule; and

(c) Such interest as the Recovery Officer may allow to the purchaser.
(iii) **Interest:**

The payment of interest is within the discretion of the Recovery Officer. No specific rate has been mentioned. It may be remembered, that the officer conducting the sale has to deposit the money realized on sale forthwith in ESIC Fund A/c No.1. It is therefore, proper that the Recovery Officer allows interest at the current borrowing rate of the government/banks from the date the sale was set aside, to the date of return of the purchase money under this Rule. It may be noted that the defaulter himself is required to deposit interest under Rule 60(1)(a) at the rate of 6 percent per annum.

### 7.18 Sale Certificate: (Rule 65 of the Second Schedule)

(i) **Duty of Recovery Officer to grant Certificate:**

The provisions of this Rule are mandatory. Where the sale of immovable property has become absolute, the Recovery Officer shall grant a Certificate in Form ESICP 23, which specifies the property sold, the name of the person declared as purchaser under Rule 57(1) and the date on which the sale had become absolute.

(ii) **To whom the Certificate is granted?**

The Certificate is granted to the purchaser. Where the purchaser is dead, it may be granted to his legal representative. If the purchaser has assigned his right to some one else, it may be granted to such assignee. Transferee from successful bidder cannot ask for Sale Certificate to be issued in his favour.

(iii) **Evidentiary value of the Certificate:**

A Sale Certificate does not transfer title. It is the best evidence of transfer. The purchaser gets his title by virtue of his purchase, and the Certificate is only evidence thereof. Hence he can apply for possession even without obtaining a Certificate. As against all the parties to the proceedings the Sale Certificate gives a complete title to the property, and a right to possession thereof. A Sale Certificate is only a formal document confirming what was purchased in recovery Auction and cannot confer title on the purchaser to property which was never included in a proclamation of sale or put up for sale, though included in the Sale Certificate. The purchaser can only base his title to the property by virtue of his purchase and not on the Certificate of sale. When the property is purchased in recovery proceedings, the Sale Certificate has the same value as a sale deed.
(iv) Amendment of Certificate:

Where there is discrepancy in description between the property as mentioned in the ‘proclamation of sale’ and the ‘Sale Certificate’, the purchaser may apply to the Recovery Officer to amend the Certificate after review under Rule 87. Such an amendment cannot be made ex-parte. Notice to the defaulter is necessary. An amendment showing a larger purchase is without jurisdiction.

(v) Effect of Certificate on irregularities:

All irregularities, though material, are cured by the Certificate of sale.

(vi) Limitation:

There is no necessity for the purchaser to apply for a Certificate under this rule, and hence such an application can be made at any time. The Recovery Officer is duty bound, as such, to grant the Certificate suo motu.

7.19 Postponement of sale to enable defaulter to raise amount due under Certificate: (Rule 66 of the Second Schedule)

(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Recovery Officer that there is reason to believe that the amount of the Certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Recovery Officer shall grant a Certificate to the defaulter, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale in Form ESICP 20.

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the ESI Recovery Officer.

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Recovery Officer.

7.20 Fresh proclamation before re-sale: (Rule 67 of the Second Schedule)

When a re-sale is to be ordered for the reason that the highest bidder did not make full payment as per the time schedule, the Recovery officer should follow the same procedure de-novo
Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before provided for the sale.

7.21 Bid of co-sharer to have preference: (Rule 68 of the Second Schedule)

Where the property sold in a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum of such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

7.22 Acceptance of property in satisfaction of amount due from the defaulter: (Rule 68A of the Second Schedule)

(1) Without prejudice to the provisions contained in this Part, the Recovery Officer, duly authorized by the Director General, ESIC in his behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of rule 59, (L.7.12) at such price as may be agreed upon between the Recovery Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Recovery Officer and on the date the possession of the property is delivered to the Recovery Officer, the property shall vest in ESI Corporation. An intimation has to be sent to the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess amount shall be paid by the Recovery Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the Recovery Officer fails to pay such excess within the period aforesaid, ESI Corporation shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at 16 {one-half per cent of every month or part of a month} to the defaulter on such amount.

7.23 Time limit for sale of attached immovable property: (Rule 68B of the Second Schedule)

(1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of arrears (contribution, damages or claim for interest ) for the recovery of which the immovable property has been attached, has become conclusive.
Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the Reserve Price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period:

(i) during which the levy of the aforesaid arrears (contribution, interest, damages), is stayed by an order or injunction of any court; or

(ii) during which the proceedings of Attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(iii) commencing from the date of the presentation of any appeal against the order passed by the Recovery Officer under this Schedule and ending on the day the appeal is decided,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the Attachment Order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.

7.24 Defaulting Purchaser answerable for Loss on Resale: (Rule 14 of Second Schedule)
Details given under Chapter V – Para 5.18

7.25 Adjournments or Stoppage of Sale: (Rule 15 of Second Schedule)
Details given under Chapter V – Para 5.19
7.26 Private alienation to be void in certain cases: (Rule 16 of Second Schedule)

Details given under Chapter V – Para 5.20

7.27 Prohibition against Bidding or Purchase by Officer (involved in sale): (Rule 17 of Second Schedule)

Details given under Chapter V – Para 5.21

7.28 Prohibition against Sale on Holidays: (Rule 18 of Second Schedule)

Details given under Chapter V – Para 5.22

7.29 Purchaser’s Title: (Rule 6 of Second Schedule)

Details given under Chapter V – Para 5.10

7.30 Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff: (Rule 7 of Second Schedule)

Details given under Chapter V – Para 5.11

7.31 Disposal of Proceeds of Execution: (Rule 8 of Second Schedule)

Details given under Chapter V – Para 5.12

7.32 Registration of Sale: (Rule 21 of the ITCP Rules, 1962)

Every Recovery Officer granting a Certificate of sale to the purchaser of immovable property sold shall send a copy of such Certificate to the registering officer concerned under the Indian Registration Act, 1908 (16 of 1908) within the local limits of whose jurisdiction the sale of any part of the immovable property comprised in the Certificate is situated.

7.33 Sale Proceeds not to be disbursed till sale confirmed: (Rule 20 of ITCP Rules, 1962)

The proceeds of the sale of immovable property shall not be disbursed until the sale is confirmed by the Recovery Officer or where an appeal has been filed against the order confirming the sale, until the disposal of the appeal.
CHAPTER - VIII

MAINTENANCE AND CUSTODY, WHILE UNDER ATTACHMENT, OF LIVESTOCK OR OTHER MOVABLE PROPERTY, FEES FOR SUCH MAINTENANCE AND CUSTODY, SALE THEREOF AND DISPOSAL OF SALE PROCEEDS.

Governing provisions:

The procedure for maintaining and custody of the attached movable property is contained under Rules 23 to 35 of the ITCP RULES, 1962 which are as under:-

8.1 Property to which rules apply: (Rule 23 of I.T. (C.P) Rules, 1962)

The Rules in this part relate to movable property (other than agricultural produce) attached by actual seizure under the Second Schedule.

8.2 Custody at place of attachment: (Rule 24 of I.T. (C.P) Rules, 1962)

(1) Where the property attached is of such a nature that its removal from the place of attachment is impracticable or its removal involves expenditure out of proportion to the value of property, the attaching Social Security Officer (Recovery) shall, subject to any directions, which the Recovery Officer may issue in this behalf, arrange for the proper maintenance and custody of the property at the place of attachment. (The expenditure incurred should be added to the amount to be recovered). The attaching Officer shall forthwith send a report of having done so to the Recovery Officer.

(2) On receipt of report from the attaching officer under sub-rule(1), the Recovery Officer may either order the removal of property to a place which he shall specify or sanction its maintenance and custody at the place of attachment under such conditions as he may think fit.

8.3 Removal and custody of property in other cases: (Rule 25 of I.T.(C.P.)Rules 1962)

Where the attached property is not kept at the place of attachment, it shall be kept in the custody of an officer (hereinafter in this part referred to as the “custodial officer”) subordinate to the Recovery Officer and authorised by him for this purpose. The custody officer may remove the property to the office of the Recovery officer for custody under his own supervision or, with the approval of the Recovery Officer, may make such arrangements as may be convenient and economical for its safe custody
with any other fit person under his own supervision and the Recovery Officer may fix the remuneration to be allowed to such person.

8.4 Property may be handed over to the defaulter: (Rule 26 of I.T.(C.P.)Rules 1962)

(1) Notwithstanding anything contained in Rule 24 or Rule 25, the attaching officer or the custody officer may, with the previous approval of the Recovery Officer, entrust, subject to his right of supervision, the attached property to the defaulter on his executing a duly stamped bond (sapurdnama) in form no. ESICP 13 which may be so varied as the circumstances of each case may require.

(2) Where any person has become surety in relation to the bond (sapurdnama) executed under sub-clause(1) for the amount due by the defaulter, he may be proceeded against under these proceedings as if he were the defaulter. In the event of default of payment as aforesaid, the proceedings against the surety/sureties will be initiated by issue of a notice in form ESICP 14. (Rule 88 of the Second Schedule)

8.5 Custody of attached cash, securities, etc.: (Rule 27 of I.T. (C.P.) Rules 1962)

If the property attached consists of cash, Government or other securities, bullion, jewellery or other valuables, the attaching officer shall send them for safe custody to the nearest branch of the authorised bank.

Note: where the property attached is current coin or currency notes, the Recovery Officer may at any time during the continuance of attachment direct, by an order in form ESICP 15, that such coins or notes shall be credited to the Corporation and the amount so credited shall be dealt with in the manner specified under “Disposal of proceeds of execution” (Refer chapter V: 5.16).

8.6 Claim of any person other than the defaulter to the property under attachment: (Rule 28 of I.T. (C.P.) Rules 1962)

When the property remains at the place where it is attached in the custody of the Attaching Officer and any person other than the defaulter claims the same, or any part thereof, the officer shall nevertheless remain in possession shall direct the claimant to prefer his claim to the Recovery Officer.

8.7 Return of property on cancellation or withdrawal of attachment: (Rule 29 of I.T.(C.P.)Rules 1962)

(1) If in consequence of withdrawal or cancellation of the attachment, the defaulter becomes entitled to receive back the movable property attached, the possession
thereof shall be given to him on payment of costs, charges, and expenses due, if any, in respect of execution of the certificate against such property.

(2) For the purpose of giving possession under sub-rule (1) the attaching officer shall inform the defaulter that the property is at his disposal.

(3) In the absence of any person to take charge of the property, the attaching officer shall, if the property has been removed from the premises in which it was seized, replace it where it was found at the time of seizure.

8.8 Property may be sold, if costs, etc., not paid: (Rule 30 of I.T. (C.P.) Rules 1962)

In default of the payment of costs, charges and expenses referred to in sub-rule (1) of rule 29, the movable property or such portion thereof as may be necessary shall be sold by auction and after defraying the expenses of such sale and the costs, charges and expenses aforesaid, the balance, if any, of the movable property as has not been sold shall be handed over to the defaulter.

8.9 Feeding and tending of live stock under attachment: (Rule 31 of I.T. (C.P.) Rules 1962)

Whenever livestock is kept at the place where it has been attached, the defaulter shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer.


In the event of the defaulter failing to feed the attached livestock, the livestock may be placed in the custody of the custodial officer or in the circumstances mentioned in Rule 33 (next para) may be placed in a pound maintained by the Government or a Local authority.

8.11 Custody of livestock in pound: (Rule 33 of I.T. (C.P.) Rules 1962)

If there be any such pound near the office of the Recovery Officer, the attaching officer or the custodial officer may place in it such attached livestock as can properly be kept there in which case the pound keeper shall be responsible for the livestock and shall receive the same rates for accommodation and maintenance thereof as are payable in respect of impounded cattle of the same description.

8.12 Custody with a person other than custodial officer: (Rule 34 of I.T. (C.P.) Rules 1962)

Notwithstanding anything contained in Rule 33, the custody officer may, with the approval of the Recovery Officer, entrust the attached livestock to any other fit person under
his own supervision and the Recovery Officer may fix the remuneration to be allowed
to such person after taking into account the local circumstances and the charges
which such person may have to incur for the maintenance and custody of such livestock.

8.13 Expenses of custody, maintenance, etc.: (Rule 35 of I.T. (C.P.) Rules 1962)

The expenses of maintenance and custody of movable property including the
remuneration payable to the person concerned under Rule 25 or Rule 34 shall be
deemed to be costs of the sale.
CHAPTER - IX

DELIVERY OF PROPERTY SOLD AND EXECUTION OF DOCUMENT, ENDORSEMENT OF NEGOTIABLE INSTRUMENT OR SHARE IN A CORPORATION

Governing provisions:

The procedure to be followed by the Recovery Officer to deliver the sold attached property which is in the form of Share in a Corporation, Negotiable Instrument, Endorsement etc is enunciated under Rule 36 to 40 of the ITCP Rules, 1962. Recovery Officer is expected to be thorough with these procedures as these may have legal ramifications.

9.1 Delivery of Movable Property, Debts and Shares: (Rule 36 of I.T. (C.P.) Rules (1962)

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) (a) Where the property sold is movable property in the possession of some person other than the defaulter, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser and requiring him to deliver possession of the property to the purchaser within the time stipulated by the Recovery Officer.

(b) Where such person in possession of the property fails without reasonable cause to deliver possession of the property to the purchaser within the time specified by the Recovery Officer, or within such further time as may be allowed by him, the Recovery Officer shall cause the property to be seized and delivered to the purchaser and the provisions of Rule 35 & 36 of the Second Schedule shall, as far as may be, apply to such seizure.

(3) (a) Where the property sold is a debt not secured by a Negotiable Instrument, the delivery thereof to the purchaser shall be made by a written order of the Recovery Officer prohibiting the creditor (i.e. the person from whom the instrument is recovered) from receiving the debt or any interest thereon and the debtor from making payment thereof to any person except the purchaser and requiring the debtor to make payment thereof to the purchaser within the time stipulated by the Recovery Officer.
(b) Where the debtor fails to make such payment to the purchaser within the time stipulated by the Recovery Officer, or within such further time as may be allowed by him, the Recovery Officer may take further proceedings to recover the amount due from the debtor as if the debtor were a defaulter in respect of whom the Recovery Officer had received a certificate under Section 45C of the Act for the recovery of arrears equal to the amount of the debt.

(4) (a) Where the property sold is a Share in Corporation the delivery thereof to the purchaser shall be made by a **written order** of the Recovery Officer prohibiting the person in whose name the Share may be standing from making any transfer of the Share to any person except the purchaser, or receiving payment of any dividend or interest thereon and requiring him to deliver the Share certificate or other document of title along with the instrument of transfer duly completed by him to the Recovery Officer within the time stipulated by the Recovery Officer and prohibiting the Manager, Secretary or other proper officer of the Corporation from permitting any such transfer or making any payment to any person except the purchaser.

(b) Where the person in whose name the Share may be standing fails to deliver the Share certificate or other document of title to the Recovery Officer within the time stipulated by him, or within such further time as may be allowed by him, the Recovery Officer may take steps to obtain a duplicate of the Share certificate or other document of title as if the Share certificate or other document of title had been lost or destroyed.


(1) Where the execution of a document or the endorsement of the party in whose name a Negotiable Instrument or a Share in a corporation is standing is required to transfer such Negotiable Instrument or Share to a person who has purchased it under a sale under the Second Schedule, the Recovery Officer may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

**EXECUTION OR ENDORSEMENT OF THE DOCUMENT**

(2) Such **execution** or endorsement may be in the **following form**, namely:
“_______________ by _______________ Recovery Officer _______________ in the proceedings for the recovery of arrears under the Income-Tax Act, 1961, against ________________”

REGISTRATION OF EXECUTION WHERE NECESSARY

(3) The Recovery Officer may cause the document to be executed on proper stamp paper and to be registered if its registration is required by any law for the time being in force and the expenses of such execution and registration shall be borne by the purchaser.

(4) Until the transfer of such Negotiable Instrument or Share, the Recovery Officer may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

9.3 Vesting order in case of other property: (Rule 38 of I.T. (C.P.) Rules 1962)

In the case of any movable property not hereinbefore provided for, the Recovery Officer may make an order vesting such property in the purchaser or as the purchaser may direct; and such property shall vest accordingly.

9.4 Delivery of Immovable property in occupancy of defaulter: (Rule 39 of I.T. (C.P.) Rules 1962)

(1) Where the immovable property sold is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the attachment of such property and a certificate in respect thereof has been granted under Rule 65 of the Second Schedule (sale certificate), the Recovery Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser on any person whom the purchaser may appoint to receive delivery on his behalf in possession of the property, and if need be, by removing any person who refuses to vacate.

CASES OF ANY RESISTANCE or OBSTRUCTION TO HAND OVER THE PROPERTY (2)

For the purpose of sub-rule(1), if the person in possession does not afford free access, the Recovery officer may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any
other act necessary for putting the purchaser, or any person whom the purchaser may appoint to receive delivery on his behalf, in possession.

**9.5 Delivery of Immovable property in occupancy of tenant (Rule 40 of I.T. (C.P.) Rules 1962):**

Where the immovable property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Rule 65 of the Second Schedule(Sale certificate), the Recovery Officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the defaulter has been transferred to the purchaser.
CHAPTER - X
RESISTANCE OR OBSTRUCTION TO DELIVERY OF POSSESSION TO PURCHASER

Governing Provisions:

At the time of handing over the possession of the property after the sale proceedings are complete, it is possible that there may be some resistance or obstruction in handing over the possession of the property. Rule 41 to 47 of the ITCP Rules, 1962 lay down the procedure to be followed in such contexts:

10.1 Resistance or obstruction to possession of immovable property: (Rule 41 of I.T. (C.P.) Rules, 1962)

(1) Where the purchaser of immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Recovery officer complaining of such resistance or obstruction within thirty days of the date of such resistance or obstruction.

(2) The Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

10.2 Resistance or obstruction by defaulter: (Rule 42 of I.T. (C.P.) Rules, 1962)

Where the Recovery Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the defaulter or by some other person at his instigation, he shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Recovery Officer may also, at the instance of the applicant, take steps to put the applicant into possession of the property by removing the defaulter or any person acting at his instigation.

10.3 Resistance or obstruction by bona fide claimant: (Rule 43 of I.T. (C.P.) Rules, 1962)

Where the Recovery Officer is satisfied that the resistance or obstruction was occasioned by any person (other than the defaulter) claiming in good faith to be in possession of the property on his own account or on account of some person other than the defaulter, the Recovery Officer shall make an order dismissing the application.

10.4 Dispossession by purchaser: (Rule 44 of I.T. (C.P.) Rules, 1962)

(1) Where any person other than the defaulter is dispossessed of immovable property sold in execution of a certificate by the purchaser thereof, he may make an
application to the Recovery Officer complaining of such dispossession within thirty days of such dispossession.

(2) The Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same

10.5 Bona fide claimant to be restored to possession: (Rule 45 of I.T. (C.P.) Rule, 1962)

Where the Recovery officer is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the defaulter, he shall direct that the applicant be put into possession of the property.

10.6 Rules not applicable to Transferee *Lite Pendente (*while the litigation is pending): (Rule 46 of the I.T. (C.P.) Rules, 1962)

Nothing in Rule 43 & 45, shall apply to resistance or obstruction by a person to whom the defaulter has transferred the property after the service of notice under Rule 2 of Second Schedule in form ESICP 2 or to the dispossession of any such person.

10.7 Right to file a suit: (Rule 47 of I.T. (C.P.) Rules, 1962)

Any party not being a defaulter against whom an order is made under Rule 42 or Rule 43 or Rule 45 may institute a suit in a civil court to establish the right which he claims to the present possession of the property.
CHAPTER XI

APPOINTMENT, POWERS AND DUTIES OF A RECEIVER

Introduction:-

A Recovery Officer need not mechanically and routinely take recourse to sell all the properties he has attached to realize the amounts to be recovered. There are instances where the defaulters possess adequate immovable properties or running business which, in opinion of the Recovery Officer although sound, is being mismanaged or is being badly dissipated. Further, there might be prior encumbrances on individual assets of the business which may render the realization through attachment and sale of individual property very difficult and unprofitable. Some business may be generating substantial income but it quickly reaches the pocket of the defaulter even before the Recovery machinery reaches him. The attachment and sale might present peculiar difficulties in some cases as for instance, there might be substantial hypothecation of raw materials and finished goods or there might be systematic crediting of the receipts to an overdraft account with the Bank. On the other hand, if it is completely taken over and managed prudently and diligently through a Receiver he would be able to recover the amount in question in due course from the returns garnered and at the same time it also helps avoid the sale that might cause incalculable harm to the business resulting in its closure. The Recovery procedure has created alternate provisions to save such properties from being sold out by empowering the Recovery Officer to appoint a suitable person of his choice known as ‘Receiver’ who would manage all the affairs of the business or the property professionally in a systematic manner aimed at realizing all the dues in a reasonable time.

This option can be judiciously resorted to by the Recovery Officer after carefully weighing all the merits and advantages in the given situation.

Types of business suitable for this mode of recovery:-

This process involves the management of the business in question by the Receiver and it naturally calls for the knowledge and skill required to run the business efficiently on a sound footing. Sometimes the knowledge required is specialized. Jobs that call only for effective supervision and good administration may not pose any serious difficulty to the Receiver but the types of jobs that warrant profound professional expertise and technical knowledge and also calls for skills and ability to take day to day decisions or hour to hour decisions to strike deals etc., obviously calls for a challenging and highly competitive persons to function as Receiver. Therefore, it is necessary for the Recovery Officer to understand the business and have a breakup of the structure and safely confine the functions of the Receiver.
to areas where business decisions are not frequently required. Even if the business is a composite one having various schemes involving purchase, sale, processing etc., it may be worthwhile to confine the function of the Receiver to areas where such decision making is not too much involved. Some examples of the types of business that can be selected for appointment of Receiver are

a) Cinema Theatres,
b) Hulling and flour mills,
c) Groundnut decorticating mills,
d) Cotton ginning factories,
e) Trade where the merchandise is having a ready market,
f) Agency business where the business is one of distribution of products of one or more producers where the goods can command ready market.
g) Cases of immovable properties that are in possession of persons who have no right to keep possession and are colluding with the owner are well suited for the appointment of Receiver.

Who is a Receiver?

The defaulter from whom the recovery is to be effected may be running a business or may possess some immovable property. The Recovery Officer may, instead of directing the sale of property, opt to manage the property or his business through a Receiver to realize the dues. A Receiver is understood to be a person who officially deals with and manages the business matters of companies which cannot pay their debts. The assets of the business are not actually vested in the Receiver and he is not the owner of the assets of the business. But, he gets the power of management of the business and may take action incidental to the exercise of such powers of management and such action may involve alienation of the current assets of the business. It has been held in cases of Civil Procedure Code that the spirit behind the provisions authorizing the appointment of Receiver is preservation and management of the business or property in order to subserve the subject matter of litigation.

Normally, when the defaulter has a business as his property, the Recovery Officer may appoint a person, who, in his opinion is well suited for the purpose of managing the business, bringing in and defending suits and for the realization, management prosecution and preservation of the property, collection of rents and profits thereof.
Governing provisions:-


11.1 Appointment of the Receiver for business: (Rule 69 of the Second Schedule)

(1) Where the property of a defaulter consists of a business, the Recovery Officer may attach the business and appoint a person as “Receiver” in form ESI CP 25 to manage the business.

(2) (Before appointing a Receiver the property has to be attached first) Attachment of business under sub clause (1) shall be made by an order in form ESI CP 24 prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge and intimating that the business has been attached under the proceedings.

A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business carried on and on the Notice board of the office of the Recovery Officer.

Note:(i) Appointment of a Receiver :- Under CPC the Court trying a suit can appoint a Receiver for properties outside its jurisdiction, but by virtue of section 223 of the Income Tax Act and I.T. (C.P.) Rules 6 & 7, the Recovery Officer in whose jurisdiction the concerned property is situated alone is entitled to appoint a Receiver. The Recovery Officer cannot appoint a Receiver when another Receiver has already been appointed in respect of the same property by a Court or another Recovery Officer, for such a procedure will lead to conflict of jurisdiction. Property which is already in the hands of the Receiver cannot be attached without the leave of the Court is first obtained.

The Recovery Officer may not ordinarily appoint a Receiver when the estate of the deceased Receiver is in the hands of the executor. The reason is that the executor is already liable for payment of the arrear dues of the defaulter under the provision of the Act. However, when such executor himself becomes a defaulter, the Recovery Officer is not precluded from appointing a Receiver.

(ii) Appointment of Receiver without prior attachment:- The Recovery Officer has to first attach the business of the defaulter before he can proceed to
appoint a Receiver for the same. Appointment of Receiver before the business is attached is illegal.

(iii) When can a Receiver be appointed: - The appointment of a Receiver whether under Rule 32(1), 69 or 70 of the Second Schedule are in the discretion of the Recovery Officer. The power to appoint a Receiver is not to be exercised as a matter of routine. The Recovery Officer has to consider in each case whether special interference with the possession of the defaulter is called for, as where it is apprehended that the defaulter is likely to dissipate the property or cause irreparable mischief to it. Similarly, where the Recovery Officer finds that the defaulter has been withdrawing large funds from his business without any necessity for such withdrawals, he will be justified in appointing a Receiver under this rule.

(iv) Who can be appointed as a Receiver:- There is nothing in the rule to prevent the Recovery Officer from appointing the defaulter himself as Receiver of his own business. It is, however, not desirable to do so. As a general rule, appointment of more than one Receiver is not allowable.

(v) Is Receiver an Officer under the Act? Unlike under the Code of Civil Procedure, the Receiver is not an officer of the Court. He is also not an officer under second schedule within the meaning of the term as defined in Rule 1 (e) thereof. He is merely a person appointed by the Recovery Officer to manage the business of the defaulter. For this purpose he is given considerable powers under Rule 48 of the I.T.C.P Rules, 1962. He is also to exercise such other powers as the Recovery Officer directs. It is thus evident that he acts under a delegated authority derived from the Recovery Officer. He is however a “public officer” within the meaning of Section 2(17) (h) of the C.P.C. in as much as he is remunerated by fees or commission for the performance of public duty under the Schedule. He is a representative of the Recovery Officer and subject to his orders. His possession is the possession of the Recovery Officer. The money in his possession is in custodia legis (guardian) for the Recovery Officer and the defaulter; even so, the property does not vest in him.

11.2 Form of order of appointment of a Receiver: (Rule 52 of I.T.C.P.Rules 1962)

An order of appointment of a Receiver under Rule 69 or Rule 70 of the Second Schedule shall be made in form ESICP 25 which may be as modified as the circumstances of each case may require.
11.3 Appointment of Receiver for immovable property: (Rule 70 of the Second Schedule)

Where immovable property is attached, the Recovery Officer may, instead of directing a sale of the property appoint a person as Receiver to manage such property.

**Note:** Where the value of immovable property is very large compared to the amount to be recovered from the defaulter, and is likely that such arrears can be realized from out of the income of such property, the Recovery Officer may appoint a Receiver for such property under this rule.


(1) Where any business or other property is attached and taken under management under the foregoing clauses, the Receiver shall, subject to the control of the Recovery Officer, have such powers as may be necessary for the proper management of property and the realization of profits, or rents and profits, thereof.

(2) The profits or rents and profits of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

(3) A Receiver appointed under section 45C (Second Schedule to the I.T Act, 1961) shall have all such powers, as to bringing in and defending suits and for the realization, management, protection and preservation of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Recovery Officer thinks fit.

11.5 Remuneration of Receiver: (Rule 49 of I.T.C.P Rules 1962)

The Recovery Officer may, by special or general order, fix the amount to be paid as remuneration for the services of the Receiver.

**Note** :- Such remuneration may be fixed as a percentage of realizations, or as lump sum or a monthly salary and this can be recovered as “Cost and Charges”.

11.6 Duties of the Receiver: (Rule 50 of I.T.C.P Rules 1962)

(1) Every Receiver so appointed shall –

   (a) furnish such security (if any) as the Recovery Officer thinks fit, duly to account for what he shall receive in respect of the property.
(b) submit his accounts at such periods and in such form as the Recovery Officer directs;

(c) pay the amount due from him as the Recovery Officer directs; and

(d) be responsible for any loss occasioned to the property by his willful default or gross negligence.

(2) The Receiver shall maintain true and regular accounts of the Receivership and shall in particular maintain a cash book in which shall be entered from day to day all receipt and payments and also a ledger. He shall also maintain a counterfoil receipt book with the leaves numbered serially in print, from which shall be given as far as possible, all receipts for payments made to the Receiver.

(3) Unless the Recovery Officer otherwise directs, the Receiver shall, as soon as may be after his appointment, open an account in the name of the Receivership in such bank as the Recovery Officer may direct and shall deposit therein all moneys received in the course of the Receivership immediately on receipt thereof save any minimum sums that may be required for meeting day to day current expenses. All payments by the Receiver shall, as far as possible, be made by cheques drawn on the bank account.

(4) Unless otherwise ordered, a Receiver shall submit his accounts once in every three months. The first of such accounts commencing from the date of his appointment and ending with the expiry of three months there from shall be submitted within fifteen days of the expiry of the said period of three months and the subsequent accounts brought down to the end of each succeeding period of three months, within fifteen days of the expiry of each such period of three months.

11.7 Enforcement of Receiver’s duties: (Rule 51 of I.T.C.P.Rules, 1962)

(1) Where a Receiver fails to submit his accounts at such periods and in such form as the Recovery Officer directs, the Recovery Officer may direct his property to be attached until such time as such accounts are submitted to him.

(2) The Recovery Officer may at any time make an enquiry as to the amount, if any, due from the Receiver as shown by his accounts, or otherwise, or an enquiry as to any loss to the property occasioned by his willful default or gross negligence and may order the amount found due, if not already paid by the Receiver under Rule 50 of I.T.C.P.Rules,1962 or the amount of the loss so occasioned, to be paid by the Receiver within a period to be fixed by the Recovery Officer.
(3) Where the Receiver fails to pay any amount which he has been ordered to pay under sub-clause (2) within the period specified, the Recovery Officer may direct such amount to be recovered from the security(if any) furnished by the Receiver or by attachment and sale of his property or, if his property has been attached under sub-clause(1), by the sale of such property, and may direct the sale proceeds to be applied to making good any amount found due from the Receiver or any such loss occasioned by him and the balance (if any) of the sale proceeds shall be paid to the Receiver.

(4) If a Receiver fails to submit his accounts at such periods and in such form as directed by the Recovery Officer without reasonable cause or improperly retains any cash in his hands, the Recovery Officer may disallow the whole or any portion of the remuneration due to him for the period of the accounts with reference to which the default is committed and may also charge interest at a rate not exceeding 12 percent per annum on the moneys improperly retained by him for the period of such retention without prejudice to any other proceedings which might be taken against the Receiver.

11.8 Withdrawal of Management: (Rule 72 of the Second Schedule)

The attachment and management under the foregoing Rules may be withdrawn at any time at the discretion of the Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

11.9 Duration of the office of Receivership:

There is no express provision in the Schedule for fixing the term or removal from office, of the Receiver. The expression “management….. may be withdrawn at any time” indicates that the Receiver holds office at the discretion of the Recovery Officer. This is also supported from the language of the penultimate paragraph of Form No ESICP 25. As a rule, a Receiver should not be allowed to continue in office if he fails to comply with the Recovery Officer’s orders to submit his accounts. Normally, duration of the office of Receivership ends if and when the entire outstanding certificate dues are recovered in full including “Cost & Charges” so ordered by the Recovery Officer.

Note: - Deterrent effect of this mode of recovery: Recourse to this method of recovery might even work as a good deterrent to non-payment of arrears of ESI dues. It is common knowledge that more profits are made in business than what are disclosed to that department and one would not normally allow the management of the business to be put in the hands of others.
CHAPTER XII

ARREST AND DETENTION OF THE DEFAULTER

Rule 4 of the Second Schedule to the Income Tax Act, 1961 envisages four distinct modes of recovery. One of these four modes is Arrest of the Defaulter and his Detention in prison. Likewise, Section 45C (b) ESI Act envisages Arrest of the employer and his Detention in prison as one of the modes of recovery to be employed for recovering the arrears.

Governing Provisions:

In terms of Section 45H the procedure to be followed in executing Arrest and Detention has to be in accordance with the provisions of the Income Tax Act, 1961. The statutory provisions and procedure for Arrest and Detention of Defaulter are provided in Part V, viz: Rule 19, Rule 73 to 81 and Rule 90. of the Second Schedule to the IT Act, 1961 read with Part VIII, viz: Rule 53 and 54 of ITCP,Rules 1962. The Rules are, in many respects, analogous to Order 21, Rules 37 to 40 of the Code of Civil Procedure, 1908 read with section 51 and sections 55 to 59 of the code. The process of execution of an Arrest Warrant actually consists of three stages, namely:

i) issue of a show cause Notice
ii) actual Arrest of a Defaulter
iii) Detention of the Defaulter.

Who may be Arrested: - Before the process of Arrest and Detention is set in motion, the Recovery Officer should satisfy himself that the Defaulter has a personal liability. A Karta of Hindu undivided family has a personal liability in the matter of payment of arrears due from the family. The partner of the dissolved firm has a personal liability in respect of arrear due from the dissolved firm. It follows that the partner is liable to the process of Arrest and Detention in respect of arrears of the firm.

(Explanation: for the purposes of this clause, where the Defaulter is a Hindu undivided family, the Karta thereof shall be deemed to be the Defaulter).

12.1 Notice to show Cause in Form ESIC CP 26: (Rule 73 of the Second Schedule)

(1) No order for the Arrest and Detention in civil prison of a Defaulter shall be made unless the Recovery Officer has issued and served a Notice in ESI CP 26 upon the Defaulter calling upon him to appear before him on the date specified in the Notice and to show cause why he should not be committed to the civil prison, and unless the Recovery Officer, for reasons recorded in writing, is satisfied:-
(a) that the Defaulter, with the object or effect of obstruction the execution of the certificate, has after the drawing up of the certificate by the Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the Defaulter has or has had since the drawing up of the certificate by the Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same (i.e. the Defaulter has sufficient means to pay the amount in question either fully or substantially but refuses to make the payment deliberately).

Note: (i) Necessity for independent enquiries: - For the purposes of making a case for Arrest and Detention strong, it would be worthwhile for the Recovery Officer to independently conduct enquiries frequently to ascertain if there is any clandestine move to transfer of properties by the Defaulter through any arrangement with the ostensible owner of the properties to secure a means for himself. In this respect, the powers of the Recovery Officer as well as his duties as the officer entrusted with the recovery work enjoin on him a role full of initiative in contrast with the passive role of a Civil Court.

(ii) The reasons for coming to conclusion that the Defaulter has to be Arrested should be recorded in writing by the Recovery Officer after satisfying himself that the Defaulter has transferred, concealed or removed any part of his property with the object of obstructing the execution of the certificate or the Defaulter who has had means to pay the arrears refused or neglects to pay the same. After this exercise the show cause Notice as at Para (1) above has to be issued.

**ISSUE OF WARRANT OF ARREST**

(2) Notwithstanding anything contained in sub Para (1) a Warrant in form ESICP 27 for the Arrest of the Defaulter may be issued by the Recovery Officer if the Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the Defaulter is likely to abscond or leave the local limits of the jurisdiction of the Recovery Officer.

Note: It is imperative that the Name and Designation of the person to whom it is issued for execution is clearly shown in the Warrant as, otherwise, it will
become defective. Rescuing a person Arrested on a defective Warrant is not an offence under Section 228 of the IPC. The liability under the Act being of a civil nature it is not necessary that the Warrant of Arrest should be addressed to a Police Officer. The officer executing the Warrant must have the Warrant in his possession at the time of Arrest. An officer acting under a Warrant shall notify the substance of the Warrant to the person Arrested and if so required shall show him the Warrant as required under Section 80 of the CPC. Merely, showing the Warrant without explaining its substance or without allowing the Defaulter to read the contents does not constitute a valid notification.

(3) Where appearance is not made in obedience to a Notice issued and served under sub – clause (1) the Recovery Officer may issue a Warrant for the Arrest of the Defaulter.

(3A) A Warrant of Arrest issued by a Recovery Officer under sub clause (2) or (3) above may also be executed by any other Recovery Officer within whose jurisdiction the Defaulter may for the time being be found.

ARRESTED PERSON TO BE BROUGHT BEFORE RECOVERY OFFICER

(4) Every person Arrested in pursuance of a Warrant of Arrest shall be brought before the Recovery Officer issuing the Warrant as soon as practicable and in any event within twenty four hours of his Arrest (exclusive of the time required for the journey)

Provided that, if the Defaulter pays the amount entered in the Warrant of Arrest as due and the costs of the Arrest to the officer Arresting him, such officer shall at once release him.

Note: Arrest how made?: The Second Schedule of the Income Tax Act, 1961 has not prescribed any procedure for making an Arrest and therefore in the absence of specified provisions procedure laid down in the Cr. P.C. should be followed. The procedure for Arrest has been laid down under section 46 of the Cr.P.C. which are as under:-

Section 46(1)- Cr.P.C

(1) In making an Arrest the Police Officer or other persons making the same shall actually touch or confine the body of the person to be Arrested, unless there be a submission to the custody by word or action.
(2) If such person forcibly resist the endeavor to Arrest him or attempts to evade the Arrest such police officer or other person may use all means necessary to effect the Arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Thus, the process of Arrest consists of physical touching of a person’s body e.g. shoulder, with a view to detain him. An Arrest by mere oral declaration is insufficient. Confinement and rough handling are not permissible, and are contrary to law when the person to be Arrested submits to the custody. The SSO (Recovery) has to execute the Warrant very tactfully. He must read the contents of the Warrant in the presence of the Defaulter and physically touch his body. Once this is done, the Arrest is complete and the Defaulter has to follow the SSO (Recovery). If he fails to do so, force can be used to Arrest him and take him to custody with the help of police under Rule 19 of Second Schedule to the I.T. Act 1961. When, after making a valid Arrest, the Defaulter Arrested is produced before the Recovery Officer under sub-rule 4 of Rule 73 of the Second Schedule, the Warrant gets automatically exhausted.

12.2 Hearing: (Rule 74 of the Second Schedule)

When a Defaulter appears before the Recovery Officer in obedience to a Notice to show cause or is brought before the Recovery Officer under Rule 73, the Recovery Officer shall give the Defaulter an opportunity of showing cause why he should not be committed to the civil prison. This is a statutory necessity and should be compulsorily followed.

12.3 Custody pending hearing: (Rule 75 of the Second Schedule)

Pending the conclusion of the inquiry, the Recovery Officer may, in his discretion; order the Defaulter to be detained in the custody of such officer as the Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Recovery Officer for his appearance when required. (The security referred to, is one other than personal security of the Defaulter)

12.4 Order of Detention: (Rule 76 of the Second Schedule)

(1) Upon conclusion of the inquiry, the Recovery Officer may make an order in form ESICP 28 for the Detention of the Defaulter in the civil prison and shall in that event cause him to be Arrested if he is not already under Arrest:
Provided that in order to give the Defaulter an opportunity of satisfying the arrears, the Recovery Officer may, before making the order of Detention, leave the Defaulter in the custody of the officer Arresting him or of any officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Recovery Officer does not make an order of Detention he shall, if the Defaulter is under Arrest, direct his release.

12.5 Detention in and release from prison: (Rule 77 of the Second Schedule)

Period of Detention:-

(1) Every person detained in the civil prison in execution of a certificate may be so detained:-

(a) where the certificate is for demand of an amount exceeding two hundred and fifty rupees for a period of six month, and

(b) in any other cases for a period of six weeks; provided that he shall be released from such Detention:-

(i) on the amount mentioned in the Warrant for his Detention being paid to the officer-in-charge of the civil prison, or

(ii) on the request of the Recovery Officer on any ground other than the grounds mentioned in rule 78 and 79 of the Second Schedule.

(2) A Defaulter released from Detention under this clause shall not, merely by reason of his release, be discharged of his liability for the arrears, but he shall not be liable to be reArrested under the certificate in execution of which he was detained in the civil prison.

12.6 Release: (Rule 78 of the Second Schedule)

(1) The Recovery Officer may order in form ESICP 29 the release of a Defaulter who has been Arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Recovery Officer and that he has not committed any act of bad faith.

(2) If the Recovery Officer has ground for believing the disclosure made by a Defaulter under sub rule (1) to have been untrue, he may order the re-Arrest of the Defaulter in execution of the certificate, but the period of his Detention in to
civil prison shall not in the aggregate exceed that authorized under Rule 77 of the Second Schedule clause 12.5.

12.7 Release on ground of illness: (Rule 79 of the Second Schedule)

The Recovery Officer can cancel the Warrant of Arrest or release the Defaulter from civil prison under the following circumstances as per Rule 79 of the second schedule as follows:-

(1) At any time after a Warrant for the Arrest of a Defaulter has been issued, the Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a Defaulter has been Arrested, the Recovery Officer may release him if, in the opinion of the Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a Defaulter has been committed to the civil prison, he may be released there from by the Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A Defaulter released under this clause may be Arrested, but the period of his Detention in the civil prison shall not in aggregate exceed that authorized under rule 77 of the Second Schedule.

Note: The Defaulter released under this rule may be reArrested, but the total period of Detention under the Arrest and re Arrest shall not exceed six weeks or six months as the case may be. Before re - Arrest and Detention in civil prison under Rule 78(2) & 79(4), the Recovery Officer has to issue a suitable show cause Notice.

12.8 Entry into dwelling house: (Rule 80 of the Second Schedule)

Important DO’s and DON’Ts to be strictly followed at the time of Arrest are laid down under Rule 80 which are as under:

For the purpose of making Arrest:-

(a) no dwelling house shall be entered after sunset and before sunrise.

(b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the Defaulter and he or any other occupant of the house refuses or in any way prevents access thereto; but when the person executing any such Warrant has duly gained access to any
dwelling house, he may break open the door of any room or apartment if he has reason to believe that the Defaulter is likely to be found there.

(c) no room, which is in the actual occupancy of a woman who, according to the customs of the country does not appear in public, shall be entered into unless the officer authorized to make the Arrest has given Notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

12.9 Prohibition against Arrest of woman or minor etc.: (Rule 81 of the Second Schedule)

The Recovery Officer shall not order the Arrest and Detention in the civil prison of:

(a) a woman, or

(b) any person who, in his opinion, is a minor or of unsound mind.

Note: In the above cases the Recovery Officer is prohibited from issuing even a show cause Notice prescribed under Rule 73. The prohibition in favour of a woman is analogous to the one provided in Section 56 of the C.P.C.

12.10 Prison in which Defaulter may be detained: (Rule 53 of the I.T.(C.P.) Rules, 1962)

A person against whom an order of Detention has been passed under Section 45C(1)(b) of the ESI Act read with Part V of the Second Schedule to the Income Tax Act, 1961 may be detained in the Civil prison of the district in which the Office of the Recovery Officer is situated, or, where such Civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the Detention of persons ordered by the civil court of such district to be detained.


The Recovery Officer is required to pay the expenditure towards the subsistence of the Arrested Defaulter to the Civil Prison where he is lodged and the amounts so paid may be added to the costs of Recovery which will be ultimately recovered from the Defaulter.

(1) when a Defaulter is Arrested or detained in the civil prison, the sum payable for the subsistence of the Defaulter from the time of Arrest until he is released shall be borne by the Recovery Officer. Such sums shall be calculated in the scale fixed by the State Government for the subsistence of the judgment debtors Arrested in execution of a decree of civil court. The subsistence allowance payable under
this clause shall be deemed to be costs in the proceedings:

Provided that the Defaulter shall not be detained in the civil prison or Arrested on account of any sum payable.

(2) the subsistence allowance shall be supplied by the Recovery Officer, by monthly installments in advance before the first day of each month.

(3) the first payment shall be made to the Recovery Officer for such portion of the current month as remains unexpired before the Defaulter is committed to the civil prison and the subsequent payment (if any) shall be made to the officer in charge of the civil prison.

Provided that the Defaulter shall not be detained in the Civil Prison or Arrested on account of any sum so payable. (in other words, the Defaulter should not be detained in the Prison any longer than required and the Detention should not be prolonged merely because of any money already paid in advance or any amount payable calculated is for longer period.

**Note:**

(i) Excessive force to be avoided:- Use of force should be limited to the minimum extent Warranted by circumstances, in the course of Arrest and Detention.

(ii) It should be remembered that the object of Arrest and Detention is to recover the arrears and at any stage of the process, the Defaulter can pay the arrears and this will bring to an end the Arrest or Detention.
CHAPTER XIII

OTHER MODES OF RECOVERY

In addition to the issue of a certificate u/s 45C of the ESI Act to the Recovery Officer for recovery of arrears, the Act also provides for certain other modes of Recovery in section 45G of the said Act which are as under:-

(i) Section 45G (2) & (3) lays down the concept of recovery of amount of arrears under the Act from any amount payable by a third party (Garnishee) to the Defaulter and the procedure of such recovery is called “Garnishee procedure”. Garnishee proceedings are summary procedure which purports to create a special procedure for obtaining payment of money.

(ii) Section 45G (4) lays down the concept of recovery of amount of arrears under the Act from the court in whose custody there is money belonging to the Defaulter.

(iii) Section 45G (5) lays down the concept of recovery of amount of arrears under the Act by distraint and sale of the Defaulters movable property in the manner laid down in the Third Schedule to the Income Tax Act, 1961.

Section 45G of the ESI Act, 1948 is virtually in pari materia with Section 226 of the Income Tax Act, 1961 with certain distinctions. Further, these modes of Recovery provided under this Section can be effected by the Recovery Officer or any other officer authorized by the Corporation even after the issue of Recovery certificate under section 45C.

Governing Provisions:

13.1 Section 45G (1) of the Act lays down that, notwithstanding the issue of a certificate to the Recovery Officer under section 45C, the Director General or any other officer (so far only the Recovery Officer is doing) authorized by the corporation may recover the amount of arrears under the Act by any one or more of the modes provided in this section. The above provision is distinctly different from the provision u/s 226 of the I.T. Act 1961, as the powers of recovery provided are available to Assessing Officers only up to the time that no certificate has been drawn up by the Tax Recovery Officer. Once such a certificate is drawn up, the powers u/s 226 is exclusively exercisable by the Tax Recovery Officer.

Note:– The essence of 45G is that even after the certificate is issued to the Recovery Officer, the Authorized officer is empowered to recover the arrears by Garnishee proceedings.
13.2 Under Section 45 G (2) of the Act, if any amount is due from any person to a Defaulter who is in arrears, the Recovery Officer/Authorised Officer may require such person to deduct from the said amount, the arrears due from such Defaulter and such person has to **statutorily comply** with such requisition and shall pay the sum so deducted to the credit of the Corporation. In other words, the whole concept of Garnishee is based on the premise that a third party who owes money to the Defaulter or is holding money on behalf of the Defaulter and before the same is given to the Defaulter it is attached by the Corporation and recovered to settle the dues. Once order of attachment is issued, Banks or any other debtor should not operate those funds for any purpose and no directions of the Defaulter would carry any significance. However, nothing in this sub section shall apply to any part of the amount exempt from attachment in execution of a decree of a Civil Court u/s 60 of the Code of Civil Procedure, 1908 (5 of 1908). The above provision is distinct and different from the provision under sub-section 2 of section 226, wherein the Assessing Officer / Recovery Officer has the power to recover arrears from out of any income being received by the assessee which is chargeable under the head “Salaries”.

13.3 Under Section 45G (3) (i) of the Act, the Recovery Officer/Authorized Officer at any time or from time to time, by Notice in writing, require any person from whom “money is due” (i.e. that money which has already become due to the Defaulter) or “may become due” to the Defaulter or any person “who holds” or “may subsequently hold” money for or on account of the Defaulter to pay to the Corporation either forthwith upon the money becoming due (for payment to the Defaulter) or being held or within the time specified in the Notice (not being before the money becomes due or is held) the quantum of the money as is sufficient to pay the amount due from the Defaulter in respect of the arrears under the Act or the whole of the money when it is equal to or less than that amount. The words “may become due” refers to claims arising out of some relationship like employer and employee, Banker and customer, debtor and creditor or annuitant and payer of the annuity subsisting at the time of issue of Notice between the Defaulter and the person served with the Notice.

Under the above section, it is possible to collect the arrears under the Act not only from the Defaulter, but also from the hands of a third person who is holding money or may subsequently hold money relating to the Defaulter. Such third person is called as “**Garnishee**” and this procedure of recovery is called “**Garnishee Proceedings**”. The said procedure is usually obtained against a Bank (Garnishee) requiring the Bank to pay money held in or from any amount that has become payable to the account of the debtor (Defaulter) to the creditor (ESIC).
13.4 Under Section 45G (3) (ii), (iii),(iv) and (v) of the Act, the Recovery Officer/Authorized Officer may at any time or from time to time issue a Garnishee Notice in writing to:

(a) any person from whom money is due or may become due to the Defaulter; or 
(b) any person who holds, or may subsequently hold money for or on account of the Defaulter to pay to the Recovery Officer/Authorized Officer for and on account of the Defaulter.

A Garnishee Notice is a Prohibitory Order directing the debtors (third person / Bank) of the Defaulter to refuse the payment of the same to the Defaulter as the same is attached by the Corporation / Department for the recovery of its arrears under the Act payable by the Defaulter. This provision does not apply to the Bank with which the employer has never dealt with in the past or a person with whom he has no dealings or a person with whom he may have dealings in the future.

A copy of the said Notice may be sent to the Defaulter to his last known address and in case of a joint account to all the joint holders to the known addresses. Where such a Notice is sent to a Post Office, Banking Companies or a Insurer, it is not necessary for any pass book, Deposit Receipt, Policy or any other document to be produced for the purpose of any entry, endorsement or the like before payment is made, this is not withstanding any Rule, practice or requirement to the contrary.

It has also been specified that any claim on the property regarding which a Garnishee Notice under this sub-section has been issued arising after the date of the Notice shall be void as against any demand contained in the Garnishee Notice. In other words, once the Notice is served there is total embargo on its further operations and no one including the Banks can operate it.

Essential Conditions for Garnishee proceedings: The whole concept of Garnishee proceedings is based on premises that the money which a third party owes to the Defaulter or any money held on behalf of the Defaulter by a third party or person or any money that may become payable to the Defaulter can be directly diverted and recovered by the Recovery Officer without allowing it to be paid to the Defaulter. Thus, the payment of the amount to the Defaulter is pre-empted and instead, is diverted to the corporation towards the recovery of Certificate amount. Hence the most critical requisite is that at the time of service of the Notice there has to be subsisting ascertained debt in the hands of the Garnishee, which is due to the Defaulter, or there must be circumstances as a consequence whereof money is likely to come into the hands of the Garnishee for and on behalf of or due to Defaulter.
The word ‘due’ is associated only with a liability to pay or an obligation to do. It would not be correct to describe an unborn obligation or future liability as something which is ‘due’. The expressions “may become due” or “may subsequently hold money” suggest, in the context, a subsisting relationship between the person served with the Garnishee Notice and the Defaulter, e.g. Defaulter’s employer or Banker or debtor, or a person paying annuity to him/her. The liability to pay may be forthwith due or it may mature after the service of the Garnishee order. Even if the debt is payable in future by instalments, the Garnishee Order may be made to be operative at the time each instalment becomes due.

But, in any event, the essential condition is that, on the date of the service of Notice, the person should be under an existing obligation to pay amounts to the Defaulter in the immediate future. Similarly, the expression “money is due” means money legally enforceable and recoverable. In a time-barred debt, there is no jural relationship of debtor and creditor. Hence, when the right of recovery is lost to the creditor, the same cannot be recovered by the creditor or by the Recovery Officer by resorting to Garnishee proceedings.

In case, the Garnishee holds or may subsequently hold money on account of the Defaulter jointly with any other person, then the shares of the joint-holders is presumed to be equal, unless proved contrary. Where a person is a partner in several firms including the Defaulters firm, recovery of the arrear of the Defaulter firm by resorting to Garnishee proceedings against the debtor(s) of the other firms can be affected only to the extent that partner had interest in the other firms and not beyond the interest so held by that partner.

13.5 Under Section 45G (3) (vi) of the Act, the Garnishee may object to the Notice by a statement on oath on the ground that the money so demanded is not due to the Defaulter or that he does not hold any money on behalf of the Defaulter and the Recovery Officer has to accept the same and conduct an inquiry. The Recovery Officer has to give a Notice and hold an inquiry for the purpose of determining whether statement on oath made was false by following all the principles of natural justice and reach an objective decision. However, if the denial was false, the Garnishee would become personally liable to the Recovery Officer/AuthorisedOfficer for such payment. The burden of proving it false squarely rests on the concerned Officer as per the decisions of various Courts. The said section gives a right only to the Garnishee to object to the Garnishee Notice by a statement on oath. It is not open to the Defaulter to challenge such Notice. Though there is no time limit prescribed for rejecting the Garnishee Notice, the same must be done within a reasonable time and if no objection
is taken within such time then the Recovery Officer could be entitled to resort to penal provision.

13.6 Under Section 45G (3) (vii) of the Act, the Recovery Officer/Authorized Officer may issue a Garnishee Notice at any time or from time to time and the Notice may be amended or revoked or the time for payment extended. The Notice should, however, be properly served.

13.7 Under Section 45G (3) (viii) of the Act, the Recovery Officer/Authorized Officer shall grant a receipt for the amount paid in pursuance of the Notice and the Garnishee is fully discharged from his liability to the Defaulter to the extent of the amount so paid.

13.8 Under Section 45G (3) (ix) of the Act, if the Garnishee decides to pay the Defaulter(only circumventing the directions in the Notice) after receipt of the Garnishee Notice, he becomes personally liable to the Recovery Officer/Authorized Officer to the extent of his own liability to the Defaulter so discharged or to the extent of the Defaulter’s liability for any sum due under the Act, whichever is less. Such an Act invites action against him as envisaged under Section 45G 3 (x) which is as under:

13.9 Under Section 45G (3) (x) of the Act, failure of the Garnishee to comply with the Notice makes him a deemed Defaulter of the amount specified in the Notice or to the extent of his own liability to the Defaulter, whichever is less; and further proceedings may be taken against him for recovery of the amount as if it were an arrear from him and the Garnishee Notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers u/s 45C. Using this provision the Recovery Officers have proceeded to attach even Bank Properties when they failed to transfer the amounts lying in the account of the Defaulter immediately after it was attached. In another case Reserve Bank of India attached the Account of Andhra Bank and paid the certificate amount to the ESI Corporation as the amount payable was refused on the instructions of its client (Defaulter). Thus, once the Notice is issued to the Garnishee by the Recovery Officer/Authorized Officer there is absolutely no liberty available to either delay/withhold the payment to the Corporation for any length of time or in any way handle the amount for any other purpose. Thus the Recovery Officer can exert pressure to recover the amount at once without any loss of time.

13.10 Under Section 45G (4) of the Act, the Recovery Officer/Authorized Officer may apply to the Court in whose custody there is money belonging to the Defaulter, to pay him the entire amount or an amount sufficient to discharge the arrears under the Act whichever is less.
13.11 Under Section 45G (5) of the Act, the Recovery Officer/Authorized Officer may recover any arrears under the Act (amount due) from the Defaulter by means of distraint and sale of movable property as laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961). The Third Schedule provides that distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by “actual seizure” and provisions of the Second Schedule relating to attachment and sale, so far as may be, apply in respect of such distraint and sale.

**PROHIBITORY ORDERS Vs GARNISHEE ORDERS**

The Recovery Officer/Authorized Officer is expected to know the subtle merits and different types of consequences that emerge from a Prohibitory Order as well as that of Garnishee Orders and should carefully and judiciously exercise his prerogative and proceed with action that is best suited in the circumstances of a given case. The following table makes the position more explicit.

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<tr>
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<tbody>
<tr>
<td>1</td>
<td>Whenever the Bank Accounts of the Employers are attached by issuing a Prohibitory Order, the Accounts are completely frozen even if the arrears due to the ESIC are very small compared to the huge balance which may be available in the concerned account.</td>
<td>Whenever the Bankers are issued the Garnishee Order, the Accounts of the Defaulters are not completely frozen. The Bankers just set aside the amount specified in the order as arrears and permit the Defaulters to operate the account with the balance amount and also withdraw that balance, if so desired by the Defaulters.</td>
</tr>
<tr>
<td>2</td>
<td>As the entire Bank operation comes to a standstill, the Defaulters could face a crisis, where the cheques issued by the Defaulter to others get dishonoured. They are not able to withdraw any amount from their Accounts. Thus, pressure is brought on them to settle the dues of the Corporation immediately.</td>
<td>No such pressure is felt by the Defaulters when they have more money in the Bank than what is due to the Corporation. They do come forward to settle the dues of the Corporation at once.</td>
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<td>--------------------------------------------------------------------------------</td>
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<tr>
<td>3</td>
<td>Normally, the Defaulters themselves request the Bankers to transfer the money available in their Accounts to the Corporation and to permit them to operate the account, withdraw the balance and honour their other cheques pending clearance. This results in early recovery of arrears.</td>
<td>The Bankers are not pressured by the Defaulters to transfer the dues to the Corporation. On the other hand, the Bankers send reply to the Recovery Officer that they would get clearance from their own Legal Divisions about the validity of the Garnishee Order before transferring the dues. Although the Banker (Garnishee) must transfer the dues ‘forthwith’, ‘time’ is to be given to him to make the payment of that amount. (Tare Chand Vs ITO(1971) 79-ITR-743, 748-9 (Punj). Even a time of one week thus given to the Garnishee-Banker is sufficient enough for the Defaulter to approach the Court of Law and obtain a stay order against the relevant certificate issued by the authorized officer.</td>
</tr>
<tr>
<td>4</td>
<td>The Prohibitory Order completely denies the Defaulter any access to the Bank Account to withdraw any amount. So, even if the Bankers take some time to get clearance from their Legal Divisions, the Defaulter actually feels the negative impact of the delay in various dimensions and becomes restive.</td>
<td>The Defaulter takes advantage of the delay in the intra-office correspondence of the Bankers.</td>
</tr>
<tr>
<td>5</td>
<td>The Prohibitory Order can be issued <em>normally</em>, after the expiry of the mandatory time limit of 15 days from the date of service of the Notice of Demand.</td>
<td>The Garnishee Order can be issued even without issuing the Notice of Demand. It is thus useful, occasionally, when such necessities arise.</td>
</tr>
<tr>
<td>6</td>
<td>The Prohibitory Order cannot be issued to attach recurring sources of income. In other words, the Prohibitory Order,</td>
<td>The Garnishee Order comes handy in such situations when rent or other recurring sources of income are to be attached.</td>
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<tr>
<td></td>
<td>if issued to attach rent, it can actually help the Recovery Officer to recover the rent of only the first month and not the rent due for subsequent months.</td>
<td>It is not necessary that there must be subsisting debt at the time of service of the Garnishee Order. The Order can be against the money which may become due in the future with reference to the past or current relationship between the Defaulter and the Garnishee. “May become due’ = “May become payable” but not “May become entitled”. Grants due by the Coal Boars under the Coal Mines Act, could not be prohibited (Coal Products Pvt Ltd Vs ITO)</td>
</tr>
<tr>
<td>7</td>
<td>At the time of service of the Prohibitory Order, there must be subsisting an ascertained debt in the hands of the debtor.</td>
<td>It is enough if the Garnishee is just the holder of the money for or on behalf of the Defaulter. The money need not necessarily belong to the Garnishee.</td>
</tr>
<tr>
<td>8</td>
<td>The money must belong to the debtor</td>
<td></td>
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</table>

**Note:**

(i) if the situs of the debt is outside the jurisdiction of the Recovery Officer attaching the debt, then the Prohibitory Order (ESICP 4) cannot be served on the debtor by the said Recovery Officer. The Recovery Officer can issue the Prohibitory Order to the Defaulter, but must transfer the Recovery Certificate to the Recovery Officer having jurisdiction over the situs of the debt to recover from the Garnishee.

(ii) Garnishee proceedings can be initiated in the event of the Defaulter failing to honour any of the instalments payable by him.

(iii) Recovery Officer/Authorized Officer can recover amount directly from Bank Account of the Defaulter, though Stay Application is pending before the appropriate court as provided in the Act.
(iv) A Bank with which the Defaulter is holding fixed deposit which is yet to mature can pay the amount of such fixed deposit along with interest due thereon to the Corporation. A debt in order to be attachable need not become payable at once.

(v) As per Rule 10(1) of the Second Schedule, all monies payable under a policy of insurance on the life of the judgment debtor is exempt from attachment and hence the Recovery Officer cannot issue any Notice for recovery of money payable under an insurance policy.

(vi) What is attachable is debt owned by any person to the Defaulter. A cash credit limit given by the Bank results into the Bank becoming a creditor of the Defaulter. Hence, any unutilized portion of a credit given to the Defaulter cannot be treated as a debt attachable. Accordingly, the Bank is under no obligation to pay the unutilized portion to the Corporation. As such, the unutilized portion of the O.D. limits in Bank Accounts cannot come under the purview of Section 226(3) of the I.T. Act.
CHAPTER XIV

APPEALS AND REVIEW

Section 45E provides that it shall not be open to the defaulter to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer. The Authorised Officer shall have the power to withdraw or cancel the certificate or correct any clerical or arithmetical mistake in the certificate by sending intimation to the Recovery Officer. Section 45F provides that the Authorised Officer can amend, modify, stay or withdraw a certificate in appeal. Though, there is no explicit provision in the ESI Act for “Appeals” and “Review”, from any order passed by the Recovery Officer, Section 45H specifically provides that the provisions of Second and Third Schedule of the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 as in force from time to time shall apply with necessary modifications. Accordingly, the detailed provisions and procedure in appeal and review has been dealt in this chapter.

Governing Provisions:


14.1 Appeals (Rule 86 of the Second Schedules):

(1) An appeal from any original order passed by the Recovery Officer (not being an order which is conclusive) shall lie to the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government by notification in the official gazette.

(2) Every appeal must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

(4) Notwithstanding anything contained in sub-clause (1), where an Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Recovery Officer authorised to exercise powers as such in respect of that area which is included in that area,
shall lie to such Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government.

14.2 Forms of appeal (Rule 55A of the ITCP, Rules 1962):

(1) Every appeal under sub-rule (1) of rule 86 of the Second Schedule to the Income Tax Act, 1961 shall be made in Form No. ESICP 30 which shall be verified in the manner indicated therein and shall be accompanied by a copy of the order appealed against.

(2) The form of appeal prescribed by sub-rule (1), the grounds of appeal and the form of verification appended thereto shall be signed:-

(a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

(b) in the case of a Hindu undivided family, by the Karta, and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person, or by some person competent to act on his behalf.


(1) The Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government by notification in the official gazette as the case may be, shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the Recovery Officer against whose order the appeal has been preferred.

(2) The following shall have the right to be heard at the time of appeal:-
(a) the appellant, either in person or by an authorised representative as mentioned in rule 55A above,

(b) the Recovery officer, either in person or by a representative,

(3) The Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government may if sufficient cause is shown, at any stage of the appeal, grant time to the parties or any of them, and for reasons to be recorded in writing, adjourn from time to time, the hearing of the appeal.

(4) The Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government may before disposing any appeal, may make such further inquiry as he/she thinks fit, or may direct the Recovery Officer to make further inquiry and report the result of the same to him/her.

(5) The said Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the said Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(7) On the disposal of the appeal, the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government shall communicate the order passed by him/her to the appellant, the Defaulter (if he is not the appellant) and the Recovery Officer.

(8) Every appeal shall be disposed of by the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government as expeditiously as possible and endeavour shall be made to dispose of the appeal within six months from the date on which it is presented.
14.4 Review (Rule 87 of the Second Schedule):

Any order passed under the recovery proceedings, may, after Notice to all persons interested, be reviewed by the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government, including the Recovery Officer who made the order, or by his successor in office, on account of any mistake apparent from the records.
CHAPTER XV
SCALE OF FEES FOR PROCESSES, CHARGES FOR OTHER PROCEEDINGS AND POUNDAGE FEES, ETC.

Governing Provisions:

Part IX i.e. Rule 56, 57,58 and 59 of the ITCP, Rules 1962 relate to scale of fees for processes, charges for other proceedings and poundage fees, etc.

15.1 Process Fees (Rule 56 of ITCP Rules 1962):

The following scale of fees shall be charged for service and execution of processes issued under the Second Schedule and these rules:

<table>
<thead>
<tr>
<th>Item</th>
<th>Where the amount mentioned in the certificate</th>
<th>Exceeds Rs. 1000</th>
<th>is Rs. 1,000 or under</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Notice of demand</td>
<td></td>
<td>1.50</td>
<td>1.00</td>
</tr>
<tr>
<td>(b) Warrant of attachment</td>
<td></td>
<td>3.00</td>
<td>2.00</td>
</tr>
<tr>
<td>(c) Warrant of arrest</td>
<td></td>
<td>3.00</td>
<td>2.00</td>
</tr>
<tr>
<td>(d) Warrant of delivery</td>
<td></td>
<td>3.00</td>
<td>2.00</td>
</tr>
<tr>
<td>(e) Proclamation of sale</td>
<td></td>
<td>5.00</td>
<td>3.00</td>
</tr>
<tr>
<td>(f) Any process not provided for hereinabove</td>
<td></td>
<td>1.50</td>
<td>1.00</td>
</tr>
</tbody>
</table>

15.2 Levy and scale of poundage fees (Rule 57 of ITCP Rules 1962):

(1) In respect of any sale made in the execution of a certificate, there shall be levied a fee by way of poundage on the gross amount realised by the sale, calculated at the rate of 2 per cent on such gross amount up to Rs.1,000 and at the rate of 1 per cent on the excess of such gross amount over Rs.1000.

(2) The poundage fee leviable under sub-rule (1) shall be calculated on multiples of Rs.25, that is to say, a poundage fee of 50 paisa shall be levied for every Rs.25, or part of Rs.25, realised by the sale up to Rs.1,000 and in the case of proceeds of the sale exceeding Rs.1,000, an additional fee of Rs.25 paisa for every Rs.25 or part thereof on the excess of such amount over Rs.1,000 shall be levied.

(3) Where the sale is in more than one lot, the poundage fee shall be calculated with reference to the sale proceeds of each lot separately.
(4) The poundage fee under sub-rule (1) shall be paid by the purchaser of the property as soon as the sale is completed.

(5) When a sale of immovable property is set aside under sub-rule (2) of Rule 63, of the Second Schedule, the Recovery Officer may make an order for payment, by the defaulter or by the person at whose instance the sale is set aside, of the poundage fees paid by the purchaser of the property under sub-rule (1) read with sub-rule (4).

15.3 Copying fees (Rule 58 of ITCP Rules 1962):

(1) Except in cases where copies are supplied free under rules or instructions in force, copying fees shall be charged for supplying a copy of any document at the rate of Re.1 for each page of such document.

(2) Copying fees shall be payable in advance.

(3) The fees to be charged for the supply of a copy of any document urgently shall be Rs.4 for each document, in addition to the fees payable under sub-rule (1).

15.4 Inspection fees (Rule 59 of ITCP Rules 1962):

(1) Fees for inspecting records of proceedings before the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government or Recovery Officer under the Second Schedule shall, where such inspection is permitted, be charged as follows:

   (a) for the first hour or part thereof : Rs. 2/-

   (b) for every additional hour or part thereof : 50 paisa

(2) Fees for inspection shall be payable in advance.
CHAPTER XVI

MISCELLANEOUS

Governing Provisions:


16.1 Officers deemed to be acting judicially (Rule 82 of the Second Schedule):

Every Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government or the Recovery Officer acting under the Act vis-à-vis the Second and Third Schedule to the Income Tax Act, 1961 and the ITCP Rules, 1962 shall, in the discharge of his / her functions, be deemed to be acting judicially within the meaning of Judicial Officers Protection Act, 1850 (18 of 1850).

16.2 Power to take evidence (Rule 83 of the Second Schedule):

Every Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government or the Recovery Officer acting under the provisions of the Act vis-à-vis the Second and Third Schedule to the Income Tax Act, 1961 and the ITCP Rules, 1962 shall have the powers of a Civil Court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

16.3 Continuance of certificate (Rule 84 of the Second Schedule):

No certificate shall cease to be in force by reasons of the death of the defaulter.

16.4 Procedure on death of defaulter (Rule 85 of the Second Schedule read with Rule 60 of ITCP Rule, 1962):

If at any time after the certificate is drawn by the Recovery Officer, the defaulter dies, the proceedings under the Act vis-à-vis the Second and Third Schedule to the Income Tax Act, 1961 and the ITCP Rules, 1962 (except arrest and detention) may be continued against the “legal representative” of the defaulter, and the provisions of the Act vis-à-vis the Second and Third Schedule to the Income Tax Act, 1961 and the ITCP Rules, 1962 shall apply as if the legal representative were the defaulter [For this purpose “legal representative” has the meaning assigned to in clause (ii) of section 2 of the...
A notice to the legal representative of a deceased defaulter shall be issued in Form **ESI CP 31** which may be amended as the circumstances of each case may require.

**16.5 Recovery from Surety (Rule 88 of the Second Schedule read with Rule 61 of ITCP Rule, 1962):**

1. Where any person has become surety under the recovery proceedings under the Act for the amount due by the defaulter, he/she may be proceeded against as if he/she were the defaulter.

2. A notice to a surety shall be issued in Form **ESI CP 14** which may be amended as the circumstances of each case may require.

**16.6 Appearance before Recovery Officer (Rule 62 of ITCP Rule, 1962):**

Any person who is entitled or required to attend before the Additional Commissioner, Regional Director, Director, Joint Director (I/C) or any other officer who may be authorised by the Central Government or the Recovery Officer in connection with any recovery proceedings under the Act, otherwise than when required under Rule 84 of the Second Schedule to the Income Tax Act, 1961 to attend personally for examination on oath or affirmation may attend either in person or by an authorised representative.

**Explanation:**

1. For this purpose “authorised representative” shall have the meaning assigned to it in clauses (iii) to (vii) of sub-section (2) of section 288 of Income Tax Act, 1961.

2. In any proceedings before the Recovery Officer, referred to in sub-clause (1) the Authorised Officer concerned shall have the right to be heard either in person of by a representative.

**16.7 Procedure for distraint by Recovery Officer (Third Schedule to the Income Tax Act, 1961):**

Where any distraint and sale of movable property are to be effected by any Authorised Officer or Recovery Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provision contained in the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.
CHAPTER XVII

PROCEDURE FOR RECOVERY OF DUES AT A GLANCE

FOLLOW UP ACTION TO BE TAKEN BY THE RECOVERY OFFICERS ON RECEIPT OF RECOVERY CERTIFICATES.

1. The Recovery Officer shall receive the certificate from the Authorized officers for recovering the amount in arrears of Contribution, Interest & Damages in form C-19, C-19 (Interest) and D-19 respectively. These Certificates would be entered in the respective C-18 & D-18 Registers in the respective Revenue Branches.

2. The Recovery Officer shall also receive Recovery Certificates from other Recovery Officers in cases where the location of the Unit where recovery is to be effected is in his jurisdiction. This Recovery Certificate will be in form ESICP 1.

3. As soon as the Certificates are received as at 1 or 2 above, the Recovery Section will enter the Dues in the system and the Master Register (Certificate Control Register) manually and allot a serial number to the Certificate.

4. The Recovery Officer thereafter generates a Demand Notice in form ESICP 2 and shall cause to be served upon the Defaulter. The Recovery Officer will be giving 15 days’ time to the defaulting employer to make the payment of the Dues specified. A copy of the ESICP 2 issued will also be marked to the Social Security Officer (Recovery) for further follow-up action.

5. The SSO (Recovery) will immediately ascertain the details of Bank Account number, various movable, immovable properties and different assets held by the Defaulter and collect a list of all the particulars to enable the Recovery Officer to swing into action immediately after expiry of the Notice Period. The Revenue Branch file could be consulted to check up the available details from the Inspection Reports of the Unit.

6. Immediately after the expiry of the 15 day’s Notice Period, the Recovery Officer should proceed to realize the amount in arrears in accordance with the provisions of section 45C to 45I of the Act.

7. In cases where the employer is a chronic Defaulter, the Dues to be recovered are quite substantial and there are perceptible chances of the employer rushing to the Court and obtaining a stay etc., the Recovery Officer has full powers to waive the Notice Period and direct the employer to pay the Dues forthwith/immediately on receipt of such Notice. In such cases, the Recovery Officer can proceed to realize the amount in
arrears by way of attaching Bank Accounts, garnishee proceedings etc., straight away. Simultaneously the Recovery Officer should also get the Legal Branch to file a Caveat in the High Court, E.I. Court etc., as a pre-emptive measure to facilitate him to proceed with the Recovery action without any hindrance.

8. Once the Notice Period is over, the Recovery Officer shall proceed to realize the amount in arrears by one or more of the following modes:

(a) by Attachment and sale of the Defaulter’s movable property.
(b) by Attachment and sale of the Defaulter’s immovable property.
(c) by arrest of the Defaulter and his detention in prison
(d) by appointing a receiver for the management of the Defaulter’s movable and immovable properties.
(e) Other modes of recovery u/s 45 G viz: garnishee proceedings, etc.

**Note:** It is to be noted that if the Attachment of movable property is not adequate to cover the certificate amount fully, the Recovery Officer shall simultaneously and concurrently attach other immovable properties to ensure that full amount of arrears is recovered.

9. Generally, the Recovery Officers opt to recover the amount in arrears from the Defaulter by way of:

i. Attachment of Bank Account by prohibiting and restraining the Banker from allowing any further operations of the Bank Account by the Defaulter. [IT Rule 26 (2) (i)]

ii. Attachment of contractual Dues/lease/rentals etc., payable to the Defaulter through Garnishee proceedings. [Sec.45G(3) of the Act]

iii. Garnishee proceedings against the Bankers/third party. [Sec.45G(3)(x) of the Act].

**Explanatory note on (i) above:** The Bank Accounts including the fixed/term deposits of the Defaulter can be attached by issuing a Prohibitory Order in form **ESICP 4** on the Bank under Rule 26(1) (i) of the Second Schedule to the IT Act, 1961 followed by transfer Orders on the Banker to transfer the amount due alongwith cost and charges of recovery etc. As the entire Bank operation of the Defaulter comes to a stand still, pressure is brought on the Defaulter to settle the arrears (Dues) of the Corporation.
At the time of service of the Prohibitory Order, there must be subsisting and ascertained debt in the hands of the debtor and the money must belong to the debtor. The Prohibitory Order cannot be issued to attach recurring sources of income. In other words, the Prohibitory Order, if issued to attach rent, it can actually help the recovery officer to recover the rent of only the first month and not the rent due for subsequent months.

Explanatory note on (ii) and (iii) above: The Bank Accounts including the fixed/term deposits of the Defaulter can be attached by issuing a Garnishee Order in form as given in Appendix 18 on the Bank under Section 45G (3) of the ESI Act, 1948, followed by transfer Orders on the Banker to transfer the amount due alongwith cost and charges of recovery etc. The Garnishee Order does not completely freeze the Bank Account of the Defaulter. The Banker just sets aside the amount specified in the Notice as arrears and permits the Defaulter to operate the Bank Account with the balance amount and also withdraw that balance, if so desired by the Defaulter. The said procedure lacks the immediate impact on Recovery as is the case of Attachment by issue of Prohibitory Order as explained under (i) above, as because no such pressure is felt by the Defaulter, when he has a substantial amount of money in the Bank than what is due to the Corporation. On the other hand, the Bankers send reply to the Recovery Officer that they would get clearance from their own legal divisions on the validity of the Garnishee Order before transferring the Dues. This time gap is sufficient enough for the Defaulter to approach the Court of law and obtain a stay Order against the relevant certificate.

However the Garnishee Order comes handy in situations when rent or other recurring sources of income are to be attached till the Dues are completely realized. In case of any default of such transfer of Dues by the Garnishee (Banker / Third party) , necessary action such as issue of summons/Notice (Appendix 19) to the Garnishee under Sec.45G3(x) of the ESI Act, 1948 read with Second and Third Schedule of the Income Tax Act, 1961 and Income Tax ( Certificate Proceedings) Rules, 1962, Code of Civil Procedure, 1908 duly affording date and time for appearance before the Recovery Officer by any responsible person duly authorized along with Books of Accounts including the F.D/T.D held by the said unit / employer/along with any material on which m they intend to reply, but necessarily with all statements and relevant records, in support of their contention justifying non-compliance with the said Orders. In case of non – appearance / representation in person, the said Garnishee shall be held as “ Deemed Defaulter” and further course of Recovery Action for recovery of said outstanding
Dues along with up to date interest @ 12% per annum shall be initiated by way of issue of Orders under Sec 45G (3) (x) of the ESI Act, 1948 read with Second and Third Schedule of the Income Tax Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1962, directing the said Garnishee to pay the said Dues along with up to date interest @12% p.a. by D.D. drawn in favour of the Recovery Officer (Appendix 20). Further, in case of default by the said deemed Defaulter, and Order under Sec 45G of the ESI Act, 1948 read Second and Third Schedule of the Income Tax Act, 1961 and Income Tax (Certificate Proceedings) Rules 1962 shall be issued to the Banker of such Banker i.e. RBI / Banker of Third party/ Garnishee directing to freeze the said account of the “deemed Defaulter” and to transfer the said Dues forthwith failing which, action under Section 45G (3) (x) of the Act shall be initiated (Appendix 21).

10. The Recovery Officer can proceed to realize the amount in arrears by Attachment and sale of the Defaulter’s movable property as detailed below :-

(A) Cases covered by warrant procedure:

➢ Attachment of movable property can be done after 15 days from the date of service of Notice of demand in form ESICP 2.

➢ A Warrant of Attachment in form ESICP 3 shall be issued by the Recovery Officer in respect of all movable property (except for those specified in Rule 26, 27,28,29,31 and 32 of the Second Schedule for which a somewhat different procedure is provided) duly authorising the SSO (Recovery) to execute the said Orders in person, by serving a copy of the warrant on the Defaulter and taking the said movable property into custody.

➢ The SSO (Recovery) is to serve a copy of the warrant on the Defaulter. In case the Defaulter refuses to receive the copy of the warrant, service by affixture as per Civil Procedure Code may be adopted. In case the Defaulter is absent, a couple of attempts may be made to serve the copy of warrant before the SSO (Recovery) takes recourse to service by affixture. The SSO (Recovery) has to return the warrant to the Recovery Officer within the specified date: if executed, certifying day and manner of execution, if not executed, reasons thereof.

➢ Where the movable property (other than agricultural produce) is in the Defaulter’s possession, the Attachment shall be made by ‘Actual Seizure’. Where the property is not capable of physical seizure, the same is attached
by ‘constructive seizure’ i.e by affixing the copy of the warrant on the entrance door of the godown where the goods are kept. Such godown/rooms where those goods are kept are to be securely locked and security personnel deployed. The expenses incurred may be recovered as “Cost and Charges” from the Defaulter. Perishable goods or goods where the cost of keeping it in custody is likely to exceed its value can be sold at once. The SSO(Recovery), in Order to effect Attachment, can break open any inner or outer door or window of any building and enter any building to seize any movable property, if he/she has reasonable grounds to believe that such building contains movable property liable to seizure. He/she should however give the woman in the household sufficient opportunity to withdraw.

➢ Attachment should be commenced only after sunrise and completed before sunset.

➢ A panchnama (Appendix 2) evidencing the proceedings is required to be made. The SSO(Recovery) should call two witnesses and also the Defaulter and get the panchnama filled up. The panchnama will record the time at which the proceedings have been commenced. The SSO (Recovery) should be careful not to attach the articles which are exempt under section 60 of the Civil Procedure Code.

➢ The SSO (Recovery) has to prepare an inventory (Appendix 3) of the articles attached by Actual Seizure and give a copy to the Defaulter and another copy to the Recovery Officer. It is advisable to make the inventory an integral part of the panchnama.

➢ The attached articles have then to be removed either to the Office of the Recovery Officer or to a place for safe custody. The expenses incurred on transportation are to be paid by the Defaulter and in case he fails to pay, the Corporation may defray the expenses and recover the same from the Defaulter by adjustment from out of the money realised on sale of the attached articles. In case of heavy articles, the SSO (Recovery) may, with the previous approval of the Recovery Officer, entrust, subject to his right of supervision, the attached movable property to the Defaulter on his executing duly stamped Bond in form ESICP 13.

➢ In the case of agricultural produce and growing crops, the copies of the warrant of Attachment shall be affixed: (i) on the land where the crop is
being grown, (ii) on the threshing floor where such produce has been cut or gathered, (iii) on the outer door of the house where the Defaulter resides, (iv) on the business premises of the Defaulter.

➢ the Recovery Officer shall make arrangements for the custody, watching, tending, cutting and gathering thereof.

➢ the Recovery Officer may permit the Defaulter to tend to the crop.

➢ the Recovery Officer may appoint any other person to tend the crop and the costs incurred by such person shall be recoverable from the Defaulter.

➢ the execution of an Attachment Order may be suspended if there is considerable time between the date of Attachment and the date on which the crop is likely to be fit for being cut and gathered.

➢ where a growing crop by its nature cannot be stored, it should not be attached at any time less than 20 days before the time it is likely to be fit for being cut or gathered.

(B) Attachment of movable property by issuing Prohibitory Order:

➢ A Prohibitory Order shall be passed by the Recovery Officer in case of:-

(a) debt not secured by a Negotiable Instrument in form ESICP 4 to the creditor from recovering the debt and the debtor from making the payment. A copy of the Prohibitory Order shall be affixed in some conspicuous part of the Office of the Recovery Officer, and another copy shall be sent to the Debtor. (separate ESICP 4 may be issued to the Bank in the name of the defaulting unit and the proprietor/partner of the unit)

(b) a share in a corporation/company in form ESICP 5 to the Defaulter in whose name the share may be standing, prohibiting him/her from transferring the same or receiving any dividend thereon. A copy of the Prohibitory Order shall be affixed in some conspicuous part of the Office of the Recovery Officer, and another copy shall be sent to the principal officer of the corporation/company.

(c) other moveable property not in the possession of the Defaulter in form ESICP 6, to the person in possession of the same prohibiting
him/her from giving it over to the Defaulter. A copy of the Prohibitory Order shall be affixed in some conspicuous part of the Office of the Recovery Officer, and another copy shall be sent to the Defaulter prohibiting him/her from receiving the property.

(C) Attachment in other cases:

(i) Attachment of Decree:

➢ The Recovery Officer shall issue a Notice of Attachment in form ESI CP 7 to the Civil Court requesting it to stay the execution of the Decree for the payment of money, or for sale in enforcement of a mortgage or charge passed in favour of the Defaulter.

➢ The stay shall be effective until the Recovery Officer: (a) cancels the Notice (b) the Recovery Officer or the Defaulter applies to the Court to execute the Decree.

➢ As soon as the Court receives the application, the Court shall proceed to execute the attached Decree, and apply the net proceeds in satisfaction of the certificate. The attached Decree can be realised by execution only, and cannot be sold in execution.

➢ The Recovery Officer is deemed to be the representative of the Defaulter of the attached Decree. He shall therefore be entitled to execute such attached Decree in the same manner as the Decree holder can.

➢ If the attached Decree is reversed on appeal, the Recovery Officer has to make restitution to the Defaulter if he has already realised the money due under the Decree.

(ii) Share in movable property:

➢ The Recovery Officer shall serve a Notice of Attachment to the Defaulter in form ESI CP 8, prohibiting him / her from transferring in any manner his / her shares of interest in such jointly owned movable property.

➢ In a joint property “Actual Seizure” not possible.

➢ If the property has been erroneously attached under Rule 23, such Attachment shall be released under sub-rule 4 of Rule 11 of the Second Schedule and fresh Attachment under Rule 28 of the Second Schedule to be made.
(iii) Salary of government servants:
➢ The Recovery Officer shall issue an Order of Attachment in form ESICP 12A to the Disbursing Officer requiring him/her to withhold the salary of the Defaulter subject to the limitations provided in section 60 of the Code of Civil Procedure and remit the amount to the Recovery Officer.
➢ A copy of the Order shall be served on the Defaulter so that he/she can know that his/her salary has been attached.

(iv) Attachment of Negotiable Instrument:
➢ Applicable to Negotiable Instrument not in the custody of Court of a Public Officer.
➢ The Recovery Officer shall issue an Order of Attachment of Negotiable Instrument in Form ESICP 9 authorising the SSO (Recovery) to see and seize the Negotiable Instruments and bring the same before him/her and hold the same subject to further Orders.
➢ The Attachment by the SSO (Recovery) should be by “Actual Seizure”.

(v) Attachment of property in custody of Court or public officer:
➢ The Recovery Officer shall issue an Order of Attachment in ESICP 10 addressed to the Court / Public Officer.
➢ Applicable to property which is actually in the hands of the Court or Public Officer.
➢ Court or Public Officer duty bound to hold or remit the amount due to the Recovery Officer.
➢ Question of priorities of money due to be decided by Court, may be on pro-rata basis.

(vi) Attachment of partnership property.
➢ The Recovery Officer shall issue an Order of Attachment in ESICP 11 Ordering that the share of the defaulting partner in the partnership property and profits are charged with the amount due to the Corporation.
➢ Copy of the Order shall be served upon the defaulting partner.
➢ A receiver may be appointed in respect of the share of this partner.
➢ Defaulter’s interest in the partnership property can also be ordered to be sold and the other partners shall be given first option to purchase the same.

(D) Sale of movable property:

(i) Issue of warrant of sale:
➢ The Recovery Officer shall issue a warrant of sale of property in form ESICP 16 authorising the SSO (Recovery) /Government Auctioneer to conduct the Auction. The warrant should be issued in the name of the SSO (Recovery) /Government Auctioneer.
➢ Remuneration paid to the Government Auctioneer should be added to cost of the sale and recovered from the Defaulter (ITCP Rule 17)

(ii) Issue of proclamation of sale:
➢ The Recovery Officer shall issue proclamation of sale of the property in Form ESI CP 17
➢ The Proclamation shall be in the language of the district / local language specifying the time and place of sale and whether the sale is subject to confirmation or not
➢ A copy of the proclamation shall be served on the Defaulter

(iii) Proclamation – how made:
➢ The proclamation of sale of movable property shall be made by beat of drum or other customary mode. This apart, announcements are to be made through loud speakers in public places, advertisements in local vernacular newspapers etc.
➢ In case of property attached by “Actual Seizure”, the proclamation shall be made in the village in which the property was seized, or if the property was seized in a town or city, in the locality in which it was seized and at such other place as the Recovery Officer may direct.
➢ In case of property attached otherwise than by “Actual Seizure”, in such place as the Recovery Officer may direct.
(iv) Sale after 15 days:

➢ The date of sale of movable property should be so fixed that there
is an interval of at least 15 days between the date of affixture of a
copy of the proclamation in the Office of the Recovery Officer and
the date of sale.

➢ The sale could however be made within 15 days: where the property
is subject to speedy and natural decay, expenses of safe keeping
exceeds the value of the property and the Defaulter consents for an
early sale.

(v) Sale of agriculture produces:

➢ If the produce is growing crop, the sale shall be on or near the land
on which such crop has grown.

➢ If the produce has been cut or gathered at or near the threshing floor
or fodder stack etc, the sale shall be made therein.

➢ Recovery Officer can also direct the sale at nearest place of public
resort, if advantageous.

➢ The sale can be postponed if a fair price is not offered and Defaulter
applies to have the sale on the next day.

(vi) Special provisions relating to growing crop:

➢ If the growing crop is such that it can be stored after its harvest, the
date of sale shall be fixed only after the crop has been cut or gathered
and is ready for storing.

➢ If the crop is such that it not capable of being stored after it is cut,
or it would be more advantageous, if it is sold in an unripe stage, the
crop may be sold before it is harvested and the purchaser shall be
entitled to enter on the land and do all that is necessary to tend, cut
or gather the crop.

(vii) Sale by Auction:

➢ The movable property shall be sold by Public Auction in one or more
lots as the officer conducting the sale may consider being feasible.

➢ If the amount due to the Corporation is realised, further sale of lot
to be stopped.
➢ When sale is not subject to confirmation, acceptance of bid by Auctioneer concludes the sale.

(viii) Sale by Public Auction:

➢ Where movable property is sold by Public Auction, the price of each lot shall be paid at the time of sale or soon after as per directions of the officer conducting the sale and in default of payment, the property shall forthwith be resold.

➢ On payment of the purchase money, the SSO (Recovery) / the officer holding the sale shall issue a certificate of sale in form ESI CP 19 and the sale shall become absolute.

➢ In case of joint property, co-owner gets preference if same bids are offered.

➢ The officer holding the sale is required to pay the entire amount received from the bidder to the ESI fund A/c No 1 forthwith and submit a full report to the Recovery Officer.

Note:

(a) Prior to the scheduled date of Auction/sale, a “Notice of Auction” (Appendix 37) specifying the terms and conditions of Auction/sale alongwith scheduled time and date shall be published in leading newspapers including a newspaper in local language for wide publicity.

(b) On the scheduled date of Auction/sale, the prescribed procedure of Auction proceeding shall be conducted as detailed in Chapter XVIII.

(ix) Irregularity not to vitiate sale but any person injured may sue:

➢ The sale is not bad in law on irregularities in publishing and the manner of conduct of sale.

➢ Sale can be set aside without any Notice to the Defaulter.

➢ The Recovery Officer can be sued if the movable property sold does not belong to the Defaulter.

(x) Negotiable Instruments and shares in a Corporation:

➢ The Recovery Officer may, instead of directing the sale to be made by Public Auction, authorize the sale of such instrument or share through an authorised broker.
(xi) Order of payment of coin or currency notes to the authorised officer:

➢ Where the movable property attached is coin or currency notes, the Recovery Officer may, at any time during the continuance of the Attachment, issue an Order for payment to the authorised officer of coins and currency notes attached in form **ESI CP 15** inter alia for credit to the Corporation.

11. The Recovery Officer can proceed to realize the amount in arrears by

Attachment and sale of the Defaulter’s **immovable property** as detailed below:

➢ Before proceeding for Attachment of immovable property, the Recovery Officer will cause to make enquiries through SSO(Recovery) to ascertain whether the property belongs to the Defaulter, full details of the property, its location, boundaries etc; details of encumbrances, mortgage, municipal tax arrear Dues, land revenue etc. (by visits to Municipal Office, Sub Registrar’s Office, Land Acquisition Office, Tahsildar’s office)

➢ Attachment of immovable property can be done after 15 days from the date of service of Notice of demand in form **ESICP 2**.

➢ The Recovery Officer shall issue an Order of Attachment of immovable property on the Defaulter in form **ESICP 12**. A copy of the Order shall be affixed on a conspicuous part of the property and the Notice Board of the office of the Recovery Officer.

➢ The Order of Attachment should be proclaimed by drumbeat at some place on or adjacent to the property attached. The Order of Attachment should also be proclaimed by other customary modes (advertisements in local daily etc) including by oral announcements in the local language or the language of the District in addition to in English.

➢ A panchnama (**Appendix 5**) evidencing the proceedings is required to be made. The SSO (Recovery) should call two witnesses and also the Defaulter and get the panchnama filled up. The panchnama will record the time at which the proceedings have been commenced, the fact that a copy of the Order of Attachment was served on the Defaulter, that a copy thereof was affixed on the property, that drum was beaten and that the proclamation was made in the language of the district.
After Attachment of property, the Recovery Officer shall issue a Notice for Sale Proclamation on the Defaulter in form ESICP 18 inter alia informing that the property would be sold and asking the Defaulter to bring to the notice of the Recovery Officer any encumbrances, charges, claims or liabilities attached to the said property. The Recovery Officer shall simultaneously issue a warrant of sale in form ESICP 16 authorizing the SSO (Recovery)/Government Auctioneer to Auction the property after giving 30 days Notice by affixing the same in the Office of the Recovery Officer, and after making due proclamation.

The Recovery Officer after incorporating all the essential ingredients collected (after issue of ESICP 18) shall issue a proclamation of sale in ESI CP 17. The proclamation shall be made by drumbeat at some place on or adjacent to the property attached. The proclamation may also be made by other customary modes (advertisements in local daily etc) including by oral announcements in the local language or the language of the district in addition to in English.

A panchnama evidencing the proceedings is required to be made. The SSO(Recovery) should call two witnesses and also the Defaulter and get the panchnama filled up. The panchnama will record the time at which the proceedings commenced, the fact that a copy of the Order of proclamation was served on the Defaulter, that a copy thereof was affixed on the property, that drum was beaten and that the proclamation was made in the language of the district.

The time interval between the affixture of proclamation and the date of sale should be 30 days, however the sale can be held earlier only when the Defaulter agrees in writing.

The sale of the property shall be by Public Auction to the highest bidder and shall be subject to confirmation by the Recovery Officer. No sale will be made if the bid amount by the highest bidder is less than the Reserve Price. Once the property is knocked down in favour of the highest bidder the purchaser shall pay a deposit of 25% of the sale value immediately to the SSO (Recovery) / Government Auctioneer conducting the sale failing which the property shall forthwith be resold.

The full amount of purchase price shall be paid by the purchaser to the Recovery Officer within 15 days from the date of sale, failing which the Recovery Officer may forfeit the deposit paid earlier.
Note: (i) Prior to the scheduled date of Auction/sale, a “Notice of Auction” (Appendix 37) specifying the terms and conditions of Auction/sale along with scheduled time and date shall be published in leading newspapers including a newspaper in local language for wide publicity.

(ii) On the scheduled date of Auction/sale, the prescribed procedure of Auction proceeding shall be conducted as detailed in Chapter XVIII.

➢ The Defaulter or any person whose interest is affected by the sale may apply for setting aside a sale within 30 days from the date of sale to the Recovery Officer along with a deposit amount as specified in the proclamation of sale with interest @ 15% p.a. from the date of proclamation to the date of deposit and for payment to the purchaser as penalty equal to 5% of the purchase money but not less than rupee one.

➢ The purchaser can also apply for setting aside a sale on the ground that the Defaulter has no saleable interest in the property within 30 days of sale i.e. before the confirmation of the sale.

➢ No Order for setting aside the sale shall be made by the Recovery Officer unless a Notice to interested parties to show cause why the sale should not be set aside is made in form ESICP 21.

➢ The sale can be set aside in the following circumstances: the Defaulter has not been served with a Notice under Rule2 i.e. ESICP 2 to pay the arrears; some material irregularity has taken place in publishing or conducting of the sale; the Defaulter has sustained substantial injury as a result of such non service or irregularity; the Defaulter has deposited the amount recoverable from him.

➢ If the Recovery Officer does not receive any application for setting aside the sale or having received, disallows the same, he/she shall make an Order confirming the sale and thereupon the sale shall become absolute. However, such confirmation of sale can be issued only on receiving the full purchase money and not before the expiry of 30 days from the date of sale. The Order of confirmation of sale is issued by the Recovery Officer in form ESICP 22.

➢ Where a sale of immovable property has become absolute, the Recovery Officer shall grant a certificate of sale of immovable property in form ESI.
CP 23 specifying the property sold, the name of the person declared as purchaser and the date on which the sale had become absolute.

➢ No sale of immovable property shall be made after the expiry of 3 years from the end of the financial year in which Order giving rise to a demand of arrears under the Act for the recovery of which the immovable property has been attached, has become conclusive. In the event that the property is required to be resold due to highest bid being less than the Reserve Price or the sale is set aside, the aforesaid period of limitation shall stand extended by 1 year.

➢ For computing the period of limitation, the following period(s) shall be excluded: during which the levy of the aforesaid arrears (contribution, interest, damages), is stayed by an Order or injunction of any Court; or during which the proceedings of Attachment or sale of the immovable property are stayed by an Order or injunction of any Court; or commencing from the date of the presentation of any Appeal against the Order passed by the Recovery Officer under this Schedule and ending on the day the Appeal is decided.

➢ Where an Order for the sale of immovable property has been made, if the Defaulter can satisfy the Recovery Officer that there is reason to believe that the amount of the certificate may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the Defaulter, the Recovery Officer shall grant a certificate to the Defaulter authorising him to mortgage, lease or sell property in form ESICP 20 and postpone the sale of the property attached. Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the Defaulter, but to the ESI Recovery Officer. Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Recovery Officer.

➢ When a resale is to be ordered for the reason that the highest bidder did not made full payment as per the time schedule, the Recovery Officer should follow the same procedure de-novo.

➢ As per Rule 8 of the Second Schedule, the Defaulter is liable to bear the expenses of Attachment and sale. The interest payment to the purchaser in case of setting aside of sale is to be borne by the Defaulter and not by the Corporation.
➢ The Recovery Officer granting a certificate of sale in **ESICP 23** to the purchaser of immovable property shall send a copy of such certificate to the Registering Officer concerned under the Indian Registration Act, 1908 (16 of 1908) within the local limits of whose jurisdiction the sale of any part of the immovable property comprised in the certificate is situated.

➢ The proceeds of the sale of immovable property shall not be disbursed until the sale is confirmed by the Recovery Officer or where an Appeal has been filed against the Order confirming the sale, until the disposal of the Appeal.

12. The Recovery Officer can proceed to realize the amount in arrears by appointment of a “**Receiver**” as detailed below:

➢ Where the property of a Defaulter consists of a business, the Recovery Officer may attach the business and appoint a person as “Receiver” in form **ESI CP 25** to manage the business.

➢ Attachment of business under sub clause (1) shall be made by an Order in form **ESI CP 24** prohibiting the Defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge and intimating that the business has been attached under the proceedings. A copy of the Order of Attachment shall be served on the Defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business carried on and on the Notice board of the office of the Recovery Officer.

Some examples of the types of business that can be selected for appointment of Receiver are:

- Cinema Theatres,
- Hulling and flour mills,
- Groundnut decorticating mills,
- Cotton ginning factories,
- Trade where the merchandise is having a ready market,
- Agency business where the business is one of distribution of products of one or more producers where the goods can command ready market.
➢ Cases of immovable properties that are in possession of persons who have no right to keep possession and are colluding with the owner are well suited for the appointment of Receiver.

➢ Where immovable property is attached, the Recovery Officer may, instead of directing a sale of the property appoint a person as receiver to manage such property.

➢ Duties of the Receiver

(1) Every Receiver so appointed shall –

(a) furnish such security (if any) as the Recovery Officer thinks fit, duly to account for what he shall receive in respect of the property.

(b) submit his accounts at such periods and in such form as the Recovery Officer directs;

(c) pay the amount due from him as the Recovery Officer directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

(2) The Receiver shall maintain true and regular accounts of the receivership and shall in particular maintain a cash book in which shall be entered from day to day all receipt and payments and also a ledger. He shall also maintain a counterfoil receipt book with the leaves numbered serially in print, from which shall be given as far as possible, all receipts for payments made to the Receiver.

(3) Unless the Recovery Officer otherwise directs, the Receiver shall, as soon as may be after his appointment, open an account in the name of the receivership in such Bank as the Recovery Officer may direct and shall deposit therein all moneys received in the course of the receivership immediately on receipt thereof save any minimum sums that may be required for meeting day to day current expenses. All payments by the receiver shall, as far as possible, be made by cheques drawn on the Bank Account.

(4) Unless otherwise ordered, a Receiver shall submit his accounts once in every three months. The first of such accounts commencing from the date of his appointment and ending with the expiry of three months there from
shall be submitted within fifteen days of the expiry of the said period of three months and the subsequent accounts brought down to the end of each succeeding period of three months, within fifteen days of the expiry of each such period of three months.

➢ The Recovery officer may, by special or general Order, fix the amount to be paid as remuneration for the services of the Receiver.

➢ Duration of the office of Receivership:-

There is no express provision in the Schedule for fixing the term or removal from office, of the receiver. The expression “management..... may be withdrawn at any time” indicates that the receiver holds office at the discretion of the Recovery Officer. This is also supported from the language of the penultimate paragraph of Form No ESICP 25. As a Rule, a receiver should not be allowed to continue in office if he fails to comply with the Recovery Officer’s Orders to submit his accounts.

13. The Recovery Officer can proceed to realize the amount in arrears by

“Arrest and Detention” of the Defaulter as detailed below:

➢ The Recovery Officer shall issue a Notice in form ESICP 26 to the Defaulter to show cause as to why a warrant of arrest should not be issued when he/she is satisfied that the Defaulter has dishonestly transferred, concealed or removed any part of his property after execution of the certificate in form ESICP 2 or the Defaulter has the means to pay the arrears, but refuses or neglects to pay the same.

➢ In case of non appearance / non compliance against the said show cause Notice, the Recovery Officer shall issue a warrant of arrest in form ESICP 27 authorizing the SSO (Recovery) to arrest the Defaulter.

➢ The process of arrest consists of Actual Seizure or touching of a person’s body with a view to detain him.

➢ When the Defaulter appears before the Recovery Officer in obedience to the Show Cause Notice or is brought before the Recovery Officer after arrest, the Defaulter is given an opportunity to Show Cause as to why he should not be committed to the Civil Prison.
Upon conclusion of the enquiry, the Recovery Officer shall issue a Warrant of Detention in form **ESICP 28** addressed to the Officer in charge of civil prison for necessary action duly fixing subsistence allowance per day during the period of confinement in prison. The maximum period for which a Defaulter can be detained in prison is 6 months.

The Recovery Officer shall issue an Order of release in form **ESICP 29** on the ground that: the Defaulter has paid the full amount of the certificate including other charges to the officer in charge of the civil prison; when the Defaulter has disclosed the whole of his property and has placed it at the disposal of the Recovery Officer; on grounds of illness of Defaulter. Re-arrest on same default not possible.

Ladies, minors and persons of unsound mind are exempt from arrest.

14. The Recovery Officer can also proceed against the buyers or lessees of the said property by invoking Section 93-A of the Act followed by Bank Attachment/Property Attachment against them by treating them as deemed Defaulters.

15. In case of closure of the Unit, the movable/immovable property belonging to the said Defaulting Unit should be attached by duly executing the inventory and panchanama in accordance with the existing procedure. (only in case of proprietorship of partnership units)

16. In case the Defaulting Unit is not in existence, the Principal employers or the Immediate Employer’s residential property alongwith the furniture and fixtures should be attached after completing the process of panchanama etc.

17. Where the employer has expired the Recovery Officer shall issue Notice under Section 39 (5) of the ESI Act read with rule 85 of the Second Schedule to the IT Act, 1961 and rule 60 of the ITCP Rules, 1962 (except arrest and detention) to the legal heirs in form **ESICP 31** to clear the amount due within 15 days.

18. Where the unit is not in existence, but the whereabouts of the Defaulter is known, the procedure for “Arrest and Detention” should be followed to realize the amount due under the Act.
CHAPTER XVIII

CONDUCT OF AUCTION

18.1 What is auction? - Rules 43 and 44 of the Second Schedule deal with auctions. A public auction has been described as “the proceeding at which people are invited to compete for the purchase of property by successive offers of advancing sums”. Where bids are not invited there cannot be a sale by public auction. A sale for a predetermined, nominal sum cannot be held to be “sale by public auction” in the absence of any provision for such sales in the statute. As has been held by the Supreme Court, the power of the Government to effect a sale of property of the defaulter for arrears of revenue by summary process is a special process resting on public grounds, and limitations on that power should be strictly construed.

18.2 Who is to hold auction? - Rule 13 of the Second Schedule empowers the Recovery Officer to direct any officer to attach and sell movable or immovable property in the course of recovery proceedings. Generally the SSO (Recovery) is directed to perform the task. If however, the Recovery Officer considers that it will be more advantageous to appoint a person other than an official subordinate to him to sell a property, he may appoint a fit person for the purpose and fix the remuneration to be allowed to him for rendering such services and the remuneration payable to such person shall be regarded as the cost of the sale. The person conducting the sale must submit a report of the sale to the Recovery Officer. He should also remit the money collected from the auction purchaser into the ESI Fund Account No.1.

18.3 One of the most important duties of the Recovery Officer is to conduct public auctions. This aspect of the work demands some of the best qualities of the Officer. It requires leadership tact, ability to recognize, capacity to deal with the public, tenacity, patience and above all good public relations. A public auction has to be meticulously planned, methodically organized and carefully executed.

18.4 Pre-auction preparation: -

As in the case of proclamation of sale, so in the case of an auction, a large amount of preliminary work has to be done by the Recovery Officer. An officer who has done his home-work will be able to handle the auction with ease and efficiency. The ensuing paragraphs deal with pre-auction preparation:

(a) Advertisement through newspapers etc.: - The first step is to advertise the auction. The Recovery Officer may, in his discretion, get an auction notice published in the official gazette, or a local newspaper, or both. The publication of the auction
notice in the official gazette is deemed to be registered notice to every member of the public and hence legally more effective. However, from a practical point of view, publication in local newspapers is most effective. The nature and extent of advertisement coverage will depend upon the nature and value of the property put up for sale. If the property is petty and remotely situated, local distribution of hand bills announcing the sale by public auction will suffice. If the property is fairly big, but is likely to attract only local purchasers, then an insertion in the local dailies will do. If, on the contrary, the property is valuable, the demand for which may emanate from all parts of India, it will certainly be advisable to get the auction advertised in all the national dailies. The aim and objective of advertising a sale by public auction is to attract as many bidders as possible, so that hopefully, the property may fetch the best price possible. The nature and extent of advertisement, its timing, its periodicity etc., must be geared to the objective aforesaid.

(b) Nature of particulars required:-

(A) Movable property: The next step is to ensure that all the required particulars of the property are collected and kept ready. If the property to be sold is, say, a motor car, the Inspector must have with him the registration certificate, the insurance policy, a letter from the Road Transport Authority regarding the arrears due, and any other information necessary. In the case of jewels and jewellery, a certificate from the goldsmith regarding the weight and value thereof must also be obtained. In the case of articles like; refrigerator, washing machine, television set, music systems, computers including personal computers, transistor, cameras, tape recorders etc., it is always better to have them valued by the authorised dealer. Minor defects in the instruments may be got repaired, so that they may fetch a better price. The expenses of repairs can be treated as costs. Wherever possible, the estimate of the value of the properties may be obtained in writing from the persons who deal in them. The Inspector must prepare a list of all the articles with the approximate value thereof and keep it ready at the time of the auction.

(B) Immovable property:-

(i) In the case of land, the following data/ documents will have to be collected:

➢ The title deed of the property or if the title deed is not available, a copy of the patta certified by the Tahasildar;
➢ A nil encumbrance certificate from the Sub-Registrar;

➢ A letter from the Municipality regarding the arrears of municipal taxes;

➢ A similar letter regarding the arrears of land revenue;

➢ A plan of the entire property;

➢ Details of the area of the property certified by the Surveyor;

➢ A Certificate from the Collector for land acquisition that the property has not been notified for acquisition.

In the case of agricultural land, the particulars of the nature of the soil, the crops grown and the type of tenancy will also have to be gathered.

(ii) House Property:– In the case of buildings, the requisite date will include the plinth area of the building, the number of rooms contained in it, the age of the building, the type of construction, the names of the tenants and the amount of rent paid by them and the dates of commencement of the tenancies. The last item of information will enable the Corporation to see whether the building had been let out unauthorized (i.e., without the permission of the Recovery Officer) subsequent to the date of service of the demand notice (ESICP 2).

(iii) Machinery:– In respect of machinery, the manufacturer’s name, the year of manufacture, the year of purchase, the probable market value and other technical data must be collected attached.

(c) Terms & conditions of the auction:– The terms and conditions of the auction must be prepared, cyclostyled and kept ready for distribution amongst the bidders. A specimen of the terms and conditions are given below for inference:

(i) Terms and Conditions of Sale of by Public Auction

General

1. The particulars mentioned in the sale proclamation have been stated to the best of the information of this office but this office shall not be answerable for any error, mis-statement or omission in the proclamation of sale.
2. So far known to this office there are no claims, liabilities or encumbrances.

3. So far known to this office there are no arrears of Municipal tax, or other taxes but if there are any, if the auction price obtained what is due from the defaulter to the Corporation then from out of the excess amount such Municipal tax arrears etc., will be paid if there is no excess such taxes will not be paid, by the department and the purchaser of the property has to take the property subject to payment of taxes.

4. The amount by which each bidding is to be increased shall be determined by the SSO (Recovery) conducting the sale. In the event of any dispute arising as to the amount of bid, or as to the bidder, the lot shall at once be again put to auction.

5. The property will be normally sold in the same order in which they have been shown in the proclamation of sale.

6. Each bidder should be qualified to bid at the auction.

7. Any bidder if he is bidding in behalf of a third party should exhibit an authority letter issued to him by the said third party.

8. Each bidder should clearly state the name and address of himself, if he is bidding for himself or the name and address of a third party on whose behalf he is bidding.

9. There is a reserve price fixed and if the highest bid is less than this reserve price even though the SSO (Recovery) conducting auction must have knocked down in favour of the highest bidder the Recovery Officer in his discretion may decline to accept such bid.

10. If the price offered appears to be clearly inadequate also the Recovery Officer may decline to accept the bid.

11. The SSO (Recovery) conducting the sale shall have the discretion to adjourn the sale for any reason subject to the provisions of the Second Schedule to the Income-tax Act, 1961. There is no necessity for fresh proclamation sale to be issued if the adjournment is for a period of not more than 30 days.
12. An amount of 2% of the purchase price up to Rs.1,000/- and 1%
of the purchase price for the amount exceeding Rs.1,000/- willbe collected from the purchaser as poundage. This will be theonly extra expenses to be incurred by the purchaser.

13. Two or more persons can join together and bid but they shoulddeclare their specific shares at the time of auction. In the absenceit will be deemed they have equal shares. Only one sale certificatewill be issued in case of immovable property, however, in theirjoint names. If the names and shares are mentioned such personsget right for that share in the property.

14. The SSO (Recovery) conducting the auction may insist on a suitabledeposit amount by all the bidders who are taking part in theauction. The deposit amount in the case of the successful bidderwill be adjusted towards the bid amount. In the case ofunsuccessful bidders the deposit amount will be returned atthe close of the auction.

15. All the bidders should note that in case the full amount ofarrears due for which the proclamation of sale has been givenis paid before the conclusion of the auction, the auction willautomatically become cancelled. On no account the bidders canclaim any costs, expenses or other compensation for their havingattended and participated in the auction. Similarly, in case thereis any stay from any authority including the Court, the auctionwill be postponed or cancelled without any further notice andthe persons participating in the auction cannot claim any damagesetc., for such postponement.

16. Presence in the auction or participation in the bid shall be deemedto be an acceptance of the conditions specified here.

17. The SSO (Recovery) conducting the auction reserves the right toprevent any individual from participating in the bid if he is satisfiedthat such an individual’s presence may impede the progress ofthe auction.

(ii) Further terms & conditions of sale by public auction of movableproperties

1. The entire price shall be paid at the time of the sale or as soonthereafter as the Inspector conducting the auction directs and
in default of payment the property shall forthwith will again be put up for auction.

2. After the payment of the price the article will be handed over on the spot and a certificate of sale will be issued by the SSO (Recovery).

3. The goods will be sold on the assumption that the bidders have inspected the lots and have known that they are buying whether they have actually inspected them or not and no complaints as to the quality, quantity, size, measurements, breakage, number, weights etc., of the goods will be entertained from the buyers by weight or number and the purchaser fails to obtain delivery of the whole or a portion of the goods sold, he shall not be entitled to make any claim other than for proportionate refund of the value of the undelivered quantity. He shall not be entitled to claim any damage, loss or profit, interest or compensation, on any account.

4. The goods sold will have to be removed by the buyer from the place of the storage within the period permitted by the Inspector conducting the auction. The purchaser will have to make his own arrangements for the transport and he will not be entitled to claim any facility or assistance for transport from this department.

5. The goods shall remain in every respect at the risk of the buyer from the time of acceptance of his bid and the department shall not be under any liability for the safe custody or preservation thereof from that date.

(iii) Further terms and conditions of sale by public auction of Immovable Property

1. An amount of 25% of the purchase price should be paid to the SSO (Recovery) conducting the auction as soon as the auction is knocked down and in default of payment, the property will be again put up for auction. The balance of 75% of the amount together with poundage fees shall be paid to Recovery Officer on or before 15th day from the date of the sale. Under no
circumstances, this time of 15 days can be extended by any authority. If the amount is not so paid then out of the 25% of the amount paid the costs of the auction will be deducted and the balance may be forfeited to the Corporation according to the discretion of the Recovery Officer.

2. The sale of immovable property will be confirmed after 30 days after the sale and only on the confirmation of the sale it becomes absolute. If the entire arrear is paid by the defaulter before the expiry of 30 days then the sale will become automatically cancelled.

3. For any reason if the sale is not confirmed but is set aside, then the entire purchase money paid will be refunded to the highest bidder together with interest at such rate as will be allowed by the Recovery Officer and also with an extra 5% of the money in certain circumstances.

4. The entire money paid by the purchaser will not be credited to the ESI Fund A/C No 1 until confirmation but will be kept with the Recovery Officer himself under his personal custody. In case the sale is set aside, the amount can be refunded immediately without any necessity for issuing a refund order by the concerned Recovery Officer.

5. After the confirmation of the sale of immovable property, a certificate in form ESICP 23 will be issued. The original of the sale certificate is liable for stamp duty and a further duty of Rs.4.50 is also chargeable on the copy of the sale certificate to be forwarded to the Sub-Registrar. These charges (which may vary from State to State) are to be borne by the auction-purchaser. The original sale certificate thus issued will be the title for the property and it has the same value as a Sale Deed and it does not require the Registration by the purchaser. Thus, the auction-purchaser is saved expenses of registration etc. This office itself will send a copy of the sale certificate for registration to the concerned Sub-Registrar for making necessary entries in his Registers.
6. Along with the sale certificate as far as possible, a plan of the property also will be issued.

7. After confirmation of the sale and after the issue of the sale certificate the delivery of the immovable property will be made by a beat of drum at the locality announcing that from the date of the sale, it has become absolute and the purchaser has become owner of the property.

8. In case the property is occupied by any tenant the tenant cannot be evicted by this office. However, an order will be made declaring the purchaser as the owner of the property from the date the sale has become absolute and a copy of it will be served on the tenant and affixed on the property and the proclamation will be made by beat of drum. The tenant will automatically become the tenant of the new purchaser and from the date of purchase the new purchaser desires to evict the tenant he has to take recourse by himself in accordance with law by approaching the rent recovery Officer or other authority. The position regarding the lessee of agricultural lands also is exactly the same.

9. In case the property is occupied by the defaulter himself or any other person on his behalf who is not a tenant then the purchaser is at liberty to go and take possession of the property. However, if any resistance is offered either by the defaulter or any person on his behalf, if an application is made by the purchaser under Rule 39 of the Income Tax Certificate Proceedings Rules, 1962, then efforts will be taken to put the purchaser in the possession of the property and if need, by removing the defaulter or any other person on his behalf who is obstructing the possession of the property.

10. In case of agricultural lands, if there are any standing crops on the lands the land is sold without any right for the standing crops. The standing crops will continue to belong to the person or persons who are the owners thereof in whatever capacity it may be. The purchaser of the land should live access to such owners to render all such operations which are required to ripen
the crops and should also give free access to such owners for cutting the crops and removing them after they are fit for harvest.

11. As far as possible, efforts will be made to obtain a nil encumbrance certificate from the Sub-Registrar but the purchaser cannot demand as of right for such certificate.

(d) Fixation of Reserve Price: The reserve price is the minimum stipulated price below which no bid will be accepted. Where a reserve price is fixed and the bid amount falls short of it, the Recovery Officer /SSO (Recovery) conducting the sale shall not accept the bid. A reserve price is generally fixed to protect the interest of the decree-holder-the Recovery Officer here. The Recovery Officer should fix the reserve price or engage a Government approved Valuer for valuation of the property (Land and Building) and fixing its reserve price. This reserve price is to be indicated in the proclamation in ESICP17. The Recovery Officer is competent to order auction without fixing a reserve price in cases where, on the earlier occasions when the property was put up for sale by public auction, there were no bidders, or the bids made were less than the reserve price. In such cases, it is advisable to obtain the prior permission of the Director General /Insurance Commissioner of the Corporation to notify the fact that no reserve price has been fixed. It is pointless to hold several in fructuous auctions when the bids do not match the reserve price.

(e) Whether restrictions imposed by Urban Land (Ceiling and Regulation) Act apply to recovery proceedings? - According to Instruction No.1103 issued by the CBDT vide letter no. F.No.403/4/77-ITCC dated 28th September, 1977, the restrictions on transfer of land imposed by sub-section (3) of section 5 and sub-section (4) of section (10) of the Urban Land (Ceiling and Regulation) Act apply only to voluntary sales, and not to involuntary sales like acquisition proceedings under Chapter XXA of the Income Tax Act, 1961. Since the restriction on transfer of land imposed by the Urban Land (Ceiling and Regulation) Act is not applicable to the sale effected by the Recovery Officer under the provisions of the Second Schedule to the Income Tax Act, 1961, it is not necessary to give notice to or to apply for permission of the competent authority under sections 26 or 27 of the Urban Land (Ceiling and Regulation) Act. However, the sale should be made and the possession given to the auction purchaser before the notification vesting the property
in the State Government under section 10(3) of the Urban Land (Ceiling and Regulation) Act is issued. For, once the notification is issued under the said section, the land would vest in the State Government and consequently, would cease to be the property of the owner/transferor. The property could not then be the subject matter of auction sale in recovery proceedings under the Income Tax Act, 1961.

(f) Venue of auction: (arrangements to be made) the choice of the venue must obviously be dictated by considerations of convenience and the availability of space. Where it is decided to hold the auction in a big hall, seating and lighting arrangements must be made and a public address system installed in advance. Adequate arrangements should be made for proper display of the movable properties coming up for sale. Drinking water should be supplied. Where the auction is expected to last the whole day or a greater part of the day, tea, coffee or cold drinks may be served. The cost of the beverages will of course be treated as auction expenses and recovered from the defaulter.

At times, the Department may be forced to hold the auction not in a closed hall or room, but in the open. In such cases, shamianas or tents should be hired and erected and the arrangements detailed in the preceding Para made in advance.

Boldly, printed notices and banners may be displayed at the auction venue, supplemented on the date of the auction by the beating of drum and announcements over the public address system.

18.5 On the date of the auction:

(a) The Recovery Officer should reach the venue well in advance and check the arrangements made. He should take along with him the SSO (Recovery) who shall conduct the auction and sufficient number of clerks and two Group D officials to assist in the course of the auction. The services of the clerks could be utilized in the preparation of bidders list, bidding sheet, cash receipts, sale certificates etc. The Group D officials can help distribute copies of the terms and conditions etc.

(b) Who may participate in the auction? The auction has to be commenced at the exact time indicated in the proclamation of sale. If there is any delay, the reasons
for the delay must be announced on the spot. Anyone can participate in the public auction, but where the Recovery Officer / SSO (Recovery) conducting the auction is of the opinion that the presence of any person would hinder the progress of the auction; he has the power to prevent such person from participating in the auction. He can also expel those who create trouble when the auction is in progress.

(c) Bidding by the Authorised Officer when permissible:- A new rule 59(1) in the Second Schedule to the I.T. Act, 1961 has been inserted w.e.f. 1-10-1975 by Taxation Laws (Amendment) Act, 1975, by which the Authorised Officer can bid at the auction if the following conditions are satisfied.

(i) An earlier sale where reserve price had been specified in the proclamation under Rule 53(cc) had been postponed for want of bids equal to or more than the reserve price; and

(ii) The Director General / Insurance Commissioner of the Corporation have authorised to bid for the property on behalf of the Corporation.

In such cases, the authorisation issued by the Director General / Insurance Commissioner should be deposited with the Recovery Officer.

(d) Identification of the real bidder :- Rule 59(2) of the Second Schedule aims at identifying the real bidder. All bidders are required to declare if they are bidding on their own behalf or on behalf of their principals. Where a bidder is acting only as an agent, he has to deposit with the Recovery Officer/ SSO (Recovery) conducting the auction the authority from his principal. If he fails to do so, he should not be allowed to bid and if he bids, his bid should be rejected. The Recovery Officer/ SSO(Recovery) conducting the auction should also insist on some initial deposits from all persons who intend to bid in the auction with a view to eliminating those who are not at all interested in bidding but have just come to witness the auction.

(e) Inspection of property by bidders and the mode of conducting auction :- As the auction commences, the SSO(Recovery) conducting the auction must read out the full description of the property as given in the proclamation of sale and also mention the value of the property, its encumbrances etc. If the bidders desire to inspect the property, movable or immovable, the SSO (Recovery) must permit the inspection. If necessary, he may take them round the property and answer all the questions they may like to ask. Thereafter, all the bidders will assemble
at the site of the auction. Then the Inspector must read out the terms and conditions of sale. It will be advisable to obtain the signatures of all the bidders on one copy of the terms and conditions in token of having been apprised of the terms and conditions.

The Recovery Officer/ SSO (Recovery) conducting the auction should then fix the rate at which each bid should be increased. He has no doubt the discretion to fix the rate; however, the rate must be commensurate with the value of the property. Thus, if the property is worth Rs.10,000, a rate of increase of Rs.100 will be quite reasonable. If the value of the property is say Rs.1 lakh, any rate of increase less than Rs.1,000 may not be proper. The Inspector may also announce that the rate of increase itself may be changed according to the circumstances.

(f) The bidding sheet and bidders list (preparation of):- A bidders list indicates the names of the bidders, their age and profession and the amounts deposited by them. The bidder’s signatures are obtained on the list. The particulars of the public auction are stated at the top of the list. A specimen of the bidders list is given at Appendix 6.

A bidding sheet incorporates the names of actual bidders and the amounts bid by each of them right from the beginning. To illustrate Let A, B & C be the bidders. A opens the auction with a bid of Rs.1,000, B responds with a call of Rs.1100, which is followed by Cs bid of Rs.1400 which is raised by A to Rs.1500. Now, against A the figures 1000 and 1500 are shown, and against B and C the figures 1100 & 1400 respectively. The bidding sheet thus enables one to find out the amounts bid by each bidder in the course of the auction of a particular item of property. At the end of the auction, when the property is knocked down in favour of A, the SSO (recovery) conducting the auction records an entry at the bottom of the bidding sheet to the effect that the property was knocked down in favour of A for a sum of Rs.1500. If the sale is subject to confirmation by the Recovery Officer, a suitable entry to that effect is also to be recorded. The signature of two witnesses, preferably of those who participated in the bid should invariably be obtained on the bidding sheet. A specimen of bidding sheet is given at Appendix 7. At the commencement of the auction, the bidders list is prepared and as the auction is in progress, the bidding sheet is filled in.

(g) Announcement regarding bidders and the amount of bid:- In the course of the auction, the name of the bidder and the amount of bid must be loudly and clearly announced. As far as possible, long gaps of time between one bid and
another should be avoided. Though there is no rule regarding how much time should be allowed to elapse before the next bid, long gaps are apt to create confusion and should therefore, be avoided.

(h) Adjournment of bidding: - If the biddings do not cease before the close of the day, the auction can be continued the next day. There is no limit to the continuance of the auction on such grounds. Should it however become necessary to adjourn the auction to another day for any other reason, an endorsement to that effect must be made on the bidding sheet and the signature of at least 2 bidders obtained. The date, time and place of the postponed auction must be clearly stated. Failure to do so is a material irregularity. Rule 15 of the Second Schedule provides the manner in which adjournment can be made. No adjournment can be made for a period beyond 30 days.

(i) Knocking down of property:- A property is knocked down in favour of the highest bidder and this is indicated by the fall of the auctioneer’s hammer. When the property is knocked down, the SSO (Recovery) conducting the auction must announce openly that the property has been knocked down in favour of the successful bidder. Then he should make the following endorsement on the bidding sheet sign it, and obtain the signatures of the auction purchaser and two witnesses, preferably two of the unsuccessful bidders.

"The property bearing No. ________________ auctioned today for the realisation of the arrears in the case of Shri ________________ has been knocked down in favour of the highest bidder Shri ________________ for a sum of Rs. ________________ today at ________________ subject to confirmation by the Recovery Officer (in case of immovable property)".

### 18.6 Post Auction follow up :-

(a) Procedure for payment of price:

(i) Movable property-Where movable property is sold by public auction, the entire price bid by the highest bidder is to be paid on the spot, together with what is called poundage. Poundage is the commission or fee collected upon the money realized by an execution. It is payable on the amount of sale by the purchaser of property as soon as the sale is completed at the rate of 2% of such gross amount up to 1,000/- and at the rate of 1% on the excess over Rs.1,000/-. For the purpose of calculation of poundage, the bid
amount is broken down into multiples of Rs.25 and the rate applied to each lump. In other words bid amounts up to Rs.1000 will bear poundage calculated at 50 p. for every Rs.25 or part thereof; and the excess over Rs.1000 will bear poundage calculated at 25 p. for every Rs.25 or part thereof. The amount collected including poundage is to be deposited into ESI fund A/c No.1 forthwith by the SSO (Recovery) conducting the sale.

On the payment of the bid amount plus poundage by the successful bidder, the movable property must be delivered to him, together with a cash receipt and a sale certificate in Form No. ESICP 19. An acknowledgement in token of having received the property must be obtained from him.

Cash payment must be insisted upon and payment by cheque discouraged. Though ordinarily on the spot payment must be insisted upon, the officer conducting the sale may, in his discretion, allow the bidder sometime for payment of the bid amount including poundage. The property in question and the related sale certificate will of course be delivered to the auction purchaser only after the payment is received.

(ii) **Immovable property:** In the case of immovable property, the successful bidder is required to pay 25% of the purchase price to the SSO (recovery) conducting the auction as soon as the auction is knocked down and the balance of 75% of the amount together with poundage fees shall be paid to the Recovery Officer within 15 days from the date of the sale. These requirements are mandatory and unless these are fulfilled, there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him. The T.R.O. has no power to extend the time limit for payments. The T.R.O. has, however, the discretion not to forfeit the deposit for failure to pay the balance of the purchase price. But he is bound to put up the property for resale, as resale in such cases is obligatory.

(b) In the cases where the balance of amount is paid within the stipulated 15 days time, the sale can be confirmed by the Recovery Officer, only if no petitions for setting aside the sale under rules 11, 60, 61 or 62 are filed. Even here, in as much as petitions for setting aside the sale can be filed any time within 30 days from the date of sale, the sale can be confirmed only after the 30 day period is over. In cases where petitions are filed under the said rules, the sale cannot be confirmed unless the petitions are considered and rejected. If the petitions are
allowed, the question of confirming the sale does not arise. Whenever the sale is confirmed, an order of confirmation must be issued in Form No. ESICP 22, followed by a certificate of sale in Form No. ESICP 23. The sale becomes absolute only on such confirmation.

(c) Default of payment and its repercussions: When the highest bidder fails to make the 25% initial deposit or after having made the initial deposit, defaults in paying the balance amount within the prescribed period, the property will have to be resold by public auction. Where the highest bid at the second auction exceeds the payments made by the highest bidder in the first, it is open to the Recovery Officer under Rule 58 of the Second Schedule to forfeit the payments made by the highest bidder in the first auction, if he has not already done so prior to the holding of the second auction. It may also happen that the highest bid in the first auction is more than the highest bid in the second auction. In that case, it is open to the Recovery Officer to take action under Rule 14 to recover from the defaulting purchaser the difference between the two bids.

(d) Co-owner of property gets preference: A co-owner of the property that is put to auction sale gets preference as a purchaser where he bids along with other purchasers. There should be a definite bid from the co-owner in the auction sale and not a mere claim to pre-emption before a property is knocked down. If the co-owner bids the same sum as the highest bidder, the co-owner’s bid should be accepted (Vide Rule 44 (3) and 68 of Second Schedule).

(e) Submission of report by SSO (Recovery): When the auction is over, the SSO (Recovery) has to give to the Recovery Officer a report of the entire proceedings, indicating the name of the highest bidder and the bid amount. In case any incident occurs at the time of the auction, the Inspector should have a Panchanama prepared.

Checklist for the use of SSO (Recovery):

A. **Checklist of articles to be carried to the auction site:**

1. Files
2. Revenue Recovery Manual
3. White papers
4. Carbons
5. Pins  
6. Ball-point pen  
7. Stamps  
8. Ink pad and rubber stamp of SSO (Recovery)  
9. Gum bottle  
10. Drum  
11. Tags  
12. Requisition forms for Police assistance  
13. Paper weights  
14. Microphone  
15. Shamiana  
16. One large table  
17. Necessary number of chairs  
18. Bidding sheets  
19. Bidders list  
20. Tape  
21. Terms & Conditions of sale  
22. Statement of reserve price  
23. Newspaper advertisement  
24. Pamphlets  
25. Cash receipt book  
26. Sale certificate for movables (ESI CP 19); and  
27. Identity cards  

B. **Checklist of the procedure to be adopted at the time of auction:**

1. Commence auction at the time indicated in the proclamation of sale  
2. Read out the full description of the property as given in the proclamation of sale, together with the value of the property, the encumbrances etc.  
3. Take bidders around the property for inspection. In case of movables the actual articles can be allowed to be inspected.  
4. Read out the terms and conditions of the sale.  
5. Announce the rate at which each bid has to be increased.
6. Announce the deposit to be made by the bidders.
7. Prepare bidders list.
8. As soon as bids are made, fill in the bidding sheet.
9. Do not allow long time gap between one bid and another.
10. Reserve price should not be disclosed.
11. In case the auction is adjourned, make a suitable endorsement on the bidding sheet, and obtain signatures of at least two of the bidders as witnesses.
12. When the property is knocked down, make a suitable endorsement on the bidding sheet, sign it and obtain signature of the highest bidder and also the signature of the last two other bidders as witnesses.
13. Collect in cash 25% of the bid amount in the case of immovable property, and the entire amount together with poundage in the case of movables.
CHAPTER XIX

REGISTERS TO BE MAINTAINED BY THE RECOVERY OFFICER

19.1 Following is the list of important Registers with which the Recovery Officer and SSO (Recovery) should be familiar:

1. Register of Recovery Certificates received and recovered. (Certificate Control Register)
2. Register of Certificates received from other regions.
3. Register of Certificates transferred outside the region.
4. Cheque Register.
5. Dishonored Cheque Register
6. Cash Book
7. Daily Collection Register (DCR)
8. Register of Movable & Immovable property attached and sold *(Two separate registers to be maintained)*
9. Execution Register for the attaching officer.
10. Part Payment Register
11. Register of Recovery in the case of companies in liquidation, BIFR & Sick.
12. Stay Register
13. Installments Register
14. Closed Certificates Register
15. Custody Register *(for movable property)*
16. Daily Diary
17. Prohibitory order Register *(Bank attachment Register etc.)*
18. ESICP 26/ESICP 27 Register
19. 45G orders Register *(Garnishee Proceedings)*
20. Re-opening / Abeyance/Cancelled/Withdrawn cases register
21. Appointment of Receiver Register
22. Notice to Legal Representatives register
23. Auction Register
24. Register of cases settled under “Amnesty Scheme”
25. Non-recoverable dues Register (cases covered under Rule 53 of the ESI (Central) Rules, 1950)
26. Waiver cases Register
27. Recovery vehicle movement Register
28. Contingent expenses register

Explanatory Notes:-

1) **Register of Recovery Certificates received and recovered.** *(Certificate Control Register):*

This is the most important register to be maintained by the Recovery Officer. In this register, the full particulars of the recovery certificates received; such as date of receipt of the certificate, name and address of the defaulter, his file number, period of default, particulars of the amount of arrears, action taken for recovery, particulars of amount recovered/realized etc., are recorded. As and when recovery certificates are received, they have to be serially recorded in this register. In fact, this is the Certificate Control Register which reflects the working of the Recovery Officer.

2) **Register of Certificates received from Other Regions:**

The register contains the details of certificates received from the Recovery Officers of other regions for execution. The certificates so received should be subsequently entered in the Certificate Control Register mentioned above.

3) **Register of Certificates transferred outside the Region:**

The register contains the details of copy of certificates transferred in from ESI CP 1 to another Recovery Officer outside the region for continuing the recovery proceedings from which they stood immediately before such transfer and such transfer shall not render necessarily the re-issue of any notice, warrant, proclamation, order or certificate already issued. The certificates so transferred should be entered in the Certificate Control Register mentioned above.
4) **Cheque Register:**

The Register contains details of cheques received from defaulters in execution of the certificate. (Only account payee cheques may be received.)

5) **Dishonored Cheque Register:**

The Register contains details of dishonored cheques for filing of complaint cases against the defaulters under the Negotiable Instrument Act.

6) **Cash Book:**

The SSO (Recovery) is authorized to collect cash from defaulters while effecting recovery of the arrears in the course of attachment of properties etc. (Rules 22, 47, 61 and 73 of the Second Schedule). The cash so collected should be remitted into ESIC Fund A/C No.1 within 24 hours of its collection. The Officer should scrupulously follow the detailed procedure laid down in the compilation “E.S.I. MANUAL OF AUDIT AND ACCOUNTS” (VOLUME-1) – Chapter III (Receipts of the Corporation – General Rules) for handling cash and payment of such monies into ESIC Fund A/C No.1. Some of the salient points are given below:

(i) Each Officer receiving money on behalf of the Corporation should maintain a Cash Book (A/C No. 1) wherein, the particulars of the date of collection, the receipt number, the defaulters name and the amount collected on Receipts side, and on Payments side, the date of remittance to ESI Fund A/C No.1 (by challan), the defaulters name and amount remitted should be entered.

(ii) Where the amount is collected in cash, the Officer concerned must issue a machine numbered receipt to the defaulter, quoting the number and date of Recovery Certificate against which the amount has been realised. He must also give a cross reference of the receipt number and date, the Bank challan number and date in all the relevant Recovery Certificates, and also enter on the Bank challan, the number of Recovery Certificate to which the realisation relates.

(iii) All monetary transactions should be entered in the Cash Book as soon as they occur and in any case before the close of the day. The Cash Book should be closed daily. The SSO (Recovery) should ensure that the amount collected is remitted into the nearest Authorized Bank within 24 hours of...
its collection. Under no circumstances, duplicate or copies of money receipts should be given. Should any need arise for such a document, a certificate may be given evidencing the fact of receipt of the sum in question. While on tour to outside centres, cash attached should immediately be remitted in ESI Fund A/c No. 1. In case the cash attached is beyond banking hours, the amount can be kept in the cash chest of the nearest branch office (under BM’s acknowledgment) and remitted in Bank on the next working day.

(iv) Where cheques have been accepted temporary acknowledgement of the receipt of the cheque should be given. Proper procedure should be followed in regard to receipt of cheques, maintenance of record of the cheques and their deposit etc.

(v) For verification and checking of the Cash Book by the Recovery Officer every month, the SSO (Recovery) should place all the challan chronologically in a Loose Leaf Binder. This would facilitate the checking of the remittance of the amounts into the Bank (ESI Fund A/C No.1) by the supervising audit officials.

The SSO (Recovery) should be very careful in handling cash. Where amounts are collected in mofussil stations, they should ensure that the amounts are remitted in the nearest Authorised Bank forthwith. Otherwise there is the risk of losing the money in which case they will be held personally liable to the extent of the loss. They must therefore make it a point to remit the amount into the Bank within 24 hours of its collection. If they cannot remit the amounts within 24 hours on account of, say, the inconvenient location of the bank, they must make it a point not to collect such amounts, but give the defaulter challans so that they can themselves remit the amounts on their own responsibility. On the occasions when the Officers have to handle large amounts of cash, they can seek the assistance of armed guards.

7) **Register of Daily Collection of Certified Demand:**

This Register is the source record for the collection and reduction figures to be furnished in the Monthly Progress Report. The Officer should prepare a list of collections and reductions and hand it over to the person who maintains the Register and see that the necessary entries are made. This Register helps to make entries in the main Register prescribed by the Directorate for showing the
progress of collection of certified arrears. The proforma of this register is given in Appendix 8.

8) Register of Moveable & Immovable Properties:

The attaching Officer, i.e., the Recovery Officer/SSO (Recovery), is solely responsible for the safe custody of the articles attached and brought to the office vide Rule 23 of the Second Schedule. It is therefore, necessary that the Recovery Officer/SSO (Recovery) maintains two Registers, one for the movable property attached and the other for the immovable property attached. These registers should give information regarding the name of the defaulter, date of attachment, description of the property attached, estimated value of the property, date of sale etc. The proforma evolved for the maintenance of these registers are given in the Appendix 9 and Appendix 10.

In regard to moveable articles kept in the Strong Room, it is also necessary that slips are pasted on each article giving Sl. No., name of the defaulter, the date of attachment and serial number of the Register. This would enable the Officer to locate the articles kept in the Strong Room easily when they are brought to sale or released from attachment on payment of taxes.

9) Execution Register for the attaching officer:

This Register gives the number of warrants issued and executed by the SSO (Recovery) for attachment of movable property under Rule 20 of the Second Schedule. The proforma of the Register is given in Appendix 11. This would enable the Officer to know how many warrants are pending with him for execution and the time he is taking for execution of the warrants. At any time, the Officer will be able to tell the number of warrants pending with him for execution.

10) Part Payment Register:

The Register contains the details of defaulters who have made part payment against the arrears due in execution of the certificate.

11) Register of Recovery in case of Factory/Establishment in liquidation, BIFR & Sick Companies:

A Register of Recovery in case of companies in liquidation, in BIFR & Sick Companies should be maintained by the Recovery Officer in order to ensure that the claim of recovery of arrears has been lodged with the Official Liquidator within the
prescribed time and to monitor that proper steps have been taken to recover outstanding demand. The format of the Register is given in Appendix 12.

12) Stay Register:

This Register, which contains the details of the cases in which stay has been granted, enables the Recovery Officer to monitor the cases properly. The form of the Stay Register is given in Appendix 13.

13) Installments Register:

This Register enables the Recovery Officer to see whether the defaulters adhere to the time schedule of payments in cases where installment facility has been granted. The form of the Register is given in Appendix 14.

14) Disposal Register for certificates finally disposed of (Closed Certificate Register):

The form of this Register is given in Appendix 15. The Register is meant for incorporating the details of the final disposal of cases, where ESICP 2 had been issued.

15) Custody Register (for movable property):

The articles attached by “actual seizure” are brought to the office of the Recovery Officer and handed over to the official in-charge of the Strong Room after obtaining his acknowledgement. The Strong Room In charge enters the particulars of the articles in the Custody Register. A separate slip is affixed on each article including the file number, the name of the defaulter, and date of attachment. It is pertinent to mention here that the Recovery Officer/SSO (Recovery) is directed to obtain the title deeds of the attached property from the defaulter. The Recovery Officer should maintain proper record of such attached title deeds in custody register and the same kept in the Strong Room.

16) Daily Diary:

The work done by the SSO (Recovery) day to day is to be entered in the Daily Diary to be maintained by each SSO (Recovery). This is the basic record that supplies all the information necessary for the preparation of statistical and other reports. A useful aid to memory, the Diary merits regular and meticulous attention.

17) Prohibitory orders Register (Bank attachment Register etc.):

This register contains the details of prohibitory orders issued for attaching debts (Bank Account, Fixed/Term), shares, decrees, salaries, interest in partnership firms, negotiable instruments, etc., at any time after the issue of demand notice
to the defaulter in form ESICP 2 by the Recovery Officer and the completion of the statutory period of 15 days from the service of the said notice.

18) **ESICP 26(Show Cause Notice)/ESICP 27(Warrant of arrest) Registers:**

This register contains the details of notice to show cause why the defaulter should not be arrested and committed to civil prison in execution of the certificate and subsequent issue of a warrant of arrest authorizing the SSO (Recovery) to arrest the defaulter and bring him before the Recovery Officer forthwith.

19) **45G Register**

*Garnishee proceedings, recovery through court in whose custody there is money belonging to the defaulter and recovery by means of distraint and sale of movable property as laid down in the Third Schedule of the Income Tax Rules, 1961:*

This register contains the details of Garnishee notices/orders issued to Banks/Third party who is holding money or owes money or may subsequently hold money for or on account of the defaulter for payment to the Recovery Officer in respect of the arrears. In addition, the details of recovery action taken under section 45G (4) and 45G (5) should also be entered in the said register.

20) **Re-opening/Abeyance/CANCELLED/Withdrawn cases Register:**

The Register contains details of cases where recovery certificates have been re-opened/kept in abeyance/cancelled/withdrawn from execution on account of appellate reduction, rectifications etc., under Section 45AA of the Act.

21) **Appointment of Receiver Register:**

The Register contains details of appointment of receiver in execution of recovery certificates.

22) **Notice to Legal representatives Register:**

The Register contains details of notices issued to legal representatives (Rule 85 of the Second Schedule read with Rule 60 of ITCP Rules, 1962) in execution of recovery certificates.

23) **Auction Register:**

The Register contains details of public auction made for movable (Rule 43 &44 of the Second Schedule) and immovable properties (Rule 56 &57 of the Second Schedule) in execution of recovery certificates.
24) **Register of cases settled under Amnesty Scheme:**

The Register contains details of cases settled under “Amnesty Scheme” floated by the Corporation from time to time.

25) **Non-recoverable dues register (cases covered under Rule 53 of the ESI (Central) Rules, 1950):**

The Register contains details of non-recoverable arrears due to the following reasons:

   a) factory/establishment closed for more than five years & the whereabouts of the defaulter cannot be ascertained despite all possible efforts.
   
   b) decree obtained by the Corporation could not be executed successfully for want of sufficient assets of the defaulter.
   
   c) claim of arrears is not fully met by:-
      
      i. the Official Liquidator in the event of factory/establishment having gone into liquidation.
      
      ii. the Commissioner of Payments in the event of unit being nationalized or taken over by the Government.

**Note:** The cases of individual declaring legal insolvency may be taken under the said head. The proforma of the Certificate to be issued by the Recovery Officer to the Authorised Officer is given Appendix 16.

26) **Waiver Cases Register:**

The Register contains details of cases where certificates are issued by the Recovery Officer to the Authorised Officers for waiver of the irrecoverable arrears by the Corporation under Rule 53 of the ESI (Central) Rules, 1950.

27) **Recovery vehicle movement Register (Log Book):**

The Register contains details of movement of the vehicle detailed for Recovery work for adding expenses as cost and charges in the respective cases.

28) **Contingent expenses register:**

The Register contains details of advances drawn and contingent expenses incurred during the execution of the certificate.

19.2 All the above registers are generally required to be maintained by the SSO (Recovery)/Superintendent/Head Clerk attached to the Recovery Officer.
CHAPTER XX

ORGANISATION OF WORK IN THE OFFICE OF THE RECOVERY OFFICER

20.1 As soon as the recovery certificates for recovery of arrears of contribution (C-19), interest [C-19(I)] and damages (D-19) is received from the Authorised Officers and from other Recovery Officers outside the state, the UDC/LDC in the Office of the Recovery Officer enters the particulars of each certificate in the Register for Recovery Certificates (Certificate Control Register) and mentions the serial number of the entry on the certificate for future reference. Employer-wise files are opened mentioning the name & address of the defaulter, code number and serial number of the certificate as entered in the Certificate Control Register. Employer-wise files are to be maintained, to enable clubbing of all pending certificates received in different periods at the time of distraint action and to monitor employer-wise arrears which will enable the branch to concentrate on the employers with large arrears.

20.2 The clerk then prepares the notice of demand (ESICP 2) for each certificate and puts it up to the Recovery Officer. Simultaneously on the duplicate copy of the ESICP 2, the serial number of the certificate as entered in the Certificate Control Register and date of preparation of the ESICP-2 are indicated.

On the basis of certificates relating to one defaulter, which as indicated earlier are kept in one file, an arrear sheet is prepared for each file. This sheet is prepared in three parts. In the first part, particulars of the certificates are entered. Further interest and costs etc., recoverable from the defaulter are noted respectively in the second and third parts. The payment made by the defaulter is also recorded on the arrear sheet, as and when they are made.

20.3 The notices of demand (ESICP 2), duly signed by the Recovery Officer are then handed over to Receipt & Issue section for dispatch. Sometimes the ESICP 2 is served through “Notice Servers”. Each Notice Server is given a Process Servers Register in which the notices given to him are entered and the progress of the service of notices watched after service, the date of service is noted by the clerk who maintains the file of the defaulter.

20.4 Recovery work is then allocated to the SSO (Recovery). The files given to the SSO (Recovery) should be duly entered in the control register maintained by him for this purpose. Once a week, the SSO (Recovery) submits to the Recovery Officer the files together with a note explaining the action taken thereon. With the help of the notes,
the Recovery Officer, besides monitoring the work of the SSO (Recovery), plans the future course of action to be taken.

20.5 The details of movable and immovable properties attached by the Recovery Officer/SSO (Recovery), from time to time are entered in the Register maintained for the purpose. The movable properties and title deeds of attached movable properties attached by actual seizure and brought to the Office of the Recovery Officer are handed over to the official in charge of the custody room.

20.6 When the time is ripe for selling the properties attached, the Recovery Officer assigns to the SSO (Recovery), the task of issuing proclamation for sale and holding of auction. When the sale is complete, the SSO (Recovery) shall submit a report to the Recovery Officer.

20.7 The cash collected by the Recovery Officer/SSO (Recovery), is either directly remitted by them into ESI fund A/C No.1 or handed over to the official authorised to deal with cash. The official authorised to deal with cash on his part, enters the details of cash collected in the Cash Book and thereafter remits the amount into the ESI fund A/C No.1. Suitable entries are then made in the Recovery Control Register. The triplicate portion of the challan is handed over to the clerk maintaining the recovery files, who in turn, makes suitable entries in the files.

20.8 When the certified amount is fully collected, the certificate is closed and the fact recorded in the register of Closed Certificates. The relevant file then is lodged in the record room.

20.9 The work of a Recovery Officer is conveniently classified under two heads, viz., work relating to old certificates in arrears and that relating to current certificates. In order that the work might be controlled better, efforts to settle the old certificates may be taken up on priority.

20.10 Duties of the SSO (Recovery) posted in the Office of the Recovery Officer:

The duties of the SSO (Recovery) may include any or all of the following items of work:

1. Service of the Notice of Demand under Rule 2 of the Second Schedule (Form No. ESICP 2).
2. Execution of warrants for attachment of movable property (Form No. ESICP 3)
3. Execution of proclamation for sale of movable property (Form No. ESICP 17).
4. Execution of orders of attachment of immovable property (Form No. ESICP 12).
5. Execution of proclamation for sale of immovable property (Form No. ESICP 17).
7. Delivery of possession of properties to the auction purchasers [IT (CP) Rules 39 to 47].
8. Acting as a Receiver for management of business/immovable property of the defaulter (Rules 69 to 72 of Schedule II);
9. Execution of arrest warrants (Rule 73 of Schedule II).
10. Handling of cash before remittance to the ESI fund A/C No.1.
11. Conducting enquiries relating to valuation of properties in connection with the duties enumerated earlier; and
12. Such other duties as may be entrusted to him by the Recovery Officer from time to time etc., enquiries for furnishing irrecoverable certificates.
13. Collecting information about Employers properties for attachment. Follow-up with Banks to confirm attachment, and remittance to ESIC in case of availability of funds.

20.11 Duties of Supervisor/Head clerk when posted in Office of the Recovery Officer:

1. Reconciliation of employer-wise arrears of Revenue Recovery Cell with the Revenue Branches. Periodical review of employers (defaulters) files so that no cases are left unattended.
2. Checking of interest up to the date of recovery.
3. Proper action on letters of cancellation/withdrawn/kept in abeyance of certificates received from authorised officers.
4. Watching progress of recovery.
5. Maintenance of Custody Register:-
   a) Issue of acknowledgement for the attached articles and cash.
   b) Making of entries regarding particulars of the attached articles in the custody register.
   c) Affixing of separate slips on each attached articles indicating the file number, name of the defaulter and the date of attachment.
d) Maintenance of special cash book for collection and receipt of cash from the SSO (Recovery), issue of acknowledgement slips and remitting the amount to ESI fund A/C No.1.

e) Maintenance and making of entries in the Recovery Control Register.

f) Keeping of Cash Receipt Books for receiving cash from defaulters in the office in the absence of SSO (Recovery).

6. Ensuring proper maintenance of:

   a) Disposal Register

   b) Stay Register

   c) Instalment Register

   d) Cheque Register

7. Any other work assigned by the Recovery Officer.

20.12 Functions of UDC / LDC when posted in Office of the Recovery Officer:

1. Matter pertaining to write off of demands

2. Issue of Notices for recovery of outstanding demand

3. Preparation of list of cases (> Rs.50,000/- and above) for follow up action for recovery

4. Correspondence with the authorised officers including cancelled / withdrawn / kept in abeyance cases.

5. Preparation of distress warrant

6. Starting of files on drawing up of Recovery Certificates and proper maintenance thereof.

7. Maintenance of Recovery Control Register, watching collections and putting up cases of defaulters to Recovery Officer for action

8. Watching timely collection of arrears and taking necessary action

9. Annual verification and tally of entries in the Recovery Control Register with that of the records maintained by the authorised officers.

10. Issue of various notices

11. Preparation of challans
12. Assisting the Recovery Officer in:–
   a) Issue of reminders to defaulters;
   b) Disposal of petitions regarding stay and instalments;
   c) Imposition of fines;
   d) Levy of interest;
   e) Furnishing necessary certificates to the authorised officers regarding write off of irrecoverable arrears;
   f) Initiation and follow up of recovery matters;
   g) Sending reports of cases under Section 61 of Civil Procedure Code.

13. Calculation of interest up to the date of recovery

20.13 The functions of other functionaries such as Stenographer etc., are same as in other branches of the Regional Office/Sub-Regional Office.

20.14 Prescribed workload of Recovery Officer:

   A Recovery Officer has been notified for each Regional Office/Sub-Regional Office to recover the arrears under Section 45C to 45I of the Act.
CHAPTER XXI

SOME COMMON DIFFICULTIES IN RECOVERY

21.1 The difficulties those arise during the execution of a Recovery Certificate can be broadly classified into four categories: -

a) The correctness of the amount itself;
b) The identity of the defaulter;
c) Procedural difficulties.
d) Legal disputes.

21.2 The correctness of the amount itself:

Lack of reconciliation of the ‘amount due’ between the Authorised Officer(s) and the Recovery Officer often raises objection to the validity of the certificate by the defaulter. For this purpose, dues should be categorized as:

(a) Dues as per certificate;
(b) Further interest;
(c) Cost & Charges;
(d) Total:

Explanation: Since employer will be aware of only the amount as per C-19, whereas at the time of each attachment, up to-date further Interest would have been added, it would not be possible to distinguish to which claim the present execution has been extended, details as above will help both the Recovery Cell, Revenue Branches and also the Employer (defaulter) to identify and reconcile the payable dues.)

21.3 The identity of the defaulter:

Service of Notices in form ESICP 2 by personal service, by post, service by affixture, substituted service on the defaulter mentioned in the certificate is a major difficulty due to lack of proper identity of the defaulter.

21.4 Procedural difficulties:

➢ Attachment of movable property (other than agricultural produce) by “Actual seizure” is difficult due to lack of service of notice in form ESICP 2, non-availability of safe storage facilities, improper identification, and uncertain ownership. Here though the ownership of movable properties is by way of actual possession,
some of the movable articles could be proved to be belonging to somebody else, e.g. Car etc.

➢ Difficulty with perishable articles.

➢ Fluctuation in prices like jewellery.

➢ While proclaiming immovable property for sale, proclamation in the local language, beating of drum in the cases of important personalities or VIPs.

➢ Lack of co-operation from State Government Authorities like Tahsildar, Village Accountants, and Sub-Registrars etc. Hence identification and sale of agricultural lands and agricultural produce is difficult.

➢ Attachment and sale of business interests, coparcenary (joint heirship) interest in H.U.F. depends upon clear cut share and the only sale of interest of the defaulter in the business and interest of the defaulter in the H.U.F. No absolute title to immovable properties; in the case of business only stepping into the shoes of the defaulter.

➢ Difficulty in quantification of goodwill.

➢ Investigation under Rule 11 of the Second Schedule becomes difficult due to lack of documentary evidence in the records, non-production of documentary evidence by the defaulter and unsubstantiated claims by the petitioners.

➢ Appointment of a Receiver particularly in taking over business, share-holders in companies etc.

➢ Adjustment from Personal Deposit Accounts and sale of seized material from bank lockers establishing identity and release of valuables.

➢ Convincing other Finance Institutions in respect of their claims as Secured Creditors. Lack of co-operation makes the matter difficult itself.

➢ Arrest and detention rarely used due to obvious problems especially availability of funds under subsistence allowance and inadequate evidences build up to satisfy Rule 73 of the Second Schedule.

21.5 Legal disputes:

➢ In the Legal issues, most of the problems are on the title of the defaulter or another, or/and others and between the Central Government and the State
Government. Problems if solved by negotiations and compromises, will lead to quicker recovery.

➢ When the matter is already pending with the Official Liquidator a valid claim petition has to be made. But generally it is the experience that there will be no information of communication from the official Liquidator as to the availability or non-availability of pro-rata funds.

➢ Shares and Securities related transactions have given rise to situation wherein a future asset or asset in information could be attached and sold. But there are no procedures in this regard, e.g. Forward Contracts, Rights issues.
CHAPTER XXII

VISION OF RECOVERY MACHINERY AFTER IT ENABLEMENT

All along, the recovery is being done manually. The system of Recovery in the offices of the Corporation is to be completely computerized by making it IT enabled wherein revolutionary changes can be ushered in the recovery apparatus of the corporation. With the advent of IT enablement completely updated information should be available at any point of time. The Employer-wise arrears, stages of pendency, action taken etc., would all be available in respect of each case in the system.

The following facilities should be inbuilt in the system:

1. The Recovery Officer should be in a position to be fully informed about the basic details for proceeding with the recovery, particularly the details of the proprietor’s properties, the bank account details and the assets of the unit like movable and immovable properties, their telephone numbers, jurisdictional Police Station, Post Office etc.

2. As soon as the Recovery Certificate is issued by the Authorized Officer, all the related information will automatically get in to the system of Recovery Officer and necessary updation will be made instantaneously.

3. In the system as soon as the C-19 is issued the follow-up notices would be readily generated in the system by the due date which can be issued.

4. On the basis of the C-19s received, the details of arrears in the data base of the Recovery Officer would automatically get up-dated and the over all position of arrears would be available at any given point of time.

5. Further, in the follow-up action, issue of Prohibitory Orders, a lot of time of the Recovery branch used to be spent on up-dating of outstanding arrears and calculating further interest. But these steps would be completed by the system itself at the time of generating the Prohibitory Orders.

6. Even after the recovery process is started, all further developments like, the stay issued by the Courts, any part-payment made by the employer etc., would be available straightaway in the system of Recovery Officer also and this would completely eliminate any wrong action because of delayed receipt of communications etc.

7. All the standard forms used by the Recovery Officer for the purpose of seizure for attachment of property, auction of property, garnishee proceeding etc., would be
available in the system and with a click of a button all the recovery forms would be readily generated and any communication issued would automatically be registered in the system. As a result, it would be easy to know what the stage the recovery action is pending.

8. The information of any new step taken, further development would get entered in all the different registers of the Recovery Officer and the need of manual entries in different registers would be completely eliminated.

9. With the introduction of the system of IT Roll Out there should be no difference in information on arrears between Revenue Branches and the Recovery Branch and it would fully tally besides giving the year wise arrears, classification of arrears like interest, damages, further interest, principal amount, as well as the arrears pending with public sector undertakings, industry wise details of arrears, BIFR cases etc.

10. This information would be available through the net work, even to Hqrs., and there will be no need to make any reference to the Recovery Officers to collect this information.

11. At any given point of time the Recovery Officers would be in a position to generate and to furnish the full details of the employers who are in arrears of say Rs. 50,000/- and above, Rs. 1.00 lakh and above, Rs.2.00 lakh and above and all other classified information required for further purpose.

12. Thus, the IT enablement should completely eliminate voluminous records that were maintained and also the labour involved in manual up dating the entries in all the registers.
APPENDIX - 1

(ESICP-1 TO ESICP-31)
FORM ESI CP 1
(Under Rule 9A of ITCP Rules, 1962)

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

No. ........................................ Dated: ........................................

.......................... (name) Recovery Officer .......................... do hereby certify that the document bearing
this endorsement is true copy of Certificate No.......................... dated.......................... forwarded by the Authorised
Officer .......................... against .......................... (name of defaulter) for the recovery of an amount of
Rs..........................

I do hereby specify that out of the aforesaid amount of Rs.......................... as noted below, is to be
recovered from the defaulter by the Recovery Officer..........................

<table>
<thead>
<tr>
<th>Rs.</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part of certificate amount</td>
<td>.........................</td>
</tr>
<tr>
<td>Costs and charges</td>
<td>.........................</td>
</tr>
<tr>
<td>Interest</td>
<td>.........................</td>
</tr>
<tr>
<td>Total</td>
<td>..........................</td>
</tr>
</tbody>
</table>

(SEAL)

RECOVERY OFFICER

(106x616) (108x552) (384x518) (186x498) (186x479) (186x460) (72x636) (106x616) (108x552) (384x518) (186x498) (186x479) (186x460)
Notice of demand to defaulter
(Under Rule 2 of Second Schedule of Income Tax Act, 1961)

No. Dated:

To

.................................................

.................................................

1. *Whereas a Certificate No. ........................ dated ........................ has been forwarded by the Authorised
Officer ........................ for the recovery of an amount of Rs........................ details of which are appended
below.

*Whereas a Certificate No. ........................ dated ........................ has been forwarded by the Recovery
Officer ........................ for the recovery of an amount of Rs........................ details of which are appended
below and the said Recovery Officer has sent a certified copy of the said certificate to the undersigned
under section 45D(2) of the ESI Act, 1948 as amended, specifying a sum of Rs........................ which is to
be recovered from you.

2. You are hereby directed to pay the above sum within 15 days of the receipt of this notice failing which
the recovery shall be made in accordance with the provisions of section 45( C) to 45 (I) of the ESI Act,
1948, as amended.

3. In addition to the sums aforesaid you will also be liable for:

(a) such interest as is payable in accordance with sub-section (5) (a) of section 39 of the ESI Act, 1948
as amended.

(b) all costs, charges and expenses incurred in respect of the service of this notice and of warrants
and other processes and all other proceedings taken for realizing the arrears.

(SEAL) RECOVERY OFFICER

*Score out whichever paragraph is not applicable.

Details of the amount to be recovered

<table>
<thead>
<tr>
<th>Period involved</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributions:</td>
<td></td>
</tr>
<tr>
<td>Interest under Sec 39 (5) (a) of the ESI Act:</td>
<td></td>
</tr>
<tr>
<td>Damages under Sec. 85 (B) of the ESI Act:</td>
<td></td>
</tr>
</tbody>
</table>

Total:

.................................................
Warrant of attachment of movable property
(Under Rule 20 of Second Schedule of Income Tax Act, 1961)

No.

To

......................................
......................................

*Whereas certificate No.......................... dated .......................... has been forwarded by the Authorised Officer ......................... against .......................... (defaulter) and the sum of Rs.......................... as noted below, is due from him in respect of the said certificate;

*Whereas certificate No.......................... dated .......................... has been forwarded by the Recovery Officer ......................... to the undersigned against .......................... (defaulter) for the recovery of an amount of Rs.......................... and the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45D(2) of the ESI Act, 1948, specifying that an amount of Rs.......................... as noted below, is due from him in respect of the said certificate;

+Certificate amount / +Specified amount

Costs and charges

Interest

Total

Rs.                                    P

And whereas the said sum of Rs.......................... has not been paid in satisfaction of the said certificates;

This is to direct you to serve a copy of this warrant on the defaulter and, unless after such service the said defaulter pays forthwith the said sum of Rs.......................... together with interest at 12 percent per annum on Rs.......................... from the date of the issue of this warrant and Rs.......................... for the cost of executing this process, to proceed to attach the movable property of the said defaulter and to hold the same until further orders from the undersigned.

You are further directed to return this warrant on or before the ......................... day of .........................20......................... with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and seal at ......................... this ......................... day of .........................

(SEAL) RECOVERY OFFICER

*Score out whichever paragraph is not applicable
+Delete inappropriate words
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Prohibitory order where the property consists of debts not secured by negotiable instruments

No.
To

*Whereas ....................... (defaulter) has failed to pay the arrears due from him in respect of certificate No....................... dated ....................... forwarded by the Authorised Officer amounting to Rs....................... and the interest payable under sub-section(5)(a) of section 39 of the ESI Act, 1948 for the period commencing immediately after the said date.

*Whereas ....................... (defaulter) has failed to pay the arrears due from him in respect of certificate No....................... dated ....................... forwarded by the Recovery Officer ....................... to the undersigned amounting to Rs....................... and the interest payable under sub-section (5)(a) of section 39 of the ESI Act, 1948; and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45(D)(2) of the said Act specifying that an amount of Rs....................... is to be recovered from the defaulter.

It is ordered that ....................... (name of creditor) be, and is hereby prohibited and restrained, until further order of the undersigned, from receiving from you a certain debt alleged now to be due from you;

And that you, the said ....................... (name of debtor) be, and is hereby prohibited and restrained, until further order of the undersigned from making payment of the said debt or any part thereof, to any person, whomsoever or otherwise than to the undersigned.

Given under my hand and seal at ....................... the ....................... day of .......................
FORM ESI CP 5

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Prohibitory order where the property consists of shares in a Corporation

No.

To

(1).................................
(2)................................. (Principal Officer)
................................. (name of Corporation)

*Whereas ......................... (defaulter) has failed to pay the arrears due from him in respect of certificate No............................ dated ......................... forwarded by the Authorised Officer ......................... amounting to Rs......................... and the interest payable under sub-section(5)(a) of the section 39 of the ESI Act, 1948 as amended.

*Whereas ......................... (defaulter) has failed to pay the arrears due from him in respect of certificate No............................ dated ......................... forwarded by the Recovery Officer ......................... to the undersigned amounting to Rs......................... and the interest payable under sub-section (5)(2) of section 39 of the ESI Act; and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45D(2) of the said Act specifying that an amount of Rs......................... is to be recovered from the defaulter.

It is ordered that you, No (1) above mentioned, be, and you are hereby, prohibited and restrained, until further order of the undersigned, from making transfer of the shares in the aforesaid Corporation standing in your name or from receiving payment of any dividend thereon.

And, that you, No (2) above mentioned, are hereby prohibited and restrained, until further order of the undersigned from permitting any such transfer or making any such payment.

Given under my hand and seal at ....................... the ....................... day of .......................
Prohibitory order where the property to be attached consists of movable property to which the defaulter is entitled subject to a lien or right of some other person to the immediate possession thereof.

(Under Rule 26(1)(iii) of Second Schedule of Income Tax Act, 1961)

No.

To

........................................

........................................

*Whereas ......................... (defaulter) has failed to pay the arrears due from him in respect of certificate No............................ dated ....................... forwarded by the Authorised Officer ...................... amounting to Rs........................ and the interest payable under sub-section (5)(a) of the section 39 of the ESI Act, 1948 as amended.

*Whereas ......................... (defaulter) has failed to pay the arrears due from him in respect of certificate No............................ dated ....................... forwarded by the Recovery Officer ...................... to the undersigned amounting to Rs........................ and the interest payable under sub-section (5)(2) of section 39 of the ESI Act, 1948; and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45D(2) of the said Act specifying that an amount of Rs........................ is to be recovered from the defaulter.

It is ordered that ....................... (name of person entitled to property) be, and is hereby, prohibited and restrained, until further order of the undersigned, from receiving from you, namely, ....................... the following property in the possession of the said ....................... that is to say: to which the said ....................... is entitled, subject to your claim of immediate possession thereof;

And, that you, are hereby prohibited and restrained, until further order of the undersigned from delivering the said property to any person or persons whomsoever.

Given under my hand and seal at ....................... the ....................... day of .......................

(SEAL)

RECOVERY OFFICER

*Score out whichever paragraph is not applicable.

+ Fill in the names of the defaulter, and where the property is included in the defaulter’s property by virtue of the ‘Explanation’ to sub-section(1) of section 222 of the Income Tax Act, 1961, fill in the name of the person referred to in the ‘Explanation’. 
Notice of attachment of a decree of a civil court

No. Dated:
To The Judge of the Court of ........................................
................................................................................
Sir,

*Whereas ........................ (defaulter) has failed to pay the arrears due from him in respect of certificate No. ......................... dated ....................... forwarded by the Authorised Officer ......................... amounting to Rs......................... and the interest payable under sub-section(5)(a) of the section 39 of the ESI Act, 1948 as amended.

*Whereas ........................ (defaulter) has failed to pay the arrears due from him in respect of certificate No. ......................... dated ....................... forwarded by the Recovery Officer ......................... to the undersigned amounting to Rs......................... and the interest payable under sub-section (5)(2) of section 39 of the ESI Act, 1948 as amended; and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45D(2) of the said Act as amended, specifying that an amount of Rs......................... is to be recovered from the defaulter.

And whereas the undersigned in exercise of his powers under section 45G(4) of the ESI Act, 1948 as amended, desires to proceed with attachment of a decree of ...................... Court dated the ...................... day of ...................... made in suit no. ...................... of ...................... wherein ...................... was the plaintiff and + ...................... was the defendant and which decree is pending execution in your Court;

You are, therefore, requested to stay the execution of the said decree unless and until-

(i) the undersigned cancels this notice; or
(ii) the Authorised Officer ...................... or the above mentioned defaulter applies to you to execute the decree.

Yours faithfully

(SEAL) RECOVERY OFFICER

*Score out whichever paragraph is not applicable.

+Fill in the names of the defaulter, and where the property is included in the defaulter’s property by virtue of the ‘Explanation’ to sub-section(1) of section 222 of the Income Tax Act, 1961, fill in the name of the person referred to in the ‘Explanation’.

ESIC RECOVERY MANUAL 191
Notice of attachment where the property consists of share of interest in movable property

No.
To

........................................................................

*Whereas you have not paid the arrears amounting to Rs........................ payable by you in respect of certificate no.......................... dated ......................... forwarded by the Authorised Officer and the interest payable under sub-section(5)(a) of the section 39 of the ESI Act, 1948 as amended.

*Whereas ........................ (defaulter) has not paid the arrears due amounting to Rs........................ payable by him in respect of certificate no.......................... dated ......................... forwarded by the Recovery Officer ........................ to the undersigned, and the interest payable under sub-section (5)(a) of section 39 of the ESI Act,1948 as amended; and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45D(2) of the said Act specifying that an amount of Rs........................ is to be recovered from the defaulter.

It is hereby ordered that you ........................ (defaulter) be, and are hereby, prohibited and restrained, until further order of the undersigned, from transferring or charging your share or interest in the under mentioned items of movable property, belonging to you and ........................ and ........................ as co-owners.

Given under my hand and seal at ........................ the ....................... day of ........................

(SEAL)

RECOVERY OFFICER

*Score out whichever paragraph is not applicable.
Order of attachment of negotiable instrument
(Under Rule 30 of Second Schedule of Income Tax Act, 1961)

No.

To

....................................... (Attaching Officer)

.......................................

Whereas the undersigned has passed on the ..................... day of .....................20............. an order for the attachment of under mentioned property, which is included in the property of ..................... (defaulter) in the course of proceedings for the recovery of arrears due form ..................... (defaulter) in respect of certificate no........................ dated ......................... forwarded by the *Authorised Officer/*Recovery Officer ........................., a certified copy of which has been forwarded by the said Recovery Officer to the undersigned under Section 45D(2) of the ESI Act, 1948, as amended.

You are hereby directed to seize the said property and bring the same before me and hold the same subject to my orders.

DETAILS OF PROPERTY

Given under my hand and seal at ..................... the ..................... day of .....................

(SEAL)

RECOVERY OFFICER

*Score out whichever portion is not applicable.
Notice of attachment of a movable property in the custody of a court or public officer

No. Dated:

To

...................................
...................................

Sir,

Whereas ....................... (defaulter) has not paid the arrears amounting to Rs....................... in respect of certificate no....................... dated ....................... [forwarded by the *Authorised Officer/*Recovery Officer.......................] and the interest/damages payable under the ESI Act, 1948, as amended; *and the said Recovery Officer has sent to the undersigned a certified copy of the said under Section 45D (2) of the ESI Act, 1948, as amended, specifying that an amount of Rs....................... is to be recovered from the defaulter; and the undersigned desires to attach sums of moneys or other property, which is included in the defaulter’s property, now in your custody +;

I request that you will hold the said money or property and any interest or dividend becoming payable thereon subject to the further orders of the undersigned.

Yours faithfully

RECOVERY OFFICER

* Score out whichever portion is not applicable.
+ Here state how the money or property is understood to be in the hands of the court or the public officer addressed, on what account and other available details.
Order of attachment of property consisting of an interest in partnership property

No.

To

........................................
........................................

Whereas ..................... (defaulter) has not paid the arrears amounting to Rs.................. in respect of certificate no.......................... dated ...................... [forwarded by the *Authorised Officer/*the Recovery Officer ......................] and the interest / damages payable under the Employees, State Insurance Act, 1948 as amended; *and the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under the Employees’ State Insurance Act, 1948, as amended specifying that an amount of Rs............... is to be recovered by the undersigned from the defaulter; and whereas the said ...................... (defaulter) is a partner in the firm known as M/s.................................................................

It is hereby ordered:

(i) that the share of the said ...................... in the partnership property and profits of the said firm be and is hereby charged with the payment of the amount aforesaid due under the said certificate; and

(ii) +that ......................

Given under my hand and seal at ......................... the ...................... day of ......................

(SEAL) RECOVERY OFFICER

* Score out whichever portion is not applicable.
+ Here incorporate any other order that may be considered necessary in the circumstances.
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Order of attachment of immovable property

No.
To

........................................

........................................

*Whereas *you ........................ (defaulter) *have/has failed to pay the sum of Rs........................ payable
by *you / him in respect of certificate no........................ dated ........................ forwarded by the Authorised
Officer and the interest payable under sub-section(5)(a) of the section 39 of the ESI Act, 1948 as amended.

*Whereas *you ........................ (defaulter) *have/has failed to pay the sum of  Rs.........................payable
by *you/him in respect of certificate no........................ dated ........................ [forwarded by the Recovery Officer
........................ to the undersigned] and the interest/damages payable under the Employees’ State Insurance
Act,1948, as amended; and whereas the said Recovery Officer has sent to the undersigned a certified copy of
the said certificate under Section 45D(2) the Employees’ State Insurance Act, 1948, as amended specifying
that an amount of Rs........................ is to be recovered by the undersigned from you/the defaulter;

It is ordered that you, the said ........................ be, and are  hereby, prohibited and restrained, until
further order of the undersigned, from transferring or changing the under mentioned property which is included
in the property of the defaulter, in anyway and that all persons be, and that they are hereby prohibited from
taking any benefit under such transfer or charge .

SPECIFICATION OF PROPERTY

Given under my hand and seal at …………………………….. the …………………….. day of …………………

(SEAL) RECOVERY OFFICER

*Score out whichever paragraph/portion is not applicable.
Order to attach salary or allowances of servants of Government or Local Authority

No.

To

........................................
........................................

*Whereas ........................................ (defaulter) has not paid the arrears amounting to Rs........................... in respect of certificate no........................... dated ................................ forwarded by the Authorised Officer ................................... and the interest / damages payable under the Employees, State Insurance Act, 1948 as amended.

*Whereas ........................................ (defaulter) has not paid the arrears amounting to Rs........................... in respect of certificate no........................... dated ................................ [forwarded by the Recovery Officer .................... to the undersigned] and the interest/damages payable under the Employees, State Insurance Act, 1948 as amended; and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under the Employees’ State Insurance Act, 1948, as amended specifying that an amount of Rs………….. is to be recovered from the defaulter; and whereas the said ........................................ (defaulter) is a ........................................ (office held by the defaulter) receiving his salary and allowances at your hands;

You are hereby required to withhold the sum of Rs........................... from the salary of the said ........................................ (defaulter) in monthly installments of Rs........................... and to remit the same till the entire amount of arrears are recovered.

Given under my hand and seal at ....................... the ....................... day of .......................
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Bond (Sapurdnama)

No. Dated:

Statement of Shri .......................................................... aged ........................ son of Shri .......................................................... residing at ..........................................................

I have received notice in Form No ESI CP 2 that arrears amounting to Rs........................ are due from me in respect of certificate no.......................... dated ........................ forwarded by the *Authorised Officer/ *the Recovery Officer ..........................................................; a certified copy of which has been forwarded by the said Recovery Officer to the undersigned under section 45D (2) of the ESI Act, 1948 as amended. I offer herewith a sum of Rs........................ towards the said arrears. Regarding the balance of Rs........................, I undertake to pay the same in monthly installment of Rs........................ each payable not later than the ........................ day of each month commencing from ......................... I also undertake to pay the interest payable under section 39(5) (a) of the ESI Act,1948 as amended. I undertake not to commit any default in the payment of the instalments. I agree that if I commit any default in paying any one of the instalments within the time aforesaid, the entire amount due from me on the date of default may be recovered in entirely by such measures as the Recovery Officer considers necessary. I specify herein my assets as on this day and I agree not to sell, give away, transfer, mortgage, or otherwise alienate or encumber these assets in any way, until the entire amount due from me is paid to the Recovery Officer in full. I agree that in the meanwhile, these assets may continue to remain attached if considered necessary. I also agree to furnish two solvent sureties who will execute a surety bond in the form approved by the Recovery Officer for the due payment by me of the aforesaid dues in instalments as agreed to herein.

DETAILS OF ASSETS AS IN THIS DAY

Before me

.......................... (Signature) .......................... (Signature)

.......................... (Name) .......................... (Name)

.......................... (Designation)

Date .......................... Date ..........................

(SEAL)

*Score out whichever portion is not applicable.
Notice to Surety
(Under Rule 88 of Second Schedule of Income Tax Act, 1961)

No. Dated:

To

Whereas you are a surety for the arrears amounting to Rs............... due from ................. (defaulter) in respect of certificate no.................. dated ................. [forwarded by the *Authorised Officer/*the Recovery Officer .....................], *a certified copy of which has been forwarded to the undersigned under Section 45D(2) of the ESI Act, 1948 as amended; and whereas it has become necessary to recover the said arrears from you and you are hereby given notice that steps will be taken under all or any of the provisions under Section 45C to Section 45I of the ESI Act, 1948 read with the Second Schedule to the Income Tax Act, 1961, to recover the said amount from you together with the interest payable under section 39(5)(a) of the ESI Act, 1948 as amended, and the costs, charges and expenses incurred in respect of warrant and other processes issued and all other proceedings taken for realising the arrears unless the outstanding amount of Rs................ in respect of the certificate together with costs, charges and expenses incurred so far amounting to Rs................ and the interest aforesaid is paid by you within fifteen days from the date of service of this notice.

(SEAL) RECOVERY OFFICER

N.B.- Attention is invited to rule 16 of the Second Schedule to the Income-tax, 1961, which is reproduced below:-

“16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the recovery officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this schedule, any private transfer or delivery of the property attached or of any interest therein any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

*Score out portion not applicable.
Order for payment to the Authorised Officer of current coins and currency notes attached
(Under Rule 47 of Second Schedule of Income Tax Act, 1961)

No.
To

Whereas in execution of certificate no....................... dated ....................... forwarded by the *Authorised Officer/*the Recovery Officer .......................,* and whereas the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45D(2) the Employees’ State Insurance Act, 1948 as amended; the following property consisting of current coins/currency notes has been attached:-

(1) Current Coins
(2) Currency notes

It is hereby ordered that out of the property so attached, Rs....................... in current coins and Rs....................... in currency notes shall be credited to ESI Fund A/C no.1 of the Corporation.

Given under my hand and seal at ....................... the ....................... day of .......................
Warrant of sale of property
(Under Rule 37 and Rule 52(1) of Second Schedule of Income Tax Act, 1961)

No.

To

........................................

........................................

........................................

These are to be command you to sell by public auction, after giving.................. days’ previous notice by affixing the same in the office of the undersigned and after making due proclamation, the under mentioned property attached in execution of certificate no.................. dated .................... [forwarded by the *Authorised Officer/*the Recovery Officer ..................] against.................. (defaulter) ; *and whereas a certified copy of the said certificate has been sent by the said Recovery Officer to the undersigned under section 45D (2) of the Employees’ State Insurance Act, 1948 as amended, or so much of the said property as shall realize (i) the sum of Rs.................. being the sum of the +amount of the said certificate/+specified amount and costs still remaining, and (ii) interest payable on Rs.................. under sub-section 5(a) of section 39 of the Employees’ State Insurance Act, 1948 as amended, for the period commencing immediately after the date of issue of this order.

2. You are further commanded to return this warrant on or before the day of..................20............. with an endorsement certifying the manner in which it has been executed or the reason why it has not been executed.

SPECIFICATION OF PROPERTY

Given under my hand and seal at ....................... the ....................... day of ....................

(SEAL) RECOVERY OFFICER

* Score out whichever portion is not applicable
+ Delete inappropriate words.
Proclamation of Sale
(Under Rule 38 and Rule 52(2) of Second Schedule of Income Tax Act, 1961)

No.

*Whereas the Authorised Officer ...................... has forwarded the certificate no...................... dated ...................... for the recovery of the sum of Rs...................... from ...................... (defaulter) which sum is recoverable together with interest in accordance with sub-section (5)(a) of section 39 of the Employees’ State Insurance Act, 1948 as amended, and the costs, charges and expenses of the proceedings for the recovery thereof.

*Whereas the Recovery Officer ...................... has forwarded the certificate no ...................... dated ...................... to the undersigned for the recovery of the sum of Rs...................... from ...................... (defaulter); and whereas the said Recovery Officer has sent to the undersigned on ...................... the day of ...................... 20.................. a certified copy of the certificate under section 45(D)(2) of the ESI Act, 1948 as amended, specifying that an amount of Rs...................... is to be recovered from the defaulter, which sum is recoverable together with interest in, accordance with sub-section (5)(a) of section 39 of the Employees’ State Insurance Act, 1948 as amended and the costs, charges and expenses of the proceedings for the recovery thereof;

And whereas the undersigned has ordered the sale of the attached property mentioned in the annexed schedule in satisfaction of the said certificate;

And whereas on the ...................... day of ...................... 20.................. (the date fixed for the sale) there will be due there-under a sum of Rs...................... including costs and interest;

Notice is hereby given that, in the absence of any order of postponement, the said property shall be sold by public auction at ...................... AM/PM on the said ...................... day of ...................... 20.................. at ...................... (place).

The sale will be of the property of the defaulter above named/property which is included in the property of the defaulter, as mentioned in the scheduled below; and the liabilities and claim attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

The property will be put up for sale in the lots specified in the schedule. If the amount to be realized by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the reminder. The sale will also be stopped if, before any lot is knocked down, the arrears mentioned in the said certificate, interest payable under section 39(5)(a) of the Employees’ State Insurance Act, 1948 as amended, and costs (including the costs of the sale) are tendered to the officer conducting the sale of proof is given to his satisfaction that the amount of such arrears, interest and costs has been paid to the undersigned.

At the sale, the public generally are invited to bid either personally or by duly authorised agent. No officer or other person, having any duty to perform in connection with this sale, however, either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

The sale shall be subject to the conditions prescribed under section 45(H) of the ESI Act, 1948, as amended read with the Second Schedule to the Income Tax Act, 1961, and the rules made there-under and to the following further conditions:-
(i) The particulars specified in the annexed schedule have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, mis-statement or omission in this proclamation.

+(ii) The reserve price below which the property shall not be sold is Rs.........................

(iii) The amounts by which biddings are to be increased shall be determined by the officer conducting the sale in the event of any dispute arising as to the amount bid or as to the bidder, the lot shall at once be again put to auction.

(iv) The highest bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid and provided further that the amount bid by him is not less than the provided further that the amount bid by him is not less than the reserve price. It shall be in the discretion of the undersigned to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it inadvisable to do so.

(v) For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions.

(vi) In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and resold.

(vii) In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration; a deposit of twenty five percent on the amount of his purchase money to the officer conducting the sale and in default of such deposit, the property shall forthwith be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15th day be a Sunday or other holiday, then on the first office day after the 15th day. In default of payment within the period mentioned above, the property shall be resold, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Corporation and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

SCHEDULE OF PROPERTY

<table>
<thead>
<tr>
<th>No of lots</th>
<th>Description of property to be sold with the names of the other co-owners where the property belongs to the defaulter and any other person and co-owners</th>
<th>Revenue assessed upon the property or any part thereof</th>
<th>Details of any encumbrances to which the property is liable</th>
<th>Claim, if any which have been put forward to the property, and any other known particulars bear on its nature and value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

Given under my hand and seal at ......................... the ......................... day of .........................

(SEAL) RECOVERY OFFICER

* Score out whichever paragraph is not applicable.
+ Applies only in the case of auction of immovable property where a reserve price is fixed.
Office of the Recovery Officer
Employees’ State Insurance Corporation

Notice for setting a sale proclamation

No.
To

...........................................
...........................................

*Whereas in execution of certificate no......................... dated ......................... forwarded by the Authorised Officer ....................... to the undersigned, the undersigned has ordered the sale of the under mentioned immovable property.

*Whereas in execution of certificate no......................... dated ......................... forwarded by the Recovery Officer.......................... to the undersigned; a certified copy of which has been sent by the said Recovery Officer to the undersigned under section 45(D)(2) of the ESI Act 1948 as amended, the undersigned has ordered the sale of the under mentioned immovable property which is included in the property of the defaulter.

You are hereby informed that the ......................... day of ......................... has been fixed for drawing up the proclamation of sale and settling the terms thereof. You are requested to bring to the notice of the undersigned any encumbrances, charges, claims or liabilities attaching to the said properties or any portion thereof.

SPECIFICATION OF PROPERTY

Given under my hand and seal at ......................... the ......................... day of .........................

(SEAL) RECOVERY OFFICER

*Score out whichever paragraph is not applicable.
NO.

This is to certify that Shri ................................ purchased for Rs ................................ the under mentioned movable property, which is included in the property of ................................ (defaulter) at a sale by public auction on the ................................ day of ................................ in execution of certificate no................................ dated ................................ forwarded by the *Authorised Officer/*the Recovery Officer ......................... to the undersigned for recovery of arrears from ................................ (defaulter); *a certified copy of which has been sent by the said Recovery Officer to the undersigned under section 45D(2) of the ESI Act, 1948 as amended , specifying that an amount of Rs........................ remains to be recovered from ................................ (defaulter).

SPECIFICATION OF PROPERTY

Given under my hand and seal at ......................... the ......................... day of .........................

(SEAL) OFFICER HOLDING THE SALE

*Score out whichever portion is not applicable
Certificate to defaulter authorizing him to mortgage, lease or sell property
(Under Rule 66(2) of Second Schedule of Income Tax Act, 1961)

No.

*Whereas in execution of certificate no....................... dated ....................... forwarded by the Authorised Officer ....................... for recovery of arrears from ....................... (defaulter) an order was made on the ....................... day of ....................... for the sale of the under mentioned property of ....................... (defaulter).

*Whereas in execution of certificate no....................... dated ....................... forwarded by the Recovery Officer ....................... to the undersigned; a certified copy of which has been sent by the said Recovery Officer to the undersigned under section 45D(2) of the ESI Act, 1948 as amended, for recovery of arrears from ....................... (defaulter) an order was made on the ....................... day ....................... of ....................... for the sale of the under mentioned property of ....................... (defaulter).

And the undersigned is satisfied that there is reason to believe that, if the sale is postponed the amount of the said certificate may be raised by the said ....................... (defaulter) by mortgage/lease/private lease of the said property or any part thereof and the sale of the under mentioned property has been postponed till the ....................... day ....................... of ....................... 

This is to certify that the said +....................... is hereby authorised to make the proposed mortgage/lease/sale within a period of ....................... from the date of this certificate; provided that all moneys payable under such mortgage/lease/sale shall be paid, not to the said +....................... but to the undersigned and provided also that no such mortgage/lease/sale shall become absolute until it has been confirmed by the undersigned.

DESCRIPTION OF PROPERTY

Given under my hand and seal at ....................... the ....................... day of ....................... 

(SEAL) 

RECOVERY OFFICER

*Score out whichever paragraph is not applicable
+ Fill in the names of the defaulter, and where the property is included in the defaulter’s property by virtue of the ‘Explanation’ to sub-section(1) of section 222 of the Income Tax Act, 1961, fill in the name of the person referred to in the ‘Explanation’.
Notice to interested parties to show cause why sale should not be set aside
(Under Rule 63(2) of Second Schedule of Income Tax Act, 1961)

No.
To

Whereas the under mentioned property, which is included in the property of .................... (defaulter) was sold on the ..................... day of ..................... in execution of certificate no..................... dated ..................... forwarded by the *Authorised Officer/*the Recovery Officer ....................., a certified copy of which had been sent by the said Recovery Officer to the undersigned under section 45D(2) of the ESI Act, 1948 as amended, for recovery of arrears from ..................... (defaulter).

And whereas ..................... has applied to the undersigned to set aside the sale under Rule 60/Rule 61/Rule 62 of the Second Schedule to the Income Tax Act, 1961.

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs before the undersigned on ..................... when the said application will be heard and determined.

DESCRIPTION OF PROPERTY
Given under my hand and seal at ..................... the ..................... day of .....................

(SEAL) RECOVERY OFFICER

*Score out whichever portion is not applicable
FORM ESI CP 22

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Order of confirmation of sale of immovable property
(Under Rule 63(1) of Second Schedule of Income Tax Act, 1961)

No.

Shri ......................... purchased for Rs......................... the immovable property specified below, which is included in the property of ................. (defaulter), at a sale held by public auction on the ....................... day of ....................... 20....................... in execution of certificate no. ....................... dated ....................... forwarded by the *Authorised Officer/*the Recovery Officer ....................... , a certified copy of which had been sent by the said Recovery Officer, to the undersigned under section 45D(2) of the ESI Act, 1948 as amended, for recovery of arrears from ....................... (defaulter). The full amount of the purchase money has been paid on........................

+No application under Rule 60/Rule 61/Rule 62 of the Second Schedule to the Income Tax Act, 1961. has been received for setting aside the sale.

+Application under Rule 60/Rule 61/Rule 62 of the Second Schedule to the Income Tax Act, 1961. made by ....................... for setting aside the sale has been disallowed by the undersigned.

Accordingly, the said sale is hereby confirmed.

SPECIFICATION OF PROPERTY

Given under my hand and seal at ....................... the ....................... day of ........................

(SEAL) RECOVERY OFFICER

*Score out whichever portion is not applicable.
+Delete the inappropriate words.
Certificate of sale of immovable property
(Under Rule 65 of Second Schedule of Income Tax Act, 1961)

No.

This is certified that Shri ......................... has been declared the purchaser at a sale by public auction on the ......................... day of ......................... of the under mentioned immovable property which is included in the property of ......................... (defaulter), in execution of certificate no. ......................... dated ......................... forwarded by the *Authorised Officer/*the Recovery Officer ........................., a certified copy of which had been sent by the said Recovery Officer to the undersigned under section 45(D)(2) of the ESI Act, 1948 as amended, for recovery of arrears from ......................... and that the said sale has been duly confirmed by the undersigned and become absolute on the ......................... day of .........................

SPECIFICATION OF PROPERTY

Given under my hand and seal at ......................... the ......................... day of .........................

(SEAL) RECOVERY OFFICER

*Score out whichever portion is not applicable
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Order attaching a business
(Under Rule 69 of Second Schedule of Income Tax Act, 1961)

No.

To


Whereas certificate No. ...................... dated ...................... for recovery of arrears amounting to Rs ...................... from +you /...................... (defaulter) has been forwarded by the*Authorized Officer/*the Recovery Officer ...................... ; and the said Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 45 (D) (2) of the ESI Act, 1948 as amended.

It is hereby ordered that the business carried on by you under the name and style of ...................... at ...................... which is included in the defaulter’s property be and is hereby attached and you are informed accordingly.

It is hereby further ordered that you, the above said ...................... be and are hereby, prohibited and restrained from transferring or charging the said business, in any way and that all persons whosoever are hereby prohibited and restrained from taking any benefit under such transfer of charge.

Given under my hand and seal at ...................... this ...................... day of ......................

(SEAL) RECOVERY OFFICER

* Fill in the name of the defaulter and where the business is included in defaulter’s property by virtue of the ‘Explanation’ to sub-section(1) of section 222 of the Income Tax Act, 1961, fill in the name of the person concerned.

* Score out whichever portion is not applicable.
FORM ESI CP 25

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Appointment of Receiver
(Under Rule 69 or Rule 70 of Second Schedule of Income Tax Act, 1961)

No.
To

..............................................
..............................................

Whereas ................................., which is included in the property of ....................... (defaulter), has been attached under an order passed by the undersigned in the course of execution of certificate No. ................. dated .................................forwarded by the *Authorized Officer/*the Recovery Officer ..............................., a certified copy of which had been sent by the said Recovery Officer to the undersigned under section 45 (D) (2) of the ESI Act, 1948 as amended, for recovery of arrears from ........................ (defaulter);

You are hereby appointed receiver of the said business/property.

Subject to any orders which may be passed by the undersigned in this behalf, you shall have all the powers necessary for the management of the said business/property in accordance with the provisions contained in the ESI Act, 1948 as amended read with the Second Schedule of the Income Tax Act, 1961 and the Income Tax (C.P) Rules, 1962.

You are required to render a due and proper account of your receipts and disbursements in respect of the said business/property in accordance with Part VII of the Income Tax (Certificate Proceedings) Rules, 1962.

You will be entitled to remuneration at the rate of .................................

Your appointment as receiver of the said business/property shall continue in force until further orders of the undersigned and may be cancelled or withdrawn at any time at the discretion of the undersigned.

Given under my hand and seal at .........................this ..............................day of .................................

(SEAL) RECOVERY OFFICER

*Score out portion if not applicable.
Notice to show cause why a warrant of arrest should not be issued.
(Under Rule 73(1) of Second Schedule of Income Tax Act, 1961)

No.
To

........................................
........................................

Whereas you have failed to pay the amount of arrears specified in certificate No. ......................... dated .......................... forwarded by the *Authorised Officer/*to the Recovery Officer .........................., a certified copy of which has been forwarded by the said Recovery Officer to the undersigned under section 45 (D) (2) of the ESI Act, 1948 as amended, for recovery of arrears from you and the interest payable under section 39 (5) (a) of the ESI Act, 1948, as amended and it is proposed to execute the above certificate by arrest and imprisonment of your person;

You are hereby required to appear before the undersigned on the ......................... day of ......................... at ......................... A.M./P.M. and to show cause why you should not be committed to the civil prison in execution of the said certificate.

Given under my hand and seal at ......................... this ......................... day of .........................

(SEAL) RECOVERY OFFICER

*Score out portion if not applicable.
FORM ESI CP 27
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Warrant of arrest
(Under Rule 73 to 81 of the Second Schedule of Income Tax Act, 1961)

No.
To

Whereas certificate no. ...................... dated ...................... was forwarded by the *Authorized Officer/ *the Recovery Officer ...................... for recovery of arrears from ...................... (defaulter) of ......................
(address); * and the said Recovery Officer has sent to the undersigned a certified copy of the said certificate
under section 45 (D) (2) of the ESI Act, 1948 as amended, specifying that an amount of Rs. ...................... is to
be recovered from the defaulter, and the sum of Rs. ...................... as noted below is due from the said
defaulter in respect of the said certificate:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>+Certificate amount / +Specified amount</td>
<td>......................</td>
<td>............</td>
</tr>
<tr>
<td>Costs and charges</td>
<td>......................</td>
<td>............</td>
</tr>
<tr>
<td>Interest upto the date of issue of warrant</td>
<td>......................</td>
<td>............</td>
</tr>
<tr>
<td>Total</td>
<td>......................</td>
<td>............</td>
</tr>
</tbody>
</table>

And whereas the said sum of Rs. ...................... has not been paid in satisfaction of the said certificate;

These are to command you to arrest the said defaulter and bring him before the undersigned as soon as
practicable and in any event within 24 hours of his arrest (exclusive of the time required for the journey)
unless the defaulter pays to you the said amount of Rs. ...................... together with further interest @12%
per annum on commencing immediately after the date of issue of this warrant and Rs. ...................... for the
cost of executing this process.

You are hereby further commanded to return the warrant on or before the ...................... day of ......................
with an endorsement certifying the day on which and the manner in which it has been executed or the reason
why it has not been executed. In case the defaulter is not found within the jurisdiction of the
undersigned, you are hereby authorized to move the Recovery Officer within whose jurisdiction the default
may for the time being be found for executing this warrant.

Given under my hand and seal at ...................... this ...................... day of ......................

(SEAL) RECOVERY OFFICER

*Score out portion if not applicable.
+Delete inappropriate words.
FORM ESI CP 28

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Warrant of detention in civil prison
(Under Rule 73 to 81 of Second Schedule of Income Tax Act, 1961)

No. Dated:

To

The Officer-in-charge of the Civil Prison of .........................

*Whereas ......................... (defaulter) has been brought before the undersigned under a warrant in execution of certificate no ......................... dated ......................... forwarded by the Authorised Officer ......................... for recovery of arrears from him.

*Whereas ......................... (defaulter) has been brought before the undersigned under a warrant in execution of certificate no ......................... dated ......................... forwarded by the Recovery Officer ......................... to the undersigned for recovery of arrears from him, a certified copy of which has been forwarded to the undersigned under section 45D(2) of the ESI Act, 1948 as amended, specifying that an amount of Rs. ......................... is to be recovered from him;

And whereas he has not satisfied the undersigned that he is entitled to be discharged from custody and has not paid the amount due from him as detailed below:-

<table>
<thead>
<tr>
<th>Rs.</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>+Certificate amount / +Specified amount</td>
<td>.........................</td>
</tr>
<tr>
<td>Costs and charges, Interest</td>
<td>.........................</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

And whereas the undersigned is satisfied that the said ......................... should be committed to the civil prison and an order to that effect has been passed by the undersigned on the ......................... day of .........................;

You are hereby commanded and required to take and receive the said ......................... into the civil prison and to keep him imprisoned therein for a period of ......................... or until the amount aforesaid together with further interest on Rs. ......................... at 12% per annum for the period commencing immediately after the date of issue of this warrant payable in section 39 (5) (a) of the ESI Act, 1948 as amended, is paid to you or until you receive an order of release from the undersigned.

The undersigned does hereby fix Rs. ......................... P ......................... per diem (calculated under rule 90(2) of the Second Schedule to the Income Tax Act, 1961) as the rate for subsistence of the said ......................... during his confinement under his warrant.

(SEAL) RECOVERY OFFICER

*Score out paragraph if not applicable.
+Delete inappropriate words.
Order of release
(Under Rule 77, 78 and 79 of Second Schedule of Income Tax Act, 1961)

No.
To

The Officer-in-charge of the Civil Prison of .................

Under orders passed this day, you are hereby directed to forthwith set free ............... who is now in your custody as a result of the warrant of detention issued by the undersigned on the ..................... day of .....................

Given under my hand and seal at ....................... this ....................... day of .....................

(SEAL) RECOVERY OFFICER
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

Appeal to the Additional Commissioner /Regional Director/Director / J.D (In-charge)
(Under Rule 86(1) of Second Schedule of Income Tax Act, 1961)

No. Dated:

Designation of the
Additional Commissioner/Regional Director/Director/J.D (In-charge)

[To be filled in the office of the Additional Commissioner/Regional Director / Director / J.D(I/C)]

1. Name and address of appellant ..............................................
2. Name and code no. of the factory/Establishment .......................
3. Nature of arrears involved in the certificate ..............................
4. Certificate No. ......................................................................
5. Recovery Officer passing the order appealed against ............... ........................
6. Rule and sub-rule under which the Recovery Officer passed the order appealed against ............... ........................
7. Date of the order appealed against ........................................
8. Relief claimed in appeal ........................................................
9. Address to which notice may be sent to the appellant ............... ........................

+ STATEMENT OF FACTS

+ GROUNDS OF APPEAL
(Signed
(appellant)

Form of verification

I ......................................................... the appellant, do hereby declare that what is stated above is true
to the best of my information and belief.

Place ............................... Signature ..............................

Date ............... Status of appellant ..............................

Notes:
1. The form of appeal, grounds of appeal and the form of verification appended theretoshall be signed
   by a person in accordance with the provisions.
2. The form of appeal, grounds of appeal and statement of facts must be in duplicate.
3. If the space provided herein for the Statement of facts and grounds of appeal is insufficient, separate
   enclosures may be used for the purpose.
Notice to legal representative
(Under Rule 85 of Second Schedule of Income Tax Act, 1961)

No. Dated:
To

*Whereas certificate No. ...................... dated ...................... has been forwarded by the Authorized Officer ...................... for the recovery of arrears amounting to Rs. ...................... from ...................... (defaulter);

*Whereas certificate No. ...................... dated ...................... has been forwarded by the Recovery Officer ...................... to the undersigned for the recovery of arrears amounting to ...................... from ...................... (defaulter) and the said Recovery Officer has sent to the undersigned on the ...................... day of ......................, a certified copy of the said certificate under section 45 D(2) of the ESI Act, 1948 as amended, specifying that an amount of Rs. ...................... is to be recovered from the defaulter.

And whereas the said ...................... has since died;

You are hereby given notice that steps will be taken under the provisions to recover the said amount from you together with the interest payable under section 39 (5)(a) of the ESI Act, 1948 as amended for the period commencing immediately after the date the amount has become due and the costs, charges and expenses incurred is respect of warrants and other processed issued and all other proceedings taken for realizing the arrears/specified amount, unless the amount of Rs. ...................... in respect of the certificate together with costs, charges and expenses incurred so far amounting to Rs. ...................... and the interest aforesaid is paid by you within fifteen days from the date of service of this notice.

(SEAL) RECOVERY OFFICER

* Score out paragraph if not applicable.
+ Delete inappropriate words.
APPENDIX - 2

PANCHNAMA
(For movable property)

Panchama drawn by the Panchs, in the presence of Shri ......................... SSO(Recovery), of the Office of the Recovery Officer, during the course of the execution of the execution proceeds of Warrant or Notice in Form No ESICP 3 in the case of ........................., who is a defaulter for non-payment of arrears due to the Corporation in the File No......................... on the spot at House No........................ Street No........................ of ........................ at the time ......................... A.M/P.M on ........................ 20.........................

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Name of Panch &amp; Fathers Name</th>
<th>Address</th>
<th>Age</th>
<th>Profession</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

We, the above mentioned Panchs on being called by the above said Shri ......................... SSO(Recovery) of the Office of the Recovery Officer, gathered here today at the place of H.No........................ Sr. No......................... of ......................... belonging to Shri ......................... and learned that Shri/M/s........................ is a defaulter for non-payment of arrears due to the Corporation etc., arrears to the extent of Rs........................ for the period ......................... and consequently the Recovery Officer ......................... has issued a warrant of attachment of movable property of the defaulter in the form of ESICP 3 in the name of Shri ......................... SSO (Recovery), on date ......................... No........................ and warrant is to be executed on or before date ......................... and in execution thereof Shri ......................... the holder of the warrant today, entered the premises of warrant on Shri ......................... at ......................... A.M/P.M., and after the service of warrant on Shri ......................... demanded the payment of the arrears and on its non-payment, attached movable properties as detailed in the inventory attached to this Panchama between the hours ......................... A.M/PM and ......................... A.M/P.M in our presence.

We also hereby state that during the execution proceedings ......................... (to be filled in case of occurrence of any incidence)

Therefore, we solemnly declare that the facts of the Panchama mentioned herein are true & correct to the best of our observations and knowledge.

Dated ......................... Time .........................

1.  3.  5.
2.  4.

Drawn before me
SSO (Recovery)
APPENDIX - 3

INVENTORY

Inventory of movables attached in the case of ................................................

File No. ................................................

Inventory of movable properties attached at the premises of Shri ......................... H.No. ......................... street ......................... No. ......................... of  ......................... under Section 45C to 45H of the ESI Act, 1948 read with Rule 22 of the Second Schedule of the Income tax Act, 1961, while executing warrant of attachment of movable property issued by the Recovery Officer, ......................... dated ......................... towards realisation of arrears due to the Corporation of Rs. ......................... for the period ......................... and executed by Shri ......................... SSO(Recovery), on ......................... 2011 between the hours ......................... AM/PM to ......................... AM/PM

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Description of Article</th>
<th>Estimated value</th>
<th>Place where kept for safe custody (Name of the person if necessary)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Witness:-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name &amp; address of Panch</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

Drawn by me today, the _______2011 _______ at _____________ AM/PM

Signature of Defaulter

Signature of SSO (Recovery)

Office of the Recovery Officer,
Employees State Insurance Corporation
........................ Region

No, ........................ Dated: ........................

To

The Officer-in-charge,
Police Station ........................


Sir,

During the course of the recovery proceedings in the case of a defaulter under the ESI Act, 1948, the assistance of Police is found necessary as it is felt that the defaulter may obstruct or give resistance to the officials executing the processes. I, therefore, request you to kindly depute half a dozen constables with a Head Constable for rendering the necessary assistance. I feel it will be advisable that at least one or two of them are armed for any contingencies that may arise.

In this connection, I would like to invite your attention to Section 45H of the E.S.I.Act, 1948 and Rule 19 of the Second Schedule to the Income-tax Act, 1961 which is quoted below:

“Section 45H: - The provisions of the Second and the Third Schedules to the Income Tax Act, 1961 and the Income Tax(Certificate Proceedings)Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the Income Tax:

PROVIDED that any reference to the said provisions and the rules to the “assessee” shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.”

“Rule 19: - Any Officer authorised to attach or sell any property or to harass the defaulter or charged with any duty to be performed under the Schedule may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duty, and the authority to whom such application is made shall depute a sufficient number of Police Officers for furnishing such assistance”.

In terms of the above Section read with the Rule, I request you to depute the above referred officials.

Yours faithfully,

Recovery Officer
APPENDIX - 5

PANCHANAMA
(For immovable property)

I / We, ....................................................................... S/o. .................................................................
residence of ........................................................................ (2) Shri .......................................................................
on being called upon by ........................ SSO (Recovery) to witness the attachment/ proclamation for the sale
of the under mentioned properties for realisation of arrears from ........................ (defaulter) in File No.
................................. solemnly state as under:
1. ................................................
2. ................................................

(mention the details of the properties )

1. That we identified the properties referred to above.
2. That a copy of the order of attachment / proclamation for sale was affixed to the outer door / to a pole
fixed in respect of each property separately in our presence.
3. That, the order of attachment / proclamation for sale has been proclaimed, near each property cited
above, and in the locality by beat of drum.
4. That, the contents of this Panchnama has been explained to us in vernacular and having understood; we
certify that what is stated above is correct & true.

1.
2.
3.
4.
5.

Drawn before me
SSO (Recovery)
**APPENDIX - 6**

**FORMAT OF LIST OF BIDDERS AT PUBLIC AUCTION**

In the case of ....................... (Name of the defaulter)

Description of the property for auction:

Date, time and place of auction:

Auction conducted by:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name</th>
<th>Father’s Name</th>
<th>Age</th>
<th>Occupation</th>
<th>Full address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amt. Deposited</th>
<th>Signature</th>
<th>Amt. Received</th>
<th>Signature</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
</tr>
</tbody>
</table>

Knocked down in favour of ....................... for a sum of Rs. ....................... subject to confirmation of the sale by the Recovery Officer and subject to provisions of the Second Schedule to the I.T. Act and the I.T.C.P Rules, 1962

Signature of the SSO (Recovery) / Government auctioneer

Signature of the Highest bidder
APPENDIX - 7
FORMAT OF BIDDING SHEET AT PUBLIC AUCTION

In the case of ......................... (Name of the defaulter)
Description of the property for auction:
Date, time and place of auction:
Auction conducted by : SSO/Government Auctioneer.

<table>
<thead>
<tr>
<th>Sl.No.</th>
<th>Name of the Bidder</th>
<th>Amount bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Knocked down in favour of ......................... for a sum of Rs. ........................., subject to confirmation of the sale by the Recovery Officer and subject to provisions of the Second Schedule to the I.T.Act,1961 and the I.T.C.P. Rules, 1962.

Signature of the SSO (Recovery) / Government auctioneer

Signature of the Highest bidder

Signature of the Witness
APPENDIX - 8
REGISTER OF DAILY COLLECTION OF CERTIFIED DEMAND

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Date</th>
<th>Certificate Case No.</th>
<th>Name and Code No. of the Defaulter</th>
<th>Ins./Rev. Branch</th>
<th>Full/Part Payment</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Interest</th>
<th>Damages</th>
<th>Post Requisitional Interest</th>
<th>Cost &amp; Other Charges</th>
<th>Total</th>
<th>Mode of payment</th>
<th>Cash/DD/Cheque/Challan</th>
<th>Interest reduced, if any</th>
<th>Signature of Rec.Off.</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## APPENDIX - 9
### REGISTER OF MOVABLE PROPERTIES ATTACHED AND SOLD

<table>
<thead>
<tr>
<th>File No.</th>
<th>Sl. No.</th>
<th>Name &amp; address of defaulter</th>
<th>Amount of arrear</th>
<th>Date of issue of Form ESI CP 2/3</th>
<th>Date of attachment</th>
<th>Description of articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estimated value of each property</th>
<th>Place where the property is kept in custody</th>
<th>Date of sale/ resale</th>
<th>Amount of sale proceeds</th>
<th>Date of confirmation if any</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
</tr>
</tbody>
</table>
# Appendix - 10

## Register of Immovable Properties Attached and Sold

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>File No.</th>
<th>Name &amp; address of defaulter</th>
<th>Amount of arrear</th>
<th>Date of issue of Form ESICP 12</th>
<th>Date of attachment of properties attached with Survey No.</th>
<th>Description of properties attached with Survey No.</th>
<th>Estimated value of each property</th>
<th>Amount of sale proceeds</th>
<th>Date of confirmation of sale</th>
<th>Date of limitation Under Rule 68B of Schedule -II</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
</tr>
</tbody>
</table>


## APPENDIX - 11
### EXECUTION REGISTER FOR THE ATTACHING OFFICIALS [SSO (RECOVERY)]

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>File No.</th>
<th>Form No ESICP3</th>
<th>Form No ESICP 16</th>
<th>Others</th>
<th>Date of receipt</th>
<th>Date of return</th>
<th>Signature of Recovery Officer</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


### APPENDIX - 12

**REGISTER OF RECOVERY IN CASE OF FACTORY/ESTABLISHMENT IN LIQUIDATION, BIFR & SICK COMPANIES**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Date</th>
<th>Entry No. in C.C.R (Certificate of the defaulter)</th>
<th>Name &amp; Address of the defaulter</th>
<th>Amount of arrears</th>
<th>Date of Factory/Establishment going into liquidation/BIFR &amp; Sick</th>
<th>Due date of lodging claim to the Official Liquidator</th>
<th>Progress made in liquidation proceedings</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
</tr>
</tbody>
</table>
## APPENDIX - 13

### STAY REGISTER

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>File No.</th>
<th>Name &amp; address of defaulter</th>
<th>Amount of arrear</th>
<th>Authority granding stay</th>
<th>Particulars of stay</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td></td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>


## REGISTER OF CASES WHERE INSTALMENTS FOR PAYMENT OF ARREARS GRANTED

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name and code No. of the defaulter</th>
<th>Amount of demand covered by instalment</th>
<th>Authority granting instalment</th>
<th>Date of grant of instalment</th>
<th>C.C.R ref. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Page No.</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

### Details of Instalments

<table>
<thead>
<tr>
<th>Amount of each instalment</th>
<th>Periodicity</th>
<th>Due Dates</th>
<th>Amount paid by Cash/DD/ Cheque/Challan</th>
<th>Date of Payment</th>
<th>Mode of Payment Cash/Cheque/DD/Challan</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
</tr>
</tbody>
</table>

---

**APPENDIX - 14**

**ESIC RECOVERY MANUAL**
### APPENDIX - 15

**DISPOSAL REGISTER FOR CERTIFICATES FINALLY DISPOSED OFF**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Date of Disposal</th>
<th>Reference no. of entry in C.C.R. Register</th>
<th>Name of the Defaulter</th>
<th>Date of Issue</th>
<th>Rent &amp; Bank Accounts</th>
<th>Movable Property</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>PAN No.</td>
<td>Service ESICP-2</td>
<td>Attached (Yes/No)</td>
<td>Realised (Yes/No)</td>
<td>Attached (Yes/No)</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Date of Disposal</th>
<th>Reference no. of entry in C.C.R. Register</th>
<th>Name of the Defaulter</th>
<th>Date of Issue</th>
<th>Rent &amp; Bank Accounts</th>
<th>Movable Property</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>PAN No.</td>
<td>Service ESICP-2</td>
<td>Attached (Yes/No)</td>
<td>Realised (Yes/No)</td>
<td>Attached (Yes/No)</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Immovable Property</th>
<th>Receiver appointed (Yes/No)</th>
<th>Arrest &amp; Detention</th>
<th>No. of objection petitions</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attached (Yes/No)</td>
<td>Proclaimed Yes/ No</td>
<td>Sold Yes/No</td>
<td>Dt. of Issue of ESI CP 26, ESICP 27, ESI CP 28</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>17</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>18</td>
</tr>
</tbody>
</table>
APPENDIX - 16

CERTIFICATE OF “IRRECOVERABLE DUES”
(To be issued by Recovery Officers)

1. Name of the defaulter:
2. Date on which the Certificate was received by the Recovery Officer:
3. Amount certified for recovery with further additions from time to time:
4. Amount by which the arrear was reduced as a result of action taken by Recovery Officer and other modes of recovery:
5. Steps taken by the R.O. to effect recover in chronological order and the results achieved. :
6. Amount considered irrecoverable:
7. Amount recommended for write off:

I hereby certify that in my opinion and after having enquiries made, all possibilities of recoveries have been exhausted. As such the demand outstanding in this case amounting to Rs. ................................................ is certified to be irrecoverable.

Recovery Officer

To

The ................................................ (Authorized officer)
E.S.I. (R.O./S.R.O./D.O.)

<table>
<thead>
<tr>
<th>Form No. ESICP</th>
<th>Subject- matter</th>
<th>Relevant rule of I.T.(C.P.) Rules</th>
<th>Relevant rule of the Second Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Notice of demand to defaulter</td>
<td>14</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Warrant of attachment of movable property</td>
<td>22(i)</td>
<td>20</td>
</tr>
<tr>
<td>4</td>
<td>Prohibitory order where the property consists of debts not secured by negotiable instruments</td>
<td>22(ii)</td>
<td>26(1)(i)</td>
</tr>
<tr>
<td>5</td>
<td>Prohibitory order where the property consists of share in a corporation</td>
<td>22(iii)</td>
<td>26(1)(ii)</td>
</tr>
<tr>
<td>6</td>
<td>Prohibitory order where the property to be attached consists of movable property to which the defaulter is entitled subject to a lien or right of some other person to the immediate possession thereof</td>
<td>22(iv)</td>
<td>26(1)(iii)</td>
</tr>
<tr>
<td>7</td>
<td>Notice of attachment of a decree of civil court</td>
<td>22(v)</td>
<td>27</td>
</tr>
<tr>
<td>8</td>
<td>Notice of attachment where the property consists of share or interest in movable property</td>
<td>22(vi)</td>
<td>28</td>
</tr>
<tr>
<td>9</td>
<td>Order of attachment of negotiable instrument</td>
<td>22(viii)</td>
<td>30</td>
</tr>
<tr>
<td>10</td>
<td>Notice of attachment of movable property in the custody of a court or public officer</td>
<td>22(ix)</td>
<td>31</td>
</tr>
<tr>
<td>11</td>
<td>Order of attachment or property consisting of an interest in partnership property</td>
<td>22(x)</td>
<td>32</td>
</tr>
<tr>
<td>12</td>
<td>Order of attachment of immovable property</td>
<td>22(xv)</td>
<td>48</td>
</tr>
<tr>
<td>12-A</td>
<td>Order to attach salary or allowances of servants of Government or local authority</td>
<td>22(vii)</td>
<td>29</td>
</tr>
<tr>
<td>13</td>
<td>Bond (sapurdnama)</td>
<td>26</td>
<td>—</td>
</tr>
<tr>
<td>14</td>
<td>Notice to surety</td>
<td>61</td>
<td>88</td>
</tr>
<tr>
<td>15</td>
<td>Order for payment to the Income tax Officer of current coins and currency notes attached</td>
<td>22(xiv)</td>
<td>47</td>
</tr>
<tr>
<td>16</td>
<td>Warrant of sale of property</td>
<td>22(xi)</td>
<td>37 &amp; 52(1)</td>
</tr>
<tr>
<td>17</td>
<td>Proclamation of sale</td>
<td>22(xii)</td>
<td>38 &amp; 52(2)</td>
</tr>
<tr>
<td>18</td>
<td>Notice for settling a sale proclamation</td>
<td>22(xvii)</td>
<td>53</td>
</tr>
<tr>
<td>Form No. ESICP</td>
<td>Subject- matter</td>
<td>Relevant rule of I.T.(C.P.) Rules</td>
<td>Relevant rule of the Second Schedule</td>
</tr>
<tr>
<td>---------------</td>
<td>----------------</td>
<td>----------------------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>19</td>
<td>Certificate of sale of movable property</td>
<td>22(xiii)</td>
<td>44(2)</td>
</tr>
<tr>
<td>20</td>
<td>Certificate to defaulter authorising him to mortgage, lease or sell property</td>
<td>22(xx)</td>
<td>66(2)</td>
</tr>
<tr>
<td>21</td>
<td>Notice to interested parties to show cause why sale should not be set aside</td>
<td>22(xviii)</td>
<td>63(2)</td>
</tr>
<tr>
<td>22</td>
<td>Order of confirmation of sale of immovable property</td>
<td>22(xvii)</td>
<td>63(1)</td>
</tr>
<tr>
<td>23</td>
<td>Certificate of sale of immovable property</td>
<td>22(xix)</td>
<td>65</td>
</tr>
<tr>
<td>24</td>
<td>Order attaching a business</td>
<td>22(xxii)</td>
<td>69</td>
</tr>
<tr>
<td>25</td>
<td>Appointment of receiver</td>
<td>52</td>
<td>69 or 70</td>
</tr>
<tr>
<td>26</td>
<td>Notice to show cause why a warrant of arrest should not be issued</td>
<td>55(i)</td>
<td>73</td>
</tr>
<tr>
<td>27</td>
<td>Warrant of arrest</td>
<td>55(ii)</td>
<td>73 to 81 (Part V)</td>
</tr>
<tr>
<td>28</td>
<td>Warrant of detention in civil prison</td>
<td>55(iii)</td>
<td>73 to 81 (Part V)</td>
</tr>
<tr>
<td>29</td>
<td>Order of release</td>
<td>55(iv)</td>
<td>77, 78 or 79</td>
</tr>
<tr>
<td>30</td>
<td>Appeal to the Additional Commissioner/Director/Regional Director/Joint Director(Incharge)</td>
<td>55A</td>
<td>86(I) (c)</td>
</tr>
<tr>
<td>31</td>
<td>Notice to legal representative</td>
<td>60</td>
<td>85</td>
</tr>
</tbody>
</table>
APPENDIX - 18

GARNISHEE ORDER UNDER SECTION 45G OF THE ESI ACT, 1948
(To the Bank)

No. ........................

ORDER

WHEREAS, M/S ........................ (Name of defaulting unit) ........................, situated at ........................ has failed to pay the arrears due under the ESI Act, in respect of Certificate No. ........................ issued/drawn by the Authorized Officer, ESI Corporation ........................ amounting to Rs. ........................ which includes interest up to ........................ on the contribution due thereon.

WHEREAS, the undersigned (Recovery Officer) issued demand notice(s) of even No. dated ........................ directing the defaulter to pay the dues along with interest as specified therein (payable in accordance with sub section (5) (a) of section 39) and the costs, charges and expenses incurred in the recovery proceedings taken for realizing the arrears, within 15 days of the receipt of the said demand notice(s). In spite of receipt of the said demand notice(s), the defaulter failed to pay the arrears as on date.

WHEREAS, it has become necessary to initiate coercive steps in accordance with the law for effecting recovery of the said dues and whereas, there is information that the said defaulter unit is having maintained an account with ........................ Bank, ........................ Branch (A/c No. ........................) which is acting as the banker of the defaulter/defaulting unit. As such, money is due to the defaulter / defaulting unit or is likely to become due from the bank either as defaulter being the depositor or due to sanction of advance / loans by the said bank to the defaulter. Thus, it is clear that the said bank comes in to possession of the money of the defaulter as the depositor or by the money that is likely to be paid to the defaulter either on account of sanction of advance / loans by the said bank or any other financial institutions or by others as working capital or otherwise.

WHEREAS, I, Shri ........................, (Recovery Officer), who is also the officer, authorized under section 45G of the ESI Act, 1948 as amended hereby, requires the Branch Manager ........................ Bank ........................ Branch ........................ to transfer forthwith an amount of Rs. ........................ (in words) which includes further interest upto ........................ on the contribution due thereon from and out of any account held by the said defaulter / defaulting unit including Fixed / Term deposit or any A/C by which ever name the same is designated by the Bank by an a/c payee Demand Draft drawn in favour of Recovery Officer, ESI Corporation ......................... Separate orders with regard to interest till the date of payment and any further cost, charges and expenses incurred in the recovery proceedings for realizing the arrears liable to be recovered under the ESI Act, 1948 read with Rule 5 of the Second Schedule of the Income Tax Act, 1961 shall be issued on the receipt of Demand Draft from the Bank.

WHEREAS, it is further ordered that after receipt of these orders / notice, no further debit transaction from the said bank account(s) shall be allowed without first transferring the amount in full as ordered above and such transactions shall be prohibited forthwith.
WHEREAS, it is further clarified that if there is no money / adequate money in possession of the Bank at the time of receipt of this order, the Manager is hereby, required to transfer the amount available in the possession of the Bank and thereafter, continue to transfer the amounts that become available to them subsequently till the arrears are completely cleared. Further, while transferring the amount available from out of the said account, the Bank has to invariably specify the reasons thereof along with a copy of a statement showing the transaction carried out till the date of receipt of orders which may be immediately provided to the SSO (Recovery) who is authorized by the undersigned to serve these orders in person.

WHEREAS, attention of the Manager is invited to Section 45G (3)(ix) & (x) of the ESI Act, 1948 as amended, according to which, the Bank and also the Manager are liable to be deemed as Principle Employer in default and the amount due from the defaulter / defaulting unit is liable to be recovered from the deemed defaulter and further, non-compliance with this requirement is likely to result in invocation of Section 45G(3)(ix) / (x) of the Act.

An extract of Sub-Section iv, viii, ix & x of Section 45G (3) of the ESI Act is enclosed for ready reference and for prompt compliance.

(GIVEN UNDER MY HAND AND SEAL AT ...................... THIS ...................... DAY OF ......................)

Encl: As above

RECOVERY OFFICER
AUTHORISED OFFICER

TO,

THE BRANCH MANAGER,

..............................................................

Copy to:-

M/s. ..................................................

..............................................................

Note: The specimen “Garnishee” order u/s 45G may be used for THIRD PARTY with appropriate modifications.
SHOWCAUSE NOTICE TO “GARNISHEE” BEFORE HOLDING THE GARNISHEE AS DEEMED DEFAULTER UNDER SECTION 45G (3) (x) OF THE ESI ACT, 1948

(To the Bank Manager)

No. ......................

NOTICE


WHEREAS, the Branch Manager, ......................... (name of the bank) situated at ......................... was issued a garnishee(s) order of even no, dated ......................... under section 45G of the ESI Act, 1948 to remit and transfer an amount of Rs. ......................... (in words) which includes interest up to ......................... on the contribution due from the Accounts maintained by M/S ......................... (name of the defaulter) who has failed to pay the statutory dues to the Corporation.

WHEREAS, the said garnishee order(s) was +duly served on the Branch Manager /+sent by Regd. Post with Acknowledgement due on ......................... and the same has been duly received as per records of this office. However, the Branch Manager * failed to remit/transfer the amount mentioned in the garnishee order(s) dated ......................... despite sufficient credit balance available with the Bank/* the Garnishee allowed debits from the account no. ......................... of the defaulter circumventing the Garnishee order,

WHEREAS, it has become necessary to initiate coercive steps in accordance with the provisions under the ESI Act, 1948 read with the Second Schedule of the Income Tax Act, 1961 against the Branch Manager ........................ (name) and ........................ (name of Bank) declaring them as DEEMED DEFAULTER’S of the amount specified in the garnishee notice.

WHEREAS, before taking such action, you, are hereby summoned to appear before the undersigned in person or through an authorized representative on ......................... at ......................... AM/PM at ......................... (address) along with the following documents to show cause/explain as to why you and ........................ (name of bank) should not be declared DEEMED DEFAULTER’s of the amount specified in the garnishee notice and the said amount recovered from you:-

1. Statements of all the Accounts maintained by M/s. .........................
2. Statements of the fixed / term deposit maintained by M/s. .........................

WHEREAS, take notice that non-compliance with the summon shall be punishable under Section 32 of the Code of Civil Procedure, 1908 & action as deemed fit under ESI Act, 1948 read with Second Schedule of Income Tax shall be taken by the undersigned.
An extract of Sub-Section vi, viii, ix & x of Section 45G (3) of the ESI Act is enclosed for ready reference and for prompt compliance.

(GIVEN UNDER MY HAND AND SEAL AT ...................... THIS ..................... DAY OF ......................)

Encl: As Above

+ Strike out the portion not applicable
* Strike out the portion not applicable

TO,

THE BRANCH MANAGER,

................................................

Copy to:-

M/s. ................................................

................................................

**Note:** The specimen Show cause notice may be used for THIRD PARTY with appropriate modifications.
ORDER DECLARING “GARNISHEE” AS DEEMED DEFAULTER UNDER
SECTION 45G (3) (x) OF THE ESI ACT, 1948

(To the Branch Manager & the Bank)

No. ........................

ORDER


WHEREAS, the Branch Manager ................................................ (name of bank), was issued a Garnishee order of even No. dated ........................ under section 45G of ESI Act read with Second Schedule of the Income Tax Act, 1961 & Income Tax (Certificate proceedings) rules, 1962 to freeze and restrain the Account maintained by M/s. ........................ to the extent of Rs. ........................ (in words).

WHEREAS, *the Bank failed to remit/transfer the amount mentioned in the garnishee order(s) dated ........................ despite sufficient credit balance available with the Bank / * the Garnishee allowed debits from the account no. ........................ of the defaulter circumventing the Garnishee order, for which a summon vide notice of even No. dated ........................ was issued to the Manager ........................ (name of the Bank), giving him an opportunity to appear before the undersigned on ........................ at ........................ AM/PM along with the statement of all accounts maintained by the defaulter for the period from ........................ to ........................ to explain as to why he / bank should not be declared as DEEMED DEFAULTER’S of the amount specified in the garnishee notice.

WHEREAS, after considering the submission of the Branch Manager / Authorized representative and the statement of accounts of the defaulter submitted by him, I hold both the Bank as well as the Branch Manager as DEEMED DEFAULTER’S under the provisions of ESI Act, 1948. (Details of the findings to be given)

WHEREAS, I, Shri ................................................ (Recovery Officer), who is also the officer, authorized under section 45G of the ESI Act, 1948 as amended hereby, declare the Branch Manager ........................ (Name) and ........................ (name of the Bank) as DEEMED DEFAULTER’S under Section 45G(3)(x) of the ESI Act, 1948. As such, the arrears due payable by M/s. ........................ to the extent of Rs. ........................ (in words) along with statutory interest @ 15% p.a. from 9-2-2001 up to 30-09-2005 and @ 12% p.a. from 1-10-2005 to till date, have now, become recoverable from ........................ (name of the Bank). Hence, you, the Branch Manager ........................ (name of the Bank) are hereby, ordered to pay the said amount of Rs. ........................ (in words) which includes the statutory interest as on date forthwith, by way of Account Payee Demand Draft drawn in favour of Recovery Officer, ESI Corporation ......................... Separate orders with regard to interest till the date of payment and any further cost, charges and expenses incurred in the recovery proceedings for realizing the arrears liable to be recovered under the ESI Act, 1948 read with Rule 5 of the Second Schedule of the Income Tax Act, 1961 shall be issued on the receipt of Demand Draft from the Bank.
WHEREAS, in case of failure to comply with this Order, the undersigned shall take coercive steps for recovery in accordance with the provisions of Section 45C to 45I of the ESI Act, 1948 read with Second and Third Schedule of the Income Tax Act, 1961 which includes, attachment of the movable and immovable properties of the deemed defaulters for the realization of the dues without further notice to the DEEMED DEFAULTER’s.

An extract of Sub-Section (ix) & (x) of Section 45G (3) of the ESI Act is enclosed for ready reference and for prompt compliance.

(GIVEN UNDER MY HAND AND SEAL AT ..................... THIS ..................... DAY OF .....................)

Encl: As above

RECOVERY OFFICER

TO,

THE BRANCH MANAGER,

..............................................................

..............................................................

Copy to:-

M/s. ..............................................................

..............................................................

..............................................................

Note: The specimen order declaring “Garnishee” as deemed defaulter u/s 45G (3) (x) of the ESI Act, 1948 may be used for THIRD PARTY with appropriate modifications.
GARNISHEE ORDER TO R.B.I (2nd GARNISHEE) ON DEFAULT BY THE DEEMED DEFAULTER (1st GARNISHEE- BANK) UNDER SECTION 45G OF THE ESI ACT, 1948.

ORDER


WHEREAS, .................................................................................. (name of bank), has allowed debits from the account number .................................................. of M/s. .................................................. (name of defaulter) circumventing the Garnishee order of even No. dated .................................. issued under Section 45G of ESI Act, 1948, duly received by the Bank as per records of this office, for transfer of an amount of Rs. ................................. (in words) from out of the said account maintained by the defaulter.

WHEREAS, a notice of even No. dated .................................. was issued to the Branch Manager .................................. (name of the bank) under Section 45G (3)(x) of ESI Act, 1948 to show cause as to why he / Bank shall not be declared as DEEMED DEFAULTER and after considering the submission of the Branch Manager / Authorized representative on .......................................................... (date), vide order dated .................................., the Branch Manager and .................................................. (name of the Bank) were held to be DEEMED DEFAULTER’S under Section 45G (3)(x) of the ESI Act, 1948. They were further directed to pay the aforesaid amount of Rs. ................................. (In words) on or before .................................. However, they failed to pay the said amount till date.

WHEREAS, it has become necessary to initiate co-receive steps against .................................................. (name of bank) as DEEMED DEFAULTER in accordance with the provisions of the ESI Act, 1948 read with the Second and Third Schedule of IT Act, 1961 for effecting recovery of the arrears dues and where as, there is information that Reserve Bank of India .................................. is acting as the Banker of .................................................. (name of the deemed defaulter Bank). Apropos, money is due to .................................................. (name of the deemed defaulter bank) or is likely to become due from the Reserve Bank of India .................................. being the Depositor.

WHEREAS, I, Shri .................................................. (Recovery Officer), who is also the officer, authorized under section 45G of the ESI Act, 1948 as amended hereby, requires the Reserve Bank of India .................................. to remit / transfer an amount of Rs. ................................. (in words) from and out of the account of .................................................. (name of the deemed defaulter bank) by way of Account Payee Demand Draft drawn in favour of Recovery Officer, ESI Corporation .................................................. Separate orders with regard to interest till the date of payment and any further cost, charges and expenses incurred in the recovery proceedings for realizing the arrears liable to be recovered under the ESI Act, 1948 read with Rule 5 of the Second Schedule of the Income Tax Act, 1961 shall be issued on the receipt of Demand Draft from the Bank.

WHEREAS, it is further ordered that after receipt of these orders, no further debit transactions from the said bank account shall be allowed without first transferring the amount in full as ordered above and such transactions shall be prohibited forthwith.

WHEREAS, it is further clarified that if there is no money / adequate money in position of the RBI .................................. at the time of receipt of the order, Regional Director, RBI .................................. is hereby ..................................
required to transfer the amount available in the possession of the Bank and thereafter, continue to transfer the amount that become available to them subsequently, till the arrears are completely cleared. In case of failure to comply with this Order, the undersigned shall take coercive steps for recovery in accordance with the provisions of Section 45C to 45I of the ESI Act, 1948 read with Second and Third Schedule of the Income Tax Act, 1961 which includes, attachment of the movable and immovable properties of the deemed defaulters for the realization of the dues without further notice to the DEEMED DEFAULTER's.

An extract of Sub-Section ix & x of Section 45G (3) of the ESI Act is enclosed for ready reference and for prompt compliance.

(GIVEN UNDER MY HAND AND SEAL AT ....................... THIS ....................... DAY OF .......................)

Encl: As Above

RECOVERY OFFICER

TO

THE REGIONAL MANAGER/DIRECTOR
RESERVE BANK OF INDIA,

................................................

Copy to:-

(1) THE MANAGER, (2) THE MANAGER,
CLEARING HOUSE, .......................... (name of the bank)
RESERVE BANK OF INDIA ..........................

..............................................................

(3) THE CHIEF GENERAL MANAGER,
.......................................................... (name of the bank)
ZONAL HEAD OFFICE,
..........................................................
APPENDIX - 22

GARNISHEE ORDER TO R.B.I (2\textsuperscript{nd} GARNISHEE) ON DEFAULT BY THE DEEMED DEFAULTER (1\textsuperscript{st} GARNISHEE- BANK WHO TOOK POSSESSION OF THE DEFAULTER’S PROPERTY UNDER SAFARESI ACT; APPLICATION OF SECTION 93A ON THE ESI ACT, 1948) UNDER SECTION 45G OF THE ESI Act, 1948.

No. ........................

ORDER


WHEREAS, this office has issued a Demand notice of even No. dated ........................ under Section 93A of the ESI Act, 1948 against M/s ................................................ (name of bank), who being the possessor of immovable property belonging to M/s ................................................ (name & address of defaulter), covered under the ESI Code No. ........................ for transfer of an amount of Rs. ........................ (in words) including interest, as the defaulter failed to make payments of the said amount. Despite acknowledging the receipt of the notice dated ........................, as per records of this office, M/s. ........................ (name of the bank), has neither complied with the Demand notice nor replied to the same.

WHEREAS, a notice of even No. dated ........................ was issued to the Branch Manager ........................ (name of the Bank) under Section 45G (3)(x) of ESI Act, 1948 to show cause as to why he / Bank shall not be declared as DEEMED DEFAULTER and after considering the submission of the Branch Manager / Authorized representative on ........................ (date), vide order dated ........................, the Branch Manager and ........................ (name of the Bank) were held to be DEEMED DEFAULTER’S by possession under Section 45G (3)(x) of the ESI Act, 1948. They were further directed to pay the aforesaid amount of Rs. ........................ (In words) on or before ........................ However, they failed to pay the said amount till date.

WHEREAS, it has become necessary to initiate co-receive steps against ........................ (name of bank) as DEEMED DEFAULTER by possession accordance with the provisions of the ESI Act, 1948 read with the Second and Third Schedule of IT Act, 1961 for effecting recovery of the arrears dues and where as, there is information that Reserve Bank of India ........................ is acting as the Banker of ........................ (name of the deemed defaulter Bank). Apropos, money is due to ........................ (name of the deemed defaulter bank) or is likely to become due from the Reserve Bank of India ........................ being the Depositor.

WHEREAS, I, Shri ................................................, (Recovery Officer), who is also the officer, authorized under section 45G of the ESI Act, 1948 as amended hereby, requires the Reserve Bank of India ........................ to remit / transfer an amount of Rs. ........................ (in words) from and out of the account of ........................ (name of the deemed defaulter bank) by way of Account Payee Demand Draft drawn in favour of Recovery Officer, ESI Corporation ......................... Separate orders with regard to interest till the date of payment and any further cost, charges and expenses incurred in the recovery proceedings for realizing the arrears liable to be recovered under the ESI Act, 1948 read with Rule 5 of the Second Schedule of the Income Tax Act, 1961 shall be issued on the receipt of Demand Draft from the Bank.
WHEREAS, it is further ordered that after receipt of these orders, no further debit transactions from the said bank account shall be allowed without first transferring the amount in full as ordered above and such transactions shall be prohibited forthwith.

WHEREAS, it is further clarified that if there is no money / adequate money in position of the RBI ......................... at the time of receipt of the order, Regional Director, RBI ......................... is hereby ......................... required to transfer the amount available in the possession of the Bank and thereafter, continue to transfer the amount that become available to them subsequently, till the arrears are completely cleared. In case of failure to comply with this Order, the undersigned shall take coercive steps for recovery in accordance with the provisions of Section 45C to 45I of the ESI Act, 1948 read with Second and Third Schedule of the Income Tax Act, 1961 which includes, attachment of the movable and immovable properties of the deemed defaulters for the realization of the dues without further notice to the DEEMED DEFAULTER’s.

An extract of Sub-Section ix & x of Section 45G (3) of the ESI Act is enclosed for ready reference and for prompt compliance.

(GIVEN UNDER MY HAND AND SEAL AT ......................... THIS ......................... DAY OF .........................)

Encl: As Above

TO,

THE REGIONAL MANAGER/DIRECTOR
RESERVE BANK OF INDIA,
.................................................................

Copy to:-

(1) THE MANAGER, (2) THE MANAGER,
CLEARING HOUSE, .............................. (name of the bank)
RESERVE BANK OF INDIA ..........................
.................................................................

(3) THE CHIEF GENERAL MANAGER,
................................................................. (name of the bank)
ZONAL HEAD OFFICE,
.................................................................
What is evidence?

Section 3 of the Evidence Act, 1872 has interpreted the word “evidence” to mean and include:

i. All statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry. Such statements are called oral evidence.

ii. All documents produced for the inspection of the court. Such documents are called documentary evidence.

From the above interpretation, it may be seen that the word “evidence” includes all the legal means excluding mere arguments which tend to prove or disprove any matter of fact, the truth of which is submitted to the judicial investigation.

As already noted, the definition of “evidence” in this Act covers the evidence of witnesses and documentary evidence and it does not cover everything that a Court has before it. There are certain other media of proof eg., the statements of parties, the result of local investigation, facts of which the court takes judicial notice, any real or personal property the inspection of which may be material in determining the question at issue, such as weapons, tools or stolen property. Thus it could be seen that the definition of “evidence” in the Evidence Act is incomplete as it does not include the whole material on which the decision of the judge may rest.

Relevancy of facts

Evidence Act consists of three parts –

Part I - Relevancy of facts (section 6 to 55)

Part II - Proof (section 56 to 100)

Part III - Production and effect of evidence (section 100 onwards)

In all the judicial proceedings, there are issues for decision which may be issues of a fact or issues of law. The latter are decided on the basis of express law and on the basis of arguments before the court. The issues of fact are on the contrary decided mainly on the basis of evidence. In the course of judicial proceedings the facts in issue are clearly set out by the courts in the preliminary stage itself. Evidence may be given by the parties to the proceedings on facts in issue and also on relevant facts. Relevant facts are these which are connected with the facts in issue in any of the ways referred to in the provisions of the Evidence Act relating to the relevancy of facts. As already stated, section 6 to 55 lays down the facts which are considered as relevant. The Evidence Act has created three categories of facts as under:

i. May presume

ii. Shall presume

iii. Facts which are taken as conclusively proved
In the case of first category, the court has the discretion to regard such fact as proved until and unless disproved or to call for proof of the fact. As regards the second category, the court has to presume that the fact is proved unless the same is disproved. In respect of the third category, the facts are taken as proved and no evidence can be entertained to disprove the same.

**Types of evidence**

i. This Act itself regulates the manner in which the evidence has to be had. It may be oral or documentary. Oral evidence has to be direct, e.g., if the evidence is of something seen or heard by a person, the evidence has to be in the form or oral testimony of the person who saw or heard. Thus hearsay evidence is altogether excluded under Act.

ii. As regards documentary evidence, the evidence has to be primary evidence (document itself) unless the court permits the production of secondary evidence in the forms of copies of the document and this mode of procedure of the secondary evidence is regulated by the Act itself.

iii. Under the Act, documentary evidence in matters evidence by the document excludes oral evidence altogether. When the subject matter in issue is an agreement which has been reduced in writing, no oral evidence as to the terms of the agreement can be led barring few exceptions.

**Burden of proof**

One important part of the Evidence Act is that regulating the burden of proof as to who should prove the facts in issue or relevant facts in a case. The general burden of proof is on the person who asserts a fact which he wants the court to take notice of. This principle can be followed by the Tax Recovery Officer in the proceedings before him when certain matters are either asserted or denied.

**Estoppel**

Estoppel is based on the principle that it would be most inequitable and unjust that if one person, by representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. In this connection, the decision in the case of S. Manickem Chettier Vs. ITO, 104 ITR 283 (Madras), may be seen wherein the High Court applied the rule of promissory estoppel and rejected the claim of a surety to be governed by the provisions of section 220(7) of the Income tax Act, 1961.

**Of Witnesses & Examination**

The Evidence Act lays down the rules as to the competency of the witnesses and their examination and cross examination. Many of the provisions of the Act in this regard rest on grounds of public good and can be adhered to in the proceedings under the Income tax Act. Some of the provisions deal with the privilege against testimony by married persons in respect of communications during the marriage, professional communications except those made for the furtherance of an illegal purpose the source of information of police and revenue officers as to the commission of offence etc.
INTRODUCTION TO TRANSFER OF PROPERTY ACT & REGISTRATION ACT

General

1. The Transfer of Property Act, 1882 is the law relating to transfer of property by act of parties. As distinct modes of attachment and sale are prescribed in the Second Schedule of Income tax Act for movable and immovable property, the distinction between the two kinds of the property under the General Clauses Act, Transfer of Property Act and Registration Act should be borne in mind. “Immovable Property” is defined in the General Clauses Act, X of 1987, section 3 (26). It states “Immovable property shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth”. The expression “attached to the earth” is defined in section 3 of the Transfer of Property Act as meaning –
   a. Rooted in the earth, as in the case of trees and shrubs;
   b. Imbedded in the earth, as in the case of walls or buildings; or
   c. Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Again, in the Transfer of Property Act, section 3, says that “immovable property does not include standing timber, growing crops or grass”. In the Registration Act, section 2(6), “immovable property” is defined as including “Land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass”.

2. “MOVABLE PROPERTY” : On regard to “movable property”, section 3(36) of the General Clauses Act, X of 1897, says : “movable property” shall mean “property of every description except immovable property”.

3. By virtue of the exclusion of “standing timber, growing crops and grass” from the definition of “immovable property” in the aforesaid three Acts viz., the General Clauses Act, the Transfer of Property Act and the Registration Act, it necessarily follows that “standing timber” “growing crops” and “grass” should have to be regarded as “movable property”. “Movable property” has been defined in section 2(9) of Registration Act as under –

   “Movable property” includes standing timber, growing crops and grass, fruit upon and juice in trees and property of every other description except immovable property”.

Some important provisions of Transfer of Property Act, 1882

Section 6 enumerates the rights and interests that cannot be transferred. Section 41 states the rules against perpetuity, section 10 explains the vested interest section 41 gives an exception to the rights of real owner of benami holders, section 53 deals with fraudulent transfers, section 53A provides a shield to the
interest of a transferee of immovable property who has performed and is willing to perform his contract, though the contract has not been registered as required under law. The Act also deals elaborately with the sale, mortgage and sale of immovable property and exchange and gift of both movables and immovables and transfer of actionable claims. Nothing in the second chapter of the Act shall affect any rule of Mohammedan Law. For example, rule against perpetuity does not effect the Muslim Wakfs. Section 129 also declares that the provisions of the Act relating to gifts shall not affect any rule of Mohammedan Law. For example, under Mohammedan Law, writing is not essential to the validity of gift but delivery of possession is necessary. The transfer of Property Act declares that any transfer relating to the immovable property is required by law to be effected by registered instrument, any person acquiring such property shall be deemed to have notice of such registered instrument.

Registration Act, 1908

This Act was passed to consolidate the enactments relating to the registration of documents. The offices of Registrar & sub-Registrar function under the superintendence of the Inspector General who has also powers to make rules. Section 17 enumerates the documents that shall have to be registered. In particular all non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of 100 rupees and upwards to or in any movable property, have to be registered. But sub-section (2) declares, among others, that, any certificate of sale granted to the purchaser of any property sold by public auction by a civil or a revenue officer needs no registration. Under section 89 (2) every court and under section 89 (4) every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall however send a copy of the certificate to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situated. Rule 21 of ITCP Rules is the corresponding provisions. A document should be presented for registration within four months from the date of its execution (section 23). The registration officer has, however, powers to extend time under certain circumstances. Provisions regarding the depositing and registering of wills are contained in parts 8 and 9 of the Act. Section 47 says that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. This would normally be the date of execution of the document.
INTRODUCTION TO SALE OF GOODS ACT

Property gets transferred from one person to another in one of the following two ways:

i. By act of parties; or

ii. By operation of law

Where the transfer is by act of parties, different transfers are governed by different laws as follow:

All kinds of transfers of immovable property and transfers of movable property by way of exchange, gift and assignment of actionable claims are governed by the transfer of Property Act. Transfers of movable property by way of pledge or hypothecation and bailment are governed by the Contract Act. Transfers of movable property by way of sale are governed by the Sale of Goods Act.

In the case of transfers by operation of law, the matter will be governed by the concerned law. Sale of property (whether movable or immovable) by the Tax Recovery Officer in public auction, is an instance of transfer by operation of law and not of transfer by act of parties. So much so, the provisions of the Sale of Goods Act are not directly applicable to such sales. How the property should be sold, when the title to the property sold passes the extent of the title that passes etc. – all these aspects are governed by the provisions of the Income tax Act and the Rules made thereunder (the Second Schedule and he ITCP Rules).

But knowledge of the provisions of the Sale of Goods Act will be useful to the Tax Recovery Officer in two ways

i. In determining the extent of interest the defaulter has in a given movable property in relation to third parties; and

ii. In appreciating the general principles underlying the Act, particularly the provisions of section 64 which deal with the sale by auction, in so far as they are not inconsistent or incompatible with the provisions of Income tax Law, they will have a persuasive force and as such it is desirable to follow them while selling the defaulter’s movable property.

The Act deals with the formation of contract of sale as well as agreement to sell, the effect of such formation, performance of the contract, the remedies available in case of breach of contract, the rights of unpaid vender, like lien as well as stoppage of goods in transit etc. Though it is more or less a replica of the English Act, it has highlighted some important aspects like how to determine the passing of title to goods when the intention of parties in not clearly expressed, the precise distinction between the sale and agreement to sell, and between warranties and conditions implied in the contract of sale, the consequences of sale by a co-owner, holder of voidable title, by the seller after sale etc.
INTRODUCTION TO THE NEGOTIABLE INSTRUMENTS ACT, 1881

A negotiable instrument is a close-in-action and thus constitutes movable property. The Tax Recovery Officer will sometimes be concerned with the sale of a negotiable instrument of the defaulter. Therefore knowledge of provisions of the Negotiable Instruments Act will be useful.

If every time cash has to be passed on, a business cannot be conducted speedily and with least risk. Hence instruments like promissory notes, bills of exchange (including hundies) and cheques (including drafts) came to be used by the mercantile community to help speedy transaction of business and safe transport of money. The Negotiable Instruments Act consists of 137 sections divided into 6 chapters and deals with the distinguishing features of these various negotiable instruments, the parties to the instruments and their rights and liabilities and discharge of liabilities, the different modes of negotiation, the manner of presentation and payment, in case of dishonor the manner of giving notice, noting by the Notary Public (person appointed under the Notories Act, 1952) and protesting, what constitutes reasonable time, crossing of cheques, special rules of evidence, international law governing the foreign negotiable instruments and so on.

The following are the special features of negotiable instruments:

i. It is a contract to pay money;

ii. The property in the instrument can be passed by mere delivery or endorsement and delivery without formalities like writing, stamping etc.

iii. The bonafide transferee for value (holder in due course) will not be affected by the defects in the title of his transferor and thus this is an exception to the general rule that no one can convey a better title than what he has. It shall be presumed that the holder (the person having the possession of the instrument and right to recovery the money in his own name) is a holder in due course.

iv. It is as good as cash and can be converted into cash by discounting it.

v. There are special rules of evidence and hence it becomes easy to prove the negotiable instrument.

vi. A Negotiable Instrument is seldom dishonored as that would result in ruination of the credit of all the concerned parties.

Section 31 of the Reserve Bank of India Act, 1934, forbids drawing, accepting, making or issuing of bills of exchange, hundies, promissory notes etc., which are payable to the bearer on demand. This is to secure Government’s monopoly of issuing paper currency.

In relation to hundies (these are bills of exchange in the vernacular language) the local usages will govern, unless the parties expressly stipulate that they will be governed by the Negotiable Instruments Act.

The plea of benami and the law relating to benami transaction have no application to negotiable instruments.
Time limit for filing prosecution under section 138 of N.I. Act

1. Issue of Show Cause Notice within 15 days of dishonoring of the cheque.

2. Wait 15 days for the employer to make good the payment.

3. On expiry of 15 days, in case of failure by the defaulter to comply, prosecution may be filed within 30 days in the Court of the Class-I Magistrate.

(i.e., total 60 days is available with ESIC for filing prosecution under this provision from the date of dishonoring of Cheque to filing of prosecution.
APPENDIX - 27

IMPORTANT CASE LAWS ON RECOVERY
(RELATING TO INCOME TAX)

1. Section 226(3) cannot be invoked on unutilised O.D. limits in Bank accounts. {K.M.Adam’s case—33 ITR 26 (Mad)}

2. The writing off of the demand does not prevent the department from taking recovery action subsequently. {H.R. Laxman’s case — 34 ITR 113 (Punj)}

3. Mere “debt” cannot be called as “arrears”. It must be “debt” that has “become payable” after the “due date” is over. {T.M.K. Abdul Kasini’s case - 46 ITR 149 (SC)}

4. A person becomes an “Assessee in default” only after a demand notice is served on him and thereupon, he fails to pay the dues within the due date. {Segu Butchia Setty’s case — 52 LTR 538, 541 (SC) }

5. In addition to the modes of recovery available under the Income—tax Act, the arrears can also be recovered by filing a suit in a Civil Court. Government is entitled to claim priority over the debts of unsecured creditors. {Builders Supply Corporation’s case — 56 ITR 91(SC) }

6. Where a notice u/s. 226(3) is issued to a debtor nothing prevents him from compounding the claim with the defaulter - creditor. But, inspite of compounding, the liability to the department extends to the mount (before compounding) mentioned in the certificate and the debtor is bound to honour the same. {Harinagar Sugar Mill’s case — 60 ITR 508 (SC) }

7. To make a garnishee order [ Sec. 226 (3) ], the relationship of Employer - Employee, Creditor — Debtor, etc., as on date will be necessary. {Budha Picture’s case — 65 ITR 620 (SC) }

8. Where the Recovery Certificate stands in the Firm’s name, straight away the department cannot proceed against the individual assets of the partners. They should be given notice and on their default to pay, further proceedings can be taken. {ITO Vs. Radhakrishna — 66 ITR 590 (SC) Also S.N. Santhalingam’s case — 121 ITR 868 (Kar)}

9. Section 226(3) can be invoked once an amount becomes “due” even before it becomes “payable” and before the assessee becomes a defaulter. {Damodar Bhat’s case - 71 ITR 806 (Sc)}

10. When the Tax Recovery Officer is acting on the basis of a certificate, the defaulter cannot question the certificate in a Court of Law, as it is only in the nature of decree or execution proceedings. Where RC is issued for the dues front the firm, recovery can be made from the partners as the order XXI — Rule 50(2) of CPC would apply. {Sahu Rageswarnath’s case — 72 LTR 617 (SC)}

11. Garnishee proceedings [ Sec. 226(3) ] means the process where under the III parties debts due to the judgment debtors, are made payable to Judgement -Creditor [Sec. 45G (ESI) ]{Soorajmal Nagarmal’s case — 74 ITR 459, 463 (SC)}
12. When a company is in liquidation, recovery proceedings can be commenced only with the leave of the Court dealing with winding up. {Official Liquidator Vs. ITO — 83 ITR 685 (Sc)}

13. Recovery Certificate once issued remains effective even during pendency of appeal. Even when Installments are given, it will be so. The effect of appeal is that the demand in the RC gets varied. {Union of India Vs. B.C. Nawen 84 ITR 526 (Cal) & 139 — ITR 802 (All)}

14. After the issue of the Recovery Certificate, if the assessee dies, recovery can be continued as the rules 84 and 85 of the II Schedule apply. However, before attachment and sale, notice to the Legal Representatives will be necessary as they should be defaulters before their properties are attached. {Mahaboob Bee Vs. TRO - 93 ITR 127 (Mad)}

15. Recovery Certificate issued in the name of a dead person is not valid. The legal heirs are to be proceeded with in the prescribed manner. {Isha Bevi Vs. TRO - 101 ITR 449 (SC)}

16. A single proclamation combining two defaulters is invalid and contrary to rule 53 of the II Schedule. {Precision instrument’s case — 104 ITR 723 (All) }

17. The title which the purchaser gets relates back to the date of sale and not the date of confirmation of sale. If the sale is set aside in appeal, the confirmation will have no effect. {Smt. C.Kamala Vs. CIT - 114 ITR 159 (Kar) }

18. Where a notice under rule 2 is served on the defaulter, Rule 16 of the II Schedule deprives a Civil Court of its jurisdiction to issue any process against the concerned property.{V.A. Ramaswamy’s case — 114 ITR 408 (Mad)}

19. Where goods are hypothecated to bank without possession and Tax Recovery Officer subsequently attaches them, the department gets priority over the bank dues. {Shenthila Nathan’s Case — 114 ITR 213 (Mad)}

20. Even when a sale is set aside, the attachment continues and Civil Court cannot issue process against the attached property. {Ganesh Lal Bajaj’s case — 115 ITR 791}

21. In respect of time barred debts, action u/s. 226(3) will not be possible, as legally no money is “due” in such cases. { T.R.Raj Kumari’s Case - 116 ITR 306 (Mad)}

22. Where a defaulter appears in response to the notice under rule 73(1), detention cannot be ordered till the enquiry under rule 74 is over or conditions under rule 73(2) & 73(3) are fulfilled.{S.K. Agarwal’s case — 125 ITR 389 (All)}

23. Issue of a certificate to the Tax Recovery Officer is mandatory before the Tax Recovery Officer commences the recovery proceedings. {Beharilal Ramcharan Kothari’s case — 131 ITR 129(SC)}

24. The sale proclamation under rule 52(2) must be in the language of the district. {S.S. Navalgi’s case — 132 ITR 621 (Ker)}
25. When a property is sold, it is effective not from the date of attachment but from the date of service of ITCP-1 See-Rule 51 of II Schedule. {Smt. Sugarbai’s case — 132 ITR 277 (Bom)}

26. The sale of attached property should be made within a reasonable time. {Tikaram’s case — 142 ITR 319 (All)}

**NOTE:** A new rule 68B has been introduced into the II Schedule by Finance Act, 1992 to the effect that no sale of immovable properties can be effected after 3 years from the end of the Financial Year in which the demand becomes final and conclusive.

27. For restraining the Tax Recovery Officer from proceeding with the recovery from the attached property the purchaser should serve a notice u/s. 80 of CPC and make both the Central Government and Tax Recovery Officer parties in the concerned suit. {Prakash Textiles Vs. TRO — 142 ITR 256 (Kar)}

28. The grant of stay, in proceedings under article 226 of the Constitution, should be an exception and not a rule. The court cannot be unmindful of the need to protect the authority levying the tax. Interim orders ought not to be granted merely because a prima facie case has been shown. Governments are not run on mere bank guarantees. {Assistant Collector of Central Excise, Vs. Dunlop India Ltd., — 154 ITR 172 (SC)}

29. If an assessee objects to the recovery proceedings taken u/s. 226(4) on the ground that there has been no valid service of a notice of demand and that no debt is due, the court must decide the objection. If it upholds the objection, it cannot permit recovery of the tax claimed. {Manmohanlal & Others Vs. ITO — 168 ITR 616 (SC)}

30. The attachment under Rule 26(i)(iii) apply to existing rents and not those becoming payable in future. {A. Gopala Naidu’s case — 169 ITR 417,420 & 421 (Kar)}

31. If the amount of demand is reduced in appeal, the sale valid. The demand in the R.C. should be altered and effected for the pre—appeal gross demand would not be recovery can be pursued thereafter. {Manoolal Kedernath Vs. ITO — 172 ITR 612 (All)}

32. When a Garnishee order was made for the payment of a fictitious amount without giving an opportunity to the person against whom the order is made to show cause against the passing of such an order for that amount, the order was a nullity. Any steps taken pursuant to or in enforcement of such an order would also be a nullity. {Surinder Nath Kapoor Vs. Union of India and Others -1 73 ITR - 469 (SC) }

33. The purchaser of a property in an auction sale does not get a better title than what the defaulter possessed. {M.H. Pandya Vs. TRO — 178 ITR 538 (Guj)}

34. Where L.I.C. registers assignment, no money becomes due or payable to policy holder and hence action u/s.226(3) will not be possible. {LIC of India & Another Vs. Gangadhar Vishwanath Ranade - 180 ITR 1 (SC)}

35. The Tax Recovery Officer is a Revenue Officer u/s.89(4) of the Indian Registration Act. On sale of immovable property, he shall grant a certificate under rule 65(1) of II Schedule and send a copy to Sub—
registrar concerned under Rule 21 of the ITCP-Rules. There are similar to rules 89(2) and 89(6) of CPC. This certificate is not compulsorily register able u/s. 17(2)(xii) of Indian Registration Act. Hence, on receipt of the Tax Recovery Officer’s certificate, the Sub-Registrar is bound to enter it in Book No. 1. The purchaser’s title becomes perfect and no registration will be necessary. The Supreme Court however felt that if the purchaser insists registration on production of certificate, stamp duty, registration, etc., may become necessary. {The cases of Smt. Shanti Devilal Singh — 183 ITR 481 and Kapoor Sons — 183 ITR 478 (SC)}

36. If the sale is not made subject to mortgage or other secured charges, the sale proceeds should be adjusted first against them and thereafter, the balance should be adjusted as per Rule 8. {R.T. Thomas’s case — 185 ITR — 274, 279 (Kar)}

37. When a property is sold, it is mandatory that the purchaser should deposit 25% of the amount forthwith and pay the balance within 15 days. The Tax Recovery Officer will have no discretion to relax these conditions or grant time. If the conditions are not fulfilled, the sale becomes invalid and property should be resold. In the matter of forfeiture of the deposit however, the Tax Recovery Officer will have discretion. {Pishorilal Sehi’s case — 188 ITR 528, 531 (All) }

38. Where an application for rectification of the demand is pending, no recovery can be effected till it is finalised. {Sultan Leather Finishers Vs. ACIT — 191 ITR 179(All)}

39. The period of limitation laid down in section 231 is confined to recovery proceedings under the Act. The provisions of limitation cannot curtail the power of the Government to file a suit to recover the outstanding law. Even after the period of limitation laid down in section 231 is over, it is open to the Government to file suit to recover the outstanding amount of tax subject to the provisions of the limitation. {British Airways Vs. CIT 193 ITR 439 (Cal) }

Note: Section 231 has been omitted by Direct Tax Laws (Amendment) Act, 1987, with effect from 1.4.1989.

40. Objection to the attachment of the property could be investigated by the Tax Recovery Officer under Rule 11 of Schedule II to the Income—tax Act, 1961. In view of the existence of alternate remedy, writ will not normally be issued by High Court. {Keshav Deo Poddar Vs. TRO 193 ITh 480 (All) }

41. Section 54 of the Transfer of Property Act, 1882 provides that a contract for sale of immovable property does not, of itself, create any interest in or charge on such property. The expression, ‘whose interest are affected which occurs in both rules 60 and 61 has to be understood, in the light of meaning assigned to it under section 54 of the Transfer of Property Act as meaning the same person. A person who has entered into an agreement for sale had only a pecuniary interest and not any interest iii the property as such within the meaning of the expression “person whose interests are affected” occurring in rule 61 of the IL Schedule to the Income—tax Act. {D.V. Sathyanarayana & others Vs. TRO - 194 ITR 409 (Kar) }

42. Directors are not liable to be proceeded against for recovery of tax due from a company which was deemed to be Public Company u/s 43A of the Companies Act or periods after company become Public
Company. {M.Rajamoni Amma and Deputy Commissioner of Income—tax (Asst.) & Others — 195 ITR 873 (SC)}

43. A joint reading of Rule 76(1) and 73(1) of the Second Schedule clearly indicates that no final order of detention in civil prison can be passed by the Tax Officer against, any defaulter unless the Tax Recovery Officer for reason to be recorded in writing is satisfied that either, the defaulter, with the object or effect of obstructing the execution of the certificate had, after, the drawing up of the certificate by the Tax Recovery Officer dishonestly transferred, conceded or removed any part of his property or the Tax Recovery Officer is satisfied that the defaulter has or has had, since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears, or some substantial refused or neglected to pay the same. {Mohamed Akstar Husin (alias) Khadar Bhatti Vs. State of Gujarat and others — 198 ITR 229 (Guj)}

44. The Commissioner of Income tax had stated in his order refusing to waive interest under sec. 220(2) that the assessee was earning very good income and it did not appear to be a case where the payment of interest caused undue hardship to the assessee. The order of the Commissioner of Income—tax was valid and could not be quashed. {G.T .N. Textiles Ltd Vs Dy. Commissioner of Income—tax & Another — 199 ITR 347 (Ker)}

45. The provisions contained in Rules 52 and 54 of the Schedule are mandatory in nature and have got to be complied with by Tax Recovery Officer. {Sardar Kripal Singh Vs. TRO & Others—201 ITR 563(All)}

46. Rule 12(a) of the II Schedule to the Income—tax Act provides that, if the amount due, with costs and all charges and expenses resulting from the attachment of the property are paid to the Tax Recovery Officer, the attachment shall be deemed to be withdrawn. The rule applies whether the property attached is movable or immovable. In the case of immovable property, the rule provides further that the withdrawal, if the defaulter so desires, to be proclaimed at his expense. The subsequent garnishee proceedings not resulting warrant of attachment are not relevant. {B. Indira Rani Vs.CIT — 201 ITR 917 (Ker) }

47. The assessee demanded the return of sale deed in respect of a particular piece of land on the ground that it had been only deposited as security in respect of the amount due to the Income tax Department and that there was no need for retention of the said security, there being no subsisting dues of the assessee. The request was turned down on the ground that the deposit of title deeds was made as a security towards the dues of the appellant’s father who continued to have arrears payable to revenue. The High Court held that the Revenue had not been able to produce any specific material to prove that the document of the title deed deposited by the appellant was in respect of dues of the appellant’s father and hence title deeds had to be returned to the assessee. {N.S. Vijayaraghavan Vs. CIT — 202 ITR 24 (Ker) Also see K. Devaki Amna Vs. CIT — 202 ITR 27 (Ker) }

48. In a case where Instrument in writing was executed by Contractor giving blank Power of Attorney to collect amounts due on contracts, an order u/s. 226(3) issued by ITO against person for whom contracts were executed to deposit amounts due from them to contractor to credit of Central Government is not valid. {Canara Bank Vs. Tecon Engineers - 207 ITR 691 (Ker)}
49. Section 188A which came into force from 1.4.1989 has retrospective operation. {Tity Thomas Vs. T.R.O — 207 ITR 1072 (Ker) }

50. When an application is made for stay of recovery under section 220(6), order for payment of tax in installments is not valid. {Gajanana Agencies Vs. ITO 210 ITR 865 (Ker) }

51. Recovery Proceedings can be continued against the lent representative of Defaulter though certificate was issued against the defaulter. {Mariam Misria Vs. TRO — 211 ITR 807 (Mad) }
APPENDIX - 28
THE SECOND SCHEDULE PROCEDURE FOR RECOVERY OF TAX

See sections 222 and 276]

PART I
GENERAL PROVISIONS

Definitions.

1. In this Schedule, unless the context otherwise requires,—

(a) “certificate”, except in rules 7, 44, 65 and sub-rule (2) of rule 66, means the certificate drawn up by the Tax Recovery Officer under section 222 in respect of any assessee referred to in that section;

(b) “defaulter” means the assessee mentioned in the certificate;

(c) “execution”, in relation to a certificate, means recovery of arrears in pursuance of the certificate;

(d) “movable property” includes growing crops;

(e) “officer” means a person authorised to make an attachment or sale under this Schedule;

(f) “rule” means a rule contained in this Schedule; and

(g) “share in a corporation” includes stock, debenture-stock, debentures or bonds.

Issue of notice.

2. When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

When certificate may be executed.

3. No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.
Mode of recovery.

4. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes:

(a) by attachment and sale of the defaulter’s movable property;

(b) by attachment and sale of the defaulter’s immovable property;

(c) by arrest of the defaulter and his detention in prison;

(d) by appointing a receiver for the management of the defaulter’s movable and immovable properties.

Interest, costs and charges recoverable.

5. There shall be recoverable, in the proceedings in execution of every certificate,—

(a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of section 220, and

(b) all charges incurred in respect of—

(i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(ii) all other proceedings taken for realising the arrears.

Purchaser’s title.

6. (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser’s right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.

7. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.
Disposal of proceeds of execution.

8. (1) Whenever assets are realised by sale or otherwise in execution of a certificate, the proceeds shall be disposed of in the following manner, namely:

(a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;

(b) if there remains a balance after the adjustment referred to in clause (a), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; and

(c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (b) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.

General bar to jurisdiction of civil courts, save where fraud alleged.

9. Except as otherwise expressly provided in this Act, every question arising between the Tax Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises:

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

Property exempt from attachment.

10. (1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer’s decision as to what property is so entitled to exemption shall be conclusive.

Investigation by Tax Recovery Officer.

11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.
(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment,
he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

Removal of attachment on satisfaction or cancellation of certificate.

12. Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

Officer entitled to attach and sell.

13. The attachment and sale of movable property and the attachment and sale of immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct.
Defaulting purchaser answerable for loss on resale.

14. Any deficiency of price which may happen on a resale by reason of the purchaser’s default, and all
expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the
sale, and shall, at the instance of either the Tax Recovery Officer or the defaulter, be recoverable
from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of
resale.

Adjournment or stoppage of sale.

15. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and
hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording
his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery
Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one
calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter
consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the
costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction
that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered
the sale.

Private alienation to be void in certain cases.

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative
in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property
belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court
issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the
property attached or of any interest therein and any payment to the defaulter of any debt, dividend
or other moneys contrary to such attachment, shall be void as against all claims enforceable
under the attachment.

Prohibition against bidding or purchase by officer.

17. No officer or other person having any duty to perform in connection with any sale under this Schedule
shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Prohibition against sale on holidays.

18. No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the
State Government or on any day which has been notified by the State Government to be a local holiday
for the area in which the sale is to take place.
Assistance by police.

19. Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

[Entrustment of certain functions by Tax Recovery Officer.

19A. A Tax Recovery Officer may, with the previous approval of the [Joint] Commissioner, entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer.]

PART II
ATTACHMENT AND SALE OF MOVABLE PROPERTY

Attachment

Warrant.

20. Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised.

Service of copy of warrant.

21. The officer shall cause a copy of the warrant to be served on the defaulter.

Attachment.

22. If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

Property in defaulter’s possession.

23. Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof:

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

Agricultural produce.

24. Where the property to be attached is agricultural produce the attachment shall be made by affixing a copy of the warrant of attachment—
(a) where such produce is growing crop,—on the land on which such crop has grown, or

(b) where such produce has been cut or gathered,—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

Provisions as to agricultural produce under attachment.

25. (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and he shall have power to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require reattachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Debts and shares, etc.

26. (1) In the case of—

   (a) a debt not secured by a negotiable instrument,

   (b) a share in a corporation, or

   (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,
the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;

(ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of decree.

27. (1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

(i) the Tax Recovery Officer cancels the notice, or

(ii) the Tax Recovery Officer or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the Tax Recovery Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The Tax Recovery Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Share in movable property.

28. Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

Salary of Government servants.

29. Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908.
(5 of 1908), and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary.

Attachment of negotiable instrument.

30. Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer and held subject to his orders.

Attachment of property in custody of court or public officer.

31. Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the [Tax Recovery] Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Attachment of partnership property.

32. (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

Inventory.

33. In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

Attachment not to be excessive.

34. The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.
Seizure between sunrise and sunset.

35. Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

Power to break open doors, etc.

36. The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

Sale

37. The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

Issue of proclamation.

38. When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

Proclamation how made.

39. (1) Such proclamation shall be made by beat of drum or other customary mode,—
   
   (a) in the case of property attached by actual seizure—
       
       (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and
       
       (ii) at such other places as the Tax Recovery Officer may direct;

   (b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

   (2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Sale after fifteen days.

40. Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.
Sale of agricultural produce.

41. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

(a) if such produce is a growing crop—on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered—at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

42. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (e.g., as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

Sale to be by auction.

43. The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

Sale by public auction.

44. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.
(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale, but any person injured may sue.

45. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Negotiable instruments and shares in a corporation.

46. Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Order for payment of coin or currency notes to the Assessing Officer.

47. Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in rule 8.

PART III
ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

Attachment.

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment.

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment.

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

Attachment to relate back from the date of service of notice.

51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.
Sale

Sale and proclamation of sale.

52. (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of proclamation.

53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

(a) the property to be sold;

(b) the revenue, if any, assessed upon the property or any part thereof;

(c) the amount for the recovery of which the sale is ordered;

(d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation.

54. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

Time of sale.

55. No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.
Sale to be by auction.

56. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer:

Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53.

Deposit by purchaser and resale in default.

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure in default of payment.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Authority to bid.

59. (1) Where the sale of a property, for which a reserve price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an Assessing Officer, if so authorised by the Chief Commissioner or Commissioner in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale.

(2) All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

(3) Where the Assessing Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.

Application to set aside sale of immovable property on deposit.

60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—
85. (a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of one and one-fourth per cent for every month or part of a month, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

61. Where immovable property has been sold in execution of a certificate, such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

Setting aside sale where defaulter has no saleable interest.

62. At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

Confirmation of sale.

63. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.
Return of purchase money in certain cases.

64. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

Sale certificate.

65. (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

Postponement of sale to enable defaulter to raise amount due under certificate.

66. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

Fresh proclamation before re-sale.

67. Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

Bid of co-sharer to have preference.

68. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Acceptance of property in satisfaction of amount due from the defaulter.

68A. (1) Without prejudice to the provisions contained in this Part, an [Assessing] Officer, duly authorised by the [Chief Commissioner or Commissioner] in this behalf, may accept in satisfaction of the
whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of rule 59, at such price as may be agreed upon between the [Assessing] Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the [Assessing] Officer and on the date the possession of the property is delivered to the [Assessing] Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the [Assessing] Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the [Assessing] Officer fails to pay such excess within the period aforesaid, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at [one-half per cent for every month or part of a month] to the defaulter on such amount.

[Time limit for sale of attached immovable property.

68B. (1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period—

(i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or

(ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period
shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.]

PART IV
APPOINTMENT OF RECEIVER

Appointment of receiver for business.

69. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

Appointment of receiver for immovable property.

70. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

Powers of receiver.

71. (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Withdrawal of management.

72. The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.
PART V
ARREST AND DETENTION OF THE DEFAULTER

Notice to show cause.

73. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied—

(a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.

(4) Every person arrested in pursuance of a warrant of arrest under this rule shall be brought before the Tax Recovery Officer issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

1[Explanation.—For the purposes of this rule, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.]

Hearing.

74. When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, the Tax Recovery Officer shall give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.
Custody pending hearing.

75. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

Order of detention.

76. (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.

Detention in and release from prison.

77. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

(a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees—for a period of six months, and

(b) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

(i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

(ii) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be rearrested under the certificate in execution of which he was detained in the civil prison.

Release.

78. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has
placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the rearrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Release on ground of illness.

79. (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be rearrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Entry into dwelling house.

80. For the purpose of making an arrest under this Schedule—

(a) no dwelling house shall be entered after sunset and before sunrise;

(b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

(c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition against arrest of women or minors, etc.

81. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

(a) a woman, or

(b) any person who, in his opinion, is a minor or of unsound mind.
PART VI
MISCELLANEOUS

Officers deemed to be acting judicially.

82. Every Chief Commissioner or Commissioner, Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).

Power to take evidence.

83. Every Chief Commissioner or Commissioner, Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

Continuance of certificate.

84. No certificate shall cease to be in force by reason of the death of the defaulter.

Procedure on death of defaulter.

85. If at any time after the certificate is drawn up by the Tax Recovery Officer the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

Appeals.

86. (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Chief Commissioner or Commissioner.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

(4) Notwithstanding anything contained in sub-rule (1), where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Chief Commissioner or Commissioner.

Review.

87. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Chief Commissioner or Commissioner, Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record.
Recovery from surety.

88. Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

Penalties.

89. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.]

Subsistence allowance.

90. (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the [Tax Recovery Officer].

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

Forms.

91. The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

Power to make rules.

92. (1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by [Chief Commissioners, Commissioners], Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely:—

(a) the area within which [Chief Commissioners, Commissioners] or Tax Recovery Officers may exercise jurisdiction;

(b) the manner in which any property sold under this Schedule may be delivered;

(c) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;

(d) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;
(e) the fees to be charged for any process issued under this Schedule;

(f) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;

(g) recovery of poundage fee;

(h) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale;

(i) the mode of attachment of business.

**Saving regarding charge.**

93. Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.

**Continuance of certain pending proceedings and power to remove difficulties.**

94. All proceedings for the recovery of tax pending immediately before the coming into force of the amendments to this Schedule by the Direct Tax Laws (Amendment) Act, 1987 shall be continued under this Schedule as amended by that Act from the stage they had reached, and, for this purpose, every certificate issued by the Assessing Officer under section 222 before such amendment shall be deemed to be a certificate drawn up by the Tax Recovery Officer under that section after such amendment, and, if any difficulty arises in continuing the said proceedings, the Board may issue (whether by way of modification, not affecting the substance, of any rule in this Schedule or otherwise) general or special orders which appear to it to be necessary or expedient for the purpose of removing the difficulty.]
THE THIRD SCHEDULE
PROCEDURE FOR DISTRAINT BY [ASSESSING OFFICER] [OR TAX RECOVERY OFFICER]
[See section 226(5)]

Distraint and sale.

Where any distraint and sale of movable property are to be effected by any [Assessing Officer] [or Tax Recovery Officer] authorized for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.
In exercise of the powers conferred by sub-section (1) of section 295 of the Income-tax Act, 1961 (43 of 1961), and rules 91 and 92 of the Second Schedule to that Act, the Central Board of Revenue hereby makes the following rules, namely:—

PART I
PRELIMINARY

Short title and commencement.
1. (1) These rules may be called the Income-tax (Certificate Proceedings) Rules, 1962.
   (2) They shall come into force on the 1st day of April, 1962.

Definitions.
2. In these rules, unless the context otherwise requires,—
   (1) “Act” means the Income-tax Act, 1961 (43 of 1961);
   (2) “public officer” shall have the same meaning as in the Code of Civil Procedure, 1908 (5 of 1908);
   (3) “principal rules” means the rules contained in the Second Schedule to the Act; and
   (4) “section” and “Schedule” mean respectively section of, and Schedule to, the Act.

Forms.
3. All references to “Forms” in these rules shall be construed as references to the forms set out in the Appendix hereto.

Tax Recovery Commissioners appointed by the Central Government.

Jurisdiction of Tax Recovery Commissioners.

Jurisdiction of Tax Recovery Officers authorised to function as such by the Central Government.

Jurisdiction of other Tax Recovery Officers.

Transfer of proceedings from one Tax Recovery Officer to another.
8. Where any proceeding for execution of a certificate pending before a Tax Recovery Officer stands transferred or is transferred to any other Tax Recovery Officer, the Tax Recovery Officer to whom the
proceeding stands transferred or is transferred may continue the proceedings from the stage at which it stood immediately before such transfer and such transfer shall not render necessary the re-issue of any notice, warrant, proclamation, order, or certificate already issued.]

**PART II**

**GENERAL PROCEDURE**

**Procedure to be followed while sending certificate to another Tax Recovery Officer.**

9. When a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, he shall—

(i) keep a copy of the certificate in his office; and

(ii) inform the Assessing Officer of his having sent the certificate.

**Procedure to be followed while sending a certified copy of certificate to another Tax Recovery Officer.**

9A. (1) Where only a part of the amount in respect of which certificate has been drawn up by a Tax Recovery Officer is to be recovered by any other Tax Recovery Officer under sub-section (2) of section 223, the Tax Recovery Officer shall, before sending a copy of the certificate to the other Tax Recovery Officer, endorse on such copy a certificate in the following form:

**FORM OF CERTIFICATE**

I, ................................................ [name] Tax Recovery Officer, ................................................, do hereby certify that the document bearing this endorsement is a true copy of certificate No. ........................ dated ........................ [drawn up by the Tax Recovery Officer], ........................, against ........................ [name of defaulter] for the recovery of an amount of Rs. ................................................. I do hereby specify that out of the aforesaid amount, an amount of Rs. ................................................ as noted below, is to be recovered from the defaulter, by the Tax Recovery Officer ........................................

<table>
<thead>
<tr>
<th>Part of certificate amount</th>
<th>Rs.</th>
<th>P.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs and charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

(2) When a copy of the certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, he shall,—

(i) keep the certificate in his office; and

(ii) inform the Assessing Officer of his having sent a copy of the certificate.
Procedure to be followed on receipt of a certificate from a Tax Recovery Officer.

10. When a certificate or the certified copy of a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, such other Tax Recovery Officer shall follow the same procedure as is laid down in the principal rules and these rules including the issue of the notice under rule 2 of the principal rules.

Intimation by the first Tax Recovery Officer.

11. The Tax Recovery Officer shall intimate the details of all amounts recovered in respect of a certificate, from time to time to the Assessing Officer, and, also, to any Tax Recovery Officer to whom the certificate or a certified copy of the Certificate has been sent by him under sub-section (2) of section 223.

Intimation by the other Tax Recovery Officer.

12. When a certificate or the certified copy of a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, such other Tax Recovery Officer shall communicate to the first-mentioned Tax Recovery Officer and to the Assessing Officer the details of all amounts recovered by him in respect of such certificate from time to time.

Intimation by the Income-tax Officer.


Form of notice of demand.

14. The notice of demand under rule 2 of the principal rules shall be issued in Form No. I.T.C.P. 1 which shall be in Form No. 57 of the Income-tax Rules, 1962 which may be so varied as the circumstances of each case may require.

PART III
ATTACHMENT AND SALE OF PROPERTY

Continuance of attachment subject to claim of encumbrancer.

15. Where, in the course of investigation made under rule 11 of the principal rules, the Tax Recovery Officer is satisfied that the property is subject to a mortgage or charge (other than a mortgage or charge referred to in section 281 or rule 16 of the said rules) in favour of some person not in possession, and thinks fit to continue the attachment, he may do so, subject to such mortgage or charge.

Proclamation of sale.

16. For the purpose of ascertaining the matters to be specified in a proclamation of sale, the Tax Recovery Officer may summon any person whom he thinks necessary to summon and may examine him in respect of any matters relevant to the proclamation and require him to produce any document in his possession or power relating thereto.

Sale to be held by whom and his remuneration.

17. If the Tax Recovery Officer is of the opinion that it will be more advantageous to appoint a person other than an official subordinate to him to sell a property, he may appoint a fit person for the purpose and fix
the remuneration to be allowed to him for rendering such services; and the remuneration payable to such person shall be deemed to be costs of the sale.

Reserve price.

18. It shall be competent for the Tax Recovery Officer to fix a reserve price in respect of any property, other than agricultural produce, to be sold and order that any bid shall be accepted only on condition that it is not less than the said reserve price.

Report of sale.

19. The officer conducting a sale shall forthwith pay the entire amount received by him from the purchaser of the property into the Government treasury and shall submit a full report of the sale to the Tax Recovery Officer.

Sale proceeds not to be disbursed till sale confirmed.

20. The proceeds of the sale of immovable property shall not be disbursed until the sale is confirmed by the Tax Recovery Officer or, where an appeal has been filed against the order confirming the sale, until the disposal of the appeal.

Registration of sale.

21. Every Tax Recovery Officer granting a certificate of sale to the purchaser of immovable property sold under the Second Schedule shall send a copy of such certificate to the registering officer concerned under the Indian Registration Act, 1908 (16 of 1908), within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate.

Forms.

22. The following forms, which may be so varied as the circumstances of each case may require, shall be used for the purpose mentioned against each:

(i) Form No. I.T.C.P. 2, for issuing a warrant of attachment of movable property under rule 20 of the principal rules;

(ii) Form No. I.T.C.P. 3, for issuing a prohibitory order in the case of a debt not secured by a negotiable instrument under rule 26(1)(i) of the principal rules;

(iii) Form No. I.T.C.P. 4, for issuing a prohibitory order in the case of a share in a corporation under rule 26(1)(ii) of the principal rules;

(iv) Form No. I.T.C.P. 5, for issuing a prohibitory order in the case of other movable property under rule 26(1)(iii) of the principal rules;

(v) Form No. I.T.C.P. 6, for issuing a notice of attachment of a decree of a civil court under rule 27 of the principal rules;

(vi) Form No. I.T.C.P. 7, for issuing a notice of attachment where the property consists of a share or interest in movable property under rule 28 of the principal rules;
(vii) Form No. I.T.C.P. 8, for issuing an order of attachment of salary or allowances under rule 29 of the principal rules;

(viii) Form No. I.T.C.P. 9, for issuing an order of attachment of a negotiable instrument under rule 30 of the principal rules;

(ix) Form No. I.T.C.P. 10, for issuing a notice of attachment of movable property in the custody of any court or public officer under rule 31 of the principal rules;

(x) Form No. I.T.C.P. 11, for issuing an order of attachment of property consisting of an interest in partnership property under rule 32 of the principal rules;

(xi) Form No. I.T.C.P. 12, for issuing a warrant of sale of property under rule 37 or rule 52(1) of the principal rules;

(xii) Form No. I.T.C.P. 13, for issuing a proclamation of sale of movable or immovable property under rule 38 or rule 52(2) of the principal rules;

(xiii) Form No. I.T.C.P. 14, for issuing a certificate of sale of movable property under sub-rule (2) of rule 44 of the principal rules;

(xiv) Form No. I.T.C.P. 15, for issuing an order for payment under rule 47 of the principal rules;

(xv) Form No. I.T.C.P. 16, for issuing an order of attachment of immovable property under rule 48 of the principal rules;

(xvi) Form No. I.T.C.P. 17, for issuing a notice to the defaulter for settling a proclamation of sale under rule 53 of the principal rules;

(xvii) Form No. I.T.C.P. 18, for making an order of confirmation of sale of immovable property under sub-rule (1) of rule 63 of the principal rules;

(xviii) Form No. I.T.C.P. 19, for issuing a notice to interested parties under the proviso to sub-rule (2) of rule 63 of the principal rules;

(xix) Form No. I.T.C.P. 20, for issuing a certificate of sale of immovable property under rule 65 of the principal rules;

(xx) Form No. I.T.C.P. 21, for issuing a certificate to defaulter authorising him to mortgage, lease or sell immovable property under sub-rule (2) of rule 66 of the principal rules;

(xxi) Form No. I.T.C.P. 22, for issuing an order of attachment of a business under rule 69 of the principal rules.

PART IV
MAINTENANCE AND CUSTODY, WHILE UNDER ATTACHMENT, OF LIVESTOCK OR OTHER MOVABLE PROPERTY, FEES FOR SUCH MAINTENANCE AND CUSTODY, SALE THEREOF AND DISPOSAL OF SALE PROCEEDS

Property to which rules apply.

23. The rules in this part relate to movable property (other than agricultural produce) attached by actual seizure under the Second Schedule.
Custody at place of attachment.

24. (1) Where the property attached is of such a nature that its removal from the place of attachment is impracticable or its removal involves expenditure out of proportion to the value of the property, the attaching officer shall, subject to any directions which the Tax Recovery Officer may issue in this behalf, arrange for the proper maintenance and custody of the property at the place of attachment. The attaching officer shall forthwith send a report of having done so to the Tax Recovery Officer.

(2) On receipt of a report from the attaching officer under sub-rule (1), the Tax Recovery Officer may either order the removal of the property to a place which he shall specify or sanction its maintenance and custody at the place of attachment under such conditions as he may think fit.

Removal and custody of property in other cases.

25. Where the attached property is not kept at the place of attachment, it shall be kept in the custody of an officer (hereinafter in this part referred to as the “custody officer”) subordinate to the Tax Recovery Officer and authorised by the Tax Recovery Officer for this purpose. The custody officer may remove the property to the office of the Tax Recovery Officer for custody under his own supervision or, with the approval of the Tax Recovery Officer, may make such arrangements as may be convenient and economical for its safe custody with any other fit person under his own supervision and the Tax Recovery Officer may fix the remuneration to be allowed to such person.

Property may be handed over to the defaulter.

26. Notwithstanding anything contained in rule 24 or rule 25, the attaching officer or the custody officer may, with the previous approval of the Tax Recovery Officer, entrust, subject to his right of supervision, the attached property to the defaulter on his executing a duly stamped bond (sapurdnama) in Form No. I.T.C.P. 23 which may be so varied as the circumstances of each case may require.

Explanation: Where the Tax Recovery Officer proceeds to recover any arrears due from the defaulter by attachment and sale of, or by appointing a receiver for the management of, any movable or immovable property which is held by or stands in the name of, any of the persons referred to in the Explanation to sub-section (1) of section 222 and which is included in the defaulter’s movable or immovable property by virtue of that Explanation, the reference to “defaulter” in this rule and in rules 28 to 32 (both inclusive), rules 39 and 40 and rules 42 to 47 (both inclusive), shall, in relation to such movable or immovable property, be construed as a reference to the person referred to in the said Explanation.

Custody of attached cash, securities, etc.

27. If the property attached consists of cash, Government or other securities, bullion, jewellery or other valuables, the attaching officer shall send them for safe custody to the nearest Government treasury or a branch of the Reserve Bank of India or State Bank of India or of its subsidiaries or of any authorised bank.

Claim of any person other than the defaulter to the property under attachment.

28. When the property remains at the place where it is attached in the custody of the attaching officer, and any person other than the defaulter claims the same, or any part thereof, the officer shall nevertheless remain in possession and shall direct the claimant to prefer his claim to the Tax Recovery Officer.
Return of property on cancellation or withdrawal of attachment.

29. (1) If in consequence of withdrawal or cancellation of the attachment, the defaulter becomes entitled to receive back the movable property attached, the possession thereof shall be given to him on payment of costs, charges and expenses due, if any, in respect of the execution of the certificate against such property.

(2) For the purpose of giving possession under sub-rule (1), the attaching officer shall inform the defaulter that the property is at his disposal.

(3) In the absence of any person to take charge of the property the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

Property may be sold if costs, etc., not paid.

30. In default of the payment of costs, charges and expenses referred to in sub-rule (1) of rule 29, the movable property or such portion thereof as may be necessary shall be sold by auction and after defraying the expenses of such sale and the costs, charges and expenses aforesaid, the balance, if any, of the movable property as has not been sold shall be handed over to the defaulter.

Feeding and tending of livestock under attachment.

31. Whenever livestock is kept at the place where it has been attached, the defaulter shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer.

Removal of livestock.

32. In the event of the defaulter failing to feed attached livestock, the livestock may be placed in the custody of the custody officer or in the circumstances mentioned in rule 33 may be placed in a pound maintained by the Government or a local authority.

Custody of livestock in pound.

33. If there be any such pound near the office of the Tax Recovery Officer, the attaching officer or the custody officer may place in it such attached livestock as can properly be kept there in which case the pound-keeper shall be responsible for the livestock and shall receive the same rates for accommodation and maintenance thereof as are payable in respect of impounded cattle of the same description.

Custody with a person other than custody officer.

34. Notwithstanding anything contained in rule 33, the custody officer may, with the approval of the Tax Recovery Officer, entrust the attached livestock to any other fit person under his own supervision and the Tax Recovery Officer may fix the remuneration to be allowed to such person after taking into account the local circumstances and the charges which such person may have to incur for the maintenance and custody of such livestock.

Expenses of custody, maintenance, etc.

35. The expenses of maintenance and custody of movable property including the remuneration payable to the person concerned under rule 25 or rule 34 shall be deemed to be costs of the sale.
PART V
DELIVERY OF PROPERTY SOLD AND EXECUTION OF DOCUMENT OR ENDORSEMENT OF NEGOTIABLE INSTRUMENT OR SHARE IN A CORPORATION

Delivery of movable property, debts and shares.

36. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) (a) Where the property sold is movable property in the possession of some person other than the defaulter, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser and requiring him to deliver possession of the property to the purchaser within the time stipulated by the Tax Recovery Officer.

(b) Where such person in possession of the property fails without reasonable cause to deliver possession of the property to the purchaser within the time stipulated by the Tax Recovery Officer, or within such further time as may be allowed by him, the Tax Recovery Officer shall cause the property to be seized and delivered to the purchaser and the provisions of rules 35 and 36 of the principal rules shall, as far as may be, apply to such seizure.

(3) (a) Where the property sold is a debt not secured by a negotiable instrument, the delivery thereof to the purchaser shall be made by a written order of the Tax Recovery Officer prohibiting the creditor from receiving the debt or any interest thereon and the debtor from making payment thereof to any person except the purchaser and requiring the debtor to make payment thereof to the purchaser within the time stipulated by the Tax Recovery Officer.

(b) Where the debtor fails to make such payment to the purchaser within the time stipulated by the Tax Recovery Officer, or within such further time as may be allowed by him, the Tax Recovery Officer may take further proceedings to recover the amount due from the debtor as if the debtor were a defaulter in respect of whom the [Tax Recovery Officer had drawn up] a certificate under section 222 for the recovery of arrears of tax equal to the amount of the debt.

(4) (a) Where the property sold is a share in a corporation, the delivery thereof to the purchaser shall be made by a written order of the Tax Recovery Officer prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon and requiring him to deliver the share certificate or other document of title along with the instrument of transfer duly completed by him to the Tax Recovery Officer within the time stipulated by the Tax Recovery Officer and prohibiting the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

(b) Where the person in whose name the share may be standing fails to deliver the share certificate or other document of title to the Tax Recovery Officer within the time stipulated...
by him, or within such further time as may be allowed by him, the Tax Recovery Officer may take steps to obtain a duplicate of the share certificate or other document of title as if the share certificate or other document of title had been lost or destroyed.

Transfer of negotiable instruments and shares.

37. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under the Second Schedule, the Tax Recovery Officer may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:

“........................ by ........................ Tax Recovery Officer ........................ in the proceedings for the recovery of arrears under the Income-tax Act, 1961, against ........................”

(3) The Tax Recovery Officer may cause the document to be executed on proper stamp paper and to be registered if its registration is required by any law for the time being in force and the expenses of such execution and registration shall be borne by the purchaser.

(4) Until the transfer of such negotiable instrument or share, the Tax Recovery Officer may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property.

38. In the case of any movable property not hereinbefore provided for, the Tax Recovery Officer may make an order vesting such property in the purchaser or as the purchaser may direct; and such property shall vest accordingly.

Delivery of immovable property in occupancy of defaulter.

39. (1) Where the immovable property sold is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser on any person whom the purchaser may appoint to receive delivery on his behalf in possession, and if need be, by removing any person who refuses to vacate the same.

(2) For the purposes of sub-rule (1), if the person in possession does not afford free access, the Tax Recovery Officer may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the purchaser, or any person whom the purchaser may appoint to receive delivery on his behalf, in possession.
Delivery of immovable property in occupancy of tenant.

40. Where the immovable property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the defaulter has been transferred to the purchaser.

PART VI
RESISTANCE OR OBSTRUCTION TO DELIVERY OF POSSESSION TO PURCHASER

Resistance or obstruction to possession of immovable property.

41. (1) Where the purchaser of immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Tax Recovery Officer complaining of such resistance or obstruction within thirty days of the date of such resistance or obstruction.

(2) The Tax Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Resistance or obstruction by defaulter.

42. Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the defaulter or by some other person at his instigation, he shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Tax Recovery Officer may also, at the instance of the applicant, take steps to put the applicant into possession of the property by removing the defaulter or any person acting at his instigation.

Resistance or obstruction by bona fide claimant.

43. Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned by any person (other than the defaulter) claiming in good faith to be in possession of the property on his own account or on account of some person other than the defaulter, the Tax Recovery Officer shall make an order dismissing the application.

Dispossession by purchaser.

44. (1) Where any person other than the defaulter is dispossessed of immovable property sold in execution of a certificate by the purchaser thereof, he may make an application to the Tax Recovery Officer complaining of such dispossession within thirty days of such dispossession.

(2) The Tax Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Bona fide claimant to be restored to possession.

45. Where the Tax Recovery Officer is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the defaulter, he shall direct that the applicant be put into possession of the property.
Rules not applicable to transferee lite pendente.

46. Nothing in rules 43 and 45 shall apply to resistance or obstruction by a person to whom the defaulter has transferred the property after the service of a notice under rule 2 of the principal rules or to the dispossession of any such person.

Right to file a suit.

47. Any party not being a defaulter against whom an order is made under rule 42 or rule 43 or rule 45 may institute a suit in a civil court to establish the right which he claims to the present possession of the property.

PART VII
APPOINTMENT, POWERS AND DUTIES OF A RECEIVER

Powers of a receiver.

48. A receiver appointed under the Second Schedule shall have all such powers, as to bringing in and defending suits and for the realisation, management, protection and preservation of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tax Recovery Officer thinks fit.

Remuneration of a receiver.

49. The Tax Recovery Officer may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

Duties of a receiver.

50. (1) Every receiver so appointed shall—

(a) furnish such security (if any) as the Tax Recovery Officer thinks fit, duly to account for what he shall receive in respect of the property;

(b) submit his accounts at such periods and in such form as the Tax Recovery Officer directs;

(c) pay the amount due from him as the Tax Recovery Officer directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

(2) The receiver shall maintain true and regular accounts of the receivership and shall in particular maintain a cash book in which shall be entered from day to day all receipts and payments and also a ledger. He shall also maintain a counterfoil receipt book with the leaves numbered serially in print, from which shall be given, as far as possible, all receipts for payments made to the receiver.

(3) Unless the Tax Recovery Officer otherwise directs, the receiver shall, as soon as may be after his appointment, open an account in the name of the receivership in such bank as the Tax Recovery Officer may direct and shall deposit therein all moneys received in the course of the receivership immediately on receipt thereof save any minimum sums that may be required for meeting day to
day current expenses. All payments by the receiver shall, as far as possible, be made by cheques drawn on the bank account.

(4) Unless otherwise ordered, a receiver shall submit his accounts once in every three months. The first of such accounts commencing from the date of his appointment and ending with the expiry of three months therefrom shall be submitted within fifteen days of the expiry of the said period of three months and the subsequent accounts brought down to the end of each succeeding period of three months, within fifteen days of the expiry of each such period of three months.

**Enforcement of receiver’s duties.**

51. (1) Where a receiver fails to submit his accounts at such periods and in such form as the Tax Recovery Officer directs, the Tax Recovery Officer may direct his property to be attached until such time as such accounts are submitted to him.

(2) The Tax Recovery Officer may at any time make an enquiry as to the amount, if any, due from the receiver, as shown by his accounts or otherwise, or an enquiry as to any loss to the property occasioned by his wilful default or gross negligence and may order the amount found due, if not already paid by the receiver under rule 50, or the amount of the loss so occasioned, to be paid by the receiver within a period to be fixed by the Tax Recovery Officer.

(3) Where the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) within the period specified, the Tax Recovery Officer may direct such amount to be recovered from the security (if any) furnished by the receiver or by attachment and sale of his property or, if his property has been attached under sub-rule (1), by the sale of such property, and may direct the sale proceeds to be applied in making good any amount found due from the receiver or any such loss occasioned by him and the balance (if any) of the sale proceeds shall be paid to the receiver.

(4) If a receiver fails to submit his accounts at such periods and in such form as directed by the Tax Recovery Officer without reasonable cause or improperly retains any cash in his hands, the Tax Recovery Officer may disallow the whole or any portion of the remuneration due to him for the period of the accounts with reference to which the default is committed and may also charge interest at a rate not exceeding 12 per cent per annum on the moneys improperly retained by him for the period of such retention without prejudice to any other proceedings which might be taken against the receiver.

**Form of order of appointment of a receiver.**

52. An order of appointment of a receiver under rule 69 or rule 70 of the principal rules, shall be made in Form No. I.T.C.P. 24 which may be so varied as the circumstances of each case may require.

**PART VIII**

**ARREST AND DETENTION**

**Prison in which defaulter may be detained.**

53. A person against whom an order of detention has been passed under Part V of the Second Schedule may be detained in the civil prison of the district in which the office of the Tax Recovery Officer ordering
the detention is situate, or, where such civil prison does not afford suitable accommodation, in any
other place which the State Government may appoint for the detention of persons ordered by the civil
courts of such district to be detained.

Subsistence allowance.

54. (1) The subsistence allowance shall be supplied by the [Tax Recovery] Officer by monthly instalments
in advance before the first day of each month.

(2) The first payment shall be made to the Tax Recovery Officer for such portion of the current month
as remains unexpired before the defaulter is committed to the civil prison, and the subsequent
payment (if any) shall be made to the officer in charge of the civil prison.

Forms.

55. The following forms, which may be so varied as the circumstances of each case may require, shall be
used for the purpose mentioned against each :

(i) Form No. I.T.C.P. 25, for issuing a notice to show cause why a warrant of arrest should not issue
under rule 73 of the principal rules;

(ii) Form No. I.T.C.P. 26, for issuing a warrant of arrest under Part V of the principal rules;

(iii) Form No. I.T.C.P. 27, for issuing a warrant of detention under Part V of the principal rules;

(iv) Form No. I.T.C.P. 28, for issuing an order of release under rule 77 or rule 78 or rule 79 of the
principal rules.

PART VIII A

APPEALS TO [A CHIEF COMMISSIONER OR COMMISSIONER]

Form of appeal.

55A. (1) Every appeal under [* * * ] sub-rule (1) of rule 86 of the principal rules, shall be made in Form
No. I.T.C.P. 29A which shall be verified in the manner indicated therein and shall be accompanied
by a copy of the order appealed against.

(2) The form of appeal prescribed by sub-rule (1), the grounds of appeal and the form of verification
appended thereto shall be signed :—

(a) in the case of an individual, by the individual himself; where the individual is absent from
India, by the individual concerned or by some person duly authorised by him in this behalf;
and where the individual is mentally incapacitated from attending to his affairs, by his
guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the karta, and where the karta is absent from
India or is mentally incapacitated from attending to his affairs, by any other adult member
of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;
(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person, or by some person competent to act on his behalf.

Procedure in appeal.

55B. (1) The [Chief Commissioner or Commissioner] shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the [Chief Commissioner or Commissioner] against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the time of appeal:—

(a) the appellant, either in person or by [an authorised representative] referred to in rule 62 of these rules;

(b) the Tax Recovery Officer, either in person or by a representative.

(3) The [Chief Commissioner or Commissioner] may, if sufficient cause is shown, at any stage of the appeal, grant time to the parties or to any of them, and may, for reasons to be recorded in writing, adjourn from time to time the hearing of the appeal.

(4) The [Chief Commissioner or Commissioner] may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Tax Recovery Officer to make further inquiry and report the result of the same to the [Chief Commissioner or Commissioner].

(5) The [Chief Commissioner or Commissioner] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the [Chief Commissioner or Commissioner] is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the [Chief Commissioner or Commissioner] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(7) On the disposal of the appeal, the [Chief Commissioner or Commissioner] shall communicate the order passed by him to the appellant, the defaulter (if he is not the appellant) and the Tax Recovery Officer.

(8) Every appeal shall be disposed of by the [Chief Commissioner or Commissioner] as expeditiously as possible and endeavour shall be made to dispose of the appeal within six months from the date on which it is presented.

PART IX

SCALE OF FEES FOR PROCESSES, CHARGES FOR OTHER PROCEEDINGS AND POUNDAGE FEES, ETC.

Process fees.

56. The following scale of fees shall be charged for service and execution of processes issued under the Second Schedule and these rules:
Where the amount mentioned in the certificate exceeds Rs. 1,000 is Rs. 1,000 or under

<p>| | | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td></td>
<td>Rs.</td>
<td>Rs.</td>
</tr>
<tr>
<td>(a) Notice of demand</td>
<td>1.50</td>
<td>1.00</td>
</tr>
<tr>
<td>(b) Warrant of attachment</td>
<td>3.00</td>
<td>2.00</td>
</tr>
<tr>
<td>(c) Warrant of arrest</td>
<td>3.00</td>
<td>2.00</td>
</tr>
<tr>
<td>(d) Warrant of delivery</td>
<td>3.00</td>
<td>2.00</td>
</tr>
<tr>
<td>(e) Proclamation of sale</td>
<td>5.00</td>
<td>3.00</td>
</tr>
<tr>
<td>(f) Any process not provided for hereinabove</td>
<td>1.50</td>
<td>1.00</td>
</tr>
</tbody>
</table>

**Levy and scale of poundage fees.**

57. (1) In respect of any sale made in the execution of a certificate, there shall be levied a fee by way of poundage on the gross amount realised by the sale, calculated at the rate of 2 per cent on such gross amount up to Rs. 1,000 and at the rate of 1 per cent on the excess of such gross amount over Rs. 1,000.

(2) The poundage fee leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 50 paise shall be levied for every Rs. 25, or part of Rs. 25, realised by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 25 paise for every Rs. 25 or part thereof on the excess of such amount over Rs. 1,000, shall be levied.

(3) Where the sale is in more than one lot, the poundage fee shall be calculated with reference to the sale proceeds of each lot separately.

(4) The poundage fee under sub-rule (1) shall be paid by the purchaser of the property as soon as the sale is completed.

(5) When a sale of immovable property is set aside under sub-rule (2) of rule 63 of the principal rules, the Tax Recovery Officer may make an order for payment, by the defaulter or by the person at whose instance the sale is set aside, of the poundage fees paid by the purchaser of the property under sub-rule (1) read with sub-rule (4).

**Copying fees.**

58. (1) Except in cases where copies are supplied free under rules or instructions in force, copying fees shall be charged for supplying a copy of any document at the rate of Re. 1 for each page of such document.

(2) Copying fees shall be payable in advance.

(3) The fees to be charged for the supply of a copy of any document urgently shall be Rs. 4 for each document, in addition to the fees payable under sub-rule (1).
Inspection fees.

59. (1) Fees for inspecting records of proceedings before the [Chief Commissioner or Commissioner] or Tax Recovery Officer under the Second Schedule shall, where such inspection is permitted, be charged as follows:

(a) for the first hour or part thereof ... \(2\text{ Rs.}\)

(b) for every additional hour or part thereof ... 50 Paise.

(2) Fees for inspection shall be payable in advance.

PART X
MISCELLANEOUS

Proceedings against legal representative of a deceased defaulter.

60. A notice to the legal representative of a deceased defaulter under rule 65 of the principal rules read with rule 2 of those rules shall be issued in Form No. I.T.C.P. 29 which may be so varied as the circumstances of each case may require.

Recovery from surety.

61. A notice to a surety under rule 88 of the principal rules read with rule 2 of those rules shall be issued in Form No. I.T.C.P. 30 which may be so varied as the circumstances of each case may require.

Appearance before Tax Recovery Officer.

62. (1) Any person who is entitled or required to attend before any [Chief Commissioner or Commissioner] or Tax Recovery Officer in connection with any proceeding under the Second Schedule or these rules, otherwise than when required under rule 83 of the principal rules to attend personally for examination on oath or affirmation, may attend either in person or by [an authorised representative].

\(3\)[Explanation: For the purposes of this sub-rule, “authorised representative” shall have the meaning assigned to it in clauses (iii) to (vii) of sub-section (2) of section 288.]

\(4\)[(2) In any proceeding before the Tax Recovery Officer, referred to in sub-rule (1), the [Assessing] Officer concerned shall have the right to be heard either in person or by a representative.]
OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

No. .......................  Dated: .........................

To

Sri/Smt./Ms. .............................................. (Name)

M/s . ............................................................

Sir/Madam,

Sub: Show Cause Notice under NI Act for tendering Cheque without sufficient balance.

You are informed that the cheque No. ....................... dated ....................... for Rs. ....................... drawn on ........................., issued in favour of ESI Corporation, submitted for realisation has been returned from the Bank with the remarks “.......................”.

In this connection your attention is invited to Sec. 138 of Negotiable Act. 1985. In terms of the same, it is hereby called upon you to make good the payment of Rs. ......................., whether by cash or by Demand Draft, in favour of ESI Fund, within 15 days of receipt of this notice or intimate the same to the undersigned alongwith the evidence of payment in form of Bank Challan.

Please note that failure to pay the amount as demanded above will render you liable for prosecution under Sec. 138 of N.I Act.

Yours faithfully

RECOVERY OFFICER

Copy to Ins. Br. For information./ Copy to Legal Br. for information.
To

The Manager,

.................................................. (Bank)

Sub:- Payment against Prohibitory Order.

Ref:- This Office Prohibitory Order dated ..................... issued in respect of M/s. ...........................................

Pursuant to the above cited Prohibitory Order issued in respect of M/s. ..........................................., you are advised to issue a Pay Order/D.D./Banker’s Cheque for an amount as per the Prohibitory Order referred above. In the event the entire amount is not available in the account, the available balance may be paid immediately.

The Pay Order may be issued in favour of ESIC Fund A/c. No.1 by Speed Post/Courier Service. Any fraction of a Rupee may be rounded off to the next higher Rupee.

The Prohibitory Order may not be treated as revoked till the full amount is paid.

RECOVERY OFFICER
APPENDIX - 33

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

(REVOCATION OF PROHIBITORY ORDER TO THE BANK)

No. .........................

To

The Manager,

.................................................. (Bank)

Sub:- Prohibitory Order attaching the Bank A/c. in respect of M/s. ............................................................. ......
(Name & Address of the Defaulter) – Revocation thereof.

WHEREAS, by an Order dated ......................... issued in ESICP 4 for Rs. ......................... (Rupees
........................................................................ only), operation of the account held by the defaulter/defaulter
Company, M/s. ................................................ and/or Sri/Smt/Ms. ............................................. ...,Principal
Employer was prohibited and you were restrained from making payment/allowing operation of that account
held with your bank.

The Defaulter/Defaulter Company has since liquidated the certificate case in full and final settlement.

Now, in view of, the aforesaid prohibitory order is revoked.

Given under my hand and seal at ......................... this ......................... day of ......................... 20..........

RECOVERY OFFICER

Copy to:–

1) M/s. ..............................................................

2) Sri/Smt./Ms. ................................................

Note:- To be issued where contribution has been received in full
APPENDIX - 34

OFFICE OF THE RECOVERY OFFICER
EMPLOYEES’ STATE INSURANCE CORPORATION

(REVOCATION OF PROHIBITORY ORDER TO THE BANK)

No. ......................

To

The Manager,

................................................ (Bank)

Sub:- Prohibitory Order attaching the Bank A/c. in respect of M/s. ............................................................. .......
(Name & Address of the Defaulter) – Revocation thereof.

WHEREAS, by an Order dated ...................... issued in ESICP 4 for Rs. ................................................
(Rupees ........................................................................ only), operation of the account held by the defaulter/defaulter Company, M/s. ................................................ and/or Sri/Smt/Ms. .............................................,
Principal Employer was prohibited and you were restrained from making payment/allowing operation of that
account held with your bank.

WHEREAS, the Recovery Proceedings have been stayed by an order of the Hon’ble E.I. Court/High Court/Authorised Officer vide Order dated ......................

Now, in view of, the aforesaid prohibitory order is revoked.

Given under my hand and seal at ...................... this ...................... day of ...................... 20 ............

RECOVERY OFFICER

Copy to:- 1) M/s. ..............................................................

2) Sri/Smt./Ms. ..............................................................

Note:- To be issued where Recovery Proceedings have been stayed by Courts.
APPENDIX - 35 (A)

RECOVERY OFFICER

To

The Insurance Commissioner
ESI Corporation,
C.I.G. Marg,
New Delhi - 110 002.

Note : This MPR (Part-I & Part-II) is to be sent to the Hqrs. Office by the 10th of the next month under a covering letter from the Recovery Officer

By E-Mail/SPEED POST

From :

Recovery Officer

.........................
Regional Office

N.B. : Specimen of
Part-I P. 304
Part-II P. 305
APPENDIX - 35 (PART - I)

RETURN CODE : MISRO/RR-01
NOMENCLATURE OF THE RETURN : RETURN ON PROGRESS MADE IN THE REVENUE RECOVERY
PERIODICITY OF THE RETURN : MONTHLY
DUE DATE FOR SUBMISSION : 10\textsuperscript{th} OF THE FOLLOWING MONTH

EMPLOYEES’ STATE INSURANCE CORPORATION, ....................... REGION, ......................
No. ........................ Dated, ........................, 20..........

RETURN ON PROGRESS MADE IN THE REVENUE RECOVERY DURING THE MONTH OF ........................, 20..........

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificates pending at the beginning of the month (Excluding Court Stay cases)*</td>
<td>Recovery certificates received from the Authorised Officers during the month</td>
<td>Total (1 + 2)</td>
<td>Certificates against which Demand Notices (CP-2) issued</td>
<td>Certificates pending for issue of Demand Notices</td>
</tr>
<tr>
<td>Recovery</td>
<td>For issue of Demand Notices</td>
<td>No.</td>
<td>Amount (Rs.)</td>
<td>No.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificates against which recovery made</td>
<td>Certificates withdrawn/kept in abeyance by Authorised Officers/R.D. out of the Certificates (Col. No. 3)</td>
<td>Total number of Certificates against which Recovery stayed during the month</td>
<td>Effective Certificates pending for recovery at the end of November, 2010</td>
</tr>
<tr>
<td>No. of Cases</td>
<td>Total amount recovered (Rs.)</td>
<td>By the courts</td>
<td>By the O.L.</td>
</tr>
<tr>
<td>Recovery</td>
<td>Part recovery</td>
<td>No.</td>
<td>Amount (Rs.)</td>
</tr>
<tr>
<td>Full recovery</td>
<td>Part recovery</td>
<td>No.</td>
<td>Amount (Rs.)</td>
</tr>
<tr>
<td>@</td>
<td>#</td>
<td>@</td>
<td>#</td>
</tr>
</tbody>
</table>

@ Certificate cases withdrawn/cancelled by the A.O.
# Certificate cases against which Exemption granted by the Competent Authority

PRI : Rs. ________/- ★ Deducted Rs. ________/- being Interest Reduced against Cft. Cases mentioned in Col. No. 6
COST : Rs. ________/- & added Rs. ________/- on various grounds, which was subtracted and shown earlier.
TOTAL : Rs. ________/-

Recovery Officer
APPENDIX - 35 (PART - II)

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE: ...........................................

No. ..........................  Dated, the ........................., 20.........

RETURN ON PROGRESS MADE IN THE REVENUE RECOVERY DURING THE MONTH OF .............., 20...........

(Amount in Rs.)

| 1. | Total administrative expenditure (including Salary of Recovery Officer/Recovery Inspector/Staff and other etc.) During the month |
| 2. | No. of Warrants of attachment of property issued | No. of Cases | Amount |
|    | (i) Movable |
|    | (ii) Immovable |
| 3. | No. of Arrest Warrants issued |
| 4. | No. of Cases of actual Arrest |
| 5. | No. of Notices issued for Attachment of Bank Accounts |
|    | (Garnishee) |
| 6. | No. of Bank Accounts actually attached |
|    | (Garnishee) |
| 7. | No of Cases of Auction or Sale of Property |
|    | (i) Movable |
|    | (ii) Immovable |

8. Target and achievement of recovery

<table>
<thead>
<tr>
<th></th>
<th>Target fixed for Recovery for 20......-...... (Rs. in Lakhs)</th>
<th>Recovery made during the month of 20......-...... (Rs. in Lakhs)</th>
<th>Progressive total since April, 20......-...... (Rs. in Lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution + Interest + Damages</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Break up of recovery:

<table>
<thead>
<tr>
<th></th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution</td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td>Damages</td>
<td></td>
</tr>
<tr>
<td>PRI</td>
<td></td>
</tr>
<tr>
<td>Cost</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>
Respected,

I am to inform you that a sum of Rs. ........................................ lakhs has been recovered during the month of ...................., 20.........., the detail is as under:-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Heads</th>
<th>Amounts Recovered (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Contribution</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Damages</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Post Requisition Interest</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Cost/Service Charges, etc.</td>
<td></td>
</tr>
</tbody>
</table>

GRAND TOTAL

Thus, total recovery made since April, 2011, is Rs. ........................................ lakhs which comes to .................% of the proportionate target of Rs. ........................................ lakhs and ....................% of the annual target of Rs. ........................................ lakhs.

With

Yours sincerely,

(....................)

Shri ........................................,

Insurance Commissioner,
E. S. I. Corporation,
Hqrs. Office, Panchdeep Bhawan,

Note:- This monthly statement is to be sent to the I.C. by the 5th of the next month under a D.O. letter from the R.D./Dir./J.D.-I.C.
Dear Sirs,

Defaults in payment of statutory dues by borrowers

The role of banks in regard to payment of Provident Fund, Employees State Insurance and other statutory dues by borrowers of banks has been engaging the attention of Reserve Bank of India since nearly a decade. Initially, banks were advised, vide our circular DBOD. No. CAS.BC>136/C.446-77 dated 1 November 1977, to safeguard their interests vis-à-vis statutory dues by verifying the position in this regard either by obtaining a suitable declaration from the borrower or, if considered necessary, by calling for proof of payment or obtaining “No dues Certificate”. These instructions were particularly modified vide our subsequent circulars DBOD No. CAS, BC, 15/C-446-78 dated 6 February, 1978 and IECD.No.CAD.85/C.446 (PF)-84 dated 10 March, 1984. On the basis of certain decisions take in 1979, some of the Regional Provident Fund Commissioners started sending lists of defaulters in payment of Provident Fund dues to Reserve Bank of India (which in turn advised the names of defaulters falling within the purview of the Credit Authorisation Scheme to the banks concerned for appropriate action) or directly to banks.

2. In terms of our guidelines, banks were expected to ascertain the position regarding payment of statutory dues from their borrowers through the medium of loan application and, where necessary, to verify the declaration of the borrower in this regard. Thereafter, while sanctioning credit limits, banks were expected to keep the position of such dues in view and also ensure that they are cleared as early as possible. We, however, find that credit limits are being sanctioned /enhanced even when dues are substantial and/or long outstanding, without any stipulation as to the clearance of such dues. In the case of borrowers who do not approach for enhanced facilities the position is expected to be looked into at the time of annual review of the credit facilities, but, according to our information, such reviews are not being made in a very large number of cases. As mentioned in our earlier circulars, it is in the interest of the banks themselves to initiate appropriate measures. This apart, the fact that a large number of parties continue to carry on operating with the assistance of operating with the assistance of bank credit without meeting their statutory obligations and that the banks have failed to check this inspite of our specific guidelines is causing concern to us. The Government of India is also perturbed by the mounting arrears in payment of statutory dues.

3. In view of the foregoing, we advise banks to modify the application forms for grant/renewal/enhancement of credit facilities, if not already done in terms of our earlier guidelines, so, as to ensure that the position regarding the statutory dues is disclosed therein. Where warranted, the banks should satisfy themselves about the genuineness of the party’s declaration in this regard. It is our intention that sanction/renewal/enhancement of credit facilities is utilized as a leverage by banks for enforcing necessary discipline on the part of their borrowers. To facilitate this, banks should ensure that all credit limits are invariably reviewed at least once.
every year as they would be obtaining for this purpose, among other data, a statement of Assets and Liabilities which should reflect the position regarding statutory dues. So far as borrowers enjoying aggregate working capital limit of Rs.50 lakhs and above are concerned, while sanctioning credit limits, a suitable condition regarding the clearance of statutory dues within a reasonable period should be stipulated and the compliance therewith followed up.

4. As regards corporate borrowers, the amount of statutory dues should normally be reflected in their annual accounts which would be duly certified by the Auditors. The non-corporate borrowers enjoying aggregate working capital limits of Rs. 10 lakhs and above from the banking system are also required to get their annual accounts audited and certified by Chartered Accountants (vide our circular IECD.No. CAD (PMS) 111/C.446 (PMS)-85 dated 12 April, 1985) and, hence, the banks should have no difficulty in ascertaining the position of their statutory dues. Nonetheless, we advise that in addition to duly audited annual accounts, banks should hereafter obtain a specific certificate from the Chartered Accountants as regards the position of statutory dues, if the audited accounts do not clearly indicate the position.

5. It need hardly be stressed that after ascertaining the quantum of statutory dues the banks should ensure that they are cleared by the borrowers within a reasonable period and that too through the internal generation of funds. As banks are aware, non-payment of statutory dues is one of the symptoms of incipient sickness of and industrial unit and it is in the interests of both the lender and the borrower to give high priority to the clearance of these dues. As such, apart from insisting on the borrowers to indicate a definite programme for clearance of arrears, banks may consider placing suitable restrictions on the outflow of funds by way of dividends, repayment of loans from promoters or their friends/relatives or inter-corporate borrowings, etc. till the overdue statutory liabilities are cleared. It may be added that in the case of sick units, that in the case of sick units, the rehabilitation packages prepared for them should invariably provide for the payment of statutory liabilities over a reasonable period in the agreed manner.

6. Apart from the above, the banks should also introduce suitable measures for monitoring by the Head/Controlling Offices, the position of over dues; they should be done at least in respect of borrowers enjoining aggregate working capital limits of Rs. 50 lakhs and over whose statutory dues are large. Further, where a banks nominee has been appointed as a director of an assisted company, he may also be advised to monitor the payment of statutory dues of that unit and to indicate the position of defaulters, if any, in his periodical reports to the banks management.

7. Please acknowledge receipt. Instructions in this matter may please be issued to your Controlling Offices/Branches and a copy thereof furnished to us at an early date.

Yours faithfully

s/d

(D.N.Samarth)
Joint Chief Office
NOTICE OF AUCTION

For the *movable/*immovable property of the following defaulter:

Description of property: ..........................................................................................................................................................

Reserve Price (in case of immovable property only): ................................................................................................................

Date and time of Auction: ............................................................ (Date) At .................................................... (A.M/P.M)

Venue of Auction: ........................................................................................................................................................................

Inspection of property to be auctioned alongwith Documents: At ..................... (Place) during .................... (A.M) to ................. (P.M) on office days.

NOTE: A refundable bidding fee of Rs. ......................... per bidder will be payable by DD/IPO in favour of ESI Fund. A/c. No.1 payable at ....................... Payment in cash will not be accepted.

Place: .................................................................
Dated: .................................................................

Recovery Officer

*Score out portion if not applicable.