

Assam Debt Conciliation Act, 1936

10 of 1936

[06 January 1937]

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PREAMBLE

An

Act to make provision for the setting up of Debt Conciliation Boards

to relieve Agriculturists from indebtedness

Whereas it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

And whereas the previous sanction of the Governor-General required by sub-section (3) of section 80A of the Government of India Act, has been obtained to the passing of this Act;

It is hereby enacted as follows:--

* For Statement of Objects and Reasons, see Assam Gazette, 1936, Part V, page 239, for Report of Select Committee, see Assam Gazette, 1936, Part V, for Proceedings in Council, see Assam Gazette 1935, Part VI, pages 90 395. 401, 1011-12, 1170-74.

1. Short title, extent and commencement :-

(1) This Act may be called the Assam Debt Conciliation Act, 1936.

(2) It extends to the whole of Assam.

(3) It shall come into force in any area on such ¹date as the Local Government may, by notification, direct.

1. "Came into force with effect from the 3rd March 1937, throughout the province of Assam, vide Notification No. 630-R., dated the 27th February 1937".

2. Section 2 :-

In this Act, unless there is anything repugnant in the subject or context,

(a) "Agriculture" includes horticulture, dairy farming and sericulture, and the use of land for any purpose of husbandry inclusive of keeping or breeding of livestock, poultry or bees and the growing of fruits, vegetables and the like;

(b) "Board" means a Debt Conciliation Board established under sub-section (1) of section (3);

¹[(c) "Creditor" means a person to whom a debt is owing and includes his heirs, executors, administrators and assigns, and it also includes a Co-operative Society registered under the Coperative Societies Act (II of 1912)]

(d) "Debt" includes all liabilities in cash or kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise, whether due or not due, but shall not include rent not due, arrears of wages, land revenue, or anything recoverable as an arrear of land revenue, or any claim for the recovery of which a suit or application is barred by limitation;

(f) "Prescribed" means prescribed by rules made under this Act;

¹[(e) "Debtor" means a person who owes a debt and who earns his livelihood mainly by agriculture, and includes his heirs, executors, administrators and assigns."],

(g) "Deputy Commissioner" means the Deputy Commissioner of a district or any other officer appointed by the [Provincial Government]⁺ to discharge any of the functions of a Deputy Commissioner under this Act].

+ Substituted by the A.O. for " T.O."

1. Substituted by Section 2 of Assam Act 14 of 1943.

3. Establishment of Debt Conciliation Board :-

(1) The [Provincial Government]^{*} may establish a Debt Conciliation Board for any district or part of a district. Such Board shall consist of three or more members not exceeding seven, including the Chairman, to be appointed by the [Provincial Government]^{*} which may, for reasons to be recorded in writing, cancel any appointment or dissolve any Board.

(2) The Chairman and every other member of a Board so established shall be appointed for a term not exceeding three years. Such Chairman or member shall, on the expiration, of the period for which he has been appointed, be eligible for re-appointment.

(3) A Board shall have such quorum as may be prescribed.

(4) Where the members of a Board are unable to agree, the opinion of the majority shall prevail. Where the Board is equally divided the Chairman shall have a second or casting vote.

* Substituted by the A.O. for "L.G.".

4. Application for settlement between debtor and his creditor :-

(1) A debtor or any of his creditors may apply to the Board appointed for the area in which the debtor ordinarily resides, to effect a settlement between the debtor and his creditors:

Provided that no application shall lie if the debtors debts be less than Rs. 50 or more than Rs. 5,000.

(2) Where applications have been made by the debtor and any of his creditors, the applications made by the creditors, shall be

merged in the application made by the debtor.

(3) If applications are made to more than one Board in respect of the debts of the same debtor such applications shall, subject to rules prescribed, be transferred to and dealt with by one Board.

(4) The [Provincial Government]* may, at any stage of a proceeding, transfer the proceeding from one Board to another, and the Board to which it is transferred shall have jurisdiction to deal with it.

* Substituted by the A.O. for "L.G.".

5. Verification of application :-

Every application to a Board under section 4 shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act V of 1908), for signing and verifying plaints.

6. Statement of debts to be included in application :-

(1) An application made by a debtor under subsection (1) of section 4 shall contain a statement of debts, in the prescribed form which shall include the following:--

(a) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor;

(b) the history of each such debt, so far as is known to the debtor, with particulars of the original principal and the rate of interest chargeable;

(c) particulars of any other liability which does not constitute a debt under this Act;

(d) particulars of the debtors property, both moveable and immoveable (including claims due to him), a specification of its value and of the places where it may be found, and details of any attachment, mortgage, lien or charge subsisting thereon;

(e) particulars of any income from sources other than agriculture;

(f) a declaration that all liabilities, debts and properties have been disclosed in the statement, and that the debtor is unable to pay his debts.

(2) An application made by a creditor under sub-section (1) of section 4 shall contain a statement of debts, in the prescribed form, which shall include the following:--

- (a) the total amount of every debt claimed by him to be owing to him by the debtor;
 - (b) the history of each such debt with particulars of the original principal, the rate of interest chargeable, and payments made either as interest or principal;
 - (c) particulars, so far as they are known to the creditor, of the debtors property, as in clause (d) of sub-section (1);
 - (d) particulars, so far as they are known to the creditor, of any income of the debtor from sources other than agriculture; and
 - (e) a declaration that agriculture is the main source of livelihood of the debtor.
- (3) The Board may return, for amendment, an application, if it is not complete and in proper form.

7. Procedure on application :-

(1) On receipt of an application under section 4 the Board shall examine it, and if it considers that it has jurisdiction to entertain it, it shall pass an order fixing a date and place for hearing the application:

Provided that the Board may at any stage whether after examining the application on presentation or after submission of the statement of debts under section 8, dismiss the application for want of jurisdiction, or if for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and his creditors.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

Period of limitation for re-hearing application.

(3) (a) If on receipt of an application under section 4, the Board dismisses it on the ground of want of jurisdiction, the applicant may, within 30 days from the date of service of notice under sub-section (2) make an objection in writing to the Board against such dismissal.

(b) On receipt of an objection under clause (a) of sub-section (3) the Board shall make such order thereon as it thinks fit.

8. Notice calling upon creditors to submit statement of debts :-

(1) If after examining the debtor, it is, in the opinion of the Board, desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served as published in the

manner prescribed, calling upon every creditor [and any property of the debtor in possession of such creditor shall be released within 30 days from the date of passing of such order:]

and to appear personally or by an authorised agent before the Board on the date fixed for the examination of the statement or settlement of the case of the debtor to submit a statement of debts owed to such creditor by the debtor Such statement shall be signed and verified in the manner prescribed in the Code of Civil Procedure, 1908(Act V of 1908), for signing and verifying plaints, and shall be submitted to the Board in writing within 30 days from the date of service or publication of the notice as the case may be:

Provided that if the Board is satisfied that any creditor for good and sufficient cause was unable to comply with such directions, it may extend the period for the submission of his statement of the debts owed to him.

Effect of non-compliance.

(2) Every debt of which a statement is not submitted to the Board or in respect of which the creditor fails to appear¹ compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged.

Provided that, if a creditor proves to the satisfaction of the Board that the notice was not served on him and that he had no knowledge of its publication, the Board may revive the debt on application made within 30 days of the date on which he first had knowledge of the order of discharge:

Provided also, that in any area in which a Board has been dissolved, the Civil Court may entertain an application for revival of the debt on the same conditions.

Boards decision as to jurisdiction final.

(3) If any question as to the jurisdiction of a Board arises after submission of the statement of debts made under sub-section (1) the Board shall not pass any order without hearing the debtor and creditor. The decision of the Board with regard to jurisdiction under section 7 or section 8 shall be final and shall not be questioned in any Civil Court.

1. Ins. by S.3 of Assam Act 14 of 1943.

9. Procedure on submission of statement of debts :-

(1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section

8 shall furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including entries in books of account, on which he relies to support his claims, together with a true copy of every such document.

(2) The Board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document, which is in the possession, or under the control, of the creditor, is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him.

10. Board to endeavour amicable settlement :-

The Board shall then call upon the debtor and each creditor, respectively, to explain his case regarding each debt, and shall endeavour to induce them to arrive at an amicable settlement.

11. Power of Board to require attendance of persons and production of documents and to receive evidence :-

(1) Subject to any rules prescribed, the Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908(Act V of 1908).

(2) Any person present may be required by a Board to give evidence or to produce any document then and there in his possession or power.

12. Agreement of amicable settlement, its registration and effect :-

(1) If the creditors, to whom not less than forty per cent. of the total amount of the debtors subsisting debts are owing, come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the immoveable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon, and the amounts payable to such creditors and the manner in which and the times at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be

signed or otherwise authenticated by the Board and the parties:

Provided that, when a Co-operative Society is one of such creditors, no settlement, in so far as it affects the debts owing to such Society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies.

(2) An agreement thus made shall, within 14 days from the date of its making, be registered under the Indian Registration Act, 1908 (XVI of 1908), by the Chairman of the Board, in such manner as may be prescribed¹.

(3) For the purpose of registration of an agreement under sub-section (2), the Chairman of the Board shall be deemed to be an officer of Government empowered to execute such an agreement within the meaning of section 88 of the Indian Registration Act, 1908 (XVI of 1908)

Existing mortgage, lien or charge to subsist.

(4) Where an agreement registered under sub-section (2) relates to a debt which is secured by a mortgage, lien or charge on any immovable property of the debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable to the creditor in respect of such debt in accordance with the terms of the agreement until such amount has been paid or the property has been sold for the satisfaction of such debt.

1. Omitted by S. 4 of Assam Act 14 of 1943

13. Recovery of sums due under agreement and distribution thereof :-

(1) If a debtor defaults in paying any amount due in accordance with the terms of an agreement registered under sub-section (2) of section 12, such amount shall be recoverable²[under the procedure laid down in section 69 of the Assam Land and Revenue Regulation, 1886(Regulation 1 of 1886)]. on application to the Deputy Commissioner made by the creditor within 90 days from the date of default.

(2) Where the Deputy Commissioner has under sub-section (1) recovered any amount which was payable in accordance with the terms of the agreement, he shall proceed to make payments as follows:--

(a) he shall, in the first instance, apply the sum realised from the sale of any portion of the immovable property referred to in section 12(4) to the payment of any amount payable under the agreement

on account of (i) rent in respect of the property sold; (ii) any debt which is secured by a mortgage, lien or charge on such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882 (Act IV of 1882), and, if the said sum is insufficient to meet such payments, the amounts which have remained unpaid shall rank equally with unsecured debt;

¹[(3) When the Deputy Commissioner certifies under sub-section (3) that any debt is irrecoverable such certificate shall be deemed to be a decree and the creditor to be the decree-holder within the meaning of the Code of Civil Procedure, 1908 (Act V of 1908), and the nearest Civil Court by which any decree for like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to the execution of decrees shall apply accordingly.

(b) if there is a surplus after the payments have been made under clause (a), the Deputy Commissioner shall apply to the payment of any other amounts payable under the agreement the sum of the surplus and of the proceeds realised from the sale of such portion of any other property of the debtor as will, together with the surplus, be sufficient to meet the payment of such amounts;

(c) if the sum of the surplus and sale proceeds referred to in clause (b) is insufficient to meet the payment of other amounts referred to therein, such other amounts and any amount payable on account of any unsecured debt for the recovery of which a decree has been passed by a Civil Court and of which details are given in the agreement shall rank equally between themselves for the purposes of payment;

(d) any further surplus remaining after the payments have been made under clauses (a), (b) and (c) shall be paid by the Deputy Commissioner to the debtor.

(4) Where the Deputy Commissioner fails to recover under the provisions of sub-sections (1) any part of such amount, he shall certify that it is irrecoverable and thereupon the agreement shall cease to subsist.

1. Substituted by S. 5 of Assam Act 14 of 1943.

2. Substituted by s. 5 ibid.

14. Power of Board to dismiss application :-

If no amicable settlement is arrived at under sub-section (1) of section 12, the Board shall dismiss the application.

15. Grant of certificate by Board in respect of certain debts

:-

(1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the Board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor, in such form as may be prescribed, a certificate including the particulars of the fair offer in respect of the debt owed by him to such creditor.

Effect of refusal to agree to a fair offer.

(2) Where any creditor sues in any Civil Court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the Court, notwithstanding the provisions of any law for the time being in force, may, if it thinks fit refuse to grant a decree for any sum in excess of the sum specified in the certificate as a fair offer, and shall not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent. per annum on the principal amount due on the date of such certificate.

(3) Where after the registration of an agreement under sub-section (2) of section 12 any creditor sues for the recovery of a debt in respect of which no settlement has been made though it was included in the application under section 6 or in the statement of debts under section 8 or any creditor sues for the recovery of a debt incurred after the date of such registration, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (Act V of 1908), not be executed until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist:

Provided that the provision in this sub-section shall not apply to the execution of a rent decree.

16. Bar of civil suit or proceeding :-

No Civil Court shall entertain--

(a) any suit or proceeding in respect of--

(i) any matter pending before a Board,

or

(ii) the validity of any procedure or the legality of any agreement made under this Act, or

(iii) the recovery of any debt recorded as wholly or partly payable

under an agreement registered under sub-section (2) of section 12 from any person who as a debtor, was party to such agreement, whether such agreement is subsisting or not, or

(iv) the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of section 8, except a debt which is revived under the proviso to that sub-section;

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 15.

17. Avoidance of certain transfers of debtors property :-

Every transfer of property made with intent to defeat or delay the creditors of the debtor shall be voidable at the option of the creditor so defeated or delayed.

18. Bar of appeal or revision :-

No appeal or application for revision shall lie against any order passed by a Board.

19. Power of Board to review its order :-

A Board may, on an application from any person interested made within ninety days of the passing of an order, review any order passed by it and pass such order in reference thereto as it thinks fit:

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

20. Appearance of party before Board by agent but not by legal practitioner :-

In any proceedings before a Board any party may be permitted to appear by an agent authorised in writing, but not by a legal practitioner.

21. Suspension of pending application on suit :-

(1) When an application has been made to a Board under section 4, any suit or other proceedings then pending before a Civil Court or a Revenue Court in respect of any debt for the settlement of which application ¹[or a Revenue Court] has been made shall be suspended until the disposal of the application.

(2) If the debt referred to in sub-section (1) is not recorded in the agreement registered, a decree, if subsequently passed therefor, or a previous decree for that debt execution whereof is suspended, shall not be executed until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist:

Provided that the provision in this sub-section shall not apply to the execution of a rent decree.

1. Added by S.6 of Assam Act 14 of 1943.

22. Allowance of time for limitation :-

In calculating the period of limitation for any suit or proceeding regarding a debt which has been the subject of any proceedings under this Act, notwithstanding anything contained in any other Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from instituting the suit or proceeding, shall be excluded.

23. Members of Board deemed to be public servants :-

The members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code (Act XLV of 1860).

24. Power to make rule :-

In addition to any power specially conferred by this Act, the [Provincial Government]* may make rules--

- (a) prescribing the quorum for, and regulating the procedure before, a Board;
- (b) prescribing the forms of application under section 4 and of statement of debts under section 6;
- (c) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 8;
- (d) prescribing the charges to be made by a Board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;
- (e) prescribing the records to be kept and the returns to be made by a Board;
- (f) prescribing the allowances, if any, to be paid to the Chairman and members of a Board;

- (g) regulating the power of a Board to summon parties and witnesses under section 11 and the grant of expenses to witnesses;
- (h) prescribing the place at which and the manner in which an agreement shall be registered under subsection (2) of section 12;
- (i) prescribing the form of certificate to be granted under subsection (2) of section 13 or sub-section (1) of section 15; and such other forms as may be required for the purpose of carrying into effect the provisions of this Act; and
- (j) providing for the representation of minors, lunatics and other disabled persons;
- (k) and generally for the purpose of carrying into effect the provisions of this Act.

25. General provisions regarding rules :-

- (1) All rules shall be subject to the condition of previous publication.
- (2) In making any rule the [Provincial Government]* may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach has been persisted in.

* Substituted by the A.O. for "L.G.".