

Goa, Daman And Diu Debt Relief Act, 1980

8 of 1981

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Goa, Daman And Diu Debt Relief Act, 1980

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AN ACT

to provide relief from indebtedness to agricultural labourers, rural artisans, marginal farmers and small farmers in the Union territory of Goa, Daman and Diu.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Thirty-first

Year of the Republic of India as follows:-

CHAPTER 1 Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the Goa, Daman and Diu Debt Relief Act, 1980.

(2) It extends to the whole of the Union territory of Goa, Daman and Diu.

(3) It shall come into force with immediate effect.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "Administrative Tribunal" means the Administrative Tribunal constituted under the Goa, Daman and Diu Administrative Tribunal Act, 1965 (6 of 1965);

(b) "agricultural labourer" means a person who follows any one or more of the following agricultural operations in the capacity of a labourer on hire or exchange, whether paid in cash or in kind or partly in cash and partly in kind and who does not hold any agricultural land namely:-

(i) farming, including cultivation and tillage of soil;

(ii) dairy farming;

(iii) production, cultivation, growing and harvesting of any horticultural commodity;

(iv) raising of livestock, bees or poultry;

(v) any practice performed on a farm as incidental to, or in conjunction with, farming operations (including any forestry or timbering operations) and preparation for market, or delivery to storage or to market or to carriage for transportation of farm products;

(c) "agriculture" with its grammatical variations and cognate expressions, includes the raising of food crops such as paddy, wheat, pulses, millets and vegetables, and of sugarcane, groundnut, coconut, arecanut, cashew and mango;

(d) "annual family income" means the aggregate of the annual income from all sources of all the members of a family;

(e) "Board" means the Debt Relief Board established under section 7;

(f) "creditor" means a person to whom a debtor owes a debt;

(g) "debt" includes all liabilities owing to a creditor in cash or in kind, secured or unsecured, payable under a decree or order of a civil court or otherwise whether due or not due, but does not include-

(i) any rent or compensation due in respect of any property let out to a debtor;

(ii) any liability arising out of breach of trust or any tortious liability;

(iii) any liability in respect of wages or remuneration due as salary or otherwise for services rendered;

(iv) any liability in respect of maintenance whether under a decree of a civil court or otherwise;

(v) any sum recoverable as arrears of land revenue;

(vi) any debt due to-

(1) the Central Government or any State Government or the administration or Government of any Union territory, or any local authority or a co-operative society;

(2) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949), the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970), a Regional Rural Bank established under sub-section (1) of section 3 of the Regional Rural Banks Act, 1976 (Central Act 21 of 1976), or any banking institution notified

by the Central Government under section 51 of the Banking Regulation Act, 1949 (Central Act 10 of 1949);

(3) any co-operative land development bank or any other co-operative institution registered under the Maharashtra Co-operative Societies Act, 1960 (Maharashtra Act XXIV of 1961) as extended to the Union territory of Goa, Daman and Diu;

(4) the Agricultural Refinance and Development Corporation established under the Agricultural Refinance and Development Corporation Act, 1963 (Central Act 10 of 1963);

(5) any Government company within the meaning of section 617 of the Companies Act, 1956 (Central Act 1 of 1956);

(6) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (Central Act 3 of 1956), or to any other Corporation established by or under any other law for the time being in force;

(7) any other banking or financial institution which may be notified in this behalf by the Government in the Official Gazette;

(h) "debtor" means an agricultural labourer, a rural artisan, a marginal farmer or a small farmer, who owes a debt;

(i) "family", in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children; Explanation.- For the purpose of this clause, "minor" means a person who has not completed his or her age of eighteen years.

(j) "foro" means the annuity or amount that an emphyteuta of a property pays annually to the direct owner;

Explanation 1.- "emphyteuta" means a person who is given possession of, or has full ownership of, a property by a contract of emphyteuse;

Explanation 2.- "emphyteuse", means a contract by which the owner of a property transfers the possession or full ownership of the property to another and the transferee binds himself to pay an annuity to the owner which is called foro;

(k) "Government" means the Government of Goa, Daman and Diu;

(l) "marginal farmer" means a person who owns land measuring,-

(i) not more than two hectares of un-irrigated land, if he is a member of a Scheduled Tribe; or

(ii) not more than one hectare of un-irrigated land in any other case, and who cultivates personally such land, and includes a person who cultivates such land as a tenant or share-cropper.

Explanation 1.- For the purposes of clause (l) and clause (q) -

(1) one-third of a hectare of land with an assured supply of water for irrigation and capable of yielding at least two crops in a year, that is to say, land irrigated seasonally as well as perennially by flow irrigation by a Government owned and managed lift or from any source constructed or maintained by the Government or any local authority, or from any other natural source of water; or

(2) one-half of a hectare of land which has an assured supply of water for only one crop in a year, that is to say, land irrigated-

(a) seasonally by flow irrigation from any source constructed or maintained by the Government or any local authority or from any other natural source of water; or

(b) perennially by a lift, other than a lift referred to in clause (1), from any source constructed or maintained by the Government or any local authority, or from any other natural source of water; or

(c) perennially from a privately owned well situated on the land within the irrigable command of any irrigation project, or in the bed of a river stream or natural collection of water or drainage channel which is a perennial source of water; or

(3) two-thirds of a hectare of land irrigated seasonally by flow irrigation from any source constructed or maintained by the Government or any local authority, or from any other natural source of water with an unassured water supply, that is to say water supply is given under water sanctions which are temporary or where such sanctions are regulated on the basis of availability of water in the storage shall be equated to one hectare of unirrigated land;

Explanation 2.- Where a person owns and cultivates personally or cultivates as a tenant or share-cropper, land falling under any one or more of the categories specified in clauses (1) to (3) of Explanation 1 together with un-irrigated land, if any, the land so owned or cultivated shall, for the purposes of clause (l) and clause (q), be converted into un-irrigated land in accordance with the principles specified in Explanation, and if any question arises as to which of the categories specified in the said Explanation any land belongs, it shall be decided by the Board whose decision thereon shall be final;

(m) "notification" means a notification published in the Official Gazette;

(n) "Official Gazette" means the Goa, Daman and Diu Government Gazette;

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

(p) "rural artisan" means a person who does not own any agricultural land and whose principal means of livelihood is production or repair of traditional tools, implements and other articles or things used for agriculture or purposes ancillary thereto and includes a person who normally earns his livelihood by practising any craft either by his own labour or by the labour of all or any of the members of his family in a rural area.

(q) "small farmer" means a person who owns land measuring-

(i) more than two hectares but not exceeding four hectares of un-irrigated land if he is a member of a Schedule Tribe or Scheduled Caste; or

(ii) more than one hectare but less than two hectares of un-irrigated land in any other case, and who cultivates personally such land, and includes a person who cultivates such land as a tenant or share-cropper.

CHAPTER 2 Moratorium

3. Stay of suits, etc :-

Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary,-

(i) no court shall entertain any suit, application or proceeding against a debtor in respect of any debt incurred by him;

(ii) all suits, applications or proceedings in relation to the recovery of debt pending before a court shall abate on the date of coming into force of this Act.

CHAPTER 3 Liquidation of certain debts

4. Discharge of certain debts :-

Notwithstanding anything contained in any other law for the time being in force or in any contract or other instrument having the force of law, and save as otherwise expressly provided in this Act, every debt outstanding on date of commencement of this Act including the amount of interest, if any, payable by an agricultural labourer or a rural artisan either of whose annual family income does not exceed two thousand and four hundred rupees or a marginal farmer shall be deemed to be wholly discharged, and the consequences as hereinafter set forth shall, with effect from that day ensue, namely,-

(a) no such debt due from the debtor shall be recoverable from him, or from or against, any movable or immovable property belonging to him, nor shall any such property be liable to be attached and sold or proceeded against in any manner in the execution of any decree or order relating to such debt against him;

(b) no court shall entertain any suit or proceedings against such debtor for the recovery of any debt, including interest, if any: Provided that, where a suit or proceeding is instituted jointly against such debtor and any other person, nothing in this clause shall apply to the maintainability of a suit or proceeding in so far as it relates to such other person;

(c) all suits, applications and proceedings (including appeals, revisions, attachment or execution proceedings) pending on the day of coming into force of this Act for the recovery of any such debt against such debtor shall abate: Provided that nothing in this clause shall apply to the sale of-

(i) any movable property, held and concluded before the day of coming into force of this Act;

(ii) any immovable property, confirmed before the day of coming into force of this Act;

(d) every debtor undergoing detention in prison in the execution of

any decree for money passed against him by any court in respect of any such debt shall be released forthwith;

(e) every property pledged or mortgaged by such debtor shall stand released in favour of such debtor and the creditor shall be bound to return the same to the debtor forthwith.

Explanation.- Nothing in this section shall be construed as to entitle any such debtor to the refund of any part of a debt already repaid by him or recovered from him before the date of coming into force of this Act.

5. Power of District Magistrate to enforce delivery of possession of property to debtor :-

Where a creditor fails to return the property to the debtor forthwith as required by clause (e) of section (4) or the debtor is opposed or impeded in taking possession of the property, the debtor may, subject to the provisions of section 6, request the District Magistrate to enforce delivery of possession of such property and the District Magistrate shall take or cause to be taken such steps or use or cause to be used such force as may be reasonably necessary for securing the delivery of possession of the property to the debtor.

6. Board to determine certain questions :-

If any question arises as to whether any person is a debtor entitled to benefits under this Chapter, the Board may, on an application made to it by the debtor or any of his creditors and after giving the parties concerned a reasonable opportunity of being heard, determine the said question.

CHAPTER 4 Debt Relief Board

7. Establishment of Debt Relief Board :-

(1) For the purposes of this Act, the Government shall, by notification in the Official Gazette, establish a Board to be called the Debt Relief Board consisting of one or more members, as it

thinks fit, to exercise the powers and discharge the functions conferred on the Board by or under this Act: Provided that where the Board consists of one member, that member shall be a person who has held a civil judicial post for at least ten years or who has been a member of the Central Legal Service (not below Grade III) for at least three years or who has been in practice as an advocate for at least ten years, and where the Board consists of more than one member, one such member shall be a person qualified as aforesaid.

(2) Where the number of members of the Board is more than one, the Government shall appoint one of those members to be the Chairman of the Board.

(3) Subject to the provisions of sub-section (1), the qualifications and other conditions of service of the member or members constituting the Board and the period for which such member or members shall hold office shall be such as may be determined by the Government.

(4) Where the number of members of the Board is more than one and if the members differ in opinion on any point, that point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, the decision of the Chairman of the Board thereon shall be final.

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

The members of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

9. Board to have certain powers of civil court :-

The Board shall have, for the purposes of this Act, all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in relation to the following matters, namely:-

(a) summoning and enforcing the attendance of any person and

examining him on oath;

(b) requiring the discovery and production of any documents;

(c) taking evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commissions for the inspection of property or for the examination of witnesses;

(f) inspection of property;

(g) any other matter which may be prescribed.

CHAPTER 5 Procedure for settlement of debts

10. Application for settlement of debt :-

(1) A debtor or any of his creditors may make an application to the Board within such time as may be prescribed to effect a settlement between the debtor and his creditors.

(2) Every application made under sub-section (1) shall be in the prescribed form and shall be signed by the applicant and verified in the prescribed manner.

(3) Every application presented by a debtor to the Board shall contain the following particulars, namely:-

(a) the place where he resides or holds land;

(b) the particulars of all claims against him together with names

and residences of his creditors;

(c) the particulars of all his property, together with specification of the value of such property and the place or places at which any such property is to be found;

(d) the particulars of his family income;

(e) a statement whether he has previously filed an application in respect of the same debt before the Board and, if so, with what result.

(4) Every application presented by a creditor shall contain the following particulars, namely:-

(a) the place where the debtor resides or holds land;

(b) the amount and particulars of his claim against such debtor;

(c) a statement containing the particulars of property if any, pledged or mortgaged with him by a debtor, the specification of its value and the place or places where the property is to be found.

11. Assignee from non-debtor not entitled to benefit of this Act :-

No application shall lie under section 10 for the settlement of any debt due from a debtor to whom such debt has been transferred or assigned by any person who is not a debtor.

12. Consolidation of applications :-

(a) Where two or more applications for settlement of debts under section 10 are presented by or against the same debtor; or

(b) where separate applications are presented by or against joint debtors under that section, all such applications shall be consolidated and heard together.

13. Service of notice on debtors and creditors to submit statement of debts :-

On the receipt of an application under section 10, the Board shall summon the defendant and the procedure for the service of summons will be the same as laid down from the sections 27 to 29 of the Civil Procedure Code, 1908 (Central Act 5 of 1908).

14. Debts in respect of which no application for settlement is made to be void :-

Every debt due from a debtor in respect of which no application has been made under section 10 within the time prescribed under the said section and every debt due from a debtor in respect of which no statement or reply is submitted to the Board by the creditor in compliance with the provisions of section 13, shall be deemed to be discharged.

15. Power of Board to effect settlement and decide disputes as to existence or amount of debt or assets :-

The Board shall fix a date for the hearing of an application made under section 10 and on the date so fixed, shall call upon the applicant and all his creditors or debtors, as the case may be, to explain their respective cases regarding each debt and shall proceed to take accounts in the manner hereinafter provided.

16. Mode of taking accounts :-

(1) The Board shall inquire into an application made under section 10 and take account of all the transactions subsisting between the parties and the persons, if any, through whom they claim, out of which the claim has arisen and determine the amount due to each of the creditors on the date of the application according to the following norms, namely:-

(a) separate accounts of principal and interest (hereafter in this section referred to as the principal account and interest account, respectively) shall be taken regarding each party;

(b) from the principal account,

(i) there shall be debited to the debtor only such money as may, from time to time, have been actually received by him or on his account from the creditor and the price of goods, if any, sold to him by the creditor;

(ii) there shall be credited to the debtor all such money already paid by the debtor towards the debt or towards the price of goods, if any, sold by him to the creditor; Explanation.- In case the debtor proves to the satisfaction of the Board, through documentary or oral evidence, that the debtor received an amount less than the one indicated by the creditor towards principal, such amount actually received by the debtor shall be debited as principal amount due to the account of the debtor;

(c) from the interest account,

(i) there shall be debited to the debtor all the interest amounts due and claimed by the creditor, from the date the principal amount was borrowed upto the date of the application, the revenue or taxes paid to the Government or to the local authority by the creditor on behalf of the debtor and such other amount lent by the creditor;

(ii) there shall be credited to the debtor, all the interest amounts paid to the creditor upto the date of the application, the revenue or taxes paid to the Government or to the local authority by the debtor on behalf of the creditor, the rent collected by the creditor through the utilisation of such income or rent on certain and specific immovable properties and such other amount paid to the creditor on account of the loan, provided that, for sufficient reasons to be recorded, such amount is acceptable to the Board as being so

paid;

(iii) there shall be credited or debited, as the case may be, all the amounts paid as foro.

(2) All moneys paid by or on account of the debtor to the creditor or on his account and all profits, service or other advantages of every description received by the creditor in the course of the transaction (estimated, if necessary, at such money value as the Board may determine in the manner prescribed) shall be credited first in the interest account as provided in clause (c) of sub-section (1), and, when the amounts so credited are found to be in excess of the debit balance in the interest account, such excess amount shall be credited to the debtor in the principal account.

(3) The accounts of principal and interest shall be made upto the date of the application, and notwithstanding anything contained in any other law custom, contract, award or decree of a civil court, the respective balance amounts, if any, appearing as due on both, the principal and interest accounts against the debtor, on that date, shall be deemed to be the amount due on that date.

17. Fraudulent alienations or encumbrances void :-

(1) If, in the course of the hearing of an application made under section 10, the Board finds that the debtor has made an alienation of property or created an encumbrance thereon with intent to defeat or delay the payment to any of his creditors, the Board shall, by notice, summon the debtor and the person in whose favour the alienation or encumbrance is made or created, to appear before it on a day to be specified in the notice.

(2) On the day specified in the notice or on such other day to which the hearing may be adjourned, the Board shall hear the parties and record evidence as may be produced and, if it is satisfied that the alienation was made or the encumbrance was created with intent to defeat or delay the payment to any of the creditors of the debtor,

the Board shall declare the alienation or encumbrance to be void.

18. Boards duty to determine paying capacity :-

(1) After taking account under section 16, the Board shall, in the manner provided in sub-section (2) determine the paying capacity of the debtor.

(2) The paying capacity of the debtor shall, for the purposes of this Act, be deemed to be-

(a) seven times of twenty per cent. of the gross value of-

(i) his annual family income in the case of agricultural labourer or a rural artisan, or

(ii) the annual agricultural produce of his land in the case of small farmer; or

(b) the amount equivalent to twice the principal amount, whichever is lower.

19. Maximum amount allowable in repayment of a debt :-

(1) If in the course of taking accounts before the Board, it is found that any of the creditors has received from his debtor twice or more than twice the amount of the principal in cash or in kind, the Board shall pass an order that the debt shall be deemed to have been fully discharged and shall further declare that the debtor shall, from the date of the order, be in lawful possession of the property secured for the debt:

Provided that if the creditor has received from his debtor more than twice the amount of the principal, the Board shall also pass an

order directing the creditor to refund the amount received in excess of twice the amount of principal to the debtor.

(2) Subject to the provisions of sub-section (1), if, in the course of the proceeding before the Board, it is found that the debtor owes to the creditor any sum either as principal or as interest or on account of both, the Board shall pass an order that the debtor shall repay in annual instalments, not exceeding seven, an amount equivalent to-

(a) the amount determined as his paying capacity under section 18; or

(b) the amount actually found due to the creditor, whichever is less.

(3) If there are more than one creditors, the Board shall also pass an order directing that the amount determined under sub-section (2) shall be distributed to all the creditors rateably.

(4) The order passed by the Board under sub-section (2) shall be in full satisfaction of the debt due from the debtor and the balance of the debt, if any, in excess of that amount shall be extinguished.

20. Appeal from orders of Board :-

(1) Any person aggrieved by any order of the Board under this Act may, within thirty days from the date of the order, appeal to the Administrative Tribunal:

Provided that if the Administrative Tribunal is satisfied that the appellant was prevented from sufficient cause from preferring the appeal within the said period of thirty days, it may entertain the appeal within a further period of thirty days but not thereafter.

(2) The order passed by the Administrative Tribunal shall be final.

CHAPTER 6 Miscellaneous

21. Execution of orders :-

An order made under this Act by the Board or the Administrative Tribunal, shall be executable by it as a decree of a civil court and for this purpose it shall have the powers of a civil court.

22. Bar on courts :-

No court shall entertain-

(a) any suit, appeal or application for revision-

(i) to question the validity of any procedure or the legality of any order passed under this Act; or

(ii) to recover any debt deemed to have been duly discharged under the provisions of this Act;

(b) any application to execute a decree passed by a court against a debtor;

(c) any suit for declaration, or any suit or application for injunction effecting any proceedings under this Act before a Board or Administrative Tribunal.

23. Penalty for molestation :-

Whoever molests, or abets the molestation of, a debtor for the recovery of a debt by him to a creditor shall, on conviction, be punishable with imprisonment of either description, which may extend to one year or with fine which may extend to two thousand rupees or with both.

Explanation.- For the purposes of this section, a person who-

(a) uses violence to or intimidates a debtor, or

(b) obstructs or persistently follows a debtor from place to place or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(c) loiters near a house or other place where a debtor resides or works for gain, or carries on business or happens to be, or does any act calculated to annoy or intimidate a debtor shall be deemed to molest a debtor.

24. Certain offences to be cognizable :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), offences punishable under this Act or any rule made thereunder shall be cognizable.

25. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against the Government, any officer of Government, any member of the Board or Administrative Tribunal for anything which is in good faith done or intended to be done in accordance with the provisions of this Act or any rule made thereunder.

26. Appearance of party before Board by agent or by legal practitioner :-

In any proceedings under this Act, any party may be represented by an agent authorised in writing or, with the permission of the Board or Administrative Tribunal, by a legal practitioner.

27. Remission of interest :-

A debtor shall not be liable to pay interest upon any debt for the period during which proceedings are stayed under this Act.

28. Power to make rules :-

(1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the matters referred to in clause (g) of section 9;

(b) the time within which and the form in which applications shall be made to the Board and the manner in which such applications shall be signed and verified under section 10;

(c) the form of the statements to be submitted by the debtor and creditors under that section;

(d) the fees payable on applications and appeals;

(e) the registers to be maintained by the Board;

(f) any other matter which has to be or may be prescribed.

(3) Every rule made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of Goa, Daman and Diu if it is in session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session or two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall thereafter have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

29. Repeal :-

The Goa, Daman and Diu Agricultural Indebtedness (Temporary Relief) Act, 1976 (9 of 1976) is hereby repealed.