

## **HYDERABAD INSOLVENCY ACT, 1351F**

### **8 of 1351**

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**HYDERABAD INSOLVENCY ACT, 1351F**

**8 of 1351**

[ ]

Whereas it is expedient to consolidate and amend the law relating to insolvency ; It is hereby enacted as follows :

**1. Short title, commencement and extent :-**

This Act may be called "the Insolvency Act," and shall come into force in the whole of <sup>1</sup>[Hyderabad area of the State of Maharashtra] from the date of <sup>2</sup>publication in the <sup>3</sup> [Official Gazette].

1. Substituted by A. O. 1956 and 1960.

2. Published in the Official Gazette, dated 17th Mehar, 1351 Fasli.

3. Substituted by A. O. 1956.

**2. Definitions :-**

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

(a) "creditor" includes a decree-holder, "debt" includes a decretal amount, and "debtor" includes a judgment debtor ;

(b) "Court" means the Court having jurisdiction to try insolvency cases under this Act ;

(c) "prescribed" shall mean such matters as may be prescribed by

rules under this Act ;

(d) "property" includes any property over which or the profits on which any person has a disposing power which he may exercise for his own benefit ;

(e) "secured creditor" means a person who has an interest by way of mortgage, charge or lien in the property of the debtor or any part thereof as a security for a debt due to him from the debtor ;

(f) "transfer of property" includes a transfer of any interest in property and the creation of any charge upon property.

(2) All expressions used in this Act and defined in the <sup>1</sup> [Code of Civil Procedure, 1908 (Central Act V of 1908),] and not herein defined, shall be deemed to have the meanings assigned to them in the 3[Code of Civil Procedure, 1908 (Central Act V of 1908)].

1. Substituted by A. O. 1956.

#### PART 1

Constitution and Powers of Court

### **3. Jurisdiction :-**

<sup>3</sup> The District Court within the local limits of its jurisdiction shall have jurisdiction in insolvency under this Act.

\*. Substituted by A.O. 1956.

### **4. Powers of Court to decide all questions relating to insolvency :-**

(1) Subject to the provisions of this Act, the Court may decide any question which may arise in any case of insolvency and which may appear to the Court expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property, whether such question relates to title or priority or is of any other nature and whether involving matters of law or of fact.

(2) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of this Act, such decision shall be final and binding for all purposes as between the debtor and his estate and, the claimants against the debtor and his estate and every person claiming through the said debtor or claimants, against the debtor and his estate.

(3) Where the Court does not deem it expedient or necessary to decide any question referred to in sub-section (1), but has reason

to believe that the debtor has a saleable interest in any property, the Court may without further inquiry, sell such interest in such manner and on such conditions as it may think fit.

## **5. General powers of Court :-**

(1) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers as it has in the exercise of original civil jurisdiction and shall follow the same procedure as it follows in the trial of such cases.

(2) Subject as aforesaid, the High Court in regard to any proceedings under this Act pending in any subordinate Court, shall have all the powers which they have in the trial of civil suits and shall, in the exercise of such powers, follow the procedure prescribed for civil suits.

## **PART 2**

Proceedings from Act of Insolvency to discharge Acts of Insolvency

## **6. Acts of insolvency :-**

A debtor shall be said to have committed an act of insolvency in each of the following cases :

(a) if in [the area to which this Act extends] or elsewhere, he makes a transfer of all or a substantial portion of his property to a third person for the benefit of his creditors generally ;

(b) if in [the area to which this Act extends] or elsewhere, he makes a transfer of his property, or of any part thereof with intent to defeat or delay his creditors :

(c) if in [the area to which this Act extends] or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this Act or under any other law for the time being in force, be void on the ground of fraudulent preference if he were adjudged an insolvent ;

(d) if, with intent to defeat or delay his creditor,

(1) he departs or remains out of [the area to which this Act extends] ;

(2) he departs from his dwelling-house or usual place of business or otherwise absents himself ;

(3) he secludes himself with the object of depriving his creditors of the means of communicating with him ;

(e) if any of his property has been sold in execution of the money-decree of any Court ;

(f) if he petitions to be adjudged an insolvent under the provisions of this Act ;

(g) if he gives notice to any of his creditors that he has suspended, or is about to suspend, payment of his debts ; or

(h) if he is imprisoned in execution of the money-decree of any Court.

Explanation For the purposes of this section the act of an agent may be deemed the act of the principal.

### **7. Petition and order of adjudication :-**

Subject to the conditions specified in this Act, if a debtor commits an act of insolvency and insolvency petition may be presented either by a creditor or by the debtor, on which the Court may make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

### **8. Exemption of corporate bodies etc., from insolvency proceedings :-**

No insolvency petition shall be presented against any body corporate or any association or company registered under any law for the time being in force.

### **9. Conditions on which creditor may petition :-**

(1) A creditor shall not be entitled to an insolvency petition against a debtor unless

(a) the debt owing by the debtor to the creditor, or if two or more creditor jointly present the petition, the aggregate amount of debts owing to such creditors is five hundred rupees or more.

(b) debt is a liquidated sum payable immediately or at certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the date of presentation of the petition.

(2) If the petitioner is a secured creditor, he shall in his petition either state that he shall relinquish his security for the benefit of other creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the property held by him as security. He may, to the extent of the balance after deducting the value of the property fixed, petition as an unsecured creditor.

**10. When debtor may petition :-**

(1) A debtor shall not be entitled to present an insolvency petition unless he is unable to pay his debts and

(a) his debts amount to five hundred rupees or more; or

(b) he is under arrest or imprisonment in execution of the money-decree of any Court; or

(c) an order of attachment of his property in execution of such a decree has been made or is subsisting.

(2) A debtor in respect of whom an order has been made under this Act and subsequently annulled for the reason that he failed to apply or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition unless the Court which had annulled the said order grants him leave to present an insolvency petition. Such Court shall not grant leave to the debtor to present an insolvency petition. Such Court shall not grant leave to the debtor to present an insolvency petition unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those mentioned in the petition on which the order of adjudication was made.

**11. Court to which insolvency petition shall be presented :-**

Every insolvency petition shall be presented to a Court having jurisdiction under this Act and within the local limits of which the debtor ordinarily resides or carries on business, or personally works for gain, or in case of imprisonment or arrest, where he is in custody.

Provided that no objection as to the place of presentment of petition shall be allowed by a Court of appellate or revisional jurisdiction, unless such objection was taken in the Court of the first instance at the earliest opportunity and unless there has been

a failure of justice.

### **12. Verification of petition :-**

An insolvency petition shall be in writing and shall be signed and verified in accordance with the provisions of the 4[Code of Civil Procedure, 1908 (Central Act V of 1908)] for the verification of plaint.

### **13. Contents of petition :-**

(1) An insolvency petition presented by a debtor shall contain the following particulars :

(a) statement that the debtor is unable to pay his debts;

(b) the name of the place where he ordinarily resides or carries on business or personally works for gain, or if he has been arrested or imprisoned, the place where he is in custody ;

(c) the Court by whose order he has been arrested or imprisoned or by which an order has been made for the attachment of his property together with particulars of the decree in respect of which such order has been made ;

(d) the amount and particulars of all pecuniary claims against him, specifying the names and residences of the creditors so far as they are known to, or can, by the exercise of reasonable diligence be ascertained by him ;

(e) the amount and particulars of all his property, together with -

(i) a specification of value of all his property, not consisting of money ;

(ii) the place or places at which any such property is to be found; and

(iii) a declaration that the debtor is willing to hand over to the Court the possession and control of all such property except such articles (not being his books of account) as are exempted by the <sup>1</sup> [Code of Civil Procedure, 1908 (Central Act V of 1908)] or by any other law for the time being in force, from attachment and sale in execution of a decree ;

(f) a statement whether the debtor had, on any previous occasion, filed a petition to be adjudged an insolvent and where such a petition was filed

(i) if such petition has been dismissed, the reasons for such dismissal ; or

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled, and if so, the grounds therefor ;

(iii) an insolvency petition presented by a creditor or creditors shall set forth all the particulars specified in clause (b) of subsection (1) as also the following particulars :

(a) the act of insolvency committed by such debtor together with the date ; and

(b) the amount and particulars of the pecuniary claims of creditor or creditors against such debtor.

1. Substituted by A.O. 1956.

#### **14. Withdrawal of petitions :-**

No insolvency petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

#### **15. Consolidation of petitions :-**

Where two or more petitions are presented against the same debtor, or where separate petitions are presented against joint debtors, the Court may on such terms as it thinks fit, consolidate all such proceedings or any of them.

#### **16. Powers to change carriage of proceedings :-**

Where a petitioner does not proceed with due diligence on his petition, the Court may substitute any creditor to whom the debtor may be indebted in the amount on the basis of which he may petition under this Act.

#### **17. Proceedings to continue on death of debtor :-**

If a debtor who has presented an insolvency petition or against whom such petition has been presented dies during the pendency of the proceedings, the proceedings shall, unless the Court otherwise orders, be continued so far as may be necessary for the sale of the debtor's property and the distribution of the proceeds of sale.

#### **18. Application of the Hyderabad Code of Civil Procedure :-**

The procedure laid down in the 6[Code of Civil Procedure, 1908 (Central Act V of 1908)] with respect to the admission of plaints

shall, so far as it is applicable, be applied to an insolvency petition.

**19. Procedure on admission of petition :-**

(1) Where an insolvency petition is admitted, the Court shall fix a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors in the prescribed manner.

(3) Where the petitioner is not the debtor, notice of the order under sub-section (1) shall be served on the debtor in the manner provided for the service of summons.

**20. Appointment of interim receiver :-**

The Court may, when making an order admitting the petition, appoint an interim receiver of the property to the debtor or of any part thereof. But where the petitioner himself is the debtor, the Court shall ordinarily appoint an interim receiver; the Court shall direct the interim receiver to take immediate possession of such property or of any part thereof, and the interim receiver shall have such of the powers conferable on a receiver appointed under the <sup>1</sup> [Code of Civil Procedure, 1908 (Central Act V of 1908)], as the Court may direct. If an interim receiver is not so appointed the Court may appoint a receiver at any subsequent stage before adjudication, and the provisions of this section shall apply to him in the like manner.

1. Substituted by A.O. 1956.

**21. Interim proceedings against debtor :-**

At the time of making an order admitting the petition or at any subsequent stage before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders :

(1) the debtor shall give reasonable security for his appearance until final order is made ; and may direct that, if he fails to give such security, he shall be detained in the civil prison ;

(2) may order the attachment with the direction that the property or any part thereof in the possession and under the control of the debtor, other than such articles (not being his books of account) as are exempted from attachment and sale in execution of a decree under the <sup>1</sup> [Code of Civil Procedure, 1908 (Central Act V of 1908)], or any law for the time being in force, shall be "actually

seized ;

(3) may order a warrant to issue with or without bail for the arrest of the debtor, and direct that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be necessary and reasonable :

Provided that an order under sub-section (2) or (3) shall not be made unless the Court is satisfied that the debtor with intent to defeat his creditors or delay the payment of debts or to avoid any process of the Court,

(a) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside the local limits of jurisdiction of the Court, or

(b) has failed to disclose or has concealed, destroyed, transferred or removed from such limits or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing of the case or any part of his property other than the articles exempted as aforesaid.

1. Substituted by A.O. 1956.

## **22. Duties of debtor :-**

The debtor shall, on the making of an order admitting the petition, produce all his books of account before the Court, and shall, at any time thereafter, on the order of the Court or the receiver and in the prescribed manner

(1) prepare and submit a complete inventory of his property,

(2) submit a list of his creditors and debtors and of the debts due from or to him,

(3) submit to examination in respect of his property and his creditors,

(4) attend when required by the Court or the receiver, and

(5) execute instruments in respect of his property and generally do all acts and things in relation to the property.

## **23. Release of debtor :-**

(1) At the time of admitting the debtor's petition or at any subsequent time before adjudication the Court may, if the debtor is

under arrest or imprisonment in a civil prison for default of payment of a money- decree, order his release on such terms as to security as may be reasonable and necessary.

(2) The Court may, at any time order any person, who has been released under this section, to be re-arrested and re-committed to custody.

(3) when an order is made under this section, the Court shall record its reasons therefor.

#### **24. Procedure at hearing :-**

(1) On the day fixed for the hearing or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters :

(a) that the creditor or the debtor is entitled to present the petition :

Provided that, where the debtor is the petitioner, he shall be required to furnish only such proof as to satisfy the Court that prima facie the debtor is unable to pay his debts and the Court when so satisfied, shall not be bound to record further evidence in that behalf ;

(b) that the debtor, notwithstanding the fact that the notice of the order admitting the petition presented by the creditor was served on him, does not appear on the day fixed for hearing ;

(c) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall examine the debtor, if he is present, as to his conduct, dealings, property and the means for the repayment of the debts and such creditors as appear at the hearing, shall have the right to question the debtor.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination to the debtor and of any oral evidence deduced, shall be made by the Court and shall be kept on the file of the case.

#### **25. Dismissal of petition :-**

(1) When a petition is presented by a creditor and the Court is not satisfied with the evidence produced, that he has right to present the petition, or that the notice of the order admitting the petition has been served on the debtor, or that the alleged act of insolvency is committed by him, or when the debtor satisfies the Court that he is able to pay the debts, or for any other sufficient cause the Court is of opinion that no order ought to be made, the Court shall dismiss the petition.

(2) When a petition is presented by a debtor and the Court is not satisfied that the debtor has a right to present the petition, it shall dismiss the petition.

#### **26. Award of compensation :-**

(1) Where a petition presented by a creditor is dismissed under sub-section (1) of Section 25 and the Court is satisfied that the said petition was frivolous or merely vexatious, the Court may on the application of the debtor award against the creditor such amount not exceeding one thousand rupees, as may be a reasonable compensation for his expense or injury and such amount may be realised as fine.

(2) When an award is made under this section, no suit shall be instituted for compensation in respect of such petition and the proceedings thereon.

#### **27. Order of adjudication :-**

(1) If the petition is not dismissed, the Court shall make an order of adjudication, and shall specify in such order the period in which the debtor shall apply for his discharge.

(2) The Court may, if sufficient cause is shown, extend such period and shall publish notice of its order in such manner as it thinks fit.

#### **28. Effect of order of adjudication :-**

(1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the disposal of his property and the distribution of the proceeds among the creditors.

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among all the creditors, and unless otherwise provided in this Act, no creditor

whose debt is provable under this Act shall, during the pendency of the insolvency proceedings, have any relief against the property of the insolvent in respect of the debt, and commence any suit or other legal proceeding, except with the leave of the Court on such terms as the Court may impose.

(3) For the purposes of sub-section (2), all goods which, at the date of the presentation of the insolvency petition on which the adjudication order is made, is in the possession, order or disposition of the insolvent in connection with trade or business, by the consent and permission of the true owner, under such circumstances that he is deemed to be the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All property which is acquired by or which devolved on the insolvent after the date on which an order of adjudication is made and before discharge, shall vest in the Court or receiver, and the provisions of subsection (1) shall apply thereto.

(5) For the purposes of this section the property of the insolvent shall not include any property (not being his books of account) which is exempted by the <sup>1</sup> [Code of Civil Procedure, 1908 (Central Act V of 1908)] or by any other law for the time being in force from attachment and sale in execution of a decree.

(6) The provisions of this section shall not affect the power of any secured creditor to realise or otherwise deal with his security.

(7) An order of adjudication shall take effect retrospectively from the date on which the petition was presented on which the said order is made.

1. Substituted by A.O. 1956.

### **29. Stay of proceedings :-**

Where a suit or any other proceeding is pending in any Court against a debtor, such Court shall, when satisfied that an order of adjudication has been made against the debtor under this Act, either stay the proceeding or allow it to continue on such terms as it may impose.

### **30. Publication of order of adjudication :-**

The Court shall publish the notice of an order of adjudication in the <sup>1</sup> [Official Gazette] in such manner as may be prescribed, stating the following particulars :

- (a) full name, address and description of the insolvent,
- (b) the date on which the order of adjudication is made and the Court which made the said order, and
- (c) the period within which the insolvent shall apply for his discharge.

1. Substituted by A.O. 1956.

**31. Protection order :-**

(1) After an order of adjudication has been made the insolvent may apply to the Court for protection, and the Court may, on such application make an order for the protection of the insolvent from arrest or detention.

(2) A protection order may, at the discretion of the Court, apply either to all the debts of the debtor or to any of them, and may commence at such time and be operative for such time as the Court may direct, and may, at the discretion of the Court, be renewed :

(3) The insolvent shall be protected from being arrested or detained for any debt in respect of which such order is made, and any insolvent arrested or detained contrary to the terms of such order, shall be entitled to release :

Provided that when such order is revoked or the order of adjudication is annulled, no such order shall prejudice the rights of any creditor.

(4) Any creditor may file an objection in the Court against the grant of a protection order.

**32. Power to arrest after order of adjudication is made :-**

After an order of adjudication has been made, the Court may, if at any time it has reason to believe on the application of any creditor or the receiver, that the debtor has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been or might be imposed on him by this Act, order a warrant to issue for the arrest of the insolvent, and on his appearing or being brought before it, may, if satisfied that he was absconding or had departed from the local limits of its jurisdiction with such intent, order his release on such terms as to security as may appear to be reasonable or necessary, and if he fails to furnish such security, direct that he shall be detained in the civil prison for

a period which may extend to three months.

### **33. Schedule of creditors :-**

(1) When an order of adjudication is made under this Act, the persons alleging themselves to be creditors of the insolvent, shall tender proof against the insolvent in evidence of the amount and particulars of their debts provable under this Act, and the Court shall determine the persons who have proved themselves to be creditors of the insolvent and the amount of each debt, and shall frame a schedule of such persons and debts :

Provided that, if in the opinion of the Court the value of any debt is incapable of being fairly estimated, the Court shall make an order to that effect, and the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be pasted at a conspicuous place in the Court.

(3) Any creditor may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name also to be entered in the schedule as a creditor whose debt is provable under this Act, and not already entered in the schedule, and the Court shall, after service of notice on the receiver and the creditors who have proved their debts, and hearing their objections (if any), allow or reject the application.

### **34. Debts provable under this Act :-**

(1) Debts which have not been included in the schedule on the ground that their value was incapable of being fairly estimated, and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust, shall not be provable under this Act.

(2) Without prejudice to the provisions contained in sub-section (1), all debts or liabilities present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before the date of the adjudication, shall be deemed to be debts provable under this Act.

### **35. Power to annul adjudication :-**

Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where the Court is satisfied on the proof tendered, that the debts due by the debtor have been paid in full the Court shall, on the application of the debtor, or of any other

person interested, by order in writing, annul any adjudication on the ground that the debtor, by reason of the provisions contained in sub-section (2) of Section 10, was not entitled to present such petition.

### **36. Orders of adjudication made concurrently by different Courts :-**

If, in any case in which an order of adjudication has been made, it is proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor, and that the property of the debtor can be conveniently distributed by such other Court, the Court may annul the order of adjudication or stay all proceedings.

### **37. Proceedings on annulment of adjudication :-**

(1) Where an order of adjudication is annulled, the sale, arrangements for the auction of the property, and payments made and all acts theretofore done by the Court or receiver shall be deemed to be void, but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint or when no such appointment is made, shall revert to the debtor to the extent of his right or interest, on such conditions as the Court may, by order in writing, declare.

(2) Notice of an order annulling an order of adjudication shall be published in the <sup>1</sup> [Official Gazette] and in such other manner as may be prescribed.

1. Substituted by A.O. 1956.

### **38. Composition and schemes of arrangement of insolvents affairs :-**

(1) Where a debtor, after the making of an order of adjudication, submits to the Court a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of such proposal, and shall issue a notice to all creditors in the prescribed manner.

(2) If, on consideration of the proposal, a majority of the creditors who are present in person or by pleader, and the total amount of whose debts is three-fourth in value of the debts proved, resolve to accept the proposal, the same shall be deemed to be accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the creditors as a whole.

(4) Where the Court is of opinion, after hearing the report of the receiver, (if a receiver has been appointed), and after considering any objections which may be made by or on behalf of any creditor, that the terms of the said proposal are not reasonable or not calculated to benefit the creditors as a whole, the Court shall refuse to approve such proposal.

(5) When any facts are proved, on proof of which the Court would be required to refuse the debtor's discharge or to suspend or attach conditions to the order of discharge, the Court shall refuse to approve the debtor's proposal unless it provides reasonable security for payment of not less than six annas in the rupee on the unsecured debts provable against the insolvent's property.

(6) The Court shall not approve any composition or scheme which does not provide for payment in priority of debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any case other than the aforesaid, the Court may either approve or reject the proposal.

### **39. Order of approval :-**

If the Court approves the proposal, the terms of the proposal shall be embodied in an order of the Court, the order of adjudication shall be annulled to which the provisions of Section 37 shall apply, and the composition or scheme shall, as far as it relates to debts due to them by the debtor and which are provable under this Act, be binding on all the creditors.

### **40. Power to readjudge debtor insolvent :-**

If default is made in the payment of any installment due in pursuance of the composition or scheme or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, re-adjudge the debtor insolvent, and shall annul the composition or scheme without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of such composition or scheme. When a debtor is re-adjudged insolvent under this section, all debts provable in other respects which have been contracted before the date on which the debtor is re-

adjudged insolvent shall be provable.

#### **41. Order of discharge :-**

(1) A debtor may, at any time after the order of adjudication is made and shall, within the period specified by the Court, apply to the Court for his discharge. On such application being made, the Court shall fix a day, notice whereof shall be given in the prescribed manner, for hearing such application and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor, and where a receiver has been appointed, the report of the receiver

(a) grant or refuse an absolute order of discharge ; or

(b) suspend the operation of the order for a specified time ; or

(c) grant an order of discharge subject to any conditions with respect to any income or earnings which may afterwards become due to the insolvent, or with respect to his after-acquired property.

#### **42. Cases in which Court shall not grant absolute order of discharge :-**

(1) The Court shall refuse to grant an absolute order of discharge under Section 41 on proof of any of the following facts :

(a) that the insolvent's assets are not of a value equal to one-third in proportion to the amount of his unsecured liabilities, or that twelve years have elapsed from the date of order of adjudication for which he cannot justly be held responsible ;

(b) that the insolvent has omitted to keep such account as is usually or suitably kept in the business carried on by him and as sufficiently discloses his business transactions and financial position within three years immediately preceding his insolvency ;

(c) that the insolvent has continued to trade even after knowing himself to be insolvent ;

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;

(e) that the insolvent has failed to account satisfactorily for any loss

or any deficiency of his assets which could meet his liabilities ;

(f) that he has become insolvent or contributed to his insolvency by rashly investing in hazardous speculations or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his business;

(g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as and when they become due, given an undue preference to any of his creditors ;

(h) that the insolvent has, on previous occasion, been adjudged insolvent or made a composition or arrangement with his creditors ;

(i) that the insolvent has concealed or removed his property, or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(2) For the purposes of this section, the report of the receiver shall be deemed to be evidence ; and the Court may presume the correctness of any statement contained therein.

(3) The power to suspend or to attach conditions to, an insolvent's discharge may be exercised concurrently.

#### **43. Adjudication to be annulled on failure to apply for discharge :-**

(1) On the day fixed for hearing the application for discharge or on such subsequent day as may be fixed in accordance with the direction of the Court, if the debtor does not appear, or if the debtor does not apply for his discharge within the period specified by the Court, the order of adjudication shall be annulled, and the provisions of Section 37 shall apply accordingly.

(2) Where a debtor has been released from custody under this Act, and the order of adjudication is annulled under sub-section (1), the Court may, if it thinks fit, recommit the debtor to the former custody, where he shall be again detained in custody in accordance with the order of the Court, and thereupon all processes which were in force against the person of the debtor at the time of release, shall be deemed to be in force as if no order of a adjudication had been made.

#### **44. Effect of order of discharge :-**

(1) An order of discharge shall not release the insolvent from

(a) any debt due to the Government ;

(b) any debt or liability incurred by any fraud or fraudulent breach of trust to which he was a party ;

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party ; or

(d) any liability imposed upon him by an order for maintenance made under <sup>1</sup> [Section 488 of the Code of Criminal Procedure, 1898 (Central Act V of 1898)].

(2) Without prejudice to the provisions contained in sub-section (1), an order of discharge shall release the insolvent from all debts provable under this Act.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with the insolvent or any person who was surety for him.

1. Substituted by A.O. 1956.

### PART 3

Administration of Property : Method of Proof of Debts

#### **45. Debts payable at future time :-**

A creditor may prove a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom, interest at the rate not exceeding six per cent per annum from the date of declaration of a dividend to the date on which the debt would have become payable, under the terms of the contract.

#### **46. Mutual dealings and set-off :-**

Where there have been mutual dealings between an insolvent and a creditor providing or claiming to prove a debt under this Act, an account shall be taken of what is due from one party to the other in respect of such dealings, and the sum due from one party shall be set-off against the sum due from the other party, and neither party shall claim or pay any sum over and above the balance.

#### **47. Secured creditors :-**

(1) Where a secured creditor realises his security, he may prove for

the balance due after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the other creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he has assessed it, and shall be entitled to receive a dividend only in respect of the balance after deducting from the debt the value assessed by him.

(4) Where the value of a security is so assessed the Court may, before realisation of such security by sale, redeem it on payment of the assessed value to the creditor.

(5) Where a creditor, after having valued a security, realises it by sale, the net amount realised shall be substituted for the amount of any valuation made by the creditor, and shall be treated in every way as an amended valuation of the security made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from any share in any dividend.

#### **48. Interest :-**

(1) On any debt or sums whereon certain interest is not fixed or agreed for, and which had become due before the debtor is adjudged an insolvent, and which are provable under this Act, the creditor may prove himself to be entitled to receive interest at a rate not exceeding six per cent per annum,

(a) if the debts or sums are payable by virtue of an instrument at a certain time from the time when they were payable, to the date of the order of adjudication ;

(b) if the debts or sums are payable otherwise, from the time when the creditor has made a demand in writing, giving the debtor a notice that interest will be computed until payment thereof, to the date of the order of adjudication.

(2) Where in a debt which has been proved under this Act, any interest or any pecuniary consideration in lieu of interest is fixed, the interest or consideration shall, for the purposes of dividend, not be computed at a rate exceeding six per cent per annum, without

prejudice to the right of a creditor to receive out of the debtor's estate interest at a rate higher than such rate after all the debts have been paid in full.

**49. Mode of proof :-**

(1) The creditor shall, for proving a debt under this Act, deliver or send by registered post to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to statement of account showing the particulars of the debt and shall specify the vouchers (if any) by which the same can be substantiated. The Court may, at any time, make an order for the production of such vouchers.

**50. Disallowance and reduction of entries in Schedule :-**

(1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry as it thinks necessary, expunge such debt from the schedule or reduce the amount thereof.

(2) Where no receiver has been appointed, or where the receiver declines to interfere in the matter, the Court may, upon the application of a creditor, and in the case of a composition or scheme, upon the application of the debtor, and after like inquiry, expunge a debt from the schedule or reduce the amount thereof.

**51. Restriction of rights of creditor under execution of decree :-**

(1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of sum realised in the course of execution proceedings, by sale or otherwise before the date of the admission of the insolvency petition.

(2) Nothing in this section shall affect the rights of a secured creditor which he may have in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution of decree, shall in all cases acquire a good title to such property against the receiver.

**52. Duties of Court executing decree as to property taken in execution :-**

Where execution of a decree has issued against any property of a debtor which is saleable and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been filed and admitted, the Court shall on application, direct the said property, if in the possession of the Court, to be delivered to the receiver, but the cost of the suit in which the decree was made and of the execution of decree shall be a first charge on the property so delivered and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

### **53. Invalidity of transfer of property without consideration**

:-

Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.

### **54. Invalidity of preference in certain cases :-**

(1) Every transfer of property, every payment made, every incumbrance incurred, and every judicial proceeding instituted by or against a debtor unable to pay his debts after they become due from his own money in favour of any creditor, for the purpose of giving that creditor a preference over the other creditors, shall, if the debtor is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

### **55. By whom petition for annulment may be made :-**

A petition for the annulment of any transfer under Section 53, or of any transfer, payment, charge or judicial proceeding under Section 54, may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver, on being requested, has refused to make such petition.

### **56. Protection of bonafide transactions :-**

Subject to the foregoing provisions of this Act with respect to the

effect of insolvency on execution of a decree, and with respect to the invalidity of certain transfers and preferences, nothing herein contained shall invalidate any insolvency proceeding in the case of

- (a) any payment by the insolvent to any of his creditors ;
- (b) any payment or delivery to the insolvent ;
- (c) any transfer by the insolvent for valuable consideration ; or
- (d) any contract or dealing by or with the insolvent for valuable consideration :

Provided that such transaction takes place before the order of adjudication is made, and that the person with whom the transaction takes place has not at the time notice of the presentation of insolvency petition by or against the debtor.

### **57. Appointment of Receiver :-**

(1) The Court may, at the time of making the order of adjudication, or at any time thereafter, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in the receiver.

(2) Subject to such conditions as may be prescribed, the Court may

(a) require the receiver to give such security as may in its opinion, be sufficient duly to account for the money which shall be received by him in respect of the said property ;

(b) by general or special order, fix the amount to be paid to the receiver as remuneration for services out of the assets of the insolvent ;

(3) Where the Court appoints a receiver, it may remove the person in whose possession and custody the aforesaid property of the insolvent is, from such possession and custody thereof :

Provided that nothing in this section shall be deemed to mean that the Court may remove from the possession and custody of property any person whom the insolvent himself has not a present right so to remove.

(4) If a receiver appointed under this section

(a) fails to submit accounts at such periods and in such manner as the Court directs ; or

(b) fails to pay the sum due from him thereon as the Court directs ;

or

(c) occasions loss to the property by wilful default or gross negligence ; the Court may direct his property to be attached and sold, and may apply the proceeds to the payment of the sum found to be due from him or to make good any loss occasioned by him.

(5) The provisions of this section shall also apply, as far as may be, to an interim receiver appointed under Section 20.

#### **58. Power to appoint Official Receivers :-**

(1) The Government may appoint such persons as it thinks fit, to be called "Official Receivers" as receivers under this Act for such local limits as may be prescribed.

(2) Where any Official Receiver is so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be deemed to be receiver for the purposes of every order of such Court appointing a receiver or an interim receiver, unless the Court for special reasons otherwise directs.

(3) Any sum payable under clause (b) of sub-section (2) of Section 57 in respect of the services of an Official Receiver shall be credited to such fund as the Government may direct.

(4) An Official Receiver shall receive such remuneration out of the said fund as the Government may fix and as an Official Receiver, shall not receive any remuneration whatever beyond that so fixed.

#### **59. Powers of Court if no Receiver appointed :-**

Where no receiver is appointed, the Court shall have all the rights of and may exercise all the powers conferred on a receiver under this Act.

#### **60. Duties and powers of Receiver :-**

Subject to the provisions of this Act, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto and for that purpose may

(a) sell all or any part of the property of the insolvent ;

(b) give receipt for any money received by him ; and may, by leave of the Court, also do all or any of the following things ;

(c) carry on the business of the insolvent so far as may be

necessary for the beneficial winding up of the same ;

(d) institute, defend, conduct or continue any suit or other legal proceeding relating to the property of the insolvent ;

(e) engage with permission of the Court, a pleader or agent to take any proceedings or do any business ;

(f) accept as the consideration of the sale of any property of the insolvent a sum of money payable at a future time, subject to such stipulations as to security or otherwise as the Court may think fit to prescribe;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(h) refer any dispute to arbitration, and compromise all debts, claims and liabilities on such terms as may be agreed upon ; and

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or special circumstances, cannot readily or advantageously be sold.

**61. Power to obtain information regarding insolvents property :-**

(1) The Court, if specially empowered by the Government in this behalf, may on the application of the receiver or any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in the prescribed manner any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, and may also summon any person when it believes to be capable of giving information respecting the insolvent or his dealings or property, and may require any such person to produce any documents in his possession and control relating to the insolvent or to his dealings or property.

(2) If any person summoned under sub-section (1) after having been paid necessary expenses and batta, refuses to appear before the Court at the time appointed, or refuses to produce any document, without lawful impediment (made known to and allowed by the Court), the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine such person concerning the insolvent,

his dealings or property, and such person may be represented by a pleader.

(4) The Government may confer the aforesaid powers on any officer of the Court and such officer shall, on being empowered as aforesaid, be competent to act in accordance with the foregoing provisions.

## **62. Special provisions in regard to immovable property :-**

(1) No sale of an immovable property paying revenue to the Government or used for agricultural purposes and to which [Section 68 of the Code of Civil Procedure, 1908)], shall be made by the receiver, but after the other property of the insolvent has been realised, the Court may ascertain

(a) the amount required to satisfy the debts proved under this Act after deducting the moneys already received ;

(b) the immovable property of the insolvent remaining unsold ; and

(c) the encumbrances (if any) on the said property; and shall forward to the [Collector] within the local limits of whose jurisdiction such immovable property is situate, a statement for the sale thereof containing the particulars aforesaid ; and thereupon the [Collector] shall, for raising the amount required, exercise at his discretion, the powers mentioned in [paragraphs 1 and 10 of Schedule III of the Code of Civil Procedure, 1908

(2) Nothing in this Act shall be deemed to affect any provision of any law for the time being in force prohibiting or restricting the execution of a decree or order against immovable property ; and any such provision shall be deemed to apply to the enforcement of an order of adjudication made under this Act as it would apply to the execution of a decree or order.

## **63. Priority of debts :-**

(1) The following debts shall be paid in priority in the distribution of the property of the insolvent

(a) all debts due to the Government or to any local authority ;

(b) all salary or wages, not exceeding twenty rupees per head, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months preceding the presentation of insolvency petition.

(2) The debts specified in sub-section (1) shall not be distinguished between themselves, and shall be paid in full, unless the property of the insolvent is insufficient for this purpose, in which case they shall abate in equal proportions.

(3) Having retained such sums as may be necessary for the expenses of administration of insolvent's property and other incidental charges, all debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership property shall be applied in the first instance to the payment of the partnership debts, and the separate property of each partner shall be applied in the first instance to the payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property ; and where there is a surplus of the partnership property, it shall be dealt with as separate property in proportion to the rights and interests which each partner may have in such partnership property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts and without any preference.

(6) The surplus after payment of the aforesaid debts shall be applied to the payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per cent per annum on the debts entered in the schedule.

#### **64. Calculation of dividends :-**

(1) In the calculation of dividends, the receiver shall retain in his hands sufficient to meet

(a) debts provable under this Act, and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs ;

(b) debts provable under this Act, and not yet determined ;

(c) disputed debts for claims ;

(d) expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in the hand of the receiver shall be distributed as dividends.

**65. Right of creditor who has not proved his debt before declaration of a dividend :-**

Any creditor who has not proved his debts before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends, which he may have failed to receive before the payment from that money or any future dividend or dividends ; but he shall not be entitled to disturb the distribution of any dividend made before his debt was proved by reason that he has not participated therein.

**66. Declaration of final dividend :-**

When the receiver has realised all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realised without needlessly protracting the receivership, he shall declare the manner prescribed to all persons who have shown themselves to be the creditors of the insolvent but have not proved their claims, that if they do not prove their claims within the time limited by such notice, he will declare a final dividend without regard to such claims. On the expiry of such time or if the Court, on application by any claimant grants him further time for establishing his claim, then on the expiry of such time, the property of the insolvent shall, without regard to the claims of other persons, be divided among the creditors entered in the schedule.

**67. No suit shall lie for dividend :-**

No suit for a dividend shall lie against the receiver ; but where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order the receiver to pay it, and also to pay out of his own money interest thereon for the period for which the payment is withheld, and the costs of the application.

**68. Management of property by and allowance to insolvent :-**

(1) The Court may appoint the insolvent himself to superintend the management of all the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in the administration of the property in such manner and on such terms

as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services which he may have discharged by order of the Court, for the management of the property. The allowance may, at any time, be varied or determined by order of the Court.

#### **69. Right of insolvent to surplus :-**

After paying all debts of the creditors with interest as provided by this Act and the expenses of the proceedings taken thereunder, the insolvent shall be entitled to any surplus remaining over.

#### **70. Committee of supervision :-**

(1) The Court may, if it thinks fit, authorise the creditors who have proved their debts to appoint a committee of supervision for the purpose of superintending the administration of the insolvent's property by the receiver.

(2) The creditors who have proved their debts or persons holding general powers of attorney from them, shall be appointed as members of a committee of supervision.

(3) The committee of supervision shall have such powers of control over the proceedings of the receiver as may be prescribed.

#### **71. Appeal against Receiver :-**

The insolvent or any creditor or any other person aggrieved by any act or decision of the receiver, may apply to the Court against such act or decision and the Court may confirm, reverse or modify the act, or decision or make such order as it thinks just :

Provided that no application under this section shall be entertained after the expiration of thirty days from the date of the act or decision.

#### **PART 4**

##### **Penalties**

#### **72. Offences committed by debtors :-**

If a debtor, whether before or after the making of an order of adjudication,

(a) wilfully fails to perform the duties imposed on him by Section 22 or to deliver up possession of any part of his property which is

divisible among his creditors under this Act, and which is for the time being in his possession or under his control, to the Court or to any person authorised by the Court to take possession of it, or

(b) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act,

(1) destroys or otherwise wilfully prevents or withholds the production of any document relating to such of his affairs as are subject to investigation under this Act, or

(2) keeps, or causes to be kept false books of account, or

(3) makes false entries in or withholds any entry from or dishonestly alters or falsifies any document relating to such of his affairs as are subject to investigation, or

(c) fraudulently with intent to diminish the sum to be divided among his creditors or to give an under preference to any of his creditors ,

(1) discharges or conceals any debts due to or from him, or

(2) makes away with, incumbers, mortgages or conceals any part of his property of any kind whatsoever, he shall, on conviction, be punished with imprisonment for a term which may extend to one year.

### **73. Procedure for offence under Section 72 :-**

Where the Court is satisfied, after such preliminary inquiry, as it thinks necessary, that there is sufficient ground for inquiring into any offence referred to in Section 72 and appearing to have been committed by the insolvent, it may record its finding to that effect and make a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint under the 12[Code of Criminal Procedure. 1898 (Central Act V of 1898)].

### **74. Discharge or composition not to bar criminal proceedings :-**

Where an insolvent has been guilty of any of the offences referred to in Section 72, a criminal proceeding against him shall not be barred by reason that he has obtained his discharge or that a proposal for composition or scheme of arrangement by him, has been accepted or approved.

## **75. Undischarged insolvent obtaining credit :-**

(1) An undischarged insolvent who obtained credit to the extent of fifty rupees or upwards from any person without informing him that he is an undischarged insolvent shall, on conviction by a Magistrate, be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court may, after such preliminary inquiry as may be necessary, send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security from the accused for appearing before such Magistrate ; and may bind over any person to appear and give evidence in the case.

## **76. Disqualification of insolvent :-**

(1) Where a debtor is adjudged or re-adjudged insolvent under this Act, he shall, subject to the provisions of this Act, be disqualified from -

(a) being appointed or acting as a Magistrate ;

(b) being elected to any office of any local authority to which election is made by votes, or holding or exercising any such office which carries no remuneration ;

(c) being elected, sitting or voting as member of any local authority.

(2) The disqualifications imposed under this section shall be removed in the following cases :

(a) if the order of adjudication is annulled under Section 35, or

(b) if an order of discharge, whether absolute or conditional is made in his favour, and he is granted a certificate that he was adjudged insolvent by misfortune and not by misconduct.

(3) The Court may at its discretion, grant or refuse such certificate, but an order of refusal shall be appealable.

## **PART 5**

### **Summary Administration**

## **77. Summary administration :-**

When a petition is presented by or against a debtor and the Court

is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value than five hundred rupees, it may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications :

(1) Unless the Court otherwise directs, notice required to be published under this Act, shall be published in the <sup>1</sup> [Official Gazette.]

(2) in case the petition presented by debtor is admitted, the property of the debtor shall vest in the Court as receiver ;

(3) at the hearing of the petition, the Court shall inquire into the debts and assets of the debtor and determine the same by order in writing; but it shall not be necessary to frame a schedule ;

(4) the property of the debtor shall be realised with all reasonable despatch, and thereafter, if practicable, distributed in a dividend ;

(5) the debtor shall apply for discharge within six months from the date of order of adjudication ; and

(6) such other modifications may be made in the prescribed manner, as may save the expense and simplify the procedure :

Provided that the Court may, at any time direct that the ordinary procedure provided for in this Act, shall be followed in regard to the debtor's estate, and thereafter this Act shall have effect accordingly.

1. Substituted by A. O. 1956.

#### PART 6

#### Appeal and Revision

### **78. Appeal and revision :-**

(1) The debtor, any creditor, the receiver or any other person may, aggrieved by a decision or order of a Court, appeal under Section 13[4] of the Hyderabad Civil Courts Act, to the superior Court having appellate jurisdiction.

(2) \* \* \* \* \*

(3) The High Court shall have the same powers of revision in relation to any proceeding of a subordinate Court at any stage as are exercised under Section 15[115 of the Code of Civil Procedure,

1908 (Central Act V of 1908)].

(4) An appeal under this section to the High Court may be filed within ninety days <sup>1</sup> [\* \* \*]

1. Omitted by A. O. 1956.

#### PART 7

#### Miscellaneous

### **79. Costs :-**

Subject to any rules made under this Act, the provisions of Section 245 of the 15[Code of Civil Procedure, 1908 (Central Act V of 1908)], shall, so far as may be, be applied to the costs of insolvency proceedings and the costs of detaining debtors in civil prison.

### **80. Court to be auxiliary to each other :-**

All Courts having jurisdiction in insolvency proceedings and the officers of such Courts shall, severally act in aid of and be auxiliary to each other in matters of insolvency. An order of a Court seeking aid with a request to another Court, shall be sufficient to enable the latter Court to exercise, in regard to the matter directed by the order, such jurisdiction as either of them could exercise in regard to such matter if such matter were within the local limits of its jurisdiction.

### **81. Limitation :-**

(1) The provisions of Sections 5 and 12 of the 15[Indian Limitation Act, 1908 (Central Act IX of 1908)] shall apply to appeals and applications filed under this Act, and a decision under Section 4 of this Act shall be deemed to be a decree for the purposes of the said Section 12.

(2) Where an order of adjudication has been annulled under this Act, in computing the period of limitation for any suit or application or an application for the execution of a decree (other than a suit or application in respect of which the leave of the Court was obtained under sub-section (2) of Section 28), which could not be filed owing to the fact that an order of adjudication was made, the period from the date of the order of adjudication to the date of its annulment shall be excluded :

Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this

Act.

**82. Power to make rules :-**

(1) The High Court may, with the sanction of the Government, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, rules may be made for the following matters .

(a) appointment and salary of receivers (other than Official Receivers), the audit of the accounts of receivers and the costs of audit,

(b) meetings of creditors,

(c) procedure where the debtor is a firm,

(d) procedure in the case of summary administration of estate, and

(e) prescribed matters or matter which may be prescribed.

(3) The rules made under this section shall be published in the <sup>1</sup> [Official Gazette] and shall, on such publication, have the same effect as this Act.

1. Substituted by A.O. 1956.

**83. Powers which may be delegated to Official Receivers :-**

The High Court, with the sanction of the Government may, from time to time, direct that in any matter in respect of which Court has jurisdiction under this Act, the Official Receivers shall, subject to the direction of the Court, have all or any of the following powers :

(a) to frame schedules and to admit or reject proofs of creditors ;

(b) to make interim orders in cases of urgency ;

(c) to hear and determine ex-parte or unopposed applications.

(2) Any order made or act done by the Official Receiver in the exercise of the aforesaid powers shall, subject to an appeal therefrom to the Court under Section 71, be deemed the order or act of the Court.

**84. Savings :-**

Nothing in this Act shall affect any provision of the <sup>1</sup> [Hyderabad Agricultural Debtors Relief Act (No. XVI of 1956).]

1. Substituted by A.O. 1956.

## **85. Repeal :-**

(1) All sections of the 17[Code of Civil Procedure, 1908 (Central Act V of 1908)], and all circulars and orders which are inconsistent with or a mere repetition of the provisions of this Act, are hereby repealed.

(2) **1 \* \* \* \* \***

1. Omitted by *ibid*.