

**Presidency-Towns Insolvency (Madras Amendment) Act,
1943**

05 of 1943

[02 March 1943]

CONTENTS

1. Short title and commencement
2. Repeal of section 61, Central Act III of 1909
3. Amendment of section 68, Central Act III of 1909
4. Amendment of section 71, Central Act III of 1909
5. Amendment of section 72, Central Act III of 1909
6. Amendment of section 74, Central Act III of 1909
7. Amendment of section 77, Central Act III of 1909
8. Insertion of new section 77-A in Central Act III of 1909
9. Repeal of section 81, Central Act III of 1909
10. Amendment of section 82, Central Act III of 1909
11. Insertion of new sections 82-A and 82-B in Central Act III of 1909
12. Repeal of section 83, Central Act III of 1909
13. Amendment of section 84, Central Act III of 1909
14. Insertion of new section 84-A in Central Act III of 1909
15. Amendment of section 112, Central Act III of 1909
16. Amendment of section 1245, Central Act III of 1909
17. Power to make rules

**Presidency-Towns Insolvency (Madras Amendment) Act,
1943**

05 of 1943

[02 March 1943]

PREAMBLE

An Act to amend the Presidency-towns Insolvency Act, 1909, in its application to the Presidency-town of Madras.

Whereas it is expedient to amend the Presidency-towns Insolvency Act, 1909(Central Act III of 1909), in its application to the Presidency-town of Madras, for the purposes hereinafter appearing;

²[It is hereby enacted as follows:--]

1. For Statement of Objects and Reasons, see part St. George

Gazette, dated 7th July 1942, Part IV-A, pages 47-48.

2. These words were substituted for the paragraph containing the enacting formula and the paragraph preceding that paragraph by section 5 of the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII of 1948).

1. Short title and commencement :-

(1) This Act may be called the Presidency-towns Insolvency (Madras Amendment) Act, 1943.

(2) This section shall come into force at once, and the rest of this Act shall come into force on such¹ date as the ²[State] Government may, by notification in the Fort St. George Gazette, appoint.

1. Came into force on the 1st April 1943.

2. This word was substituted for the word " Provincial " by the Adaptation Order of 1950.

2. Repeal of section 61, Central Act III of 1909 :-

Section 61 of the Presidency-towns Insolvency Act, 1909(Central Act III of 1909) (hereinafter referred to as the said Act), shall be omitted.

3. Amendment of section 68, Central Act III of 1909 :-

In sub-section (2) of section 68 of the said Act, after the words "in such manner," the words as is laid down in this Act or " shall be inserted.

4. Amendment of section 71, Central Act III of 1909 :-

In section 71 of the said Act-

(a) in sub-section (1), for the words "in his hands," the words "under his control" shall be substituted;

(b) in sub-section (2), for the words "in hand," the words " realized by the official assignee " shall be substituted.

5. Amendment of section 72, Central Act III of 1909 :-

In section 72 of the said Act, for the words " in the hands " the words " under the control " shall be substituted.

6. Amendment of section 74, Central Act III of 1909 :-

In section 74 of the said Act, for the words " pay it, and also to pay out of his own money interest thereon," the words " pay such dividend and interest thereon " shall be substituted.

7. Amendment of section 77, Central Act III of 1909 :-

In section 77 of the said Act--

(a) to clause (a) of sub-section (1) the following paragraph shall be added, namely:--

"The official-assignee, the deputy official-assignee or assignees, if any, and all other officers and servants subordinate to the official-assignee (other than those employed in estates under his administration) shall form part of the staff attached to the said Court";

(b) in sub-section (2), the words "shall give such security and " shall be omitted.

8. Insertion of new section 77-A in Central Act III of 1909 :-

After Section 77 of the said Act, the following section shall be inserted, namely:--

"77-A. Official assignee to be corporation sole.--

(1) The official assignee shall be a corporation sole by the name of the Official Assignee of Madras and as such Official Assignee shall have perpetual succession and an official seal and may sue and be sued in his corporate name and may do all acts necessary or expedient to be done in the execution of his office.

(2) In all suits or proceedings by or against the official assignee, there shall be inserted after his official title the description as assignee of the property of an insolvent (naming the particular insolvent)."

9. Repeal of section 81, Central Act III of 1909 :-

Section 81 of the said Act shall be omitted.

10. Amendment of section 82, Central Act III of 1909 :-

Section 82 of the said Act shall be renumbered as sub-section (1) of that section, and after the section as so renumbered, the following sub-sections shall be added, namely:--

"(2) The revenues of the ¹[State] shall be liable to make good all

sums which the official assignee is required by order of the Court to pay under sub-section (1) in respect of any misfeasance, neglect or omission occurring after the commencement of the presidency-towns Insolvency (Madras Amendment) Act, 1943(Madras Act V of 1943).

(3) Nothing in sub-section (2) shall prevent the ²[State] Government from recovering any sum paid by them under that sub-section from the person who was holding the office of official assignee or deputy official assignee or any office subordinate to the official assignee, when the misfeasance, neglect or omission occurred."

1. This word was substituted for the word "Province" by the Adaptation Order of 1950.

2. This word was substituted for the word "Provincial" by the Adaptation Order of 1950.

11. Insertion of new sections 82-A and 82-B in Central Act III of 1909 :-

After section 82 of the said Act, the following sections shall be inserted, namely:--

"82-A. Liability of State Government for costs in legal proceedings, etc.--

(1) Where the official assignee has incurred whether before or after the commencement of the Presidency-towns Insolvency (Madras Amendment) Act, 1943, in the matter of any insolvency--

(a) any costs in legal proceedings taken by him under the direction of the Court, or

(b) any civil liability bona fide in the discharge of his duties,

the revenues of the ¹[State] shall be liable for the payment of such costs or to meet such liability, in so far as assets realized and not distributed by the official assignee in respect of such insolvency are insufficient to pay such costs or to meet such liability.

(2) Any sum paid out of the revenues of the ¹[State] under sub-section (1) in respect of an insolvent's estate shall be repaid to the ²[State] Government by the official assignee out of any assets of the estate which may subsequently become available, in priority to all other claims and charges on such assets other than fees and percentages chargeable by the official assignee under this Act.

82-B. Certain liabilities not to be incurred without the express direction of the Court.--

(1) Where an insolvent's estate has no available assets, the official assignee shall not incur any costs, charges or expenses in respect of such estate without the express direction of the Court, but the Court may, on the application of the official assignee, empower him to spend an amount specified by it in payment of any costs, charges and expenses of, or in connexion with, the realization or administration of the estate of the insolvent.

(2) Nothing contained in sub-section (1) shall be deemed to authorize the official assignee to spend any amount in excess of the balance for the time being available in the fund placed at his disposal by the 2[State] Government for expenditure under that sub-section.

(3) Any amount spent in respect of an insolvent's estate by the official assignee out of the fund referred to in sub-section (2) shall, if any assets of the estate subsequently become available to the official assignee, be paid back by him into such fund, in priority to all other claims and charges on such assets other than fees and percentages chargeable by the official assignee under this Act".

1. This word was substituted for the word "Province" by the Adaptation Order of 1950.

2. This word was substituted for the word " Provincial " by *ibid*.

12. Repeal of section 83, Central Act III of 1909 :-

Section 83 of the said Act shall be omitted.

13. Amendment of section 84, Central Act III of 1909 :-

In section 84 of the said Act, for the words "an official assignee," the words "a person for the time being holding the office of official assignee" and for the word "vacate," the words "be deemed to have vacated" shall be substituted.

14. Insertion of new section 84-A in Central Act III of 1909 :-

After section 84 of the said Act, the following section shall be inserted, namely:--

"84-A. Bank accounts to be maintained by official assignee, etc.

(1) (a) The official assignee shall maintain an account with the Reserve Bank of India in the prescribed manner and shall pay into such account, after making any prescribed deductions, all moneys

received by him in the realization of insolvents estates and any other sums the payment of which may be prescribed.

(b) All payments to be made by the official assignee in respect of liabilities arising from insolvents estates shall, except in the case referred to in section 82-B, be made by cheques drawn by the official assignee on the said account or by cash realized from the proceeds of such cheques.

(2) Subject to such rules as may be made under section 112, whenever the cash balance standing to the credit of the said account is, in the opinion of the official assignee, in excess of the amount which is required for the time being to meet demands in respect of insolvents estates or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee shall transfer such excess to the account and credit of the ¹[State] Government with the Reserve Bank of India.

(3) The provisions of sub-sections (1) and (2) shall apply to all moneys in the hands of the official assignee at the commencement of the Presidency-towns Insolvency (Madras Amendment) Act, 1943.

(4) All investments of moneys made before such commencement by the official assignee or on his behalf by the Registrar of the High Court, other than investments exclusively appertaining to the estates of particular insolvents, shall be transferred to the ¹[State] Government in such manner as may be prescribed.

(5) The revenues of the ²[State] shall be liable to meet all claims--

(a) upon any moneys transferred to the account and credit of the ¹[State] Government under sub-section (2) or under sub-section (3) read with sub-section (2); and

(b) upon any investments transferred to the ¹[State] Government under sub-section (4)."

1. This word was substituted for the word " Provincial " by the Adaptation Order of 1950.

2. This word was substituted for the word " Province " by *ibid*.

15. Amendment of section 112, Central Act III of 1909 :-

In sub-section (2) of section 112 of the said Act--

(i) clause (b) shall be omitted;

(ii) in clause (f), after the word "audit," the words "and inspection" shall be inserted;

- (iii) clause (g) shall be omitted;
- (iv) in clause (h), the words " out of the proceeds aforesaid " shall be omitted;
- (v) in clause (i), after the words "direction of the Court," the words " or otherwise in his official capacity" shall be added;
- (vi) the last paragraph beginning with the words "and in the case of the High Court at Madras " and ending with the words " expenses of his establishment " shall be omitted.

16. Amendment of section 1245, Central Act III of 1909 :-

Section 125 of the said Act shall be renumbered as sub-section (1) of that section and after the section as so renumbered, the following sub-section shall be added, namely:--

"(2) The official assignee shall transfer to the account and credit of the ¹[State] Government, in such manner and at such times as may be prescribed in this behalf--

(a) all fees and percentages received by him under this Act after the commencement of the Presidency-towns Insolvency (Madras Amendment) Act, 1943, and

(b) all fees, percentages, commission and other remuneration received by him after such commencement either as a trustee ²[under a composition or scheme] or as an agent of another official assignee or an official receiver."

1. This word was substituted for the word "Provincial" by the Adaptation Order of 1950.

2. These words were substituted for the words " in a composition " by section 3 of, and the Second Schedule to, the Madras Re-enacting and Repealing (No. 1) Act, 1948 (Madras Act VII of 1948).

17. Power to make rules :-

Tho ¹[State] Government may make rules consistent with this Act to provide for any matter for which provision is, in their opinion, necessary or convenient for the purpose of giving effect to the provisions of this Act.

1. This word was substituted for the word "Provincial" by the Adaptation Order of 1950.