

THE BURMA AGRICULTURISTS' DEBT RELIEF ACT, 1947

[BURMA ACT NO. LXXII OF 1947.]

[19th November 1947].

It is hereby enacted as follows :—

1. (1) This Act may be called the Burma Agriculturists' Debt Relief Act, 1947.
- (2) It shall come into force on such date as the Governor may, by notification, direct in this behalf.

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

- (a) "agriculture" includes horticulture and the use of land for any purpose of husbandry ;
- (b) "Board" means a Debt Settlement Board constituted under this Act ,
- (c) "creditor" means a person to whom a debt is owing but does not include a co-operative society ;
- (d) "debt" means any liability owing to a creditor, in cash or kind, secured or unsecured, and includes any sum of money payable under a decree or order of a Civil Court or otherwise, whether due or not due, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue or any money for the recovery of which a suit is barred by limitation ;
- (e) "debtor" means an agriculturist—
- (a) who is engaged in the cultivation of land with his own hands as his principal means of subsistence, or
- (b) who satisfies the following conditions, namely—
- (i) that he superintends personally and throughout the working periods of the year the actual cultivation of the land, and
- (ii) that he derives the major part of his income either from such superintendence or from the cultivation of land with his own hands or jointly from such superintendence and such cultivation ;
- and whose debts exceed Rs. 100.
- (f) "prescribed" means prescribed by rules made under this Act.

3. (1) The Governor may, by notification, establish a Debt Settlement Board for any district or part of a district, and such Board shall consist of not less than three and not more than five members including the Chairman who shall be a person holding or having held an office not lower in rank than that of an Assistant Judge or an Extra Assistant Commissioner or an advocate of the High Court.

(2) The Governor may, by notification, cancel the appointment of the Chairman or any member of a Board and dissolve any Board.

Price,—Annas'0—4—0.]

(3) The Chairman and every member of a Board shall be appointed for a term not exceeding three years.

(4) Every member including the Chairman shall, on the expiration of the period for which he has been appointed, be eligible for reappointment for a further term not exceeding three years, but no member or Chairman, whose appointment has been cancelled under the provision of sub-section (2), shall be eligible for reappointment.

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

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

(7) If at any time the Chairman of a Board is temporarily prevented from discharging his duties, he may nominate any member thereof to act for him during his temporary absence and such member shall, while so acting, have the same powers as the Chairman.

4. A debtor may apply to the Board established for the local area within which the debtor ordinarily resides for compulsory scaling down of his debt with his creditor or creditors :

Application for settlement between debtor and his creditors.

Provided that if the debtor's debts exceed ten thousand rupees the application shall be dismissed.

5. (1) Every application to the Board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, for signing and verifying plaints.

Verification of application.

(2) If a person makes any statement in a verification mentioned in sub-section (1) or in sub-section (1) of section 9, which is false and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed an offence under section 177 of the Penal Code.

6 Every application presented by a debtor to a Board shall contain the following particulars, namely—

Particulars to be stated in application.

- (a) a statement that he owes a debt ;
- (b) the place where he resides ;
- (c) the amount and particulars of all claims against him, including arrears of wages, land revenue or anything recoverable as an arrear of land revenue and any money for the recovery of which a suit is barred by limitation, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him ;
- (d) the amount and particulars of all his property, including all claims due to him together with a specification of the value of such property not consisting of money, and the place or places at which any such property is to be found, and details of any mortgage, lien or charge subsisting thereon ; and
- (e) a declaration that all his debts and properties have been included in the application.

7. The application shall be returned to the applicant if it does not comply with any of the requirements mentioned in sections 5 and 6 for amendment failing which the application shall be rejected.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

8. An application under section 4 may be dismissed by the Board at any stage of the proceedings,—
Dismissal of applica-
tion.

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a scaling down of debts ; or

(b) if, in the opinion of the Board, the applicant fails to pursue his application with due diligence ; or

(c) if the application includes a claim which, in the opinion of the Board, is collusive and intended to defraud any creditor.

9. (1) On receipt of an application under section 4, the Board shall, unless it rejects the application under section 7, examine the debtor and if it is, in the opinion of the Board, desirable to attempt to scale down his debt, the Board shall pass an order fixing a date and place for hearing of the application.
Procedure on appli-
cation and notice
calling upon creditors
to submit statement of
debts.

(2) The Board shall issue a notice which shall be served or published in the manner prescribed calling upon every creditor of the debtor to submit a statement of debts owing to such creditor by the debtor. Such statement shall be submitted to the Board in writing within one month from the date of service or publication of the notice as the case may be and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints :

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

(3) Every debt of which a statement is not submitted to the Board in compliance with the provisions of sub-section (2) shall be deemed for all purposes to have been duly discharged :

Provided that if a creditor proves to the satisfaction of the Board that the notice was not served on him or that he has no knowledge of the publication thereof, or that for some other sufficient reasons he was unable to submit the statement, the Board may revive the debt.

10. (1) Every creditor submitting a statement of the debts owing to him in compliance with a notice issued under sub-section (2) of section 9 shall furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including all entries in books of accounts, on which he relies to support his claims, together with a true copy of every such document.
Procedure on sub-
mission of statement
of debts.

(3) If any document, which is in the possession or under the control of the creditor, is not produced by him as required by subsection (1), the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt :

Provided that the Board or Court shall have power to excuse for sufficient reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceeding pending before it.

11. (1) The Board shall call upon the debtor and each creditor respectively to explain his case regarding each debt and shall scale it down as provided under sections 13 and 14.

(2) If there is a dispute as to the existence or amount of debt owing to any creditor or the assets of any debtor, the Board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all the parties in all proceedings before the Board :

Provided that the decree of a Civil Court relating to a debt shall, subject to the provisions of sections 13 and 14, be conclusive evidence as to the existence and amount of such debt.

(3) The Board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

12. (1) Subject to the provisions of sections 132 and 133 of the Code of Civil Procedure and to rules made under this Act, the Board shall have power to summon any person whose attendance it considers necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purpose of any inquiry under this Act.

(2) Any party or person present may be required by the Board to give evidence or to produce any document in his possession or power then and there or within such time as the Board may direct.

13. Subject to the provisions of the Accrual of Interest (War-Time Adjustment) Act, 1947, the Board shall scale down the debts incurred before the 1st October 1941 in the manner mentioned hereunder, namely—

(1) all interest outstanding on the 1st October 1946, in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of Court and whether the debt or other obligation has ripened into a decree or not shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date ;

(2) where an agriculturist has paid to any creditor twice the amount of the principal whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged ;

amount only as would make up such shortage, or the principal amount or such portion of the principal amount as is outstanding, whichever is smaller, shall be repayable :
Provided that nothing contained in sub-sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Explanation.—Where a debt has been renewed or included in a fresh document in favour of the same creditor, the principal originally advanced by the creditor together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable by the agriculturist under this section.

14. Subject to the provisions of the Accrual of Interest (War-Time Adjustment) Act, 1947, the Board shall scale down the debts incurred on or after the 1st October 1941 in the manner mentioned hereunder, namely—

Provision for debts incurred after 1st October 1941.

interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of Court under which it arises or at 6½ per cent per annum simple interest whichever is less and credit shall be given for all sums paid towards interest, and only such amount as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due :

Provided that any part of the debt which is found to be a renewal of a prior debt shall be deemed to be a debt contracted on the date on which such prior debt was incurred, and if such debt had been contracted prior to the 1st October 1941, shall be dealt with under the provisions of section 13 :

Provided also that nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

15. (1) An order for the scaling down of debts shall be in writing, and it shall state, subject to the provisions contained in sections 17 and 18 the amounts payable to creditors and the manner in which, the assets from which and the times at which they are to be paid. Such order shall be read and explained to the parties concerned and shall be authenticated by the Board.

(2) The order made under sub-section (1) shall take effect as if it were a decree of a Civil Court at the place where the debt concerned was incurred and be executable as such and such order shall, subject to the provisions of sub-section (3) hereof and section 24, be final :

Provided that no such order shall be executed in any Court without the sanction of the Board.

(3) If, after an order is made under sub-section (1), any debt is revived by the Board under sub-section (3) of section 9, the Board shall make a fresh order.

16. Where an order is made in respect of any debt which is secured by a mortgage, lien or charge on any immovable property of a debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable under the order in respect of such debt until such amount has been paid or discharged.

17. A debtor shall be liable to pay the amount due in accordance with the order made by the Board under sub-section (1) of section 15 ; and the Board shall, upon application made by a creditor, accord sanction to the execution of its order in a Civil Court of competent jurisdiction, if a debtor defaults in paying such amounts within such time as may be prescribed :

Provided that no debtor shall be liable, before the 1st January 1952, to pay any debt incurred by him prior to the commencement of this Act and scaled down under the provisions of this Act :

Provided also that where a debtor is unable to find the creditor and pay the amount due in accordance with the order he may deposit such amount with the Registrar of the District Court and such deposit shall be conclusive evidence that an offer of payment has been made by the debtor in accordance with the order.

18. All debts incurred by an agriculturist before the commencement of this Act and scaled down under the provisions of this Act shall, from the 1st January 1952, carry interest on the principal amount set out in the order scaling down the debts, in so far as any sum remains payable thereunder, at the rate previously applicable under law, custom, contract or otherwise ; and no interest shall be payable on such principal amount in respect of the period commencing from the date on which this Act comes into force to the 31st December 1951 :

Rate of interest payable by agriculturists on old loans.

Provided that the interest shall not in any case exceed $6\frac{1}{4}$ per cent per annum simple interest, that is to say, one pie per rupee per mensem, simple interest, or one anna per rupee per annum simple interest.

19. In any proceeding for settlement of a debt, the Board shall scale down all interest due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at $6\frac{1}{4}$ per cent per annum, simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest :

Rate of interest payable by agriculturists on new loans.

Provided that the Governor may, by notification in the Gazette, alter and fix any other rate of interest from time to time.

20. No Civil Court shall entertain any suit or application for execution of a decree in respect of—
Bar of Suit.

- (i) any matter pending before a Board ;
or
- (ii) the validity of any procedure or the legality of any order made under this Act ;
or
- (iii) the recovery of any debt payable under an order made under sub-section (1) of section 15 save as provided under section 17 ;
or
- (iv) the recovery of any debt which has been deemed to have been duly discharged under sub-section (3) of section 9.

21. Every transfer of property made with intent to defeat or delay the creditors of the debtor, before or after an application has been made to a Board under section 4 and until the order under sub-section (1) of section 15 in respect of such application has ceased to subsist, shall be voidable by the order of the Board on the application of any creditor so defeated or delayed.
Avoidance of certain transfers of debtor's property.

22. Any alienation of land made with the sanction of the Board in pursuance of or to carry out an order made under sub-section (1) of section 15 shall, subject to the provision of the Land Alienation Act, not be considered as fraudulent preference under the law of insolvency nor shall such alienation be voidable under section 53 of the Transfer of Property Act.
Alienation of land when not fraudulent preference.

23. No appeal or application for revision shall lie against any order passed by a Board :
Bar of appeal or revision. Provided that the Governor may call for any proceeding of any Board, or alter any order passed by any Board, where it appears to be illegal or perverse.

24. The Board may, on application either by a debtor or a creditor made within 30 days of the passing of an order or on its own motion at any time review an order passed by it and pass such other order in reference thereto as it thinks fit :
Provided that no order shall be varied or reversed unless notice has been given to all persons interested to appear and be heard.

25. In any proceedings before a Board any party may appear in person or be permitted to appear by an agent authorized in writing or by a legal practitioner on his behalf.
Appearance of party before Board by Agent or legal practitioner.

26. Where an application has been made to a Board under section 4, any suit, appeal or other proceedings then pending before a Civil Court in respect of any debt for the settlement of which the application has been made, shall be stayed until the Board has rejected or dismissed the application.
Stay of pending suit or proceeding.

27. Where in the course of an enquiry into an application made under section 4 a Board finds that there is any sum owing by the debtor to Government on account of loans advanced under the Agriculturists' Loans Act or the Land Improvement Loans Act, or otherwise, the Board shall report this fact to the Collector.

Submission of reports by Board regarding sums due to Government.

28. In calculating the period of limitation for any suit filed in, or proceedings before a Civil Court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings continued as well as the time taken for obtaining a certified copy of the order of the Board shall be excluded.

All-wance of time for limitation.

29. The members of a Board shall be deemed to be public servants within the meaning of the Penal Code.

Members of a Board deemed to be public servants.

30. No suit or other proceeding shall lie against any member of the Board for any act in good faith done or intended to be done under this Act.

31. (1) The Governor may make rules to carry out all or any purposes of this Act and not inconsistent therewith.

Power to make rules.

(2) In particular, and with out prejudice to the generality of the foregoing power, he shall have power to make rules—

- (a) prescribing the constitution of and quorum for and procedure before a Board ;
- (b) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 9 ;
- (c) prescribing the charges to be made by the Board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid ;
- (d) prescribing the records to be kept and the returns to be made by a Board ;
- (e) prescribing the allowances, if any, to be paid to the Chairman and members of a Board and to the staff, if any, employed by the Board ;
- (f) regulating the powers of a Board to summon parties and witnesses under section 12 and the grant of expenses to witnesses.