

THE LIABILITIES (WAR-TIME ADJUSTMENT) ACT, 1945.*

[BURMA ACT XIX, 1945.] (1st November, 1945.)

WHEREAS it is expedient to confer on Courts certain powers in relation to remedies in respect of the non-payment of money and the non-performance of obligations, and to provide for the adjustment and settlement of the affairs of persons financially affected by reason of war circumstances ;

* * * * *

It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Liabilities (War-time Adjustment) Act, 1945. Short title, commencement and duration.

¹ (2) It shall come into force in any local area on such date as the President of the Union may, by notification, appoint in this behalf and different dates may be appointed for different parts of this Act and for different areas.

(3) It shall remain in force until the President of the Union, by notification, declares it to be no longer in force.

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

(i) “business” includes trade or profession and also the goodwill acquired by a person engaged in a trade or profession ;

* Published in Home Dept. Notification No. 140, dated the 5th October 1945.

¹ This Act came into force in the whole of Burma on 1st November 1945, see *Burma Gazette*, 1946, Part I, page 76.

- (ii) "the Court" means the District Court, or any other Court designated by the High Court by rules made under section 8, within the local limits of whose jurisdiction the debtor ordinarily resides or carries on business or personally works for gain, or, in the case of proceedings relating to immovable property, within the local limits of whose jurisdiction the property or any part thereof is situate :

Provided that, within the local limits of ordinary original jurisdiction of the High Court, the High Court shall be the Court :

- (iii) "debtor" includes a mortgagor and a partnership, and in relation to any scheme of arrangement under Part III means the person or partnership to whose affairs the scheme relates ;
- (iv) "war circumstances" means circumstances directly or indirectly attributable to any war in which His Britannic Majesty may be or has been engaged after the first day of September, 1939.

PART II.

RESTRICTIONS ON EXECUTION AND OTHER REMEDIES.

Restriction
on execution
of money
decrees.

3. Save as provided by this Act, no person shall be entitled, except with the leave of the Court, to execute or otherwise enforce any decree or order of any Court (whether made before or after the commencement of this Act) for the payment or recovery of money :

Provided that, nothing in this section shall apply to—

- (a) any decree for the recovery of damages for tort ;
- (b) any decree or order for the recovery of a debt which has become due by virtue of a contract made after the commencement of this Act ;
- (c) any decree or order under which any sum of money is recoverable in respect of costs ;
- (d) any order for maintenance ;
- (e) any order made in any criminal proceeding or in any proceeding for the recovery of a penalty in respect of any contravention of, or failure to comply with, the provisions of any enactment for the time being in force.

Restriction
on realisation
of security.

4. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, save as provided by this Act, be entitled, except with the leave of the Court, for the purpose of realising or enforcing his security in any manner or for any other purpose whatsoever, to exercise any remedy which is available to him under any such law or to execute any decree or order of any Court against any property of the judgment-debtor :

Provided that nothing in this section shall apply to any remedy or proceeding available in consequence of any default in the payment of a debt,

or the performance of an obligation, being a debt or obligation arising by virtue of a contract made after the commencement of this Act :

Provided further, that nothing in this section shall affect the operation of the Land Alienation Act, the Burma Land Purchase Act or the Lands Disputes (Summary Jurisdiction) Act, 1945.

(2) Where an application is made under sub-section (1) by the mortgagee of any immovable property for leave to exercise against the property any right or remedy arising out of the mortgage, the Court may, for the purposes of the application, treat any person appearing to the Court to be affected by the exercise of the right or remedy as if he were the mortgagor and may grant relief accordingly, and all persons appearing to be so affected shall be made parties to the application.

5. If, on an application for such leave as is required under section 3 or section 4 for the exercise of any of the rights and remedies mentioned in those sections, the Court is of opinion that the person liable to satisfy the decree or order is unable immediately to do so by reason of war circumstances, the Court may refuse leave for the exercise of that right or remedy or give leave therefor subject to such terms, restrictions and conditions as the Court thinks fit.

Procedure on application for leave to execute decree or order.

6. Where an insolvency petition has been presented against any debtor and the debtor proves to the satisfaction of the Court having jurisdiction in respect of the petition that his inability to pay his debts is due to war circumstances, the Court may at any time stay the proceedings under the petition for such time and subject to such conditions as the Court thinks fit.

Court may stay insolvency proceedings against any debtor.

7. (1) Where at any stage of a proceeding under this part the Court is satisfied, by affidavit or otherwise, that the debtor has, with intent to obstruct or delay the execution of any decree or order passed against him, taken advantage of the provisions of this part, and

Attachment of property where application is *mala fide*.

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, or
- (c) in the case of a secured debt, has failed to take proper steps for the preservation of the security, the Court may by order (which may be made *ex-parte*) direct the debtor, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree or order, or to appear and show cause why he should not furnish such security. The Court may also by the same order direct the attachment of the whole or any portion of any property of the debtor, or may appoint a receiver of such property.

(2) Where the debtor fails to show cause why he should not furnish security or fails to furnish the security required within the time fixed by the Court, the Court may order that the said property, or such portion thereof as appears sufficient to satisfy the decree or order, shall be attached, or, if the property has already been attached by an order under sub-section (1), may continue the attachment.

(3) Where the debtor shows cause to the satisfaction of the Court or furnishes the required security and any property of the debtor has been attached under sub-section (1) the Court shall order the attachment to be withdrawn or make such other order as it thinks fit.

(4) Where the Court passes an order under sub-section (2), all proceedings under this part shall be deemed to have terminated, and execution of any decree or order against the debtor may be taken out and prosecuted in accordance with the provisions of the Code of Civil Procedure or of any other law for the time being in force relating to execution.

Procedure.

8. The High Court may make rules designating the Courts, other than the District Courts, which shall have jurisdiction under this part, prescribing the manner in which applications shall be made, and generally for regulating the conduct of proceedings under this part.

PART III.

ADJUSTMENT OF LIABILITIES.

Debtor may
apply to
Court for a
scheme of
arrangement.

9. Any debtor who is in financial difficulties owing to war circumstances may apply to the Courts for the settlement of an equitable and reasonable scheme of arrangement with his creditors and, in particular, such a scheme of arrangement as will enable him, if he carries on a business, to preserve that business.

Procedure
for effecting
scheme of
arrangement.

10. (1) On an application under section 9 the Court shall cause notice thereof to be served on all the creditors of the debtor who have debts provable in insolvency, and

(a) if the debtor and all such creditors assent to a scheme, the Court shall approve the scheme ;

(b) when no scheme to which the debtor and all such creditors assent can be effected, the Court may approve any scheme which appears to it to be equitable and reasonable and to which the debtor and a majority in number and in value of the said creditors assent."

(2) A scheme approved under sub-section (1) shall, subject to the following provisions of this part, be binding on the debtor and on all creditors on whom notice was served under sub-section (1) :

Provided that where any of the said creditors has a debt which would be entitled to be paid in priority under any law relating to insolvency if the debtor were adjudged insolvent, a scheme of arrangement shall not be approved

unless that creditor assents thereto or the scheme secures the payment of the debt with the like degree of priority.

11. A scheme of arrangement approved under this part may provide for the composition of debts, the postponement of payment of debts, the assignment or charging of any property of the debtor in favour of the creditors, and the management or disposal of the debtor's business, if any, or any other part of his property, and may, with the assent of the other parties thereto, vary the terms of any lease, mortgage or contract to which the debtor is a party.

What a scheme of arrangement may provide for.

12. Where it appears that a scheme of arrangement approved under this part is not binding on any creditor by reason of the fact that he was not given notice of the application under section 9 as required by sub-section (1) of section 10, that creditor, or any creditor who is bound by the scheme, may apply to the Court to extend the scheme, with such variations as may be necessary, to the creditor not bound thereby, or to revoke the scheme, and the Court may, if it thinks fit, extend or revoke the scheme accordingly.

Extension or modification of scheme where creditor not served with notice.

13. Any creditor who has not assented to a scheme approved under clause (b) of sub-section (1) of section 10 may appeal to the High Court against the approval thereof on the ground that it contravenes the provisions of this part or that it is inequitable or unreasonable, and the High Court may on such appeal vary or revoke the scheme but without prejudice to the validity of anything done in the meantime.

Appeal against scheme.

14. Any scheme of arrangement approved under this part may be enforced by the Court on the application of the debtor or of any creditor bound thereby, and any disobedience of an order of the Court made on any such application shall be deemed to be a contempt of Court and shall be punishable accordingly.

Enforcement of scheme.

15. If the debtor fails to comply with an approved scheme, or if it appears to the Court that the scheme cannot for any sufficient reason proceed without undue delay or without injustice to the creditors or to the debtor, or that the debtor is guilty of any act or omission which would constitute an offence under this Act or has in any respect failed to act in complete good faith towards his creditors, the Court may, if it thinks fit, on the application of any creditor bound by the scheme or, if the ground is injustice to the debtor, on his application, revoke the scheme but without prejudice to the validity of anything done in the meantime.

Revocation of scheme.

16. The revocation of an approved scheme by the Court or the High Court shall be without prejudice to the making of a new scheme of arrangement, and the Court or the High Court, as the case may be, may give such directions as it may think fit with respect to the making of a new scheme.

Revocation not to affect new scheme.

17. (1) The High Court may make rules for carrying into effect the provisions of this part.

Power of High Court to make rules.

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

- (a) for the form and contents of an application by a debtor under section 9 ;
- (b) for the giving of notice to creditors under sub-section (1) of section 10 and the form and contents of such notices ;
- (c) for the manner of proof of debts and the method of valuing securities, debts and liabilities, including future and contingent liabilities ;
- (d) for the fees to be paid on applications and in connection with proceedings on applications ;
- (e) generally, for the procedure to be adopted in the approval of schemes of arrangement.

PART IV.

MISCELLANEOUS.

False statement or omission by debtor.

18. If any debtor knowingly makes any false statement, or omits to state any material fact, for the purpose of securing the assent of the creditors to a scheme of arrangement under this Act or the exercise in favour of the debtor of any power of the Court he shall be liable on conviction to imprisonment for a term which may extend to two years, or to a fine which may extend to two thousand rupees, or to both.

Fraudulently disposing of property after approval of scheme.

19. If any debtor, after the approval of a scheme of arrangement, fraudulently sells, removes or disposes of any part of his property he shall be liable on conviction to imprisonment for a term which may extend to two years, or to a fine which may extend to two thousand rupees, or to both.

Exemption from stamp duty in respect of certain instruments.

20. Where a scheme of arrangement is approved under this Act, every deed, conveyance, assignment or other instrument relating solely to property which was the property of the debtor on the date of the approval of the scheme and which after the execution of the instrument, is or remains his property or the property of a trustee appointed for the purposes of the scheme, shall be exempt from stamp duty.

Government to be bound by this Act.

21. This Act shall, subject to such exemptions and modifications as may be prescribed by the President of the Union, by notification in this behalf, apply in relation to debts and liabilities due to or incurred towards the Government, property in which the Government has an interest, leases, mortgages and contracts entered into with the Government, proceedings by the Government, and the exercise of remedies by the Government, in the same manner as it applies to subjects :

Provided that nothing in this section shall be taken as affecting the prosecution of any criminal proceeding.