

# The Jammu and Kashmir Debtors, Relief Act 1976

JAMMU & KASHMIR

India

## The Jammu and Kashmir Debtors, Relief Act 1976

### Act 15 of 1976

- Published on 21 April 1976
- Commenced on 21 April 1976
- [This is the version of this document from 21 April 1976.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Debtors, Relief Act 1976 Act No. 15 of 1976 [Received the assent of the Governor on 21st April, 1976 and published in Government Gazette dated 23rd April, 1976 (Extraordinary)] An Act to provide relief from indebtedness to the weaker sections of the community in the Jammu and Kashmir State. Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-seventh Year of the Republic of India as follows :-

#### 1. Short title, extent and commencement.

(1) This Act may be called the Jammu and Kashmir Debtors Relief Act, 1976. (2) It shall extend to the whole State of Jammu and Kashmir. (3) It shall come into force on such date as the Government may by notification in the Government Gazette appoint.

#### 2. Definitions.

- Unless there is anything repugnant in the subject or context, - (1) "debt" means a liability of a debtor in cash or in kind payable under a written or unwritten engagement including a liability under a decree or order of a Civil Court but shall not include - (i) debts barred by the law of limitation; (ii) debts due to the State Land Development Bank, or a Land Development Bank, or a Co-operative Bank as defined in the Jammu and Kashmir Co-operative Societies Act, 1960 or any institution mentioned in section 4(A) of the Jammu and Kashmir Alienation of Land Act, Svt. 1995 or section 140 of the Jammu and Kashmir Transfer of Property Act, Svt. 1977; (iii) bona fide cash advances made for purchase of fruit; (iv) arrears of rent, wages or hires; (v) all sums payable to the Government of Jammu and Kashmir or Union Government or a Company or Corporation owned by the Government of Jammu and Kashmir or the Union Government; (vi) advances made for supply of Labour; (vii) power debts; (viii) maintenance allowances; (ix) claims for money based on compensation for damages arising under tort or otherwise; (x) breach of contract of service; (xi) debts due to a supplier of articles on credit or on instalment basis; (xii) any liability in cash arising out of an order under sub-section (4) of section 16 of the Jammu and Kashmir Distressed Debtors' Relief Act, Svt.

2006.(2)"Debtor" means a person who owes a debt, on his own behalf or assuery for some one else, and who earns his livelihood wholly or principally by agriculture, or by horticultural or pastoral pursuits, carried on within the limits of the State or who, within such limits, ordinarily engages personally in agricultural Labour or such pursuits ; and includes-(i)a lohar, a tarkhan, and a kumhar who, within such limits, is wholly or principally dependent on wages in the shape or agricultural produce given to him on account of his service to agriculturists as such lohar, takhan or kumhar, as the case may be; and(ii)a person who has incurred a debt, for purposes of handicrafts, not exceeding ten thousand rupees ; and(iii)heirs, successors and executors of such person.Explanation. - An "agriculturist" who, without any intention of changing his status as such temporarily ceases to earn his livelihood by such labour or pursuits, or who is prevented from so earning his livelihood or so engaging in such labour or pursuits by age or by bodily infirmity or by insanity or by minority or by necessary absence due to service in the noncommissioned ranks of the Indian Army, Navy and Air Force, or due to service in a Civil Department under the Government of Jammu and Kashmir or the Union Government of India when emoluments of such service do not exceed two hundred and fifty rupees per mensem, does not thereby cease to be an "agriculturist" within this definition;(3)"prescribed" means prescribed by rules made under this Act;(4)"wages" shall have the same meaning as is assigned to it in the law, for the time being in force in the State, relating to compensation payable to workmen ;(5)"land revenue" and "arrears of land revenue" have the meanings assigned to these words in the Jammu and Kashmir Land Revenue Act, Svt. 1996;(6)"creditor" means one to whom a debt is due, but does not include any person serving in the Indian Army, Navy or Air Force;(7)"assets" include the entire property of all sorts owned by a debtor;(8)"Board" means a Debt conciliation Board established under section 3;(9)"Co-operative Society" means a society registered under the provisions of the Jammu and Kashmir Co-operative Societies Act, 1960;(10)the word and expressions used in this Act but not defined, shall have the meanings assigned to them in the Code of Civil Procedure, Svt. 1977 or the Jammu and Kashmir Land Revenue Act, Svt. 1996, as may be applicable.

### **3. Setting up of Debt Conciliation Boards.**

(1)The Government may, for the purpose of settlement of debts, by order notified in the Government Gazette-(a)establish Debt Conciliation Boards;(b)define the territorial and pecuniary limits of the jurisdiction of a Board ; and(c)establish additional Boards within the territorial limits of the jurisdiction of a Board and also provide for the distribution of business between the Boards so established.(2)Every Board shall consist of a Chairman, who shall be a Government official, and not less than two other members to be appointed by the Government.(3)The Chairman and every member of a Board so established shall be appointed for such period as the Government may determine.(4)The quorum for meeting of the Board shall be half its number of members including the Chairman and where such number is odd, half of such number increased by one.(5)The decision of the majority of its members including the Chairman present in a meeting shall prevail.(6)No member of a Board, including the Chairman, who has directly or indirectly any share or interest in any transaction, out of which the proceedings before the Board have arisen, shall act as a member of the Board in respect of such proceedings.(7)The Government may at any time, by order notify in the Government Gazette-(a)dissolve any Board ;(b)transfer, on grounds of administration, or remove, on grounds of misconduct or otherwise, the Chairman or any member of a Board and appoint in his

place any other person as such Chairman or member.(8)An additional Board shall have the same powers as are conferred on the existing Boards and shall be deemed in respect of proceedings transferred or allotted to it, as the successor-in-office of the existing Board.(9)When a Board is dissolved or ceases to exist otherwise, the Government may at any time establish another Board within the same local limits in which the former Board had jurisdiction and may declare this Board to be the successor-in-office of the first Board and may confer on it the same powers as are conferred on the former Board.(10)The dissolution of a Board or the occurrence of any vacancy on the Board through death, resignation or removal of its members under sub-section (7) or absence of any member or Chairman in any meeting shall not in any way affect the validity of any proceedings pending before or conducted by the said Board, or before any other Board established in place of the said Board, as the case may be, as if there has been no dissolution of the Board or the occurrence of such vacancy or the absence of such member or Chairman.(11)Save as otherwise provided in this Act, the proceedings pending before any Board which has been dissolved under sub-section (7) and in place of which no other Board has been established, shall be deemed to be civil proceedings within the meaning of section 14 of the Limitation Act, Samvat 1995, and the provisions of the said section shall, as far as may be, apply to the computation of the period of limitation in regard to any suit or application which may be instituted in any civil court to enforce any claim which was the subject-matter of the proceedings pending before the Board so dissolved.

#### **4. Application for settlement between a debtor and his creditors.**

- Within six months or such longer period as the Government may, by notification specify for a particular area, from the date on which a Board is established under section 3, a debtor or any of his creditors shall apply to the Board appointed for the area in which a debtor resides or holds any land to effect settlement between the debtor and his creditors :Provided that in case of a debtor or any of his creditors residing in the district of Ladakh; in the Sub-Division of Gurez, in Matchil illaqa of Tehsil Kupwara and Tehsil Karnah in the District of Baramulla; in Tehsil Gool Gulabgarh in Niabat Panchari of Tehsil Udhampur; in the territorial jurisdiction of the Police Station Dudoo Basantgarh of Tehsil Ramnagar and in Thakra Kote and Nagote illaqa of Tehsil Reasi in the District of Udhampur; in Tehsil Budhal in the District of Rajouri; in Niabat Banni in the District of Kathua and in Marew, Wadwan and Paddar illaqa of Tehsil Kishtwar in the District of Doda; application may be made within twice such period.

#### **5. Verification of application.**

- Every application to a Board shall be in writing and be signed by the applicant and verified in such manner as may be prescribed.

#### **6. Particulars to be stated in application.**

(1)Every application presented by a debtor shall contain the following particulars and shall be in such form as may be prescribed :-(a)the place where the applicant resides or holds land ;(b)the particulars of all debts owned by the applicant with date or dates when and causes for which, these were incurred, and the names and particulars of the creditor's ;(c)the particulars of all property held

by the applicant, together with a specification of the value thereof, the place of places at which such property is to be found, and details of any attachment, mortgage, lien or charge subsisting thereon, including the names and particulars of the co-sharers, if any;(d)a statement that the applicant is unable to pay his debts;(e)a statement whether the applicant has previously filed an application in respect of the same debt before the same or another Board, and if so, with what result;(f)details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety, together with the names and particulars of all such persons; and(g)the history of each debt with particulars of the original principal and the rate of interest chargeable and paid thereon.(2)Every application presented by a creditor shall contain the following particulars and shall be in such form as may be prescribed-(a)the place where the debtor resides or holds land ;(b)the amount and particulars of the creditor's claim against his debtor;(c)the history of each such debt and the particulars of the amount originally advanced and the rate of interest chargeable and recovered;(d)the names and particulars of the other creditors as far as these are known to the applicant;(e)particulars, so far as these are known to such creditor, of the debtor's property;(f)a statement whether such creditor has previously filed an application in respect of the same debt before the same or another Board, and if so, with what result; and(g)a statement whether the liability has been incurred by the debtor himself or has devolved upon him by succession or otherwise.

## **7. Procedure on receipt of application.**

(1)On receipt of an application under section 4, the Chairman of the Board shall pass an order fixing a date and place for hearing the application.(2)Notice of the order under sub-section (1) shall be sent to creditors by registered post, acknowledgement due, and where the debtor is not the applicant, notice of the order under sub-section, (1) shall be sent to such debtor in a similar manner.(3)Where service of such notice in the manner provided in sub-section (2) is not practicable, the notice shall be served in any other manner prescribed by rules.

## **8. Notice calling upon creditors to submit statements of debts.**

(1)On the date fixed, the Board shall issue a notice calling upon every creditor of the debtor to submit in writing a statement of debts owed to such creditor by the debtor.(2)Every debt owed to a single creditor, of which no such statement has been submitted to the Board in compliance with the provisions of sub-section (1), shall be deemed to be duly discharged for all purposes and all occasions against such creditor; and every debt owed to two or more creditors jointly, of which such a statement or statements signed by all such or their recognised agent has or have not been submitted, shall be deemed to be so discharged against such creditors as have failed to submit the said statement or statements, but only to the extent of their respective share, in the said debt:Provided that no such debt shall be deemed to be discharged against any creditors whose names have not been included in the application made under section 4 by the debtor.(3)Where the creditor, or any of the joint creditors, fails without sufficient cause to be present in person or by an authorised agent in accordance with the provisions of section 31 at any of the hearings fixed by the Board or fails to produce full particulars and documents as required by sub-section (1) of section 9, the debt due to him or to the joint creditors, as the case may be, shall, subject to the provisions of

sub-section (4), be deemed for all purposes and all occasions to have been fully discharged.(4)Where the creditor against whom an order has been made under sub-section (3) makes an application within thirty days of such order and proves that the notice was not served on him or that he was unavoidably absent at the hearing on which such order was made by the Board, the Board may restore the application subject to such terms as the Board thinks fit.(5)Where the creditor appears and the debtor does not appear when the case is called on for hearing, then-(i)if it is proved that the notice was duly served on him in time to enable him to appear and answer on the date fixed, the Board may proceed ex parte ; or(ii)if it is not proved that the notice was so served, the Board shall direct second notice to be issued and served on the debtor.(6)Where the Board has adjourned the hearing of the case ex parte, and the debtor at or before such hearing, appears and assigns good cause for the previous non-appearance, he shall be heard in answer to the case as if he had appeared on the date fixed for his appearance.(7)Where the Board has proceeded ex parte against a debtor and no action is taken under sub-section (6) it shall dispose of the case in the mode prescribed by section 16, as far as it is possible, and may make such order as it thinks fit.(8)If any debtor proves to the satisfaction of the Board that the notice was not served on him of that he was unavoidably absent at any hearing fixed by the Board, the Board may set aside the order passed ex parte, subject to such terms as the Board think fit.(9)An application by a debtor for any order to set aside an ex parte adjudication may be made within thirty days from the date of the adjudication or where the notice was not duly served, when applicant had knowledge of such adjudication.

## **9. Procedure on submission of statements of debts.**

(1)Every creditor submitting in compliance with a notice issued under sub-section (1) of section 8 a statement of the debts owed to him shall furnish, along with such statements, full particulars of all such debts, and shall at the same time, produce all documents (including entries in books of account) on which he relies to support his claims together with a true copy of every such document:Provided that a decree or order of Civil Court which has become final shall be conclusive evidence as to the amount of the debt to which the decree relates, but the amount may be reduced as the result of an agreement arrived at in accordance with section 13.(2)The Board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

## **10. Board to attempt amicable settlement.**

- The Board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

## **11. Power of Board to adjudicate on genuineness or enforceability of debts.**

- If a creditor or debtor, as the case may be, challenges the genuineness or enforceability of a debt included in an application but other than a debt payable under a decree or order of a civil court which has become final or denies the liability to pay such debt, the Board shall adjudicate upon the issue.

## **12. Power of Board to require attendance of persons and production of documents and to receive evidence.**

- Any Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, Samvat 1977, and every proceeding before the Board shall be deemed a judicial proceeding.

## **13. Registration and effect of agreement.**

(1) If the debtor and all or any of the creditors come to an amicable settlement, the Board shall forthwith reduce such settlement to writing in the form of an agreement setting forth the amounts payable to each creditor and the manner in which and the time at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the Board and the parties. (2) An agreement thus made shall take effect as if it were a decree of a civil court having jurisdiction in the area of the jurisdiction of the Board.

## **14. Debts, in respect of which no application for settlement is made, to be void.**

- Every debt due from a debtor who resides or holds any land within the local area for which a Board is established under section 3 in respect of which no application had been made under section 4 within the period specified in the said section 4, shall be extinguished.

## **15. Debts in respect of which suits or other proceedings are pending.**

- The provisions of section 14 shall not apply to a debt in respect of which a suit or other proceeding pending in any civil or revenue court is transferred by that court to the Board under sub-section (1) or sub-section (2) of section 29.

## **16. Powers to pass just and equitable orders in cases where creditors does not agree to amicable settlement.**

(1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the Board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, proceed to record such evidence as the parties may produce and pass such order as may appear to it just and equitable: Provided that if a debtor has paid back to his creditor in cash or kind or both an amount equal to the principal sum and half of the principal sum, the Board shall dismiss all claims shown outstanding against the debtor and all such outstanding shall thereafter be deemed to have been fully discharged: Provided further that if the board finds after due enquiry, that such debtor has paid more than the principal and one-half of the principal, the Board shall pass a decree for the excess amount in favour of the debtor. (2) Any party aggrieved by a final order of a Board under this Act may prefer an appeal to the

Appellate Authority to be appointed by the government having jurisdiction in the area, against such order within sixty days from the date of the order and there shall be no further appeal :Provided that in respect of the cases arising in any area specified in the proviso to section 4, the period of limitation shall be twice such period.(3)An order passed under sub-section (1) or sub-section (2) shall be executable as if it were a decree of a civil court having jurisdiction in the area of the jurisdiction of the Board.(4)A just and equitable order under this section shall include an order by which a debtor is required to make payment by instalments keeping in view his paying capacity.(5)Whenever it is made to appear to the Government that a case decided finally by a Board or an Appellate Authority involves a substantial question of law or a question of public interest it may call for the record of the case and pass such order thereon as it thinks fit:Provided that the Government shall not pass an order under this sub-section against any person without giving him an opportunity of being heard:Provided further that the provisions of section 18 shall apply to an order passed by the Government under this sub-section.

## **17. Power of Board to decide questions arising on settlement of debts.**

(1)Subject to the provisions of this Act, the Board shall have full powers to decide any question which may arise in any proceedings under this Act.(2)Any person aggrieved by an adjudication determining finally the rights of the parties under this section may appeal therefrom to the Appellate Authority to be appointed by the Government within a period of sixty days and in a case of appeals arising out of areas mentioned in the second proviso to section 4, twice such period, from the date of the order of such adjudication and the decision of the Appellate Authority to be appointed by the Government in appeal shall be final.

## **18. Bar of civil jurisdiction.**

- Notwithstanding anything contained in any law for the time being in force and save as otherwise provided in this Act-(1)no civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the rules made thereunder required to be settled, decided or dealt with or to be determined by a Board or Appellate Authority to be appointed by the Government.(2)no order of any Board or the Appellate Authority to be appointed by Government shall be called in question in any civil court on any ground whatsoever including that relating to non-compliance with the provisions of this Act or the fundamental principles of judicial procedure.

## **19. Power of Board to review its order.**

- A Board may, on the application of any person interested, review any order passed by it other than an order passed in review and pass such order as it thinks fit:Provided that it shall not under this section pass an order reversing or modifying any order affecting any person interested without giving such person an opportunity of being heard:Provided further that no application for review shall be entertained if presented more than two months after the date of the order which the person interested seeks to get reviewed.

## **20. Agreements or orders passed by Board to supersede decisions of civil court.**

- Any agreement under sub-section (2) of section 13 or an order made under section 15 shall, in suppression of all previous decisions of a civil court in respect of the debts mentioned in it, be binding on the parties.

## **21. Court-fee on appeal.**

- A memorandum of appeal shall be accompanied by a court-fee of rupees six.

## **22. Procedure in appeal.**

- In the hearing of the appeals made under this Act, the Appellate Authority to be appointed by the Government shall follow the procedure provided in the Code of Civil Procedure, Samvat 1977, for the hearing of appeals from original decrees so far as may be applicable.

## **23. Court-fee on applications.**

- Every application made under section 4, shall be accompanied by a court-fee of rupees three.

## **24. Settlement to be void.**

- Any settlement of debt due from a debtor to any creditor arrived at after the establishment of a Board under section 3 for the local area in which he resides or holds land, shall be void and shall not be recognised by any Board or Civil Court either as an acknowledgement or otherwise unless it is certified by the Board under section 13.

## **25. Consolidation of applications.**

(1) Where more than one application has been made to the same or different Boards by or in respect of the same debtor or creditor or one or more of the joint debtors, or joint creditors, the Appellate Authority to be appointed by the Government shall, after holding such enquiry as he thinks fit, direct that all such applications shall be dealt with by any one of such Boards as may be specified in this direction. (2) Where two or more applications for settlement of debts under section 4 are presented by or against the same person or where such separate applications are presented against joint debtors or creditors, all such applications shall be consolidated.

## **26. Power of transfer.**

- Notwithstanding anything contained in this Act, the Appellate Authority to be appointed by the Government may, on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of his own motion, transfer any petition or other



proceeding pending before any Board to any other Board competent to try or dispose of the same.(2)Where any petition or any other proceeding has been transferred under sub-section (1), the Board which thereafter hears such petition or proceeding may, subject to any special direction, either re-hear it or proceed from the point at which it was transferred.

## **27. Continuation of proceeding on death of party.**

- If any party to the proceedings before the Board dies, the proceeding shall, unless the Board otherwise directs, be continued after legal representatives of such deceased party are, as soon as may be, brought on the record.

## **28. The Board may summon any other person.**

(1)The Board may, on the application of the debtor or any creditor, summon before it, in the manner prescribed, any other person known or suspected to have in his possession any property belonging to the debtor or supposed to be indebted to the debtor; or any other person whom the Board may deem capable of giving information in respect of the debtor, his dealings or property and the Board may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.(2)If any person so summoned refuses to come before the Board at the time appointed, or refuses to produce any document, having no lawfull impediment made known to the Board and allowed by it, the Board may by warrant cause him to be apprehended and brought up before it for examination.(3)The Board may examine any person so brought before it concerning the debtor and his dealings and property.

## **29. Transfer of pending suits and proceedings to the Board.**

(1)Any suit or other proceeding for the recovery by a creditor of any debt against a person who is a debtor pending in any civil or revenue court shall be transferred by such court to the Board to which an application under section 4 lies.(2)When any application under section 4 includes a debt in respect which a suit or other proceeding is pending before a civil or revenue court, the Board may give intimation thereof to such court in the manner prescribed. On receipt of such intimation the court shall transfer the suit or proceeding, as the case may be, to the Board.(3)When any suit or proceeding is transferred too the Board under sub-section (1) or sub-section (2) the Board shall proceed as if an application under section 4 had been made to it.Explanation. - The word "Proceeding" in this section includes an appeal, an application for revision and an application for execution.

## **30. Application of Limitation Act.**

- Save as expressly provided in this Act, the provisions of the Jammu and Kashmir Limitation Act, Samvat 1955, shall apply to all claims in respect of debts in the proceedings under this Act as if such proceedings, were proceedings in a suit in civil court.

### **31. Appearance of party before Board by agent or by legal practitioner.**

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

### **32. Members of Board deemed to be public servants.**

- The Chairman and other members of the Board shall be deemed to be public servants Within the Meaning of section 21 of the Ranbir Penal Code, Svt. 1989.

### **33. Transfer of pending applications and proceedings to civil courts.**

- Notwithstanding anything contained in this Act, an application or proceeding before any Board which has been dissolved under the provisions of this Act, and in place of which no other Board has been established, shall be transferred by the Government to such civil court having jurisdiction in that area as the Government may, by general or special order specify, and shall be heard and disposed of by that court in accordance with the provisions of this Act as if for the expression 'Board', wherever occurring in this Act, the expression "court" were substituted. Such court shall, for the purpose of this Act be deemed to be successor-in-office of the Board so dissolved.

### **34. Power of Government to delegate power to the Revenue Minister or any subordinate authority.**

- The Government may, by notification in the Government Gazette, delegate all or any of its powers under this Act to the Revenue Minister or any other subordinate authority.

### **35. Penalty.**

- If any person in a proceeding under the Act-(a)intentionally makes any false statement during the course of such proceeding; or(b)intentionally produces before the Board any false document; or(c)flies under section 8 a statement which is false or incorrect to his know ledge; or(d)abets the doing of any act punishable under this section;such person shall be punished by the Chairman of the Board with fine which may extend to one thousand rupees.

### **36. Power to make rules.**

(1)The Government may, from time to time, make any rules consistent with the provisions of this Act to carry out the purpose thereof.(2)In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely -(a)the charges to be made by a Board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;(b)regulating the procedure before a Board and, for purposes of section 35 before a Chairman of a Board ;(c)the records to be kept and the returns to be made by a Board and the manner in which such records and returns shall be maintained;(d)the

allowance to be paid to members of a Board ;(e)the particulars of the debts under sub-section (1) of section 9 ;(f)the place at which and the manner in which an agreement shall be executed and authenticated;(g)the form of order to be made under sub-section (1) of section 16 ; and(h)any other matter required to be prescribed under this Act.

### **37. Repeal and savings.**

(1)The Jammu and Kashmir Distressed Debtors Relief Act, Samvat 2006 is hereby replaced.(2)Notwithstanding such repeal, nothing in this Act shall affect the previous operation of the Act mentioned in sub-section (1) and the rules and orders made thereunder.