

The (Central Provinces and Berar) Debt Conciliation Act, 1933

MADHYA PRADESH

India

The (Central Provinces and Berar) Debt Conciliation Act, 1933

Act 2 of 1933

- Published on 18 March 1933
- Not commenced
- [This is the version of this document from 18 March 1933.]
- [Note: The original publication document is not available and this content could not be verified.]

Published in the Central Provinces Gazette, dated 18-3-1933. An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness. Whereas it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors; And whereas the previous sanction of the Governor-General required by sub-section (3) of Section 80-A of the Government of India Act has been obtained to the passing of this Act; It is hereby enacted as follows:

1. Short title, extent and commencement.-

(1) This Act may be called the (Central Provinces [and Berar] Debt Conciliation Act, 1933. (2) [It extends to the whole of the Mahakoshal region excluding the merged territories.] (3) It shall come into force on such [date] as the State Government may, by notification, direct.

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

[(a) in the Mahakoshal region excluding the merged territories], the expressions 'malik-makbuza', 'proprietor', 'raiya', 'raiya-malik', and 'village' shall have the meanings assigned to them in the Central Provinces Land Revenue Act, 1917 (II of 1917) and the expressions 'holding', 'land', 'occupancy tenant' and absolute-occupancy tenant' shall have the meanings assigned to them in the Central Provinces Tenancy Act 1920 (I of 1920); [(b) X X X] (b-1) the expression "agriculture" shall have the meaning assigned to it in the Central Provinces Tenancy Act, 1920 (I of 1920); (c) "Board" means a Debt Conciliation Board established under sub-section (1) of Section 3; (d) "creditor" means a person to whom a debt is owing and includes a co-operative society; (e) "debt" includes all liabilities owing to a creditor, in cash or kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether due or not due, but shall not include arrears of wages, [village profits],

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;[(f) "debtor" means a person who earns his livelihood mainly by agriculture and who, in the [Mahakoshal region excluding the merged territories], is an occupancy tenant or absolute-occupancy tenant or raiyat or raiyat-malik or a malik-makbuza or a proprietor, and who in Berar, is a holder, whose debts exceeds Rs. 150 or such lower amount not being less than fifty rupees, as the State Government may, by notification, prescribe for a particular area];(g)prescribed means prescribed by rules made under this Act.

3. Establishment of Debt Conciliation Board. - (1) The State Government may establish a Debt Conciliation Board for any district or part of a district. Such Board shall consist of a Chairman and two or more members [not exceeding nine], including the Chairman, to be appointed by the State Government which may, for reasons to be recorded in writing, cancel any appointment and dissolve any Board.

(2)The Chairman and every member of a Board so established shall be appointed for a term not exceeding one year. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed [from time to time] for a further term not exceeding one year.(3)A Board shall have such quorum as may be prescribed.(4)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.[(5) 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. Application for settlement between debtor and his creditors. - [(1) In the [Mahakoshal region excluding merged territories], a debtor or any of his creditors may apply to the Board appointed for the area in which any holding, land or village of the debtor, or any part thereof, is situate, to effect a settlement between the debtor and his creditors [X X X] :

Provided that no application shall be made if the debtor's debts exceed fifty thousand rupees or such larger amount as may be prescribed for each area.](2)No debtor or creditors shall simultaneously make more than one application, and where applications have been made by the debtor and any of his creditors, the applications made by the creditors shall be merged in the application made by the debtor.

5. Verification of application. - Every application to a Board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (V of 1908), for signing and verifying plaints.

6. Particulars to be stated in application. - (1) Every application presented by a debtor to a Board shall contain the following particulars, namely :-

(a) a statement that the debtor is unable to pay his debts; (b) the place where he resides; [(c) (i) in the [Mahakoshal region excluding merged territories], the amount and particulars of all claims against him, 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;] [(ii) X X X] (d) the amount and particulars of all his property, including 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. (2) Every application presented by a creditor shall contain the following particulars, namely:-(a) the place where the debtor resides; and (b) the amount and particulars of this claim against such debtor.

7. Procedure on application. - (1) On receipt of an application under Section 4, the Board shall pass an order fixing a date and place for hearing the application :

Provided that the Board may at any time dismiss the application if, for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and his creditors. (2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor or creditors, as the case may be. [7A. Finality of Board's jurisdiction. - (1) If, no receipt of an application under Section 4, the Board admits the application as being within its jurisdiction or, under sub-section (1) of Section 7, dismisses it on the ground of want of jurisdiction, a debtor or his creditor may, [within thirty days from the date on which intimation of admission or dismissal, as the case may be, is sent to him by registered post] make an objection in writing to the Board against such admission or dismissal. (2) On receipt of an objection under sub-section (1), the Board shall make such order thereon as it thinks fit and it shall be final. (3) If no objection is made under sub-section (1), or if an objection is made and decided under sub-section (2), the jurisdiction of the Board shall not be questioned in any civil court.]

8. Notice calling upon creditors to submit statement of debts. - (1) If, after examining the debtor, it is in the opinion of the Board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor, [such statement shall be submitted to the Board in writing on or before such date as the Board may fix in this behalf not being earlier than two months from the date of service or publication of the notice, as the case may be]:

Provided that, if the Board is satisfied that any creditor was, for good and sufficient cause, unable to

comply with such directions, [Mahakoshal region excluding merged territories], may, [X X X] extend the period for the submission of his statement of the debt owed to him.(2)Every debt of which a statement is not submitted to the Board in compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged:Provided that, if a creditor proves to the satisfaction of the Board or a civil court that the notice was not served on him and that he had no knowledge of its publication [or that he was prevented from complying with the provision of sub-section (1) on account of unforeseen or unavoidable difficulty or cause] the Board or court may revive the debt.

9. Procedure on submission of statement of debts. - (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of Section 8 shall furnish, alongwith such statement, 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 if the Board is satisfied that any creditor was, for good and sufficient cause, unable to produce such documents alongwith the statement, it shall require them to be produced on a date fixed for the purpose.](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.(3)If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1), the document shall not be admissible in evidence [in the [Mahakoshal region excluding merged territories] against the debtor [x x x] in any suit brought by the creditor or by any person claiming under him.][9A. Verification of statement and particulars of debts. - Every statement submitted under sub-section (1) of Section 8, together with all particulars furnished along with it under sub-section (1) of Section 9, shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (V of 1908), for signing and verifying plaints.]

10. Board to endeavour amicable settlement. - The Board shall call upon the debtor and each creditor, respectively, to explain his case regarding each debt and shall endeavour to induce them to arrive at an amicable settlement.

11. Power of Board to require attendance of persons and production of documents and to receive evidence. - (1) Subject to the provisions of Sections 132 and 133 of the Code of Civil Procedure, 1908 (V of 1908), and to rules made under Section 25, A 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 ascertaining the antecedents of any debt or for any other

purpose in connection with an inquiry under this Act].

(2) Any person present may be required by a Board to give evidence or to produce any document then and there in his possession or power.

12. Agreement of amicable settlement its registration and effect. - (1) If the creditors to whom not less than [thirty] percent of the total amount of the debtor's debts are owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording [a list of immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon], the amounts payable to such creditors 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 :

Provided that, when a co-operative society is one of such creditors, no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies. (2) An agreement thus made shall [within one month], from the date of its making, be registered under the Indian Registration Act, 1908 (XVI of 1908) by the Chairman of the Board in such manner as may be prescribed and it shall then take effect as if it were a decree of civil court. (3) For the purpose of the registration of an agreement under sub-section (2), the Chairman of the Board shall be deemed to be an officer of Government empowered to execute such agreement within the meaning of Section 88 of the Indian Registration Act, 1908 (XVI of 1908). [12A. Existing mortgage, lien or charge to submit. - Where an agreement registered under sub-section (2) of Section 12 relates to a 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 to the creditor in respect of such debt in accordance with the terms of the agreement until such amount has been paid or the property has been sold for the satisfaction of such debt.] [12B. Suspension of instalment consequent on the suspension or remission of land revenue or rent. - When the total land revenue or rent, as the case may be, payable by a debtor in the State for any year is suspended or remitted by Government to the extent specified in column (1) of the table below, the instalment payable by such debtor in that year in accordance with the terms of an agreement registered under sub-section (2) of Section 12 on or after the 1st April, 1933, shall, notwithstanding anything contained in such agreement, be suspended to the extent specified in column (2) of that table. On such suspension the payment of the instalment or portion thereof suspended and the remaining future instalments due in respect of the debt, shall be postponed by one instalment period. No interest shall be charged on any instalment or portion thereof for the period during which its payment remains postponed :-

(1)

(2)

Where the suspension or remission is less than 50 per cent but not less than 30 per cent of the total land revenue or rent payable by a debtor. Half the instalment shall be suspended.

Where the suspension or remission is 50 per cent or more than 50 per cent of the total land revenue or rent payable by a debtor. The whole instalment shall be suspended.]

13. Recovery of sums due under agreement. - (1) If a debtor defaults in paying any amount due in accordance with the terms of an agreement registered under sub-section (2) of Section 12 such amount shall be recoverable as an arrear of land revenue on the application of the creditor made within ninety days from the date of default.

(2) Where immovable property is liable to be sold for the recovery of any amount, the Revenue Officer ordering the sale may direct the whole or such portion thereof to be sold as may appear to him sufficient to satisfy the amount. (3) The sale of immovable property for the recovery of an amount payable under the terms of an agreement shall be subject to any mortgage, lien, or charge thereon, except where it is for the recovery of an amount secured by a mortgage, lien, or charge within the meaning of Section 12-A, in which case it shall be sold free from that mortgage, line, or charge, as the case may be. (4) Where two or more creditors whose debts are secured by a mortgage, lien, or charge on the same immovable property have applied for the recovery of their amounts under sub-section (1), and where such immovable property is liable to be sold for the recovery of those amounts, the Revenue Officer shall determine the order of priority amongst the creditors in accordance with the provisions of the Transfer of Property Act, 1882 (IV of 1882), and shall order sale of the property for the recovery of the amount of the debt determined to be the first in priority.][13A. Application of sale proceeds in case of sale of immovable property. - Where any immovable property is sold for the recovery of the amount payable under the terms of an agreement to a creditor secured within the meaning of Section 12-A, the sale proceeds shall be applied as follows: (a) (i) in the first instance, to the payment of any instalments that have fallen due under the agreement to such secured creditor inclusive of costs of the proceedings; (ii) secondly to the payment of the remaining amount payable to such creditor; (b) if there is a surplus after the payments have been made under clause (a), it shall be applied in the same manner to the payment of the amounts of other secured subsequent creditors in order of their priority determined in accordance with the provisions of the Transfer of Property Act, 1882 (IV of 1882); (c) any further surplus remaining after payments have been made to secured creditors under clause (b) shall be distributed rateably amongst the unsecured creditors in payment of the amounts payable under the terms of the agreement as follows; (i) in the first instance towards the payment of instalments that have fallen due; (ii) secondly towards the payment of the remaining amounts; (d) any surplus yet remaining after the payments have been made under clause (c) shall be paid to the debtor.

13B. Application of sale proceeds in case of sale of property on account of unsecured debt. - Where any moveable or immovable property is sold in pursuance of sub-section (1) of Section 13 for the recovery of any amount payable under the terms of an agreement on account of any unsecured debt, the sale-proceeds thereof shall be distributed as follows :

(a)in the first instance in payment of any amounts for which application for recovery has been made inclusive of costs of the proceedings;(b)secondly, rateably amongst the other unsecured creditors, towards any amounts that have fallen due;(c)if there be any surplus after full payment has been made under clause (b) it shall be applied rateably towards the payment of the remaining amounts payable to unsecured creditors under the agreement;(d)if there be a surplus yet remaining after the payments have been made under clause (c), it shall be paid to the debtor.

13C. Grant of certificate when debt irrecoverable. - (1) When the Revenue Officer fails under sub-section (1) of Section 13 to recover as an arrear of land revenue any part of the amount referred to therein, he shall certify that it is irrecoverable and thereupon the agreement shall cease to subsist for all the creditors.

(2)If after the sale of immovable property referred to in Section 13-A or 13-B, any creditor has grounds to believe that the property remaining with the debtor is not sufficient to give effect to the terms of the agreement registered under sub-section (2) of Section 12, he may apply to the Deputy Commissioner or such Revenue Officer as he may authorise in this behalf for the grant of a certificate that the remaining amount payable under the agreement is irrecoverable. Such application shall be in writing and shall specify the above stated grounds.(3)If the Deputy Commissioner or Officer authorised under sub- section (2) is satisfied, after hearing the debtor and other creditors and after making such enquiry as he thinks fit, that the whole or any part of the remaining amount payable under the agreement is irrecoverable he may grant a certificate accordingly and thereupon the agreement shall cease to subsist for all the creditors.(4)Where an agreement ceases to subsist any amount which was payable under such agreement but has not been paid shall be recoverable as if a decree of a civil court had then been passed for its payment.

13D. Priority of Government debts, etc., not affected. - Nothing in Sections 13, 13-A, 13-B and 13-C shall be deemed to affect the priority of any claim due to the Government or any claim which is given priority under any law for the time being in force.]

13E. Power to deposit amount of instalment with Deputy Commissioner. - (1) If a creditor refuses to accept any amount tendered to him by his debtor in accordance with the terms of an agreement registered under sub-section (2) of Section 12, or if, in any case, the debtor is doubtful as to the person entitled to receive such amount, the debtor may apply to the Deputy Commissioner for permission to deposit such amount with him.

(2)An application made under sub-section (1) shall be in writing and shall contain-(a)a statement of the grounds on which it has been made.(b)the name of the creditor to whose credit the deposit is to be entered, and(c)the name of the person to whom payment was last made and of the person now

claiming it.[13F. Grant of receipt for deposit. - (1) If it appears to the Deputy Commissioner that the applicant is entitled to make the deposit under Section [13-E], he shall receive such Deposit and give a receipt therefor.(2)Payment of deposit. - The Deputy Commissioner shall cause a notice of such deposit to be served on every person who he has reason to believe, claims or is entitled to it and may pay the amount thereof to any person appearing to him to be entitled to it, or may retain it pending the decision of a Civil Court as to the person entitled to it.

13G. Debtor to be deemed to have fulfilled terms of agreement. - A debtor who has made a deposit under Section [13-F] shall be held to have fulfilled the terms of the agreement.

13H. Bar of suits or other legal proceedings. - No suit or other legal proceeding shall be instituted against [the Government] in respect of anything done regarding a deposit under this Act, but nothing in this section shall prevent any person entitled to recover the amount of such deposit from recovering it from any person to whom it has been paid under Section [13-H].]

14. Power of Board to dismiss application. - If no amicable settlement is arrived at under sub-section (1) of Section 12, the Board shall dismiss the application.

15. Grant of certificate by Board in respect of certain debts. - (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, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor.

(2)Power of Court to disallow costs or interest. - Where any creditor sues in a Civil Court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at six per cent annum on the amount due on the date of such certificate.(3)Where, after the registration of an agreement under sub-section (2) of Section 12, any unsecured creditor sues for the recovery of a debt, other than a debt incurred subsequent to such agreement, in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such registration, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908) not be executed until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist:[Provided that the provision in this sub-section shall not apply to the execution of a decree

passed in a suit for the recovery of rent as defined in the Central Provinces Tenancy Act, 1920 (C.P. Act I of 1920), [or in the Berar Land Revenue Code, 1928].]

16. Bar of civil suit. - No Civil Court shall entertain-

(a)any suit in respect of-(i)any matter pending before a Board, or(ii)the validity of any procedure or the legality of any agreement made under this Act, or(iii)the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of Section 12 from any person, who, as a debtor, was party to such agreement, whether such agreement is subsisting or not, or(iv)the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of Section 8, except a debt which is revived under the proviso to that sub-section;(b)any application to execute a decree, the execution of which is suspended under sub-section (3) of Section 15.

17. Avoidance of certain transfers of debtor's property. - Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a Board under Section 4 and until the agreement registered in respect of such application has ceased to subsist, shall be voidable at the option of any creditor so defeated or delayed.

18. Bar of appeal or revision. - No appeal or application for revision shall lie against any order passed by a Board.

19. Power of Board to review its order. - A Board may, [either on its own motion at any time or], on the application from any person interested made within ninety days of the passing of an order, review any order passed by it and pass such order in reference thereto as it thinks fit :

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

20. Appearance of party before Board by agent but not by legal practitioner. - In any proceedings before a Board any party may be permitted to appear an agent authorised in writing, but not by a legal practitioner.

[21. Suspension of pending application or suit. - When an application has been made to a Board under Section 4 any suit or other proceedings then pending before a Civil Court in respect of any debt for the settlement of which application has been made shall be suspended until the Board has disposed of the application :Provided that no decree, whether passed before the date of such application or passed in the suit after revival, for the recovery of an unsecured debt in respect of which a certificate has been granted under sub-section (1) of Section 15, shall be executed until all

amounts recorded as payable under an agreement registered under sub-section (2) of Section 12 have been paid or such agreement has ceased to subsist.]

22. Submission of reports by Boards regarding sums due to Government. - Where in the course of an inquiry into an application made under Section 4 a Board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists Loans Act, 1884 (XII of 1884), or the Land Improvement Loans Act, 1 (XIX of 1883), or otherwise, the Board shall report this fact through the Deputy Commissioner to the [Commissioner].

23. Allowance of time for limitation. - In calculating the period of limitation for any suit filed in, or proceeding 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 had continued shall be excluded.

24. Members of Board deemed to be public servants. - The members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code (XLV of 1860).

[24A. Proceedings deemed to be judicial proceedings. - All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of Section 228 of the Indian Penal Code.][25. Power to make rules. - (1) In addition to any power specially conferred by this Act, the State Government may make rules-(a)prescribing the quorum for, and regulating the procedure before, a Board ;(b)prescribing the manner in which notices shall be issued and served or published under sub-section (1) of Section 8;(c)prescribing 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;(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;(f)regulating the power of a Board to summon parties and witnesses under Section 11 and the grant of expenses to witnesses;(g)prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of Section 12;(h)prescribing the form of certificate to be granted under [Section 13-C] or sub-section (1) of Section 15; and(i)generally, for the purpose of carrying into effect the provisions of this Act.][(2) Any charges prescribed by rules may be recovered as an arrear of land revenue from a person liable to pay them.]

26. General provisions regarding rules. - (1) All rules for which provision is made in this Act shall be made by the State Government and shall be consistent with this Act.

(2)All rules shall be subject to the condition of previous publication.(3)In making any rule the State Government may direct that a breach thereof shall be punishable with fine which may extend to fifty

rupees, and, where the breach is a continuing one, with further fine which may extend to ten rupees for everyday after the first during which the breach has been persisted in.