

The M.P. Adjustment and Liquidation of Industrial Workers' Debt Act, 1936

MADHYA PRADESH

India

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Act 5 of 1936

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The M.P. Adjustment and Liquidation of Industrial Workers' Debt Act, 1936(No. 5 of 1936)Statement of Objects and Reasons. - This Statement of Objects and Reasons as published on page 11 of in Part II of the C.P. Gazette, dated 4th January, 1935 is as under:"In connection with indebtedness among industrial workers the Royal Commission on Labour recommended special legislation, providing a summary procedure for the liquidation of workers' unsecured debts, and indicated the lines on which such a measure should be framed. The object of this bill is to give effect to this recommendation. Its general form resembles that of the Provincial Insolvency Act, but there are special provisions for scaling down of debts, limitation of total liability to the assets plus the amount payable from the income within three years after allowing for maintenance of the worker and his dependents and wider discretion to the Courts in determining priority of debts for the distribution of assets and surplus income. The bill is an enabling measure, and the relief it contemplates is restricted to industrial worker whose average monthly income does not exceed Rs. 60.[Dated 10th April, 1936]An Act to provide for the adjustment and liquidation of the debts of industrial workers.Whereas it is expedient to provide for the adjustment and liquidation of the debts of industrial workers;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 [Madhya Pradesh] [Substituted by M.P. Act 23 of 1958.] Adjustment and Liquidation of Industrial Workers' Debt Act, 1936.(2)[It extends to the whole of Madhya Pradesh.] [Substituted by M.P. Act 23 of 1958.](3)[This section shall come into force at once and the remaining provisions shall be in force in such local areas of Madhya Pradesh in which they were in force immediately before the commencement of the Madhya Pradesh Extension of Laws Act, 1958

(23 of 1958) and may be brought into force in any other local area on such date as the State Government may, by notification in the official Gazette, direct.] [Substituted by M.P. Act 23 of 1958.]

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context, - (i) "assets" means all property owned by a person which could be attached under the Civil Procedure Code, 1908 (V of 1908), in execution of a decree and, except where the context indicates otherwise, includes any sum realized by a Court under this Act from the sale of any such property; (ii) "adjusted debt" means the sum shown against the name of any creditor in the schedule prepared under Section 21; (iii) "average income" means the average monthly income of any industrial worker calculated on his total income from all sources during a period of twelve months preceding the month of the presentation of a liquidation petition under this Act; (iv) "Court" means the principal civil Court of original jurisdiction and shall include a civil Court specifically empowered by notification in this behalf by the State Government; (v) "creditor" includes a decree-holder, "debt" includes a judgment-debt and "debtor" includes a judgment-debtor; (vi) "dependent" in relation to an industrial worker means any of the following relatives, namely: (a) a wife, minor legitimate son and unmarried legitimate daughter, or a widowed mother; and (b) if during a period of twelve months preceding the month of the presentation of a liquidation petition, entirely dependent on the earnings of the industrial worker, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, or where no parent of the industrial worker is alive, a paternal grand parent; (vi) "factory" means a factory as defined in the Factories Act, 1934 (XXV of 1934) [See now the Factories Act, 1948 (LXIII of 1948)]; (viii) "industrial establishment" means any establishment which the State Government may, by notification, declare as an industrial establishment; (ix) ["industrial worker" means a person who is employed either by way of manual labour or on monthly wages in a factory, mine or industrial establishment and whose average income does not exceed five hundred rupees, but shall not include a person who is employed for doing clerical work] [Substituted by M.P. Act 16 of 1976.]; (x) "mine" means a mine as defined in the Indian Mines Act, 1923 (IV of 1923); (xi) "prescribed" means prescribed by rules made under this Act; (xii) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit; (xiii) "secured debt" means a debt due to a creditor from his debtor for which the creditor holds a mortgage, charge or lien on the property of the debtor or any part thereof as security for that debt; (xiv) "surplus" means, in the case of industrial worker having (a) no dependent, twelve times his average income. (b) one dependent, nine times his average income, and (c) more than one dependent, six times his average income; and (xv) other words and expressions shall have the meanings assigned to them in the Provincial Insolvency Act, 1920 (V of 1920).

3. [Presentation of liquidation petition. [Substituted by M.P. Act 16 of 1976.]

- Any industrial worker may present a petition for the liquidation of his debts (hereinafter called a liquidation petition), if his debts exceed the aggregate value of his assets and if he was, on the date of

the presentation of a liquidation petition an industrial worker for a period of not less than one year preceding such date.]

4. Bar for entertainment of petition under the Provincial Insolvency Act, 1920.

- No Court shall entertain a petition under the Provincial Insolvency Act, 1920 (V of 1920), to have an industrial worker adjudged an insolvent except where-(i) such industrial worker is not entitled to present a liquidation petition under Section 3, or (ii) a liquidation petition presented by such industrial worker under Section 3 has been dismissed under Section 14 or the proceedings have been cancelled under Section 34.

5. Verification of liquidation petition.

- Every liquidation petition 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. Court to which liquidation petition may be presented.

- Every liquidation petition shall be presented to the Court having jurisdiction under this Act in any local area in which an industrial worker ordinarily resides or personally works for gain or, if he has been arrested or imprisoned, where he is in custody.

7. Contents of liquidation petition.

- Every liquidation petition shall contain the following particulars, namely : (a) a declaration that the petitioning industrial worker (hereinafter referred to as petitioner) is entitled to present a liquidation petition; (b) a statement that he is willing but unable to pay his debts; (c) the place where he ordinarily resides or personally works for gain or, if he has been arrested or imprisoned the place where he is in custody; (d) the Court (if any) by whose order he has been arrested or imprisoned or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made; (e) the amount and the particulars of all pecuniary 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; (f) the amount and particulars of all his property together with- (i) a specification of the value of all such property not consisting of money; (ii) the place or places at which such property is to be found; and (iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars as are exempted by the Code of Civil Procedure, 1908 (V of 1908), or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree; (g) a statement showing the number of his dependents and his average income; and (h) a statement whether the petitioner has on any previous occasion filed a liquidation petition and, where such a petition has been filed, - (i) if such petition has been dismissed under Section 14 or the proceedings have been cancelled under Section 34, the reason for such dismissal or cancellation; (ii) if such petition has been allowed, concise particulars of the debts liquidated,

including a statement whether any previous liquidation has been cancelled and, if so, the grounds therefor.

8. Procedure for admission of liquidation petitions.

- The procedure laid down in the Code of Civil Procedure, 1908 (V of 1908), with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of liquidation petitions under this Act.

9. Procedure on admission of liquidation petitions.

(1)Where a liquidation petition has been admitted, the Court shall make an order fixing a date for hearing the petition.(2)Notice of the order under sub-section (1) shall be given to the creditors of the petitioner in such manner as may be prescribed.

10. Prohibition to apply for arrest of industrial worker and power of Court to release industrial worker.

- A creditor, who has received notice of a liquidation petition presented by an industrial worker, shall not be entitled, from the date of the service of such notice, to apply to any Court for the arrest of the petitioner in any suit or proceeding for the recovery of any debt proposed to be liquidated under the liquidation petition and if such petitioner is under arrest or imprisonment in execution of a decree of any Court, the Court making the order admitting the petition shall, notwithstanding anything contained in any other enactment for the time being in force, order his release on such terms as to security as may be reasonable and necessary.

11. Procedure at hearing of liquidation petitions.

(1)On the day fixed for the hearing of a liquidation petition or on any subsequent day to which the hearing may be adjourned, the Court shall require proof that the petitioner is entitled to present the liquidation petition :Provided that he shall, for the purpose of proving his inability to pay debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon.(2)The Court shall also examine the petitioner, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing and the creditors shall have the right to question him thereon.(3)The Court shall, if sufficient cause is shown, grant time to the petitioner or any of his creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.(4)A memorandum of the substance of the examination of the petitioner and of any other oral evidence given shall be made by the Court and shall form part of the record of the case.

12. Power and procedure of Court.

- Subject to the provisions of this Act, the Court shall have the same powers and shall follow the same procedure, so far as may be, as a Court invested with jurisdiction under the Provincial Insolvency Act, 1920.

13. Abatement of proceedings on death of petitioner.

- If an industrial worker who has presented a liquidation petition under this Act dies, the proceedings in the matter shall abate.

14. Dismissal of liquidation petition.

- Where, for reasons to be recorded in writing, the Court is not satisfied that a petitioner is entitled to present a petition under Section 3, it shall dismiss the petition.

15. Order of adjudication and appointment of receiver.

- If the Court does not dismiss a liquidation petition, it shall make an order of adjudication, and may, at the same time or at any time afterwards, appoint a receiver for the property of the petitioner in accordance with the Code of Civil Procedure, 1908.

16. Effect of order of adjudication.

(1) On the making of an order of adjudication, the whole of the assets of the petitioner shall vest in the Court or in a receiver and thereafter no creditor to whom the petitioner is indebted in respect of any debt adjustable under this Act shall have any remedy against the assets of such petitioner in respect of his debt or commence any suit or other legal proceeding except with the leave of the Court and on such terms as it may impose. (2) All assets which are acquired by or devolve on the petitioner after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and the provisions of sub-section (1) shall apply in respect thereof. (3) An order of adjudication shall relate back to, and take effect from, the date of the presentation of a liquidation petition on which it is made.

17. Avoidance of voluntary transfer.

- Any transfer of his assets by an industrial worker not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration shall, if an order of adjudication is passed on a liquidation petition presented by him within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.

18. Avoidance of preference to certain creditors over other creditors.

- Every transfer of assets, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any industrial worker, who is unable to pay from his own money his debts as they become due in favour of any creditor, with the intention of giving that creditor a preference over other creditors, shall, if an order of adjudication is passed on a liquidation petition presented by him within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

19. Debts adjustable.

- All debts, except those incapable of being fairly estimated or demands in the nature of unliquidated damages, shall be adjustable under this Act.

20. Determination of petitioner's debts.

(1) On making an order of adjudication, the Court shall inquire into the amount of the petitioner's debts and may refuse to admit any debt shown by the petitioner or claimed by any creditor. (2) In determining the amount of debts due, the Court may exercise the powers conferred upon it by Section 3 of the Usurious Loans Act, 1918 (X of 1918) : Provided that no Court shall allow on account of arrear of interest, exclusive of such interest as has already been paid, a sum greater than the principal of the debt.

21. Schedule of determined debts.

- After the Court has determined the debts, it shall prepare a schedule in such form as may be prescribed showing-(i) the amount of the debts so determined and the creditors to whom they are due; (ii) the assets of the petitioner and their value as estimated by the Court; and (iii) the average income of the petitioner.

22. Procedure after determination of debts.

(1) If the adjusted debts of the petitioner do not exceed the sum of the assets and the surplus, the Court shall read out to the parties present the adjusted debts and the names of the creditors to whom they are due and shall discharge the petitioner. (2) After a petitioner is discharged under sub-section (1), no sum shall be recoverable in any Court in respect of any debt then owned by him, with the exception of the adjusted debts and simple interest on such debts at a rate not exceeding six per cent per annum from the date of discharge. (3) The entry of a debt in the schedule prepared under Section 21 shall, in any civil proceeding, be conclusive proof that the sum was due to that creditor from the petitioner at the date on which such schedule was signed by the Court.

23. Encumbered industrial worker.

(1) If the total adjusted debts of a petitioner exceeds the sum of his assets and the surplus, the Court shall issue a declaration that the petitioner is an encumbered industrial worker. (2) The Court shall at the same time read out to the parties present the names of the creditors with the adjusted debts due to them and shall discharge the claims of those creditors to whom no debts have been found due on adjustment.

24. Realization of debts of encumbered industrial worker.

- The Court shall realize the assets of every petitioner in respect of whom a declaration has been issued, under sub-section (1) of Section 23, that he is an encumbered industrial worker.

25. Making over proceeds of assets to secured creditor.

(1) After realizing the assets of an encumbered industrial worker under Section 24, the Court shall make over the proceeds of any assets on which, or any part of which, a creditor holds a mortgage, charge or lien to such creditor, up to the amount of the adjusted debts due to him from the encumbered industrial worker. (2) If the amount realized under sub-section (1) is in any case insufficient to meet the adjusted debts due to the secured creditor, he shall rank in respect of the remainder of the debts due to him as an unsecured creditor.

26. Distribution of proceeds of assets to creditors in order of priority and assignment of shares of surplus.

(1) After taking any action required by Section 25, the Court shall distribute the proceeds of the assets available for the unsecured creditors to those creditors in proportion to the adjusted debts due to them and shall make an order in such form as may be prescribed assigning a share of the surplus, not exceeding one thirty-sixth of the surplus in any one month payable on the specified dates to the creditors in order of priority. (2) In determining the order of priority among the creditors, the Court shall have regard to the date of incurring the debts, the purposes for which they were incurred and any other circumstances which it regards as conferring a claim to priority.

27. Execution of order under Section 26 as decree of Court of Small Causes.

- Every creditor whose claim has not been discharged shall be supplied with a copy of the order made under sub-section (1) of Section 26 and such order may be executed by that creditor in any appropriate civil Court in respect of any share of the surplus assigned to him as though it were a decree of a Court of Small Causes bearing the date of the order : Provided that it shall be necessary to certify payment through the Court until the judgment-debtor has had notice of execution: Provided further that no such order shall be capable of execution more than three years after the date of the order.

28. Sums exempt from interest.

- Sums due under an order issued under Section 26 shall carry no further interest.

29. Recovery of debt due by encumbered industrial worker.

- No sum shall be recoverable otherwise than in accordance with Sections 23, 24, 25, 27 and 28 in respect of any debt entered in the schedule prepared under Section 21 in respect of any person declared to be an encumbered industrial worker.

30. Bar of recovery of debt of industrial worker.

- No debt incurred by any industrial worker, while he is an encumbered industrial worker, shall be recoverable in any Court.

31. Cessation of industrial worker as encumbered industrial worker.

(1)The Court may, at any time before the expiry of thirty-seven months from the date of its order under Section 26, if it is satisfied that an encumbered industrial worker has paid the sums specified in that order declare that he has ceased to be an encumbered industrial worker.(2)On such a declaration being made or on the expiry of thirty-seven months from the date of the order under Section 26, whichever is earlier, the industrial worker shall cease to be an encumbered industrial worker.

32. Display of lists of petitioners and encumbered industrial workers.

- The Court shall cause to be displayed at all times during Court hours in a part of the Court house to which the public have access-(a)a list of all petitioners whose liquidation petitions are pending in the Court, giving their addresses and the dates of their petitions and the dates on which these petitions will be heard;(b)a list of all industrial workers who are encumbered industrial workers, giving their addresses and the dates on which they are declared to be encumbered industrial workers.

33. Concealment of any debt by industrial worker.

- If an industrial worker conceals any debts, the creditor to whom such debt is due may apply to the Court for a declaration that any proceedings instituted by such industrial worker are not applicable to that debt, and on such a declaration being given the creditor shall have all the rights in respect of such debt that he would have had if the proceedings were not instituted, except that he shall have no claim against any assets realized and distributed.

34. Power of Court to cancel proceedings.

- The Court may, at any time for reasons to be recorded in writing, cancel the proceedings on grounds relating to the conduct of the petitioner, and if a liquidation petition is proved to be false in any material particular, the Court may declare that the petitioner is not entitled to any further relief under this Act, in which case no further petition from him shall be considered.

35. Appeal.

(1) Any petitioner or creditor aggrieved by any order of the Court under sub-section (1) of Section 20 or Section 26 or Section 34 may, within thirty days from the date of such order, appeal to the Court ordinarily hearing appeals from a decision of such first mentioned Court. (2) On admission of an appeal under sub-section (1), the Court shall pass such order thereon as it thinks fit and this order shall be final and shall not be subject to revision.

36. Limitation.

- In calculating the period of limitation for any suit or application which might have been brought or made but for proceedings under this Act, the period from the date of presentation of a liquidation petition under this Act to the date of the proceedings thereunder terminate shall be excluded.

37. Penalty.

- If an industrial worker, whether before or after the making of an order of adjudication-(a) wilfully fails to deliver up to the Court or to any person authorized by it in this behalf possession of any part of his assets which are realizable by the Court under this Act and which are for the time being in his possession or under his control, or (b) fraudulently with intent to conceal the state of his affairs or to defeat the object of his act, -(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act, or (ii) has kept or caused to be kept false account books, or (iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Act, or (c) fraudulently with intent to diminish the sum to be distributed among his creditors or to give an undue preference to any of his creditors, -(i) has discharged or concealed any debt due to or from him, or (ii) has made away with, charged, mortgaged or concealed any part of his assets, he shall be punishable on conviction, with imprisonment which may extend to one year.

38. Penalty to encumbered industrial worker for obtaining credit.

- [(1) An encumbered industrial worker obtaining credit to the extent of five hundred rupees or upward from any person without informing such person that he is an encumbered industrial worker shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both] [Substituted by

M.P. Act 16 of 1976.].(2)Where the Court has reason to believe that an encumbered industrial worker has committed the offence referred to in sub-section (1) the Court, after making such preliminary inquiry, as may be deemed fit, may send the case for trial to the nearest Magistrate of the first class and may send the accused in custody or take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence on such trial.

39. Power to make rules.

(1)The State Government may, after previous publication, make rules for the purpose of carrying into effect all or any of the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing powers, the State Government may make rules-(a)prescribing the manner of giving notice under sub-section (2) of Section 9;(b)prescribing the form in which a schedule shall be prepared under Section 21;(c)prescribing the form in which a statement shall be prepared under sub-section (1) of Section 26;(d)prescribing the form in which an order shall be made under sub-section (2) of Section 26, and(e)generally for the purpose of carrying into effect the provisions of this Act.