

ASSAM DEBT CONCILIATION ACT, 1936

472 ASSAM ACT X OF 1936 THE ASSAM DEBT CONCILIATION ACT, 1936* tPuUihed in the Assam Gazette of the 6th January 1937 1 Act to make provision for the setting up of Debt Conciliation Boards relieve Agriculturists from indebtedness WHEREAS it is expedient to relieve agriculturists from indeb- Preamble. tedneg by amicable settlement between them and their credi- tors ; And whereas the previous sanction of the Governor-General uired by sub-section (3) of section 80A of the Government of {entia Act, has been obtained to the paging of this Act ; It is hereby enacted as follows Short (1) This Act may be called the Assam Debt Conciliation extent commetre. Act, 1936. ment. (2) It extends to the whole of Assam. Loca{3) It shall come into force in any area on such date as the Government may, by notification, direct

2. In this Act, unless there is anything repugnant in the subject or context.ulture " includes horticulture, dairy farming sericulture, and the use of land for any pur of husbandry inclusive of keeping or breeding of •ve- stock, poultry or bees and the growing of fruits, vege- tables and the like ; (b) Board " mans a Debt Onciliation Board established under sub-section (L) of section (3) ; (c) Creditor means a person to whom a debt is owing and includes a co-operative society registered the Co-operative Societies' Act (11 of 1912); (d) Debt " Includes all liabilities 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 rent not due, arrears of wage, land revenue, or anything recoverable as an arrear of land revenue, or any claim for the recovery of which a suit or is barred by limitation ; (e) Debtor means a person who owes a debt and who earns his livelihood mainly by agriculture ; (f) Precribed " means prescribed by rules made under this Act ; (g) Deputy Commissioner means the Deputy Commis- sioner of a district or any other officer appointed by the (Provincial Government]t to discharge any of the functions of a Deputy Commissioner under this Act. For Staternent of Objects and Assam 1936, Part V, 239, for Of Select Committee, se Gazøe, 1936, Part V, *roceedings in Council, see Asm Gazetu, 1935, Part VI, pages 90, 395. 401, 1011-12, by the A.O. for L.G. X OF 1936 1 DEBT CONCILIATION ACT 936* rds ideb. 3. (1) The [Provincial Government] * may establish Debi kabiish- of Debt Conciliation Board for any district or part of a district. diation Such Board shall consist of three or more members not exceeding seven, including the Chairman, to be appointed by the [Provincial Government]* which may, for reasons to be recorded in writing, cancel any appointment or dissolve any Board. (2) The Chairman and every other member of a Board so established shall be appointed for a term not exceeding thrce yers. Such Chairman or member shall, on the expiration, of the period for which he has been appointed, be eligible for re-appointment. (3) A Board shall have such quorum as may be precribed. (4) M'hre the members of a Board are unable to agree, the opinion of the majority shall prevail. Where the Boarti is equal- ly divided the Chairman saall have a second or casting vote. 4. (1) A debtor or any of his creditors may apply to the ication Board appointed for the area in which the debtor ordinarily resides, to effect a settlement between the debtor and his credit- deb- his : Provided that no application shall lie if the debtor's debts be les than Rs.50 or more than Rs.5,000. (2) Where applications have been made by the debtor and any of his creditors, the applications made by the creditors, shall merged in the application made by the debtor. (3) If applications are made to more than one Board in respect of the debts of the same debtor such applications shall, subject to rules prescribed, be transferred to and dealt with by one Board. (4) The [Provincial may, at any stage of a proceeding, transfer the proceeding from one Board to another, and the Board to which it is •ransferred shall have jurisdiction to deal with it. tion 5. Every applicati)ll to a Board under section 4 shall be in writing and shall be signed and verified in the manner prescribed b the CO of Civil Procedure, 1908, for signing and verifying Act 1908. ts. 6. (1) An application made by a debtor umier sub section (1) of section 4 shall contain a statement of debts, in the prescribed in form which shall include the following (a) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him irvrespectof each debt, so far as is known to the debtor, and a note whether each such claim is admit- tea by the debtor ; (b) the history Of each such debt, so far as is known to the debtor, with particulars of the original principal and the rate of interest chargeable ; (c) particulars ot any other Liability which does not consti- tute a debt undec this Act ; by the A.O. for V of DEBT CONCILIATION Åcr (d) particulars of the debtor's property, both moveau and immoveable (including claims due to him», specification of its value and of the places where may be found, and details

of any attachment, mortgage, lien or charge subsisting thereon ; (e) particulars of any income from sources other than agriculture ; (f) a declaration that all liabilities, debts and properties have been disclosed in the statement, and that debtor is unable to pay his debts. (2) An application made by a creditor under sub-section of section 4 shall contain a statement of debts, in the prescribed form, which shall include the following (a) the total amount of every debt claimed by him to be owing to him by the debtor ; (b) the history of each such debt with particulars of original principal, the rate of interest chargeable, and payments made either as interest or principal ; (c) particulars, so far as they are known to the credit of the debtor's property, as in clause (d) of sub-section (d) particulars, so far as they are known to the credit of any income of the debtor from sources other than agriculture ; and (e) a declaration that agriculture is the main source of livelihood of the debtor. (3) The Board may return, for amendment, an application if it is not complete and in proper form. 7. (I) On receipt of an application under section 4 the Board shall examine it, and if it considers that it has jurisdiction to entertain it, it shall pass an order fixing a date and place for hearing the application : Provided that the Board may at any stage whether examining the application on presentation or after submission of the statement of debts under section 8, dismiss the application for want of jurisdiction, or 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 by registered post to the debtor and creditor. (a) If on receipt of an application under section 4 the Board dismisses it on the ground of want of jurisdiction or limitation for applicant may, within 30 days from the date of service of application, under sub-section (2) make an objection in writing to the Board against such dismissal (b) On receipt of an objection under clause (a) of sub-section (3) the Board shall make such order thereon as it thinks fit. Notice shall be given to the debtor and creditor. (J) If after examining the statement of debts submitted by the debtor, it is considered by the Board, desirable to attempt to effect a settlement between the debtor and his creditors, a notice shall be issued and served upon the debtor and every creditor of published in the manner prescribed, calling upon every creditor to submit a statement of debts owed to such creditor or by the debtor. Such statement shall be signed and verified in the manner prescribed in the Code of Civil Procedure, 1908, for signing and verifying pleadings, and shall be submitted to the Board in writing within 30 days 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 for good and sufficient cause was unable to comply with such directions, it may extend the period for the submission of his statement of the debts 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 of 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 that the notice was not served on him and that he had no knowledge of its publication, the Board may revive the debt on application made within 30 days of the date on which he first had knowledge of the order of discharge : Provided also, that in any area in which a Board has been dissolved, the Civil Court may entertain an application for revival of the debt on the same conditions. (3) If any question as to the jurisdiction of a Board arises after submission of the statement of debts made under sub-section (1) the Board shall not pass any order without hearing the debtor and creditor. The decision of the Board with regard to jurisdiction under section 7 or section 8 shall be final and shall not be questioned in any Civil Court

9. Every creditor submitting a statement of the debts—Every creditor who is owed to him in compliance with a notice issued under sub-section (1) of section 8 shall furnish, along with 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. (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 against the debtor in any suit brought by the creditor or by any person claiming under him. 10. The Board shall then 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. (1) Subject to any rules prescribed, the 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, 1908. 12. (1) Any person present may

be required by a I evidence or to produce any document then and Agreement PO Session or power. 12. (1) If the creditors, to whom not less than 50 per cent of the total amount of the debtor's subsisting debts are registered, come to an amicable settlement with the debtor, the same shall forthwith be reduced to writing in the effect. agreement recording the immoveable properties of with particulars of any mortgage, lien or charge subsisting on, and the amounts payable to such creditors and the times at which they are to be paid. The agreement shall be read out and explained to the creditors, and shall be signed or otherwise authenticated by the Board and the parties : Provided that, when a Co-operative Society is a creditor, no settlement, in so far as it affects the debts of 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 14 days of its making, be registered under the Indian Registration Act, 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 the Civil Court. (3) For the purpose of registration of an agreement under sub-section (2), the Chairman of the Board shall be deemed an officer of the Government empowered to execute such agreement within the meaning of section 88 of the Indian Registration Act, 1908. (4) Where an agreement registered under sub-section (2) relates to a debt which is secured by a mortgage, lien or charge on any immovable property of the debtor, such mortgage or charge shall subsist to the extent of the amount payable by the debtor 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. 13. (1) If a debtor defaults in paying any amount due under an agreement 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 application to the Deputy Commissioner made by the creditor within 90 days from the date of default. (2) Where the Deputy Commissioner has under sub-section (1) recovered any amount which was payable in accordance with the terms of the agreement, he shall proceed to make payments as follows (a) he shall, in the first instance, apply the sum realised from the sale of any portion of the immovable property referred to in section 12(4) to the payment of amount payable under the agreement on account (i) rent in respect of the property sold ; (ii) any debt which is secured by a mortgage, lien or charge on such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1892, and, if the said sum is insufficient to meet such payments, the amounts which have remained unpaid shall rank equally with unsecured debts ; - or 1936] DEBT CONCILIATION ACT, 1936. (3) Every debtor is required to submit a statement of debts owed to such creditor or by the debtor. Such statement shall be signed and verified in the manner prescribed in the Code of Civil Procedure, 1908, for signing and verifying plaints, and shall be submitted to the Board in writing within 30 days 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 for sufficient cause was unable to comply with such directions, it may extend the period for the submission of his statement of the debts 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 paid or discharged : Provided that, if a creditor proves to the satisfaction of the Board that the notice was not served on him and that he had no knowledge of its publication, the Board may revive the debt application made within 30 days of the date on which he first had knowledge of the order of discharge : Provided also, that in any area in which a Board has been dissolved, the Civil Court may entertain an application for revival of the debt on the same conditions. (3) If any question as to the jurisdiction of a Board arises after submission of the statement of debts made under sub-section (1) the Board shall not pass any order without hearing the debtor and creditor. The decision of the Board with regard to jurisdiction under section 7 or section 8 shall be final and shall not be questioned in any Civil Court. 9. (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, along with 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. (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 against the debtor in any suit brought by the creditor or by any person claiming under him. 10. The Board shall then 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. of 11. (I) Subject to any rules prescribed, the Board may to at- exercise all such powers connected with the summoning and or examining of parties and witnesses and with the production of and documents as are conferred on a Civil Court by the Code of Of Civil Procedure, 1908. ts to 1.1 Act v of 1908. X OF 1936] DEBT CONCILIATION ACT 477 (6) if there is a surplus after the payments have been made under clause tap, the Deputy Commissioner shall apply to the payment of any other amounts payable under the agreement the sum of the surplus and of the proceeds realised from the sale of such portion of any other property of the debtor as will, together with the surplus, be sufficient to meet the payment of such amounts ; (c) if the sum of the surplus and sale proceeds referred to in clause (b) is insuÆcient to meet the payment of other amounts referred to therein, such other amounts and any amount payable on account of any unsecured debt for the recovery of which a decree has been passed by a Civil Court and of which details are given in the agreement shall rank equally between themselves fcr ghe purposes of payment ; (d) any further surplus remain.ag after the payments have been made under clauses (a), (bj and (cy shall be paid by the Deputy Commissioner to the debtor. (3) Where the Deputy Commissioner fails to recover as an arrear of land revenue any part of such amount, he shall certify that it is irrecoverable and thereupon the agreement shall cease to subsist. (4) Where an agreement ceases to subsist, any amount, which was payable under such agreement, but has not been paid, Shal) be recoverable as if a decree of a Civil Court had then been passed for its payment

14. If no amicable settlement is arrived at under sub- of to dis- section (I) of section 32, the Board shall dismiss the application.

15. (I) Where, during the hearing of any application made Grant of under section 4, any creditor refuses to agree to an amicable by settlement, the Board may, if it is of opinion that the debtor has in made such creditor a fair offer which tb- creditor ought reason- debts. ably to accept, grant the debtor, in such form as may be prescribed, a certificate including the particulars of the fair offer in respect of the debt owed by him to such creditor. of (2? Where any creditor sues in any Civil Court for the reco- sal to very o a debt in respect of which a certificate has been granted to a under sub-section (1), the Court, notwithstanding the provisions Offer• of any law for the time being in force, may, if it thinks fit refuse to grant a decree for any sum in excess of the sum specified in the certificate as a fair offer, and shall 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 6 per cent. per annum on the principal amount due on the date of such certi- ficate. (3) Where after the registration of an agreement under sub- section (2) of section 12 any creditor sues for the recovery of a debt in respect of which no settlement has been made though it was included in the application undet section O or in the statement of debts under section 8 or any creditor sues for the recovery of a debt incurred after the dne of such registration, any decree passed in such suit shall, notwithstanding anything 478 DEBT CONCILIATION ACT CASSAM ACT contained in the Code of Civil Procedure, 1908, not be exe- Act Vd cuted until all amounts recorded as payable under such agree- ment have been paid or such agreement has ceased to subsist: Provided that the provision in this sub-section shall not Bar of civil apply to the execution of a rent decree. guit or pro- 16. No Civil Couct shall entertain— (a) any suit or proceeding in respect of— (i) any matter pending before a Board, (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 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 revivd 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. Avoidance 17. Every transfer of property made with intent to defeat or of certain transfers Of delay the creditors of the debtor shall be voidable at the option debtor'S pro- of the creditor so defeated or delayed. appeal 18. No appeal or application for revision shall lie against or revision. any order passed by a Board, Power of 19. A Board may, on an application from any person interest- Board to ed made within ninety days of the passing of an Older, review any order pased 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. Appea rance 20. In any proceedings before a Board any party may be of party fore Board permitted to appear by an agent authorised in writing, but not by agent but by a legal practitioner. by 1%aI practit ioner. Suspension 21. (I) wmen an application has been made to a Board under of pending seciton 4, any suit or other proceedings then pending before a

application Civil Court in respect of any debt for the settlement of which on suit. application has been made shall be suspended until the disposal of the application. (2) If the debt referred to in sub-section (1) is not recorded in the agreement registered, a decree, if subsequently passed therefor, or a previous decree for that debt execution Whereof is suspended, shall 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 rent decree. X OF 1936 DEBT CONCILIATION ACT 479 22. In calculating the period Of limitation for any suit or yance proceeding regarding a debt which has been the subject of any for proceedings under this Act, notwithstanding anything contained in any other Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from insti- tuting the suit or proceeding, shau be excluded. •rs of 23. The members of a Board shall be deemed to be public be ervants within the meaning of the Indian Penal Code. Act xLV ser- 24. In addition to any power spccially conferred by this Act, Of 1860• to the [Provincial Government]* may make rules— (a) prescribing the quorum for, and regulating the pro- cedure before, a Board • (b) prescribing the forms of application under section 4 and oi statement of debts under section 6 ; (c) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 8 ; (d) 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 ; (e) prescribing the records to be kept and the returns to be made by a Board ; (f) e=ng the allowances, if any, to be paid to the (g) regulating the power of a Board to summon parties and witnesses under section 11 and the grant of expenses to witnesses ; (k) prescribing the place at which and the manner in which an agreement shall be registered unde sub- section (2) of section 12 ; (O prescribing the form of certificate to be granted under sub-section (2) of section 13 or sub-section(l) of section 15 ; and such other forms as may be required for the purpose of carrying into effect the provisions of this Act ; and (j) providing for the representation of minors, lunatics and other disabled persons (k) and generally for the purpose of carrying into effect the provisions of this Act. 25. (I) AII rules shall be subject to the condition of previous mblication. (2) In making any rule the (Provincial may irect that a breach thereof shall be punishable with fine which ray extend to fifty rupees, and where the breach is a continuing ne, with further fine which may extend to ten rupee for every •y after the first during which the breach has been persisted in. by the A. O, fore L. G.