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## THE INSOLVENCY LAWS (AMENDMENT) ACT, 1978

No. 28 of 1978 and the state of the

ed to be reduced by an tenance do not a proper [4th August, 1978.]

In Act further to amend the Presidency-towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:-

1. (1) This Act may be called the Insolvency Laws (Amendment) Short Act, 1978.

and commence-

Amend-

- 100 of (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- Vonsylead adv 2. In the Presidency-towns Insolvency Act, 1909,-

Nilia 10 (a) section 9 (excluding the Explanation) shall be renumbered Act 3 as sub-section (1) thereof, and after sub-section (1) as so renumber- of 1909. ed, the following sub-sections shall be inserted, namely:—

"(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein:

> Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice—

- (a) in a case where such application is allowed by the Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and
- (b) in a case where such application is rejected by the Court he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later:

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Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the Court therefor. CONTRACT COMMENTS OF THE STATE WITH

- (3) An insolvency notice sub-section (2) shall-
  - (a) be in the prescribed form;
  - (b) be served in the prescribed manner;
- (c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security Table Association payment of such amount to the satisfaction of the creditor or his agent;
  - (d) specify for its compliance a period of not less than one month after its service on the debter or, if it is to be served on a debtor residing whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the Court granting leave for the service of such notice;
- (e) state the consequences of non-compliance with the Amendment), Short notice.
- (4) No insolvency notice shall be deemed to be invalid by hear free 212 reason buly that the sum specified therein asother amountaine under the decree of order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the E 19A Correctly specified (in othe insolvency onotice odoes not correctly 10011 to redaming represent the amount due under the decree or order

iyisansa Jastreadi Provided that if the debtor does not give any such notice as (1) soldforesaid, he shall be deemed to have complied with the insolvency notice if within the period specified therein for its compliance, he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due Total Theen correctly epecified therein and the control will

- (5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the Court to set aside the insolvency notice on any of the following grounds, namely:-
  - -200 14 (d) that he has accounter-claim or set-off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;
- (b) that he is entitled to have the decree or order set aside under any law providing for the relief of Indebtedness eilt ni ben and that
  - risial a 190 double he has made an application before the competent authority under such law for the setting aside of the decree or orders or

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- Hall seel for to and (ii) the time allowed for the making of such applisa of all it is cation has not expired; it have dinors one -stiply to give a nair inwittante
- (c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.";
- (b) in section 112, in sub-section (2), after clause (m), the following clause shall be inserted, namely:—
- the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause size (b), of sub-section (3) of section 9;".

## 3. In the Provincial Insolvency Act, 1920,—

Amendment of Act 5 of 1920.

(a) section 6 (excluding the Explanation) shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has mood smooth and decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice thereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein: (13)

first family. Provided that where a debtor makes an application sub-section (5) for setting aside an insolvency notice—

- (a) in a case where such application is allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and
- (b) in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the and the insolvency notice for its compliance, whichever is later:

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily, outside India, unless the creditor obtains the leave of the District add Court therefor.

- (3) An insolvency notice under sub-section (2) shall-
  - (a) be in the prescribed form;
  - (b) be served in the prescribed manner;
- (c) specify the amount due under the decree or order clause (a). and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent; (5) non made to yell esuato

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stage there is a (d) specify for its dompliance a (period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing, whether permanently or temporarily, outside India, such period (being hot less than one month) as may be specified by the order of the District Court granting leave for the service of such motice;

- har page of the (e) state the consequences of non-compliance with the notice.
  - (4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor, that the sum specified in the insolvency notice does not correctly represent the amount due under the decree or order: (5)

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvthe goiency notice if, within the period specified therein for its compliance, he takes such steps as would have constituted a compli-Tagging ance with the insolvency notice had the actual amount due been correctly specified therein.

- (5) Any person served with an insolvency notice may, within the period specified therein for its compliance, apply to the District Court to set aside the insolvency notice on arry of the following grounds, namely:
- (a) that he has a counter-claim or set-off against the creditor which is equal to or is in excess of the amount due end ve funder the decree or order and which he could not, under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;
- (b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness data and that—
  - (i) he has made an application before the competent Teld authority under such law for the setting aside of the decree or order; or
    - (ii) the time allowed for the making of such application has not expired;
    - (c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.";
  - (b) in section 79, in sub-section (2), clause (a) shall be relettered as clause (aa) thereof, and before clause (aa) as so relettered, the following clause shall be inserted, namely: -
- ticspee this (a) the form of the insolvency notice under clause (a), and the manner in which such notice may be served under clause (b), of sub-section (3) of section 6;".

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