

THE AZAD KASHMIR CIVIL PROCEDURE CODE
 (AMENDMENT) ACT, 1956
 (Passed under Council Order No. 66/56 dated 2-2-1956)

Whereas it is necessary to amend the Civil Procedure Code in-force in Azad Kashmir Territory, it is hereby enacted as follows :-

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(i) This Act may be called the Azad Kashmir Civil Procedure Code Amendment Act, 1956.

(ii) It shall apply throughout the Azad Kashmir Territory and shall come into force at once.

The following shall be added as Order XXI (A) in the Civil Procedure Code in force in Azad Kashmir Territory :-

ORDER XXI (A)
 OF INSOLVENT JUDGMENT-DEBTORS

Power to apply for declaration of insolvency:- Any judgment-debtor arrested or imprisoned in execution of a decree for money or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment debtor resides or is in custody.

Contents of application:- The application, when made by the judgment-debtor, shall set-forth (a) the fact of his arrest and imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned or by which the order of attachment was made, and where he has been arrested or imprisoned, the place in which he is in custody.

(b) the amount, kind, and particulars of his property and the value of any such property not consisting of money ;

(c) the place or places in which such property is to be found ;

- (d) his willingness to put it at the disposal of the Court;
- (e) the amount and particulars of all pecuniary claims against him; and
- (f) the names and residence of his creditors so far they are known to, or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

Subscription and verification of application:- The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying Pleadings.

Service of copy of application and notice:- The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expenses ;

Where the applicant is the judgment-debtor or the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made or on the pleader of such decree-holder and on the other creditors (if any) mentioned in the application ;

Where the applicant is the decree-holder-on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in the Government Gazette and such public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

Power to serve other creditors:- The Court may also if it thinks fit, cause a like copy and notice be served on any other person alleging himself to be a creditor of the applicant, and applying for leave to be heard on the application.

Powers of Court as to judgment-debtor under arrest:- If at the time of making an order admitting the petition or at any subsequent time before adjudication, the judgment-debtor is in custody under the forgoing provisions of this Code, the court may order his release on such term as to security as may be reasonable and necessary.

On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge, and may, if it thinks fit grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the Judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of Receiver:- If the Court is satisfied:-

- (a) that the statements in the application are substantially true;
- (b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or at any subsequent time ;
- (c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property ;
- (d) that he has not committed any other act of bad faith regarding the matter of the application.

The Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a Receiver of his property, or if it does not appoint such Receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order

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rejecting the application.

Creditors to prove their debts:- The creditors mentioned in the application and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him: and the Court shall by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts ; and shall frame a schedule of such persons and debts, and the declaration under rule 8 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

Schedule to be framed:- A copy of every such schedule shall be stuck up in the Court-house. Nothing in this section shall be deemed to entitle a partner in an insolvent firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Application by un-scheduled creditors:- Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent; for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule, so far as regards the amount, nature, or particulars of his own debt or to strike out the name of another creditor, or to alter the schedule, so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any) may comply with or reject the application.

Effect of order appointing Receiver:- Every order under rule 8 shall be published in the Government Gazette and every order under that section appointing a Receiver shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 60), whether setforth in his application or not.

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Receiver to give security and collect assets:- The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid; and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Duty of Receiver:- The Receiver shall proceed under the direction of the Court :-

- (a) to convert the property into money ;
- (b) to pay there out debts, fines, and penalties (if any) due by the insolvent to the State ;
- (c) to pay the said decree-holder's costs ;
- (d) to discharge, according to their respective priorities all debts secured by mortgage of the insolvent's property ;
- (e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any reference :

His right to remuneration: and such Receiver may retain, as a remuneration for the performance of his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution) and shall deliver the surplus (if any) to the insolvent or his legal representative:

Delivery of surplus:- Provided that in any local area in which a declaration has been made under section 68 and is in force, no sale of immoveable property paying revenue to the State, or held or let for agricultural purposes, shall be made by the Receiver, but after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received (b) the immoveable property of the insolvent remaining unsold, and

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(c) the encumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by Schedule III as he thinks fit, and subject to the provisions of the said Schedule, so far as it may be applicable, and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

Effect of discharge:- (a) Any insolvent discharged under rule 8 or 12 may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention.

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A protection order may apply either to all the debts of the debtor or to any one of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

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A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applied, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release: Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled.

(d) Any creditor shall be entitled to appear and oppose the grant of a protection order.

(e) But the property of discharged insolvent (subject to the provisions of rule 15) whether previously or subsequently acquired (except the particulars specified in the first proviso to section 60, and except the property vested in the Receiver) shall by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one third, or until the expiry of twelve years from the date of the order of discharge under rule 8 or 12.

Declaration that insolvent is discharged from such liability:-

If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one third or after the expiry of twelve years from the order of discharge, the

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Court shall declare the insolvent discharge as aforesaid, absolved from further liability in respect of such debts.

Procedure in case of dishonest applicant:- Whenever, at the hearing under rule 7, it is proved that the applicant has:-

- (a) been guilty, in his application, of any concealment of or wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust ;
- (b) fraudulently concealed, transferred, or removed any property; or
- (c) committed any other act of bad faith regarding the matter of the application ;

the Court shall at the instance of any of his creditors sentence him, by order in writing, to imprisonment for a term which may extend to one year from the date of committal ;

or the Court may, if it thinks fit, send him to Magistrate to be dealt with according to law.

Investment of other Courts with powers of District Courts:-

The Government may, by notification in the Government Gazette, invest any court other than a District Court with the powers conferred on District Courts by the preceding rules and the District Judge may transfer to any Court situate in his District, and so invested, any case instituted under rule 1.

A court so invested may entertain an application under rule 1 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made in execution of a decree for money passed by the Court."