

Bill No. XXXVII of 2015

THE PERSONAL BANKRUPTCY (DECLARATION AND
REHABILITATION) BILL, 2015

A

BILL

*to provide for mechanism through which a person unable to pay off debts can declare
bankruptcy and subject himself to rehabilitation and for matters connected
therewith and incidental thereto.*

CHAPTER I

PRELIMINARY

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Personal Bankruptcy (Declaration and Rehabilitation) Act, 2015.

(2) It extends to the whole of India.

5 (3) It shall come into force on such date, as the appropriate Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for coming into force of different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title,
extent and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means in the case of a State, the Government of that State, and in other cases, the Central Government;

(b) “bankruptcy” means the legal status of an individual citizen who is unable to pay his creditors; 5

(c) “creditor” means an individual, a bank, a non-banking financial intermediary or any such registered or non-registered institution that does the banking function of accepting deposits and lending money, to which a person owes money;

(d) “debt” means an amount owed to a creditor for funds borrowed;

(e) “debtor” means an individual citizen who owes money to a creditor; 10

(f) “defaulter” means any debtor who do not repay the debt despite adequate liquidity;

(g) “prescribed” means prescribed by the rules made under this Act;

(h) “secured creditor” means any creditor who has the legal right to take a specific property of the debtor and sell it in case of default in payment; 15

(i) “tribunal” means the special Bankruptcy Tribunal established under section 3 of this Act;

(j) “trustee” means an officer attached to a tribunal under section 5 of this Act;

CHAPTER II

ESTABLISHMENT OF TRIBUNAL 20

Composition of the Tribunal.

3. (1) The appropriate Governments shall, by notification in the Official Gazette, establish a Special Bankruptcy Tribunal with effect from such date as may be prescribed, attached to every district court for exercising the jurisdiction, power and authority conferred on such tribunals under this Act (2) the tribunal shall consist of;

(a) a Chairperson, appointed by the appropriate Government, who has served as Judge of the H.C. for a period not less than five years; and 25

(b) not less than three judicial members, appointed by the appropriate Government, who have served as judicial officers for at least five years in Civil Court or District Court of any State.

Term Salaries and Allowances of Members.

4. (1) The Chairperson and the judicial members of the tribunal shall hold office for a term of five years and shall be eligible for re-appointment only once. 30

(2) The salaries and allowances payable to the Chairperson and the judicial members shall be such as may be prescribed by the appropriate Government.

Trustee to reduce property to cash and distribute among creditors.

5. Every tribunal shall have one trustee who shall take charge of the property of the debtor who has applied to be declared as bankrupt, attached to the tribunal and who shall reduce every property of the debtor to cash, except the properties listed as “exempt properties” in Section 14 of this Act, and distribute it to creditors within three months of such application. 35

Appointment of other officers to the tribunal.

6. The appropriate Governments shall provide such number of officers and staff to assist the tribunal in such manner as may be prescribed. 40

Appropriate Government to make rules.

7. The appropriate Governments may, in consultation with the Chairpersons of the tribunal, make rules regulating the practices and procedures of the tribunal;

CHAPTER III

DECLARING BANKRUPTCY

8. A debtor under the purview of this Act, can not file for bankruptcy if;
- (i) he transfers his property or any part thereof with the intent to defeat or delay his creditors;
- (ii) he transfers his property, or any part thereof, which would be void as a fraudulent preference, under this Act or any other enactment for the time being in force, if he were to be adjudged an insolvent;
- (iii) he intends to defeat or delay his creditors by departing or remaining out of the territories to which the respective Act extends or departs from his dwelling house or usual place of business or otherwise absent himself or if the debtor secludes himself so as to deprive his creditors of the means of communicating with him;
- (iv) he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or
- (v) he is sentenced to imprisonment by any court;
9. A debtor shall be entitled to file a bankruptcy petition if,—
- (i) he is a non-wilful defaulter;
- (ii) his debts amount to rupees 10,000 or more; or
- (iii) he is under arrest or imprisonment for payment of money; or
- (iv) an order of attachment has been made against his property.
10. A debtor, entitled to file a bankruptcy petition, shall do so before the Special Bankruptcy Tribunal of the district where he resides.
11. Each bankruptcy petition shall be in writing, duly signed and verified in the manner as may be prescribed and each petition shall contain:
- (i) a statement that the debtor is unable to pay his debts;
- (ii) the place where he ordinarily resides or carries on business or personally works, or, if he has been arrested or imprisoned, the place where he is in custody;
- (iii) the Court order under which he has been arrested or imprisoned, or an order which has been made for the attachment of his property;
- (iv) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors;
- (v) the amount and particulars of his property, a specification of the value of all such property not consisting of money, the place or places at which any such property is located ; and
- (vi) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent and in that case—
- (a) if such petition has been dismissed, the reasons for such dismissal, or
- (b) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and, if so, the grounds therefore.
12. (1) A creditor shall file a bankruptcy petition against his debtor, only if he is of the opinion that the debtor is a wilful defaulter;

Declaration of bankruptcy by a debtor.

Entitlement for filing bankruptcy.

Petition to be filed in appropriate jurisdiction.

Contents of the petition.

Creditor to file bankruptcy petition.

(2) Every bankruptcy petition presented by a creditor or creditors shall set forth the full particulars of the debtor and shall also specify,—

(i) the act of insolvency committed by such debtor, together with the date of its commission;

(ii) the amount and particulars of his or their pecuniary claim or claims against such debtor. 5

However, provided no bankruptcy petition shall be filed against corporations, joint ventures, companies or partnerships under this Act;

(3) The procedure laid down in the Code of Civil Procedure, 1908 with respect to the admission of complaints, shall so far as it is applicable, be followed in the case of bankruptcy petitions; 10 5 of 1908.

(4) No petition, whether presented by a debtor or a creditor, shall be withdrawn without the leave of the court.

CHAPTER IV

PROCEDURE AT THE TRIBUNAL

15

Procedure for adjudging bankruptcy of debtor.

13. (1) Subject to the conditions specified in this Act, once a creditor or debtor files a petition of bankruptcy after following the procedures laid down in this Act, the tribunal may issue an order adjudging bankruptcy of the debtor.

(2) The tribunal shall fix a date for hearing of the petition after receiving a bankruptcy petition, such that the notice of such an order, fixing the date of hearing shall be served to the debtor as well as the creditors; 20

(3) On the day fixed for the hearing of the petition or on any other day to which the hearing is postponed, the debtor or creditor shall prove before the tribunal that he is entitled to file the petition:

(a) Where the debtor is the petitioner, he shall furnish such documents to prove that he is a non-wilful defaulter; 25

(b) Where the creditor is the petitioner, he shall furnish such documents to prove that the debtor is a wilful defaulter.

(4) The tribunal shall, if deemed necessary and sufficient cause shown, grant time to the debtor or creditor to produce further evidence on the case; 30

(5) The tribunal shall dismiss the petition, after due examination of the documents and other evidences, if in the case of the petition being filed by:

(a) a debtor, and the tribunal is not satisfied that he is not a non-wilful defaulter;

(b) a creditor, if the tribunal is not satisfied that the debtor is not a wilful defaulter; 35

(6) The tribunal shall order an enquiry to be conducted to establish that the current monthly income of the debtor is not higher than a desired limit as decided by the tribunal, given that such income is not above the median income of the State where the debtor resides;

(7) If the petition, after due examination of evidence, is accepted, then the tribunal shall issue an Order of Bankruptcy adjudging the debtor as bankrupt, and the copy of such an order shall be served both on the debtor and the creditor/creditors. 40

Power to entrust property with trustee and list of exempt properties.

14. Once the order is made, the tribunal shall entrust the properties, if any, of the debtor, with the trustee of the tribunal, except the exempt properties which include:

(a) the house of the debtor; 45

(b) the area where the house is built;

(c) the essential utilities and utensils required for the house, as prescribed in the rules made under this act; and

(d) the essential instruments to continue his work/job in the case of debtors who are farmers, carpenters and the like.

5 **15.** The trustee shall be responsible to liquidate the propertise to money, in the manner as may be prescribed, and distribute the money to the creditors in such order of preference, fully secured creditors, partly secured creditors to the extent they are secured, realization expenses and remuneration of the trustee, preferential creditors and unsecured creditors:

Responsibility of trustee to liquidate properties.

10 Provided that nothing in this section shall affect the power of any secured creditor to realise his security, in the manner as he would have been entitled otherwise.

16. (1) If after the distribution is completed, the debtor is required to obtain a certificate of dischrage from the tribunal, such that, the tribunal, for the issue of such a certificate, shall be convinced that the default in payments by the debtor was not wilful and
15 the conduct of the debtor has been satisfactory during the tribunal proceedings;

Certificate of Discharge.

(2) On obtaining the certificate of discharge, the unpaid debts are cancelled and the debtor is liberated from the demands of his creditors;

(3) The time taken from the filing of the petition to the issue of the certificate of discharge shall not be more than 3 months:

20 *Provided that if the tribunal has reasons to believe that the procedure of liquidating the properties of the debtor should take more time, on the request of the trustee, the tribunal shall grant an additional time not exceeding one month for the completion of all procedures.*

(4) The certificate of discharge, shall not be release to the debtor from;

(a) any debt due to the Government;

25 (b) any debt or liability incurred by any means of fraud or fraudulent breach of trust to which be is party;

(c) any debt or liability in respect of which he was obtained forbearance by any fraud to which he was a party; or

2 of 1974. 30 (d) any liability under an order for maintenance made under section 125 of the Code of Criminal Procedure 1973.

CHAPTER V

REHABILITATION

17. After the issue of the order of bankruptcy, the debtor, his immediate relatives and his properties shall be protected from all coercive methods, physical and emotional, of the
35 creditors or anyone intermediately thereof;

Protection to Debtor and kin.

18. The appropriate Government shall constitute a Bankruptcy rehabilitation Fund as may be prescribed made under this Act to help revive declared bankrupts, within a year of enactment of this act, and ensure that;

Bankruptcy Rehabilitation Fund.

40 (i) every person who is declared bankrupt by the tribunal by order of bankruptcy, shall be provided with the minimum social benefits by the appropriate Government; and

(ii) the debtor, if the tribunal feels necessary, shall be recommended to be given loan from the bankruptcy rehabilitation fund of the appropriate Government, at an interest rate as may be prescribed by the tribunal.

45 **19.** (1) A debtor, who is declared bankrupt with no properties except his house to pay off debts, shall be required to submit a proposal outlining his plan to pay off the debts,

Plan to pay off debt in case of no properties except exempt properties.

(i) the plan may be submitted to the tribunal within 3 months of him being declared bankrupt; and

(ii) the plan shall pay off debts within a time period of 3 years or as deemed right by the tribunal;

(iii) the tribunal, if satisfied with the proposal, shall allow an extension of the said time period, to issue his certificate of discharge;

(2) If the debtor is a farmer and declared bankrupt, an extension of at least two years shall be given to the farmer to pay off his debts and issue his certificate of discharge: 5

Provided that the default in payment of a debtor is caused by natural calamities, the tribunal shall recommend the creditors for a moratorium for the payments of the debtor.

CHAPTER VI

CIVIL RECORD AND PENALTY

10

Record of
Bankruptcy
in civil and
credit record.

20. After issue of the order of bankruptcy by the tribunal, the record of bankruptcy shall remain on the debtors credit record and civil record till the next seven years along with the certificate of discharge if issued under section 16.

Misrepresenta-
tion of
Statement of
Bankruptcy
or other
records as a
punishable
offence.

21. Whoever make any mis-representation in the statement of Bankruptcy in the credit or civil record shall be punished with imprisonment for one month and also with fine which may extend to ten lakh rupees: 15

Provided that all sums realised by way of fines shall be credited in the Bankruptcy Rehabilitation Fund.

CHAPTER VII

MISCELLANEOUS

20

Repeal and
Saving.

22. (1) The Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 are hereby repealed. 3 of 1909
5 of 1920.

(2) The repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing; 25

Central
Government
to provide
funds.

23. The Central Government will from time to time, provide, after due appropriation made by the Parliament by law in this behalf, requisite funds for carrying out the purposes of this Act. 30

Power to
remove
difficulty.

24. If any difficulty arises in giving effect to the provisions of this Act, the appropriate Government may make such order or give such direction, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for the removal of any difficulty. 35

Power to
make rules.

25. The appropriate Government, may be notification in the Official Gazette, make rules for carrying out the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

India's ranking fell from 109 to 132 among 185 economies in 2012 when it comes to ease of resolving insolvency issues according to the World Bank. Personal Bankruptcy laws help people who are no longer in a position to pay off their debts and are distressed due to coercive methods used by creditors, thus unable to make a fresh start. The personal bankruptcy framework in India is weak and barely has provisions for any statutes, apart from the few passed almost over a century ago, during the British regime, namely, The Provincial Insolvency Act, 1920 and The Presidency Towns Insolvency Act, 1909. The Bill repeals the two archaic laws.

In the context of massive growth of different types of loans, credit card usage and the like, the law should also be progressive and effective. Bankruptcy and insolvency is specified in the entry 9 of the concurrent list of the Seventh Schedule of the constitution of India. The Centre as well as the State Government have the power to legislate on the same and both share responsibility to take to task the matter of bankruptcy. The Bill is an attempt to make a comprehensive legislation regarding personal bankruptcy. It vests upon the appropriate Government to establish Special Tribunals to admit petitions of Bankruptcy and issue notices to hear cases of personal bankruptcy.

The Bill lays down the guidelines for functioning of the tribunal as well as safeguards to rehabilitate debtors and make for a transparent, expeditious and just procedure for settling debt. There are separate provisions for farmers who are debtors, in which case, the legislation is comparatively liberal with regard to the allocation of time. The record of bankruptcy will be present in the civil and credit record of the person for a period of 7 years from the date of issue of the order of bankruptcy by the tribunal along with the Certificate of Discharge.

The Bill also provides for a Bankruptcy Rehabilitation Fund for the revival of those declared bankrupt along with imposing penalty in the form of fine or imprisonment, or both in the event of misrepresentation of the Statement of Bankruptcy in the civil and credit record of any person. The remuneration earned thereof would be deposited in the Bankruptcy Rehabilitation Fund.

Hence this Bill.

VIVEK GUPTA

FINANCIAL MEMORANDUM

Clause 3 of this Bill requires the Central Government to set up special tribunals to hear cases of personal bankruptcy. Clause 18 of the Bill provides for the establishment of a Bankruptcy Rehabilitation Fund by the Central Government. Therefore, the Bill, if enacted, will involve a non-recurring expenditure towards establishing tribunals and the rehabilitation fund of around one hundred crore rupees.

The Bill will also involve a recurring expenditure towards the salaries of those serving at the tribunal and for maintenance of records and proceedings amounting to ten crore rupees annually. Clause 23 of the Bill makes it obligatory for the Central Government to provide requisite funds for carrying out the purposes of this Bill. The Bill, if enacted will involve therefore expenditure from the Consolidated Fund of India which as of we can not be precisely estimated.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 25 of this Bill gives power to the appropriate Government to make necessary rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

RAJYA SABHA

A

BILL

to provide for mechanism through which a person unable to pay off debts can declare
bankruptcy and subject himself to rehabilitation and for matters connected
therewith and incidental thereto.

(Shri Vivek Gupta, M.P.)