



Government of Bengal

**Co-operative Credit and
Rural Indebtedness Department**

Procedure

To be followed by Ordinary Debt Settlement Boards

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Procedure to be followed by Ordinary Debt Settlement Boards.

1. Application: Notice under section 12 (2).—(a) An application—

- (i) by an individual debtor, or
- (ii) by persons whose debts and property are joint,

shall be in Form I (rule 14).

(b) An application by debtors or other persons whose *property* is not joint and who apply jointly for the settlement of a joint debt shall be in Form III (rule 16). In this case each of them shall submit a separate statement of his individual debt in Form I as well.

(c) An application by a creditor shall be in Form II (rule 15).

2. On receipt of the application, unless the Board dismisses it forthwith, the Board shall—

(i) scrutinize the application to see that the columns have been properly filled up and all the required information has been given; errors or omissions appearing in an application may be rectified at this stage except with regard to columns 6, 7, 8 or 9 of Schedule A to Form I; once the application has been filed before the Board no addition, alteration, correction or interpellation is to be made in any of these four columns. If the Board considers at this or any later stage, either at the request of the debtor or as a result of its own enquiry, that any error or omission in any of these four columns should be rectified, an amending note should be recorded on the order-sheet to the desired effect, and in the relevant column of Schedule A should merely be noted "vide order-sheet of date.....;"

- (ii) fix a date for the consideration of the application;
- (iii) inform the applicant verbally of the date fixed;
- (iv) issue and serve a notice in Form V on all other parties whose names and addresses are given in the application; and
- (v) if the debtor is a member of and owes any amount to a co-operative society, issue a notice in Form IV to the central society concerned (rule 24).

This action under section 12 must be followed in the case of every application before any further action at all is taken. The adjournment for consideration of the application should not ordinarily be longer than one week. At the end of each sitting before the people disperse, the Board should announce loudly and clearly with regard to applications received since the last sitting the names and addresses of the parties given in the applications and the dates which have been fixed for their consideration.

3. Consideration of the application.—On the day fixed in the notice objections, if any, in respect of the application that may be advanced by any person on whom the notice was served, shall be considered. In particular, three points must be considered by the Board at this stage—

- (a) whether the debtor is an agricultural debtor as defined in item 9 of section 2; [if the application is under section 9 (1) (a), whether at least one of the applicants is a debtor within the meaning of the Act];
- (b) whether he ordinarily resides within the jurisdiction of the Board;
- (c) whether the liabilities of the debtor are “debts” within the meaning of item 8 of section 2.

The Board’s findings on these three points must be recorded on the order-sheet, and unless its findings on these three points are in the affirmative, the application must be dismissed. With regard to (c), if some of the liabilities are debts within the meaning of the Act, and some are not, the application need only be dismissed so far as concerns these latter, and should proceed with regard to the remainder. It is expected that this consideration of the application will ordinarily take place in the presence of creditor and debtor. If either the creditor or the debtor is absent at this stage, the Board may proceed to consider the application upon the three points mentioned above *provided that* they are satisfied that a notice under section 12 (2) was duly served upon the absent party. In such a case the Board must record on the order-sheet that one party is absent but that they are satisfied that a notice under section 12 (2) was duly served.

If the Board decides to examine the applicant, it shall record in writing briefly but clearly the substance of the examination.

4. Action under section 13 (1) and under section 34.—If after consideration of the application the Board does not dismiss it, it shall proceed as follows:—

*Issue notice under section 34, if required, in Form XV or
Form XXXI.*

The order for the issue of these notices must be passed by the Board at a sitting and not privately by the Chairman or any other individual member, and must not be passed until the Board has recorded that it is satisfied upon the points mentioned in (a), (b) and (c) of paragraph 3 above.

5. (a) Where the application was filed by a creditor, as soon as the debtor appears on receipt of the notice under section 12 (2), he should be asked to file a statement of debt in Form I, or in Form III together with Form I, as the case may be. Although a month is allowed for filing this statement he should be asked to file it within one week if possible. On receipt of these statements the Board must carefully scrutinize them to see that the columns have been properly filled up and that all the required information has been given, observing the instructions given at the beginning of paragraph (2) above with regard to columns 6 to 9 of Schedule A.

Thereupon—

- (i) a notice shall be issued in Form VI on every creditor mentioned in the debtor's statement; and
- (ii) a general notice for all the creditors in Form VI shall be published as laid down in rule 30.

(b) If the application was filed by a debtor, the notices referred to above shall be similarly issued, i.e., a notice on every creditor mentioned in his application and a general notice on all his creditors. Each creditor shall file a statement of debt in Form II within one month of the service of notice or of its publication whichever is later and the case will be adjourned accordingly [section 13 (1)].

6. **Production of documents: section 14.**—As soon as a creditor has filed his statement of debt he should be asked to produce all documents by which he intends to prove any debt owing to him. Bonds must be produced by the creditor, and Boards must not send requisitions to civil courts for records of cases.

7. He shall also supply the Board with a true copy of every such documents. This copy shall be filed on the record of the case after its correctness has been verified by the Board. The original document shall be marked and returned to the creditor.

8. Ordinarily, it should not be necessary to allow more than one week for the production of the documents. It may sometimes take more than a week for the creditor to obtain the original documents and certified copies from the civil court. Therefore the Boards should warn creditors generally, and in all cases at their first appearance, that they will be required to produce their documents, and that they should take suitable steps to secure them and the copies in proper time.

9. **Determination of debt: section 18.**—When the necessary documents have been filed, the Board shall proceed first to determine the claim of each creditor (rule 15). This determination will not be necessary in respect of debts—

- (i) regarding the existence and amount of which there is no doubt or dispute; or
- (ii) regarding which there is a civil court decree.

In such cases the debt shall be in the case of (i) as admitted by the debtor, and in the case of (ii) the full amount decreed. Against each such debt should be noted on the order-sheet either the words "admitted by the debtor" or "civil court decree". In cases where orders under section 13 (2) have been passed the fact should be noted in the order-sheet against the debt concerned as the basis of its determination. In cases where there has been doubt or dispute a very brief but clear memorandum should be kept on record of the evidence by which the Board came to a decision regarding the existence and amount of each such debt.

10. **Assessment and realization of fees.**—Before formally recording in writing its findings under section 18, the Board shall assess and realize the fees under item 3 to the schedule of rule 136 (rule 139). As soon as the fees are paid the formal orders under section 18 shall be recorded.

11. **Estimating the surplus income of the debtor.**—The Board shall then ascertain the debtor's *surplus* income which is available for repayment of his debts. For this purpose it should ascertain his annual income from land and from any supplementary source (Schedule F, Form I), such as business, service, *borga*, etc., in a normal year, and should subtract therefrom the sum representing his necessary living expenses for the maintenance, clothing and education of his family and for such obligatory charges as cultivation and the landlord's rent. A brief note showing how the surplus income was calculated should be kept on the record.

12. **Settlement.**—Then, and not till then, the Board will attempt to bring about a settlement with *all* the creditors in terms of this surplus as far as annual instalments are concerned. That is to say, on the one hand, the full amount of the surplus must be devoted annually for as many years as may be fair and reasonable to repayment of his debts; on the other hand, the total amount payable annually to all the creditors must not exceed the estimated annual surplus income of the debtor. This instruction for careful calculation of and regard for the surplus income must not be taken to mean that other possible forms of settlement are ruled out*. There will be no harm in attempting settlement with each creditor individually as he appears, if they all cannot appear on the same day *provided that* in settling with individual creditors the amount of the total surplus income is kept in mind. As often as possible cash payment at the time of the award should be encouraged.

*It is merely desired to emphasize that in negotiating monetary settlements strict regard must be had to the debtor's surplus income.

13. If the Board finds that—

- (i) the debtor has no surplus income or land from which his debts can be paid off, or
- (ii) the Board fails to bring about an amicable settlement with all or any of the creditors,

it shall submit a report to the Subdivisional Officer to that effect with a recommendation as to the action to be taken (rule 78). In the case of (ii) it should record clearly the offers made to each creditor which it considers reasonable, and should secure, if possible, the signatures against these of the creditors, if any, who are willing to accept the offers. No formal award must be signed by an Ordinary Board in respect of an application which either wholly or partly has to be referred for final orders to a Special Board. The award must be a self-contained whole, and cannot be signed partly by one Board and partly by another Board. (But this will not mean that Ordinary Boards will receive no credit for the settlements which they have been able to achieve in partly settled cases. Arrangements will be made for the recording of successful part-settlements in the periodical returns of Ordinary Boards.)

14. **Award.**—When settlement has been reached with all the creditors, the settlement will be embodied in writing, provided that if the settlement includes any debt due to a co-operative society, it shall not be embodied in writing until the approval of the Assistant Registrar has been received. Any unusual delay in obtaining this

approval should be reported to the Subdivisional Officer. To facilitate the proper maintenance of statistics, the Board should in all cases record the full money value of the award, that is to say, the money actually to be paid to the creditor (whether in cash down or by instalments) and the money-equivalent of any transfer of land, of the enjoyment of usufructuary mortgage, etc.

15. **Publication of awards.**—As soon as possible after the award has been signed and communicated to the parties, it must be published as provided in rule 104.

16. **Registration of awards.**—The award should be sent to the Sub-Registrar for registration as soon as possible after 40 days have elapsed from the date when it was signed and communicated to the parties, or if there is an appeal, as soon as possible after the disposal of the appeal (rule 103).

17. **Short summary of procedure.**—In short summary, the procedure is as follows:—

- (1) on receipt of an application the Board at a sitting fixes a date for consideration of the application and notifies the date;
- (2) considers the application and decides whether or not it is entertainable, and records its findings;
- (3) if not dismissed, issues any necessary notices under section 34 and calls for statements of debts under section 13;
- (4) calls for production of documents;
- (5) considers the documents and determines the claims of the creditors, deciding any doubt or dispute, and arriving at a total of the debt due to each creditor;
- (6) assesses and realizes the fees under item 3 to schedule of rule 136;
- (7) estimates surplus income of debtor available for repayment of his debts by annual money instalments;
- (8) negotiates for terms of settlement keeping within the surplus income as far as annual instalments are concerned;
- (9) signs and communicates the award in fully settled cases, or in cases not fully settled records the offers (i) made, (ii) considered reasonable, and (iii) accepted, and refers the case to the Subdivisional Officer for transfer to a Special Board;
- (10) registers the award; and
- (11) sends records to Record Room monthly.

Each of these stages is important, and none must be omitted.