

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

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এস, আর, ও নং ২১৩-আইন/৯৭—দেউলিয়া বিধায়ক আইন, ১৯৯৭ (১৯৯৭ সনের ১০ নং আইন) এর ধারা ১১৮ এর বিধান মোতাবেক সরকার উক্ত আইনের অনুমোদিত ইংরেজী পাঠ (Authentic English Text) এতদসঙ্গে প্রকাশ করিল।

পাঠকদের সুবিধার্থে উক্ত অনুমোদিত ইংরেজী পাঠের সহিত উহার ধারাগুলির একটি তালিকাও প্রকাশ করা হইল।

রাষ্ট্রপতির আদেশক্রমে

মোঃ দিদারুল আনোয়ার

উপ-সচিব।

(৩৪৪৩)

মূল্য : টাকা ১৬'০০

**BANKRUPTCY ACT, 1997**

(Act 10 of 1997)

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An Act to make provisions relating to bankruptcy Whereas it is expedient to make provisions relating to bankruptcy;

It is hereby enacted as follows :

**CHAPTER 1**  
**PRELIMINARY**

1. **Short title and commencement.**—(1) This Act may be called the Bankruptcy Act, 1997.

(2) It shall come into force on such date, within 31st December, 1997, as the Government may, by notification in the official Gazette, specify.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

- (1) “exempted property” means such property of an individual debtor as is exempted in pursuance of the provisions of section 32;
- (2) “Plaint” means an application filed under section 10 for the purpose of obtaining an order of adjudication; and “plaintiff” means the person who files the plaint;
- (3) “Court” means a Bankruptcy Court as defined in section 4(3);
- (4) “formal demand” means a demand which is, for the purpose of sub-section (1) (i) of section 9 issued and served in the prescribed Form in pursuance of sub-section (2) of that section;
- (5) “appeal” means an appeal under section 96;
- (6) “Appellate Court” means the High Court Divisions of the Supreme Court of Bangladesh;
- (7) “composition” means a composition proposed or approved under section 43;
- (8) “individual” means a natural person and “individualdebtor” means a debtor who is an individual;
- (9) “attachment” means an attachment which is executable or executed under any provision of this Act in the manner specified in section 101;
- (10) “adjudication” or “order of adjudication” means an order made under section 10 declaring a debtor to be a bankrupt;
- (11) “District Court” means the Principal Civil Court having Jurisdiction over a district;
- (12) “schedule” means a schedule framed under section 38(1);
- (13) “Penal Code” means the Penal Code, 1860 (Act XLV of 1860);
- (14) “claim” means a claim of any kind or any nature which is ascertainable in terms of money;
- (15) “undischarged bankrupt” means an individual bankrupt in respect of whom an order of discharge has not made under the provision of Chapter V;
- (16) “discharge” in relation to an individual bankrupt, means a situation when, in pursuance of an order of discharge made under the provisions of Chapter V, he is discharged from all liabilities in respect of debts provable against him under section 39;



- (17) "Responsible Officer" means a Responsible Officer designated under section 24(a);
- (18) "bankrupt" means a debtor who is adjudged a bankrupt under section 10 or 45 or 46(13);
- (19) "act of insolvency" means an act of insolvency as specified in section 9;
- (20) "Civil Code" means the Code of Civil Procedure, 1908 (Act V of 1908);
- (21) "section" means a section of this Act or of the Civil Code or Criminal Code;
- (22) "prescribed" means prescribed by rules made under this Act;
- (23) "decree" means a decree as defined in section 2(2) of the Civil Code;
- (24) "creditors' committee" means a creditors' committee constituted under section 36(1) or 46(11)(g);
- (25) "re-organisation", in relation to the debts of an eligible debtor, means a re-organisation proposed or approved under section 46;
- (26) "arrangement", in relation to the affairs of a debtor, means an arrangement proposed or approved under section 43;
- (27) "review" means a review under section 99;
- (28) "representative" includes an employee;
- (29) "provable debt" means a debt provable under section 39 against the debtor;
- (30) "administrative expense" means any expense required to be made under this Act towards payment of any claim against the Estate arising after the order of adjudication and includes the Receiver's fee and the expense for the management, administration, sale or distribution of the Estate in accordance with the provisions of this Act;
- (31) "Criminal Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (32) "dividend" means such part of the Estate as is to be determined in accordance with the provisions of section 76 to 79 and to be paid to the creditors;
- (33) "Estate" means the Estate referred to in section 31(2) and also such property as are included in the Estate as part thereof in pursuance of the other provisions of this Act;
- (34) "rules" means rules made under this Act;

- (35) "special manager" means a special manager referred to in sub-section (8) of (9) of section 46;
- (36) "person" includes a company, statutory or other body, association and partnership firm;
- (37) "bank-debt" means a loan given or a financing benefit in respect of which a claim may be made by a bank company as defined in section 5(0) of the Banking Companies Act, 1991 (Act 14 of 1991) or by a financial institution as defined by section 2(j) of the Financial Institutions Act, 1993 (Act 27 of 1993);
- (38) "eligible debtor" means a debtor who is not an individual debtor;
- (39) "eligible creditor" means a creditor or creditors who, individually or jointly, raised a claim for a matured debt of at least taka 5,00,000·00 by sending a formal demand in accordance with the provisions of clause (i) of section 9(1);
- (40) "Receiver" means a Receiver appointed under section 64, and includes an interim Receiver appointed under section 23(1) or 46(3), and also an official Receiver appointed under section 74;
- (41) "debtor's estate" means the estate in the name of the debtor and also the estate in the name of his wife, son, daughter or any other person by benami.

3. **Application of other laws.**—The provisions of this Act shall be, unless otherwise provided therein, deemed to be in addition to, and not in derogation of, any other law for the time being in force.

## CHAPTER II

### CONSTITUTION, POWER AND PROCEDURE OF COURT

4. **Bankruptcy Court.**—(1) Subject to the other provisions of this Act, the District Court shall be the Court under this Act and the District Judge shall be the Judge to deal with and dispose of the proceedings under this Act within the territorial jurisdiction of that Court.

(2) The District Judge may authorise any Additional District Judge of his judgship to deal with and dispose of any case under this Act.

(3) The Court of a Judge referred to in sub-sections (1) and (2) shall be known as a Bankruptcy Court.

5. **Power of Court to decide all questions arising in bankruptcy.**—(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions, whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Notwithstanding anything contained in any other law for the time being in force, every decision given by a Court shall, subject to the provisions of this Act, be final and binding for all purposes as between, on the one hand the debtor and the debtor's estate and, on the other hand, all claimants against him and all persons claiming through or under such claimants or any of them.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (1), but has reason to believe that the debtor has a saleable interest in any estate, the Court may, without further inquiry, sell such interest in such manner and subject to such conditions as it may think fit.

6. **General powers of Court.**—Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers as it has in the exercise of original civil jurisdiction.

7. **Special powers of Court.**—(1) Where default is made by a debtor or other person in obeying any order or, direction given by the Court or given by the Receiver or any other Officer of the Court under any power conferred by this Act, the Court may, on the application of the Receiver or the said other Officer or on its own motion, order such defaulting debtor or person to comply with the order or direction so given, or upon finding good cause therefor, it may make an immediate order for the committal of such defaulting debtor or other person in civil prison on such terms and conditions as may be determined by the Court.

(2) The power given by sub-section (1) shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

8. **Procedure to be followed by Court.**—(1) Save as expressly provided by or under this Act, the provisions of the Civil Code, except section 11 thereof, shall not apply to any proceedings under this Act.

(2) The Court shall, in all proceedings under this Act, follow the procedure laid down in this Act and the rules.

## CHAPTER III

## ACT OF BANKRUPTCY, PLAINT, ADJUDICATION, ETC.

## Act of Bankruptcy

9. **Act of bankruptcy.**—(1) Any of the following acts of the debtor shall be an act of bankruptcy, namely:—

- (a) if, in Bangladesh or elsewhere, he makes a transfer of all or substantially all the property kept in his name or in the name of his wife, son or daughter's name by benami to a third person for the benefit of his creditors generally;
- (b) if, in Bangladesh or elsewhere, he makes a transfer of his property or property kept in the name of his wife, son or daughter by benami or of any part thereof with intent to defeat or delay his creditor's demand;

**Explanation.**—A person shall be deemed to have transferred his property or any part thereof with intent to defeat or delay his creditors, if he, without receiving reasonable value therefor, made such transfer at a time when he was unable to pay his debtors;

- (c) if, in Bangladesh or elsewhere, he makes any transfer of his property or of any part thereof or mortgages, pledges, hypothecates or creates charge thereon, which would, under this Act or any other enactment for the time in force, be void as a fraudulent preference if he were adjudged bankrupt;
- (d) if, with intent to defeat or delay his creditors—
  - (i) he departs or remains out of Bangladesh;
  - (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself;
  - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him; or
  - (iv) submits collusively or fraudulently to an adverse decree, judgement or order of any court or other authority;
- (e) if any of his property has been sold in execution of a decree of any court for the payment of money;
- (f) if he files plaint to the Court for being adjudged bankrupt under the provisions of this Act;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, the payment of his debts;

- (h) if he is imprisoned in execution of a decree of any court for the payment of debt; or
- (i) if one or more creditor, having a valid and matured debt against the debtor for an amount of not less than Tk. 5,00,000.00 has served on such debtor a formal demand under this Act requiring such debtor to pay the debt or to give security for it to the satisfaction of such creditor or creditors and, within 90 days after service of the demand, the debtor does not comply with the requirements of the demand.

(2) A formal demand under sub-section (1)(i) shall be in the prescribed form and shall state the consequences of non-compliance therewith, and shall be served in such manner as may be prescribed.

(3) For the purposes of this section, the Act of an agent may be considered as the act of the principal.

### Plaint

10. **Power of adjudication.**—Subject to the provisions of this Act, if a debtor commits an Act of bankruptcy, a Plaint may be presented either by one or more eligible creditors or by the debtor, and the Court may on such Plaint make an order, called an order of adjudication, adjudging the debtor a bankrupt.

11. **Persons subject to bankruptcy proceedings.**—(1) Any person, other than those specified in sub-section (2), shall be subject to bankruptcy proceeding under this Act, who—

- (a) is domiciled, or maintains his principal business-office in Bangladesh; or
- (b) at any time within a year immediately before filing of the plaint, ordinarily resided in, or had a dwelling house or a place of business in, Bangladesh;
- (c) generally carries on business in Bangladesh by agent.

(2) No Plaint shall be accepted by the Court against—

- (a) any Government organisation including Parliament and a judicial body;
- (b) any charitable or religious body;
- (c) such statutory bodies whose principal object is not financial gain;
- (d) any autonomous body established by or with the financial assistance of the Government.

**12. Conditions for filing Plaintiff by creditors.**—(1) A creditor shall not be entitled to file a Plaintiff against a debtor unless such creditor is an eligible creditor, and—

- (a) the debt owing by the debtor to the eligible creditor or, if two or more eligible creditors join in the Plaintiff, the aggregate amount of debts owing to such creditors amounts to Tk. 5,00,000·00;
- (b) such creditors have a prima facie case that the debtor has committed an act of bankruptcy; and
- (c) the act of bankruptcy, on the basis of which the Plaintiff is filed, has occurred within one year immediately before the presentation of the Plaintiff.

(2) If the said creditor is a secured creditor, he shall, in his Plaintiff, give an estimate of the value of the security, failing which he shall be deemed to have opted to be treated as an unsecured creditor.

**13. Conditions for filing Plaintiff by debtor.**—(1) A debtor shall not be entitled to file a Plaintiff unless he specifically mentions in the Plaintiff that he is unable to pay his debts and—

- (a) further mentions in the Plaintiff that his debts amount to Tk. 20,000·00; or
- (b) he is under arrest or imprisonment in execution of a decree of any Court for the payment of debt; or
- (c) an order of attachment in execution of such a decree has been made, and is sub-sisting against his property at the time of filing the Plaintiff.

(2) A debtor in respect of whom an order of adjudication under this Act has been annulled, owing to his failure to apply or to prosecute an application for his discharge, shall not be entitled to present a Plaintiff without the leave of the Court by which the order of adjudication was annulled.

(3) The Court shall not grant leave under sub-section (2) unless it is satisfied that—

- (a) the debtor was prevented by any reasonable cause from presenting or prosecuting his Plaintiff as the case may be; or
- (b) the Plaintiff is based on facts substantially different from those contained in the Plaintiff on which the order of adjudication was made.

14. **Plaint to be presented to competent Court.**—Subject to the provisions of section 4, every Plaint shall be presented to a Court having jurisdiction, in accordance with that section, in the local limits of which—

- (a) the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or is in custody; or
- (b) in the case of a debtor not being an individual, its head office or registered office is situated.

15. **Verification of Plaint.**—Every Plaint under this Act shall be in writing and shall be signed and verified in the manner prescribed by the Civil Code for signing and verifying plaints.

16. **Contents of Plaint.**—(1) Every Plaint presented by a debtor shall contain the following particulars, namely :—

- (a) a specific statement to the effect that the debtor is unable to pay his debts;
- (b) the detail particular of the place where he ordinarily resides or carries on business or personally works for gain or, if he has been arrested or imprisoned, the place where he is in custody, or if the debtor is not an individual, the location of its head office or registered office;
- (c) the description of the Court, if any by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree or judgement in pursuance of which any such order has been made;
- (d) the amount and particulars of all pecuniary claims against him, together with the names and addresses of his creditors so far as they are known to, or may, by the exercise of reasonable care and diligence, be ascertained by him;
- (e) the quantity and particulars of all his property, together with—
  - (i) a specification of the value of all such property not consisting of money;
  - (ii) the place or places at which any such property is to be found; and
  - (iii) a declaration of his willingness to place at the disposal of the Court all of his property, including the books of account :

Provided that in the case of debtor, the exempted property, if any, shall not be included in the property to be so placed.

- (f) a statement whether the debtor has, on any previous occasion, filed a **Plaint** or similar **Plaint** to be adjudged bankrupt in Bangladesh or elsewhere and, where such a **Petition** or **Plaint** has been filed—
- (i) if such **Petition** or **Plaint** has been dismissed, the reasons for such dismissal;
  - (ii) if the debtor has been adjudged bankrupt, concise particulars of the bankruptcy including a statement whether any previous adjudication has been annulled and, if so, the grounds therefor.
- (2) Every **Plaint** presented by a creditor shall, to the best of such creditor's knowledge, set forth the particulars regarding the debtor specified in clause (b) of sub-section (1) and shall also specify—
- (a) the act of bankruptcy committed by such debtor, together with the date on which such act was committed; and
  - (b) the amount and particulars of such creditor's claim against such debtor.
17. **Withdrawal of **Plaint**.**—No **Plaint**, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.
18. **Consolidation of proceedings.**—Where two or more **Plaints** are presented against the same debtor, or where separate **Plaints** are presented against joint debtors, the Court may, if it considers it proper, consolidate all or any of such proceedings on such terms as it considers necessary.
19. **Power to substitute **Plaintiff-Creditors**.**—Where a creditor does not proceed with due diligence on his **Plaint**, the Court may substitute any other eligible creditor as the **Plaintiff-Creditor**.
20. **Continuance of proceedings on death of debtor.**—If a debtor by or against whom a **Plaint** has been presented dies, the proceedings in the matter shall, unless the Court, for reasons to be recorded in writing, otherwise orders, be continued so far as may be necessary for the realization and distribution of the property of the debtor.
21. **Procedure for admission of **Plaint**.**—The procedure laid down in the Civil Code with respect to the admission of **Plaints** shall, so far as it is applicable be followed in the case of a **Plaint** filed under this Act :
- Provided that where a different procedure is prescribed under this Act or in the rules, that procedure shall be followed.
22. **Working Procedure after filing of **Plaint**.**—(1) When a **Plaint** is admitted the Court shall, for hearing the **Plaint**, make an order fixing such a date so that such date falls within sixty days of such order.



(2) Notice of the order under sub-section (1) shall be notified in the following manner, namely:—

(a) by giving it, in such practical means as the Court considers proper, to the Plaintiff or his lawyer or authorised representative;

(b) in the case of any person other than the Plaintiff, by any practicable means as the Court considers proper and also by publishing the substance of the Plaint and the order in two consecutive issues of at least two Bengali Daily Newspapers having wide circulation and published from the capital city.

23. **Appointment of interim Receiver.**—(1) The Court may, when making an order fixing a date for hearing a Plaint filed by a Creditor, and where the debtor is the Plaintiff, ordinarily shall, appoint an interim Receiver of the property of the debtor or of any part thereof, and may direct the Receiver to take immediate possession thereof, and the Receiver shall, thereupon, have such of the powers exercisable by a Receiver appointed under the Civil Code and also such of the powers specified in sections 65, 66, 67, 68, 69 and 71 of this Act, as the Court may direct.

(2) In appointing an interim Receiver, the Court shall follow the conditions set forth in section 64(1).

(3) If an interim Receiver is not so appointed, the Court may make such appointment at any subsequent time but before adjudication.

24. **Interim proceedings against debtor.**—At the time of making an order fixing a date for hearing the plaint or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely:—

(a) in the case of a debtor other than an individual debtor, order the said debtor to designate an individual as his representative to be called the Responsible Officer within such period as may be specified by it, and where the said debtor defaults in so designating, the Court shall designate one or more Responsible Officers who are owners of, or the case may be, directors or Chief Executives, by whatever name called, in relation to the activities or business of that debtor;

(b) order the debtors or, as the case may be, Responsible Officer, to prepare such reports, gather such property, enter into or refrain from such transactions, appear at such meetings or hearing and take such other actions as the Court deems appropriate;

- (c) order the debtor or the Responsible Officer to give reasonable security for his appearance until the *Plaint* is dismissed or an order of adjudication is made and direct that, in default of giving such security, he or, as the case may be, the Responsible Officer, shall be detained in the Civil Prison;
- (d) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, including his books of account but excluding his exempted property, if any;
- (e) order a warrant to issue with or without bail for the arrest of the debtor or, as the case may be, the Responsible Officer who has failed to comply with any order given under clause (b) or (c), and also direct either that such debtor or Responsible Officer be detained in the Civil Prison until the *Plaint* is dismissed or an order of adjudication is made, or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (d) or clause (e) shall not be made unless the Court is satisfied that the debtor or the concerned Responsible Officer, with intent to defeat or delay his creditors or to avoid any process of the Court,—

- (i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or
- (ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or about to conceal, destroy, transfer or remove from such limits, any property other than his exempted property or any documents likely to be of use to his creditors or the Court in the course of the hearing or during the period of bankruptcy of the debtor.

25. **Duties of debtors.**—(1) On the making of an order fixing a date for hearing the *Plaint* and at any time thereafter, the debtor shall, as required by the Court or the Receiver,—

- (a) produce all books of accounts;
- (b) give such inventories of his property and such lists of his creditors and debtors and of the debts due to and from them, respectively;
- (c) submit to such examination in respect of his property or his creditors or debtors;
- (d) execute necessary instruments in relation to properties; and
- (e) generally do all such other necessary acts and things.

(2) On and after the making of an order fixing a date for hearing the Plaintiff, and until the Plaintiff is dismissed, or if an order of adjudication is made, until it is annulled, or until the Court orders otherwise, the debtor shall be barred from filing any civil case or take other legal action against any creditor in respect of any claim.

**26. Release of arrested or detained debtor.**—(1) At the time of making an order fixing a date for hearing the Plaintiff or at any subsequent time, the Court may, if the debtor is under arrest or imprisonment in execution of a decree of any Court for the payment of money, order his release on such terms as to security as it deems reasonable and necessary.

(2) The Court may at any time order that any person who has been released under this section be re-arrested and recommitted to the custody of the same jail or custodian from which he was released.

(3) At the time of making any order under this section, the Court shall record in writing its reasons therefor.

**27. Debtor's written objection and hearing-procedure.**—(1) Where a Plaintiff is presented by an eligible creditor, the debtor may, before the date fixed by the Court, but not later than the date of hearing on the Plaintiff, file a short written objection, if any, to the Plaintiff; and the Government may, if it deems fit, prescribe by rules the form of such objection.

(2) On the day fixed for the hearing the Plaintiff or, subject to sub-section (3), on any subsequent day to which the hearing is adjourned, the Court shall require proof of the following matters, namely :—

- (a) right of the creditor or the debtor, as the case may be, in the matter of presentation of the Plaintiff :

Provided that, where the debtor is the Plaintiff, he shall, or the purpose of proving his liability to pay his debts, be required to furnish only proof as to satisfy the Court that there are prima-facie grounds for believing the same and the Court, if and when so satisfied, shall not be bound to further hear on the matter;

- (b) in the matter of presentation of the Plaintiff by the debtor and if he has not already appeared in response thereto, the debtor has been given notice under section 22(2); and
- (c) the alleged act of bankruptcy against the debtor.

(3) Hearing on the **Plaint** shall be held generally from day to day consecutively, and in no circumstance adjournment shall be given at a time for more than seven days, unless the creditor or creditors' who presented the **Plaint** agree to it:

Provided that the period or periods during which the hearing remains adjourned shall not exceed ninety days after the filing of the **Plaint**.

(4) The Court or, if directed by the Court, the Receiver shall examine the debtor, if he or the Responsible Officer is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor or the Responsible Officer on those matters.

(5) Subject to the time limit specified in sub-section (3), the Court may, grant time to the debtor, the Responsible Officer or to any creditor to produce any evidence on a matter raised by any of them, if the Court is satisfied that evidence thereon is necessary for the proper disposal of the **Plaint**.

(6) A memorandum containing the information revealed at the time of the examination of the debtor and the vital result of any oral evidence recorded at the time of hearing shall be made by the judge and that shall form part of the record of the proceedings.

**28. Dismissal of **Plaint**.—**(1) The Court shall dismiss a **Plaint** presented by a creditor, if—

- (a) the Court is not satisfied with the proof of—
- (i) such creditor's right to present the **Plaint**;
  - (ii) the service on the debtor of a notice of the order fixing a date for hearing the **Plaint** in accordance with section 22(2);
  - (iii) the alleged act of bankruptcy; or

(b) the debtor can satisfy the Court that—

- (i) he is able to pay his debts;
- (ii) he is not a wilful defaulter; or

(c) the Court is satisfied that for any other cause, it is expedient that no order of adjudication should be made.

**Explanation.**—In this sub-section "wilful defaulter" means a debtor who is liable for bank debt in excess of taka 5,00,000 (five lac) for a period of at least one year after the issue of formal demand.

(2) In the case of a **Plaint** presented by a debtor, the Court shall dismiss the **Plaint** if it is not satisfied about his right to present the **Plaint**.

**29. Award of compensation.**—(1) Where a **Plaint** presented by a creditor is dismissed under sub-section (1) of section 28, and the Court is satisfied that the **Plaint** was frivolous or vexatious, the Court may, on the application of the debtor, award against the creditor such amount, not exceeding Tk. 1,00,000 as compensation to the debtor for the expense or injury occasioned to him by the **Plaint** and the proceedings thereon, and such amount may be realized as if it were a fine.

(2) Where an award of compensation under sub-section (1) has been given, it shall bar any suit or any other Civil or Criminal proceeding under any other law for compensation or other remedy in respect of the **Plaint** and the proceedings thereon referred to in that sub-section.

### Order of Adjudication

**30. Order of adjudication.**—(1) If a **Plaint** is not dismissed, the Court shall—

(a) make an order of adjudication;

(b) in the case of an individual debtor, specify in the order—

(i) the date on which it shall first consider whether to grant the debtor a discharge pursuant to sub-section (3) of section 47 and that the debtor may apply for his discharge where the debtor himself is not the **Plaintiff**;

(ii) that the debtor may, prefer an appeal under section 96 against such order after making deposit of a sum, which shall not be less than ten per cent of the total amount claimed by the eligible creditors, as determined by the Court.

(2) The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that case the Court shall, in such manner as it considers appropriate, in form all concerned of such extension.

**31. Effect of order of adjudication.**—(1) On the making of an order of adjudication, the bankrupt shall assist to the utmost of his capacity in the realization of his property and the distribution of the proceeds among his creditors in accordance with the provisions of this Act.

(2) On the making of an order of adjudication, all the property of the debtor, except the exempted property, shall stand vested in the Receiver or, where no Receiver has been appointed, in the Court and shall become divisible among the creditors, and the property so vested shall be known as the Estate.

(3) Each creditor, to whom the debtor may be indebted in respect of any debt provable under this Act, shall in respect of such debt, be barred during the pendency of the bankruptcy proceedings from having any remedy against the exempted property of the debtor and the Estate or from commencing any civil case or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.

(4) Nothing in this section shall affect the right of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not passed.

(5) An order of adjudication shall be deemed to have taken effect from the date on which the Plaintiff was presented.

32. **Exempted property.**—Notwithstanding anything contained in any other provisions of this Act, the following property of an individual debtor shall not be liable to be taken over, or vested under section 23 or 31 respectively, and such property shall be known as exempted property, namely:—

- (a) the tools, if any, used by the debtor himself;
- (b) wearing apparel and household furnishing and other like accessories of himself, spouse and children;
- (c) debtor's un-mortgaged dwelling place or homestead, the area of which is not exceeding 2500 square feet of land or plinth in one or more than one storied building in the urban area or 5000 square feet of land or plinth in one or more than one storied building in any other area:

Provided that the total value of the articles specified in clauses (a) and (b) shall not exceed taka 3,00,000 (three lac).

33. **Transfer of pending cases, etc.**—(1) Notwithstanding anything contained in any other law for the time being in force, any court, in which a suit or other proceeding relating to a claim for money or other property is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, transfer it to the Court which has made the order of adjudication:

Provided that where an appeal or revision arising from such suit or other proceeding is pending in a superior court, such appeal or revision shall be transferred to the appellate court as specified in section 96.

(2) For the purposes of this Act, the Courts referred to in sub-section (1) and its proviso shall be deemed to be a Bankruptcy Court and an Appellate Court respectively; and where any of such courts makes any order allowing or refusing a transfer of a suit or other proceeding under this section, no question, except in the form of an appeal or revision under section 96 or, as the case may be, section 99, shall be raised in any other court in regard to that order.

34. **Publication of order of adjudication.**—(1) The Court, shall cause to be published a notice of an order of adjudication in the official Gazette and in such other manner as may be prescribed; such notice shall state the name, address and description of the bankrupt, the date of the adjudication, the period within which the debtor shall apply for his discharge and the name of the Court by which the adjudication is made and such other particulars as the Court may consider it proper to include therein.

(2) If, on the application of any creditor, the Court orders publication of the notice in any newspaper, it may require such creditor to bear the cost for such publication.

#### Interim proceedings consequent upon order of adjudication

35. **Protection order.**—(1) Any debtor, who has been adjudged bankrupt, may apply to the Court for protection from arrest or detention for any debt and the Court may, on such application and after giving notice thereof in such manner and to such of the creditors as it considers proper and after giving reasonable opportunity of hearing to such creditors, make an order for such protection of the debtor.

(2) A protection order may be made in respect of all the debts of the debtor, or of any of them as the Court may determine, and such order may take effect on such date and for such period as the Court may determine, and may be revoked or renewed as and when the Court thinks it proper to do so.

(3) A debtor shall not be arrested or detained in prison for any debt in respect of which a protection order has been made and any debtor arrested or detained contrary to the terms of such an order shall be released without delay on production of a copy of such order :

Provided that the protection order shall not operate to prejudice the rights of any creditor in the event of such order being revoked or the concerned order or adjudication annulled.

36. **Creditors' committee.**—(1) Where the number of eligible creditors is more than ten, the Court may order the Receiver to form a creditors committee in such manner as prescribed by rules or, in the absence of such rules, as the court may direct and such committee shall consist of such number of member not exceeding five, as the Court may direct.

(2) The creditor's committee formed under sub-section (1) may advise the Receiver in the discharge of his functions, who shall, as far as practicable but without contravening the provisions of this Act and the rules, abide by such advice.

37. **Power to arrest after adjudication.**—At any time after an order of adjudication has been made, the Court may, if it has reason to believe, on the application of the creditor's committee or any creditor or the Receiver, that the debtor or, as the case may be, the Responsible Officer has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been, or might be, imposed under this Act, order that a warrant be issued for his arrest, and on his appearing or being brought before it, may, if satisfied that he was absconding or had departed with such intent, order his release on such terms as to security as may be reasonable or necessary or, if such security is not furnished, direct that he shall be detained in the civil prison for a period which may extend to three months.

38. **Schedule of creditors and debts.**—(1) When an order of adjudication has been made, all persons claiming themselves to be creditors in respect of debts provable under this Act shall, in form prescribed by rules or by the Court, present a summarised demand containing the amount and particulars of the debt and shall tender proof of such debts by producing evidence thereof; and the Court shall, by order, determine the persons who have proved themselves to be creditors in respect of such debts, and the amount thereof respectively, and shall frame a schedule of such persons and debts:

Provided that, subject to sub-section (1) of section 39, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon such debt shall not be included in the Schedule.

(2) A copy of such Schedule shall be posted on the notice board or any other conspicuous place of the Court building.

(3) Where a Schedule has been framed under sub-section (1), any individual debtor may, at any time before the discharge of the bankrupt or, in the case of debtor other than an individual debtor, before the date specified by the Court in this behalf or, in the absence of such date, before the date as may be prescribed by rules, tender proof of the amount due to him and apply to the Court for an order directing his name to be entered in the Schedule as a creditor in respect of any debt provable under this Act and not entered in the Schedule, and the Court, after causing notice to be served on the Receiver and the other creditors who have proved their debts, and after giving reasonable opportunity of hearing on their objections, if any, shall either allow or reject the application.

(4) An application or objection under sub-rule (3) shall be in a summarised form and shall be filed in such form as may be prescribed by rules or, in the absence of any rules, as may be directed by the Court.

39. **Provable debts.**—(1) Debts which have not been included in the Schedule framed under section 38 on the ground that their value is incapable of



being fairly estimated, all such debts and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall be provable under this Act, unless the Court determines otherwise.

(2) All debts and liabilities, present or future, certain or contingent, to which a debtor, other than an individual debtor, is subject at any time before he is adjudged bankrupt, or in the case of an individual debtor, to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act unless otherwise determine by the Court.

### **Annulment of adjudication**

40. **Power to annul adjudication.**—Where, in the opinion of the Court, a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the debtor have been paid in full, the Court shall, on the application of the debtor or any other person interested, by order in writing, annul the adjudication, and the Court may, on its own motion or on an application made by the Receiver or any creditor, annul any adjudication made on the Plaint presented by a debtor who was, by reason of the provisions of sub-section (2) of section 13, not entitled to present such Plaint.

41. **Power to cancel one of concurrent orders of adjudication.**—If, in any case in which an order of adjudication has been made, it is proved to the Court by which such order was made that any bankruptcy proceedings or the like is pending in another court in Bangladesh or abroad against the same debtor, and the property of the debtor can be more conveniently distributed by such other court, the Court may annul the adjudication or stay all proceedings thereon.

42. **Proceedings on annulment of adjudication.**—(1) Where an adjudication is annulled, all sales and dispositions of any property of the debtor and payments duly made, and all acts done in relation thereto, by the Court or the Receiver before such annulment, shall be valid; and subject as aforesaid, the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions, if any, as the Court may, by order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in the official Gazette and also in such other manner as may be prescribed.

## CHAPTER IV

## COMPOSITION, ARRANGEMENTS AND REORGANIZATION

## Composition and Schemes of Arrangement

43. Compositions and schemes of arrangement.—(1) Where a debtor, after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, in this Chapter referred to as the Proposal, the Court shall fix a date for the consideration of the Proposal, and shall issue a notice to all creditors in such manner as may be prescribed, or in the absence of any rules, as the Court considers proper, and shall also direct the Receiver to examine the Proposal keeping in view of the information available on record and submit a report on the feasibility of the Proposal and thereupon the Receiver shall submit the report with specific opinion.

(2) If, in the consideration of the Proposal, two-thirds in value of all the creditors whose debts are proved and who are present in person or through an Advocate or other authorised agent resolve to accept the Proposal, and if the Court approves the Proposal, the same shall be deemed to have been duly accepted by all the creditors.

(3) The debtor may, during the consideration of the Proposal referred to in sub-section (2), amend the terms of his Proposal and the Court may, if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors, approve such amendment.

(4) Where the Court is, after hearing and considering the report of the Receiver on the Proposal and after considering any objections which may be made by or on behalf of any creditor, of opinion that the terms of the Proposal are not reasonable or not calculated to benefit the general body of creditors, the Court shall refuse to approve the Proposal.

(5) When any matter relating to the Proposal appears, on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the Proposal, unless, after such notice and hearing as the Court deems appropriate, the debtor provides a reasonable security for payment to his creditors :

Provided that security for payment of an amount of 15% to 65% per cent and 25% to 75% per cent of the total claims of unsecured creditors and creditors

holding bank debt respectively, as may be fixed by the Court, shall be deemed to be reasonable security for the purposes of this sub-section :

Provided further that, in fixing the reasonable security, the Court shall consider the following circumstances in relation to the debt, namely :—

- (a) if the debtor has suffered a misfortune for which he can not be held responsible, the degree of the misfortune;
- (b) the degree of risk associated with any enterprise for which the debtor received financing;
- (c) the actions of the debtor which are contrary to good sense or ethical conduct;

(6) No composition or scheme shall be approved by the Court which does not provide for the payment of the debts specified in section 75 in priority to other debts.

(7) In any other case, the Court may either approve or refuse to approve the Proposal.

44. **Order of approval and its effect.**—If any Proposal under section 43 is approved—

- (a) the Court shall specify the terms of approval by an order;
- (b) the Court shall clearly specify about the annulment of the order of adjudication, and accordingly the provisions of section 42 shall apply to such annulment; and
- (c) the approved composition or scheme shall be binding on all the creditors so far as it relates to any debt due to them from the debtor and provable under this Act.

45. **Power to re-adjudge debtor as bankrupt.**—(1) If the defaults in making payment of any instalment due in pursuance of the approved composition or scheme, or if it appears to the Court that the composition or scheme cannot be implemented without injustice to the creditors or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it considers proper in the circumstances, re-adjudge the debtor as bankrupt and annul the composition or scheme, but it will not prejudice the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme.

(2) When a debtor is re-adjudged as bankrupt under sub-section (1), all debts made by him before the date of such re-adjudication shall be provable in the bankruptcy proceeding.

### Reorganisation

46. **Reorganisation order.**—(1) At any time before or after an order of adjudication, an eligible debtor may apply to the court to reorganise his debts stating the grounds therein along with a plan of reorganisation.

(2) On receipt of an application under sub-section (1), and, on being satisfied that the applicant is an eligible debtor, the Court shall make an order fixing a date within 90 (ninety) days of such receipt for hearing of the application and shall give notice thereof to the Receiver, if any, and to the eligible creditors as are on record of the Court in such manner as specified in the rules, and in the absence of such rules, as the Court considers expedient.

(3) When fixing a date for hearing under sub-section (2), the Court shall, if a Receiver or interim Receiver has not already been appointed, appoint an interim Receiver.

(4) Upon fixing a date for hearing the application, the Court, if it considers it necessary,—

(a) apply the provisions specified in clauses (a) and (b) of section 24.

(b) direct the Receiver to examine the plan of reorganisation keeping in view the information available on the record of the Court and to report on the plan within a date specified by the Court, which date shall not be later than the day fixed under sub-section (2), and upon such direction, the Receiver shall accordingly submit a report along with his opinion on the feasibility of the proposed plan.

(5) The eligible creditors may, before the date fixed for hearing the application, file written objection or suggestion with regard to the proposed reorganisation and the Court, after hearing on the report, if any, submitted by the Receiver pursuant to sub-section (4)(b) and also application and objection or suggesting, if any, may make a reorganisation order in consideration of the following factors, namely :—

(a) national interest;

(b) interest of the creditors;

(c) interest of the debtor:

Provided that a reorganisation order shall not be made unless two-thirds in value of all the creditors, whose debts have been proved, have, either personally or through their Advocates or other authorised agent, given their written consent to the plan of reorganisation:

Provided further that in making a reorganisation order the Court may, subject to the rules made in this behalf, make such modification

in the plan of reorganisation and may impose such conditions as it considers necessary for protecting the interest of the dissenting creditors, the interest of various classes of creditors and the general body of creditors, and the modifications so made and the conditions so imposed shall form part of the plan of reorganisation.

(6) A reorganisation order shall be binding on the debtor and all creditors so far as it relates to any debt due to them and provable under this Act including any debt incurred before the dates of such order.

(7) An order of adjudication, if any, shall stand annulled upon a reorganisation order made under sub-section (5), but it will not prejudice the validity of any transfer or payment duly made or of anything duly done under this Act but subsequent to the order of adjudication.

(8) Upon a reorganisation order made sub-section (5), the Estate of the debtor shall stand vested in the Receiver, and the debtor shall, subject to the provisions of this Act and supervision of the Receiver, be the special Manager of his Estate including the business thereof, if any—

(9) The Court may,—

(a) on its own motion or on the application of the Receiver or any eligible creditor, and

(b) after giving notice to the person against whom the application has been made or, as the case may be, the eligible creditors or the Receiver, and after giving reasonable opportunity of hearing on the matter, appoint the Receiver or a third person to be the Special Manager, hereinafter referred to as the alternative Manager, in place of the debtor.

(10) The other provisions of this Act shall, subject to the provisions of this section, apply in the case of a reorganisation in the same manner as they apply to any bankruptcy proceeding under this Act.

(11) Where a reorganisation order is made,—

(a) all such property as is acquired by, or devolves on, the debtor after the filing of the Plaintiff and before the date of reorganisation order shall be included in the Estate;

(b) any creditor may prove his claim within the period specified by rules or, in the absence of such rules, at any time before the date specified by the Court;

(c) all such debts as are incurred by the debtor after the filing of the Plaintiff shall be deemed to be administrative demand;

- (d) the debtor may receive a discharge pursuant to the terms of an approved plan of reorganisation and upon order of the Court to that effect;
- (e) notwithstanding anything contained in section 47, the debtor may continue to possess and use a property of which he is in possession and the debtor's use of such property is necessary for the reorganisation, even if such property is subject to a lien, mortgage or other secured interests :

Provided that the Court may allow the secured creditor to take possession of such property, if the Court is satisfied that the secured creditor's interest in such property has not been adequately protected during the pendency of the reorganisation or if the debtor has no equity in the property :

- (f) the Receiver shall be entitled to a fee at the rate specified in section 66;
- (g) the Receiver shall, within such period as may be specified by rules or, in the absence of such rules, as may be determined by the Court, constitute a creditors committee consisting of not more than seven creditors having highest unsecured claims and willing to be included in the Committee.

(12) Keeping in view of any rules made in this behalf, the Court shall specify the following matters in the reorganisation order, namely:—

- (a) the power and duties of, and restrictions upon, the debtor with respect to management of the Estate and its business;
- (b) the manner in which the Receiver shall monitor such managements;
- (c) the matter on which the creditors committee may advise the Receiver;
- (d) the powers and duties of the Receiver with respect to such management and advise; and
- (e) the time limits and guidelines which shall apply to the implementation of the plan of reorganisation.

(13) After making the reorganisation order, if the Court, on its own motion or on the application of the Receiver or any eligible creditor, decides for reasons recorded in writing that the reorganisation order was improperly made, or it should be modified or withdrawn in view of changed circumstances, or the Special Manager or the alternative Manager is unable to implement the plan of reorganisation within a reasonable time acceptable to the creditors and the Court, the Court shall either modify or annul the reorganisation order and in the case of such annulment, shall proceed to make an order of adjudication which shall

relate back to the date of filing of the *Plaint* and thereupon the provision of this Act, other than this Chapter, shall apply to such proceeding:

Provided that such amendment or annulment shall not affect the validity of any transfer or payment duly made or anything duly done under the approved plan of reorganisation prior to such amendment or annulment thereof.

## CHAPTER V

### DISCHARGED AND UNDISCHARGED BANKRUPTS

47. **Discharge.**—(1) The Court may make an order of discharge with respect to an individual bankrupt, and such order shall have the effect of discharging the bankrupt from all claims, debts and liabilities provable under section 39 except expressly otherwise specified in the order.

(2) Where a *Plaint* is filed by the debtor, it shall be deemed that he has made prayer for his discharge also, and when a *Plaint* is filed by one or more eligible creditors, in that case the debtor shall apply for his discharge before the date specified under section 30(1)(b)(i).

(3) At the time of making an order of adjudication, the Court shall fix a date of hearing at which it will first consider whether or not the debtor shall be granted a discharge and such date shall be a date falling within sixty days after the date of the said order:

Provided that, if the examination of the bankrupt pursuant to sub-section (3) of section 27 has not been concluded, such hearing shall be adjourned.

(4) At the hearing under sub-section (3), the Court, if it is satisfied that the bankruptcy was the result of mere misfortune and not of any act of his moral turpitude or of his gross negligence contributing thereto, shall issue an order of discharge of the bankrupt forthwith.

(5) A bankrupt who has not been discharged under sub-section (4) may apply separately to the Court for a discharge, and the Court shall appoint a day for hearing such application, but such application shall not be heard until the examination of the debtor pursuant to sub-section (4) of section 27 is concluded.

(6) Where the debtor is a resident out of Bangladesh and is unable for want of means or for any other reason which the Court considers sufficient to prevent his return to Bangladesh, or where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as, in the opinion of the Court, makes

him unfit to attend his public examination, the Court may make an order dispensing such examination or directing that the debtor be examined on such terms, in such manner and at such place as it considers appropriate.

(7) Notice of the hearing on the application for discharge shall be given to each creditor as are on the record of the Court in such manner as may be specified in the rules and, in the absence of rules, as the Court may direct.

(8) At the hearing, the Court shall hear the Receiver and may also hear any creditor and may put such questions to the debtor and receive such evidence as it considers necessary.

48. **Matters likely to affect discharge.**—(1) On hearing the application submitted under sub-section (5) of section 47, the Court—

- (a) shall direct the Receiver to make and submit a report as to the debtor's general conduct and affairs including the debtor's conduct during the proceedings relevant to his bankruptcy;
- (b) after considering such report, may either grant or refuse an absolute order of discharge, or grant an order of discharge subject to any conditions with respect to any earning or income which may become due to, or be acquired by, the debtor subsequent to such order.

(2) The Court may refuse to make an order of discharge or suspend the operation of such order for a specified period, if it is satisfied that—

- (a) the debtor has committed any offence under this Act or section 421, 422, 423 or 424 of the Penal Code; or
- (b) any of the facts specified in sub-section (4) has been proved;

Provided that the Court may attach a condition in the suspension order to the effect that subject to the debtor deposit in the Court an amount equal to at least 50% of his total debts, may order the withdrawal of the order of suspension.

(3) If, at any time after the expiry of two years from the date of any conditional order made under this section, the Court is satisfied in respect of an undischarged bankrupt that there is no reasonable probability of his being in a position to comply with the condition of that order, the Court may modify the order or any subsequent order in such manner and upon such conditions as it considers appropriate.

(4) The facts referred to in sub-section (2)(b) are as follows :—

- (a) that the debtor has omitted to maintain such books of account as would sufficiently disclose his business transactions and financial position



within three years immediately preceding the order of adjudication or within such shorter period immediately preceding that order as the Court may fix in consideration of the prevailing circumstances;

- (b) that the debtor continues his trade after knowing or having reason to believe himself to be a bankrupt;
- (c) that the debtor has contracted any debt without having, at the time of contracting it, any reasonable ground of expectation for making it possible for its repayment the burden of proof of the expectation for repayment shall lie on the debtor;
- (d) that the debtor has brought about or contributed to his bankruptcy by rash speculations, or extravagance in living, or by recklessness, or for want of reasonable care and attention to his business and affairs;
- (e) that the debtor has delayed or put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other legal proceeding properly brought or instituted against him;
- (f) that the debtor has given an undue preference to any of his creditors within 3 months immediately preceding the date of the filing of the Plaintiff;
- (g) that the debtor has, in Bangladesh or elsewhere, on any previous occasion, been adjudged bankrupt or in the matter of repayment of his debt a composition or arrangement with his creditors or a plan of reorganisation has been approved;
- (h) that debtor has been found guilty of any fraud;
- (i) that the debtor has, within 3 months immediately preceding the date of the filing of the Plaintiff, sent goods out of Bangladesh under circumstances which afford reasonable grounds for believing that the sending was not a bonafide commercial transaction;
- (j) that the assets of the Estate are not of a value equal to 50% of the amount of the debtor's unsecured liabilities, unless he satisfies the Court that this situation has arisen from circumstances for or in respect of which he cannot justly be held responsible.

(5) For the purposes of this section, the report of the Receiver shall be prima-facie evidence of the statements therein contained.

(6) The Court may, as one of the main conditions that may be attached under this section, require the debtor to consent to a determination against him made by the Receiver for any balance, or part of the balance, of the debt provable in the bankruptcy proceeding which is not satisfied at the date of the order of discharge.

(7) Where, pursuant to sub-section (6), the debtor consents to a determination of the Receiver, no proceeding, without leave of the Court, shall be taken for the realisation of the balance or part thereof referred to in that sub-section, and the Court may grant such leave on proof that the property acquired or the income or the portion of it earned by the debtor since his discharge is sufficient for payment of his debts.

(8) For the purposes of this section, the following presumption shall be made, namely :—

- (a) if the debtor appears in the Court at any stage of a bankruptcy proceedings, and he is adjudged bankrupt, whether before or after such appearance, it shall be presumed that he knew or had reason to believe himself to be a bankrupt;
- (b) if the Receiver reports to the Court that the value of the assets of the Estate which have been realized, together with the estimated value of the assets which are realizable, is not sufficient to pay 50% of the debts proved in the Court, the Court shall presume, until the contrary is proved, that the debtor has continued to trade after knowing or having reason to believe himself to be bankrupt :

Provided that in determining whether a debtors knew or had reason to believe himself to be a bankrupt at any particular date, every debt owing to him which had been at that date due for more than 12 months shall be excluded for the purpose of computation of the value of the said asset;

- (c) a debtor shall be presumed to have continued to trade after knowing or having reason to believe himself to be a bankrupt, if he continued to trade after he was in fact adjudged bankrupt, and he—
  - (i) is unable to satisfy the Court that he had reasonable ground for believing himself to be solvent; or
  - (ii) fails, without reasonable excuse, proof whereof shall lie on him, to produce a proper balance-sheet for each of the 3 years immediately preceding the date of filing of the Plaintiff;
- (d) until the contrary is proved, any preference given by the debtor to any creditor within the 3 months immediately preceding the date of filing the Plaintiff shall be presumed to be undue and paid without reasonable cause.

**49. Consequences of failure to apply for discharge, etc., If—**

- (a) the debtor fails to appear on the day specified under section 30(1)(b)-
  - (i) or on such subsequent day as the Court may, subject to section 50(1), direct, for hearing the matter of his discharge, or

- (b) the debtor does not apply for an order of discharge before the date specified under section 50(1), or
- (c) after hearing the debtor's application therefor, the Court determines that granting of discharge shall not be proper, the Court shall make an order declaring the debtor an undischarged bankrupt.

(2) Where a debtor has been released from the custody under the provisions of this Act and is declared an undischarged bankrupt under sub-section (1), the Court may, if it thinks fit, recommit the debtor to his former custody, and the officer in charge of the prison to whose custody the debtor is so recommitted shall receive him into his custody, and thereupon all processes which were in force against the person of debtor at the time of such release as aforesaid shall be deemed to be still in force against him.

50. **Undischarged bankrupt.**—(1) When an order of adjudication has been made,—

- (a) the bankrupt shall, within 60 days thereafter, file an application to the Court for his discharge;
- (b) upon an application being filed within that period the Court shall fix a date, after the said period but not beyond the 30th day thereafter, for hearing, and shall give notice thereof to the Receiver and the creditors on record of the Court in such manner as specified in rules or, in the absence of rules, as the Court considers proper;
- (c) after giving reasonable opportunity of hearing the concerned parties present, the Court may make an order discharging the bankrupt; and
- (d) in the event of a discharge being not granted, the debtor shall continue to remain an undischarged bankrupt.

(2) An undischarged bankrupt—

- (a) shall, after every 6 months, submit to the Receiver an account of all moneys and property which have been acquired by him or which have come to his hands during the preceding 6 months and shall pay over to the Receiver for the benefit of the Estate so much of the said moneys and property as have not been spent for maintenance of the bankrupt and his family;
- (b) shall not leave Bangladesh without the previous permission of the Court.

(3) If an undischarged bankrupt—

- (a) defaults in complying with the provisions of sub-section (2)(a), he shall be punishable with imprisonment for one year or with fine or with both;

(b) contravenes the provision of sub-section (2)(b), shall be punishable with an imprisonment for two years or with fine or with both.

51. **Effect of order of discharge.**—(1) An order of discharge shall not release the debtor from the liabilities of the following debtors, namely :—

(a) any debt due to the Government :

Provided that the Government may, by notification in the official gazette, specify, from time to time, such class of Government dues in respect of which the Court may grant discharge to a debtor;

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party;

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

(d) any liability under an order for maintenance given under section 488 of the Criminal Code or the provisions of the Family Court Ordinance, 1985 (XVIII of 1985).

(2) Subject to the provisions of sub-section (1), an order of discharge shall release the debtor from all other debts improvable under this Act.

(3) An order of discharge shall not release any person who, at the date of filing the Plaint was a partner of, or co-trustee with, the debtor, or was jointly bound or had made any joint contract with the debtor, or was surety for the debtor.

(4) An order of discharge shall be conclusive evidence of the bankruptcy of the debtor and of the validity of the bankruptcy proceedings, and he may, in any other proceedings in relation to the debt or claim, in respect of which the debtor has been granted a discharge, plead that the cause of action for the bankruptcy proceedings occurred, and he may further plead that the claim or debt arose before the date of filing the Plaint and that the said other proceedings is barred by the order of discharge.

(5) A discharged debtor shall, notwithstanding his discharge, give such assistance as the Receiver requires in the realization of such of his property as is vested in, and realisable by, the Receiver, and if he fails to do so, he shall, on conviction, be punishable with an imprisonment which may extend to one year and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made, or anything duly subsequent to the discharge, but before such revocation.

## CHAPTER VI ADMINISTRATION OF PROPERTY

### Method of Proof of Debts

52. **Debts payable at a future time.**—A creditor may prove a debt which is payable not at the date when the debtor is adjudged bankrupt, but at a subsequent date, and may receive dividends equally with the other creditors, but a rebate of interest at the rate of six percent per annum, computed from the declaration of the dividend upto the time when the debt would have become payable, according to the terms on which it was contracted, shall be deducted from the dividend.

53. **Mutual dealings and set-off.**—Where there have been mutual dealings between a debtor and a creditor proving or claiming to prove a debt under this Act, an account shall be made of what is due from one party to the other in respect of such mutual dealings, and the sum due from one party shall be set-off against any sum due from the other party, and the balance of the account may be claimed by or paid to either side to whom it is due.

54. **Secured creditors.**—(1) Where a secured creditor realizes his security, he may prove for the balance due after deducting the net amount realised.

(2) Where a creditor does not realize his security, whether partly or fully, before the date of order of adjudication, the property subject to security shall, notwithstanding the provision of section 31(2), stand vested in the Receiver or, as the case may be, in the Court on that date and the possession thereof shall be immediately taken over.

(3) Where the Receiver, subject to any direction of the Court, finally determines the realizable value of such property and if it is—

- (a) sufficient to satisfy any secured creditor's claim in respect of his security and proved in the Court, the Receiver shall—
  - (i) sell the property and pay the full amount of such claim less the Receiver's fee specified in section 66 and also the expense of the sale; and
  - (ii) after payment as aforesaid, the remaining amount of the sale shall form part of Estate; and
- (b) not sufficient to fully satisfy such claim, the Receiver shall, at the option of the secured creditor—
  - (i) sell the same and pay the proceeds over to the creditor, less the expense of sale, and Receiver's fee as specified in section 66; or

(ii) deliver such property to the creditor together with an appropriate document of title pursuant to sub-section (6).

(4) Where a secured creditor relinquishes his security in favour of the Estate he may prove for his whole debt.

(5) The secured creditor may claim against the Estate for any deficiency in the value of the property received by him under sub-section (3)(b)(ii) as against the amount due on such creditor's claim.

(6) The Court shall execute such documents of title and issue such orders under the seal of the Court as are necessary to give effect to the provisions of sub-section (3)(b)(ii); and the purchase or, as the case may be, the creditor shall bear the cost of preparing the document including that of registration, if necessary, failing which the property shall, under section 31(2), remain vested in the Receiver or, as the case may be, in the Court.

55. **Interest.**—(1) Where on any debt interest is not reserved or agreed for, and which is overdue at the date when the debtor is adjudged bankrupt and which is provable under this Act, the creditor may prove the demand for interest at a rate not exceeding six percent per annum, if—

- (a) the debt is payable at a certain time by virtue of a written instrument, in such case the interest shall be payable for the period from the time when the debt was payable upto the date of such adjudication; or
- (b) the debt is payable otherwise, from the time when a demand has been made giving the debtor a notice that interest will be claimed from the date of the demand until the time of payment thereof, but not later than the date of such adjudication.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding two percent of the prevailing bank rate per annum; but such calculation shall not affect the right of a creditor to receive out of the Estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

56. **Mode of proof.**—(1) A debt may be proved by delivering or sending by registered post to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the documents, if any, by which the same can be substantiated; and the Court may at any time call for the production of the documents.

**57. Expunging etc. of any debt from schedule.**—(1) Where the Receiver finds that the amount or any particulars of a debt has not been properly entered in the schedule, he shall apply to the Court for expunging or reducing the amount of debt, and the Court may after notice to the debtor and the concerned creditor, and after such inquiry, as it considers necessary, expunge or modify such entry or reduce the amount of the debt.

(2) The Court may also, after like notice and inquiry, expunge or modify an entry or reduce the amount of a debt upon the application of a creditor or the creditor's committee, if the Receiver declines to apply under sub-section (1), or, in the case of a composition, scheme or arrangement or plan or reorganisation, upon the application of the debtor.

#### **Effect of bankruptcy on previous transactions**

**58. Restriction on rights of creditor at the time of execution of decree.**—

(1) Where execution of a decree has been ordered against the property of a debtor, no person shall be entitled to the benefit of the execution against the Receiver but the sale proceeds of the assets realised in the course of the execution by sale or otherwise before the date of filing the Plaint shall be exception to this.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the Receiver.

**59. Duties of Court executing decree as to debtor's property.**—(1) where in the Course of execution of a decree, a decree has been ordered against any saleable property of a debtor and before the sale thereof notice has been given to the court executing the decree that a Plaint by or against the debtor has been filed under section 10, such court shall order the vesting of the property to the Receiver, if at that time it is in the possession of the Court but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so vested, and the Receiver may sell the property or part thereof for the purpose of satisfying the charge.

**60. Nullification of certain transfers.**—(1) The Court may, by order, nullify the transfer of any property of the debtor, whether made by the debtor himself or by his legal representative or his heirs or administrator or other authorised person within fifteen years immediately preceding the date of the order of adjudication, if the Court is satisfied that the transfer was made to defeat any

debt owned by the debtor, but the nullification shall not be applicable to the following transfers, namely:—

- (a) a transfer in favour of a purchaser or encumbrancer for a proper value consisting of goods;
- (b) a transfer of a property acquired by way of inheritance;
- (c) a transfer made, at any time within six years immediately preceding the date of the order of adjudication, in favour of a person who proves that at the time of transfer the debtor was able to pay, without the aid of the transferred property, all the claims made in the bankruptcy proceeding.

(2) Where an order under sub-section (1) is made nullifying a transfer, the property shall form part of the Estate and shall stand vested in the Receiver or, as the case may be, in the Court, and accordingly possession thereof shall be taken over immediately.

**61. Nullification of preferences.—(1) Where—**

- (a) a debtor transfers in any manner any of his property, or makes any payment or incurs any obligation in relation to his property, or allows himself to be affected by a judicial proceeding in favour of a creditor at a time when he is unable to pay his debts as they become due, and
- (b) such transfer or payment or obligation or the proceeding has the effect of giving any preference to that creditor or surety or guarantor in relation to the debt due to that creditor; and
- (c) the debtor is adjudged bankrupt, or a reorganisation order is made, on a Plaint presented within one year after the date of such transfer or payment or obligation or initiation of the judicial proceeding, the transfer or payment made, or obligation incurred or the result of the proceeding shall be deemed to be fraudulent and void as against the Receiver; and the Court shall nullify the transfer, payment, obligation or the result of proceeding; and thereupon the Receiver shall recover the property transferred or the payment made:

Provided that the Court shall not nullify any payment made to a creditor in the ordinary course of business, or to the extent that the creditor, being a regular supplier of goods or services to the debtor, provides additional goods or services on credit to the debtor after receipt of such payment.

(3) This section shall not affect the rights of any person who, in good faith and for valuable consideration, has acquired title through or under a creditor of the bankrupt.



**62. Person to apply for nullification.**—The person entitled to apply for nullifying any transfer, payment, obligation or judicial proceeding under section 60 or 61 is the Receiver or a Creditor's Committee, if any, or, with the leave of the Court, any creditor who has proved his debt and satisfied the Court that the Receiver or the Creditor's Committee has failed to apply accordingly or to take steps in a proper manner to that end.

**63. Protection of bonafide transactions.**—Except as provided in sections 50, 59, 60, 61 and 62, nothing in this Act shall invalidate the following matters, namely:—

- (a) any payment made by the debtor to any of his creditors ;
- (b) any payment of delivery made to the debtor ;
- (c) any transfer made by the debtor for valuable consideration ; or
- (d) any contract or dealing by or with the debtor for valuable consideration;

Provided that the protection under this section in relation to the above matters shall be allowed only if—

- (i) the payment, delivery, transfer, contract or dealing took place before the date of the order of adjudication or order of reorganisation ;
- (ii) the person to or with whom the payment, delivery, transfer, contract, or dealing was made had at that time no notice of the presentation of the Plaintiff by or against the debtor or of the commission by the debtor of any act of bankruptcy ; and
- (iii) the debtor received reasonable and valuable consideration, delivery, transfer, contract or dealing made by him.

#### **Realization of Property**

**64. Appointment of Receiver etc.**—(1) Upon making an order of adjudication, the Court shall, subject to the following conditions, appoint from the approved list of Receivers maintained by the Government such person as the Court thinks fit to be the Receiver:—

- (a) the Court may confirm any interim Receiver as permanent Receiver ;
- (b) in appointing a person as Receiver, the Court must be satisfied that he has no personal interest in the proceedings ;
- (c) While appointing a Receiver, the Court shall consider the desire of the Plaintiff-creditors or such other creditors who have a significant amount of claim against the debtor ;

- (d) the post of Receiver shall be distributed evenly among the persons included in the list of Receivers ; and
- (e) where a person appointed as Receiver is, for any reason not available or is unable to act as such, and no other person can be appointed from the approved list for reasons to be recorded in writing, the Court may appoint any person not included in that list to act as Bankruptcy Receiver.
- (2) While referring a Receiver in any correspondence or other document, his name along with the number of the concerned bankruptcy proceeding and the names of the bankruptcy Court and of the debtor shall be mentioned.
- (3) For carrying out the purposes of this Act, the Court may—
- (a) appoint such other officers and employees as it considers necessary to assist the Receiver in the discharge of his powers and functions ; and
- (b) subject to any rules made in this behalf, determine the terms and conditions of service of the persons so appointed including their remuneration which shall be paid out of the fees specified in section 66.
- (4) The Court may, subject to any rules made in this behalf, at any time remove any Receiver and also any other officer or employee appointed by the Court under sub-section (3).

**65. General Powers, functions and liabilities of Receiver.**—(1) A Receiver of the concerned Estate shall have the power to act, sue and be sued on behalf of the Estate and, with the identification referred to in section 64(2), may hold property of every description, make contracts, compromise or refer to arbitration any claims by or against the Estate, enter into any engagements binding the Estate and do all other acts necessary or expedient to be done in the discharge of the functions of his office.

(2) Subject to any direction given by the Court, the Receiver shall administer the Estate and collect, sell and liquidate the Estate or any part thereof and distribute the proceeds thereof to the creditors and other persons entitled thereto as provided in this Act.

(3) The Receivers shall act under the general direction and superintendence of the Court.

(4) Subject to any direction of the Court, the Receiver shall remove any person having unauthorised possession or custody of any property of the Estate ;

and for this purpose the Receiver shall be entitled to seek through Court the assistance of the Police or other authority:

Provided that the Court may allow any such person to retain possession or custody of property if it is in the best interest of the Estate and the creditors:

Provide further that, notwithstanding anything contained to the contrary in any other law for the time being force, no court other than the Bankruptcy Court shall have jurisdiction to decide any question as to whether a person is in lawful possession or custody of a property which is prima-facie part of this Estate.

(5) Where a Receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the balance due from him thereon as the Court directs, or
- (c) occasions loss to the Estate or any part thereof by his wilful default or gross negligence, the Court may direct his personal property to be attached and sold, and may apply the proceeds to make good the said balance or the loss.

66: Fees of Receiver etc.—(1) Subject to the approval of the Court and the provision of section 64(3) (b), the Receiver shall be entitled to take from the sale proceeds of the assets realized out of the Estate a fee of—

- (a) an amount not exceeding 10% of the first Tk. 10,00,000 or part thereof;
- (b) 5% of the amount in excess of Tk. 10,00,000 but not exceeding Tk. 2,00,00,000; and
- (c) 1% of any amount in excess of Tk. 2,00,00,000.

(2) A Receiver shall also be entitled to the reimbursement of all expenses actually incurred by him in realizing and distributing the assets of the Estate or any part thereof, including the expense for giving reward under section 71(4).

(3) Where the Receiver, pursuant to section 55, sells a property for the benefit of the secured creditor or jointly for the benefit of the secured creditor and the Estate, he shall ordinarily be entitled to a fee, subject to the approval of the Court and the provisions of sections 54(3) (b), of not more than 4% of the value of such property sold, and the remaining portion of the sale proceeds, after deducting the amount spent on the expense of the sale, shall be included in the Estate.

**67. Examination by Receiver etc.—**(1) The Receiver shall—

- (a) examine the debtor or the Responsible Officer in respect of the Estate;
- (b) investigate the conduct of the debtor or the Responsible Officer;
- (c) submit a report to the Court stating whether there is reason to believe that the debtor or any other person has committed any act which constitutes an offence under this Act or under the Penal Code in relation to the Estate, or which would justify the Court in refusing or suspending a discharge or in attaching conditions thereto;
- (d) submit such other reports to the Court concerning the conduct of the debtor or the Responsible Officer as the Court directs;
- (e) if he is an interim Receiver, take such part in the examination of the debtor or the Responsible Officer as is reasonably necessary for carrying out the purposes of section 23(2) or this section or as the Court may direct in this behalf;
- (f) take part and give assistance in the prosecution of any debtor or any other person charged with any offence under this Act.

(2) With respect to a debtor, not being an individual, as soon as his investigation is reasonably completed, the Receiver shall prepare and file in Court a list of Officers, Directors, Partners, Owners and other persons who appear to be liable to contribute to the Estate by reason of such persons' having received any unlawful benefit from the debtor's property.

(3) Where it appears to the Receiver in the course of his investigation that a debtor or any other person has been guilty of an offence under this Act or under sections 421, 422, 423 or 424 of the Penal Code, the Receiver may, after consultation with the Public Prosecutor, take necessary step to institute criminal proceedings against the debtor or such other person, if he considers that there is a reasonable possibility that the debtor or other person may be convicted.

**68. Management of Estate, etc.—**(1) Upon his appointment, the Receiver shall immediately take—

- (a) physical possession of all documents, books of account and other documents in the possession or control of the debtor in respect of the Estate;
- (b) physical possession of all such article or items of property of the Estate as are capable being taken over;
- (c) constructive possessions of such other documents and items of the Estate as are not capable of being taken over physically;

(d) for the purpose of enforcing the taking over of the possession as aforesaid, necessary assistance from the Court including action under section 65(1);

(2) Every document and item of the Estate of which the Receiver takes possession shall be preserved and managed by him for the best interest of the creditors and for the distribution thereof among the creditors in accordance with the provisions of this Act.

(3) For the carrying out of purposes of sub-section (2), the Receiver shall have regard to the desires of the creditors as far as practicable, and for the purpose of ascertaining their desires he shall—

- (a) where a creditor's committee has not been constituted, convene meetings of creditors at such time and in such manner as may be specified by rules or, in the absence of rules, as he may consider necessary from time to time, or when requested by the creditors holding atleast 50% of the total value of the debt as are on the record of the Court;
- (b) where a creditor's committee has been constituted, convene meetings of the creditors committee at such time and in such manner as may be specified by rules or, in the absence of rules, as he may consider necessary or when requested by majority members of the creditor's committee;
- (c) preside over such meetings and shall cause to be recorded the minutes of the meetings;
- (d) inform the creditors or, as the case may be, creditors' committee of the subject matter of examination of the debtor held under section 67 and the summarized results thereof;
- (e) in the case of a reorganisation, inform the special manager and give him reasonable opportunity to present his proposal and views, if any, on the issues to be discussed in the meeting.

69. **Action against persons indebted to debtor.**—(1) As soon as possible after an order of adjudication has been made, the Receiver shall, on the basis of any information received from the bankrupt or otherwise, prepare and file in Court a list of persons who are prima-facie indebted to the bankrupt specifying against the name of each such person along with the amount of his debt or the extent of his indebtedness.

(2) After filing the list under sub-section (1), the Receiver shall—

- (a) send to each enlisted person a notice specifying the amount of his debt or the extent of his indebtedness;

- (b) also state in the notice that if such person does not appear in the Court, on or before a date specified therein, and expresses his intention in writing to object to the matter of his indebtedness as specified in the notice, it shall be presumed that he has consented to such indebtedness and that the debt shall be realized as part of the Estate ;
- (c) serve the notice in such manner as may be specified by rules or, in the absence of rules, as the Receiver, subject to any direction of the Court, considers proper.
- (3) Where an enlisted person—
- (a) does not appear in the Court pursuant to a notice under sub-section (2), the Court shall, on proof by the Receiver, make an order specifying amount or extent of the indebtedness of that person along with a finding as to the time when it become or becomes due, and thereupon the Receiver shall realize the debt ;
- (b) appears in the Court on or before the date specified under sub-section (2) (b) and files a written objection against the alleged indebtedness, the Court shall, within a period not exceeding 20 days from that date and after giving him and the Receiver a reasonable opportunity of proving their respective claims, make an order specifying, the amount or extent of the indebtedness, if proved, along with a finding as to the time when it become or becomes due, and accordingly the Receiver shall realise the debt.
- (4) While making an order under sub-section (3) in favour of the Receiver, the Court shall also specify the cost including Advocates' fee, if any, in relation to the proceedings and such cost shall be realized by the Receiver in addition to the actual debt specified by the Court.

70. **Power of Court if no Receiver appointed.**—Where no Receiver is appointed or where the office of a Receiver at any time falls vacant, the Court shall have all the rights of, and may exercise all the powers conferred on, a Receiver under this Act.

71. **Certain powers and duties of Receiver.**—(1) Subject to the provisions of this Act, the the Receiver shall realize speedily all the property of the Estate and distribute the same as dividends to the creditors entitled thereto, and for that purpose may—

- (a) sell all or any part of the Estate, including the debtor's on-going business, if any, its goodwill and the book debts due or becoming due to the debtor, by public auction or private sale, and if necessary, may also empower any person to sell or otherwise transfer the whole thereof to any third person or to sell the same in parts.

- (b) give receipt for any money received by him, which receipt shall effectually discharge the person paying the money from all responsibility in respect of the application of such money by the Receiver;
- (c) in respect of such Estate for which he has been appointed, claim, prove and receive money or any other thing on its behalf;
- (d) deal with any right or property to which the debtor is entitled in the same manner as the debtor might have dealt with it;
- (e) exercise any powers exercisable by a Receiver under any other provision of this Act, and in particular, for the purpose of carrying into effect the provisions of this Act, execute any power of Attorney or any other kind of instrument.

(2) Subject to any general or special orders of the Court, the Receiver, if he deems it necessary in the best interest of creditors, may—

- (a) carry on the business of the debtor so far as is necessary for the beneficial winding up of the same or may sell the same;
- (b) institute, defend or continue any suit or other legal proceeding relating to the Estate or any part thereof;
- (c) with the permission of the Court, employ an Advocate to take any proceedings or do any business;
- (d) as consideration for the sale of any property of the Estate, accept a sum of money payable at a future time subject to such stipulations as to security or otherwise as the Receiver deems fit;
- (e) mortgage or pledge any part of the property of the Estate for the purpose of raising money for the payment of debt proved against the debt; or
- (f) refer any dispute to arbitration or compromise with respect to any debts, claims and liabilities, present or future, certain or contingent, liquidated, subsisting or supposed to subsist between the debtor and any other person or on the basis of mutual consent compromise the same on receipt of such sums at such time and conditions as may be agreed on;
- (g) make such compromise or other arrangement as he considers necessary and expedient with the creditor or persons claiming to be creditors in respect of their claims.
- (h) make such compromise or other arrangement, as he considers necessary and expedient, with respect to any other claim made or capable of being made against the Estate; and

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot easily or advantageously be sold.

(3) The Receiver shall, within the scope of sections 59, 60, 61 and 62, recover any property transferred by or taken from the debtor prior to the date of filing the plaint.

(4) If any information which assist the Receiver in locating or recovering any property of the Estate is provided by any persons other than the debtor, Receiver may, with the permission of the Court give a reward of upto 15% of the value of the property actually recovered.

**72. Power to require information regarding bankrupt's property.**—(1) At any time after an order of adjudication has been made, the Court or the Receiver may, on the application of the creditor's Committee or any creditor who has proved his debt,—

- (a) by written notice direct any such person to appear before the Court or the Receiver who is known or suspected to have in possession of any property belonging to the debtor or supposed to be indebted to the debtor, or any person whom the Court or the Receiver considers capable of giving information respecting the debtor, his dealings or property of the Estate; and
- (b) require any such person to produce before the Court or the Receiver any document in his custody or power relating to the debtor or to the Estate, dealings or property.

(2) If any person so directed, after having been tendered a reasonable sum as cost of his appearance, fails or refuses to appear before the Court or the Receiver at the time appointed or fails or refuses to produce any such document, having no lawful impediment made known to and allowed by the Court or the Receiver may, by warrant, cause him to be apprehended and brought up for examination.

(3) Where a person, pursuant to this section, appears or is brought before the Court or the Receiver, it or he may examine such person concerning the debtor or his Estate dealings or property, and such person may also engage Advocate for this purpose.

**73. Directives to Receiver.**—Subject to the provisions of this Act, the Receiver shall—

- (a) have regard to the directives given by any resolution of the creditors at any general meeting and to any advice given by any creditors' committee;



(b) use his own discretion in the administration of the Estate.

74. **Official Receiver.**—(1) The Government may appoint such number of persons to be called “official Receiver” to act as the Receivers for such local limits or for such class of bankruptcy proceedings as it may consider necessary.

(2) Where any Official Receiver has been appointed under sub-section (1), he shall be the Receiver or, as the case may be, the interim Receiver for every bankruptcy proceedings arising within his local limits as specified under that sub-section, unless the Court, for reasons to be recorded in writing, otherwise directs.

(3) Notwithstanding the provisions of section 66, every Official Receiver shall receive such remuneration as the Government may, from time to time, specify in this behalf, and no remuneration beyond that so specified shall be received by the official Receiver without the Court's approval.

#### Disposal of Estate

75. **Priority of debts etc.**—(1) At the time of distribution of the Estate prior to the payment of dividends to creditors, there shall be paid first the administrative expenses including the necessary expenses incurred by the Receiver and thereafter the Receiver's fee under section 66(1) or, as the case may be, section 74(3) and then the other dividends shall, subject to sub-section (2), be paid in the following order of priority :—

- (a) all taxes and other debts of a like nature due to the Government;
- (b) all wages or salaries, not exceeding Tk. 2,000 due to any clerk, servant, labourer or workman in respect of services rendered to the debtor during the period of 6 months immediately before the date of filing the Plaint;
- (c) all bank debts;
- (d) all unsecured claim;
- (e) any subordinated claim;

(2) Where the Estate, after paying the debts specified in clauses (a) and (b) of sub-section (1), is not sufficient to pay all bank-debts in full and at least 50% of all unsecured claims, the priority given to bank-debts shall abate to the extent so far as may be necessary to ensure that the payments to be made in respect of unsecured claim is at least of 50% of the bank debts.

(3) The debts or claims of each class specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the Estate is insuffi-

cient to meet them, and if the Estate is sufficient, they shall abate in equal proportions between themselves.

(4) If after the retention of the sums necessary for the administrative expense and the Receiver's fee, all the debts and claims specified in sub-section (1) shall be paid forthwith in consideration of the sufficiency of the Estate.

(5) Where the debtor is a partnership firm, the partnership property shall be applicable in the first instance in payment of the debts of the firm and if the Estate derived from such property is not sufficient for such payment, the personal property of each partner shall be applicable in payment of his debts and liabilities in relation to the firm.

(6) Where, after application of the personal property or, as the case may be, of the partnership property in pursuance of sub-section (5), there remains a surplus, it shall be dealt with as part of the partnership property and shall be divisible among the partners in proportion to the rights and interests of each partner in the partnership.

(7) Subject to the foregoing provisions of this section, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(8) Where there is any surplus after payment of all expenses, fees, debts and claims, it shall be applied in payment of interest, calculating from the date on which the debtor is adjudged bankrupt, at a rate of not exceeding six per cent per annum on all debts included in the schedule.

**76. Manner of calculation of dividend, etc.—**(1) The Receiver shall, after retaining sufficient assets in hand to meet the expenses of the following debts and the expenses relating to the following matters, namely:—

- (a) such debts as are provable under this Act and as appear, from the debtor's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;
- (b) such debts provable under this Act the basis of the claims of which has not yet been determined;
- (c) disputed claims; and
- (d) the administrative claims in relation to the Estate.

(2) subject to the provisions of sub-section (1), all monies received shall be distributed as dividends with all convenient speed among creditors whose claims have been proved without objection.

(3) The following procedures shall be followed in declaring and paying dividends :—

- (a) the first dividend, if any, shall be declared and distributed within 12 months after the order of adjudication;
- (b) subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than 12 months;
- (c) before declaring a dividend, the Bankruptcy Receiver shall publish a notice indicating his intention to do so, to be published in such manner as specified in the rules or, in the absence of such rules, as the Court may direct, and shall also send a notice to each creditor mentioned in schedule whose debt has not yet been proved;
- (d) when the Receiver has declared dividend, he shall send to each creditor who has proved his debt a notice showing the amount of the dividend, and when and how it is payable, and also the specified informations relating to the Estate;
- (e) a dividend of less than taka 100.00 shall not be paid to any creditor.

**77. Release of the Receiver from responsibilities, etc.—**(1) When the Receiver—

- (a) has realised all the properties of the Estate or so much thereof as can be realised without needlessly extending the proceedings, and has distributed therefrom a final divisible portion, if any, or
- (b) has stopped his action by reason of a composition having been approved; or
- (c) has resigned or has vacated his office or has been removed from his office,

the Court shall, on his application or otherwise, require him or any other person to prepare a report of the activities of the Receiver.

(2) Where all the requirements under sub-section (1) are complied with, the Court shall take into consideration the report and any objection which is presented by any creditor or person interested against the release of the Receiver and shall either grant or withhold the release.

(3) Where the release of the Receiver is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just fixing liability or default of the Receiver.

(4) Where the Court gives an order releasing the Receiver, he shall be discharged from all liability in respect of any act done or default made by him in the administration of the Estate, but the order may be revoked on proof that it was improperly granted or obtained by fraud or suppression of any material fact.

(5) If the debtor or any creditor or other person is aggrieved by any act or decision of the Receiver, such person may apply to the Court in that behalf and the Court may make such orders as it considers appropriate.

(6) Where the Court on its own motion or on the application of any creditor, considers that there are prima-facie proof that the Receiver did not faithfully perform his duties or did not duly observe all the requirements imposed on him by any enactment, rules or otherwise, the Court may take cognizance of the conduct of the Receiver and inquire into the matter and take such action as it considers appropriate.

(7) In the enquiry concerning the bankruptcy proceeding, the Court may, at any time, require the Receiver or any person working under him for examination on oath.

(8) No payment shall be allowed to the Receiver in respect of the performance by any other person of the ordinary duties which are required by this Act or by rules made thereunder, to be performed by the Receiver himself except the fee provided for in section 66(1).

**78. Right of creditor who has not proved debt before declaration of a dividend.**—Any creditor, who has not proved his debt before the declaration of any dividend, shall be entitled to be paid, out of any money for the time being in the hands of the Receiver, any dividend which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, and the excuse that he could not participate in the proceedings of the declaration shall not be allowed.

**79. Final dividend.**—(1) When the Receiver has realized all the property of the Estate, or so much thereof as in his opinion can be realized without needlessly extending the proceedings in bankruptcy, he shall, subject to the provisions of sub-sections (2) and (3), declare a final dividend.

(2) Before a final dividend is declared under sub-section(1), the Receiver shall give notice, in such manner as may be prescribed by rules or in the absence of such rules, as may be directed by the Court, to persons whose claims are on the record of the Court but have not been proved, and in such notice he shall

specify that if they do not prove their claims to the satisfaction of the Court within a time specified in the notice, he will proceed to pay the final dividend without regard to their claims.

(3) After expiry of the time specified in such notice or if the Court, on application by any claimant, grants further time, then on the expiry of such further time, the property of the Estate shall be divided only among such creditors as have proved their claims and the claims of any other person shall not be allowed.

**80. Suit for dividend barred.**—(1) No separate action for a dividend shall lie against the Receiver in any other Court, but the Court having jurisdiction under this Act may, on the application of a creditor, order the Receiver to pay a dividend.

(2) If the Court finds good cause therefor, it may order the Receiver to pay, from his personal funds, dividends improperly withheld or any interest thereon and the cost of application therefor.

**81. Management of the Estate by bankrupt and allowance therefor.**—

(1) Where the bankrupt is an individual debtor, the Receiver or the Court may, for the benefit of the creditors, appoint the debtor to superintend the management of the Estate or any part thereof, or to carry on the trade, if any, of the debtor, or in any other respect to aid in administering the Estate, in such manner and on such terms, as the Court may approve.

(2) The Receiver or the Court may, from time to time, make such allowance as it think just to an individual debtor out of the Estate for the support of himself and his family, or in consideration of his services if he is engaged under subsection (1); but any such allowance made by the Receiver shall be subject to the approval of the Court.

**82. Right of bankrupt to surplus property.**—The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act and of the expenses of the proceedings taken thereunder.

**83. Application against order etc. of Receiver.**—If the debtor or any of the creditors or any other person is aggrieved by any order, decision or act of the Receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such orders as it thinks just :

Provided that no application under this section shall be entertained after the expiry of thirty days from the date of the order, decision or act complained of.

## CHAPTER VII

## Offences and Penalties

84. **Offences by debtors and penalties.**—(1) where a debtor has been adjudged bankrupt or in respect of whose affairs an order of reorganisation has been made under this Act, any of his following acts shall be an offence for which he shall be punishable with imprisonment which may extend to two years or with fine or with both—

- (a) if the debtor does not to the best of his knowledge and belief fully and truly disclose to the Receiver all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of for meeting the ordinary expenses of business or the ordinary expenses of his family :

Provided that if he proves to the satisfaction of the Court that he had no intent to defraud or to defeat or delay the bankruptcy proceedings, non-disclosure of such information shall not be an offence;

- (b) if the debtor does not deliver up to the Receiver such parts of his property as is in his custody or under his control in accordance with the instructions of the Receiver and which he is required by law to deliver up :

Provided that if he proves to the satisfaction of the Court that he had no intent to defraud, or to defeat or delay the bankruptcy proceedings, such non-delivery shall not be an offence;

- (c) if the debtor does not deliver to the Receiver all books and other documents in his custody or under his control relating to his property or affairs in accordance with the instructions of the Receiver :

Provided that if he proves to the satisfaction of the Court that he had no intent to defraud, or to defeat or delay the bankruptcy proceedings, such non-deliver shall not be an offence;

- (d) if the debtor, after the filing of a Plaint by or against him, conceals any debt due to or from him or any property of a value of Tk. 5,000 or more :

Provided that, if he proves to the satisfaction of the Court that he had no intent to defraud, or to defeat or delay the bankruptcy proceedings, such concealment shall not be an offence;

- (e) if, at any time after the filing of a plaint by or against the debtor and within 48 months immediately before filing of the Plaint, he has fraudulently removed out of the local limits of the Court any part of his property of a value of Tk. 5,000·00 or more;

- (f) if the debtor makes any material omission in any statement relating to his affairs :

Provided that if he proves to the satisfaction of the Court that he had no intent to defraud, or to defeat or delay the bankruptcy proceedings, such omission shall not be an offence;

- (g) if, knowing or believing or having reason to believe that a false debt has been proved by any person under the bankruptcy, the debtor fails within a period of one month after such proof to inform the Receiver thereof;

- (h) if the debtor, at any time after the filing of a Plaint by or against him, prevents the production of any book of accounts or other documents affecting or relating to his property or affairs :

Provided that, if he proves to the satisfaction of the Court that he had no intent to conceal the state of his affairs or to defeat or delay the bankruptcy proceedings, such prevention shall not be an offence;

- (i) if the debtor, at any time after the filing of a Plaint by or against him or within 48 months immediately before the filing of the Plaint, conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book of accounts or other document affecting or relating to his property or affairs :

Provided that if he proves to the satisfaction of the Court that he had no intent to conceal the state of his affairs or to defeat or to delay the bankruptcy proceedings, any of his above activity or his being privy thereto shall not be an offence;

- (j) if the debtor, at any time after the filing of a Plaint by or against him, or within 48 months immediately before the filing of the Plaint, makes or is privy to the making of any false entry in any book of account or document affecting or relating to his property or affairs :

Provided that, if he proves to the satisfaction of the Court that he had no intent to conceal the state of his affairs or to defeat or delay the bankruptcy proceedings, his making of such false entry shall not be an offence;

- (k) if the debtor, at any time after the filing of a Plaint by or against him, or within 48 months immediately before filing of the Plaint, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;

- (l) if the debtor, at any time after the filing of a Plaint by or against him, or in any written or oral communication to any of his creditors within

48 months immediately before filing of the **Plaint**, attempts to account for any part of his indebtedness or property or lack of property by fictitious losses or expenses :

(m) if, being an undischarged bankrupt—

(i) either alone or jointly with any other person he obtains a credit of Tk. 10,000.00 (Ten thousand) or more from any person without informing that person that he is an undischarged bankrupt; or

(ii) he engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt;

(n) if the debtor, at any time within 48 months immediately before the filing of a **Plaint** by or against him, has obtained any property on credit by any false representation, including the making, signing or delivering of a financial statement containing any materially false information, or other fraud, and has not fully satisfied the claim of the creditor to whom the false representation was made;

(o) if the debtor, at any time within 48 months immediately before the filing of a **Plaint** by or against him, being a trader or merchant, has obtained any property on credit under the false pretence of carrying on his business and dealing in the ordinary way, and has not fully satisfied the claim of any creditor who was materially influenced by the false pretence :

Provided that, if he proves to the satisfaction of the Court that he had no intent to defraud, such false pretence shall not be an offence;

(p) if the debtor, at any time within 48 months immediately before the filing of a **Plaint** by or against him, being a trader or merchant, pawns, pledges or sends out of Bangladesh in unusual quantities or to unusual quarters, or in manner other than the ordinary course of his trade he disposes of any property which he has obtained on credit and has not fully paid for it :

Provided that, if he proves to the satisfaction of the Court that he had no intent to defraud, any such activity of him shall not be an offence;

(q) if the debtor makes any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

**Explanation.**—For the purposes of this sub-section, the activities of <sup>(cc)</sup> special manager referred to in section 46(9) shall be deemed to be the activities the debtor.



(2) Where—

- (a) the debtor has sent out of Bangladesh a property which he has obtained on credit and not paid for, and
- (b) he fails to account for the consideration received by him for the property so sent out,

the debtor shall be deemed to have sent the property out of Bangladesh in manner other than in the ordinary course of his business, unless the contrary is proved.

(3) Where—

- (a) the debtor mortgages or otherwise subjects a property to a similar liability or sends it out of Bangladesh in such circumstances that any of such activities of the debtor constitutes an offence under sub-section (1)(p), and
- (b) any other person, having known of such circumstances receives the property ;

then such other person shall be deemed to have committed the same offence under that sub-section as the one committed by the debtor, and accordingly that other person shall be punishable thereunder with the same penalty.

85. **Penalty for failure to keep proper books of accounts.**—(1) A bankrupt shall be punishable with rigorous imprisonment which may extend to two years or with fine or with both if, having been engaged in any trade or business during any period of two years immediately preceding the date of the Plaint, he has not kept proper account throughout that period or has not preserved all books of accounts so kept:

provided that such bankrupt shall be deemed not to have committed any offence under this sub-section, if—

- (a) his unsecured liabilities at the date of the order of adjudication does not exceed Tk. 5,00,000.00 (five lac): or
- (b) he proves that in the circumstances in which he traded or carried on business, the said failure was not the result of dishonest intention or is ignorable.

(2) A prosecution shall not be instituted against a bankrupt under this section except by order of the Court.

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of accounts if he has not kept—

- (a) such books of accounts as are necessary to exhibit or explain his transaction and the financial position of his trade or business, including a book or books containing entries from day to day, in sufficient details, of all cash received and paid; and
- (b) where the trade or business involved dealings in goods, statements of stock-takings; and
- (c) except in the case of goods sold by way of retail trade to the actual consumer, accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

86. Incurring debts irresponsibly.—A bankrupt shall be punishable with imprisonment which may extend to two years and fine if, within 48 months immediately before the filing of the plaint, he incurs any debt without having any responsible ground of expectation for his repaying the debt.

87. Debtor's departure from Bangladesh.—If a debtor—

- (a) at any time after filing a plaint, departs from Bangladesh without permission of the Court; or
- (b) within 12 months immediately before such filing, departs from Bangladesh and does not return within 6 months after such filing,

he shall be punishable with rigorous imprisonment which may extend to two years or with fine or with both:

Provided that if he proves to the satisfaction of the Court that he had no intention to defraud his creditors, or to delay or defeat the bankruptcy proceedings, such departure shall not be an offence.

88. Offences of undischarged bankrupt.—(1) Any of the following acts of an undischarged bankrupt shall be an offence and for such offence he shall be punishable with rigorous imprisonment which may extend to one year or with fine or with both, namely:—

- (a) if he has, with intent to defraud any of his creditors, made or caused to be made any gift, delivery or otherwise transfers, of or created or caused or caused to be created any charge on, his property, or has allowed such property to be in any other way encumbered or subject to any kind of tax;
- (b) if he has, with intent to defraud any of his creditors, concealed or removed any part of his property before the payment of money on the basis judgement or order against him.

89. **Procedure of making complaint in respect of certain offences.**—Where, after such preliminary inquiry, if any, as it considers necessary, it appears to the Court that the bankrupt has committed an offence under sections 84, 85, 86, 87 or 88 the Court may record a finding to that effect, and send a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the criminal code.

90. **Debtor not exempted from prosecution for non-discharge of debt.**—Any order of the Court discharging the debtor or accepting or approving a composition, scheme of arrangement or plan of reorganisation of his affairs shall not exempt him from being prosecuted under this Act for the commission of any offence thereunder.

91. **Offences by creditors, etc.**—(1) In a proceedings under this Act, any creditor who makes any claim, declaration or statement of account which is untrue in any material particular shall, unless he satisfies the Court that he had no intent to defraud, be punished with imprisonment which may extend to one year or with fine or with both.

(2) If, in a proceeding under this Act, any creditor obtains or receives any money or property or security from any person as an inducement for forbearing to oppose, or for assisting such inducement, he shall be punished with a fine which may extend to 3 times the amount of value of such money, property or security.

(3) Where a Creditor—

- (a) consents to a plan of reorganisation or signs or authorises person to consent or sign a plan of reorganisation to which section 43 applies or proposes or affirmatively consents to a plan of reorganisation to which section 46 applies; and
- (b) within six months before or at any time after the consenting, signing, proposing or assenting as aforesaid, receives any secret or, collusive preference or benefit for such proposing, signing or consenting the plan or the scheme,

he shall be punishable with a fine which may extend to five times of the value of the preference or benefit and the Court imposing the fine may award a part of the fine, not exceeding one half thereof, to the informer whose information resulted in such imposition.

(4) Every benefit or preference referred to in sub-section (3) shall be deemed to be secret and collusive if the same is not clearly disclosed on the plan or the scheme of arrangement.

(5) Any person who, knowing that an order of adjudication has been made, removes, conceals receives or otherwise disposes of any part of the property of the Estate, with intent to defeat the order, shall be punished with a fine which may extend to three times of the value of such property or with rigorous imprisonment which may extend to 3 years, or with both.

(6) Fines imposed and levied under this section shall be deemed to be a part of the Estate and shall vest in the Receiver.

92. **Offence by companies, etc.**—Where a person committing an offence under this Act is a company, the offence shall be deemed to have been committed by the owner, Director, Manager, Secretary or other officer or agent of the company unless he proves that the offence has been committed beyond the knowledge or that he exercised due diligence to prevent the commission of such offence.

*Explanation.*—In this section—

- (a) “Company” means a business firm and society or establishment;
- (b) “Director”, in relation to a business firm, means a partner, a member of Board of Director.

93. **Abatement of offences.**—Whoever abates the commission of an offence under this Act shall be guilty of the same offence and shall be punishable with the same penalty.

## CHAPTER VIII

### DISQUALIFICATION OF UNDISCHARGED BANKRUPT

94. **Disqualifications of an undischarged bankrupt.**—(1) An undischarged bankrupt shall, subject to the provisions of sub-section (2), be disqualified in the following matters, namely:—

- (a) election as a member of Parliament or of a legal authority or other statutory body or sitting or voting in the proceedings thereof;
- (b) appointment as a Judge, Magistrate, Justice of the Peace or any other office in the service of the Republic or acting as such;
- (c) appointment as Receiver or acting as such;
- (d) obtaining loan from bank or financial institution.

- (2) The above disqualifications shall cease when—
- (a) the order of adjudication is annulled; or
  - (b) the Court makes an order of discharge of the bankrupt.

## CHAPTER IX

### SUMMARY ADMINISTRATION OF ESTATE

95. **Summary disposal of Estate.**—When a **Plaint** is presented by or against a debtor and the Court is satisfied by affidavit or otherwise that the total property of the debtor is not likely to exceed in value Tk. 5,00,000 (five lac), the Court may make an order that the debtor's Estate be administered and distributed in a summary manner, and there upon the provisions of this Act shall be applicable subject to the following modifications, namely :—

- (a) unless the Court otherwise directs, no notice required under this Act shall be published in the official Gazette;
- (b) on the admission of a **Plaint** presented by a debtor, the Estate of the debtor shall vest in the Court and the Court may itself act as the Receiver or appoint any person, whether he is an official Receiver or not, to act as Receiver;
- (c) at the hearing of the said **Plaint**, the Court shall inquire into the debts and assets of the debtor and determine the same by order in writing and it shall not be necessary to frame a schedule in pursuance of the provisions of section 38;
- (d) the property of the Estate shall be realized with reasonable speed and thereafter, as soon as possible, distributed to the creditors, in a single dividend; and
- (e) such other modifications as may be prescribed by rules with the view to saving the expense and simplifying procedure in this behalf :

Provided that the Court may at any time direct that the ordinary procedure provided by or under this Act shall be followed in regard to the debtor's Estate and thereafter such procedure shall be followed accordingly.

## CHAPTER X

## APPEAL AND REVIEW

96. Appeals.—(1) Subject to the other provisions of this Act, the debtor, any creditor, the Receiver or any other person aggrieved by a decision or an order made in the exercise of bankruptcy jurisdiction by an Additional District Judge or District Judge may prefer appeal before the High Court Division.

(2) The Supreme Court shall, from time to time, constitute a Bench of the High Court Division whose function shall be to exclusively deal with the appeals under this Act.

(3) A person intending to prefer an appeal under this section shall—

- (a) within 10 days after the date of making of the order or decision against which appeal is to be preferred, notify the Court in writing about his intention;
- (b) if he is a debtor, deposit in Court within the said 10 days an amount equal to ten percent of the total value of the claim of the creditors as determined by the Court;
- (c) file with the appellate Court the memorandum of appeal within 60 days after the date of making of the decision or order appealed against;
- (d) before filing the memorandum to the appellate Court, supply to the original court such number of the copies of the memorandum of appeal as may be directed by the original Court;
- (e) attach with the memorandum a certificate issued by the original Court to the effect that the deposit under clause (b), if applicable, has been made and that the copies of the memorandum under clause (d) have been supplied.

(4) On receipt of the notice under sub-section (3) (a), the Court shall—

- (a) supply to the intending appellant within 5 days of such notice, a certified copy of the decision or order against which appeal is sought to be preferred and the cost of such copy shall be deposited in advance by the intending appellant;
- (b) direct the intending appellant to supply to the Court such number of copies of the memorandum of appeal as it may consider necessary in view of the number of persons likely to be affected by the appeal and on receipt of such copies shall forthwith deliver them to those persons or their engaged Advocates or other authorised persons.

(5) The orders or decision which are appealable under This Act are as follows:—

- (a) decision on title ;
- (b) decision on act of bankruptcy ;
- (c) decision on the priority in making payment out of the Estate ;
- (d) order dismissing a plaint pursuant to section 28 ;
- (e) order awarding compensation pursuant to section 29 ;
- (f) order of adjudication pursuant to section 30 ;
- (g) a decree including a preliminary decree, decision or order which disposes of a suit or other proceeding, transferred under section 33, if such decree, decision or order would have been appealable had it been made by the transferer Court ;
- (h) order regarding any fundamental entry in the schedule pursuant to section 38 ;
- (i) order annulling adjudication pursuant to section 40 ;
- (j) order declaring the conditions on which the debtor's property shall revert to him on annulment of adjudication pursuant to section 42 ;
- (k) a reorganisation order or any order approving a plan of reorganisation pursuant to section 46 ;
- (l) order on application for discharge pursuant to section 47 ;
- (m) order disallowing or reducing claim of any creditors pursuant to section 57 ;
- (n) order nullifying a previous transfer of property pursuant to sections 52 to 63.

(6) Subject to the other provisions of this Act, no order or decision of the Court other than those specified in sub-section (5) shall be called in question in any manner whatsoever before any court or other authority.

(7) The Appellate Court shall not ordinarily stay the operation of the order of adjudication ; and the Receiver, the bankrupt and the creditors shall continue to take such actions as are required by this Act, unless the appellate Court, for reasons to be recorded in writing, prohibits any such action :

Provided that, where an order of adjudication is set aside in appeal, the validity of any action taken after making of the order of adjudication, in pursuance of the provision of this Act, shall not be affected, unless such action was prohibited by the appellate court.

97. **Procedure to be followed in appeal.**—The procedure to be followed in relation to an appeal against an order or decision specified in section 96 shall be such as may be prescribed by rules and in the absence of such rules as the Appellate Court may consider appropriate.

98. **Powers of Appellate Court.**—The Appellate Court may, after giving to the concerned parties reasonable opportunity of hearing,—

- (a) confirm, reverse, modify or set aside the order or decision appealed against; and
- (b) also give such directions to the lower Court in respect of the subject matter of the appeal as it considers just and proper.

99. **Review.**—(1) Where an order or decision is made by the Court or the Receiver and no appeal under section 96 can be preferred, any person aggrieved by the order or decision may, within 30 days after the date of making such order or decision apply to the Court or Receiver which or, as the case may be, who made the order or decision, for review thereof on any of the following grounds, namely :—

- (a) there is a clear mistake or error in the order or decision, which resulted in gross miscarriage of justice to the applicant; or
- (b) the applicant, after due diligence and care, could not produce a material evidence, which was not within his knowledge or control and which would have substantially benefitted him had it been produced at the time of making the order or decision.

(2) The Court or, as the case may be, the Receiver may—

- (a) after giving the applicant reasonable opportunity of hearing, summarily reject it if it or as the case may be, he is not satisfied about the ground taken, or
- (b) if satisfied about such grounds—
  - (i) after giving reasonable opportunity of hearing and, if considered proper, without giving notice to anyone else, allow or reject the application or give such other order as may be considered appropriate; or
  - (ii) after giving notice of the application to the concerned parties and after giving a reasonable opportunity of hearing, allow or reject the application or give such other order as may be considered appropriate.



(3) No appeal shall lie against an order given by the Court under sub-section (2).

**100. Time limit for disposal of appeal and review.**—(1) The time limit for disposal of an appeal and review shall be as follows :—

- (a) in the case of an appeal, 60 days from the date of filing the memorandum of appeal;
- (b) in the case of review, 30 days from the date of filing the application for review.

(2) Where an appeal or review is not disposed of within the time limit specified in sub-section (1), the same shall be deemed to have been disallowed, and no further appeal or review shall lie against the same order or decision appealed against.

(3) For the purposes of this section, in calculating the time-limit specified in sub-section (1), the weekly holidays and other holidays declared by the Government and the Supreme Court shall be excluded, but not any day on which any judge of the concerned Court or, as the case may be, the Receiver remains absent from duty on any ground.

## CHAPTER XI MISCELLANEOUS

**101. Attachment, etc.**—(1) An attachment under this Act shall be made in such manner as may be prescribed by rules and, in the absence of such rules, as the Court directs.

(2) The provisions of section 64 of the Civil Code shall, *mutatis mutandis*, apply to an attachment under this Act.

**102. Power of Court to follow other laws in the matter of notice etc. prescribed in other laws.**—Where a notice, warrant of arrest or warrant of attachment or similar process is to be issued under this Act, the Court may, until rules are made in this behalf, use the relevant form, *mutatis mutandis*, prescribed in the Civil Code or, as the case may be, in the Criminal Code.

**103. Costs of proceedings, etc.**—The costs of any proceeding under this Act, including the costs of maintaining a debtor or any other person in the Civil Prison shall, subject to the rules, be such as the Court may, in its discretion, determine.

104. **Courts to be auxiliary to each other.**—All Courts having jurisdiction in bankruptcy and the officers and other employees of such Courts shall, where necessary, severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and if any such Court requests seeking aid of another Court of jurisdiction, then the later Court may exercise, in regard to the matters directed by the order, such jurisdiction as such later Court could exercise in regard to similar matter within its own jurisdiction.

105. **Limitation.**—(1) The provisions of sections 4 and 12 of the limitation Act, 1908 (XI of 1908) shall apply to appeals and applications under this Act and for the purpose of the said section 12, a decision given under section 4 of the said Act shall be deemed to be a decree.

(2) Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any proceeding for the execution of a decree in the absence of the order of adjudication, the period from the date of the order of adjudication to the date of the order of annulment (both dates inclusive) shall be excluded :

Provided that nothing in this section shall apply to a proceeding in respect of a debt provable but not proved under this Act.

106. **List of Official Receivers.**—The Government shall, from time to time prepare and maintain a list of approved Receivers comprising such persons (including individuals, firms and companies) as are of good reputation with regard to honesty and are competent to serve the public interest as Receivers; and such Receivers shall be known as official Receivers.

107. **Delegation of powers to Official Receivers.**—(1) The government may, from time to time, direct that, in any matter in respect of which jurisdiction is given to the Court by this Act, the Official Receivers shall, subject to the directions, if any, of the Court, have all or any of the following powers, namely :—

- (a) to frame schedules and to admit or reject claims of creditors ;
- (b) to make interim orders in any case of urgency ;
- (c) to hear and determine any unopposed of exparte application.

(2) Subject to the right of appeal provided for in section 96, any order made or act done by the Official Receiver, in the exercise of the powers under sub-section (1), shall be deemed to be the order or act of the Court.

108. **Receiver etc, to be public servant.**—Any Receiver appointed under this Act including interim Receiver and Official Receiver, any officer or employee appointed under section 64(3) and a special manager appointed under section

46(9) shall, in relation to any of their acts or omission in connection with any of their powers, functions and duties or with a proceeding under this Act, be deemed to be a "public servant" within the meaning of section 21 of the Penal Code.

109. **Transfer of proceedings.**—(1) On the application of a debtor, eligible creditor or the Receiver, the District Court may, after such notice to such of the parties as it considers necessary:—

- (a) transfer any proceeding pending before it or any of its subordinate Court to itself or to any subordinate Court having jurisdiction to dispose of the proceedings;
- (b) withdraw any proceeding pending in a subordinate Court, and—
  - (i) dispose of the same by itself; or
  - (ii) transfer the same for disposal to another subordinate Court having jurisdiction; or
  - (iii) re-transfer the same for disposal to the subordinate Court from which it was withdrawn.

*Explanation.*—For the purposes of this sub-section, the Courts of Additional District Judge shall be deemed to be subordinate to the District Court.

(2) On the application of the debtor or an eligible creditor, the High Court Division may, after such notice to such of the parties as it considers necessary, transfer any proceeding pending before any Court in one district to another Court having jurisdiction in another district.

(3) The District Court or the High Court Division shall not, in exercise of the power given by this section, transfer any proceeding, unless it is satisfied for reasons to be recorded in writing that, there will be gross injustice to the applicant without such transfer, or that the proceeding can be most conveniently disposed of by the transferee Court.

(4) Any application under this section shall be disposed of within 15 (fifteen) days from the receipt thereof, and no fresh application shall be entertained on the same ground mentioned therein.

110. **Inherent powers of the Court.**—The Court may, on the application of the debtor, a creditor or the Receiver, make, in relation to a proceeding pending before it, such order as it considers appropriate for the ends of justice or for the prevention of the abuse of the process of the Court:

Provided that the power given by this section shall not be exercised when a specific remedy is provided by or under this Act.

**111. Power of Court to rectify certain matters.**—The Court may, at any time—

- (a) correct any clerical or arithmetical mistake found in any of its order or an error arising from inadvertent slip or omission;
- (b) amend any defect or error in any of its order, if it considers that such amendment is necessary for determining any substantial question raised in a proceeding.

**112. Court Fee.**—The Court Fee payable on a Plaint shall be Taka 100.00.

**113. Protection of action taken in good faith.**—No civil or criminal or other proceedings against the Government, Receiver or any other person for any action taken or purported to have been taken in good faith under this Act shall lie at the instance of a person affected or likely to be affected by such action.

**114. Removal of difficulties.**—The Government may, by notification in the official Gazette, remove any difficulty arising from any vagueness in any provision of this Act.

**115. Bar to jurisdiction of other courts.**—No question in respect of a proceeding under this Act shall be raised before any court or other authority except in accordance with the provisions of this Act.

**116. Construction of references to “insolvent” in other laws, etc.**—Reference to the word “insolvent” or any derivative thereof in any other law for the time being in force shall be deemed to be a reference to the word “bankrupt” or, as the case may be, to the corresponding derivative thereof under this Act.

**117. Power to make rules.**—(1) The Government may make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the appointment and the procedure of payment of remuneration of Receivers other than Official Receivers;
- (b) audit of the account of Receivers and the cost of such audit;
- (c) meeting of the creditors or the Creditors' Committee;
- (d) the procedure to be followed where the debtor is a firm;

(e) the procedure to be followed in the case of Estate to be administered in a summary manner; and

(f) any matter which is to be or may be prescribed by rules.

(3) All rules made under this section shall be published in the Official Gazette and shall, on such publication, have effect.

**118. Authentic English Text.**—After the Commencement of this Act, the Government shall, by notification in the official Gazette, publish an Authentic English Text of this Act, which shall be known as the Authentic English Text of this Act :

Provided that in the event of any conflict between the said Act and the said English Text, the Act shall prevail.

**119. Repeal and savings.**—(1) The insolvency (Dacca) Act, 1909 (III of 1909) and the Insolvency Act, 1920 (V of 1920) are hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), any proceedings under the repealed Acts, pending immediately before the commencement of this Act, shall be disposed of in accordance with the provisions of such of the repealed Acts under which the proceedings was so pending, as if they have not been so repealed.