

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR,
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the December 26, 1978.

No. 4172/SL/78. The following Ordinance made by the President on the 26th day of December, 1978, is hereby published for general information:-

(ORDINANCE XCVIII OF 1978)

AN

ORDINANCE

to provide for the law relating to the repayment and recovery of loans advanced by the Cooperative Banks

WHEREAS on account of promulgation of Establishment of the Federal Bank for Cooperative and Regulation of Cooperative Banking (Adaptation) Ordinance, 1977 all the Cooperative Banks except the Azad Kashmir Government Bank, in Azad Jammu and Kashmir territory, functioning on or before the 7th January, 1977, have ceased functioning as such banks and heavy loans advanced by these banks are outstanding;

AND WHEREAS it is expedient to provide for the repayment and recovery of these loans in order to facilitate the payment to the depositors and creditors of these banks ;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir interim constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title, extent and commencement:-** (1) This Ordinance may be called the Cooperative Banks (Repayment and Recovery of Loans) Ordinance, 1978.
(2) It extends to the whole of Azad Jammu and Kashmir territory and shall apply to the debtors and borrowers of the Cooperative Banks wherever they may be.
(3) It shall come into force at once and shall be deemed to have taken effect on and from the 26th day of December, 1977 and shall override all other laws.

2. **Definitions:-** In this Ordinance unless there is anything repugnant in the subject or context;

- (a) 'borrower' means a person who has obtained a loan from a Cooperative Bank or a Cooperative Society or his surety, or, in case of a benami a person who is the real beneficiary or recipient of the loan, and includes the legal heirs and the successors-in-interest of any such person or surety ;
- (b) 'Cooperative Bank' means a Cooperative Society carrying on banking business immediately before coming into force of the Establishment of Federal Bank for Cooperatives and Regulation of Cooperative Banking (Adaptation) Ordinance, 1977;
- (c) 'Cooperative Society' means any society established and registered under the provisions of the Cooperative Societies Act, 1925 or under any other law for the time being in force relating to the registration of Cooperative Societies;
- (d) 'Government' means the Azad Government of the State of Jammu and Kashmir;
- (e) 'Loan' includes a benami loan, an advance, a cash credit and overdraft, a packing credit, a bill discounted and purchased, letter of credit, any other financial accommodation or engagement provided by a Cooperative Bank to a borrower or any transaction which in the opinion of the Registrar is in substance a loan whether based on a valid instrument or not.

Explanation:- 'Benami loan' means a loan the real beneficiary or recipient whereof is a person other than the person in whose name the loan is advanced or granted.

- (f) 'Registrar' means the Registrar Cooperative Societies, Azad Government of the State of Jammu and Kashmir or any other officer specially appointed or empowered as such by the Government;
- (g) 'Provincial Cooperative Bank' means Azad Jammu and Kashmir Government Cooperative Bank Ltd. or any Cooperative Society as defined and notified under clause (p) of Section 2 of the 'Establishment of Federal Bank for Cooperatives and Regulation of Cooperative Banking

Ordinance, 1976, as adapted in Azad Jammu and Kashmir;

- (h) 'Unsecured or insufficiently secured loan' means a loan which is not secured by mortgage, pledge, hypothecation, assignment of such property of the borrower or of his surety or of both as the Registrar may think adequate.

3. **Payment and securing of loans:-** Notwithstanding anything contained in any other law for the time being in force or in any agreement or other instrument, award or decree of any court, every loan payable to a cooperative bank shall, unless repaid earlier, be repaid to the Provincial Cooperative Bank in case of Cooperative Banks which stand dissolved under Section 42, sub-section (4) of the Establishment of the Federal Bank for Cooperatives and Regulation of Cooperative Banking Ordinance, 1976, as adapted in Azad Jammu and Kashmir, and to the successor Cooperative Society in case of Cooperative Banks which have been converted into non-banking societies under sub-section (5) of the said section, in the following manner, that is to say :-

- (a) not less than twenty percent of the loan shall be paid within sixty days from the commencement of the Ordinance No. XXXIV of 1977 or in such extended period not exceeding thirty days as the Registrar may fix;
- (b) the balance of the loan after payment as aforesaid shall, within one month from the expiry of the period mentioned in clause (a), be secured by mortgage, pledge, hypothecation or assignment of such property of the borrower or his surety or of both as the Registrar may think adequate and shall be repaid in such installments within a period not exceeding one year from the commencement of the Ordinance XXXIV of 1977 as the Registrar directs;

Provided that the Registrar may, if he considers necessary in case in which not less than fifty percent of the loan has been repaid within the aforesaid period of one year, extend the period by a further period and such further period shall not exceed six months.

4. **Recovery of loans.-** (1) If the amount of any loan or any part thereof to be repaid in accordance with the provisions of section

3, is not paid within the period or periods specified in the said section, the same may be recovered by the Registrar according to the law and under the rules for the time being in force for the recovery of arrears of land revenue and while doing so he may exercise all or any of the powers of Collector under the Land Revenue Act and the rules made thereunder.

(2) Whereas

(a) the borrower is a company, partnership or association of persons and the assets of such company, partnership or association are not sufficient to meet the total liability, including the loans payable under this Ordinance of such company, partnership or association ;

(b) the borrower is an individual person and his assets are not sufficient to meet his total liability; and

(c) the Registrar is of the opinion, after such enquiry as he may deem fit, to hold in the matter, that the loan has been appropriated by any director, share-holder, partner or member, as the case may be, of such company, partnership or association or any other person and, in case of an individual borrower by any other person than the borrower himself, the loan shall be recoverable from the person who has appropriated the loan as aforesaid and his assets as if the loan had been taken by him;

(3) The recovery under this section shall not save a borrower from any other means of recovery or punishment provided in this Ordinance or rules made thereunder or under any other law for the time being in force.

5. (1) In respect of Cooperative Banks which stand dissolved by the operation of Section 42, sub-section (4) of the Establishment of Federal Bank for Cooperatives and Regulations of Cooperative Banking Ordinance, 1976, as adapted in Azad Jammu and Kashmir, the Provincial Cooperative Bank and in respect of the cooperative banks which have been converted into non-banking societies under sub-section (5) of Section 42 of the said Ordinance, such societies, shall, within thirty days of the commencement of this Ordinance, or within such extended period as the Registrar may allow, furnish to the Registrar full particulars in respect of all cases of loans required to be repaid under section 3 ;

(2) On receipt of information under sub-section (1) in respect of any loan the Registrar shall cause notice to be issued to the borrower requiring him to repay and secure the loan in accordance with the provision of Section 3;

(3) Where any borrower to whom notice under sub-section (2) is issued does not admit the loan or any liability arising there from, he shall within thirty days of the receipt of notice, or within such further period as the Registrar may, in special circumstances allow, submit either personally or by registered post (acknowledgement due), a written statement to that effect to the Registrar, who thereupon shall cause notice to be issued to the bank or society concerned, and shall, after making such inquiry as he considers necessary, and giving the parties reasonable opportunity of being heard, decide about the liability ;

(4) The decision of the Registrar under sub-section (3) shall be final and shall not be called in question in any court.

6. **Power of Registrar when making inquiry.**- The Registrar shall, for the purpose of making any inquiry under this Ordinance, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery or production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commission for the examination of witness ;
- (e) appointing guardians or next friends of persons who are minors or of unsound mind ;
- (f) adding legal representatives of deceased borrowers or sureties ;
- (g) substituting the names of rightful parties;
- (h) consolidation of cases; and
- (l) any other matter which may be prescribed by rules, made under section 7.

7. **Rules.**- The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

8. **Detention in civil prisons.**- The Registrar may send a borrower or debtor or his surety to Civil Prison if any one of them is not ready or has failed to furnish security to the satisfaction of the Registrar when so required by him under Section 3 and may keep them or any one of them in the prison till such security is furnished by them or any one of them.
9. **Restrictions on alienations.**- (1) Where any person owing a loan to a Cooperative Bank has, on or after the 7th day of January, 1977, alienated any property by sale, exchange, gift, mortgage or will, otherwise than by or under an order or decree of a Court or with the special permission of the Government, granted by an order in writing, subject to such conditions as may be specified therein, such alienation shall not operate to transfer any right, title or interest in the property of the borrower unless the loan due from the borrower has been repaid;
- (2) Any alienation as aforesaid shall become void upon a declaration to that effect made by the Registrar and published in the official Gazette and this declaration shall have effect of and be acted upon as a decree of a Civil Court ;
- (3) Any party aggrieved by a declaration made by the Registrar under sub-section (2) may prefer an appeal to Government against such declaration and the order made by Government on such appeal shall be final and shall not be open to question in any Court.
10. **Punishment.**- (1) Whoever contravenes any of the provisions of this Ordinance or the rules made thereunder shall be punishable with imprisonment for a term which may extend to seven years or with fine, which in the case of default in the repayment of loan shall not be less than one half of the amount of the loan outstanding against him.
- (2) Any person who obstructs or resists the enforcement of any order made under this Ordinance shall be punished with rigorous imprisonment which may extend to seven years, or with fine, or with both.
11. **Cognizance of Offence.**- (1) Offences under this Ordinance shall be cognizable and non-bailable.
- (2) Notwithstanding anything contained in any other law for the time being in-force offences under this Ordinance shall be triable by a Magistrate of the First Class.

12. **Assistance to Registrar:-** All Officers and servants of the Government shall assist the Registrar in the performance of his functions.
13. **Bar of jurisdiction:-** (1) No Court or other authority shall have jurisdiction :-
- (a) to entertain or adjudicate upon any matter which the Government, or the Registrar is empowered by or under this Ordinance or the rules framed thereunder to dispose off or determine ; or
 - (b) to question the legality or validity of anything done under this Ordinance or the rules framed thereunder by the Government or the Registrar.
- (2) No Court or other authority shall be competent to grant an injunction or other order in relation to any proceeding before the Government, the Registrar or anything done or to be done by or at the instance of the Government, the Registrar under this Ordinance or the rules framed thereunder.
- (3) Any proceeding pending before any Civil Court, including the High Court and the Supreme Court, in respect of any matter to which this Ordinance relates, shall abate forthwith and no such proceeding shall henceforth be taken cognizance of by any such Court.

(Brigadier Mohammad Hayat Khan)
President,
Azad Jammu & Kashmir.

Sd/- (Syed Mohammad Akram Shah)
Deputy Secretary Law