

No.LL.(B)85/2001/36—The Meghalaya Protection of Interest of Depositors (In Financial Establishments) Act, 2006 (Act No. 6 of 2006) is hereby published for general information.

MEGHALAYA ACT NO. 6 OF 2006

(As passed by the Meghalaya Legislative Assembly)

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THE MEGHALAYA PROTECTION OF INTEREST OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 2006

An

Act

to protect the deposits made by the public in the Financial Establishments and matters relating thereto.

Be it enacted by the Legislature of the State of Meghalaya in the Fifty-Seventh Year of the Republic of India as follows:-

Short title extent and Commencement

1. (1) This Act may be called the Meghalaya Protection of Interest of Depositors (In Financial Establishments) Act, 2006.

(2) It extends to the whole of Meghalaya.

(3) It shall come into force at once.

Definitions

2. In this Act unless the context otherwise requires,

(a) "Act" means the Meghalaya Protection of Interest of Depositor (in Financial Establishments) Act, 2006.

(b) "Competent Authority" means the authority appointed under Section 4;

(c) "Deposit" includes and be deemed always to have included any receipt of money or acceptance any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or any other form, but does not include :-

(i) Amount raised by way of share capital or by way of debenture or by bond or by any other instrument covered under the guidelines given, and regulations made by Securities Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(ii) Amount contributed as capital by partners of a Firm;

(iii) Amount received from a Scheduled Bank or a Co-operative Bank or any other Banking Company as defined in Clause © of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

- (iv) Any amount from :-
 - (a) The Industrial Development Bank of India;
 - (b) A State Financial Corporation;
 - (c) Any Financial Institution specified in Section 4A of the Companies Act, 1956 (1 of 1956);
 - (d) Any other Institution that may be specified by the Government in this behalf;
- (v) Amount received in the ordinary course of business by way of :-
 - (a) Security Deposit,
 - (b) Dealership Deposit,
 - (c) Earnest money,
 - (d) Advance against order for goods or services;
- (vi) Any amount received from an individual or a firm or an association of individual not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the state; and
- (vii) Any amount received by way of subscriptions in respect of a chit;

Explanation I : "Chit" has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Acts, 1982 (10 of 1982)

Explanation II : Any credit given by a seller to buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposited for the purposes of this clause;

(d) "Financial Establishment" means an individual or an association of individuals or a firm carrying on the business of receiving deposits under any scheme or arrangement

Or, in any other manner but does not include a corporation or a cooperative society owned or controlled by any State Government or the Central Government or a banking company as defined under Clause (c) of Section 5 of the Banking Regulation Act, 1949 (Act No.10 of 1949);

- (e) "Section" means a section of this Act;
- (f) "Special Court" means a Special Court constituted under Section 8; and
- (g) "State Government" means the Government of Meghalaya;

Attachment of properties on default of return of deposits

3. (1) The Government or the District Magistrate in their respective jurisdiction may suo motu or on receipt of complaints, cause investigation of the complaint or fraudulent transaction referred to in section 5, through the Superintendent of Police. The District Magistrate shall forward his report together with the complaint to the Government within a maximum period of thirty days.

(2) Notwithstanding anything contained in any other law for the time being in force :-

(i) Whereupon complaints received from the depositors or otherwise the State Government is satisfied that any Financial Establishment has failed :-

- (a) To return the deposit after maturity or on demand by the depositor, or

Appointment and powers of Competent Authority

- (b) To pay interest or other assured benefit; or
- (c) To provide the service promised against such deposit; or
- (ii) Where the State Government have reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interests to the depositors, with an intention to defraud them or if the State Government is satisfied that such Financial Establishment is not likely to return the deposits, or make payment of interest or other benefits assured or to provide the services against which the deposit is received;
- (iii) The State Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording reasons in writing issue an order attaching the money or other property believe to have been acquired by such Financial Establishment either in its own name or in the name of any other person from and out of the deposits collected by such Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the personal assets of the promoters, partners, directors, managers or members of any other person of the said Financial Establishment, as the State Government may think fit.
- (3) On the publication of the order under sub-section (2) all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government pending further order from the Special Court.
- 4. (1) The State Government may by notification, appoint Competent Authority to exercise control over the properties attached by the State Government under Section 3.
- (2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.
- (3) On receipt of the order of the State Government under Section 3, the Competent Authority shall take such action as it deems necessary or expedient for taking physical possession of all the monies, properties and assets of the concerned Financial Establishment expeditiously and the Competent Authority shall have all the powers which are necessary for the aforesaid purpose.
- (4) Without prejudice to the generality of the powers vested under sub-section (3), the Competent Authority shall be entitled to -
 - (a) Require assistance of any police authority or any other authority or person and on such requisition, it shall be the duty of the police authority or such other authority or person to extend necessary assistance.
 - (b) Open bank accounts in any scheduled commercial bank and credit all monies realized and operate the bank accounts while dealing with the money received in the capacity as Competent Authority;
 - (c) Require any person believed to be in possession or control over any information, money, properties or assets of the Financial Establishment, to furnish necessary information, to hand over possession of such properties or assets to the Competent Authority and such person shall comply with the requisition without any loss of time.

(d) Appoint legal practitioner of chartered accountant or any other person whose services are necessary for taking possession and for realization of the assets of the Financial Establishment;

(e) Sell, receive, transfer, endorse, negotiate, or otherwise deal with any marketable security or negotiable instrument belonging to or in the control of the Financial Establishment and given proper discharge for the same;

(f) Sell, transfer or otherwise realize any movable or immovable property belonging to or in the control of the Financial Establishment either by public auction or with the prior approval of the Special Court by private arrangements;

Provided that the perishable items of such property shall be sold by public auction as soon as the Competent Authority deems fit;

(g) Make payment as per the orders passed by the Special Court from and out of the bank accounts; and

(h) Do all and every acts and deeds, which would be necessary for the speedy realization of the assets of the Financial Establishment.

(5) Upon receipt of the order of the State Government under Section 3, the Competent Authority shall apply within fifteen days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute.

(6) An application under sub-section (5) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to default the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3.

(7) The Competent Authority may make an application to any Special Court or Designated Court or any other Judicial Forum established or constituted or entrusted with the powers of any other State Government under any similar enactment for adjudicating any issue or subject matter pertaining to money or property or assets belonging to a Financial Establishment or any person notified under this Act situated within the territorial jurisdiction of that Special Court or any Judicial Forum as the case may be for passing orders to give effect to the provisions of this Act.

Explanation : For the purpose of this section, the expression "Financial Establishment" includes the directors, promoters, managers or members of the said establishment or any other person whose personal assets have been attached under Section 3.

Assessment of assets and deposit liabilities

(1) Within thirty days from the date of appointment, the Competent Authority shall assess the deposit liabilities and the assets of the Financial Establishment and submits the statement thereof to the Special Court.

(2) The Competent Authority thereafter shall issue notice within ten days either individually or by means of effective media publication, inviting the claims by secured creditors, if any, and also the

depositors of the Financial Establishment to submit their claims with proper proof to establish the same.

(3)

Every notice under sub-section (2) sent to or deemed to have been effected to claimants shall state that if the statement of claim is not sent to the Competent Authority before the expiry of the period of one month from the date of notice, the claims shall not be treated as claims entitled to be paid under the provision of this Act.

(4)

Every notice sent to a secured creditor shall require him to value the security before the expiry of the period of one month from the date of the notice and such notice shall also state that if the statement of the claim together with the valuation of the security is not sent to the Competent Authority, the Competent Authority himself shall value the security and his valuation shall be binding on such secured creditor.

(5)

If the claimant fails to comply with the notice issued under sub-section (4), such security shall be valued by the Competent Authority in his best judgement.

6. Report by the Competent Authority

After making a report under Section 5, the Competent Authority shall make an application to the Special Court seeking permission to make payment to the depositors from out of the money realized. While making such application, the Competent Authority shall assess the liability to the depositors and the other liabilities and in case the money realized or realizable is not sufficient to meet the entire liability, make a submission to the Special Court seeking permission for making payment to the depositors and disburse the money as per the orders of the Special Court.

7. Punishment for default in repayment of deposits and interest

Notwithstanding anything contained in Sections 3 and 4 where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees.

8. Constitution, Jurisdiction and function of Special Court

(1)

For the purpose of this Act, the State Government may, with the concurrence of the Chief Justice of the Guwahati High Court, by notification in the Official Gazette, constitute a Special Court in the cadre of a District and Session Judge.

(2)

No Court other than the Special Court shall have jurisdiction in respect of any matter to which the provision of this Act apply.

(3)

Any pending case in any other Court to which the provision of this Act apply shall stand transferred to the Special Court.

(4)

The Special Court shall on an application by the Competent Authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money realized from out of the property attached.

9. Powers of the Special Court regarding realization of assets and payment to depositors.

(1)

The Special Court shall have all the powers for giving effect to the provisions of this Act.

(2)

Without prejudice to the generality of sub-section (1), the Special Court may :-

(a)

Give any, direction to the Competent Authority, as it deems fit, for effective implementation of the provisions of this Act;

- (b) Approve the statement of dues of the Financial Establishment due from various debtors, assessment of the value of the assets of the Financial Establishment, finalise the list of the depositors and their respective dues;
- (c) Direct the Competent Authority to take possession of any assets belonging to or in the control of the Financial Establishment and sell, transfer or realize the attached assets either by public auction or by private sale as he deems fit depending upon the nature of assets and credit the sale proceeds thereof to the bank accounts;
- (d) Approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realization of the assets of the Financial Establishment;
- (e) Order for payment to the depositors by the Competent Authority or order for proportionate payment to the depositors in the event of the money so realized is not sufficient to meet the entire deposit liability; and
- (f) Pass any order which the Special Court deems fit for realization of the assets of the Financial Establishment and repayment to the depositors of the Financial Establishment or on any matter or issue incidental thereto.

Explanation :- For the purpose of this section, the expression "Financial Establishment" includes the directors, promoters, managers or members of said establishment or any other person whose money, property or assets have.

Powers of Special Court Regarding Attachment

- 10. (1) Upon receipt of an application under sub-section (3) of Section 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the State Government under Section 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order or attachment should not be made absolute.
- (2) The Special Court shall also issue such notice to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof, on the ground that he has an interest in such property or portion thereof.
- (3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or sub-section (6).
- (4) If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute.
- (5) If cause is shown or any objection is made as aforesaid the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Special Court shall pass an order making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment;

Provided that the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

(7) Where the Special Court passes an order under sub-section (6) making an order of attachment absolute or varying the order of attachment by releasing a portion of the property from attachment, it may issue such direction as may be necessary for realization of the assets attached and for the equitable distribution amongst the depositors of the money realized from and out of the assets so attached.

(8) Where an application is made by any person duly authorized or constituted or specified by any other State Government under similar enactment empowering him to exercise control over any money or property or assets attached by the State Government, the Special Court shall exercise all its powers, as if, such an application were made under this Act and pass appropriate order or direction on such application as to give effect to the provisions of such enactment.

Attachment of property of mala fide transferees 11. (1) Where the assets available for attachment of a Financial Establishment or other person referred to in Section 3 are found to be less than the amount of value which such Financial Establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said Financial Establishment has transferred (whether after the commencement of this Act or not) any of the property otherwise than in good faith and for consideration the Special Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of Section 10, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration the Special Court shall order the attachment of so much of the said transferee's property as is the opinion of the Special Court equivalent.

Security in lieu of attachment 12. Any Financial Establishment or person whose property has been or is about to be attached under this Act may, at anytime apply to the Special Court for permission to give security in lieu of such attachment and where the security offered is in the opinion of the Special Court, satisfactory and sufficient it may cancel the ad-interim order of attachment or, as the case may be, refrain from passing the order of attachment.

Administration of property attached 13. The Special Court may, on the application of any person interested in any property attached under this Act and after giving the

Competent Authority an opportunity of being heard, make such orders as the Special Court considers just and reasonable for –

- (a) Providing from such property attached as the applicant claims an interest in such sums as may be reasonable necessary for the maintenance of the applicant and of his family and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Special Court under Section 8;
- (b) Safeguarding so far so as may be practicable the interest of any business affected by the attachment and particularly in the interest of any partners in such business.
- (c) Discharging any liability, statutory or otherwise of such Financial Establishment.

Appeal 14.

Any person including the Competent Authority if aggrieved by an order to the Special Court may appeal to the High Court within thirty days from the date of order.

Special Public Prosecutor 15.

The State Government by notification appoints an Advocate of not less than ten years standing as a Special Public Prosecutor for the purpose of conducting the cases under this Act in the Special Court.

Taking Cognizance, Procedure and powers of Special Court regarding offence 16. (1)

The Special Court may take cognizance of the offence without the accused being committed to it for trial and in trying the accused person shall follow the procedure prescribed in the code of Criminal Procedure, 1973 for the trial of warrant cases by Magistrates.

(2)

The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the proceedings before a Special Court.

Act to over ride other laws 17.

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

Protection of action taken in good faith 18.

No suit prosecution or other legal proceedings shall lie against the State Government or any person for anything who is in good faith done or intended to be done under this Act.

Power to made rules 19. (1)

The State Government may make rules for carrying out the purposes of this Act.

(2)

All rules made under this Act shall be published in the Official Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(3)

Every rule made by the State Government under this Act, shall be laid as soon as may be after it is made, before the State Legislature.

Power to remove difficulties 20. (1)

If any difficulty arises in giving effect of the provisions of this Act, the State Government may, by order not inconsistent with the provisions of this Act, remove such difficulties.

(2)

Every order made, under this section shall be laid, as soon as may be after it is made, before the Legislature of the State of Meghalaya.

L. M. SANGMA,
Joint Secretary to the Govt. of Meghalaya,
Law (B) Department.