

The Meghalaya Credit Operation and Miscellaneous Provisions Rules, 1979

MEGHALAYA

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Rule

THE-MEGHALAYA-CREDIT-OPERATION-AND-MISCELLANEOUS-PRO of 1979

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The Meghalaya Credit Operation and Miscellaneous Provisions Rules, 1979Published vide Notification No. RDS 181/77/Part/23, dated the 24th April, 1979 in the Meghalaya Gazette, Part 5A, dated 10-5-1979, page 121Last Updated 19th February, 2020Notification No. RDS 181/77/Part/23, dated the 24th April, 1979. - In exercise of the powers conferred by sub-section (3) and Section 1 of the Meghalaya Credit Operation and Miscellaneous Provisions Act, 1976 (Meghalaya Act No. 10 of 1976) the Governor of Meghalaya hereby appoints the 1st day of May, 1979, as the date on which the said Act shall come into force in the whole State of Meghalaya.

Chapter I Preliminary

1. Short title and commencement.

(1)These Rules may be called the Meghalaya Credit Operation and Miscellaneous Provisions Rules, 1979.(2)They shall come into force at once.

2. Definitions.

- In these Rules, unless the context otherwise requires-(a)"Act" means the Meghalaya Credit Operation and Miscellaneous Provisions Act, 1976 (Meghalaya Act 10 of 1976).(b)"designated officer" means an officer designated by the State Government under sub-section (1) of Section 8 of

the Act.(c)"Form" means a form appended to these Rules.(d)"prescribed authority" means an official of the State Government notified by the State Government under sub-section (1) of Section 10 of the Act.(e)"Section" means a section of the Act.(f)"Specified Officer" means an officer specified by the State Government under sub-section (2) of Section 4 of the Act.(g)All other words and expressions used but not defined in these Rules but defined or used in the Act shall have the meanings respectively assigned to them in the Act.

Chapter II

Distrain and Sale of Movables

3. Action to be taken by the Bank prior to the making of application referred to in Rule 4.

- If an agriculturist fails to repay to the bank, the whole or part of the financial assistance obtained by him on or before the due date, the bank shall serve on him or his heirs or legal representatives with at least fifteen days' clear notice, informing him that if he fails to pay the amount due within the period specified in the notice, the crops or other produce or movables (hereinafter referred to as the said property) charged to the bank shall be distrained and sold through the specified officer.

4. Application by the bank for distraint.

(1)On the agriculturist failing to make the due payment to the bank within the period specified in the notice under Rule 3, the bank may apply to the specified officer within whose jurisdiction the agriculturist resides or holds such property for distraint and sale of the said property.(2)Every application under sub-rule (1) shall be in Form "A".(3)A copy of the document creating the charge duly certified by an officer of the bank authorised by it in this behalf shall be filed along with the application referred to in sub-rule (1).

5. Service of notice to show cause against distraint on the agriculturist.

- If the specified officer is satisfied that the application is in order, he shall cause to be served on the agriculturist or his heir or legal representative, a written notice of demand in Form "B" calling upon him to pay the amount specified in the notice within fifteen days from the date of service thereof, or to show cause why the property charged be not distrained and sold.

6. Mode of service of notice.

- The notice referred to in Rules 3 and 5 shall be served by delivering a copy to the agriculturist or his heir or legal representative or to any adult male member of his family at his usual place of residence or to his authorised agent, or when such service cannot be affected, by affixing a copy of the notice on some conspicuous part of his residence.

7. Procedure where no cause is shown against distraint.

- If the amount specified in the notice referred to in Rule 5 or any part of property charged thereof is not paid within the time allowed therefor, or if no cause is shown, or where cause shown is considered by the specified officer to be insufficient, he shall attach the property charged.

8. Custody of distrained property.

- The specified officer shall make proper arrangements for custody and preservation of the distrained property during the interval between distraint and sale thereof. The applicant or any officer of the bank concerned, if so authorised by the applicant, shall, if required by the designated officer undertake the custody and preservation of the property distrained.

9. Time when the distraint can be made.

- The attachment shall be made at any time between sunrise and sun-set.

10. Distraint of crops or ungathered produce.

- If crops or ungathered produce of the land belonging to the agriculturist or his heir or legal representative are distrained, the specified officer may cause them to be sold when fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season and stored in proper place until sold.

11. Entry of the distrainer on private premises for distraining.

(1)Wherever the specified officer for the purpose of the attachment of the properties referred to in sub-rule (1) of Rule 3 has the information or the reasons to believe that-(a)any portion of the properties to be attached under the Act and the Rules has been concealed or is likely to be concealed;(b)any person who has been required under these Rules to produce or cause to be produced, any books, accounts, documents, or other information in his custody or power has omitted or failed to produce or cause to be produced, such books, accounts, documents or other information; or(c)any books, accounts, receipts, vouchers, certificates, reports or other documents belonging to any property to be attached are likely to be tampered with, falsified or manufactured,it shall be lawful for the specified officer or any official authorised by him to effect the search or inspect under this rule.(2)Whenever any place liable to search or inspection under sub-rule (1) is areas closed, any person residing in, or being in charge of such place, shall on demand of the official conducting the search and on production of authority to conduct the search in question, allow free ingress thereto, and afford all reasonable facilities for search therein.(3)If ingress to such place cannot be obtained under sub-rule (2), it shall be lawful in any case for the official conducting the search or inspection to enter such place and search therein, and in order to effect entrance into such place, stable, cow-shed, granary, godown, out-houses or other building, to break open the lock of any door, box, safe, almirah or other receptacle for exercising the powers conferred by sub-rule (1)

where the keys thereto are not available, if after notification of his authority and purpose and demand, of admittance duly made, he cannot otherwise obtain the admittance: Provided that if any such place in an apartment in the actual occupancy of a female who, according to the custom, does not appear in public, such official shall before entering such apartment give notice to such female that she is at liberty to withdraw and shall afford her every reasonable opportunity for withdrawing, and may then break open the apartment and enter it. (4) Before making a search under this rule, the official shall call upon two or three independent respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of such locality is available or is willing to be a witness to the search or to attend and witness the search and may issue an order in writing to them or any of them so to do. (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer and signed by such witnesses; but no person witnessing a search under this rule shall be required to attend the Court as a witness of the search unless specifically summoned by it. (6) The occupant of the place searched, or some persons on his behalf, shall, in every instance, be permitted to attend during search and a copy of the list prepared under this rule, signed by the said witnesses, shall be delivered to such occupants or persons. When any person is searched under this rule a list of all things taken in possession shall be prepared and a copy thereof shall be delivered to such person. (7) Any person who, without reasonable cause, refuses or neglects to attend and witness search under this rule, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code.

12. Sale of distrained property by public auction.

(1) The specified officer may sell or cause to be sold by public auction any property distrained under Rule 7 or such part thereof as may, in his opinion, be necessary to satisfy the demand together with expenses of the distraint and the costs of the sale. (2) The distrainer shall, at any time before the date of sale, cause proclamation of the date and place of the intended sale to be made by beat of drum in the village in which the agriculturist or his heir or legal representative resides or the said property is kept and in such other place or places as the specified officer may consider necessary to give due publicity to the intended sale. (3) The specified officer may, in his discretion, adjourn the sale to a specified day recording the reasons for such adjournment. Where a sale is adjourned for a longer period than fifteen days, a fresh proclamation under sub-rule (2) shall be made unless the agriculturist or his heir or legal representative consents to waive it.

13. Recovery of sale proceeds from purchasers.

- The purchaser shall not be permitted to carry away any part of the property until he has paid for it in full. If the purchaser fails to pay the purchase money the property shall be resold.

14. Utilisation of sale proceeds.

(1) Where any crop, produce or other movable property is distrained and sold in accordance with these Rules, the amount due to the bank and the expenses incurred for distraint and sale shall be

deducted from the sale proceeds and the balance, if any, shall be paid to the agriculturists concerned.(2)The agriculturist or his heir or legal representative shall be given a receipt for the amount appropriated from the sale proceeds.

15. Release of distrained property on payment of the amount due by the agriculturist or by any person claiming interest in the property.

- Where prior to the date fixed for sale the agriculturist or his heir or legal representative or any person acting on his behalf or any person claiming an interest in the property distrained pays the full amount due, including interest, and other expenses incurred in the distraint and sale of the property charged, the distrainer shall not proceed with the sale and shall release the property forthwith.

Chapter III

Charge and Mortgage of Immovable Properties

16. Registration of charge/mortgage in favour of bank.

(1)A copy of the declaration creating a charge or variation of the declaration or a copy of the mortgage executed in favour of the bank referred to in Section 5 of the Act shall not be a carbon copy but shall be neatly hand-written, printed or type-written or be a cyclostyled copy of type-written matter on only one side of the paper.(2)Such copy of document shall contain the following particulars, namely:(a)the number of stamps and their value;(b)a copy of the endorsement made by the stamps vendor or the treasury on the back of such stamps; and(c)the date of execution and the names and addresses of the witnesses.(3)Such copy, complying with the requirements mentioned above and duly certified to be a true copy by an employee authorised by the bank in this behalf, shall be sent by the bank to the Sub-Registrar concerned by registered post acknowledgement due within a period of thirty days from the date of execution of the document.(4)The Sub-Registrar receiving the copy of the document referred to in sub-rule (3) shall send the acknowledgement within fifteen days from the date of its receipt.

17. Inspection of the records of the Registrar.

- Where a copy of the document creating a charge, variation or mortgage has been sent to the Deputy Commissioner or the Sub-Registrar under Section 1 of the Act, the bank or any employee thereof duly authorised by it in this behalf, may at any time inspect the relevant record of the Deputy Commissioner or the Sub-Registrar concerned to ensure whether the said copy has been filed in accordance with the provisions of Section 5 of the Act in the relevant books prescribed under Section 51 of the Registration Act, 1908, No fee shall be charged for such inspection.

18. Noting of charge or mortgage under Section 8 of the Act.

- On receipt of intimation under Section 8 of the Act, the District Council or such other Revenue Official as may be designated by the State Government, shall acknowledge the same within fifteen days from the date of receipt of such intimation. He shall make a note of the particulars of charge or mortgage in the record-of-rights as may be available relating to the land within one month from the date of receipt of such intimation. The bank in whose favour such a charge is created or mortgage is given, may at any time through any of its employees duly authorised in that behalf, inspect the relevant records of the revenue officer concerned to ensure whether the said charge or mortgage has been duly recorded in the concerned Register.

Chapter IV

Sale of Land or any Interest Therein

19. Action to be taken by the bank prior to the making of application under Section 10 of the Act.

- If an agriculturist has defaulted in the repayment of three consecutive instalments, the bank shall serve a registered notice on the defaulter calling upon him to clear the dues within one month from the date of issue of the notice and if the borrower does not clear the dues within stipulated period, a second notice giving him a further period of one month shall be served upon him through registered post. Thereafter the Branch Manager of the bank may move the prescribed authority within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situated, for initiating action under Section 10 of the Act.

20. Application under Section 10 of the Act.

(1) Every application by a bank under Section 10 of the Act for the sale of any land or any interest therein shall be made, by the bank in Form 'C' to the prescribed authority. (2) A copy of the original document creating the charge or mortgage duly certified by an officer of the bank authorised in this behalf shall be certified alongwith the application referred to in Section 10.

21. Service of notice under Section 10 of the Act.

- On receipt of the application referred to in Rule 20, the prescribed authority shall cause to be noted thereon, the date of its presentation and if he is satisfied that the application is in order, a notice in Form "C" shall be served on the agriculturist or his heirs or legal representatives, as the case may be.

22. Issue of order by the prescribed authority.

- If the agriculturist or his heir or legal representative fails to pay the amount due to the bank within thirty days from the date of service of the notice referred to in Rule 21 the prescribed authority shall pass orders for the payment of sum or sums due to the bank by the sale of his land or any interest, which is subject to such charge or mortgage, in accordance with the provisions of sub-section (4) of Section 11 of the Act.

23. Supply of certified copy of the order passed by the prescribed authority to the aggrieved party.

- Any person affected by any order passed by the prescribed authority under Rule 31, shall be entitled to be furnished with certified copy thereof and any other connected document on application duly made in that behalf.

24. Time within which the Bank has to dispose of the property under Section 11 of the Act.

- Any land or interest therein acquired by a bank under Section 11 of the Act shall be disposed of by it within five years from the date of such acquisition or such further period as the State Government allow.

25. Notice, summons, etc., to be issued under the Act/Rules.

- Every order, notice, summons or intimation issued by any authority under the Act or under these Rules shall bear the signatures of such authority or such other authority as may be duly authorised in this behalf, and shall be authenticated by the seal of such authority. Form 'A' [See Rule 4 (2)] Before the.....(Distrainer).....Tehsil.....District.....Applicant Bankversus.....Opposite party (Agriculturist or his heir or legal representative) Application under sub-section (2) of Section 4 of the Meghalaya Credit Operation and Miscellaneous Provisions Act, 1976 (Meghalaya Act 10 of 1976) for the distraint and sale of crop, produce or other movable property.

1. Name and address of the agriculturist (if the agriculturist is dead, the name of his heir or legal representative should also be stated).....

2. The amount of the financial assistance.....

3. Date when the charge was created.....

4. Date when the loan was actually advanced.....

5. The nature of the transaction and the terms of the loan.....

6. Total amount due (including interest).....

7. Payments, if any, made by the agriculturist along with the date of such payment.....

8. Net amount due on the date of application (excluding cost).....

9. Description of the property charged/mortgaged.....

It is, therefore, requested that the property hereinbefore mentioned may be distrained and sold, and the amount due be paid to the bank. Agent/Officer-in-charge..... Bank

Enclosures Date.....

Form B[See Rule 5] Before the..... (Distrainer)..... Tehsil..... District..... Notice under Rule 5 of the Meghalaya Credit Operation and Miscellaneous Provisions Rules, 1979. To, Shri..... Whereas Shri..... borrowed a sum of Rs..... on..... 19, as financial assistance from..... Bank..... Branch, District..... by creating a charge on the crops, produce or other movable specified below:..... And whereas the amount due to that said bank has not yet been paid and the bank has made on application (copy enclosed) that the property specified below be distrained and sold; You are, therefore, called upon to pay the sum of Rs within a period of fifteen days from the date of service of this notice and/or to show cause why the property specified below be not distrained and sold and the amount due be not paid to the bank from the sale proceeds thereof. Description of the crop, produce or another movable charged.....

Date.....

Enclosures: (Distrainer)

Form 'C'[See Rule 20 (1)] Before the Prescribed Authority..... Applicant (Bank) Versus Opposite party (Agriculturist or his heir or legal representative) Application under Section 10 of the Meghalaya Credit Operation and Miscellaneous Provisions Act, 1976 (Meghalaya Act 10 of 1976).

Name of the agriculturist to whom financial assistance was granted (if the

1. agriculturist is dead, the name of his heirs or legal representatives should also be stated)
2. The amount of financial assistance
3. Date when the deed was executed
4. Date when the deed was registered
5. Date when the loan was actually advanced

6. The nature of the transaction and the terms of the loan
7. Total amount due (including interest)
8. Payments, if any, made by the agriculturists along with the date(s) of such payments
9. Net amount due on the date of application (excluding post)
10. Description of the property charged/mortgaged

It is, therefore, requested that the amount due to the bank may be directed to be paid by the sale of the property hereinbefore mentioned.

Agent/Officer-in-Charge

Enclosures:

Date..... Bank

Form 'D'[See Rule 21]Before the Prescribed Authority Notice under Section 10 of the Meghalaya Credit Operation and Miscellaneous Provisions Act, 1976 (Meghalaya Act 10 of 1976).ToShri.....Whereas, Shri.....borrowed a sum of Rs..... as financial assistance from..... Bank..... Branch district....., on the basis of the deed of charge/mortgage executed on in respect of the property specified below;And whereas, the amount due to the said bank has not yet been paid and the bank has made an application (copy enclosed) that the property specified below be sold;Now, therefore, in exercise of the powers under the proviso to Section 10 (1) you are hereby called upon to pay the entire amount due to the said bank within a period of thirty days from the date of service of this notice.Please take notice that in the case of default, the property specified below shall be sold in accordance with the provisions of the Act and Rules made thereunder.Description of the property charged/mortgaged:.....

Date.....19.....

Seal (Prescribed Authority)

Enclosures: