

Tripura Protection of Interests of Depositors (In Financial Establishments) Act, 2000

TRIPURA

India

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Act 6 of 2000

- Published on 12 September 2000
- Commenced on 12 September 2000
- [This is the version of this document from 12 September 2000.]
- [Note: The original publication document is not available and this content could not be verified.]

Tripura Protection of Interests of Depositors (In Financial Establishments) Act, 2000(Tripura Act No. 6 of 2000)Last Updated 10th June, 2020[Dated 12.9.2000]An Act to protect the interests of depositors of the Financial Establishment and for matters connected therewith the incidental thereto.Be it enacted by the Tripura Legislative Assembly in the Fifty-First year of the Republic of India as follows:Chapter - I Preliminary

1. Short title, extent & commencement.

(1)This act may be called the Tripura Protection of Interests of Depositors (In Financial Establishments) Act, 2000.(2)It extends to the whole of Tripura.(3)It shall come into force at once.

2. Definition.

- In this Act, unless the context otherwise requires, -(a)"Competent Authority" means the Competent Authority appointed under section 5;(b)"Designated Court" means a Designated Court constituted under section 6;(c)"deposit" includes and shall be deemed always to have included any receipt of money of acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include -(i)amount raised by way of share capital or by way of debenture or by bond or any other instrument covered under the guidelines given, and regulations made by the SEBI establishment 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 (c) of section 5 of the Banking Regulation Act, 1949; (10 of 1949);(iv)any amount received from - ,(a)the Industrial Development

Bank of India;(b)a State Financial Corporation;(c)any financial Institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964 (18 of 1964);(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 individuals 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 Act, 1982, (10 of 1982);Explanation - II. - Any credit given by a seller to a 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 any person accepting deposit under any scheme or arrangement or any other manner but does not include a Corporation or a Co-operative 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, (10 of 1949) ;(e)"Government" means Government of Tripura.Chapter - II Default and Remedies

3. Conviction for Fraudulent default.

- Any Financial Establishment which(i)fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised; or(ii)fraudulently fails to render service as assured, against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management or conduct of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extent to one lakh of rupees and such Financial Establishment also shall be liable for a fine which may extent to one lakh of rupees :Provided that in the absence of special and adequate reasons recorded in the judgement of the Court, the imprisonment shall not be for less than 3 years and the fine shall not be less than one lakh of rupees.Explanation. - For the purpose of this section, a financial, Establishment, which -(1)commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit ; or(2)fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person, or(3)commits such defaults due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed, shall be deemed to have committed a default fraudulently or failed to render specific service fraudulently.

4. Attachment of Properties on default.

(1)Notwithstanding anything contained in any other law for the time being in force, -(i)Where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed, -(a)to return the deposit after maturity or on demand by the depositor ;

or(b)to pay interest or other assured benefit ; or(c)to provide the service promise against such deposit ; or(ii)where the Government has reason to believe that any Financial establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them and if the 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 may, in order to protect the interest of the depositors of such Financial Establishments, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits by the 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 promoter, Director, partner or manager or member of the said Financial Establishment, as the Government may think fit.(2)On the publication of the order under sub-section (1) all the properties and the 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 Designated Court.(3)The Collector of a District shall be competent to receive the complaints from his District under Sub-Section (1) and shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned Superintendent of Police in the District for investigation.

5. Competent Authority.

(1)Government may while issuing the order under Sub-section (1) of section 4, appoint any of its officers not below the rank of a Deputy Collector as the competent Authority to exercise control over the money and the properties attached by the Government under section 4.(2)The Competent Authority shall have such other powers as maybe prescribed for carrying out the purpose of this Act.(3)The Competent Authority shall apply within 15 (fifteen) days from the date of publication of the said order, to the Designated Court, accompanied by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have invested or acquired or any other property attached under section 4 for such further orders as may be found necessary.(4)The Competent Authority, may also make an application to any Special Court or Designated Court or any other Judicial forum established or constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject matter pertaining to any money or property or assets of a Financial Establishment under any similar enactment in respect of money or property or assets belonging to or ostensibly belonging to a Financial Establishment or any person notified under this Act situated within the territorial jurisdiction of that Special Court or Designated Court or any judicial forum, as the case may be, for passing appropriate orders to give effect to the provisions of this Act.

6. Designated Court.

(1)For the purposes of this Act the Government may, with the concurrence of the Chief Justice of the Gauhati High Court, by notification, in the official Gazette, constitute one or more Designated Court

to be presided over by a judicial officer not below the rank of a District Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification.(2)No Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.(3)Any pending case in any other Court to which the provisions of this Act apply shall, on the date of publication of this Act, stand transferred to the Designated Court.

7. Powers of Designated Court regarding attachment.

- 1. Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by copies of the application and affidavits and of the evidence, if any, recorded calling upon the said Establishment and the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.

2. The Designated 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 Financial Establishment or the person to whom the notice is issued under Sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have 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 Designated Court at any time before an order is passed under sub-section (4) or sub-section (6) ;

4. The Designated Court shall if no cause is shown and no objections are made on or before the specified date, under subsection (3), forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for disposal of the assets attached and for the equitable distribution among the depositors of the money realized from out of the property attached.

5. If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under order 37 of the Civil Procedure Court, 1908 and exercise

all the powers of a court in hearing a suit under the said code and any person making an objection shall be required to adduce evidence to show that on the date of attachment he had some interest in the property attached.

6. After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment :

Provided that the Designated 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 an application is made by any person duly authorized or constituted 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 Designated Court shall exercise all its powers, as if such an application was made under this Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such enactment.

8. Attachment of property of malafide transferees.

(1)Where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositor and where the Designated Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that 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 Designated 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 subsection (5) of section 7, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Designated Court shall order the attachment of so much of the said transferee's property as in the opinion of the Designated Court equivalent to the proper value of the property transferred.

9. Security in lieu of attachment.

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

10. Administration of Property attached.

- The Designated Court may, on the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for - (a) providing from such of property attached and vested in the Competent Authority as the applicant claims and interest in such sums as may be reasonably 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 Designated Court under section 3 : (b) safeguarding so far as may be practicable the interest of any business affected by the attachment and in particular, the interest of any partners in such business or any other person connected with such business.

11. Appeal.

- Any person including the Competent Authority, if aggrieved by an order of the Designated Court, may appeal to the High Court within the sixty days from the date of the order. Chapter - III Special Public Prosecutor and Trial Procedure

12. Special Public Prosecutor.

- The Government may, by notification appoint an Advocate of not less than ten years standing as a Special Public Prosecutor in consultation with the District and Session Judge of the concerned District, for the purpose of conducting cases in the Designated Court.

13. Procedure and Powers of Designated Court regarding offences.

(1) The Designated Court may take cognizance of the offence without the regarding Offences - case being committed to it for trial and in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 (2 of 1974) for the trial of warrant cases by the Magistrates. (2) The provisions of the code of Criminal Procedure, 1973, (2 of 1974) shall so far as, may be, apply to the proceedings before a Designated Court and for the purposes of said provisions a Designated Court shall be deemed to be a Magistrate. Chapter - IV Miscellaneous

14. Act of override Other laws.

- 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.

15. Protection of action Taken in good faith.

- No suit or other proceeding shall lie against the Government or the Competent Authority or an officer or employee of the Government for anything which is in good faith done or intended to be done under this Act.

16. Power to Make Rules.

(1)The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.(2)Every rule made under this Act shall be laid, as soon as may be, after it is made before the House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before expiry of the session in which it is so laid or the session immediately following the House agree in making any modification in the rule or House agree that the rule should not be made, and notify the decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

17. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act the Government may, as occasion arise, by order, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary to remove the difficulty.