



सत्यमेव जयते

The Mizoram Gazette EXTRA ORDINARY Published by Authority

REGN. NO. NE—313 (MZ)

Vol. XXXI Aizawl, Thursday 19. 12. 2002 Agrahayana 28, S.E. 1924, Issue No. 395

NOTIFICATION

No.H.12013/115/2002-LJD/4, the 18th December, 2002. The following Act of the Mizoram Legislative Assembly which received the assent of the Governor of Mizoram is hereby published for general information.

The Mizoram Act No. 14 of 2002

The Mizoram Protection of Interests of Depositors (in financial establishment) Act, 2002

Received the assent of the Governor of Mizoram on the 4th December, 2002.

AN

ACT

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

It is enacted by the Mizoram Legislative Assembly in the Fifty-third Year of the Republic of India as follows.

CHAPTER—I

PRELIMINARY

Short title, extent and commencement. 1. (1) This Act may be called the Mizoram Protection of Interests of Depositors (In Financial Establishments) Act, 2002.

(2) It shall extend to the whole of Mizoram.

(3) It shall come into force on such date as the Government may by notification in the Official Gazette appoint.

Definitions 2. In this Act, unless the context otherwise requires,—

(a) "Competent Authority" means the authority appointed under section 4;

(b) "Deposit" means the deposit of a sum of money made with a Financial establishment for a fixed period, for interest or return in any kind;

(c) "Financial Establishment" means an individual, an association of individuals or a firm carrying on business of receiving deposits under any scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956 or 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 or a non-banking financial company as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934; Central Act No. 1 of 1956 Central Act No. 10 of 1949 Central Act No. 2 of 1934

(d) "Government" means the State Government of Mizoram.

CHAPTER—II

ATTACHMENT OF PROPERTY OF DEFAULTING FINANCIAL ESTABLISHMENT

Attachment of properties on default of return of deposits 3. Notwithstanding anything contained in any other law for the time being in force:—

(a) Where, upon complaints received from a depositor or number of depositors, that any Financial Establishment defaults the return of deposits after maturity, or

(b) Where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, the Government may in order to protect the interests of the depositors of such Financial Establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposit collected 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, manager or member of the said Financial Establishment as the Government may think fit and transfer the control over the said money or property to the Competent Authority.

Competent
Authority

4. (1) The Government may, by notification, appoint an authority hereinafter called "the Competent Authority" to exercise control over the properties attached by the 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) Upon receipt of the orders of the Government under section 3, the Competent Authority shall apply within fifteen days to the Court of District and Sessions Judge or a judge of Special Court constituted under this Act, of the competent jurisdiction for making the ad-interim order of attachment absolute.
- (4) An application under sub-section (3) shall be accompanied by one or more affidavit stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded; 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 to the deposits or any other property attached under section 3.

CHAPTER-III

PUNISHMENT FOR DEFAULT IN REPAYMENT

Punishment for default in repayment of deposit and interest 5. Notwithstanding anything contained in Chapter II, 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 extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees.

CHAPTER-IV

TRIAL OF OFFENCES

Competent Court 6. (1) No Court, other than the District and Sessions Judge or a Special Court constituted under this Act shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(2) Any pending case in any other Court to which the provisions of this Act apply, shall stand transferred to the Court of District and Sessions Judge of competent jurisdiction.

(3) The Court of District and Sessions Judge or a Special Court constituted under this Act on 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 realised from out of the property attached.

(4) In such a district in which the Court of District and Sessions Judge is not available, the Court of Additional District Magistrate (Judicial) exercising jurisdiction in the district shall be construed as a Court of District and Sessions Judge.

Upon receipt of an application under section 3, the Court of the District and Sessions Judge or Special Court constituted under this Act shall forward the same to the Financial Establishment or to any person whose property is attached by the Court under section 3, a notice accompanied by application and affidavit and the evidence, if

any, recorded, calling upon him to show cause on a date to be specified in the notice as to why the order of attachment should not be made absolute.

(3) The Court of District and Sessions Judge 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 specified in the notice and make objection if he so desires to 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 interests 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 Court of District and Sessions Judge 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 Court of District and Sessions Judge shall forthwith pass an order making the ad-interim order of attachment absolute.

(5) If any cause is shown or any objection is made as aforesaid, the Court of District and Sessions Judge shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Court of District and Sessions Judge 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 on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Court of District and Sessions Judge 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 :

Provisional
Attachment
in
Civil
Suits

Central
Act V of
1908

1/11/02
10/11/02
10/11/02

Provided that the Court of District and Sessions Judge shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in the subsection (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 re-payment to the depositors of such Financial Establishment.

Attachment 8.
of properties
malafide
transferees

(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 or value which such Financial Establishment is required to repay to the depositors and where the Court of District and Sessions Judge is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith and for consideration the Court of District and Sessions Judge 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 Court of District and Sessions Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Court of District and Sessions Judge shall order the attachment of so much of the said transferee's property as in the opinion of the Court of District and Sessions Judge equivalent to the proper value of the property transferred.

Security
in lieu of
attachment

9. 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 Court of District and Sessions Judge for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of Court of District and Sessions Judge

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.

Adminis-
tration of
property
attached.

10. The Court of District and Sessions Judge 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 Court of District and Sessions Judge considers just and reasonable for-

(a) providing from such of the property attached 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 Court of District and Sessions Judge under Section 5;

(b) safeguarding so far as may be practicable the interest of any business affected by the attachment and particularly in the interest of any partners in such business.

Appeal

11. Any person including the Competent Authority, if aggrieved by an order of the Court of District and Sessions Judge may appeal to the High Court within thirty days from the date of order.

Special
Public
Prosecutor

12. The Government may, by notification, appoint an Advocate of not less than ten years standing as a Special Public Prosecutor for the purposes of conducting the cases falling under this Act in the Court of District and Sessions Judge.

Procedure
and powers
of the Court
of District
Magistrate
regarding
offences

13. (1) The Court of District and Sessions Judge 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. Central Act 2 of 1974

(2) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings under this Act. Central Act 2 of 1974

CHAPTER V
MISCELLANEOUS

Act to
override
other
laws

14. Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything consistent 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.

Power to
make
rules

(1) The Government may make rules for carrying out the provisions of this Act.

(2) All rules made under this Act shall be published in the Mizoram 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, as soon as may be after they are made, be laid before the State Legislative Assembly while it is in session, for a total period of not less than fourteen days which may be comprised in one session or two or more successive sessions, and if before the expiry of the session it is laid, the Mizoram Legislative Assembly agrees in making any modification in the rule or the Legislative Assembly is of the opinion that the rule should not be made, the rule shall thereafter have effect in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

P. Chakraborty,
Secretary,
Law & Judicial Deptt.,
Govt. of Mizoram.