

ASSAM PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 2000

jog No. No. 768/97 The Assam Gazette EXTRAORDINARY PUBLISHED BY AUTHORITY 1 2000, 30 1922 ('RS) 158 July, 2000, 30th Asadha 158 Oisपुरy idayv 922 E.) GOVERNMENT OF ASSAM CRIDERS BY THE GOVERNOR LEGISI DEPARTMENT : LEGISLATIVE BRANCH NOTIFICATION The 9th May, 2000 No. LGLE146/99/13 :—The following Act of the Assam Legislative Assembly which received the assent of the Governor is hereby published for- generül€ information. 574THE ASSAM GAZETTE, EXTRAORDINARY JULY 21, 2000 ASSAM ACT No. VI OF 2000 (Received the assent of the Governor on 6th Mayp 2000) THE ASSAM PROTECTION OF INTERESTS OF DEPOSI- TORS (IN FINANCIAL ESTABLISHMENTS) ACT, 2000 AN ACT to protect the deposits made by the public in the Financial Establishments and matters relating thereto. It is hereby enacted in the Fifty-first Year of the Republic of India as follows :-- Short title, (i) extent and commence— ment. (ii) (iii) Definition 2. (i) (ii) (iii) (iv) CHAPTER -1 This Act may be called the Assam Protection of Interests of Deposi- tors (in Financial Establishments) Act, 2000. It extends to the whole of Assam. It shall come into force at once. In this Act, unless the context other- wise requires, 'Competent authority' means the authority appointed under section 4; 'Deposit' meann the deposit of a sum of money made with a Finan- Cial Establishment fora fixed period, for interest or return in any kind, 'Financial Esta blishment' means an indi- vidual, an association of individuals or a firm carrying on business of receiving deposits under any scheme or arrange- ment or in any other manner but does not include a company registered Central Act under the Companies Act, 1956 or a No. 1 of Corporation or a Co-operative So ciety 1956. owned or controlled by any Stata Government or the Central Govern- ment or a Banking Company as de- Central Act fined under Section 5(c) of the No. 10.1949 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, Central Act 1934; No. 2 of 'Government' means the State Govern- 1934' ment of Assam. ASSAM GAZETTE EXTRAORDINARY JULY 21, 2000 575 Attachment of proper- ties on de- fault of re- turn of deposits. Competent authority. 3. (i) (ii) CHAPTER 11 Notwithstanding any-thing contained in any other law for the time being in force : Where, upon complaints received from a depositor or number ef depositors, that any Financial Establishment defaults the return cf deposits after maturity, or Where the Government have reason to be- lieve that any Financial Establishment is acting in a calculated manner with an in- tention to defraud the depositors and if the Gc,vernmc nt are satisfied that such Financial Establishment is not likely to return the deposits, the Government may in Order to protect the interests of the de- positors of such Financial Establishmen t, pass an ad—interim order attaching the money cr other property alleged to have been Proc ured either in the name of the Financial Establishment or in the name of any other perscn 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 dc- posits, such other property of the said Fin- ancial 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 tho competent au— thority. 4. (i) The Government may, by notification, ap— point an authority hereinafter called Competent authority" to exercise control over the properties attached by the Govern— ment under Section 3. (ii) The Competent authority shall have svch other powers as may be necessary for, car- rying out the purposes of this Act. 576 THE ASSAM GAZETTE, EXTRAORDINARY, JULY 21, '20€0 (iii) Upon receipt of the orders of the Gov- ernment under Section 3, the Competent authority shall apply within fifteen days to the Court of District and Session Judge of the competent juris- diction for making lhe ad-interim order of attachment absolute. (iv) An application under sub-flection (iii) shall be accompanied by onc or more affdavits, 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 of the deposits or any other pro- perty attached under Section 3. Punishment 5. for default in Repayo ment- of deposit and interests. Competent 6• Court. CHAPTER—III Notwithstanding anything contained in Chapter 11, where any Financial Establisment defaults the return Of the deposit or defaults the pay- nunt 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 (i) No. Court, other than the Court of District and Sessions Judge shall have jurisdiction in respect of any matter to which the provisions of this Act apply. (ii) 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.

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Power of the Court of the District and Sessions Judge. 7. (iii) (i) (ii) The Court of District and Sessions Judge 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.

• Upon receipt of an application under Section 4, the Court of the District and Sessions Judge shall issue to the Financial Establishment or to any other person whose property is attached by the Government under Section 3, a notice accompanied by an 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. 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. (iii) 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 Court of District and Sessions Judge at any time before an order is passed under sub-section (iv) or sub-section (vi).

578 THE ASSAM GAZETTE EXTRAORDINARY JULY 21, 2000 (iv) 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. (v) If cause is shown any objection under Act V of 1908. 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. (vi) After investigation under sub-section (v), 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 : 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 sub-section (i), 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.

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8. (i) Where the assets available for Attachment of properties of a Financial Establishment Transferees. 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 or after the commencement of this Act or not) 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. (ii) 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 (v) 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 is in

the opinion of the Court of District and Sessions Judge equivalent to the proper value of the property transferred

9. Any Financial Establishment or Security in lieu of attachment. person whose property has been or is about to be attached under this Act, may, apply to the Court at any time, 580 THE ASSAM GAZETTE EXTRAORDINARY JULY 21 2000 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 the Court of District and Session Judge satisfactory and sufficient, it may cancel the interim order of attachment or, as the case may be, refrain from passing the order of attachment

10. The Court of District and Sessions Judge may, on the application of property attached. Appeal Special Public Prosecutor. 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 Session Judge considers just and reasonable for— (i) providing from such of the property attached as the applicant claims an 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 : (ii) safeguarding so far so may be practicable the interest of any business affected by the attachment and particularly in the interest of any partners in such business. 11, Any person including the Competent authority, if aggrieved by any order of the Court of District and Sessions Judge, may appeal to the High Court within thirty days from the date of order

12. Government shall, by notification, appoint an Advocate of not less than ten years' standing as a Special Public Prosecutor for the purpose of conducting the cases falling under this Act in the Court of District and Session Judge. ASSAM GAZETTE, EXTRAORDINARY, JULY 21, 2000 581 13E (i) The Court of District and Central Act Procedure 2 of 1974, and powers of the Court Sessions Judge may take cognizance of the offence without the accused being committed to it for trial and in trying the Judge regarding offences against a person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 for the trial of warrant cases by Magistrates. (ii) The provisions of the Code of Central Act 2 of 1974, Criminal Procedure, 1973 shall apply to the proceedings under this Act. CHAPTER-V 14. Save as otherwise provided in this Act to override other Act, the provisions of this Act shall have effect notwithstanding anything consistent therewith contained in any other law for the being in force of any Custom or usage or any instrument having effect by virtue of any such law. 15. (i) The Government may make rules for carrying out the provisions of this Act. (ii) All rules made under this Act shall be published in the Assam 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, (iii) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are published. (iv) All rules 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 shall, unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modification or annulments as the Legislative Assembly may, during the said period agree to make so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder. DEKA, Secretary to the Legislative Govt. of Assam, Department GUWAHATI —Printed and published by the Dy. Director (Pgt. & Sty.), Directorate of Pgt. and Sty., Assam, Guwahati-21 (Exc Gazette) No. 1