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# HIGH COURT OF TRIPURA AGARTALA

**Certificate annexed with Certified copy of Judgment/Final Order**

*Sudhi's*

**Case No : WP(C)/585/2018**

Rose Valley Hotel and Entertainment Ltd.  
VS  
State of Tripura and Anr.

Date of Filling : 2018-06-08

Date of Registration : 2018-06-11

Date of Final Hearing : 2021-09-09

Date of Disposal : 2021-09-09

Date of Uploading of Judgment/Final Order on Server : 2021-09-10 17:40:35.550694

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**WP(C) No.585/2018**

Rose Valley Hotel and Entertainment Ltd., A Company, registered under the Companies Act, 1956, with sister agencies namely ROSE VALLEY REAL ESTATE AND CONSTRUCTION LTD. and ROSE VALLEY CHAIN MARKETING SYSTEM LTD.,

Registered Head office at R.B./29 Raghunathpur, VIP Road, Kolkata - 700059.

Regional Office at Mantribari Road, P.S. West Agartala, Sub-Division - Agartala, District Tripura.

Represented by its Chairman - Sri Gautam kundu, S/o. Lt. Nirmal Kundu, resident of 71 Jessore Road (south), Ashabari Apartment Barasat, 24 PNS(N), Barasat, 743201, West Bengal.

..... Petitioner(s).

- Vs. -

1. State of Tripura and Anr., represented by the Principal Secretary to the Government of Tripura, Department of Finance, Secretariat Building, Kunjaban, Tripura.

2. Directorate of Institutional Finance.

P.N. Complex, Kunjaban, Agartala, Tripura West, Pin - 799006.

..... Respondent(s).

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

For Petitioner(s) : Mr. B N Mjumder, Sr. Advocate,  
Mr. Rajib Shaha, Advocate,

For Respondent(s) : Mr. Debalaya Bhattacharya, G.A.,  
Mr. S Saha, Advocate.

Date of hearing & judgment : 9<sup>th</sup> September 2021.

Whether fit for reporting : Yes.

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## JUDGMENT (ORAL)

The petitioner has challenged a notification dated 19<sup>th</sup> January 2017 issued by the Government of Tripura in exercise of powers under Section 4(1)(ii) of the Tripura Protection of Interests of Depositors (In Financial Establishments) Act, 2000 (hereinafter to be referred to as the "Act of 2000") attaching several properties of the petitioner-company. The petitioner has also prayed for a direction to the respondents to protect the attached moveable and immovable properties till appropriate orders are passed by the designated Court. The third prayer made by the petitioner is for carrying out the valuation of the properties which valuation may be produced before the Court.

[2] Brief facts are as under :

Petitioner as a company registered under Companies Act, 1956 and engaged in the business of hospitality related industry in the name of Rose Valley Hotels and Entertainment Ltd. In the course of its business, the petitioner company had received deposits from several individuals. The petitioner had also acquired immovable properties from such deposits. The petitioner had established an amusement park in the vicinity of the city of Agartala. The business activities of the company, however, ran into several legal disputes. A detailed reference would be made to some of these disputes

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at a later stage. For the moment, it may be noted that initially Securities and Exchange Board of India (SEBI) found it objectionable that the company was accepting deposits and acting like a Non-Banking Financial Company (NBFC) without proper licences. SEBI therefore, prohibited the petitioner-company from carrying out certain activities. Police complaints were also filed against the petitioner for alleged fraudulent acts in receiving deposits by making false promises and claims of returns. Prohibitory orders were also issued by the Government of Tripura in exercise of powers of the Act of 2000. Eventually, by the impugned notification, the Government of Tripura attached all immovable and moveable properties of the petitioner-company upon which the petitioner has filed the present petition.

[3] Appearing for the petitioner learned senior counsel Mr. B N Majumder raised following contentions :

(i) The impugned notification is bad in law since no reasons are recorded by the competent authority before passing the order. Even otherwise, there was no material before the said authority to form a belief that the powers for attachment of the property were required to be exercised.

(ii) The State-authorities having attached the properties, failed to protect the same from theft and pilferage. As a result, moveable

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properties and attachments at the sites have been stolen away by the members of the public, thereby diminishing the value of the property. He contended that it was the duty of the State-authorities to protect the attached properties.

(iii) Counsel submitted that the total valuation of the properties of the company is much higher than the outstanding dues of the creditors and depositors. It is, therefore, necessary that the current valuation of the property be carried out and placed before the Court.

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[4] The respondents have appeared and filed replies. The stand taken in such replies, broadly stated, is as under :

(i) There were multiple proceedings initiated against the company suggesting that the company had misled the members of the public in order to receive deposits. This was carried on without proper licences and despite prohibition from SEBI and the Government of Tripura. There was enough material before the competent authority to form a belief that power of attachment under the Act of 200 was required to be exercised.



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(ii) The State-authorities have taken steps to protect the properties from any loss or damage. Various steps taken by the State-authorities are brought on record.

(iii) The stand of the respondents also is that proceedings are pending before different Designated Courts. The question of valuation, therefore, cannot be gone into right now in the writ petition. Let the Designated Courts take appropriate steps as found necessary.

[5] Appearing for the petitioner learned senior counsel Mr. Majumder reiterated the stand taken by the petitioner in the petition and submitted that the impugned order be set aside since it does not record reasons which is a mandatory requirement of the statute. Even otherwise, there was no material before the authority to be satisfied that such action was necessary. He drew my attention to various documents on record to canvass that the State-authorities had not taken sufficient steps to protect the properties. Such negligence would harm the depositors.

[6] On the other hand, learned Government Advocate Mr. Debalaya Bhattachariya opposed the petition contending that there was ample material before the authority to pass the impugned order. He placed before me the original file leading to issuance of the impugned notification which I had

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perused with the consent of the counsel for the petitioner. (I had offered to share with him the documents which I propose to rely upon in this judgment and which form part of the original files. He, however, did not insist on the same.) Learned Government Advocate further submitted that all necessary steps are taken to protect the properties under attachment.

[7] Before deciding these three issues raised by the petitioner, one may have a quick glance at the provisions contained in the Act of 2000. To protect the interest of depositors of financial establishment and for the matters connected therewith and incidental thereto, the Act of 2000 was framed. Term "deposit" has been defined in Section 2(c) in the widest possible manner. Term "financial establishment" has been defined in Section 2(d) as to mean any person accepting deposit under any scheme or arrangement or in any other manner excluding a corporation or a co-operative society owned or controlled by the State or the Central Government or a banking company as defined in the Banking Regulation Act, 1949.

[8] Section 3 is a penal provision providing penalty for any fraudulent default by a financial establishment of repayment of deposit on maturity. In such a case, every person including a promoter, partner, director, manager or any other person or employee responsible for the management and conduct

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of the business or affairs of the establishment would be punished with imprisonment for a term which may extend to six years.

[9] Section 4 pertains to attachment of properties on default and reads as under :

“4.(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

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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.”

[10] Sub-section (1) of Section 5 provides that the Government while issuing the order under sub-section (1) of Section 4, appoint any officer not below the rank of a Deputy Collector as a competent authority to exercise control over the money and the properties attached under Section 4. Sub-section (4) of Section 5 empowers the competent authority to make an application to the Designated Court or any other judicial forum for passing appropriate orders to give effect to the provisions of the Act.

[11] Section 6 of the Act envisages setting up of Designated Court for the purpose of the Act. Sub-section (3) of Section 6 provides that any

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pending case in any other Court to which the provisions of the Act applies shall, on the date of publication of the Act, stand transferred to the Designated Court.

[12] Section 7 pertains to the powers of the Designated Court regarding attachment. Sub-section (1) of Section 7 provides that upon receipt of the application under Section 5, the Designated Court shall issue to the financial establishment or any other person whose property is attached and vested in the competent authority by the Government under Section 4, a notice accompanied by the copies of the application and affidavits, if any, calling upon such a person to show cause why the order of attachment should not be made absolute.

[13] Section 10 empowers a Designated Court to administer the property so attached.

[14] It can thus be seen that once the property has been validly attached under Section 4 of the Act of 2000, all issues concerning such property would be dealt with and decided by the Designated Court. However, when the petitioner has raised a fundamental question of validity of the order of attachment itself, the same must be examined by this Court. As per sub-section (1) of Section 4, either upon complaints received from the

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depositors or even suo motu Government is satisfied that any financial establishment has failed to return the deposit after maturity or on demand by the depositor or has failed to pay interest or other assured benefit or has failed to provide the service promised against such deposit; or where the Government has reason to believe that the financial establishment is acting in calculated manner detrimental to the interest of the depositors with an intention to defraud the depositors and the Government is satisfied that the establishment is not likely to return the deposits or make payment of the interest etc., in order to protect the interest of the depositors after recording reasons in writing issue an order attaching the money or property believed to be of the financial establishment. As per sub-section (2) of Section 4, upon publication of the order under sub-section (1), all properties and assets of the financial establishment shall forthwith vest in the competent authority appointed by the Government pending further order from the Designated Court.

[15] In this context, let us see the material considered by the Government before issuing the impugned notification. In an affidavit-in-reply, dated 16<sup>th</sup> April 2019, filed on behalf of the Government, it is pointed out that the Director of Institutional Finance as well as the office of the District Magistrate & Collectors and Sub-Divisional Magistrates had

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received many complaints from depositors against the petitioner-company of making short payment of maturity amount or non-payment of the invested amount. Some of the complaints are annexed with the said affidavit. It is further stated that the Development Officer of Small Savings, Group Insurance and Institutional Finance has lodged an FIR before the West Tripura Police Station against the functionaries of petitioner-company for carrying out illegal and fraudulent business activities inter alia on the grounds that the company have been collecting deposits from the public under a plan called Holiday Membership Plan, has been accepting deposits and carrying out the activities as an NBFC without proper licences and has indulged in financial irregularities, that the company is giving incentives and making lucrative offers and thereby collecting deposits which are prohibited by the Reserve Bank of India(RBI). It is also stated that the Sub-Divisional Magistrate had issued an interim order, on 12<sup>th</sup> June 2013, restraining the company from accepting deposits from the public. It is further stated that after receiving the reports of the District Magistrates & Collectors and Superintendent of Police of the districts, the Principal Secretary, Finance, Government of Tripura, has issued the impugned notification.

[16] This affidavit thus refers to various circumstances taken into consideration by the authority before passing the impugned notification such

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as the alleged illegal activities carried out by the company, the FIR filed by the authority before the police and the prohibitory order issued by the competent authority preventing the company from receiving any further deposits from the public. The competent authority also as per this affidavit, took note of the reports submitted by the District Collectors and police authorities. I have also perused the original file which contains the documents leading up to the issuance of the notification. This file shows that on 12<sup>th</sup> June 2013, after recording detailed reasons and pointing out specific instances of the company failing to repay the depositors upon maturity of the deposits and irregularities detected during the inspection and after providing opportunity to the company as referred to in Section 3A(7) of Tripura Protection of Interest of Depositors (In Financial Establishments) (Amendment Act), 2011, the Sub-Divisional Magistrate, Sadar, had imposed a restriction against the company from collecting or mobilizing any kind of monetary deposits from the public under any plan whatsoever. It may be noted that some of the complaints of not returning the deposits on maturity, copies of which have been produced by the respondents in the above noted affidavit, were received by the company after this prohibitory order also.

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[17] The original file also contains a detailed order passed by SEBI, on 3<sup>rd</sup> January 2011, in which after taking note of various activities of the

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company and hearing the representatives of the company the SEBI concluded that the company was engaged in various irregular activities. SEBI therefore, passed a prohibitory order directing the company not to collect any money from investors or to launch any scheme, not to dispose of any of the properties or delineate assets and not to divert any fund raised from the public kept in the Bank account or which is in the custody of the company.

[18] Original file of the Government also contains various reports made by the District Collectors. For example, we have on record a report-cum-proposal of the District Collector, Sipahijala, dated 19<sup>th</sup> December 2016, pointing out that a letter of the Superintendent of Police, Tripura, was received regarding proposal for attachment of property due to cheating of the large amount of public money. A notice was issued to the company to put forth its views. Notice could not be served due to closure of the office and it was pasted on the wall. He stated that field inquiries were also conducted through the Sub-Divisional Magistrate which shows that there are certain lands of the company under the jurisdiction of the Bishalgarh Sub-Division. He also attached a report of Sub-Divisional Magistrate, Bishalgarh and other necessary documents and requested that necessary action be taken immediately under the Act of 2000. Similar reports were also made by the

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District Collectors of Dhalai District, Unakoti District, Khowai District, West Tripura District etc.

[19] It was after perusal of such voluminous material that the Finance Secretary issued the impugned notification. There was thus neither any dearth of material before the authority to enable the said authority to come to the conclusion that it was necessary to exercise the powers in terms of Section 4 the Act of 2000, nor there was any breach of procedural requirement. It is true that sub-section (1) of Section 4 of the Act requires reasons to be recorded in writing. However, such requirement cannot be seen in isolation. Merely because there is no such narration of the satisfaction of the said authority in the impugned notification, it cannot be stated that his decision is bereft of reasons. The affidavit-in-reply when seen in line of the documents on record available in the original files would show that the Finance Secretary had the benefit of voluminous material on the basis of which he exercised the powers under Section 4. Essentially such a satisfaction is within the subjective satisfaction of the competent authority. Even otherwise, in the present case, there was overwhelming material before the authority suggesting large scale irregularities committed by the company. It is true that the Finance Secretary has not in so many words recorded his reasons in writing, nevertheless to strike down an order in case

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of such voluminous material would be too artificial exercise in technicality.

The first prayer of the petitioner, therefore, must fail.

[20] Regarding the petitioner's anxiety to ensure proper protection of the attached property, I find that in some cases at least the reaction of the Government was somewhat slow. For example, in a letter dated 22<sup>nd</sup> June 2017, the District Collector West Tripura conveyed to the Superintendent of Police that it was reported to him that valuable articles inside the Rose Valley Park premises are being regularly stolen and the sub-divisional administration was worried about the encroachment on the said properties in future also. He, therefore, requested the police authorities to provide adequate security and to keep vigil. On 1<sup>st</sup> November 2017, Sub-Divisional Magistrate, West Tripura, wrote to the Sub-Divisional Police Officer(SDPO) and conveyed to him that the filed functionaries during their visit at the Rose Valley office building have found some unclaimed goods which are lying in front of the main gate which was later seized by the police. He requested that necessary arrangements for placing the guards around the property may be made.

[21] We may recall, the impugned notification was issued on 19<sup>th</sup> January 2017. When the District Magistrate and Sub-Divisional Magistrate were writing to police authorities on 22<sup>nd</sup> June 2017 and 1<sup>st</sup> November 2017,

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there was substantial time lapse between the issuance of the notification and the letters urging the police authorities to take protective measures. In the letter dated 22<sup>nd</sup> June 2017, it was conveyed that the properties are being stolen. Undoubtedly, therefore, there was some delay on part of the Government machinery to properly protect the attached properties which by virtue of Section 4(2) of the Act of 2000 had vested in the Government. Once the petitioner is divested of any control over the attached property and pending further orders by the Designated Court the property is to vest in the Government, both in the interest of the petitioner-company as well as the depositors it is the duty of the Government machinery to ensure that the property does not deteriorate or is encroached or stolen for want of proper protection. To what extent the Government machinery can be blamed. However, what ultimate directions can be issued must depend on the outcome of the various proceedings before the Designated Courts and these questions also must be decided by such Courts who are in charge of all proceedings and are entrusted with duty and responsibility to examine all such issues and also vested with necessary powers to do so under the Act of 2000. After highlighting all these aspects I leave it to the concerned Courts to examine full facts and pass appropriate orders either by way of interim measures, if found necessary, or while disposing of the proceedings.

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[22] Before concluding I may also only take note of the latest affidavit filed by the Government, dated 25<sup>th</sup> June 2021, in which it is asserted that all necessary steps are being taken for protecting the various attached properties.

[23] Regarding the petitioner's last request for obtaining valuation reports, the same can be urged before the Designated Courts which can take a proper view in the matter.

[24] With these observations and directions, petition is disposed of. Pending application(s), if any, also stands disposed of.

( AKIL KURESHI, CJ )

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