

Office of the Custodian, the Special Court (TORTS) Act, 1992

1. Objective

- 1.1 The Custodian is appointed by the Central Government under Section 3 (1) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, which came into force on 6th June 1992. The Act was enacted when large scale irregularities and malpractices were noticed in transactions in Government and other securities, indulged in by some brokers in collusion with the employees of various Banks and Financial Institutions (FIs), leading to diversion of funds from Banks / FIs to the individual accounts of certain brokers. The Act sought to deal with the situation and in particular to ensure speedy recovery of huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of Banks and Financial Institutions. The period of transactions in securities under the purview of the Act was applicable after the 1st day of April, 1991 and on and before 6th June 1992.
- 1.2 A Special Court (presided by sitting Judge(s) of High Court of Bombay) has also been established under section 5 (1) of the Act, mainly for speedy trial of offences relating to transactions in securities.

2. Organizational set-up

The office of the Custodian is an attached office under the administrative control of Departmental of Financial Services, Ministry of Finance, headed by the Custodian and having its offices at New Delhi and Mumbai. This office has a sanctioned

strength of 18 temporary posts, which are extended on year on year basis.

3. Function of the Custodian

The Custodian, under Section 3 (2) of the Act, is empowered to notify any person in the official gazette, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after 1st day of April 1991 and on and before 6th June 1992. As per Rule 2 of Special Court (TORTS) Rules 1992, the Custodian will entertain any information or complaint in writing by:-

- (a) the Reserve Bank of India;
- (b) any Bank or Financial Institution;
- (c) any enforcement or investing agency or department of the Government;
- (d) any officer or authority of the Government;
- (e) any person who is engaged in transactions of securities as a dealer, agent or broker;
- (f) any other person whose right or interests in securities are affected;
- (g) any other source including reports and proceedings before the Special Court established under the Act or any Court or Tribunal for the time being in force as the Custodian may deem fit at any point of time.

Provided that the information or complaint sent by any person referred to in clauses (e) and (f) shall not be entertained by the Custodian if it is not accompanied by an affidavit signed by that person and duly verified by a Magistrate or a Notary Public.

3.2 Under Section 3 (3) of the Act, any property movable or immovable, or both, belonging to any person notified under

Section 3(2) of the Act stand attached simultaneously with issue of notification.

3.3 Under Section 3 (4) of the Act, Custodian is to deal with the attached property, in such manner as the Special Court may direct.

3.4 Under Section 3 (5) of the Act, Custodian may take assistance of any person while exercising his/her powers or for discharging his/her duties under Section 3 and Section 4 of the Act.

3.5 Under Section 4 (1) of the Act, the Custodian, if satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time after 1st day of April, 1991 and on and before the 6th June 1992 in relation to any property of the person notified under Section 3(2) has been entered into fraudulently or to defeat the provisions of the Act, may cancel such contract or agreement and on such cancellation such property shall stand attached under the Act.

Provided that no contract or agreement shall be cancelled except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

3.6 Under Section 4 (2) of the Act, any person aggrieved by a Notification or Order issued by the Custodian may file a petition before the Special Court. An appeal against the orders of Special Court shall lie before the Supreme Court both on facts and on law under section 10 (1) of the Act.

3.7 Custodian, under Section 11 (1) of the Act with enabling orders from the Special Court may sale any attached property to discharge the liabilities of notified persons in full, as far as may be, as per Section 11 (2) in the order as under:

- (a) All Central/State Government's Revenue, taxes, cesses due from notified persons;

- (b) All amounts due from notified persons to Banks/Financial Institutions;
- (c) Any other liability as specified by the Special Court from time to time.

3.8 Under Section 12 (1) and (2) of the Act, no suit prosecution or other legal proceedings shall lie against the Central Government or the Custodian or any of its officers or other employees for any damage caused or likely to be caused by anything which in good faith done or intended to be done under the said Act.
