

Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997

TAMILNADU

India

Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997

Act 44 of 1997

- Published on 31 October 2018
- Commenced on 31 October 2018
- [This is the version of this document from 31 October 2018.]
- [Note: The original publication document is not available and this content could not be verified.]

Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997(Tamil Nadu Act 44 of 1997)Last Updated 29th November, 2019(As modified upto 31st October 2018)CHAPTER -1

1. Short title and commencement.

(1)This act may be called the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997.(2)It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires:-(1)"Competent authority" means the authority appointed under section 4;(2)"deposit" means the deposit of money either in one lump sum or by instalments made with the Financial Establishment for a fixed period, for interest or for return in any kind or for any service;(3)"Financial Establishment" means an individual, an association of individuals, a firm or a company registered under the companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in 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 in section 5(c) of the Banking Regulation Act 1949 (Central Act X of 1949).(4)"Government" means the State Government.CHAPTER - II

3. Attachment of properties on default of return of deposits.

- Notwithstanding anything contained in any other law for the time being in force, - (i) where upon complaints received from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity, or fails to pay interest on deposit or fails to provide the service for which deposit has been made, or (ii) 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 or to make payment of interest or to provide the service, the Government may, in order to protect the interest 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 deposits 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, partner, director, manager or member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, as the Government may think fit, and transfer the control over the said money or property to the Competent Authority."

4. Competent authority.

(1) The Government may, by notification, appoint one or more authorities for such area or areas or such case or cases as may be specified in the notification 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 order of the Government under section 3, the Competent authority shall apply within thirty days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction, and realise the sale proceeds. (4) An application under sub section (3) shall be accompanied by one or more affidavits, 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 property attached under section 3. (5) The Competent authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders. (6) For the purpose of crediting the dealing with the money realised by the Competent authority, he shall open an account in any Scheduled commercial bank.

CHAPTER -III

5. Default in repayment of deposits and interest honouring the commitment.

- 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, or fails to return in any kind, or fails to render service for which the deposit has been made, 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 may extend to one lakh of rupees and such Financial Establishment is also liable for a fine which may extend to one lakh of rupees.

5A.

Compounding of offence.(1)An offence punishable under section 5 may, before the institution of the prosecution, be compounded by the Competent authority or after the institution of the prosecution, be compounded by the Competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.(2)Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody shall be discharged forthwith.CHAPTER -IV

6. Special Court.

(1)For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the High Court, by notification, constitute one or more Special Courts for such area or areas or such cases as may be specified in the notification in the cadre of a District and Sessions Judge.(2)No Court including the Court constituted under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, other than the Special Court shall have jurisdiction in respect of any matter to which the provision of this Act apply.(3)Any pending case in any other court to which the provisions of this Act apply shall stand transferred to the Special Court.(4)When trying any case, the Special Court may also try any offence, other than an offence specified in section 5, with which the accused may, under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) be charged, at the same trial.

7. Powers of Special Court regarding attachment, sale, realisation and distribution.

(1)Upon receipt of an application under section 4, the Special Court 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 the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute and property so attached be sold in public auction.(2)The Special 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 the Financial Establishment or the person to whom the notices is issued calling upon such person to appear on the same date as that specified in the notice and

make objection if he so desires to the 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 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 Special Court 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 Special Court shall forthwith pass an order making the ad-interim order of attachment absolute and direct the Competent authority to sell the property so attached by public auction and realise the sale proceeds.(5)If cause is shown or any objection is made as aforesaid the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court 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 at the date of the attachment he had some interest in the property attached.(6)After investigation under sub-section (5), the Special Court shall pass an order, within a period of one hundred and eighty days from the date of receipt of an application under sub-section 3 of Section 4, either 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 and then direct the Competent Authority to sell the property so attached by public auction and realise the sale proceeds:Provided that the Special 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 of property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment.(9)*** Omitted.(10)The special court shall on an 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 attached or realised out of the sale.

8. Attachment of property of mala fide 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 Special Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that the 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 Special 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 sub-section (5) of section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration the Special Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Special Court is 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 anytime, apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the Special Court, satisfactory, and sufficient it may cancel, the ad-interim order of attachment or, as the case may be refrain from passing the order under sub-section (6) of section 7.

10. Administration of property attached.

- The Special Court 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 Special Court considers just and reasonable for-(a)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 Special Court under section 5:(b)safeguarding so far as may be practicable the interest of any business affected by the attachment and in particular in the interest of any partners in such business

11. Appeal.

- Any person including the Competent authority, if aggrieved by an order of the Special Court may appeal to the High Court within thirty days from the date of order.

12. Special Public Prosecutor.

- The Government shall, by notification appoint one or more Advocates of not less than ten years standing as a Special Public Prosecutor for each of the Special Court for the purpose of conducting the cases in the Special Court.

13. Procedure and powers of Special Court regarding Offences.

(1)The Special Court 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.(2)The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions a Special Court shall be deemed to be a Magistrate.CHAPTER -V

14. Act to 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. Power to make rules.

(1)The Government may make rules for carrying out the provisions of this Act.(2)(a)All rules made under this Act shall be published in the Tamil Nadu Government 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(b)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.(3)Every rule made or notification issued under this Act, shall, as soon as possible after it is made or issued be placed on the table of the Legislative Assembly, and if before the expiry of the session in which it is so placed or the next session, the Legislative Assembly agrees in making any modification in any such rule or notification or the Legislative Assembly agrees that the rule or notification should not be made or issued the rule or notification shall, thereafter have effect only in such notified 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 under that rule or notification.