

# Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999

ANDHRA PRADESH

India

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### Act 17 of 1999

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Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999(Act No. 17 of 1999)Last Updated 13th August, 2019Statement of Objects and Reasons. - Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard earned savings. To curb these malpractices, the State Government have decided to bring a law for protecting the interests of depositors of financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a Conference of the State Chief Ministers and Finance Ministers presided by the Union Finance Minister on 14-09-1998 at Vignan Bhavan , New Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of "Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, "to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.To achieve the above object, the Government have decided to make a separate law by undertaking Legislation.Statement of Objects and Reasons - (Act 12 of 2003). - The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (A.P. Act No. 17 of 1999), has been broadly fashioned on the lines of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997.According to Section 2(c) of the Act, 17/1999 "a company registered under the Companies Act, 1956" and "Non-banking financial company as defined in clause (f) of Section 45-1 of the Reserve Bank of India Act, 1934" are exempted`from the purview of "Financial Establishments".as defined thereunder. As a result a sizeable cross section of financial establishments are getting excluded from the regulatory framework of this important Act. To plug these loopholes in the Act, it has been decided to delete the exemption given to the aforesaid categories of financial establishments and to bring them also under the purview of this Act, by suitably amending the Andhra Pradesh Protection

of Depositors of Financial Establishments Act, 1999. This bill seeks to give effect to the above decision. The following Act of the Andhra Pradesh Legislative Assembly which was reserved by the Governor on the 13th April, 1999 for the consideration and assent of the President, on the 23rd June, 1999 and the said assent is hereby first published on the 1st July, 1999 in the Andhra Pradesh Gazette for general information : -An Act to protect the deposits made by the Public in Financial Establishments and for matters connected therewith or incidental thereto. Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Fiftieth Year of the Republic of India as follows :?

## **1. Short title, extent and commencement.**

(1) This Act may be called the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999. (2) It extends to the whole of the State of Andhra Pradesh. (3) It shall come into force on such [date as the Government may, by notification, appoint] [1.11.1999 vide in G.O. Ms. No. 348, Home (General-B), dated 29.10.1999. printed infra.].

## **2. Definitions.**

- 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 either in lumpsum or instalments made with a financial establishment for a fixed period, for interest or return in any kind; (c) [ "Financial Establishment" means any person or group of individuals accepting deposit 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 under clause (c) of Section 5 of the Banking Regulation Act, 1949] [Substituted by Act No. 12 of 2003, dated 14.7.2003.]. (d) "Government" means the State Government of Andhra Pradesh; (e) "Notification" means the notification published in Andhra Pradesh Gazette and the word "notified" shall be construed accordingly; and (f) "prescribed" means prescribed by rules made under this Act;

## **3. Attachment of properties on default in respect of deposits.**

- Notwithstanding anything contained in any other law for the time being in force, -(i) Where, upon complaints received from a depositor or depositors, that any financial establishment defaulted or is likely to default in the return of deposits in cash or kind after maturity, or in any manner agreed upon; or (ii) Where the Government have reason to believe that any financial establishment is acting in a manner prejudicial to the interests of the depositors with an intention to defraud the depositors; and if the Government are satisfied that such financial establishment is not likely to return the deposits in cash or kind after maturity, or in any manner agreed upon, 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 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, 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.

#### **4. Competent Authority.**

(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 and discharge such other functions as may be prescribed, in addition to the powers and functions specified under this Act.(3)Upon receipt of the orders of the Government under Section 3, the Competent Authority shall apply within fifteen days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute.(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 deposits, and the details, if any, of persons in whose names such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3.

#### **5. Penalty for default.**

- Where any financial establishment defaults in the return of the deposit either in cash or kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member 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 rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakh.

#### **6. Special Court.**

(1)For the purpose of this Act, the Government shall, with the concurrence of the Chief Justice of the High Court, by notification, constitute a District and Sessions Court as a Special Court.(2)No Court including a Court constituted under the Presidency Towns Insolvency Act, 1909 (Central Act III of 1909) and the Provincial Insolvency Act, 1920, (Central Act V of 1920). other than the Special Court shall have Jurisdiction in respect of any matter to which the provisions 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)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 realised from out of the property attached.

#### **7. Powers of Special Court regarding attachment.**

(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 to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.(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 notice 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 objections are made and no cause is shown on or before the specified date 1-he Special Court shall forthwith pass an order making the ad interim order of attachment absolute.(5)If any objection is made or cause is shown as aforesaid, the Special Court shall proceed to investigate the same, and in so doing as regards the examination 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 Court in hearing a suit under the Code of Civil Procedure, 1908 (Central Act V of 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 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 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 or property of value not less than the value that is required for re-payment to the depositors of such financial establishment.

## **8. Attachment of property of certain 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 before or after the commencement of this Act, any of the property otherwise than in good faith and for valuable 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 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 of the said transferee was not in good faith and for valuable consideration, the Special Court shall order the attachment of so much of the transferee's property as is in the opinion of the Special Court equivalent to the 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 any time, 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 of attachment.

## **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 particularly by 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 such order.

## **12. Special Public Prosecutor and Special Government Pleader.**

- The Government shall, by notification, appoint an Advocate who has been in practice as an Advocate for not less than ten years as a Special Public Prosecutor, as well as Special Government Pleader 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 offences 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 (Central Act 2 of 1974), for the trial of warrant cases by Magistrate. (2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), 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.

## **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 affect by virtue of any such law.

### **15. Penalty for false or vexatious complaints.**

- Whoever makes a complaint knowing or having reason to believe it to be false or vexatious shall be punished with imprisonment for a term which may extend to one year with fine which may extend to rupees one lakh. or with both.

### **16. Protection of action taken in good faith.**

- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

### **17. Power to remove doubts and difficulties.**

- If any doubt or difficulty arises in giving effect to the provision of this Act, the Government may, by order, make provision or give such direction, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the doubt or difficulty.

### **18. Power to make rules.**

(1)The Government may, by notification make Rules to carry out the purposes of this Act.(2)Every rule made under this Act shall immediately after it is made, be laid before the Legislative Assembly of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled 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.