

Chhattisgarh Protection of Depositors Interest Act, 2005

CHHATTISGARH

India

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Act 24 of 2015

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Chhattisgarh Protection of Depositors Interest Act, 2005(Act No. 24 of 2015)Last Updated 19th October, 2019[Dated 23.07.2015]An Act to protect the deposits made by the public in the financial establishment and matters connected therewith or incidental thereto.Be it enacted by the Chhattisgarh Legislature in the Fifty-sixth Year of the Republic of India as follows :-

1. Short title and commencement.

(1)This Act may be called the Chhattisgarh Protection of Depositors Interest Act, 2005.(2)It shall come into force from the date of its publication in the Official Gazette.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"Chief Justice" means Chief Justice of the High Court of Chhattisgarh;(b)"State" means State of Chhattisgarh;(c)"State Government" means State Government of Chhattisgarh;(d)"Competent Authority" means the authority appointed under Section 5 of the Act;(e)"Deposit" means "deposit" as defined in Section 45-1 (bb) of Reserve Bank of India Act, 1934 (No. 2 of 1934);(f)"Depositor" means person who makes deposit with company; and includes heir, legal representative, administrator or assignee of the depositor;(g)"District Magistrate" means person appointed as district magistrate under Section 20 of The Code of Criminal Procedure, 1973 (No. 2 of 1974);(h)"Financial establishment" means an individual, an association of individuals, firm or company incorporated under the Companies Act, 1956 (1 of 1956) receiving deposits under any scheme or arrangement or in any other manner but does not include, Corporation or Co-operative Society owned or controlled by the State Government or the Central Government, or Banking Company as defined under Section 5 of the Banking Regulation Act, 1949 (No. 10 of 1949);(i)"Fraudulent default" means any financial establishment, which fraudulently defaults any repayment of deposits on maturity and/or any benefit in the form of interest, bonus,

profit or dues in any other form as promised or on maturity or fraudulently fails to render services as assured against the deposit;(j)"Special Court" means the special court constituted under Section 4 of the Act.

3. Act not in derogation of any law.

- The provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force.

4. Special Court.

- (i) State Government in consultation with the Chief Justice may by notification in the official gazette notify as many special courts as may be necessary for such area or areas for trial of cases under the Act.(ii)A person shall not be qualified to act as judge in special court unless he is a session's judge or additional session's judge under Code of the Criminal Procedure, 1973 (No. 2 of 1974).

5. Competent authority.

- The State Government may, by notification, appoint any authority not below the rank of a District Magistrate as competent authority.

6. Intimation of business.

(1)Every financial establishment already carrying on its business in the area of jurisdiction of the competent authority, shall intimate the competent authority about its business within two months from the commencement of the Act.(2)No financial establishment shall commence its business in the area of jurisdiction of the competent authority without prior intimation.(3)The financial establishment shall file all such copies of periodical statements to the competent authority, which are required to be filed under the law to supervisory authorities including Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI).(4)The competent authority at his discretion may at any time direct any financial establishment carrying on business in the area of jurisdiction of the competent authority to furnish in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the establishment, as may be specified in general or special order.(5)Whoever contravenes the provisions of this section shall be punished with imprisonment, which may extend to three months or with fine, which may extend to five thousand rupees or with both and financial establishment shall also be liable to pay fine, which shall not be less than twenty five thousand rupees but may extend to fifty thousand rupees.

7. Attachment of properties on default of return of deposits and power of special court regarding attachment.

(1)Where the competent authority is satisfied,(i)Upon complaints received from depositors or otherwise, that any financial establishment has fraudulently defaulted.(ii)That any financial establishment is acting in a calculated manner with an intention to defraud the depositors and such financial establishment is not likely to return the deposits, the competent authority 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 or establishment, or if it appears 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, as the competent authority may think fit and publish the order in local newspaper of the area.(2)The competent authority shall apply within fifteen days from the date of the order to the special court for making the ad-interim order or attachment absolute.(3)The competent authority may also make an application to any special court or designated court or any other judicial forum established or constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject pertaining to any money or assets of a financial establishment under any similar enactment in respect of money or property or assets belonging to or ostensibly belonging to a financial establishment or any person notified under the Act situated within the territorial jurisdiction of that special court or designated court or any other judicial forum as the case may be, for passing appropriate orders to give effect to the provisions of the Act.(4)Upon receipt of an application under sub-section (2) of Section 7, the special court shall issue show cause notice accompanied by copy of application filed by the competent authority to the financial establishment or any other person whose property is attached that why the order of attachment should not be made absolute.(5)Any person having any interest or claim in the property attached under subsection (1) may apply to the special court within 45 days of the order of attachment for their claim, after receiving the application/objection the special court shall, after giving an opportunity of being heard to the applicants and the competent authority, may make such order as deem fit.(6)For hearing of application/objection provision of the Code of Civil Procedure, 1908, shall be applicable.(7)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.(8)The special court may at the time of passing the final order pass an order of attachment absolute or in part. In making such order the special court shall not release such part or property so attached as is necessary for repayment to depositors.(9)The special court may, on application by the competent authority, pass such order or issue such direction as may necessary for sale of property attached and for distribution among the depositors of the money realised from such sale.(10)Where an application is made by any person duly authorised or specified by any other State Government under similar enactment empowering him to exercise control over any money or property or assets attached by that State Government, the special court shall exercise all its powers, as if such an application were made under the Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such enactment.

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 7 is insufficient for repayment to 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 before or after the commencement of the Act any property otherwise than in good faith not for consideration the special court may, by notice, require any transferee of such property whether or not he has received the property directly from the said financial establishment, to show cause why so much of the transferees property, as is equivalent to the proper value of the property transferred should not be attached. (2) Where the said transferee fails to appear or show cause on the specified date, or where after investigation in the manner provided in sub-section (5) to (9) of section 7, the special court is satisfied that the transfer of the property to the said transferee was not in good faith and not for consideration, the special court shall order the attachment of so much of the said property of the transferee, as is in the opinion of the special court, equivalent to the proper value of the property transferred.

9. Security in lieu of attachment.

- Special court may on application on behalf of a financial establishment or any person referred to in sub-section (1) of section 7 pass an order in writing to permit furnishing of security in lieu of attachment in appropriate case.

10. Punishment for defaults by financial establishment.

- Where any financial establishment fraudulently defaults or any financial establishment acts in a calculated manner with an intention to defraud the depositors; every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment shall be punished with imprisonment for a term which shall not be less than 3 years but may extend to ten years and with fine which shall not be less than one lakh rupees but may extend to five lakhs rupees and such financial establishment shall also be liable to fine not less than three lakhs rupees but may extend to ten lakhs rupees.

11. Factors to be considered for imposing fine.

- The court in fixing the amount of fine shall take into consideration the amount required for repayment of depositors.

12. Awarding of compensation.

- When a court imposes a sentence of fine, the court shall, when passing the judgment, order the whole or part of the fine recovered be awarded as compensation to the depositors in lieu of their claim in full or part as an equitable distribution.

13. Procedure and powers of Special Court regarding offences.

- For trial of the offence the procedure prescribed for the warrant trial in the Code of Criminal Procedure, 1973 (No. 2 of 1974) shall be applicable and special court may take cognizance of the offence without being committed the case to it.

14. Special Public Prosecutor.

- The State Government shall appoint a special public prosecutor having not less than ten years practice as an advocate, for conducting cases before the special court.

15. Anticipatory bail not to be granted.

- Notwithstanding anything contained in section 438 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) no application for anticipatory bail shall lie for an offence punishable under the Act.

16. Appeal.

(1) An Appeal against the order passed by the special court shall lie to the High Court within thirty days from the date of order. (2) No appeal shall be entertained unless it is accompanied by satisfactory proof of seventy five percent deposit of liability with competent authority.

17. Power to make rules.

(1) The State Government may make rules for carrying the Legislative Assembly.

18. Protection of action taken in good faith.

- No suit or other proceedings shall lie against the State Government or the competent authority or an officer or employee of the State Government for anything, which is done in good faith or intended to be done under the Act.

19. Power to remove difficulty.

- If any difficulty arises in giving effect to the provisions of the Act, the State Government may by order do anything not inconsistent with the provisions of the Act.