

U.P. Protection of Interest of Depositors in Financial Establishment Act, 2016

UTTAR PRADESH

India

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Act 16 of 2016

- Published on 8 June 2016
- Commenced on 8 June 2016
- [This is the version of this document from 8 June 2016.]
- [Note: The original publication document is not available and this content could not be verified.]

U.P. Protection of Interest of Depositors in Financial Establishment Act, 2016(U.P. Act No. 16 of 2016)Statement of Objects and Reasons. - It has been brought to the notice of the State Government that there have been numerous cases of fraudulent defaults by Financial Establishments in the State and such Financial Establishment have been receiving money by promising impracticable and unviable returns due to which persons of middle and poor classes are being cheated by such Financial Establishments. In majority of such cases Financial Establishments have intentionally failed to return the deposit on maturity or to pay interest or to render any specified service agreed against such deposits. The Reserve Bank of India has suggested to the State Government to make a law to protect the interests of such depositors.It has therefore been decided to make a law to provide for protecting the depositors who have deposited their money in such Financial Establishments.The Uttar Pradesh Protection of Interest of Depositors in Financial Establishment Bill, 2016 is introduced accordingly.Received the assent of the President on May 21, 2016 and published in the U.P. Gazette, Extraordinary, Part 1, Section (Ka), dated 8th June, 2016, pp. 9-14(As passed by the Uttar Pradesh Legislature)An Act to provide for protecting the interest of depositors in Financial Establishments and for matters connected therewith or incidental theretoIt is hereby enacted in the Sixty-seventh Year of the Republic of India as follows -

1. Short title, extent and commencement.

(1)This Act may be called the Uttar Pradesh Protection of Interest of Depositors in Financial Establishments Act, 2016.(2)It extends to the whole of Uttar Pradesh.(3)It shall come into force on such date as the State Government may, by notification in the Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a)"Competent Authority" means the Competent Authority appointed under Section 5;(b)"Designated Court" means a Designated Court constituted under Section 7;(c)"Deposit" includes any receipt of money or acceptance of any valuable commodity whether before, on or after the commencement of this Act, by any Financial Establishment returnable after a specified period of otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include -(i)amount raised by way of share capital or by way of debenture, bond or any other instruments covered under the guidelines given and regulations made by the Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act, 1992;(ii)any amount contributed as capital by partners of a firm;(iii)any amount received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949;(iv)any amount received from, -(1)a State Financial corporation;(2)any other institution that may be specified by notification issued by the State Government in this behalf;(v)any amount received in the Ordinary course of business by way of security deposit, dealership deposit, earnest money or advance against order for goods or services;(vi)any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and(vii)any amount received by way of subscriptions in respect of a Chit;Explanation I. - "Chit has the meaning as assigned to it in clause (b) of Section 2 of the Chit Funds Act, 1982 (Act No. 40 of 1982).Explanation II. - Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be a deposit for the purposes of this clause.Explanation III. - Any amount collected by builders/real estate companies or any person for sale of plot or flat or house or any such arrangement with the State of Uttar Pradesh shall be deemed to be a deposit for the purposes of this clause.(viii)Amount raised by unlisted companies by way of share capital or debenture/bonds in compliance with provisions of Chapter III and IV of the Companies Act, 2013;(ix)Deposits raised by companies in compliance with provisions of Sections 73, 74, 75 & 76 of the Companies Act, 2013.(d)"Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner and shall include a company or association or body of individuals, whether incorporated or not but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949.

3. Fraudulent default by Financial Establishment.

- Any Financial Establishment, which defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fails to render service as assured against the deposit, 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 of such Financial Establishment shall, on conviction be punished with imprisonment for a term which may extend to ten years or with fine which may extend to ten lakh rupees or with both.Explanation. - For the purposes of this section, a Financial Establishment,

which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such defaults due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed, shall be deemed to have committed a default or failed to render the specific service, fraudulently.

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

(1)Notwithstanding anything contained in any other law for the time being in force, -(a)Where upon complaints received from the depositors or otherwise the State Government is satisfied that any Financial Establishment has failed, -(i)to return the deposit after maturity or on demand by the depositors; or(ii)to pay interest or other assured benefit; or(iii)to provide the service promised against such deposit; or(b)Where the State 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 State 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. The State Government may, after recording reasons in writing, issue an order by publishing it in the 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 and out of the deposits collected by Financial Establishment.(2)On the publication of the order under clause (b) of sub-section (1), all the properties and assets of the Financial Establishment shall forthwith vest in the Competent Authority appointed by the State Government, such vesting shall remain vested as such unless the Designated Court orders otherwise.(3)The Collector of the District concerned shall be competent to receive the complaints under sub-section (1) and shall forward the same together with his report to the State Government at the earliest and shall send a copy of the complaint also to the concerned Police Superintendent of the district for investigation.

5. Appointment of Competent Authority.

(1)The State Government may while issuing the order under sub-section (1) of Section 4 appoint any of its officer not below the rank of the Deputy Collector as the Competent Authority to exercise control over the money and the properties attached under Section 4.(2)The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.(3)The Competent Authority shall, apply within thirty days from the date of the publication of the order referred to in sub-section (1) to the Designated Court, accompanied by one or more affidavits stating the grounds on which the State Government has issued the order referred to in Section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under Section 4, for such further orders as found necessary.

6. Report and return by Financial Establishment.

(1) Every Financial Establishment which carries on its business as such in the State of Uttar Pradesh on or after the commencement of this Act shall make a report to the Director General, Institutional Finance and forward a copy thereof to the Collector and the Superintendents of Police of the district, mentioning the details about its authority to carry on such business, the location of the Financial Establishment in the State and its main Branch Office, if any, and permanent address of every person responsible for the management of, or conducting of the business of affairs of the Financial Establishment in the State with such particulars as may be prescribed. (2) The report referred to in sub-section (1) shall be made by the new Financial Establishments within seven days from the date of start of their business in the State and such Financial Establishment as have been carrying on its business as such prior to the commencement of this Act shall make such report within seven days from the date of commencement of this Act. (3) Every Financial Establishment shall furnish a quarterly return within one month of the expiry of each quarter of a financial year to the Director General Institutional Finance in respect of its business and financial position, the area of its investment and the location of investments of moneys made by it within and outside the State, if any, and such other particulars as may be prescribed. (4) Whoever fails to submit report required under sub-section (2) or fails to furnish return under sub-section (3) shall be punishable with fine which may extend to fifty thousand rupees. (5) The Director General, Institutional Finance shall be responsible for enquiring into the business and financial position, details of investment and other particulars of Financial Establishment and ensure that appropriate action is taken against unreported or clandestine activities of Financial Establishment which are brought to light.

7. Designed Court.

(1) For the purposes of this Act the State Government may with the concurrence of the Chief Justice of the Allahabad High Court, by notification, in the Gazette, constitute one or more Designated Court in the cadre of the District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification. (2) No court including the Court constituted under the Provincial Insolvency Act, 1920 other than the Designated 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 from the date of commencement of this Act, stand transferred to the Designated Court.

8. Powers of Designed Court regarding attachment.

(1) Upon receipt of an application under Section 5, the Designed Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the State Government under Section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorded calling upon the said Establishment and the said person to show cause on or before a date to be specified in the notice, as to why the order of attachment should not be made absolute. (2) The Designed 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 under sub-section (1),

calling upon all such persons to appear on the same date as specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have 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 Designated Court at any time on or before the specified date before an order is passed under the sub-section (4) or sub-section (6).(4)The Designated Court shall if no cause is shown and no objections are made on or before the specified date, under sub-section (3), forthwith pass an order making the order of attachment absolute, and issue such directions as may be necessary for realization of the assets attached and for the equitable distribution amongst the depositors of the money realized from and out of the property attached.(5)If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provision of this Act follow the summary procedure as contemplated under Order 37 of the Code of Civil Procedure, 1908 and exercise all the powers of a court in hearing a suit under the said Code 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 Designated Court shall pass an order of attachment passed under sub-section (1) of Section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:Provided that the Designated 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.

9. 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 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Designated Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that that said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith for consideration, the Designated 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 8, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith or for proper consideration, the Designated Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred.

10. 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 Designated Court for permission to give security in lieu of such attachment and where the security offered and given is, in the opinion of the Designated Court, satisfactory and sufficient, it may cancel the order of attachment or as the case may be refrain from passing the order of attachment.

11. Administration of property attached.

- The Designated Court may, on the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for, -(a)providing from such of the property attached and vested in the Competent Authority 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 defense of the applicant where criminal proceedings have been instituted against him in the Designated Court under Section 3;(b)safeguarding so far as may be practicable the interest of any business affected by the attachment and in particular, the interest of any partners in such business.

12. Appeal.

- Any person including the Competent Authority, if aggrieved by an order of the Designated Court, may prefer an appeal to the High Court within sixty days from the date of the order.

13. Special Public Prosecutor.

- The State Government may, by order appoint one or more Advocates of not less than ten years standing as a Special Public Prosecutor in consultation with the District and Session Judge of the concerned District for the purpose of conducting the cases in the Designated Court.

14. Procedure and powers of Designated Court regarding offences.

(1)The Designated Court may take cognizance of the offence without the accused being committed to it for trial and, in trying the accused persons, 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 Designated Court and for the purposes of the said provisions, a Designated Court shall be deemed to be a Magistrate.(3)No anticipatory bail shall be granted to any person responsible for managing/operating the defaulting Financial Establishment by the Court.

15. Act to override other laws.

- Save as otherwise provided in this Act the provisions of this Act shall have effect in addition to, and not in derogation of, any other law for the time being in force.