

# **The Delhi Protection of Interest of Depositors (In Financial Establishment) Act, 2001**

DELHI

India

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### **Act 10 of 2001**

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The Delhi Protection of Interest of Depositors (In Financial Establishment) Act, 2001 Delhi Act No. 10 of 2001 [Dated 20th July, 2001] Received the assent of the Lt. Governor, Delhi on 20.7.2001. An Act to protect the interest of depositors (in Financial Establishments) In the National Capital Territory of Delhi Be it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Fifty Second Year of the Republic of India as follows:-

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

(1) This Act may be called the Delhi Protection of Interest of Depositors (In Financial Establishments) Act, 2001. (2) It shall come into force at once.

### **2. Definitions.**

- In this Act, unless the context otherwise requires,-(a) "Assistant Collector" means an officer appointed as such under the Delhi Land Revenue Act, 1954 (Act 12 of 1954). (b) "Competent Authority" means the Authority appointed under section 5. (c) "Delhi" means the National Capital Territory of Delhi. (d) "Deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any financial establishment to be returned after a specified period or 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 instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992); (ii) amounts contributed as capital by partners of a firm; (iii) amounts 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,

(10 of 1949);(iv)any amount received from-(a)the Industrial Development Bank of India.(b)A State Financial Corporation;(c)Any financial institution specified in or under section 6 A of the Industrial Development Bank of India Act 1964 (18 of 1964);(d)Any other institution that may be specified by the Government in this behalf;(v)Amount received in the ordinary course of business by way of-(a)security deposits;(b)dealership deposits;(c)earnest money;(d)advanced 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 Delhi;(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 (2) of section 2 of the Madras Chit Fund Act, 1961 (Madras Act 24 of 1961) as extended to the National Capital Territory of Delhi.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 purpose of this clause.(e)"Designated Court" means the Designated Court constituted under section 10;(f)"Financial establishment" means a person or a group of persons accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a corporation or a co-operative society owned or controlled by any State Government or the Central Government or the Government of any Union Territory or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949).(g)"Government" means the Government of National Capital Territory of Delhi.(h)"Lieutenant Governor" means the Administrator of the National Capital Territory of Delhi appointed by the President under article 239 AA of the Constitution.

### **3. Fraudulent default by Financial Establishment.**

- Any financial establishment, which fraudulently defaults any repayment or deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently 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 establishments shall, on conviction, be punishable with imprisonment for a term which may extend to six years and with fine which may extend to one lakh rupees and such financial establishment shall also be liable for a fine which may extend to one lakh rupees or where such deposit is quantifiable in terms of money, twice the amount involved in such default, which is more;Provided that in the absence of special and adequate reasons recorded in the judgement of the Court, the imprisonment shall not be less than six months and the fine shall not be less than twenty thousand rupees as against each individual and not less than one lakh rupees against such financial establishment.Explanation. - For the purpose 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 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 which 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) Government of the Deputy Commissioner of a revenue area of Delhi in their respective jurisdiction suo-moto or on receipt of the complaints may cause investigation of a complaint or fraudulent transaction referred to in section 3, the Deputy Commissioner shall forward his report to the Competent Authority appointed under section 5 at the earliest. (2) Notwithstanding anything contained in any other law for the time being in force—(i) where, upon complaints received from the depositors, or otherwise, the Government is satisfied that any financial establishment has failed,—(a) to return the deposit after maturity or on demand by the depositors; or (b) to pay interest or other assured benefit; or (c) to provide the service promised against such deposit; or (ii) where the Government has reason to believe that any financial establishment is acting in a manner detrimental to the interest of the depositors, with an intention to defraud them and if the 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 Government may in order to protect the interest of depositors of such financial establishment, after recording reasons in writing, issue an order by publishing it in the Official 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 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 personal assets of the promoter, director, partner or manager or member of the said financial establishment, as the Government may think fit. (3) Notwithstanding anything contained in any other law for the time being in force.

#### **5. Appointment of Competent Authority.**

(1) Government shall while issuing the order under sub-section (2) of section 4, appoint any of its officers not below the rank of a Group 'A' officer as the Competent Authority to exercise control over the money and the properties attached by the Government under section 4. (2) To Competent Authority shall apply within forty five days from the date of the publication of the said Order, to the Designated Court, supported by one or more affidavits stating the grounds on which the Government has issued the said order under 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. (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 or the Government of any Union Territory for adjudicating any issue or subject matter, pertaining to money or property or assets of financial establishments under any similar enactment and, where there is no such Designated Court or any other Judicial Forum in respect of money or property or assets belonging to or ostensibly belonging to a financial establishments or any person notified under this Act situated within the territorial jurisdiction of that Designated Court or any other Judicial Forum, as the case may be, for passing appropriate orders to give effect to the provisions of this Act.

## **6. Duties and power of the Competent Authority.**

(1) Without prejudice to the generalities of sub-section (1) of section 5, the Competent Authority may carry out the purpose of this Act. (2) (i) On receipt of order of appointment, the Competent Authority shall take such necessary actions as is necessary or expedient for taking physical possession of all the monies, properties and assets of the concerned financial establishments expeditiously and the Competent Authority shall have all the powers which are necessary for the aforesaid purpose. (ii) Without prejudice to the generality of the powers vested under sub-clause (1) of this sub-section, the Competent Authority shall be entitled to:—(a) assistance of any police officer or any other Authority or person and on such requisition it shall be the duty of the police officer or such other Authority or person to extend necessary assistance; (b) open bank accounts in any scheduled commercial bank and credit all monies realized and operate the bank accounts while dealing with the money received in his capacity and Competent Authority; (c) require any person believe to be in possession or control over any money, property or assets of the financial establishment, to furnish necessary information, to hand over possession of such assets to the Competent Authority and such person shall be comply with the requisition without any loss of time; (d) appoint legal practitioner or chartered accountant or any other person whose services are necessary for taking possession of assets and realization of the assets of the financial establishment; (e) sell, receive, transfer, endorse or otherwise deal with any marketable security or negotiable instrument belonging to or in the control of the financial establishment and give proper discharge for the same; (f) sell, transfer or otherwise realize any moveable or immoveable property belonging to or in the control of the financial establishment either by public auction or with the prior approval of the Designated Court by private arrangements: Provided that the perishable items of assets shall be sold by public auction as soon as the Competent Authority deem fit. (g) make payment as per orders passed by the Designated Court from the bank accounts, and (h) do all and every act and deed which would be necessary for the speedy realization of the assets of the financial establishment. Explanation. - For the purpose of this section, the expression "financial establishment" includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under section 4.

## **7. Assessment of assets and deposit liabilities.**

(1) Within 60 days from the date of appointment, the Competent Authority shall assess the deposit liabilities and the assets of the financial establishment and submit the statement thereof to the Designation Court. (2) The Competent Authority, thereafter, shall issue a notice either individually or by means of effective media publication, inviting the claims by secured creditors, if any, and also the depositors of the financial establishment, to submit their claims with proper proof to establish the same. (3) Every notice under sub-section (2) sent to or deemed to have been effected to claimants shall state that, if the statement of claim is not sent to the Competent Authority before the expiry of the period of one month from the date of notice, the claims shall not be treated as claimed entitled to be paid under the provisions of this Act. (4) Every notice sent to a secured creditor shall require him to value the security before the expiry of the period of one month from the date of notice and such notice shall also state that if the statement of the claim together with the valuation of the security is not sent to the Competent Authority, the Competent Authority shall value the security

and his valuation shall be binding on such secured creditors.(5)If the claimant fails to comply with the notice as per sub-section (4), such security shall be valued by the Competent Authority in his best judgement.

## **8. Report by the Competent Authority.**

- After making a report as per section 7, the Competent Authority shall make an application to the Designated Court seeking permission to make payment to the depositors from out of the money realized. While making such application, the Competent Authority shall assess the liability to the depositors and the other liabilities and in case the money realized or realizable is not sufficient to meet the entire liability, make a submission to the Designated Court seeking permission for making payment to the depositors and disburse the money as per the orders of the Designated Court.

## **9. Powers of the Designated Court regarding realization of assets and payment to the depositors.**

(1)The Designated Court shall have all the powers for giving effect to the provisions of this Act.(2)Without prejudice to the generality of sub-section (1), the Designated Court may-(a)any direction to the Competent Authority as it deem fit, for effective implementation of the provisions of this Act;(b)approve the statement of dues of the financial establishment due from various debtors, assessment of the value of the assets of the financial establishment, finalize the list of the depositors and their respective dues;(c)direct the Competent Authority to take possession of any assets belonging to or in the control of the financial establishment and sell, transfer or realize the attached assets, either by public auction or by private sale as he deems fit depending upon the nature of assets and credit the sale proceeds thereof to the bank account;(d)approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realization of the assets of the financial establishment;(e)order for payment to the depositors by the Competent Authority or order for proportionate payment to the depositors in the event of the money so realized is not sufficient to meet the entire deposit liability, and(f)pass any order which the Designated Court deems fit for realization of the assets of the financial establishment and repayment to the depositors of the financial establishment or any matter or issue incidental thereto.Explanation. - For the purpose of this section, the expression 'financial establishment' includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under Section 4.

## **10. Designated Court.**

(1)For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the Delhi High Court, by notification in the Official Gazette, constitute one or more Designated Courts in the cadre of Distt. & Sessions Judge including Addl. Distt. & Session Judge for such area or areas or for such cases or group of cases, as may be specified in the notification.(2)No Court including the Court constituted under the Presidency Insolvency Act, 1909 (3 of 1909) and the Provincial Insolvency Act, 1920 (5 of 1920), other than the Designated Court shall have jurisdiction in respect

of any matter to which the provisions of this Act is invoked.(3)Any pending case in any other Court in respect of which the provisions of this Act is invoked, shall stand transfer to the Designated Courts from the date of notification issued under sub-section (2) of section (4) of this Act.

## **11. Powers of Designated Court regarding attachment.**

(1)Upon receipt of any application under section (5), the Designated Court shall issue to the financial establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section (4), a notice accompanied by the application and the affidavits and of the evidences recorded, if any, calling upon the said establishment and the said person to show cause on or before a date to be specified in the notice, why the order of attachment should not be made absolute.(2)The Designated 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 such persons to appear on the same date as specified in the notice and make objections, if they so desired to, the attachment of the property or any portion thereof, on the ground that they have 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 Designated Court at any time on or before the specified date before an order is passed under 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 (1), forthwith pass an order making the order of attachment absolute, and issue such direction and may be necessary for realization of the assets 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 provisions of this Act follow the summary procedure as contemplated under the Code of Civil Procedure, 1908 (5 of 1908) and exercise all the powers of a Court in hearing a suit under the said Code. 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 as early as possible preferably within one year of the reference of the case to it, either making the order of attachment passed under sub-section (2) 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 repayment to the depositors of such financial establishment.(7). Where an application is made by any person duly authorized or constituted or specified by any other State Government or the Government of any Union Territory under similar enactment empowering him to exercise control over any money or property or assets attached by that State Government or the Government of the Union Territory, the Designated Court shall exercise all its powers, as if such an application were made under this Act and pass appropriate order or direction on such application so as to give effect to the provisions of such enactment.

## **12. Attachment of property of mala fide transferees.**

(1) Where the assets available for attachment of a financial establishment or other person referred in section (4) are found to be less than the amount for 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 the said financial establishment has transferred (whether after the commencement of this Act) any of the property otherwise than in good faith and 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 (7), the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Designated Court shall order the attachment of so much of the said transferee's property as in the opinion of the Designated Court is equivalent to the proper value of the property transferred.

## **13. 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, applied 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.

## **14. 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 orders as the Designated Court consider 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 defence 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; (c) liabilities according to a financial establishment or person emanating out of proceedings before a Designated Court, shall be discharged in the manner prescribed by the Government out of the attached properties and assets in respect of such financial establishments or person as referred to in section 4.

## **15. Appeal.**

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

## **16. Special Public Prosecutor.**

- The Government shall, by notification, appoint an advocate of not less than ten years standing at the Bar, as a Special Public Prosecutor or Special Government pleader for the purpose of conducting the case in the Designated Court.

## **17. 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 person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 (2 of 1974) for the trial of Sessions case.(2)The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) 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 Court of Magistrate.

## **18. 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 enforce or any custom or usage or any instrument having effect by virtue of any such law.

## **19. Protection of action taking in good faith.**

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

## **20. Power to delegate.**

- The Government may by notification in Official Gazette, direct that powers exercisable by it under the Act may also be exercised by such officer as may be mentioned therein subject to such conditions if any, as may be specified therein.

## **21. Power to make rules.**

- The Government may by notification in the Official Gazette make Rules for carrying out all or any of the purpose of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such may provide for all or any of the following matters, namely-(a)all matters expressly



required or allowed by this Act to be prescribed;(b)the procedure for attachment of property on default of return of deposit and terms and conditions, if any, required for the purpose;(c)the procedure for assessment of assets and deposit liabilities by the Competent Authority;(d)the procedure for reporting to the Designated Court by the Competent Authority;(e)the manner in which the liabilities accruing to a financial establishment or person emanating out of the proceedings before a Designated Court is to be discharged out of the attached properties and assets in respect of such financial establishments or persons;(f)the procedure for filing appeals by the Competent Authority, if aggrieved by an order of Designated Court;(g)the maintenance of registers and books of accounts by the financial establishments covered under this Act, the safe custody of books, papers and documents in the office of the Competent Authority and also for destruction of such books, papers and documents no longer required, and(h)the auditing of the Balance Sheets and Profit and Loss Accounts.(3)Every rule made by the Government under this Act shall be laid as soon as may be after it is made before the House of the Legislative Assembly while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification in the rule or the Legislative Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified 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.

## **22. Power to remove difficulties.**

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the official Gazette, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary to remove the difficulty:Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.(2)Every order made under this section shall, as soon as may be after it is made, be laid before the House of the Legislative Assembly.