

The M.P. Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000

MADHYA PRADESH

India

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Act 16 of 2001

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The M.P. Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 M.P. Act No. 16 of 2001 Received the assent of the President on the 1st May, 2001; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)" dated 9th May, 2001. An Act to protect the deposits made by the public in the Financial Establishments and matters connected therewith or incidental thereto. Be it enacted by the Madhya Pradesh Legislature in the Fifty-first year of the Republic of India as follows :-

1. Short title and commencement.

(1) This Act may be called the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000. (2) It shall come into force on such [date] [W.e.f. 10-5-2001.] as the State Government may, by notification, appoint and different dates may be appointed for different provisions of this Act.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "Competent Authority" means the authority appointed under Section 5; (b) "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 any 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) amounts contributed as capital by the partners of a firm; (ii) amounts received from a scheduled bank or a cooperative bank or any other banking company as defined in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949); (iii) any amount received from - (a) the Industrial Development Bank of India (IDBI); (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); or (d) any other institution that may be specified by the Government in this behalf. Explanation. - 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 deposit for the purpose of this clause.(c)"Financial establishment" means an individual, an association of individuals or a firm or a 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, a Corporation or a Co-operative Society owned or controlled by the State Government or the Central Government, or a Banking Company as defined under Clause (c) of Section 5 of the Banking Regulation Act, 1949 (No. 10 of 1949).

3. Intimation of business.

(1)Every financial establishment, about business in the area of jurisdiction of Competent Authority, shall intimate the Competent Authority to that effect.(2)The financial establishment shall file a copy of each of such periodical statement to the Competent Authority as may be required to be filed, under any law, with any other supervisory authority including Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI).(3)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 a general or a special order.(4)Whosoever contravenes the provisions of this section, shall be punished with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.

4. 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 depositors or otherwise, the Competent Authority is satisfied that any financial establishment defaults the return of deposits in cash or kind, as promised, after maturity; or(ii)where the Competent Authority has reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors, and, if the Competent Authority is satisfied that such financial establishment is not likely to return the deposits, the Competent Authority 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 or 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, as the Competent Authority may think fit.

5. Competent Authority.

(1)The State Government may, by notification, appoint any authority not below the rank of a Collector as Competent Authority.(2)The State Government may entrust the Competent Authority with such other powers as may be necessary for carrying out the purposes of this Act.(3)The Competent Authority shall apply within fifteen days of the order passed by it to the Special Court

designated under this Act for making the ad-interim order of attachment absolute.(4)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 this Act situated within the territorial jurisdiction of that Special Court or Designated Court or any judicial forum as the case may be, for passing appropriate orders to give effect to the provisions of this Act.

6. Punishment for defaults by financial establishment.

(1)Where any financial establishment 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 six years and with fine which may extend to one lakh rupees and such financial establishment shall also be liable to fine which may extend to one lakh rupees :Provided that except for special and adequate reasons to be recorded, the imprisonment shall not be less than for one year and the fine shall not be less than fifty thousand rupees.(2)No police official shall investigate an offense under this Act, without express permission of an officer not below the rank of Superintendent of Police having jurisdiction.

7. Special Court.

(1)The State Government may, for the purpose of disposal of cases under this Act, with the concurrence of the Chief Justice of the High Court, by notification, designate Special Courts, which shall not be below the rank of Court of Sessions Judge or an Additional Sessions Judge, as may be necessary for such area or areas as may be specified in the said notification.(2)The Special Court shall, on an application by the Competent Authority, pass such order or issue such directions as may be necessary for the equitable distribution among the depositors of the money realized from out of the property attached.(3)In case the money realized from sale of properly attached is not enough to cover the shortfall, the Special Court shall decide for imposing such fine to cover the shortfall as may be necessary for the equitable distribution among the depositors.

8. Power of Special Court regarding attachment.

(1)Upon receipt of an application under Section 5, the Special Court shall issue to the financial establishment or to any other person whose property is attached by the Competent Authority under Section 4, a notice accompanied by the application, calling upon him to show cause on a date to be specified in the notice why the order of attachment should be made absolute.(2)The Special Court shall also issue such notice to all such persons who have represented before it as having or likely to claim, any interest or title in the property of the financial establishment, calling upon such person to appear on the date as specified in the notice and make objection, if he so desires, to the attachment

of the property or any 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 (his 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.(5)If a 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 (Central Act V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.(6)After investigation under sub-section (5), the Special Court shall pass an order 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 :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.(7)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 the State Government, the Special 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.

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 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 this Act, 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 8, 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 property of the transferee, as in the opinion of the Special Court is 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 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.

11. Appeal.

(1)An appeal against the order passed by the Special Court may be preferred to the High Court within thirty days from the date of the order.(2)No appeal under sub-section (1), by a person who is in any manner liable to repay the deposit and the interest accrued thereon to the depositors, shall be entertained unless, the appeal is accompanied by satisfactory proof for deposit with the Competent Authority of an amount equivalent to seventy five percent of the aggregate amount of deposit liability.

12. Special Public Prosecutor.

- The State Government may, if necessary, by notification, appoint Advocate of not less than ten years standing as a Special Public Prosecutor for the purpose of conducting the cases in the Special Court.

13. Procedure and powers of Special Court regarding offenses.

(1)The Special Court may take cognizance of the offense 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 (No. 2 of 1974) for the trial of the warrant cases by the Magistrate of the First Class.(2)The provisions of the Code of Criminal Procedure, 1973 (No. 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 Court of Magistrate of the First Class.

14. Anticipatory bail not to be granted.

- Notwithstanding anything contained in Section 438 of the Code of Criminal Procedure, 1973 (No. 2 of 1974), no Court shall grant anticipatory bail to any person under this Act.

15. Power to make rules.

(1)The State Government may make rules for carrying out the provisions of this Act.(2)Every rule made under this Act, shall, as soon as possible after it is made, be laid on the Table of the Legislative Assembly.

16. 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 in good faith done or intended to be done under this Act.

17. Power to remove difficulty.

- If any difficulty arises in giving effect to the provisions of this Act. the State Government may, as occasion arises by order, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary to remove the difficulty.