

Puducherry Protection of Interests of Depositors in Financial Establishments Act, 2004

PUDUCHERRY

India

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Act 1 of 2005

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Puducherry Protection of Interests of Depositors in Financial Establishments Act, 2004(Act No. 1 of 2005)Last Updated 27th December, 2019Statement of Objects And Reasons - Act No. 1 of 2005. - The last few years have witnessed a rapid growth of non-banking Financial Establishments and deposit taking unincorporated bodies not covered under the Reserve Bank of India, Act, 1934 in different parts of the country. In the recent past, certain financial institutions have also sprung up in this Union Territory with the sole object of receiving deposits from the public (primarily middle class and the poor) on the promise of unprecedented high rate of interest but without any obligation to refund the deposits to the investors at the time of maturity. Many of these Financial Establishments have in fact defaulted in the return of such deposits to the investors thus paving way for public resentment and insecurity. The Reserve Bank of India have in fact been seized of the situation prevalent in the country and have therefore addressed all State Governments and Union Territory Administrations to protect the interests of such depositors by having a legislation enacted in the matter.Since this Union Territory has also seen the mushroom growth of such Financial Establishments in question in the last few years, it is proposed to undertake a legislation which seeks to protect the deposits made by the public in Financial Establishments not being a company registered under the Companies Act, 1956, or a corporation or a co-operative society owned or controlled by the State Government or the Central Government or a banking company under Banking Regulation Act. The more salient features of the proposed draft legislation cover the following:Attachment by the Government of moneys or properties of such Financial Establishments who default in return of deposits;Constitution of a Designated Court with powers, among others, to pass orders or issue directions for the equitable distribution among the depositors of the money realised out of the property attached.The Bill seeks to achieve the above objects.[Dated 15-3-2005]An Act to protect the interests of depositors in the Financial Establishments in the Union territory of Puducherry.Be it enacted by the Legislative Assembly of Puducherry in the Fifty-fifth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Puducherry Protection of Interests of Depositors in Financial Establishments Act, 2004. (2) It extends to the whole of the Union territory of Puducherry. (3) It shall come into force at once.

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 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) amounts 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 Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act, 1992 (Central Act 15 of 1992); (A) the Industrial Development Bank of India; (B) a State Financial Corporation; (C) any financial institution specified in or under section 4A of the Companies Act, 1956 (Central Act 1 of 1956); or (D) any other institution that may be specified by the Government in this behalf; (v) amounts received in the ordinary course of business by way of, (A) security deposit; (B) dealership deposit; (C) earnest money; and (D) advance against order for goods or services; (vi) any amount received from an individual or a firm or an association of individuals registered under any enactment relating to money lending which is for the time being in force in the Union territory of Puducherry; and (vii) any amount received by way of subscriptions in respect of a Chit. (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 (Central Act 10 of 1949); (iv) any amount received from, -Explanation I. - "Chit" has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982 (Central Act 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 purpose of this clause; (c) "Designated Court" means the Designated Court constituted under section 10; (d) "Financial Establishment" means any person or group of individuals or a firm carrying on business of accepting 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 Government, any State Government or the Central Government, or a banking company as defined under section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949); (e) "Government" means the Administrator of the Union territory of Puducherry appointed by the President under article 239 of the Constitution.

3. Fraudulent default by Financial Establishment.

- If any Financial Establishment, which fraudulently 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 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 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 for a fine which may extend to an amount equivalent to five lakh rupees or where such deposit is quantifiable in terms of money twice the amount involved in such default whichever is more: Provided that in the absence of special and adequate reasons recorded in the judgement of the Designated Court, the imprisonment shall not be less than for three years and the fine shall not be less than twenty thousand rupees as against each individual and not less than one lakh rupees as 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 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) The Government or the District Magistrate may, suo moto or on receipt of a complaint, cause investigation of the complaint, or fraudulent transaction referred to in section 3. The District Magistrate shall forward his report together with the complaint to the Government 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 depositor; or (b) to pay interest or other assured benefit; or (c) to provide the service against such deposit; or (ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interests of the depositors, with an intention to defraud them; or (iii) where 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 interests of the depositors of such Financial Establishments, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or 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 the Financial Establishments, and where 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 Establishments or the personal assets of the promoters, partners, directors, managers or members or any other person of the said Financial Establishments. (3) On the publication of the order under sub-section (2), all the properties and assets of the Financial Establishment and of the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government pending further orders from the Designated Court.

5. Appointment of Competent Authority.

(1)The Government shall while issuing the order under sub-section (2) of section 4, appoint any of its officers not below the rank of Deputy Collector as the Competent Authority to exercise control over the money and the properties attached by the Government under section 4.(2)The Competent Authority shall, apply within fifteen days from the date of the publication of the said order, to the Designated Court, accompanied 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 the Designated Court may find 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 under any similar enactment for adjudicating any issue or subject matter pertaining to 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. Duties and powers of Competent Authority.

(1)Without prejudice to the generalities of sub-section (1) of section 5, the Competent Authority may carry out the purposes of this Act.(2)(i)On receipt of order of appointment, the Competent Authority shall take such necessary action as may be necessary Or expedient for taking physical possession of all the monies and assets of the concerned financial establishment 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 clause (i), the Competent Authority shall be entitled to -(a)require assistance of any police authority or any other authority or person and on such requisition it shall be the duty of the police authority 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 as Competent Authority;(c)require any person believed to be in possession or control over any money 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 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, negotiate, 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 movable or immovable 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 deems fit;(g)make payment as per the orders passed by the Designated Court from out of 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 EstablishmentExplanation. - For the purpose of this section, the expression "Financial Establishment" includes the directors, promoters, managers or member 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 thirty 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 Designated Court. (2) The Competent Authority thereafter shall issue notice either individually or by means of effective media publication, inviting 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 a claim 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 the 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 himself 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 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 the foregoing power, the Designated Court may,--(a) give any direction to the Competent Authority as it deems 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, finalise 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 may be deemed

fit, depending upon the nature of assets and credit the sale proceeds thereof to the bank accounts;(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 being 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 company and repayment to the depositors of the Financial Establishment or on any matter or issue incidental thereto.Explanation. - For the purpose of this section, the expression "Financial Establishment" includes the directors, promoters, managers or member of said establishment or any other person whose property or assets have been attached under section 4.

10. Designated Court.

(1)For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the Madras High Court, by notification, in the Official Gazette, constitute one or more Designated Courts in the cadre of District and Sessions Judge including Additional 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 other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act are invoked.(3)Any pending case in any other court in respect of which the provisions of this Act are invoked shall stand transferred to the Designated Court from the date of order issued under sub-section (2) of section 4 of this Act.

11. Power of Designated Court regarding attachment.

(1)Upon receipt of an 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 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, 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 subsection (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 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 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 ad-interim order of attachment absolute.(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 (Central Act V 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 on the date of attachment he had some interest in the property attached.(6)After investigation under sub-section (5), the Designated 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 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 the Designated Court passes an order under sub-section (6) making the order of attachment absolute or varying the orders of the attachment, it may issue such direction as may be necessary for realization of assets attached and for equitable distribution amongst the depositors of the money realised from and out of the assets so attached.(8)Where an application is made by any person or authority duly authorised or constituted or specified by any other State Government under a similar enactment empowering him to exercise control over any money or property or assets attached by that State Government, 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 to in section 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositor and where the Designated Court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing the said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith or for proper 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 11, the Designated Court is satisfied that the transfer of 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 in the opinion of the Designated Court 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, apply to the Designated Court for permission to give security in lieu of such attachment and where security offered and given is, in the opinion of the Designated 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.

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 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 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)discharging any liability, statutory or otherwise, of such financial establishment.

15. Appeal.

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

16. Special Public Prosecutor.

- The Government shall, by notification in the Official Gazette, appoint an advocate of not less than ten years standing as a Special Public Prosecutor for the purpose of conducting the cases 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 (Central Act 2 of 1974) for the trial of sessions cases.(2)Except the provisions of section 467, all 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 Designated Court and for the purpose of the said provisions a Designated Court shall be deemed to be a 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 in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

19. Protection of action taken 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 make rules.

(1)The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.(2)All rules made and notifications issued under this Act shall be published in the Official Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.(3)Every rule made or notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the Table of the Legislative Assembly, and if before the expiry of the session in which it is so placed or the next session the Legislative Assembly agrees in making any modification in any such rule or notification or the Legislative Assembly agrees that the rule or notification should not be made or issued, the rule or notification 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 or notification.

21. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the 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:Provided that no such order shall be made after the expiry of a 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 Legislative Assembly of Puducherry.