

Bihar Protection Of Interest Of Depositors (In Financial Establishments) Act, 2002

18 of 2002

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Bihar Protection Of Interest Of Depositors (In Financial Establishments) Act, 2002

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An Act to protect the interest of Depositors of the Financial Establishments and matters relating thereto. Be it enacted by the Legislature of the State of Bihar in the Fifty Third Year of the Republic of India as follows, namely:--

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Bihar Protection of Interests of Depositors (in Financial Establishments) Act, 2002, (2) It shall extend to whole of the State of Bihar. (3) It shall come into force at once.

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 the Designated Court constituted under section 6; (c) "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 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) amount 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 6A of the Industrial Development Bank of India Act, 1964; (v) amount received in the ordinary course of business by way of- (a) security deposit. (b) dealership deposit (c) earnest money (d) 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 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; Explanation II: Any credit given by a seller to a buyer on the, sale of any property (whether moveable or immovable) shall not be deemed to be deposit for the purpose of this clause. (d) "Financial Establishment" means any person including association of persons in whatever form it operates, a firm or a company accepting deposit under any scheme or arrangement or in any other manner but docs not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949. (e) "Government" means the Government of Bihar. (f) "Prescribed" means prescribed under the Rules.

3. Fraudulent Default By Financial Establishment :-

Where any Financial Establishment, having fraudulently or dishonestly, defaults in repayment of any deposit on maturity along with any benefit in the form of interest, bonus or profit, or in any other form as promised or fraudulently or dishonestly fails to render service as assured against the deposit, the Financial Establishment and every person including the promoter, partner, director, manager or any other person or any employee responsible for the management of or conducting the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for term up to ten years and with fine up to one lakh rupees or where such default relates to a quantifiable sum of money twice the amount of such sum, whichever is more: Provided that in absence of special and adequate reasons to be recorded in the judgment of the Court, the imprisonment shall not be for less than three years and the fine shall not be less than fifty thousand rupees. Explanation I -- For the purpose of this section, a Financial Establishment, which commits default repayment of any 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 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. Explanation II--When a question arises whether any Financial Establishment has committed fraudulent default within the meaning of this section, the Court shall presume that such Financial Establishment has committed the default 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, (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 on demand by the depositor; or (b) to pay interest or other assured benefits; 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 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 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 transpired that such money or other property is not available for attachment or not sufficient for repayment of the deposit, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may deem fit. (2) On the publication of the order under Sub-section (i) all the properties and asset of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further order from the Designated Court. (3) Save and otherwise specially provided in any other law the attachment shall be made in the manner provided for attachment of property in execution of a decree under Order 21 Rules 43, 43A, 46, 47, 49, 50, 51 and 54 of the Code of Civil Procedure.

5. Appointment, Duties And Power Of Competent Authority

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(1) The Government may while issuing the order under Sub-section (1) of Section 4, appoint any of its officers not below the rank of the Collector as the Competent Authority to exercise control over the moneys and the properties attached by the Government under Section 4 of a Financial Establishment. (2) On receipt of order of appointment, the Competent Authority shall take such necessary actions as are necessary or expedient for taking physical possession of all the moneys and assets of the concerned financial establishment expeditiously and the Competent Authority shall have all the powers which are necessary for the aforesaid purpose. (3) The Competent Authority shall apply within thirty 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. (4) The Competent Authority may also make an application to any Designated Court or any other judicial forum authority constituted or entrusted with the powers under any other State Government Law for adjudicating any issue or subject matter pertaining to any money or property of a Financial Establishment under similar enactment in respect of money and property belonging to Financial Establishment or person notified under this Act situated within the territorial jurisdiction of that authority for appropriate orders to give effect to the provisions of this Act. (5) Without prejudice to the generality of the powers vested under Sub-section (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 moneys realised 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 asset 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 realisation 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 realise any movable or immovable property belonging to or in the control of the financial establishment either by public auction or with the private arrangements; (g) make payment as per the orders passed by the Designated Court from out of the bank accounts, and (h) do all and every acts and deeds which would be necessary for the speedy realisation of the assets of the financial establishment. Provided that the sales and transfers of movable properties should not be done before the Designated Court

has passed made the order of attachment issued by the Government absolute or has issued a revised attachment order under Section 8. (6) The Competent Authority shall make applications from time to time to the Designated Court seeking permission to make payments to the depositors from out of the money realised. While making such applications, the Competent Authority shall assess the liability to the depositors and the other liabilities and in case the money realised or realisable is not sufficient to meet the entire liability, make a submission to the Designated Court seeking permission for making part payment to the depositors and to other creditors and disburse the money as per the order of the Designated Court. 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 3.

6. Assessment Of Assets And Deposit Liabilities :-

(1) Within thirty days from the date of his 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 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 sent to claimants shall state that if the statement or 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 claim entitled to be paid under the provision 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 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 the Sub-section (4), such security shall be valued by the Competent Authority in his best judgment.

7. Designated Court :-

(1) For the purpose of this Act, the Government may, with the

concurrence of the Chief Justice of the Patna High Court, by notification in the Official Gazette, constitute one or more Designated Courts in the cadre of Subordinate Judge including Assistant 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 Presidency Towns Insolvency Act, 1909 and the Provisional Insolvency Act, 1920, 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 to which the provisions of this Act apply shall, on the date of publication of this Act, stand transferred to the Designated Court.

8. Powers 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 copy of the application and of affidavit and the evidence, if any recorded, calling upon the said Establishment and the said person to show cause on 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 of the person to whom the notice issued under Sub-Section (1) calling upon all such persons to appear on the same date as that 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 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 objection is received under Sub-section (3), forthwith pass an order making the order of attachment absolute, and issue any direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from 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 respect, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 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 either making the 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 repayment of the deposits of the financial Establishment. (7) Where an application is made by any person duly authorised or constituted or specified by any other State Government under similar enactment empowering him to exercise control over any money or the property attached by that Government, the Designated Court shall exercise all its powers as if application is made under this Act and pass appropriate orders or directions on such application.

9. Powers Of The Designated Court Regarding Realisation 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 Subsection (1), 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 realise the attached assets either 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 accounts; (d) approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the

assets of 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 realised is not sufficient to meet the entire deposit liability; and (f) pass any order which the Designated Court deems fit for realisation of the assets of the company and repayment to the depositors of the financial establishment or on any matter or issue incidental thereof. 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 3.

10. Attachment Of Property Of Malafide 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 re-pay to the depositor 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 or not) any of the property otherwise than in good faith and for adequate 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 transfer 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 adequate consideration, the Designated Court shall order the attachment of so much of the said transferee property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred.

11. Security In Lieu Of Attachment :-

Any Financial Establishment or person whose property has been or is proposed 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 an order of attachment.

12. Administration Of Property Attached :-

(1) The Designated Court may, on the application of any person interested in any property attached and vested in the Competent Authority, give an opportunity to the person concerned of being heard and 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 as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Designated Court under section 3; and (b) Safeguarding so far as may be practicable the interests of any business affected by the attachment, and in particular, the interests of any partners in such business.

13. Appeal :-

(1) An appeal shall lie against the final order passed by the Designated Court in connection with and relation to the attachment before the High Court of the area concerned within 60 days from the date of the final order. (2) Any person convicted on a trial held by the Designated Court may appeal to the High Court of the area concerned.

14. Special Public Prosecutor And Special Government Pleaders :-

The Government may, by order appoint one or more Advocates of not having less than 7 years practice as Special Public Prosecutor/Special Government Pleader in consultation with the District and Sessions Judge of the concerned district for the purpose of conducting the cases in the Designated Court.

15. Procedure And Powers Of Designated Court Regarding Offences :-

(1) The Designated Court may, on perusal of the police report of the facts constituting an offence under this Act or upon a complaint made by an officer authorized in this behalf by the State Government, take cognizance of the offence without the accused being committed to it for trial. (2) While trying the accused person the Designated Court shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 for the trial of the warrant cases. (3) The Designated Court will exercise the power of remand with

regard to person forwarded to it as provided under Sections 167 and 309 of the Code of Criminal Procedure, 1973. (4) The Designated Court, while trying the offence under this Act, may also try an offence other than the offence under this Act with which, the accused may be charged at the same trial under Code of Criminal Procedure, 1973. (5) (a) The offence punishable under this Act shall be cognizable. (b) Subject to the provision contained under this Act the provision with regard to bail as provided under Chapter XXXIII of the Code of Criminal Procedure shall apply except the provision of grant of anticipatory bail as provided under Section 438 of the Code of Criminal Procedure.

16. 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 in force or any custom or usage.

17. 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.

18. Power To Make Rules :-

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act. (2) Every Rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the Rules or both Houses agree that the Rules should not be made, and notify their decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, 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 or omitted to be done under that rule.

19. Power To Remove Difficulties :-

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.