

Gujarat Protection of Interest of Depositors (in Financial Establishments) Act, 2003

1 of 2004

[22nd January, 2004]

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Gujarat Protection of Interest of Depositors (in Financial Establishments) Act, 2003

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An Act to protect the interest of depositors of the Financial Establishments and for the matters connected therewith or incidental thereto. It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows :

1. Short title and commencement :-

(1) This Act may be called the Gujarat Protection of Interest of Depositors (in Financial Establishments) Act, 2003 .

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,

(a) "Competent Authority" means the Competent Authority appointed under Sec. 5;

(b) "Designated Court" means the Designated Court constituted under Sec. 9;

(c) "deposit" includes and shall be deemed always to have been 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 (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 cl. (c) of S.5 of the Banking Regulation Act, 1949 (10 of 1949).

(iv) any amount received from

(a) the Industrial Development Bank of India,

(b) the Gujarat State Financial Corporation,

(c) any financial institution specified in or under Section 4A of the Companies Act, 1956 (1 of 1956).

(d) any other institution as the State Government may by an order specify;

(v) amounts received in the ordinary course of business by way of

(a) security deposit,

(b) dealership deposit,

(c) earnest money, or

(d) advance against order for goods or service;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and

(vii) any amount received by way of subscriptions in respect of a Chit.

Explanation. For the purpose of this clause

(i) Chit shall have the same meaning as assigned to it in cl. (b) of Section 2 of the Chit Funds Act, 1982 (40 of 1982);

(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;

(d) "Financial Establishment" means any person or group of individuals accepting deposits under any scheme or arrangement or in any other manner but does not include a Corporation owned or controlled by any State Government or the Central Government or a banking company as defined under cl. (c) of S.5 of the Banking Regulation Act, 1949 (10 of 1949);

3. Fraudulent defaults by Financial Establishment :-

Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity alongwith 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 (Sic extend) to ten lacs of rupees and such Financial Establishment also shall be liable for a fine which may extend to ten lacs of rupees : Provided that in the absence of special and adequate reasons recorded in the judgment of the court, the imprisonment shall not be less than three years and the fine shall

not be less than one lac of rupees and in case of imposition of fine on Financial Establishment, it shall not be less than five lacs of rupees.

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 deposit :-

(1) Notwithstanding anything contained in any other law for the time being in force,

(i) Where upon complaint received from the depositor or otherwise, the State Government is satisfied that any Financial Establishment has failed,

(a) to return the deposit on maturity on demand by the depositor; or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(ii) Where the State Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them; and if the State Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the State Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording the reasons in writing, issue an order

by publishing it in the Official Gazette, for attaching the money, property or assets belonging to or 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 moneys, properties or assets, is not available for attachment or not sufficient for repayment of the deposits, such other property or assets of the said Financial Establishment or of the promoter, director, partner or member of the said establishment as the State Government may think fit.

(2) On publication of the order under sub-sec. (1), all the moneys, properties and assets of the Financial Establishment and of the person mentioned therein shall forthwith vest in the Competent Authority pending further order from the Designated Court.

(3) The Collector of a district shall be competent within his jurisdiction to receive the complaint under sub-sec. (1) and he shall forward such complaint alongwith his report to the State Government at the earliest and shall send a copy of the complaint to the concerned Superintendent of Police or Commissioner of Police, as the case may be, for investigation.

5. Appointment of Competent Authority :-

(1) The State Government shall while issuing the order under sub-sec. (1) of Sec. 4, appoint an officer not below the rank of the Deputy Collector to be the Competent Authority to exercise control over the moneys, properties and assets attached by the State Government under Sec. 4.

(2) The Competent Authority shall have such other powers and discharge such other functions as may be prescribed by rules for carrying out the purposes of this Act.

(3) The Competent Authority shall apply, within thirty days from the date of the publication of the order made under Sec. 4 to the Designated Court, accompanied by one or more affidavits stating therein the grounds on which the State Government has issued the said order and the amount of moneys or other properties or assets belonging to or believed to have been acquired out of the deposits and the details, if any, or persons in whose name such property is believed to have been invested or acquired or any other property attached under Sec. 4, for such further orders as the Designated Court may find necessary.

(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 matter pertaining to moneys or properties or assets of the Financial Establishment under any similar enactment in respect of moneys or properties or assets belonging to or ostensibly belonging to the Financial Establishment or of 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) The Competent Authority, on receipt of order of his appointment, shall take such necessary actions as it is necessary or expedient for taking physical possession of all the moneys, properties and assets of the concerned Financial Establishment expeditiously and he shall have all the powers which are necessary for the aforesaid purpose.

(2) Without prejudice to the generality of the powers vested under sub-sec. (1), 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;

(c) to direct the person to furnish the necessary information relating to moneys, properties and assets of the Financial Establishment to hand over possession of such moneys, properties and 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 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 prior approval of the Designated Court by private arrangements :

Provided that the perishable items of assets shall be sold by public auction at the earliest 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 acts and deeds which would be necessary for the speedy realisation of the assets of the Financial Establishment.

Explanation. For the purpose of this section, the expression "Financial Establishment" includes the promoters, directors, partners, managers or members of the said establishment or any other person whose property or assets have been attached under Sec. 4.

7. Assessment of assets, deposits and liabilities :-

(1) The Competent Authority shall, within thirty days from the date of his appointment, assess the assets, deposits and liabilities 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 sufficient proof in support thereof.

(3) Every notice under sub-sec. (2) shall specify that if the statement of claims is not sent to the Competent Authority before the expiry of the period of one month from the date of such notice, the claims shall not be treated as claim entitled to be paid under the provisions of this Act.

(4) Every notice 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 specify that if the statement

of the claim together with the valuation of the security is not sent to the Competent Authority within such period, the Competent Authority himself shall value the security to the best of his judgment and his valuation shall be binding on such secured creditors.

(5) The Competent Authority shall prepare a statement of dues of the Financial Establishment which is due from various debtors, the assessments of the value of the property and assets of the Financial Establishment and the list of the depositors and their respective dues; and submit the same to the Designated Court.

8. Report by Competent Authority :-

The Competent Authority shall, after complying with the provisions of Sec. 7, make an application to the Designated Court seeking permission to make payment to the depositors from out of the money realised. While making such application, 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 with 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. Designated Court :-

(1) For the purposes of this Act, the State Government may, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification, in the Official Gazette, constitute one or more Designated Court of the level of the Court of a District and Sessions Judge for such area or for such case or group of cases or such class as may be specified in the notification.

(2) No Court, other than the Designated Court shall have jurisdiction to deal with or decide any question which the Designated Court is empowered to deal with or decide by or under this 4.

(3) Any case or proceeding pending before any Court or any authority in relation to the moneys, properties or assets of the Financial Establishment covered by an order made under Sec. 4, shall stand transferred to the respective Designated Court and shall be dealt with and decided by such Court in accordance with the provisions of this Act.

10. Powers of Designated Court regarding attachment :-

(1) Upon receipt of an application made under Sec. 5, the Designated Court shall issue to the Financial Establishment or to any other person whose moneys, properties or assets are attached by the State Government and vested in the Competent Authority under Sec. 4, a notice accompanied by the application and affidavits and copies of the evidence, if any, recorded, calling upon the said establishment or 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 or of the person to whom the notice is issued under sub-sec. (1), calling upon all such persons to appear on the same date as that specified in the notice and to make objection if they so desire, to the attachment of the moneys, properties or assets 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 moneys, properties or assets 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-sec. (4) or sub-sec. (6).

(4) The Designated Court shall, if no objection is made or no cause is shown on or before the specified date under sub-sec. (2), forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the property, and assets and moneys attached and for equitable distribution among the depositors of the money so realised.

(5) If cause 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 4, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 (5 of 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 so attached.

(6) After investigation under sub-sec. (5), the Designated Court shall pass an order either making the order of attachment passed under sub-sec. (1) of Sec. 4 absolute or varying it by realizing a portion of the property or assets or moneys from attachment or canceling 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-sec. (1) has in the property or assets, unless it is also satisfied that there will remain under attachment an amount of 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 constituted or specified by any other State Government under similar enactment empowering him to exercise control over any moneys or properties 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 give direction on such application so as to give effect to the provisions of such enactment.

11. Power of 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 sub-sec. (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 which is due from various debtors, the assessment of the value of the assets of the Financial Establishment and finalise the list of the depositors and their respective dues;

(c) direct the Competent Authority to take possession of any property or assets belonging to or in the control of the Financial Establishment and to sell, transfer or realise the attached property or assets either by public auction or by private sale as it deems fit

depending upon the nature of property or assets and credit the sale proceeds thereof to the bank accounts;

(d) approve the necessary expenditure incurred by the Competent Authority for taking possession and realisation of the properties and assets of the Financial Establishment;

(e) pass an order to make payment to the depositors by the Competent Authority or for proportionate payment to the depositors in the case where the moneys so realised is not sufficient to meet with the entire deposit liability; and

(f) pass any order appropriate for realisation of the property or assets of the Financial Establishment and repayment to the depositors of such Financial Establishment or on any matter incidental thereto.

Explanation. For the purpose of this section, the expression "Financial Establishment" includes the promoter, director, partner, manager or member of the said Establishment or any other person whose properties or assets have been attached under Sec. 4.

12. Attachment of property of malafide transferees :-

(1) Where the property or assets available for attachment of a Financial Establishment or other person referred to in Sec. 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Designated Court is satisfied by an affidavit or otherwise, that there is reason to believe that the said Financial Establishment has transferred any of the property otherwise than in good faith or for inadequate 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-sec. (5) of Sec. 10, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for not for adequate consideration, the Designated Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Designated Court

equivalent to the proper value of the property transferred.

13. Security in lieu of attachment :-

Any Financial Establishment or person whose moneys, properties or assets have been or are about to be attached under this Act may, at any time, apply to the Designated Court for permission to give security in lieu of such attachment and where the security offered and given is, in the opinion of the Designated Court, satisfactory and sufficient, the Designated Court may modify or 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 moneys, properties or assets attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for

(a) providing from such of the moneys, properties or assets attached and 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 Sec. 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 partner or any other person connected with such business.

15. Appeal :-

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

(2) In computing the period of limitation, the provisions of Section 4 Of the Limitation Act, 1963 Section 12 of the Limitation Act, 1963 (36 of 1963) shall so far as may be, apply.

16. Special Public Prosecutor :-

The State Government may, by an order, appoint one or more advocates of not less than ten years' standing, as a Special Public Prosecutor as well as 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 warrant cases by Magistrates.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) except Sec. 438 thereof shall, so far as may be, apply to the proceedings before a Designated Court and for the purposes of the said provisions a Designated Court shall be deemed to be a Magistrate.

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 in force or any custom or usage.

19. Protection of action taken in good faith :-

No suit, prosecution or other legal 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 in pursuance of the provisions of this Act, or rules made thereunder.

20. Power to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(3) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

21. Power to remove difficulty :-

If any difficulty arises in giving effect to the provisions of this Act,

the State Government may, by order, do anything, not inconsistent with the provisions of this Act, as appears it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.