

## **Odisha Protection Of Interests Of Depositors (In Financial Establishments) Act, 2011**

### **CONTENTS**

1. Short title, extent and commencement
2. Definitions
3. Attachment of properties on default of return of deposit
4. Competent Authority
5. Report and return by Financial Establishment
6. Default in Repayment of deposits and interests honouring the commitment
7. Compounding of offence
8. Designated Court
9. Powers of Designated Court regarding attachment, sale, etc
10. Attachment of property of malafide transferees
11. Security in lieu of attachmet
12. Administration of property attached
13. Appeal
14. Special Public Prosecutor
15. Procedure and powers of Designated Court regarding offences
16. Act to override other laws
17. Protection of action taken in good faith
18. Power to make rules
19. Power to remove difficulties

## **Odisha Protection Of Interests Of Depositors (In Financial Establishments) Act, 2011**

### **AN ACT**

TO PROTECT THE DEPOSITS MADE BY THE PUBLIC IN THE FINANCIAL ESTABLISHMENTS AND MATTERS RELATING THERETO.

BE it enacted by the Legislature of the State of Odisha in the

### **1. Short title, extent and commencement :-**

- (1) This Act may be called the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011.
- (2) It extends to the whole of the State of Odisha.
- (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 4;
- (b) "Deposit" means the deposit of money either in one lump sum or by installments made with the Financial Establishment for a fixed period for interest or for return in any kind or for any service;
- (c) "Designated Court" means the Designated Court constituted under section 8;
- (d) "Financial Establishment" means an individual or an association of individuals, a firm or a Company registered under the Companies Act, 1956 carrying on the business of 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 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 Odisha; and
- (f) "prescribed" means prescribed by rules made under this Act.

### **3. Attachment of properties on default of return of deposit** :-

Notwithstanding anything contained in any other law for the time being in force,-

- (i) where, upon complaints received from a number of depositors that any Financial Establishment defaults the return of deposits after maturity or fails to pay interest on deposit or fails to provide the service for which deposit has been made, or
- (ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors, and if the Government are satisfied that such Financial Establishment is not likely to return the deposits or to make payment of interest or to provide the service, the Government may, in order to protect the interest 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 from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the Promoter, Director, Partner or Manager or

Member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, as the Government may think fit and transfer the control over the said money or property to the Competent Authority.

#### **4. Competent Authority :-**

(1) The Government may, by notification, appoint a District Magistrate or an Additional District Magistrate for such area or areas or for such case or cases as may be specified in the notification as the Competent Authority to exercise control over the properties attached by the Government under section 3.

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purpose of this Act.

(3) Upon receipt of the orders of the Government under section 3, the Competent Authority shall apply within thirty days to the Designated Court for making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction and realize the sale proceeds.

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under section 3.

(5) The Competent Authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders.

(6) For the purpose of crediting and dealing with the money realized by the Competent Authority, he shall open an account in any Scheduled Bank.

#### **5. Report and return by Financial Establishment :-**

(1) Every Financial Establishment which commences or carries on its business as such in the State of Odisha on or after the

commencement of this Act shall make a report to the Collector and the Superintendent of Police of the district, mentioning the details about its authority to carry on such business, the location of the Financial Establishment in the State and its main Branch Office, if any, wherever situated, permanent address of every person responsible for the management of, or conducting of the business or affairs of, the financial Establishment in the State and such other particulars as may be prescribed.

(2) Such report shall be made within seven days from the date on which a Financial Establishment commences or carries on its business as such in the State:

Provided that a Financial Establishment which has been carrying on its business as such prior to the commencement of this Act shall make such report within seven days from the date of such commencement.

(3) Every Financial Establishment shall furnish a quarterly return within one month of the expiry of each quarter of a financial year to the Collector and the Superintendent of Police of the district in respect of its business and financial position, the area of its investment and the location of investments of moneys made by it within and outside the State, if any, and such other particulars as may be prescribed.

(4) Whoever fails to submit report required under sub-section (2) or fails to furnish return under sub-section (3) shall be punishable with fine which may extend to fifty thousand rupees.

## **6. Default in Repayment of deposits and interests honouring the commitment :-**

Notwithstanding anything contained in section 3, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit or fails to return in any kind or fails to render service for which the deposit have been made, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees and such Financial Establishment is also liable for a fine which may extend to two lakh rupees.

## **7. Compounding of offence :-**

(1) An offence punishable under section 6 may, before the institution of the prosecution, be compounded by the Competent

Authority or after the institution of the prosecution, be compounded by the Competent Authority with the permission of the Designated Court on payment of the entire amount due to the depositors with or without interest.

(2) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.

## **8. Designated Court :-**

(1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the Orissa High Court, by notification, constitute one or more Designated Courts for such area or areas or such case or cases as may be specified in the notification which shall be presided by an officer belonging to the Odisha Superior Judicial Service.

(2) No court including the Court constituted under the Provincial Insolvency Act, 1920 other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other court to which the provisions of this Act apply shall stand transferred to the Designated Court.

(4) When trying any case, the Designated Court may also try any offence, other than an offence specified in section 6, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

## **9. Powers of Designated Court regarding attachment, sale, etc :-**

(1) Upon receipt of an application under section 4, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 3, a notice accompanied by the application and affidavits and 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 as to why the order of attachment should not be made absolute and the properties so attached be sold in public auction.

(2) The Designated Court shall also issue such notice to all other persons represented to it as having or being likely to claim any

interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has 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) If no cause is shown and no objections are made on or before the specified date, the Designated Court shall forthwith pass an order making the ad-interim order of attachment absolute and direct the Competent Authority to sell the property so attached by public auction and realize the sale proceeds.

(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 procedure and exercise all the powers of a court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection shall be required to adduce evidence to show that on 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, within a period of one hundred and eighty days from the date of receipt of an application under sub-section (3) of section 4, 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 and then direct the Competent Authority to sell the property so attached by public auction and realize the sale proceeds:

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 a value not less than the value that is required for repayment to the depositors of such Financial Establishment.

(7) The Designated Court shall, on an application by the Competent Authority, pass such order or issue such direction as may be

necessary for the equitable distribution among the depositors of the money attached or realized out of the sale.

#### **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 3 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 affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred, whether before or after the commencement of this Act, any of the property otherwise than in good faith and for consideration, the Designated Court may, by notice, require any transferee of such property, whether or not he received the property directly from the said Financial Establishment, to appear on a date to be specified in the notice and show cause why so much of the transferees 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 9, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Designated Court shall order the attachment of so much of the said transferees property as 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 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, it may cancel the ad-interim order of attachment or, as the case may be, refrain from passing the order under sub-section (6) of section 9.

#### **12. Administration of property attached :-**

The Designated Court may, on the application of any person interested in any property attached 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 property attached as the applicant claims an interest in, such sum 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 6;
- (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.

### **13. Appeal :-**

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

### **14. Special Public Prosecutor :-**

The Government shall, by notification, appoint one or more Advocates of not less than ten years standing practice as special Public Prosecutor for each of the Designated Court for the purpose of conducting cases in the Designated Court.

### **15. 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 for the trial of warrant cases by Magistrates.

(2) The provisions of the Code of Criminal Procedure, 1973 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.

### **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 or any instrument having effect by virtue of any such law.



### **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 :-**

The Government may, by notification, make rules to carry out the purposes of this Act.

### **19. Power to remove difficulties :-**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature.