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The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999

Act 16 of 2000

Keyword(s):

Competent Authority, Designated Court, Deposit

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**THE MAHARASHTRA PROTECTION OF
INTEREST OF DEPOSITORS (IN FINANCIAL
ESTABLISHMENTS) ACT, 1999**

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MAHARASHTRA ACT No. XVI OF 2000¹

[THE MAHARASHTRA PROTECTION OF INTEREST OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENTS)
ACT, 1999.]

(This Act received the assent of the President on the 20th
January 2000; assent was first published in the
Maharashtra Government Gazette, Part IV, on the 21st
January 2000.)

**An Act to protect the interest of depositors in the Financial
Establishments and matters relating thereto.**

Mah. WHEREAS the Governor of Maharashtra had promulgated
Ord. the Maharashtra Protection of Interest of Depositors (in
VII of Financial Establishments) Ordinance, 1999, on the 29th April
1999. 1999 (hereinafter referred to as "the said Ordinance");

AND WHEREAS upon the re-assembly of the State
Legislature on the 22nd October 1999, a Bill for converting
the said Ordinance into an Act of the State Legislature could
not be introduced in the Maharashtra Legislative Assembly
for want of time as the session of the State Legislature was
prorogued on the 23rd October 1999;

AND WHEREAS as provided by article 213(2)(a) of the
Constitution of India, the said Ordinance would have ceased
to operate after the 3rd December 1999, the date on which
the period of six weeks from the date of re-assembly of the
State Legislature would have expired;

AND WHEREAS it was considered expedient to continue
the operation of the provisions of the said Ordinance by law;

Mah. AND WHEREAS both Houses of the State Legislature were
Ord. not in session and the Governor of Maharashtra was satisfied
XXXIV of that circumstances existed which rendered it necessary for
1999. him to take immediate action to continue the operation of the
provisions of the said Ordinance for the purposes hereinafter
appearing; and, therefore, the said Ordinance was repealed
by withdrawal and the Maharashtra Protection of Interest of
Depositors (in Financial Establishments) (Continuance)
Ordinance, 1999, was promulgated with retrospective effect
that is, with effect from the 29th April 1999, on the 2nd
December 1999;

¹ For Statement of Objects and Reasons, see *Maharashtra Government Gazette*,
Part V-A, P.—



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AND WHEREAS the instructions from the President under the proviso to clause (1) of article 213 of the Constitution of India have been obtained ;

AND WHEREAS it is expedient to replace the Maharashtra Protection of Interest of Depositors (in Financial Establishemnts) (Continuance) Ordinance, 1999 by an Act of the State Legislature; It is hereby enacted in the Fiftieth Year of the Republic of India as follows :—

Mah.
Ord.
XXXIV
of
1999.

Short title
and
commence-
ment.

1. (1) This Act may be called the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

(2) It shall be deemed to have come into force on the 29th April 1999.

Definitions.

2. 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 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) 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) 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 ;

10 of
1949.

(iv) any amount received from,—

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,



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1964.

(c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964, 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,

(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 the time being in force in the State; and

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

40 of
1982.

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 movable or immovable) shall not be deemed to be deposit for the purposes of this clause ;

(d) “Financial Establishment” means any person accepting deposit 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 ;

10 of
1949.

(e) “Government” means the Government of Maharashtra.

3. 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 to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Fraudulent
default by
Financial
Establish-
ment.



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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 default 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.

Attachment
of
properties
on default
of return of
deposits.

4. (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 or 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 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 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 service against which the deposit is received, the Government may, in order to protect the interest of the depositors of such Financial Establishment, 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 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 as the Government may think fit.



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(2) On the publication of the order under sub-section (1), all the properties and assets 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) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.

5. (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 Deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4, of a Financial Establishment.

Appointment
of
Competent
Authority.

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

(3) The Competent Authority shall, within thirty days from the date of the publication of the said order, apply 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 found necessary.

6. (1) For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the Bombay High Court by notification in the *Official Gazette*, constitute one or more Designated Court in the cadre of a 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.

Designated
Court.

(2) No court including the court constituted under the 3 of
1909. Insolvency Act, 1920, other than the Designated Court shall
5 of
1920. 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, on the date of coming into force of this Act, stand transferred to the Designated Court.



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Powers of
Designated
Court
regarding
attachment.

7. (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 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, 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 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 objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such 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 respects, 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 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 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 to the depositors of such Financial Establishment.

8. (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 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 transferee's property as is equivalent to the proper value of the property transferred should not be attached.

Attachment
of property
of malafide
transferees.

(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 consideration, the Designated Court shall order the



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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.

Security in
lieu of
attachment.

9. 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 order of attachment or, as the case may be, refrain from passing the order of attachment.

Administration
of property
attached.

10. 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 order as the Designated Court considers just and reasonable for—

(a) providing for 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.

Appeal.

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

Special
Public
Prosecutor.

12. The Government may, by order appoint one or more Advocates of not less than ten years standing as a Special Public Prosecutor in consultation with the District and Sessions Judge of the concerned District or the Principal Judge of the City Civil and Sessions Court, Greater Bombay for the purpose of conducting the cases in the Designated Court.



13. (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 of
1974.

Procedure and powers of Designated Court regarding offences.

(2) The provision 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.

2 of
1974.

14. 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.

Act to override other laws.

15. 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.

Protection of action taken in good faith.

16. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act.

Power to make rules.

(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 rule or both Houses agree that the rule 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.



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Power to
remove
difficulties.

17. If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arise, 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.

Repeal of
Mah. Ord.
XXXIV of
1999 and
saving.

18. (1) The Maharashtra Protection of Interest of Depositors (in Financial Establishment) (Continuance) Ordinance, 1999 is hereby repealed.

Mah.
Ord.
XXXIV
of
1999.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act.

