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PART III

Laws, Regulations and Rules passed thereunder.

GOVERNMENT OF JAMMU AND KASHMIR
CIVIL SECRETARIAT—DEPARTMENT OF LAW,
JUSTICE AND PARLIAMENTARY AFFAIRS

Srinagar, the 25th October, 2012. ✓

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 25th October, 2012 and is hereby published for general information :—

**THE JAMMU AND KASHMIR PROTECTION OF
INTEREST OF DEPOSITORS (IN FINANCIAL
ESTABLISHMENTS) ACT, 2012**

(Act No. XV of 2012)

[25th October, 2012].

An Act to protect the interest of depositors of financial establishments and for the matters connected therewith or incidental thereto.

But it enacted in the Sixty-third Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Jammu and Kashmir Protection of Interest of Depositors (In Financial Establishments) Act, 2012.

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

2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) "Act" means the Jammu and Kashmir Protection of Interest of Depositors (In Financial Establishments) Act, 2012 ;
- (b) "Competent Authority" means the Competent Authority appointed under section 5 ;
- (c) "Designated Court" means Court of Sessions Judge having territorial jurisdiction over the subject matter ;
- (d) "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 ~~se~~ ^{certified} service with or without any benefit in the form of interest, bonus, profit or in 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 under Securities and Exchange Board of India, established under the Securities and Exchange Board of India, established 1992 (15 of 1992) ;
 - (ii) amounts contributed as capital by partners of a firm ;
 - (iii) amount 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) the Jammu and Kashmir 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 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 clause (b) of section 2 of the Chit Funds Act, 1982 (40 of 1982) ; and

(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.

(e) "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 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) ;

(f) "Government" means the Government of Jammu and Kashmir ;

(g) "permanent resident" means a person as defined in section 6 of the Constitution of Jammu and Kashmir ;

(h) "prescribed" means prescribed by rules made under the Act ;

(i) "rules" means rules made under the Act.

3. *Fraudulent defaults by financial establishment.*—When any financial establishment fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such financial establishment shall, be liable to punishment with imprisonment for a term which may extend to six years and with fine which may extend to ten lacs of rupees and such financial establishment will also 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 promised or fails to render any specified service promised against such deposit, or fails to render specific service agreed against the deposit with 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 promise made while accepting such deposit or arising 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 need 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 where the Government—

- (i) upon receipt of a complaint from the depositor or otherwise satisfied that any financial establishment has failed
 - (a) to return the deposit on maturity on demand by depositor ; or
 - (b) to pay interest or other assured benefit ; or
 - (c) to provide the service promised against deposit ; or
- (ii) has reason to believe that any financial establishment acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them ;

it may, on being 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 deposits were received, and to protect the interest of the depositors of such financial establishment, it may attach the properties of such financial establishment.

establishment, issue an order, after recording the reasons for the same, by publishing it in the Government 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 Government may think fit.

(2) On publication of the order under sub-section (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-section (1) and he shall forward such complaint along with his report to the Government at the earliest and shall send a copy of the complaint to the concerned Superintendent of Police for investigation.

5. *Appointment of Competent Authority.*—(1) The Government shall, while issuing the order under sub-section (1) of section 4, appoint an officer not below the rank of the Additional Deputy Commissioner to be the Competent Authority to exercise control over the moneys, properties and assets attached by the Government under section 4.

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

(3) The Competent Authority shall apply, within thirty days from the date of the publication of the order made under section 4, to the Designated Court, accompanied by one more affidavits stating therein the grounds on which the 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, 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 order as the Designated Court may find necessary.

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 shall have all the powers which are necessary for the aforesaid purpose.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Competent Authority shall be entitled to—

- (a) 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 ;
- (b) do all and every acts and deeds which would be necessary for the speedy realisation of the assets of the financial establishment ;
- (c) make payment as per the orders passed by the Designated Court from out of the bank accounts of the financial establishment ;
- (d) open bank accounts in any scheduled commercial bank and credit all the moneys realised and operate the bank accounts while dealing under the Act ;
- (e) 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 ;
- (f) 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 ;

(g) sell, transfer or otherwise realise any movable or immovable property belonging to, or in the control of, the financial establishment or by public auction or, with the prior approval of the Designated Court, by private arrangement :

Provided that in case of sale of any immovable property, it shall be sold only to a person who is permanent resident of the State :

Provided further that the perishable items/assets shall be sold by public auction at the earliest by the Competent Authority ; and

h) direct any person to furnish the necessary information relating to moneys, properties and assets of the financial establishment, and to hand over possession of such moneys, properties and assets to the Competent Authority and such person shall comply with the requisites without any loss of time.

Definition :—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 section 4.

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 a report thereon to the Designated Court.

(2) The Competent Authority shall, thereafter, issue notice either orally or by means of effective media publication, inviting statement of 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-section (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

(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 valuation of the security is not sent to the Competent Authority within such period, the Competent Authority shall value the security to the best of its judgement and its 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 assessment of the value of the property and assets of the financial establishment and the list of the depositors with 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 section 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 moneys as per the orders of the Designated Court.

9. *Designated Court.*—(1) For the purposes of the Act, the Court of Session's, having territorial jurisdiction for such cases, shall be the Designated Court for purposes of the Act.

(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 the Act.

(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 section 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 the Act.

Powers of Designated Court regarding attachment.—(1) Upon an application made under section 5, the Designated Court shall have the power to order that the whole or any part of the financial establishment or to another person whose moneys, assets or interests are attached by the Government and vest in the Designated Court. (2) The Designated Court may, at its discretion, require the person to whom the moneys, assets or interests are attached to produce the original documents and affidavits and copies of the evidence, if any, recorded in the said establishment or the said person to show cause on a day to be specified in the notice, why the order of attachment should not be absolute.

The Designated Court shall also issue such notice to all other persons who have any interest in the property or assets presented to it as having, or being likely to claim, any interest or share in the property or assets of the person to whom the property or assets are attached, and the Designated Court may, if it is satisfied that there will remain under attachment an amount of property or assets not less than the value that is required for repayment to the Designated Court of the moneys, assets or interests attached, order that the property or assets shall be attached to the Designated Court at any time before an order is passed under section 5(4) or sub-section (6).

The Designated Court shall, if no objection is made or no cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing the Designated Court shall, for purposes of investigation, examination of the property or assets and in all other respects, subject to the provisions of the Act, as if the property or assets were attached to the Designated Court at any time before an order is passed under section 5(4) or sub-section (6).

The Designated Court shall, if no objection is made or no cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing the Designated Court shall, for purposes of investigation, examination of the property or assets and in all other respects, subject to the provisions of the Act,

follow the summary procedure as contemplated under Order 37 of the Code of Civil Procedure, Samvat 1977 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 so 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 realising a portion of the property or assets or moneys from attachment or cancelling the order of attachment :

Provided that 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 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 repayment to the Designated Court of the moneys, assets or interests attached.

11. *Power of Designated Court regarding realisation of assets and payment to depositors.*—(1) The Designated Court shall have all such powers as may be necessary for giving effect to the provisions of the Act.

(2) Without prejudice to the generality of sub-section (1), the Designated Court may—

- (a) give any direction to the Competent Authority as it deems fit, for effective implementation of the provisions of the 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.

ending up on the nature of property or assets and credit proceeds thereof to the bank accounts :

ed that in case of sale of any immovable property, it shall only to a person who is permanent resident of the e the necessary expenditure incurred by the Competent ty for taking possession and realisation of the properties ets of the financial establishment ;

n order to make payment to the depositors by the tent Authority or for proportionate payment to the ors in the case where the moneys so realised is not nt to meet with the entire deposit liability ; and

y order appropriate for realisation of the property or assets financial establishment and repayment to the depositors i financial establishment or on any matter incidental

or the purpose of this section, the expression "financial stablishment" includes the promoter, director, partner, anager or member of the said establishment or any other erson whose properties or assets have been attached nder section 4.

int of property of mala fide transferees.—(1) Where the available for attachment of a financial establishment or ed to in section 4 are found to be less than the amount or financial establishment is required to repay to the are the Designated Court is satisfied by an affidavit or e is reason to believe that the said financial establishment y of the property otherwise than in good faith or for ration, the Designated Court may, by notice, require uch property, whether or not he received the property aid financial establishment, to appear, on a date to be tice and show cause why so much of the transferee's

property as it equivalent to the property 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 10, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith or was 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 the 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 :

Provided that before issuance of any order under this section, the Designated Court shall provide a reasonable opportunity of being heard to the Competent Authority.

14. *Administration of property attached.*—The Designated Court may, on the application of any person interested in any moneys, properties or assets attached and vest in the Competent Authority under the Act and after giving the Competent Authority reasonable 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 reasonable and 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, 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 evoked 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 sections 112 of the Limitation Act, Samvat 1995 (1938 AD) shall, so far as may apply.

16. *Special Public Prosecutor.*—The Public Prosecutor appointed for the purpose of conducting cases in the Sessions Court having territorial jurisdiction shall act as a Special Public Prosecutor for the purpose of conducting the case in the Designated Court under the Act.

17. *Procedure and powers of Designated Court regarding offences.*—The Designated Court may take cognizance of the offence without the aid of a warrant, and may try the accused person, and may pass sentence thereon, as if the offence had been committed to it for trial and, in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1909 for the trial of warrant cases by Magistrates.

(2) The provisions of the Code of Criminal Procedure, Samvat 1989 (1932 AD) 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 the provisions of the 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 legal 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 in pursuance of the provisions of the Act, or rules made thereunder.

20. *Power to make rules.*—The Government may, by notification in the Government Gazette, make rules for carrying out the purposes of the Act.

21. *Power to remove difficulty.*—If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order, do anything, not inconsistent with the provisions of the 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 two years from the commencement of the Act.

(Sd.) **ACHAL SETHI,**

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