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PART IV—Bills introduced in the West Bengal Legislative Assembly; Reports of Select Committees presented or to be presented to that Assembly; and Bills published before introduction in that Assembly.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 1666-L.—20th November, 2013.—The Governor having been pleased to order, under rule 66 of the

Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly, the publication of the following Bill, together with the Statement of Objects and Reasons and the Financial Memorandum which accompany it, in the *Kolkata Gazette*, the Bill, the Statement of Objects and Reasons and the Financial Memorandum are accordingly hereby published for general information:—

Bill No. 27 of 2013

**THE WEST BENGAL PROTECTION OF INTEREST OF DEPOSITORS
IN FINANCIAL ESTABLISHMENTS BILL, 2013.**

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**A
BILL**

to protect the interest of depositors in financial establishments in West Bengal and to provide for the matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for the protection of interest of depositors in financial establishments in West Bengal and to provide for the matters connected therewith or incidental thereto;

It is hereby enacted in the Sixty-fourth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013.
- (2) It extends to the whole of West Bengal.
- (3) It shall come into force at once.
2. In this Act, unless there is anything repugnant in the subject or context,—
 - (a) “Administrator” means an administrator appointed under sub-section (5) of section 7;
 - (b) “Competent Authority” means the authority mentioned in section 8;
 - (c) “deposit” includes and shall be deemed always to have included any receipt of money, or acceptance of any valuable commodity, to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service, by any financial establishment, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—
 - (i) any amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given,

Definitions.

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(Clause 2.)

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) any amount received by way of contribution towards capital from the partners of a firm;
- (iii) any 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;
- (iv) any amount received from,—
 - (A) the Industrial Development Bank of India, or
 - (B) a State Financial Corporation, or
 - (C) any financial institution specified in or under section 4A of the Companies Act, 1956, or
 - (D) any other institution that may be specified by the Government in this behalf;
- (v) any amount received in the ordinary course of business by way of,—
 - (A) security deposit, or
 - (B) dealership deposit, or
 - (C) earnest money, or
 - (D) advances against order for goods or service;
- (vi) any amount received from an individual or a firm or an association of individuals 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.

10 of 1949.

1 of 1956.

Explanation I.—“Chit” has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982;

40 of 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) “Designated Court” means the Designated Court specified under section 12;
- (e) “financial establishment” means any person or a group of individuals or a corporate body or a partnership firm including the director, promoter, partner, manager or member of the said establishment accepting deposit under any scheme or arrangement or in any other manner but does not include,—
 - (i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949; or
 - (ii) a corporation incorporated by an Act of any Legislature; or
 - (iii) a co-operative society owned or controlled by any Government; or
 - (iv) any institution as the State Government may, by notification, specify;
- (f) “notification” means notification published in the *Official Gazette*;
- (g) “prescribed” means prescribed by rules made under this Act;
- (h) “State Government” means the Government of West Bengal.

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(Clauses 3, 4.)

Fraudulently
default in
payment of
deposit after a
specified period
or otherwise by
financial
establishments.

3. (1) Where any financial establishment—

- (a) fails to make any re-payment of deposit along with any benefit in the form of interest, bonus, profit or in any other form, after a specified period, that is, on maturity or otherwise; or
- (b) fails to render service, product or asset promised against the deposit; or
- (c) fails to render any specified service agreed against such deposit with intention of causing wrongful gain to one person or wrongful loss to another person; or
- (d) commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit; or
- (f) commits such default due to 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,

such financial establishment and every person including the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment, shall be deemed to have committed a default in repayment of deposit fraudulently.

(2) Every person including the promoter, partner, director, manager, member, employee or any other person responsible for the management, or for conducting the business or affairs, of a financial establishment who has committed a default in repayment of deposit fraudulently within the meaning of sub-section (1), shall, on conviction, be punishable with imprisonment for life or imprisonment for either description for a term which may extend to ten years and such financial establishment shall also be liable to a fine which may extend to an amount equivalent to five lakh rupees, or where such deposit is quantifiable in terms of money, twice the money involved in such default, whichever is higher:

Provided that in the absence of special and adequate reasons recorded in the judgement of the Court, the imprisonment shall not be less than for three years and the fine shall not be less than twenty thousand rupees as against each individual and not less than one lakh rupees against such financial establishment.

(3) Every offence punishable under sub-section (2), shall be cognizable and non-bailable.

(4) No Court shall take cognizance of any offence under this section except with the previous sanction of the Competent Authority.

(5) No police official below the rank of Deputy Superintendent of Police or equivalent, having jurisdiction, shall investigate an offence under this Act.

(6) All the properties of the financial establishment committing a default in repayment of deposit fraudulently under the provisions of sub-section (1), and the properties of the persons mentioned in sub-section (2), shall be liable to be attached in accordance with the provision of section 5.

Intimation of
business.

4. (1) Every financial establishment shall intimate the Competent Authority about its business in the area of jurisdiction of such Authority in such form, in such manner and within such time, as may be prescribed.

(2) Every financial establishment shall file all periodical statements to the Competent Authority in the area of jurisdiction of such Authority in such form, in such manner, and within such time, as may be prescribed. The Competent Authority may share such statements with any other regulator or authority including the Securities and Exchange Board of India (SEBI), the Registrar of Companies (ROC) and the Reserve Bank of India (RBI).

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in Financial Establishments Bill, 2013.*

(Clause 5.)

(3) The Competent Authority may, by a general or special order, direct any financial establishment in its jurisdiction to furnish such statements, information or particulars relating to or connected with deposits received by such establishment, as may be prescribed.

(4) Whosoever contravenes the provision of this section shall be punished with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.

Attachment of
properties on
default of return
of deposits etc.

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

- (a) where upon complaints received from the depositors or otherwise, the State Government is satisfied that any financial establishment has failed—
 - (i) to return the deposit after a specified period or on demand by the depositor, or
 - (ii) to pay interest or other assured benefit accrued on such deposit, or
 - (iii) to provide the services promised against such deposit; or
- (b) where the State Government has reason to believe as recorded in writing that any financial establishment is acting in a manner detrimental to the interest of the depositors with an intention to defraud them; or
- (c) where the State Government is satisfied that any financial establishment is not likely—
 - (i) to return the deposit, or
 - (ii) to make payment of interest accrued on such deposit, or
 - (iii) to provide benefits assured on such deposit, or
 - (iv) to provide the services against which the deposit is received,
- (d) where the State Government is satisfied that any financial establishment committing a default in repayment of deposit fraudulently, has transferred (whether after the commencement of the Act or not) any of the property otherwise than in good faith and for consideration,

it may, in order to protect the interest of the depositors of such financial establishment, by an order to be published in the *Official Gazette* and after recording reasons in writing, attach the money or other property acquired either in the name of such financial establishment or in the name of any other person on behalf of such financial establishment:

Provided that if it is found that such money or other property as referred to above is not available for attachment or is not sufficient for repayment of the deposits, the State Government may attach—

- (a) *firstly*, such other property believed to have been acquired with the money collected by way of deposits by such financial establishment; and
- (b) *secondly*, the personal assets of the promoter, partner, director, manager, member, employee or any other person responsible for the management of the said financial establishment; and
- (c) *thirdly*, the personal property of a person who has borrowed money from such financial establishment to the extent of his default.

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in Financial Establishments Bill, 2013.*

(*Clauses 6, 7.*)

(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 State Government and shall remain vested pending further order from the Designated Court.

(3) Save as otherwise specially provided in any other law, the attachment shall be made in the manner provided for attachment of property in execution of decree under Order XXI, Rules 43, 43A, 46, 47, 49, 50, 51 and 54 of the Code of Civil Procedure, 1908.

5 of 1908.

(4) The Competent Authority shall, within thirty days from the date of the publication of an order under sub-section (1), make an application, supported by an affidavit stating the grounds on which the State Government has issued the said order under that sub-section 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 and any other property attached under this section, to the Designated Court of making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction and realized the sale proceeds and may also apply for such further order or orders as the Competent Authority may find necessary.

(5) 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 Government under any similar enactment for adjudicating any issue or subject-matter pertaining to money or property or assets belonging to or ostensibly belonging to a financial establishment or any person mentioned in the order under sub-section (1), 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.

Power to enter premises and inspect certain documents.

6. (1) The State Government may, by notification, authorize the Competent Authority or any authority under the Competent Authority to carry out the purposes of this Act to enter and search any premises, where it has reason to believe that any register, book, record, paper, application, information in electronic storage and retrieval device or medium, instrument or proceedings are kept and to inspect them and to take such notes and extracts as it may deem necessary.

(2) Every person having in his custody or maintaining such register, book, record, paper, application, instrument or proceedings shall at all reasonable times produce or permit the Competent Authority or any other authority authorized by the Competent Authority to inspect them to take notes and extracts as it may deem necessary and if necessary seize and impound them:

Provided that no residential accommodation (not being a place of business cum residence) shall be so entered into and searched except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area, and all searches under this section shall, so far as may be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

Search, seizure and confiscation of property and its management.

7. (1) Where the Competent Authority has reason to believe that any financial establishment or the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment—

- (a) has committed any act which constitutes an offence under section 3; or
- (b) is in possession of any proceeds of crime involved in an offence under section 3; or

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(Clause 7.)

- (c) is in possession of any records relating to an office under section 3, or
- (d) is in possession of any property relating to an office under section 3,
such Competent Authority may, subject to the rules made in this behalf,
authorise any officer—
 - (i) to enter and search any building, place, vessel, vehicle or aircraft
where he has reason to suspect that such records or proceeds of
crime are kept;
 - (ii) to break open the lock of any door, box, locker, safe, *almirah* etc.;
 - (iii) to seize any record or property found as a result of such search after
recording reasons in writing;
 - (iv) to place marks of identification on such record or make or cause to
be made extracts or copies therefrom;
 - (v) to make a note or an inventory of such record or property;
 - (vi) to examine on oath any person who is found to be in possession or
control of any record or property, in respect of all or any of the
matters relevant for the purpose of any investigation under this
Act.

(2) Where it is not practicable to seize such record or property of any financial establishment or the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment, the officer authorised under sub-section (1), may, in such manner as may be prescribed, make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of the order shall be served on the person concerned.

(3) Where the Competent Authority has made an order under sub-section (1) or sub-section (2), it shall, within thirty days from the date of publication of an order under sub-section (1) or sub-section (2), as the case may be, supported by an affidavit stating the grounds on which such Competent Authority has issued the said order under that sub-section, to the Designated Court and the Designated Court shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such seized or freezed property of any financial establishment or the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment in the same manner as mentioned in the provision for attachment of property under section 5.

(4) Where an order of confiscation of seized or freezed property of any financial establishment or the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment has been made under sub-section (3), all rights and title in such property shall vest to the Competent Authority free from all encumbrances.

(5) The State Government may by order publish in the *Official Gazette*, appoint as many officers (not below the rank of a Joint Secretary to the Government of West Bengal) as it thinks fit, to perform the functions of an Administrator.

(6) The Administrator appointed under sub-section (5), shall receive and manage the property in such manner and subject to such conditions as may be prescribed.

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(Clauses 8, 9.)

(7) The Administrator shall, in such manner as may be prescribed, take such measures to dispose of the property which is vested in the Competent Authority appointed by the State Government, to protect the interest of depositors.

Competent Authority.

8. (1) The State Government shall, by notification, appoint an officer of the State Government to be designated as Director of Economic Offences as the Competent Authority for the purpose of this Act.

(2) The State Government may, by notification, appoint such other person or persons as it thinks fit to assist the Competent Authority and may specify the area or areas over which such person or persons shall exercise jurisdiction and power under the Act.

Powers of Competent Authority.

9. (1) The Competent Authority shall exercise such powers and perform such duties as may be required, by or under this Act and shall have jurisdiction over the entire State of West Bengal.

(2) Without prejudice to the generality of the powers conferred under sub-section (1) or any other provisions of the Act, the Competent Authority shall have the powers to—

- (a) cause investigation of a complaint on fraudulent transaction referred to in section 3 and report thereof to the State Government;
- (b) 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;
- (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 assets to the Competent Authority and such person shall comply with the requisition without any loss of time;
- (d) appoint, subject to the prior approval of the State Government, 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, with the prior approval of Designated Court or so directed by the said Court;
- (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 by private arrangement with the prior approval of Designated Court or so directed by the said Court;

Provided that the perishable item of assets shall be sold by private auction as soon as the Competent Authority deems fit.

- (g) open bank account in any Scheduled Commercial Bank and credit all monies realized and operate the bank account while dealing with money received in his capacity as Competent Authority, with the prior approval of Designated Court or so directed by the said Court;

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in Financial Establishments Bill, 2013.*

(Clauses 10-12.)

- (h) make payment out of the bank account as per the order of the Designated Court;
- (i) do all and every acts and deeds which would be necessary for the speedy realisation of the assets of the financial establishment.

Assessment of assets and deposit liabilities.

10. (1) The Competent Authority shall, within thirty days from the date of application to the Designated Court under sub-section (4) of section 5, assess the assets and liabilities, particularly the total amount of deposits to be returned to the depositors of the financial establishments.

(2) The Competent Authority shall, for the purpose of assessing the total amount of deposits to be returned to the depositors referred to in sub-section (1), issue a notice to the secured creditors, if any, and to the depositors of the financial establishment, directing them to submit a statement of their claims in such manner as may be prescribed.

(3) Every notice issued under sub-section (2), shall specify that if the statement of claim is not sent to the Competent Authority before the expiry of the period of thirty days from the date of receipt of such notice, the claim of the secured creditors, if any, and of the depositors, shall be barred under the provisions of this Act:

Provided that the Competent Authority may, if it is satisfied that such secured creditors or the depositors, as the case may be, were prevented by sufficient cause from sending or filing the statement of claim within the said period of thirty days, permit such secured creditors or the depositors to send or file such statement of claim within a further period of thirty days.

(4) Every notice issued to a secured creditor under sub-section (2), shall require him to annex with the statement of claim, an estimate of the valuation of the security and such notice shall also state that if such statement of claim together with annexure is not sent to the Competent Authority before the expiry of the period of thirty days, such Competent Authority shall, in his best judgement, value the security which shall be binding on such secured creditors.

(5) The Competent Authority shall, after assessing the net assets and liabilities of the financial establishment, submit a statement to the Designated Court in such manner as may be prescribed.

Permission for making part payment.

11. (1) The Competent Authority shall, after making an assessment of the deposit liabilities, apply before the Designated Court, from time to time, seeking permission for making payment to the depositors from out of the money realised.

(2) In case the money realised or realisable is not sufficient to meet the entire deposit liabilities, the Competent Authority shall apply to the Designated Court, seeking permission for part-payment to the depositors and the Designated Court shall, while passing an order or direction in this regard, take into consideration the estimate submitted by the secured creditors, if any, and the statement of the Competent Authority, under sub-section (4) and sub-section (5) of section 8, respectively.

Designated Court.

12. (1) The State Government may, by notification, specify one or more courts as the Designated Court, for such area or areas or for such case or class or group of cases, as may be specified in the notification, to try the offences punishable under this Act.

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in Financial Establishments Bill, 2013.*

(Clauses 13, 14.)

(2) A Designated Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court at Calcutta.

(3) A person shall not be qualified for appointment as a judge or an additional judge of a Designated Court unless he is, immediately before such appointment, serving as a Sessions Judge or an Additional Sessions Judge in the State.

Jurisdiction of
Designated Court.

13. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction the offence has been committed.

2 of 1974.

(2) No Court including the Court constituted under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, other than the Designated Court shall have jurisdiction in respect of any matter to which provisions of this Act are invoked, and every pending case in any other court to which provisions of this Act are invoked shall, on and from the date of commencement of this Act, stand transferred to the Designated Court for disposal and the Designated Court to which the case is so transferred, may proceed with the case from the stage at which it was at the time of such transfer as if the Designated Court has originally taken cognizance of the case and the case was pending with it at that time:

3 of 1909.
5 of 1920.

Provided that on and from the date of commencement of this Act, nothing in this section shall apply to any matter or proceeding which has been heard but the judgement has not been delivered by any other court on or before such date.

Powers of
Designated Court
regarding
attachment.

14. (1) Upon receipt of an application under sub-section (4) of section 5, the Designated Court shall issue to the financial establishment or to the person, whose property has been attached and vested in the Competent Authority under section 5, a notice accompanied by a copy of the application and affidavit together with an extract of evidence recorded, if any, calling upon such financial establishment and person to show cause as to why the order of attachment should not be made absolute and the property so attached be sold in public auction.

(2) The Designated Court, while issuing a notice under sub-section (1), shall also issue a notice to all other persons having or being likely to claim any interest or title in the property of the financial establishment, or the property of the person, to whom the notice is issued under sub-section (1), directing them to appear before it and to raise objection, if any, in respect of the attachment of the property or any 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 sub-section, raise an objection as aforesaid before the Designated Court at any time before an order is passed under sub-section (5) or sub-section (6), as the case may be.

(4) Any person raising an objection under this section shall be required to show *prima facie* that he has some interest in the property attached on the date of the attachment.

(5) If no cause is shown or no objection is raised by the financial establishment, or by the person whose property has been attached and vested in the Competent Authority or by other persons to whom the notice has been issued under sub-section (2), on or before the date specified in the notice, the Designated Court shall, after

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(Clause 15.)

considering the objection, if any, raised under sub-section (3), pass an order making the *ad interim* order of attachment absolute and issue such direction as may be necessary for realisation of the assets attached and direct the Competent Authority to sell the property so attached by public auction and realize the sale proceeds and for the equitable distribution of the money so realised among the depositors.

(6) If cause is shown or any objection is raised as aforesaid, the Designated Court shall proceed to investigate the matter.

(7) After investigation under sub-section (6), the Designated Court shall pass an order within a period of 180 days from the date of receipt of an application under sub-section (4) of section 5 either by making the *ad interim* order of attachment passed under sub-section (5) absolute or by varying it by releasing a portion of the property from attachment or cancelling the *ad interim* order of attachment and 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 in property, 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) Subject to the provisions of this Act, the Designated Court shall follow the summary procedure as contemplated under the Code of Civil Procedure, 1908 and exercise all the powers of a court in hearing a suit under the said Code.

5 of 1908.

(9) 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 direction on such application.

Powers of the
Designated Court
regarding
realisation of
assets and
payment to
depositors.

15. (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 the power vested under 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 this Act;
- (b) approve the statement of dues of the financial establishment due from various debtors;
- (c) assess the value of the assets of the financial establishment and finalise the list of the depositors and their respective dues;
- (d) direct the Competent Authority to take possession of any assets belonging to or in the control of the financial establishment and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank accounts;
- (e) approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the financial establishment;

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(Clauses 16-18.)

- (f) pass an 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
- (g) pass any order which the Designated Court deems fit for realisation of the assets of the financial establishment and for repayment to the depositors of such financial establishment or on any matter or issue incidental thereto.

Explanation.— For the purpose of this section, the expression “financial establishment” includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Act.

Attachment of
property of *mala
fide* transferees.

16. (1) Where the assets available for attachment of a financial establishment or other person referred to in section 5 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 or 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.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in section 14, the Designated Court is satisfied that the transfer of the property to the said transferee was not made in good faith or for 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.

Security in lieu of
attachment.

17. (1) Any financial establishment or person or transferees referred to in section 16 whose property—

- (a) is about to be attached; or
- (b) has been attached,

under this Act may, at any time, apply to the Competent Authority or the Designated Court, as the case may be, for permission to give security in lieu of proposed attachment.

(2) Where the security offered is in the opinion of the Designated Court, sufficient and satisfactory, it may allow to furnish the security in such manner and within such time as may be prescribed.

(3) Where the security as referred to in sub-section (2) is furnished, the Competent Authority shall refrain itself from passing the *ad interim* order of attachment or the Designated Court shall not pass the order of attachment absolutely or, as the case may be, shall cancel the order of attachment.

Administration of
property
attached.

18. 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 from 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

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(Clauses 19-22.)

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 partner of such business;
- (c) discharge in liability, statutory or otherwise, of such financial establishments.

Appeal.

19. (1) Any person including the Competent Authority, if aggrieved by the order of the Designated Court, in connection with or in relation to the attachment, may appeal to the High Court within sixty 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, at Calcutta.

Special
public
prosecutor.

20. (1) The State Government, in consultation with the District and Sessions Judge of the concerned District or, as the case may be, the Principal Judge of the City Civil and Sessions Court, Calcutta, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the State Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been a practicing Advocate for not less than ten years standing at the Bar.

Procedure and
powers of
Designated
Court regarding
offences.

2 of 1974.

21. (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 a Sessions case.

(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 Court of Magistrate.

(3) When trying an offence under this Act, a Designated Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

Act to override
other laws.

22. (1) Save as otherwise provided in this Act, the provisions of this Act or any rule made thereunder or any order made under any such rule 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.

(2) Where a Commission of Inquiry has been constituted under section 3 of the Commissions of Inquiry Act, 1952, before the coming into force of this Act and a report for recommending commission of an offence by a financial establishment under this Act, has been furnished to the State Government after coming into force of this Act, the provisions of this Act or any rule made thereunder or any order made under any such rule relating to attachment or confiscation of properties of such financial

60 of 1952.

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(Clauses 23-25.)

establishment and of every person including the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment, 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.

Protection of
action taken
in good faith.

23. No suit or other legal proceedings shall lie against the State Government or any officer of that Government or Competent Authority or other person exercising any powers or discharging any function or performing any duty under this Act, for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Power to
make rules.

24. (1) The State Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters, which under any provision of this Act are required to be prescribed or to be provided for by rules.

Power to
remove
difficulties.

25. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, 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.

STATEMENT OF OBJECTS AND REASONS.

Last few decades have witnessed birth, and mushrooming growth, of many financial establishments in the State of West Bengal. It has been observed that many of these financial establishments have resorted to collecting deposits from unsuspecting public, particularly the middle class and the poorer section of the society, by making false, unrealistic or commercially not viable promises of exceptionally high rate of interest or rewards and many of such financial establishments use to prepare lucrative deposits scheme with the intention of deliberately misleading common people, knowing fully well that on maturity it would not be possible for such establishments to refund even the principal amount or to render services assured.

2. In fact, many of these financial establishments have, intentionally, failed to return the principal amount or deposits on maturity or to pay interest or to render any specific service agreed to at the time of accepting the deposit.

3. Such fraudulent default in payment of deposits by financial establishments has been causing great resentment and uproar amongst the general members of the public and it has also been responsible for causing law and order problems, including human tragedies.

4. It has been felt necessary to provide for a suitable legislation in the State of West Bengal for the protection of the interests of depositors in the financial establishments and for such purposes, it is considered expedient to regulate and to impose restrictions on such financial establishments with a view to curbing the unscrupulous activities of such financial establishments and to make liable every person including the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or conducting the business or affair of such financial establishments.

5. In this context, the West Bengal Protection of Interest of Depositors in Financial Establishments Bill, 2013 (Bill No. 15 of 2013) (hereinafter referred to as the said Bill), has earlier been introduced in the West Bengal Legislative Assembly and passed

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by the West Bengal Legislative Assembly on the 13th April, 2013. After passing of the said Bill, the same has been reserved by the Governor for the consideration of the President of India for assent.

6. Subsequently, the Department of Financial Services, the Department of Revenue and the Department of Economic Affairs of the Government of India, have raised various queries at different stages and offered some suggestions for including some additional provisions in the said Bill. Finally, Ministry of Home Affairs (Judicial and Political Pensions Section), Government of India, *vide* the letter dated 26-07-2013, has suggested that the State Government might consider to withdraw the said Bill and send a fresh Bill incorporating the suggestions accepted by the Government of West Bengal.

7. Accordingly, it is considered necessary and expedient to withdraw the Bill No. 15 of 2013 and introduce a new Bill with the following new provisions:—

- (a) a new sub-clause (6) has been inserted in clause 3, regarding reference of attachment of property in case of fraudulent default in payment of deposit after a specified period or otherwise by financial establishments;
- (b) in clause 4, sub-clause (2) has been substituted and a new sub-clause (4) has been added, regarding intimation of business;
- (c) in clause 5, in sub-clause (1),—
 - (i) a new item (d) has been added, regarding attachment of properties of any financial establishment committing a default in payment of deposit fraudulently and has transferred its property other than in good faith and for consideration;
 - (ii) to the proviso, new item (c) has been added, regarding attachment of personal property of a person who has borrowed money from such financial establishment.

8. The Bill has been framed with the above objects in view.

KOLKATA,
The 20th November, 2013.

DR. AMIT MITRA,
Member-in-Charge.

FINANCIAL MEMORANDUM.

To give effect to the provisions of the Bill, nominal expenditure is expected to be incurred during the year 2013. The amount of such expenditure cannot, however, be quantified at this stage.

KOLKATA,
The 20th November, 2013.

DR. AMIT MITRA,
Member-in-Charge.

By order of the Governor,

SIDDHARTHA CHATTOPADHYAY,
*Secy.-in-Charge to the Govt. of West Bengal,
Law Department.*