Tamil Nadu Protection Of Interests Of Depositors (In Financial Establishments) Amendment Act, 2003

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An Act further to amend the Tamil Nadu Protection of Interests of Depositors (in Financial Establislments) Act, 1997. BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-fourth year of the Republic of India as follows:- Statement of Objects and Reasons2 The Tamil Nadu Protection of Interest of Depositors (in Financial (Establishments) Act, 1997 (Tamil Nadu Act 44 of 1997) was enacted by the Government of Tamil Nadu to protect the interests of the depositors who have lost their hard earned money with the Financial Institutions. At present there is no provision in the said Act for attaching the properties of the persons who borrowed money from the Financial Establishments and for the sale of attached property in public auction and for the equitable distribution of the sale proceeds to the depositors. In order to overcome the shortcomings and to make the said Tamil Nadu Act 44 of 1997 more effective, the Government have decided to amend the said Act so as to - (1) bring a company registered under the Companies Act, 1956 (Central Act 1 of 1956) and a non-banking financial company within the purview of the Act; (2) make the non payment of interest and failure to render service for which deposit has been made, as offences under the Act; (3) attach the properties of the persons who have borrowed money from the Financial Establishments and failed to return the money; (4) appoint more than one competent authority under the Act; (5) constitute Special Courts for different areas and for different cases and to appoint Special Public Prosecutors for each of the Special Courts; (6) specify the time limit within which the Special Court shall pass the final order; (7) compound the offences punishable under the Act; and (8) to sell the attached properties in public auction and to distribute the sale proceeds among the depositors. 2. The Bill seeks to give effect to the above decision. Financial Memorandum2 The Bill when enacted would involve expenditure from the Consolidated Fund of the State as it provides for the constitution of more Special Courts and for appointment of Special Public Prosecutors. It is, however, not possible at this stage to estimate with any degree of accuracy, the expenditure to be incurred as a result of the proposed legislation. 1. Received the assent of the President on the 28th September, 2003 - Published in Tamil Nadu Government Gazette, Extraordinary, Part IV, Section 2, Page 139, dated 3rd October, 2003. 2. Vide T.N. Bill No.25 of 2003.

1. Short Title And Commencement :-

(1) This Act may be called the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Amendment Act, 2003.
(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. Amendment Of Section 2 :-

In Section 2 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (Tamil Nadu Act 44 of 1997) (hereinafter referred to as the Principal Act), for clauses (2) and (3), the following clauses shall be substituted, namely:
"(2) "deposit" means the deposit of money either in one lump sum or by instalments made with the Financial Establishment for a fixed period, for interest or for return in any kind or for any service;
(3) "Financial Establishment" means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative

society owned or controlled by any State Government or the Central Government or a banking company as defined in Sec.5(c) of the Banking Regulation Act, 1949 (Central Act X of 1949);"

3. Substitution Of Section 3 :-

For Section 3 of the Principal Act, the following Section shall be substituted, namely:
"3. Attachment of properties on default of return of deposits: Notwithstanding anything contained in any other law for the time being in force-
(i) where upon complaints received from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity, or fails to pay interest on deposit or fails to provide the service for which deposit has been made, or
(ii) where the Government have reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors,
and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, or to make payment of interest or to provide the service, the Government may, in order to protect the interests of the depositors of such Financial Establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, partner, director, manager or member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority,"

4. Amendment Of Section 4 :-

In Section 4 of the Principal Act,-
(1) in sub-section (1), for the expression "an authority", the expression "one or more authorities for such area or areas or such

case or case as may be specified in the notification " shall be substituted.
(2) after clause (4), the following clauses shall be added, namely:
"5. The competent authority shall make an application to any Court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in Sec.3 situated within the territorial jurisdiction of that Court for appropriate orders.
(6) For the purpose of crediting and dealing with the money realised by the competent authority, he shall open an account in any Scheduled commercial bank."

5. Amendment Of Section 5 :-

In Sec.5 of the Principal Act, after the expression "interest on the deposit"; the expression "or fails to return in any kind, or fails to render service for which the deposit has been made " shall be inserted.

6. Insertion Of New Section 5-A :-

In Chapter III of the Principal Act, after Section 5, the following Section shall be inserted, namely:
"5-A. Compounding of offence.- (1) An offence punishable under Sec.5 may, before the institution of the prosecution, be compounded by the competent authority or after the institution of the prosecution, be compounded by the competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.
(2) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody shall be discharged forthwith."

7. Amendment Of Section 6 :-

In Section 6 of the Principal Act,-
(1) in sub-section (1) for the expression "a Special Court", the expression "one or more Special Courts for such area or areas or such case or cases as may be specified in the notification " shall be substituted;
(2) sub-section (4) shall be omitted.

8. **Amendment Of Section 7** :-

In Section 7 of the Principal Act,-

(1) in the marginal heading, for the expression "regarding attachment", the expression "regarding attachment, sale, realisation and distribution" shall be substituted;

(2) in sub-section (6), for the expression "the Special Court shall pass an order", the expression "within a period of one hundred and eighty days from the date of receipt of an application under sub-section (3) of Section 4" shall be inserted.

(3) "after sub-section (6), the following sub-sections shall be added, namely:

"(7) Where the ad-interim order of attachment is made absolute, on an application by the competent authority, the Special Court shall direct the competent authority to sell the properties attached, by public auction and realise the sale proceeds.

(8) The Special Court shall on an application by the competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors, the money attached or realised out of the sale under sub-section (7)."

9. **Amendment Of Section 12** :-

In Section 12 of the Principal Act, for the expression "a Special Public Prosecutor", the expression "a Special Public Prosecutor for each of the Special Court" shall be substituted.