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SECRETARIAT
OF
THE ODISHA LEGISLATIVE ASSEMBLY

NOTIFICATION

The 24th September, 2016

No.8977/L.A.—The following Bill which has been introduced in the Odisha Legislative Assembly on the 24th September, 2016 is herewith published under Rule 68 of the Rules of Procedure and Conduct of Business in the Odisha Legislative Assembly for general information.

THE ODISHA PROTECTION OF INTERESTS OF
DEPOSITORS (IN FINANCIAL ESTABLISHMENTS)
AMENDMENT BILL, 2016

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BILL

TO AMEND THE ODISHA PROTECTION OF INTERESTS
OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS)
ACT, 2011

BE it enacted by the Legislature of the State of Odisha in the Sixty-seventh Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Odisha Protection of Interests of Depositors (in Financial Establishments) Amendment Act, 2016.

Amendment of section 2. 2. In the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 (hereinafter referred to as the principal Act), for clause (b) of section 2, the following clause shall be substituted, namely:—

Odisha Act
21 of 2013.

“(b) “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) amount raised by way of share capital or by any 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;
- (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;
- (iv) any amount received from,—
 - (a) a State Financial Corporation, or
 - (b) any public financial institution specified in clause (72) of section 2 of the Companies Act, 2013, or

15 of 1992.

10 of 1949.

18 of 2013.

- (c) any other institution that may be specified by the Government in this behalf;
- (v) amount 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 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 receipt of a Chit.

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;”.

Amendment
of section 4.

3. In the principal Act, in section 4, after sub-section (3), a new sub-section shall be inserted, —

“(3-a) where any property attached under section 3 of the Act are transferred to the Competent Authority is subject to speedy and natural decay or if it is otherwise expedient so to do, he may sell such property by public auction or otherwise and credit the sale proceeds in an account opened in a Scheduled Bank for the purpose and immediately after disposing the said property intimate to the Designated court”.

Amendment
of section 6.

4. In the principal Act, in section 6, for the words “one lakh rupees”, the words “ten lakh rupees” and for the words “two lakh rupees”, the words “one crore rupees” shall be substituted.

Omission of
section 7.

5 . In the principal Act, section 7 shall be omitted.

Amendment of
section 9.

6. In the principal Act, in section 9,—

(a) in sub-section (1), after the words “be sold in public auction”, the words, comma and figure “and in so doing, as regards the issue of notice, the Designated Court shall follow the procedure and exercise all the powers of a court in issue and service of summons under the Code of Civil Procedure, 1908” shall be inserted;

5 of 1908.

(b) in sub-section (2), after the words “ in such property or portion thereof”, the words, comma and figure “and in so doing, as regards the issue of notice, the Designated Court shall follow the procedure and exercise all the powers of a court in issue and service of summons under the Code of Civil Procedure, 1908” shall be inserted;

5 of 1908.

(c) in sub-section(5), for the word “investigate”, the word “inquire” shall be substituted;

(d) in sub-section (6), for the word “investigation”, the word “inquiry” shall be substituted;

(e) in sub-section (7), for the words “The Designated Court shall”, the words “ Subject to the provisions of sub-section (8), the Designated Court shall” shall be substituted and the following proviso shall be added, namely:—

“Provided that where the money realized is not sufficient to make equitable distribution among the depositors, the Designated court may pass order for payment to the small depositors in preference”; and

(f) after sub-section (7), the following sub-section and the Explanation shall be inserted, namely:—

“(8) If the Government has paid any amount to any small depositor from out of the Corpus Fund created, if any, for the purpose of making payment to the said small depositors due to delay in equitable distribution, of the money attached or realised out of the sale proceeds among the depositors, under sub-section(7), the Designated Court shall, on an application by the Competent Authority, pass such order to recover the amount paid from the said Corpus Fund from out of the said sale proceeds at the first instance before making such equitable distribution.

Explanation.—For the purpose of this section the expression “small depositor” means the depositor whose total deposit in a Financial Establishment is not more than ten thousand rupees and includes the legal heirs of such depositor in case of his death.”.

Amendment
of section 10.

7. In the principal Act, in section 10, in sub-section (2), for the word “investigation” the word “inquiry” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

With a view to protect the deposits made by public who have invested in various financial establishments, the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 was enacted.

While communicating the assent of the President of India, Government of India had advised the State Government to change the definition of "Deposit" on the lines of the Maharashtra Act, which has been defined with greater clarity. Government of India had also advised an amendment to Section 7 (1) of the Act providing for compounding of the offence only in the event of payment of entire amount due to the depositors along with interest. Besides, during implementation of the Act, it was felt that the provisions of "stringent punishment" prescribed under section 6 of the Act may not be effective in view of the provision of "compounding of an offence". Further, in order to remove various practical as well as legal difficulties certain amendments of the Act are felt necessary.

In order to make the punishment for the commission of offence under the Act more stringent, suitable provisions have been proposed to be provided through amendment by enhancing the quantum of fine.

Since provision of giving priority in payment to "small depositors" is not there in the Act, the same is proposed to be provided through amendment by suitably defining the expression "small depositors" so that the small depositors having low source of income need not wait until the full realization of the entire deposit amount by auctioning of the attached properties through established procedure, which may take considerable time.

The proposal shall not only aim at removing various practical as well as legal difficulties being faced during implementation of the Act but shall also aim at providing more teeth to curb the illegal activities of the financial establishments.

The Bill seeks to achieve the above objectives.

PRADIP KUMAR AMAT

Member-in-Charge

A.K. SARANGI

Secretary

Odisha Legislative Assembly