

## Karnataka Protection Of Interest of Depositors in Financial Establishments Act, 2004

### Chapter IV - Chapter Iv

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(1) For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the High Court of Karnataka, by notification, constitute one or more Special Court consisting of a Single Judge not below the rank of a District and Sessions Judge for such area or areas or for such class or classes of cases.

(2) No Court including the Court constituted under the Presidency Towns Insolvency Act, 1909 (Act 3 of 1909) and the Provincial Insolvency Act, 1920 (Act 5 of 1920) other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act is invoked.

(3) Any pending case in any other Court in respect of which the provisions of this Act invoked, shall stand transferred to the Designated Courts from the date of notification issued under sub-section (1).

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### Section 11 - Powers of the Special Court regarding realisation of assets and payment to depositors

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(1) The Special Court shall have all the powers for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1), the Special 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, assessment of the value of the assets of the financial establishment, finalise the list of the depositors and their respective dues;

(c) direct the Competent Authority to take possession of any assets belonging to or in the control of the financial establishment and transfer or realise the attached assets or sell the attached assets by public auction or by private sale as it deems fit or depending upon the nature of assets and credit the sale proceeds thereof to the bank accounts;

(d) approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the financial establishment;

(e) on receipt of an application under Section 8, order for payment to the depositors by the Competent Authority or order for proportionate payment to the depositors in the events of the money so realised is not sufficient to meet the entire deposit liability; and

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

Explanation.--For the purpose of this section, the expression "financial establishment" includes the directors, partners, promoters, managers or member of said establishment or any other person whose property or assets have been attached under Section 3.

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## Section 12 - Powers of Special Court regarding attachment

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(1) Upon receipt of an application under Section 5, the Special Court shall issue to the financial establishment and to any other person if any, whose property is attached by the designated authority under Section 3, a notice accompanied by the copies of the application and affidavits and of the record of evidence, if any, calling upon them to show cause on or before a date to be specified in the notice why the order of attachment should not be made absolute.

(2) The Special 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 Special Court at any time before an order is passed under sub-section (4) or sub-section (6).

(4) The Special Court shall if no cause is shown and no objections are made 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 Special Court shall proceed to investigate the same and in so doing, as regards the examination of parties and in all other respects, the Special 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 attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Specified Court shall pass an order as far as may be within one year from the date of receipt of application under sub-section (1), either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad interim order of attachment:

Provided that Special 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.

(7) Where the Special Court passes an order under sub-section (6), making the order of attachment absolute or varying the order of attachment by releasing a portion of the property from attachment it may, issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution amongst the depositors of the money realised from and out of the assets so attached.

(8) 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 property or assets attached by that State Government, the Special Court shall exercise all its powers, as if, such an application were made under this Act and pass appropriate order or direction on such application so as to give effect to the provisions of such enactment.

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### **Section 13 - Attachment of property of mala fide transferees**

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(1) Where the assets available for attachment of a financial establishment or other person referred to in Section 3 are found to be less than the amount or value which such Financial establishment is required to repay to the depositors and where the Special 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 proper consideration, the Special 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 sub-section (5) of Section 12, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith or for proper consideration, the Special Court shall order attachment of so much of the said transferee's property as is in the opinion of the Special Court equivalent to the proper value of the property transferred.

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### **Section 14 - Security in lieu of attachment**

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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 Special Court for permission to give security in lieu of such attachment and where the security offered and given is, in the opinion of the Special Court, satisfactory and sufficient, it may cancel the ad interim order of attachment or as the case may be, refrain from passing the order of attachment.

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### **Section 15 - Administration of property attached**

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The Special 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 orders as the Special 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 family, and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Special Court;
  - (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;
  - (c) discharging in the prescribed manner, out of the property so attached, any liability, statutory or otherwise, accruing to a financial establishment or a person emanating out of the proceeding before the Special Court.
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### **Section 16 - Appeal**

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

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### **Section 17 - Special Public Prosecutor**

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The Government shall, by notification, appoint an Advocate of not less than fifteen years standing as a Special Public Prosecutor for the purpose of conducting the cases in the Special Court.

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### **Section 18 - Procedure and powers of Special Court regarding offences**

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(1) The Special 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 specified in the Code of Criminal Procedure, 1973 (Central Act II of 1974) for the trial of warrant cases by Magistrates.

(2) The provisions of the Code of Criminal Procedure, 1973 (Central Act II of 1974) except the provisions of Section 438 shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions, Special Court shall be deemed to be a Court or Judicial Magistrate, First Class or Metropolitan Magistrate, as the case may be.

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