

Protection of small depositors' interests

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After seeing a series of defaults made by companies in repaying fixed deposits and interest accrued thereon, it seems as if the matter has crossed the tolerance limits of the government. It has decided not to remain silent anymore and to protect the interests of small depositors with full vigour.

A step has already been taken in this direction in the form of Companies (second Amendment) Bill, 2000, which has inserted the new Sections 58AA and 58AAA in Companies Act, 1956, in addition to enhancing penalties for defaults committed under Section 58A.

Section 58AA requires every company that accepts deposits from small depositors to intimate the Company Law Board (CLB) within 60 days the name and address of each depositor(s) to whom it has defaulted in repayment of deposits or interest thereon, along with an action plan for payment. Upon receipt of such an intimation, CLB shall, within a period of 30 days from the date of receipt of intimation, pass an appropriate order after giving the small deposit(s) an opportunity of being heard.

Managements ought to be very careful in dealing with fixed deposits and not commit even a single default because once a one is committed it will be a stigma on the company's name forever and investors will always feel reluctant to invest in companies having a dubious track record.

Similarly, in case any interest accrued on deposits of small depositors is waived, the fact of such a waiver shall also be mentioned in advertisement and application forms.

As per the provisions of Section 58A(10) and 58AA(9) of the Act, any person who knowingly fails to comply with the provisions of these sections shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than Rs 500 per day, for the period during which such non-compliance continues.

As per Section 58AAA every offence connected with, or arising out of acceptance of deposits under Section 58A or 58AA, is a cognizable offence under the Code of Criminal Procedure. Section 2(C) of Code of Criminal Procedure, 1973, defines a 'Cognizable Offence' as an offence for which a police officer may, in accordance with the first schedule under the Code or any other law for the time being in force, arrest a person without warrant.

As Section 58AA(10) makes a director of the company liable for default, the implication of Section 58AAA is that a police officer can arrest, without an arrest warrant, a director of a Company which has contravened any of the provisions of Section 58A or 58AA. Such an offence is a non-bailable one. This is the first time that an offence has been made cognizable under the Companies Act as all other offences are regarded as non-cognizable by Section 624 of the Act.

The above provisions will further strengthen the exiting provision in the Act under Section 58A (9) which empowers holders of fixed deposits to make an application to CLB, on the basis of which CLB can pass an order directing the company to repay the deposit forthwith or within a stipulated time period. Moreover, the above provisions will also help a lot in development of a healthy market for fixed deposits in the country, as now only serious companies wanting to utilise funds raised from fixed deposits for their business purpose, will come out with fixed deposit schemes and fraudulent promoters who just want to gobble public money will stay away from the market.