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Fugitive Economic Offenders

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ABSTRACT

Fugitive economic offenders act came into force on 21st April, 2018 but was assent by the president on 31st July, 2018. This act is a must needed act because the individuals who are mostly the big industrialist who takes the huge number of debts from bank and they do not pay them back resulting into NPA, so they run away with the debt amount on them to another country and even they refuse to return back to the country because this will bring the legal action against them. This act prohibits the offenders to leave the country if they leave the country, they can be called back and a legal action can be taken against them, their properties can be confiscated and once found guilty of schedule offence then will be declared as FEO by the special court. As all the laws are not perfect there are some loopholes in it but overall, it is huge relief on the part the new specific laws that have been made in particular to deal with this huge crime which is done by the white-collar people.

Keywords: FEO- Fugitive Economic Offender, NPA- Non-Performing Assets.

I. INTRODUCTION

“Fugitive Economic Offenders” are those individuals against whom there is an arrest warrant which should be in relation to any schedule economic crime and either the individual has left the country or is in aboard and not willing to return back to the country. As per current scenario we have been witnessing that there are many cases in which big industrialist like Nirav Modi, Lalit Modi, Mehul Choksi, Vijay Mallya they took the debts from the bank, which are the money of government and the tax payers and they left the country in order to escape from the legal proceedings and enjoys their life in some foreign country by taking the citizenship of that escaped country for the protection of their offences. This situation has cost a massive loss on the economy of India so there was an immediate need of a particular act which prohibits these offenders to damage a country’s economy and there should be a legal proceeding which they cannot run away from that easily. In order to get rid of this fraud the Ministry of Finance proposed draft under Union Budget for a bill name Fugitive Economic Offenders Bill. The bill was introduced on 12th day of March, 2018 in the Lok Sabha as the bill did not get the consent it could not be taken up for the consideration. Due to in rise of number of Non- Performing

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Assets in the country which created an alarming situation in the country's economy. The necessity of the bill was not hidden from anyone in the country not even the President of India. Thus, the President of India took a notice and used his power under Article 123 of Constitution of India and thus the ordinance was passed named Fugitive Economic Offenders Ordinance.

Under Article 123 when the Parliament is not in session and the President is satisfied that the circumstances exist which renders that it is a necessary action for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to be required.² The ordinance which has been passed by the President as the same effect as of an Act of Parliament but it is a temporary solution as it ceases to operate because it expires in 6 weeks from the reassemble of the Parliament. After several debate the Parliament gave the consent and without any amendments in ordinance, Fugitive Economic Offenders Bill got the assent of the president on 31st July, 2018. **Fugitive Economic Offenders Act, 2018 shall be deemed to have come into force on the 21st day of April, 2018.**³

Fugitive Economic Offenders Act is for those individuals who commits a schedule offence and the debt amount is of 100 crores or more. Under this Act offences should be under schedule: Counterfeiting, Forgery, Fraudulent removal of property and cheating under the Indian Penal Code, 1860, Dishonour of cheque under the Negotiable Instruments Act, 1881, Offences under the Reserve Bank of India Act, 1934, Taking of gratification to influence a public servant under the Prevention of Corruption Act, 1988, Money laundering offences under the Prevention of Money Laundering Act, 2002, Fraud under the Companies Act, 2013, and Defrauding creditors under the Insolvency and Bankruptcy Code, 2016.

II. POWERS UNDER THE ACT

Under Prevention of Money Laundering Act 2002 there a unit called Financial Intelligence Unit [FIU]. It is the arms of the Ministry of Finance. The Director/Deputy Director has the authorisation to file the case in Special Court against the individual when he/she has a reasonable fact to believe that the individual is a fugitive economic offender.

Firstly, there will be a submission of an application requesting in Special Court that the individual who has committed the schedule offence should be declared as the Fugitive Economic Offender under the Act.

After this the director of FIU will have the power to attach the property of the offender for 30

² Article 123, Constitution of India, <https://indiankanoon.org/doc/1090693/>

³ Fugitive Economic Offender act 2018, (August.1.2018) <https://taxguru.in/corporate-law/fugitive-economic-offenders-act-2018.html>

days without any permission of the Special Court. Here, “attaching the property” means the offender cannot sell or use the property. If there is a need to extend the time for the attachment of the property it can be extended up to 180 days with the permission of Special Court.

If the Special Court declares the individual as a Fugitive Economic Offender the offender’s property will be confiscated and sold. The money which will be generated from selling will be given to the financial creditors from whom the debt has been taken.

This Act bars the individual on filing or defending the civil claims but an individual can appeal the decision of the Special Court in High Court.

On December 10, 2018 deportation order of Vijay Mallya by the Westminster Magistrate’s Court in UK was huge relief on the part of Indian government and the Indian banks as there were immense pressure of long list of bad debts and absconding Promoters. The UK court order was followed up by the Special Court in Mumbai and declared Vijay Mallya as the “Fugitive Economic Offender” under the Act on January 5th, 2019.

The analysis done by several experts showed that, it was an alarming situation for Indian to bring this act in existence. The total number of fraud cases reported by the banks and the other financial institution, averaged around 4,500 cases a year in the past 10 years which rose steeply with shocking number of 5,835 cases in the year 2017-2018 which estimated that the financial institution has suffered a huge loss of an unbelievable amount of Rs. 41,000 Crores fraud.⁴ As per the Ministry of External Affairs, over 30 people accused of various financial scams/frauds and under probes by the Enforcement Directorate/ Central Bureau of Investigation are currently absconding from India.⁵

In current scenario, On 13th May 2021 the Special Court has issued a public notice to Nirav Modi the fugitive offender who was a diamond merchant and wanted criminal in India for the fraud under money laundering in the Punjab National Bank Scam case, the court, asked him why his property should not be confiscated under Fugitive Economic Offenders (FEO) Act as the Enforcement Directorate’s report mentions that he had a pecuniary interest in the fraud long with him his wife, sister and brother-in law were the interested parties so, the judge of Special Court, Justice V C Barde also asked the offender to appear before court on June 11, 2021.⁶

⁴ *RBI Annual Report 2017-18*, <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/769788/fugitive-economic-offenders-act-2018-deliberate-or-desperate>

⁵ *14th March 2018*, Question No. 3198 in Rajya Sabha answered, <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/769788/fugitive-economic-offenders-act-2018-deliberate-or-desperate>

⁶ *Business Standard, 13th May 2021*, https://www.business-standard.com/article/current-affairs/pnb-scam-special-court-issues-show-cause-notice-to-nirav-modi-121051300675_1.html

III. CHALLENGES WHICH CAN ARISE IN THE ACT

1. The biggest issue in this act is that, the individual is not allowed to file a suit defending the civil claims. As this law violated the basic and most important fundamental rights Article 14 right to equality which ensures that every citizen of India has the fundamental right to have an access to justice. There can be a possibility the act can be repealed by the Supreme Court of India.

2. It is not easy to sell the property; e.g. Sahara case, In Aamby Valley incident where the Sahara chief was in jail and the amount which was required to bring him out was in thousand crores and therefore Sahara tried to sell the property of Aamby valley but they could not find any buyers.

Reasons

- No buyers are interested in buying such a huge amount of property.
 - Even though if any buyers agree to purchase such property, they buy it at a very low cost, which is not a profitable transaction.
3. When the properties are confiscated, many a times the individual has a Benami Property which will also be confiscated. Firstly, the Benami Property are not easy to be found or recognised and Secondly, when there is a benami property the other partner can claim on the property as the other is legally the owner of the property not the fugitive offender. The act should be free from loopholes.
4. This Act violates the principle of innocent unless proven guilty. But in this scenario when the special court declares that the person is a fugitive economic offender his /her property is sold. But when the individual appeals in High Court and the High Court declares that the individual is an innocent person and wrongfully that person was considered as a fugitive economic offender. In this situation, the individual suffers the loss even though he has not committed it and if the property has been sold in the process with decision of Special Court, then the sold property cannot be reverted back.

IV. CONCLUSION

As a way forward- Challenges which are faced can be tackled by:

- Complete ban on filing civil suit should be clarified reasonably.
- No time limitation should be there to sell the property to get the amount for the creditors. In this where an individual is appointed from special court to sell the property, buyers don't buy them till they know that the appointed person has the last less time

period left to sell the property to clear the debts of the creditors so they wait for the point where the amount reduces and the buy at a very low price but due to this time limitation the debt cannot be fully recovered. As the money is considerate enough and it does not equalise with the evaluation of the property.

Thus, this Act is moreover a relief as the fugitive economic offenders cannot escape the safe route by taking all the money from banks and enjoying in aboard. This law will prohibit these schedule offenders and will make sure the debt they took from banks are cleared and taken back from them legally.
