



# LEGAL MECHANISM AND FRAMEWORK TOWARDS FUGITIVE ECONOMIC OFFENDERS IN INDIA A SOCIO LEGAL STUDY

Ravinder Kumar, Research Scholar, K.R. Mangalam University, Sohna Road, Gurgaon

## ABSTRACT

According to the Reserve Bank of India (RBI) statistical table for banks in India 2018, unprofitable (or non-performing) assets of SCBs increased from INR 3,23,464/- crores on March 31st 2015 to INR 10,35,528/- crores on March 31st 2018. Upgrading the NPA in the economy not only reduces economic growth but also injects corruption and poverty into the blood of the country. It empties public money, money that has been saved in the bank and other institutions by working day and night. The money that could be used for education, health, production and employment was used by some economic criminals for their personal growth. Therefore, this suggests that businesses and, in particular, banks and financial institutions have been significantly affected in the recent past due to some unethical entrepreneurs. These entrepreneurs borrowed money from banks and financial institutions for their businesses. But they do not pay the loan and, instead, flee to foreign countries far from the jurisdiction of the Indian courts. To stem this threat, the President of India has enacted the Fugitive Economic Offenders Act, 2018 (FEO) 2018 and came into force on April 21, 2018. The law establishes special courts to try these fugitive economic criminals and provides confiscation of its properties inside and outside India. This particular analyzes the most remarkable features of the law, its positive and negative attributes, and its socio-legal implications for business, and investigate the socio-economic problems and challenges pertaining to fugitive economic offenders in India.

**Key Words:** *Fugitive Economic Offenders, India, law*

## INTRODUCTION

The Fugitive Economic Offenders Act, 2018 (FEO) was promulgated by the President of India and came in to effect on 21 April 2018. In the recent past the country has witnessed several instances of economic offenders fleeing away from India in an attempt to escape from the jurisdiction of Indian courts, anticipating the commencement, or during the pendency, of criminal proceedings.

The absence of such offenders from Indian courts has several undesired consequences.

- It hampers investigation in criminal cases
- It wastes precious time of courts of law
- It undermines the rule of law in India.
- In most such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India.

The existing civil and criminal provisions in law are not entirely adequate to deal with the severity of the problem. It was, therefore, felt necessary to provide an effective and speedy deterrent to ensure that such actions are curbed.

## BANK FRAUD BY KINGFISHER AIRLINES

Kingfisher Airlines, a full service airline was launched by the business tycoon, Vijay Mallya in the year 2005. From the very initial days, due to mismanagement on the part of the authorities of the organization, the airlines was suffering huge amount of losses. Various wrong decisions were taken such as acquiring of a Deccan Air, a severely

loss making company and merging the same into Kingfisher Airlines as well as providing very luxurious services to passengers at a very a standard fares etc. Kingfisher Airlines continually started reporting losses from 2008 onwards till it was grounded in 2012. The losses started to mount when the Deccan Airlines were bought by the airlines. In spite of reporting losses since the very inception of the Kingfisher Airlines, the banks when approached in 2010 by Mallya, did not deny him the loan to fund the airlines. The consortium of banks turned a blind eye towards the same and granted him a loan of 1500 crores on personal guarantee. The timeline of the fraud follows1:

**2006:** Kingfisher Airlines approach the IDBI Bank for a loan that would fund its purchase of aircrafts. Due to a Mallya's murky history with the IDBI the bank decided to decline the proposal.

**2008:** Air Deccan deal is finalised. UB Ltd paid Rs 550 crore for a 26 per cent stake in the carrier. In March 2008 KA owed a debt of Rs. 934 crores, due to a heightened spike in oil prices and the stress of working a high-cost and low-cost airline company together.

**2009:** The debt of the airlines increased to Rs. 5,665 crores, which grew into Rs. 7,000 crores. Even though the losses went on, the bank changed its mind and granted them a loan of Rs. 900 crore to the airlines.

**2010:** Banks intimate the borrowers that they will be provided a time period of 9 months to pay back the loan. By this time, Mallya became a Member of Parliament.

**2011-2012:** During these years, Mallya continued withdrew Rs. 33.46 crore as salary. Kingfisher Airlines' license to operate is confiscated. As a result, it stops paying its employees' salaries. As of March 2016, Kingfisher Airlines owes Rs. 3000 crore to 3000 employees in terms of salary. It owes banks such as SBI and IDBI a colossal sum of US \$1 billion as loan.

**2014:** Mallya was announced as a "wilful defaulter" by the United Bank of India. Other banks like State Bank of India and Punjab National Bank did the same.

**2015:** In November 2015, Arun Jaitley, in his speech, declared that the airlines indebted to the extent of Rs. 9,091.40 crore.

**April 2015:** Mumbai International Airport Private Limited sold the personal aircraft belonging to Mallya worth Rs. 22 Lakhs. He also owed the Service tax department, a debt worth 115 crore. The Department approached Bombay High Court to impound Mallya's passport, forcing him to appear in court.

**2016:** In a plea to prevent Mallya from absconding, a consortium of banks approached the Supreme Court of India. They were unsuccessful in doing so because by that time Mallya had already left India. As a result, a special magistrate in Hyderabad court issued a non-bailable arrest warrant (NBW) against Mallya for not appearing in court for a slew of pending cases.

**April 2016:** The Enforcement Directorate approaches a special court in Mumbai to issue another non-bailable arrest warrant under the

Prevention of Money Laundering Act, 2002. The court goes ahead and does so. The above incidents led to the enactment of the FEO legislation in order to facilitate the entire process of bringing the economic offenders back to the country.

## ANALYSIS OF THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018

### Extent and Application

The FEO extends to the whole of India. It came in to effect on 21 April 2018. It applies to any individual who is, or becomes, a fugitive economic offender on or after the above date.

### Important Definitions

**Fugitive Economic Offender:** "Fugitive economic offender" means any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India, who: (i) leaves or has left India so as to avoid criminal prosecution; or (ii) refuses to return to India to face criminal prosecution. [Sec.4 (1)(e)]<sup>1</sup>

**Proceeds of Crime:** "Proceeds of Crime" means any property derived or obtained, directly or indirectly, by any person from any criminal activity relating to a scheduled offence or the value of such property or where such property is outside the country, then the property equivalent in value held within the country. [Sec.4 (1)(g)]<sup>2</sup>

<sup>1</sup> Sec.4 (1)(e), The Fugitive Economic Offenders Act, 2018

<sup>2</sup> Sec.4 (1)(g), The Fugitive Economic Offenders Act, 2018

## Salient Features

In terms of Section 2(1) (m), the FEO is applicable when the amount involved in the offence or offences is one hundred crore rupees or more and the offence is specified in the schedule. Specified offences under the (i) the Indian Penal Code, (ii) the Negotiable Instruments Act, 1881, (iii) the Reserve Bank of India Act, 1934, (iv) the Central Excise Act, 1944, (v) the Customs Act, 1962, (vi) the Prohibition of Benami Property Transactions Act, 1988, (vii) the Prevention of Corruption Act, 1988, (viii) the Securities and Exchange Board of India Act, 1992, (ix) the Prevention of Money Laundering Act, 2002, (x) the Limited Liability Partnership Act, 2008, (xi) the Foreign Contribution (Regulation) Act, 2010 (xii) the Companies Act, 2013, (xiii) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, (xiv). The Insolvency and Bankruptcy Code, 2016 and (xv) the Central Goods and Services Tax Act, 2017.

- Section 4 provides for the Director can make an Application before the Special Court for a declaration that an individual is a fugitive economic offender;<sup>3</sup>
- Section 5 enables the attachment of the property of a fugitive economic offender;<sup>4</sup>
- Section 10 provides for issue of a notice by the Special Court to the individual alleged to be a fugitive economic offender;<sup>5</sup>
- Section 12(2) provides for confiscation of the property of an individual declared as a fugitive

economic offender resulting from the proceeds of crime;<sup>6</sup>

- Section 4(2) (d) enables confiscation of other property belonging to such offender in India and abroad, including benami property;<sup>7</sup>
- Section 12(8) states that all the rights and title in the confiscated property shall, from the date of the confiscation order, vest in the Central Government, free from all encumbrances<sup>8</sup>
- Section 14 disentitles the fugitive economic offender from defending any civil claim;<sup>9</sup> and
- Section 15 provides the appointment of an Administrator to manage and dispose of the confiscated property under the Act.<sup>10</sup>

If at any point of time in the course of the proceeding prior to the declaration, however, the alleged Fugitive Economic Offender returns to India and submits to the appropriate jurisdictional Court, proceedings under the proposed Act would cease by law. All necessary constitutional safeguards in terms of providing hearing to the person through counsel, allowing him time to file a reply, serving notice of summons to him, whether in India or abroad and appeal to the High Court have been provided for in the Act.

## IMPLICATIONS FOR BUSINESS

Though there are many positive implications of the Fugitive Economic Offenders Act, 2018 for business, the FEO has certain disadvantages also. They are discussed hereunder.

<sup>3</sup> Sec.4, The Fugitive Economic Offenders Act, 2018

<sup>4</sup> Sec. 5, The Fugitive Economic Offenders Act, 2018

<sup>5</sup> Sec.10, The Fugitive Economic Offenders Act, 2018

<sup>6</sup> Sec.12 (2), The Fugitive Economic Offenders Act, 2018

<sup>7</sup> Sec.4 (2)(d), The Fugitive Economic Offenders Act, 2018

<sup>8</sup> Sec.12 (8), The Fugitive Economic Offenders Act, 2018

<sup>9</sup> Sec.14, The Fugitive Economic Offenders Act, 2018

<sup>10</sup> Sec.15, The Fugitive Economic Offenders Act, 2018

### The positive attributes of the FEO

- This Act helps the banks and other financial institutions to achieve higher recovery from financial defaults committed by such fugitive economic offenders, improving the financial health of such institutions.
- The Act has a provision for a 'Special Court'. The existing infrastructure of the special courts constituted under the PMLA<sup>11</sup>, no additional expenditure is likely to arise.
- The distinctive feature of the Act is that it permits the Central Government to confiscate the property of economic offenders absconding from India until they submit to the jurisdiction of the appropriate legal forum. It is to be noted that The Bill provides for confiscation of property upon a person being declared an FEO. This differs from other laws, such as Criminal Procedure Code, 1973, where confiscation is final two years after proclamation as absconder.
- The FEO provides for the appointment of an administrator to manage and dispose of the confiscated property in order to raise funds which would be then be paid to the creditors within a time bound period.
- The FEO is expected to re-establish the rule of law as the fugitive economic offender will be forced to return to India and face trial for his offences.

### The Negative attributes of the FEO

- Disallowing Civil Claims: FEO stipulates that any Court in India, in any civil proceedings before it, may disentitle a fugitive economic offender from putting forward or defending any civil claim. This is will be very helpful to the banks and financial institutions in pressurizing the offender to settle the dues. But the other part of this provision will cause to business and shareholders. The stipulation also disentitles the LLP<sup>12</sup> and the Companies in which the fugitive offender holds a key managerial post or is a majority shareholder. The Company or LLP may have nothing whatsoever to do with the offence, and is still liable for punishment. This is one negative feature of the FEO in respect of the other innocent shareholders and employees of the Company.
- The purpose of FEO will not be achieved unless suitable arrangements are made via treaties or other formal agreements with other countries for confiscation of properties outside India. The Ministry of External Affairs has issued a comprehensive list of 39 countries with which India has entered into mutual legal assistance treaties The countries are Switzerland, Turkey, United Kingdom, Canada, Kazakhstan, United Arab Emirates, Russia, Uzbekistan, Tajikistan, Ukraine, Mongolia, Thailand, Bahrain, France, South Korea, Singapore, South

<sup>11</sup> Prevention of Money-laundering Act, 2002

<sup>12</sup> Limited Liability Partnerships

Africa, United States of America, Belarus, Mauritius, Kuwait, Spain, Bulgaria, Vietnam, Mexico, Egypt, Hong Kong, Bosnia & Herzegovina, Iran, Myanmar, Sri Lanka, Australia, Bangladesh, Indonesia, Malaysia, Azerbaijan, Kyrgyz Republic, Israel and Sultanate of Oman. This list has to be strengthened for not only service of all kinds of judicial processes or other documents but also for confiscation of properties outside India.

The FEO does not require the officers to obtain a search warrant or ensure the presence of witnesses before a search. Other laws of India contain such safeguards which protect innocent persons from harassment and planting of evidence. To that extent the FEO contains a negative attribute though

otherwise is beneficial to the banks, financial institutions and business in general.

## CONCLUSION

Fugitive Economic Offenders, having obtained loans from banks and financial institutions do not repay the loan and instead escape to foreign countries. It is also seen that income earned through illegal business is routed to a foreign state where the source of income is not questioned. The Fugitive economic Act, 2018 is a significant development in the Indian Legal System, which helps tracking the offenders and capturing their assets so as to settle the debts they owe to the Banks, Financial Institutions and the Government. The sweeping features of this act will ensure robust economic growth by restoring confidence amongst all the stakeholders of business.