

IN THE COURT OF SESSIONS, ERNAKULAM DIVISION

Present :-

Sri. V P M Suresh Babu, Additional District & Sessions Judge VII.

Thursday, the 14th day of August, 2025/23rd Sravana, 1947.

Crl.MP.No. 1995/2025 in

SC No. 1379/2024

Petitioner/Petitioner :

Krishnan Gopinath, aged 79 years, S/o.Krishnakurup, residing at 1586/A Gandhi Jayanthi road, Thammanam, Ernakulam

By Advs. Biju K Chacko, Leena Joseph, Dr. Sajan Vazhappilly

Respondents :

Ramesh Viswanathan, aged 57 years, S/o.Viswanathan,DVRA-12, Bansuri First Avenue Divine Village IMG Junction, Kakkanad, Ernakulam District Pin – 682

By Adv. Varghese vinu C J

Petition filed under Section 18 of the Banning of Unregulated Deposit Schemes Act.

The petition coming on for hearing on 13.08.2025 and the Court on 14.08.2025 passed the following:

ORDER

This is an application filed under Section 18 of the Banning of Unregulated Deposit Schemes Act.

2. The case of complainant is that, the accused contacted the complainant in December 2020 and informed that he has been running a banking financial institution namely Upayog Nidhi Limited at room number 81/485 at the Sreekandath road, Kochi. He represented that he was the Chairman and Managing Director of the institution. It was represented that he is conducting a regulated deposit scheme and regularly paying interest to the depositors. Believing the representations of the accused, the complainant

deposited a sum of ₹5,00,000/- in Upayog Nidhi Limited. The accused also issued an FD receipt and share certificate stating that they are genuine documents. The accused also received an amount from the wife and daughter-in-law of the complainant promising to pay interest. The accused paid monthly interest to the complainant till August, 2022. Thereafter, the interest was not paid. The amount was not returned. Thus the accused has committed the offences punishable under Section 21 and 23 of the Banning of Unregulated Deposits Schemes Act.

3. According to the petitioner, he submitted CMP No. 3234/2023 before the court for attachment of the property belonging to the accused under the provisions of the BUDS Act. Accordingly, as per Order dated 25.08.2023 in CMP No. 3234/2023 the property of the accused was attached and the order was sent to the competent authority. As per Section 18 of the Act, the competent authority is bound to conduct either public auction or private sale of the property and deposit the amount in the Bank account and to provide compensation to the complainant. Therefore the petitioner pray for a direction to the competent authority to sell the property and deposit the amount in Bank account and provide compensation to the aggrieved person.

4. Though notice of application was served to the Advocate for the accused, he did not appear or any objection is filed.

5. The only point for consideration is :-

Whether any direction as prayed for can be issued to the competent authority under the Banning of Unregulated Deposit Schemes Act?

6. **The point:** The learned Advocate for the petitioner submit that long prior to the taking cognizance of the offence, based on the petition filed by the petitioner as CMP 3234/2023, the court has ordered

attachment of the property of the accused under the provisions of Banning of Unregulated Deposit Schemes Act.

7. Section 7 of the Act deals with the power of the competent authority. Section 7(4) provides that the competent authority for the purpose of attachment and other connected matters have the same power as that of the Civil Court. Section 18 deals with the power of designated Court. Under Section 18(c) the court has power to direct the Competent Authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account.

8. It is seen that though the court has passed an order as early as 2023 till date there is nothing to show that any steps has been taken by the competent authority to take possession of the assets and to conduct sale of the property. The very object of the Banning of Unregulated Deposit Schemes Act is provided in the statute is “An Act to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto”. Therefore the twin object is to ban the unregulated deposit schemes and to protect the interest of the depositors. For the said purpose, various provisions are incorporated in the statute including the power to attach and sell the property. The salutary object behind the statute will be defeated if the competent authority is sleeping over the order passed by the court.

9. In fact, the statute contemplates a special procedure whereby whenever a crime is registered for an offence under the Act, immediately the police officer shall Inform about the commission of an offence under the Act to

the competent authority. In the instant case, a complaint was filed before this court and based on the application filed by the complainant attachment is already ordered by the court and it is communicated to the competent authority. There is no justification for the competent authority to sit over the order passed by the court without considering the salutary object behind the Act. Therefore, I am of the view that the prayer of the petitioner to direct the competent authority to take possession of the asset in consistent with the objective of the statute. Therefore, the application has to be allowed.

In the result, petition is allowed. The competent authority is directed to take possession of the asset mentioned in CMP No. 3234/2023, within one month from the date of receipt of this order and to take further steps to sell the property at the earliest and inform the court regarding the steps taken to sell the property on or before 18.09.2025.

Forward the order to Competent Authority forthwith.

Dictated to the Confdl. Asst., transcribed and typed by her corrected by me and pronounced in open court on this the 14th day of August, 2025.

Sd/-

V P M Suresh Babu

Addl. District & Sessions Judge- VII

Special Court for Trial of Cases investigated by ATS

(By Order)

///True copy///

Sheristadar

Sr:

Comp by : sr

Crl.MP.No. 1995/2025
dtd 14.8.25