



THE FUGITIVE ECONOMIC OFFENDERS BILL 2018

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Over the years, India has witnessed several economic offenders flee the country anticipating or during pendency of any ongoing criminal proceedings. With the need to provide an effective, expeditious and constitutionally permissible deterrent to ensure that such actions are curbed, the Government of India introduced the Fugitive Economic Offenders Bill, 2018 (hereinafter **Bill**). The Bill was approved by the Union Cabinet on 1 March 2018.

The Bill deals with the following aspects:

1. **Fugitive Economic Offender**

The Bill sets out a 'Fugitive Economic Offender' to be an individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India and who (i) leaves or has left India so as to avoid criminal prosecution; or (ii) refuses to return to India to face criminal prosecution.

The scheduled offences are listed in the Bill and relate to those economic offences where total value involved is more than INR 100 crore under the following legislations:

- a) Indian Penal Code 1861;
- b) Prevention of Corruption Act, 1988;
- c) Securities Exchange Board of India Act 1992;
- d) Customs Act 1962;
- e) Companies Act 2013;
- f) Limited Liability Partnership Act 2008; and
- g) Insolvency & Bankruptcy Code 2016

2. **Declaration of Fugitive Economic Offenders**

Similar to the adjudicating authority (forming part of the Department of Revenue, Government of India) under the provisions of Prevention of Money Laundering Act 2002 (**PMLA**), the Bill provides that a director appointed under such authority (**Director**) can file an application to the special court designated under the PMLA that an individual be declared as a fugitive economic offender.

The Director also has the power to attach property for a period of 180 days from the date of attachment of order if there is reason to believe that such property is from the proceeds of a crime. Such attachment can be done by the Director prior to filing of the application.

3. **Process of Declaration**

The application for declaration of fugitive economic offender should contain:

- a) reasons for the belief that an individual is a fugitive economic offender;
- b) information available on the whereabouts of such an individual;
- c) list of properties or value of properties believed to be proceeds of crime;
- d) list of properties in India for which confiscation is sought; and
- e) list of persons who may have an interest in any of these properties

Upon receiving the application from the Director, the special court will send a notice to the individual alleged to be fugitive economic offender requiring the individual to be present at a specified time which is not to be less than six (6) weeks from the date of the notice.

If such individual appears in person at the time and date specified in the notice, the special court will dismiss the application and terminate the proceedings under the Bill. If the individual appears through counsel, the special court will have a discretion to grant 1 (one) week to the individual to file a reply to the application. However, if the individual does not appear in person or through counsel after the notice has been sufficiently effected on the individual, the special court will hear the application ex-parte.

Based on the merit of the application and reply of the individual, if any, the special court will hear the application and if it concludes, may declare the individual as a fugitive economic offender. If the individual is declared as a fugitive economic offender, the special court has the power to order confiscation of the fugitive's properties in India.

4. **Disposal of confiscated property**

The Bill provides that confiscated property of the fugitive economic offender will be disposed of by an administrator appointed who will hear the claims and make efforts to satisfy the claims of the creditors.

5. **Disentitlement from civil proceedings**

The Bill further sets out that upon declaration, any court in India, in any civil proceedings before it, may, in its discretion, disentitle such individual so declared from putting forward or defending any civil claim. The section also provides that such court also has the discretion to disentitle any company from putting forward or defending any civil claim if any promoter, key managerial personnel or majority shareholder of the said company has been declared a fugitive economic offender. However, the Bill does allow an appeal to be filed in the relevant high court against an order regarding declaration of fugitive economic offender.

Critical Analysis

It is important to note that the Bill states an economic fugitive offender to be a person against whom a warrant for arrest has been issued for the scheduled offences, but does not expressly set out whether such person has been actually held liable for such offence. The Bill does not grant any power to the special court to assess the charge of the scheduled offence on its merit, but only deals with the aspect of declaring such person as a fugitive. The Bill is silent on the status of the property of a person who is declared a fugitive economic offender but subsequently after adjudication of a proper trial, gets acquitted from the offences that he was charged with. Going by the current language of the Bill, in such scenario the property of such person would have been confiscated and disposed of without any justifiable reason. This goes against the principles of natural justice that a person is innocent until proven guilty by a proper trial.

The disentitlement provisions of the Bill blatantly give a right to any civil court to disregard the principles of *audi alterem partem*. Even if it is argued that the disentitlement is an exception to the *audi alterem partem* rule, it still does not justify disentitling an entity (in whom a fugitive economic offender was a promoter/key managerial personnel/majority shareholder) from putting forward or defending a civil claim. There is no justification for penalizing the other shareholders/stakeholders of the entity who might also be victims themselves.

The Bill sets out that the special court while making the confiscation order can exempt property in which any other person has any interest in it provided it is shown that such interest was acquired without knowledge of the fact that the property was a proceed of a crime. However, the Bill does not provide for any provision which grants such interested person to present his case, this also includes a lack of notice to such person.

Conclusion

The Bill aims at forcing economic offenders to return to India to face trial for scheduled offences. It is also expected to assist the banks and other financial institutions to achieve higher recovery from financial defaults committed by such fugitive economic offenders. It is an encouraging initiative. However, there are a number of issues/uncertainties in the Bill which are arbitrary and need to be resolved. Otherwise, such shortcomings could end up negating the purpose of the Bill.

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