

LEX NEWSLETTER ZONE

Banking & Finance Bytes

- Supreme Court holds that a non-banking or non-financial institution merging with a financial institution may claim relief under the SARFESI Act, 2002.
- Reserve Bank of India Circulars:
 - ~ Cross Border Mergers made easier.
 - ~ Trade of Virtual Currencies Banned.
 - ~ Extension of last date of annual filing under Condonation of Delay Scheme.
 - ~ G-Sec Valuation taken over by FBIL.

Supreme Court Judgments

- [Indiabulls Housing Finance Ltd. vs. M/s. Deccan Chronicals Holdings Ltd. & Ors.](#)¹

-Shreya Dasgupta, Associate

The Supreme Court bench constitution of Justice A.K Sikri and Justice Ashok Bhushan held that a non-banking or non-financial institution merging with a financial institution may claim relief under the SARFESI Act, 2002.

Indiabulls Financial Services Limited ('IBFSL') in the sum of Rs.50 crores each in December, 2011 and January, 2012. IBFSL was not a banking company or financial institution within the meaning of the SARFAESI Act and, therefore, it had no jurisdiction to take any steps by invoking the SARFESI Act.

Thereafter, IBFSL merged with Indiabulls Housing Finance Limited, which is a financial institution. Therefore, it was held that the successor-in-interest, Indiabulls Housing Finance Limited which is a financial institution can be treated as a 'secured creditor' under section-2(1)(zd) of the SARFESI Act and shall be entitled to effect recovery in accordance with Section 13 of the SARFESI Act.

It was also held that the SARFESI Act, 2002 is placed on a higher pedestal than the Arbitration and Conciliation Act, 1996 in the matters of recovery suit by banks and/or financial institutions.

Reserve Bank of India Circulars

- [Cross Border Mergers made easier by the Reserve Bank of India.](#)²

-Shreya Dasgupta, Associate

¹ CIVIL APPEAL NO. 18 OF 2018.

² Notification No. FEMA.389/2018-RB dated March 20, 2018.

Starting April 20, 2018 inbound and outbound mergers will receive automatic clearance provided they satisfy conditions set out in new regulations issued by the RBI. The earlier companies law, Companies Act, 1956, did not permit an Indian company to merge with a foreign company though the reverse was allowed.

For inbound mergers, the resulting company is permitted to own and acquire assets outside India but only in accordance with Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2004- such as the overseas direct investment regulations that set out investment limits and investment routes available to an Indian resident for investing offshore.

For outbound mergers, the Indian resident who becomes a shareholder of the resulting foreign company can acquire shares or other securities pursuant to such merger only if permitted under the Liberalised Remittance Scheme. The scheme caps a resident's foreign investment to \$250,000 per annum. Any merger consideration received by the Indian shareholder that exceeds this limit will not be permitted without specific RBI approval.

Further, the resulting companies from both inbound and outbound mergers will get a two-year period to regularise compliance with the existing Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2004 framework.³

🚩 India Bans Virtual Currency Trade

- Anant Joshi, Associate

Issuing instructions in exercise of its powers⁴ the Reserve Bank of India, has issued a circular⁵

³<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11235&Mode=0>.

⁴ Conferred by section 35A read with section 36(1)(a) of Banking Regulation Act, 1949, section 35A read with
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prohibiting services including the maintaining of accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer / receipt of money in accounts relating to purchase/ sale of Virtual Currencies ("VCs").

The Central Banking Institution asserted that it has issued repeated warnings⁶ about the risks associated with the trade of VCs, most prominently including the path-breaking crypto-currency 'Bitcoin' which has been a cause of great debate as well as concern for Central Banks, globally. It is the world's first decentralized digital currency, that works without a central bank or any single administrator, on the backing of a 'Blockchain', which the Indian Finance Minister vowed to "explore the use of, proactively, to speed a move towards a digital economy", while vowing to eliminate the use of Cryptocurrencies, "as the government does not consider them legal tender."⁷

The RBI, to soften the impact of the circular, provided regulated entities which already provide such services the option to exit the relationship within three months from the date of the circular.

The move is expected to have a huge impact on Bitcoin's price and Market Capitalization. However, experts say that investors in India can technically still hold on to their Bitcoin and

section 36(1)(a) and section 56 of the Banking Regulation Act, 1949, section 45JA and 45L of the Reserve Bank of India Act, 1934 and Section 10(2) read with Section 18 of Payment and Settlement Systems Act, 2007.

⁵ RBI/2017-18/154; DBR.No.BP.BC.104 /08.13.102/2017-18, dated: April 6, 2018

⁶ Through its public notices on December 24, 2013, February 01, 2017 and December 05, 2017.

⁷<https://in.reuters.com/article/us-india-budget-cryptocurrency/india-vows-to-eliminate-use-of-cryptocurrencies-idINKBN1FL56T>.

other digital currency and can also trade in cash or through a foreign bank account.⁸

✚ G-Sec Valuation taken over by FBIL.⁹

-Shreya Dasgupta, Associate

The valuation of Government Securities (G-Sec) has been taken over by Financial Benchmark India Pvt. Ltd. (FBIL) from Fixed Income Money Market and Derivatives Association of India (FIMMDA).

Under the notification, the valuation of government securities in effect from March 31, 2018, will be done by Financial Benchmark India Pvt. Ltd. (FBIL) instead of Fixed Income Money Market and Derivatives Association of India (FIMMDA). FBIL will commence publication of the G-Sec and SDL valuation benchmarks based on the extant methodology. Banks and other financial institution should use the valuation of FBIL for their investment portfolio.¹⁰

✚ Extension of last date of annual filing under Condonation of Delay Scheme

-Shreya Dasgupta, Associate

In furtherance to the general circular bearing no. 16/2017 dated December, 29, 2017 wherein they have allowed the companies and directors defaulting in the annual filings may complete their filing with March 31, 2018. Now, the date of filing has been extended to April 30, 2018 under general circular bearing no. 02/2018 dated March 28, 2018.

⁸ <http://www.bbc.com/news/world-asia-india-43669730>.

⁹ RBI/2017-18/146 FMRD.DIRD.7/14.03.025/2017-18, dated March 31, 2018

¹⁰ <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11218&Mode=0>.

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