

LEX NEWSLETTER ZONE

Banking & Finance Bytes

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✚ Modifications in bank rate¹

-Shreya Dasgupta, Associate

Under notification dated August 1, 2018 bearing no. RBI/2018-19/32 DBR. No. Ret. BC. 03/ 12.01.001/2018-19, the rate which the Reserve Bank of India charges the commercial banks for loan and advances i.e. the bank rate, has been increased from 6.50 to 6.75 per cent. The bank rate was previously increased on June 6, 2018 from 6.25 percent to 6.50 per cent.

✚ Launch of India Post Payments Bank²

-Shreya Dasgupta, Associate

¹
<https://rbi.org.in/Scripts/NotificationUser.aspx?id=11353&Mode=0#AN1>

²
<https://economictimes.indiatimes.com/industry/banking/finance/banking/pm-modi-launches-india-post-payments-bank/video/65636298.cms>

India Post Payments Bank will be the third payments bank in India after Airtel and Paytm. This has been launched by the Prime Minister, Mr. Narendra Modi on September 1, 2018. It will be a public sector company under the Department of Posts and the Ministry of Communication with a 100 per cent equity of the Government of India, and governed by the Reserve Bank of India. India Post Payments Bank will focus on providing banking and financial services to people in rural areas, by linking all the 1.55 lakh post office branches (that's nearly 2.5 times the bank network) with India Post Payments Bank services by the end of 2018. India Post Payments Bank will have 650 branches in addition to 3,250 access points co-located at post offices and around 11,000 rural post office volunteers and postmen in urban area that will provide doorstep banking services.

✚ Simplification of the law of 'adverse possession'³

-Shreya Dasgupta, Associate

The Supreme Court of India in the case of Ram Nagina Rao vs. Deo Kumar Rao constituted a bench consisting of Justice NV Ramana and Justice Mohan M Shantanagoudar explaining the concept of "adverse possession" in this

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<https://economictimes.indiatimes.com/industry/banking/finance/banking/pm-modi-launches-india-post-payments-bank/video/65636298.cms>

case. In this case, the plaintiffs claimed that the defendant had got khaitan of their ancestral house, changed to their names, without having informed the plaintiffs. The defendants claimed that they were in possession of the house before 1953 and the khaitan got changes in 1970, however the plaintiff had filed a case after 19 years of the change in khaitan, barring it by limitation. It is made clear that adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of the title of the true owner. The person who bases his title on adverse possession must show, by clear and unequivocal evidence, that the possession was hostile to the real owner and it amounted to the denial of his title to the property claimed. It further explained that a person who holds possession on behalf of another person cannot deny the other person's title over the property and make his adverse by utilising the statute of limitation. One cannot claim adverse possession by simply being in permissive possession by the true owner, for however long it may be. The adverse possessor should expressly or impliedly communicate his intention of adverse possession to the actual owner and even after the communication and it should be known to the real owner. It was decided by the Apex Court that other than the change in khaitan and payment of taxes for being in possession of the property, the defendant had denied the title of the plaintiffs only when the suit was filed, i.e. first time in their written statements. Further they held even if the khaitan and tax receipts are considered, it just proves the possession of the house by the defendant, but not their adverse possession. Hence, for adverse possession over a property by a person, that person should clearly communicate his intention to take adverse possession over the property to the real owner and his hostile nature should be in the knowledge of the real owner.

✚ Jurisdiction of the Haryana Real Estate Authority⁴

Vaidya., Associate.

The Panchkula RERA bench on July 12, 2018 in the case of Sanju Jain v TDI infrastructure has made itself clear that with regards to RERA applicability to unregistered projects. The judgement which was passed in favour of the buyer briefly mentions that the sellers claimed regarding non applicability of RERA's authority was dismissed by the court stating that section 11 of the Act is silent about the applicability of RERA towards specific promoters of unregistered projects and hence it would be applicable towards the said promoter i.e. TDI infrastructure. The RERA bench of Panchkula in the said matter also clarified the duties/responsibilities under section 34(f) of the Act stating that the Act does not state that the duties of the promoter does not cease to exist upon grant of completion certificate and also does not expressly bar the authority of RERA to question the same.

✚ Judicial clarification on the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018⁵

-Shreya Dasgupta, Associate

Subsequent to the amendment of the homebuyers who can be financial creditor, the Allahabad bench of National Company Law Tribunal in the case of Ajay Walia vs. M/s. Sunworld Residency Private Limited held that a homebuyer who subrogated all his rights in favour of the bank at the time of taking loan cannot be treated as a financial creditor under the Insolvency and Bankruptcy Code, 2016. The Tribunal referred to the tripartite agreement between the homebuyer, builders and the

⁴https://www.icsi.edu/WebModules/REAL_ESTATE_REGULATION_AND_DEVELOPMENT_ACT.pdf

⁵ <https://www.livelaw.in/homebuyer-who-subrogated-all-rights-in-favour-of-bank-cannot-be-treated-as-financial-creditor-under-ibc-says-nclt-allahabad-read-order/>

bank in the instant case wherein the homebuyer had assigned/subrogated all its rights alleged to have been created in its favour by the Supplementary Agreement in favour of the HDFC Bank and hence cannot be considered as a “financial creditor” under the recent amendment.

these instructions of the Master Direction on Reporting under FEMA, 1999, the entity shall be liable under the Foreign Exchange Management Act, 1999 (FEMA) and regulations made thereof.

Reporting of foreign investments in a single master form

-Shreya Dasgupta, Associate

On April 5, 2018, the Reserve Bank of India (“RBI”) introduced the Single Master Form (“SMF”) for reporting of all types of foreign investments in India. With the introduction of the new process, the reporting of foreign investment, which is a 2 step process will become a single step process in the form of FC-GPR. This process further introduces the reporting of indirect foreign investment through form DI and reporting of inflows in investment vehicles through Form InVi. All entities should provide data regarding all foreign investment irrespective of the fact that the regulatory body is RBI or not. The operational instructions of the SMF will be provided by the RBI in the Master Direction on Reporting under FEMA, 1999. In the event, an entity is non-compliant to

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