

Banking and Finance Bytes

- ✚ Home-buyers should be included as 'Financial Creditors' under IBC and not as 'Operational Creditors': SC
- ✚ Modification by RBI in the Master direction on Issuance and Operation of Prepaid Payment Instruments.
- ✚ Amendment in the regulation of priority sector lending.
- ✚ Failed transactions cannot be considered in the number of free transactions of the ATM.
- ✚ Failure or deviation in service of statutory notice cannot be considered a ground for quashing of petitions under Section 138 of the NI Act.

- ✚ **Home-buyers should be included as 'Financial Creditors' under IBC and not as 'Operational Creditors': SC**

- Akshay Ramesh, Associate

The Supreme Court ("SC"), in the case of *Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors.*¹, dismissed the petition of a group of realtors claiming that the amendment of 2018 in the Insolvency and Bankruptcy Code, 2016 ("IBC") is unconstitutional and against Article-14 and 19(1)(g) of the Constitution. Considering other recent cases dealt by SC i.e. the Jaypee and the Amrapali case, wherein the SC permitted the home-buyers to attend the meeting of Committee of Creditors, the SC, in this case, opined that the ultimate people to whom these companies are liable and answerable are the home-buyers. Further, the SC held that it is the ultimate responsibility of the real estate companies to complete the projects for which they have taken advance from the public. The aim of this amendment is to enable the home-buyers to trigger the IBC under Section 7 and obtain a rightful stance in the Committee of Creditors. It was also observed by the SC that unlike other Operational Creditors, the home-

buyers have a stake in the corporate debtor i.e., the real estate companies and are largely affected by the financial health of such corporate debtor. Further, it was stated that in other cases, the Operational Creditor does not generally pay in advance to fund the manufacturing of goods and services, which is not the case in real estate companies. The SC pointed out that the home-buyers are not the same as fixed deposit holders or debenture holders as other creditors, being involved in the company, can foresee the situation of the company and withdraw the money invested; however, the home-buyers do not have such option. The SC has also stated that the meaning of 'borrow' is wide and the advance taken by the realtor for completion of the project shall also be treated as a 'borrowing' for a real estate company till the time it doesn't hand over the completed apartments to the home-buyers. So, if the company fails to deliver the project, the money given in advance by the home-buyers will be a borrowing by the company and thus, the home-buyers will be treated as 'Financial Creditors'. With regard to the remedy available to the home-buyers under Real Estate Regulatory Authority ("RERA"), the SC held that it is an alternative remedy and their remedy under IBC as 'Financial Creditors' cannot be taken away, merely because they have a substitute remedy under RERA.

- ✚ **Modification by RBI in the Master direction on Issuance and Operation of Prepaid Payment Instruments.**²

-Akshay Ramesh, Associate

The Reserve Bank of India ("RBI") on 30.08.2019 by powers conferred under Section 18 read with Section 10(2) of Payment and Settlement Systems Act, 2007 (Act 51 of 2007) amended the Master direction on Issuance and Operation of Prepaid Payment Instruments by its circular bearing no. RBI/2019-20/5. The timeline for the conversion of minimum detail

¹ 2019 SCC OnLine SC 1039

²<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11673&Mode=0>.

Prepaid Payment Instruments to KYC-compliant Prepaid Payment Instruments has been extended from 18 months to 24 months, keeping in view the recent trends of e-KYC and digital KYC.

✚ **Amendment in the regulation of priority sector lending.³**

- Akshay Ramesh, Associate.

The RBI on August 13, 2019 by its circular bearing no. RBI/2019-20/39 had amended the regulations regarding priority sector lending. The RBI, in order to boost credit for the borrowers who need facilities, has allowed banks to provide credit to Non-Banking Financial Corporation (“NBFC”) for the purpose of on-lending in the following sectors with certain compliances:

- (i) Agriculture: The NBFCs can only on-lend for agricultural purposes on ‘term-lending’ basis with a cap of INR 10,00,000 per borrower;
- (ii) Micro & Small Enterprises: The NBFCs are allowed to on-lend up to a maximum of INR 20,00,000 per borrower;
- (iii) Housing: The on-lending limit of NBFCs for housing companies have been escalated from INR 10,00,000 to INR 20,00,000.

The circular further states that the above changes shall only be applicable to the facilities availed after the date of the release of this circular and all the facilities before the circular shall continue to comply with pre-existing regulations. The credit given by the bank to the NBFCs for on-lending purposes will be up to 5% of the total priority sector lending allocation of the banks on an ongoing basis. It further states that the above changes are valid till only 31.03.2020 and will be reviewed after that. The loans disbursed before this circular shall continue to be under

the on-lending model and will continue to be classified under priority sector till the date of repayment/maturity.

✚ **Failed transactions cannot be considered in the number of free transactions of the ATM.⁴**

- Akshay Ramesh, Associate.

The RBI on August 14, 2019 by its circular bearing no. RBI/2019-20/41 clearly stated that the failed transactions cannot be considered by the bank within the number of free transactions available to an individual. The RBI specified that it noticed that the bank does count transactions that have failed or the transactions in which the cash was not available in the ATM as free transactions. The RBI by virtue of this circular has directed the bank not to consider these transactions as valid. This circular was issued by RBI by the powers conferred to it under Section 10(2) read with Section 18 of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007).

✚ **Failure or deviation in service of statutory notice cannot be considered a ground for quashing of petitions under Section 138 of the NI Act.⁵**

- Akshay Ramesh, Associate.

The SC on 05.09.2019 in the case of *Kishore Sharma vs. Sachin Dubey* decided that the service of notice within the statutory period under Section 138 of the Negotiable Instruments Act is not mandatory and is a triable issue. The service of notice cannot be treated as an indisputable matter and can be contended in the court. The division bench of SC consisting of Hon’ble Justice A.M. Khanwilkar and Hon’ble Justice Dinesh Maheshwari further reiterated that failure to serve notice within the statutory period cannot be the only reason of quashing a petition under Section 138 of the Negotiable Instruments Act.

³<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11659&Mode=0.0>

⁴<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11661&Mode=0.0>

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