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## Reserve Bank of India

### Customer Protection - Limiting Liability of Customers of Co-operative Banks in unauthorized Electronic Banking Transactions

The Reserve Bank of India ("RBI") on December 14, 2017 vide their circular has addressed the issue of increasing the liability of the banks in the public service sector. Customer service has great significance in the banking industry. The banking system in India today has tremendous outreach for delivery of financial services. With the increased thrust on IT enabled financial inclusion and related customer protection issues, the criteria for determining the customer liability have been reviewed. The directions issued in this regard are as follows:

#### **1. Strengthening of systems and procedures**

The banks must make such provisions keeping in mind the ease of carrying out electronic banking transactions. To enable these, certain systems are to be put in place, some of which are fraud detection and prevention systems, customer advisory services, risk mitigation and protection mechanisms etc.

## **2. Reporting of unauthorized transactions by customers to banks**

Banks must ask their customers to mandatorily register for SMS alerts and, wherever available, register for e-mail alerts, for electronic banking transactions. The customers must be advised to notify their bank of any unauthorized electronic banking transaction at the earliest after the occurrence of such transaction and informed that the longer the time taken to notify the bank, the higher will be the risk of loss to the bank/customer.

## **3. Limited Liability of a Customer**

- Zero liability

There is zero liability on part of the customer in the event that the default is committed by the bank or a third party provided that the customer informs the bank about such default within three (3) working days of receiving the communication from the bank regarding the unauthorized transaction.

- Limited liability

The liability of the customer is mitigated in cases where there has been some default on part of the customer or in cases where the fault cannot be attributed to either the customer or the bank, but lies elsewhere in the system and the customer notifies the bank of such a transaction within four to seven working days of receiving a communication of the transaction.

## **4. Reversal Timeline for Zero Liability/Limited Liability of customer**

On being notified by the customer, the bank shall credit (shadow reversal)

the amount involved in the unauthorized electronic transaction to the customer's account within ten (10) working days from the date of such notification by the customer (without waiting for settlement of insurance claim, if any).

**5. Board Approved Policy for Customer Protection**

Bank shall formulate / revise their customer relations policy with approval of their Boards, which should clearly define the rights and obligations of customers in case of unauthorized transactions in specified scenarios.

**6. Burden of Proof**

The burden of proving customer liability lies with the bank.

**7. Reporting and Monitoring Requirements**

The banks shall put in place a suitable mechanism and structure for the reporting of cases of unauthorized electronic banking transactions to the Board or one of its Committees. The Board will review such transactions reported as well as the actions taken and give appropriate suggestions to improve the system and procedures.

Information Utilities under the Insolvency and Bankruptcy Board of India  
(“IBBI”)

The IBBI has registered National E- Governance Services Limited as the first Information Utilities (“IU”) under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (“**IBBI (IUs) Regulations, 2017**”) on September 25, 2017. *Vide its circular dated December 19, 2017* the Reserve Bank of India (“**RBI**”) has issued directions to all financial creditors regulated by the RBI to comply with the relevant sections of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) and the IBBI (IUs) Regulations, 2017.

This provision has come to fruition by virtue of Section 215 of the IBC, a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, to an IU in such form and manner as may be specified by the IBBI (IUs) Regulations, 2017.

## Securities and Exchange Board of India

### Disclosure of holding of specified securities and Holding of specified securities in dematerialized form

The Securities and Exchange Board of India (“SEBI”) vide its *circular dated December 19, 2017* made a few amendments towards the disclosure of holding of specified securities and holding of specified securities in dematerialized form. In continuation with the circular issued on November 30, 2015, the SEBI amended Clause 2(c) to state that:

*“The details of the shareholding of the promoters and promoter group, public shareholder and non-public, non-promoter, shareholder must be accompanied with PAN Number (first holder in case of joint holding). Further, the shareholding of the promoter and promoter group, public shareholder and non-public non-promoter shareholder is to be consolidated on the basis of the PAN and folio number to avoid multiple disclosures of shareholding of the same person.”*

## Insolvency and Bankruptcy Board of India

### Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2017.

Insolvency And Bankruptcy Board of India (“**IBBI**”) vide its Notification dated December 31, 2017 in exercise of its power conferred to it by Clause (t) of sub-section (1) of Section 196 read with Section 240 of the Insolvency and Bankruptcy Code, 2016 has made the following regulation to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulation**”).

- The following clause shall substitute the regulation 2, clause (f) of sub-regulation (1) of the Principal Regulation:

*“(f) “dissenting financial creditor” means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the committee;”*

- The following sub-regulation shall be substituted in regulation 35 for sub-regulation (3) of the Principal Regulation:

*“(3) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the liquidation value to every*

*member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the liquidation value and shall not use such value to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29.”*

- The following sub-regulation shall be inserted in regulation 35, after sub-regulation (3) in the Principal Regulation:

*“(4) Subject to sub-regulation (3), the interim resolution professional or the resolution professional, as the case may be, shall maintain confidentiality of the liquidation value.”*

- Regulation 36, sub-regulation (2), clauses (j) and (k) of the Principal Regulation shall be omitted.
- The following regulation shall be replaced as in Regulation 39, for sub-regulation (1):

*“(1) A resolution applicant shall submit resolution plan/(s) prepared in accordance with the Code and these regulations to the resolution professional within the time given in the invitation made under clause (h) of sub-section (2) of Section 25.”*

## Bombay High Court

### Ruling on Real Estate Regulatory Authority

The Bombay High Court upheld the validity of the Real Estate (Regulation and Development) Act 2016 (“**RERA**”) in its judgement pronounced on December 06, 2017. A bench comprising of Justice Naresh Patil and Justice RG Ketkar pronounced the judgment after hearing all parties in the matter and upheld the provisions of the new Act that came into effect on May 1, 2017.

#### **Background**

The Petitioners in this case were builders and developers who were vexed by certain provisions of the RERA. Petitioners had challenged the constitutionality of Sections 3, 5, 7, 8, 11(h), 14(3), 15, 16, 18, 22, 43(5), 59, 60, 61, 63 and 64 of the RERA.

#### **Contentions raised**

The constitutionality of the various provisions of the RERA were majorly challenged on the following grounds:

- a. Retrospective / retro-active application of certain provisions, for which it was held by the Hon’ble Court that:

*“the Legislature has the power to make laws with retrospective effect. Even assuming that RERA operates retrospectively, the same would not render it unconstitutional, unless the retrospectivity is shown to be excessive or harsh and injuriously affects a substantial or vested right.”*



- b. Unreasonable restrictions (under Article 19(1)(g) read with Articles 19(6)) imposed by certain provisions and arbitrariness of certain provisions (violating Article 14) for which the Court held that there exists a presumption of constitutionality especially in cases related to economic legislations. It is necessary for the Court to appreciate the circumstances under which the legislature made the relevant provisions. Citing various other reasons, the Court held that RERA was enacted in public interest and therefor is not unconstitutional.
- c. Mandatory requirement of a Judicial Member in the Authority and on the Appellate Tribunal.
- d. It was submitted that registration of ongoing project under RERA would be contrary to the contractual rights established between the promoter and allotted under the agreement for sale executed prior to registration under RERA. On assessment by the Hon'ble Court it was concluded that completed projects are not affected by the provisions of RERA. The Hon'ble Court pointed out that RERA only applies to projects that have been initiated before RERA but are yet to be completed, that is, ongoing projects. What the provisions envisage is that a promoter of a project which is not complete / without completion certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed.

While the Hon'ble Bombay High Court dismissed most of the arguments by developers, it granted them relief on two fronts:

- It held that in exceptional and compelling circumstances, if the builder fails to complete a project within the stipulated time, the authority has the power to grant further extension for completion without penalising the builder. This assessment will be done by the RERA authority on a case-to-case basis.
- Additionally, the Hon'ble Court partially struck down the provision relating to constitution of members of the Real Estate Appellate Tribunal in answer to Clause (c) above. It directed that the two-member bench of the tribunal should always consist of a judicial member and majority of the members should be judicial members.

In September, after several petitions challenging RERA were filed in high courts across the country, the Hon'ble Supreme Court stayed the proceedings in other courts and suggested that the Hon'ble Bombay High Court hear its RERA cases first.

## Supreme Court of India

### Macquarie Bank Limited versus Shilpi Cable Technologies Ltd

The Supreme Court in the matter of *Macquarie Bank Limited* (“**Appellant**”) versus *Shilpi Cable Technologies Ltd.* (“**Respondent**”) decided on December 15, 2017, answered two important issues of the Insolvency and Bankruptcy Code, 2016 (“**Code**”)

A bench comprising of Justice RF Nariman and Justice Navin Sinha set aside the National Company Law Appellate Tribunal (“**NCLAT**”) Order which had dismissed an application seeking to initiate insolvency proceedings for non-compliance of the provision contained in Section 9 of the Code.

#### **NCLAT Ruling**

Upholding the impugned judgement of the National Company Law Tribunal (“**NCLT**”) the NCLAT held that the application for the issuance of the insolvency proceedings against the Respondent had not complied with the mandatory provision contained in Section 9(3)(c) of the Code.

Further it also stated that the advocate/lawyer is not permitted to issue a notice on behalf of the operational creditor as contained in Section 8 of the Code.

#### **Supreme Court Ruling**

- Issue 1:

Whether a lawyer is permitted to issue a demand notice on behalf of the Operational creditor.

The Supreme Court stated that according to the words used in Section 8 of the Code it is to be noted that had the legislature wished to restrict such demand notice being sent by the operational creditor himself, the expression used would perhaps have been “issued” and not “delivered”. Delivery, therefore, suggests that such notice could be made by an authorized agent as well.

*“Therefore, a conjoint reading of Section 30 of the Advocates Act and Sections 8 and 9 of the Code together with the Adjudicatory Authority Rules and Forms thereunder would yield the result that a notice sent on behalf of an operational creditor by a lawyer would be in order.”*

To further substantiate the point the Supreme Court also held:

*“the expression “an operational creditor may on the occurrence of a default deliver a demand notice...” under Section 8 of the Code must be read as including an operational creditor’s authorized agent and lawyer...”*

- Issue 2

Whether Section 9(3)(c) under the Code is a mandatory provision necessary to be complied with in order to trigger the insolvency procedure.

Referring to sub-clause (c) of Section 9(3), the bench said it is clear that a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor cannot be considered a pre- condition which is required to be complied with before initiating the insolvency procedure before the Code.

The Court therefore concluded by saying that the judgment passed by the NCLAT is to be set aside and the two issues which were hindrances to the applications made under Section 9 of the Code have been expressly dealt with.

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