FIDC

Finance Industry Development Council

(A body incorporated as a Self Regulatory Organization for Registered NBFCs)

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December 15, 2017

Shri Arun Jaitleyji
Minister of Finance
Government of India
North Block
New Delhi - 110 001.

Hon'ble Finance Minister Sir,

SUB: PRE-BUDGET MEMORANDUM - ISSUES RELATED TO NON-BANKING FINANCE COMPANIES (NBFCs)

Finance Industry Development Council (FIDC) is a Self Regulatory Organization (SRO) cum Representative Body of all the Non-Banking Finance Companies (NBFCs) registered with Reserve Bank of India. We would like to express our sincere thanks to Ministry of Finance for inviting us to present our views/issues during the Pre-Budget Discussion today.

At the outset we hereby convey our deep appreciation of the much desired bold and major structural reforms undertaken by your ministry which have been the drivers to the quantum jump in India's position in the Ease of Doing Business index issued by the World Bank and the Sovereign rating upgrade by Moody's. This shall give a big boost to the Indian economy and make India one of the most preferred destinations for foreign investment, in addition to the growth of the domestic industry, especially, MSMEs.

Realizing PM's Vision of New India By 2022 – NBFCs to Play an Important Role

NBFCs have been the unsung and silent contributors in nation building for the past more than 8 decades now. Moody's have stated that one of the important factors, to this rating upgrade, has been the Govt"s efforts to formalize economic activity. NBFCs have played a significant role in this, by providing financial services to the unbanked segment of the population in the rural, semi urban and urban areas across the country. This has enabled these people to move away from the moneylenders and become a part of the formal economy.

Hon'ble Prime Minister Shri Narendra Modi shared his vision for building a New India by 2022 during his Independence Day speech this year. Some of the key elements of his vision are :

- promoting entrepreneurship,
- greater focus on the lower strata of the society,

- promoting framers prosperity and
- greater use of technology to bring transparency

NBFCs Promote Financial Inclusion

NBFCs over the years have played a vital role in the development of the economy, be it in financial intermediation in rural and semi urban areas or financing activities that are engines of growth, such as transport sector, SMEs and MSMEs, leasing, hire purchase etc.

For more than 70 years now, NBFCs have been in the forefront of catering to the segment of customers who are un-bankable masses in the rural and semi–urban areas. Through strong linkage at the grassroots level, ability to take quicker decisions and highly personalized customer service, they have created a medium of reach and communication and are very effectively serving this segment that were forced to approach unorganized money lenders for all their credit needs. NBFCs have transformed a borrower, who is “unbanked” into “bankable”.

Performance

The Economic Survey, Volume – 2 for 2016-17 mentions that the total balance sheet size of the NBFC sector as on 31 March, 2017 stood at Rs. 12.56 lakh crores which is about 200 bn USD.
RBI’s Financial Stability Report dated June 2017 states :

- The greater role of non-banking sector in resource mobilization, and hence credit intermediation, helped commercial sector, albeit partially, to make up for historically low bank credit outstanding growth. Thus, problems in the banking sector are leading to greater reliance on non-banks for borrowers as well as savers.

- Against asset quality concerns, credit intermediation by public sector banks has retrenched and that by NBFCs and Mutual Fund Funds has increased significantly.

As per this report, NBFCs growth during the last two years has been quite impressive inspite of the challenging environment and developments like demonetisation. Moreover, this has been a “healthy” growth as reflected in the better asset quality. Key parameters on Y-o-Y growth are:

Description		FY17 (FY16)
• Growth in Aggregate Balance Sheet size	=	14.50% (15.50%)
• Net Profit (%age to total income)	=	14.00% (18.30%)
• Gross NPA (as %age of total advances)	=	4.40% (4.60%)
• Net NPA (as %age of total advances)	=	2.30% (2.50%)
• CRAR (minimum prescribed by RBI is 15%)	=	22.00% (24.30%)

NBFCs have performed well without compromising on compliance to the regulatory framework.

Since 2014 the Regulatory Framework for NBFCs has been "harmonised" with that for banks and other financial institutions and the regulatory arbitrage has been plugged to a great extent.

Recent Developments & the Way Forward

NBFCs expertise and potential to finance MSMEs has been duly recognised by the apex International body like World Bank Group, Government of India and leading Financial Institutions :

- World Bank Group has signed Engagement Letters (MOUs) with FIDC to conduct Training Programs on
  - Commercial Credit Reporting - which aim at development of alternate credit scoring models for unbanked and MSMEs who do not have any reported credit history
  - Movable Asset Based lending - which aim at developing models for financing against the security of "intangible" movable assets. This is best suited for lending to MSMEs who cannot offer any tangible movable assets as security.

- Hon'ble Prime Minister in his address to the nation on 31st December 2016 announced coverage of NBFCs under the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) - this shall give the much desired boost to aggressive financing of MSMEs by NBFCs.

Regulation of NBFCs "Harmonised" with Banks & Other Financial Institutions

The Revised Regulatory Framework for NBFCs, issued by RBI in 2014, has largely plugged the regulatory arbitrage between banks, FIs and NBFCs. Today, the regulatory norms for NBFCs in all the following key areas are at par with banks:

- Mandatory Registration with RBI along with prescribed entry level
- Minimum Capital Adequacy (CRAR) of 15% which is even higher than the banks
- Know Your Customer (KYC) Norms and all other provisions of Prevention of Money Laundering Act, 2002
- Code of Fair Business Practices
- Asset Liability Management
- Corporate Governance
- Prudential Norms on Asset Classification (NPA Classification), Income Recognition and Provisioning
- Credit Concentration Norms
- Statutory Liquidity Ratio (SLR)
- Onsite Inspection of books and accounts on annual / bi-annual basis
- Offsite surveillance– submission of Returns to RBI on monthly, quarterly & annual basis

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The expert committees in the recent past, have all appreciated high levels of compliance being shown by NBFCs, thereby posing lower risk to the system.

Stringent Regulation and high compliance levels, should dispel any doubts regarding the healthy and ethical functioning of NBFCs . As such, let there be no apprehension on how well NBFCs are regulated, while considering our requests

Request

Based on the facts stated above, we hereby request that :

- ***Refinancing of NBFCs by MUDRA has not taken off due to the policy and eligibility criteria. We request that a Joint Working Group may be set up to resolve the issues ensuring much needed refinance by MUDRA, as detailed in Annexure -1***

- ***Tax issues as detailed in Annexures- 2 be considered favorably, to bring the much desired parity with banks, FIs including Housing Finance Companies***

- ***Recoveries need to be fast tracked and facilitated by doing away with the rider of minimum loan ticket size of Rs.1.0 cr for Enforcement of Security Interest under the SARFAESI Act , as detailed in Annexure – 3***

We shall be glad to supplement this memorandum with any additional information / clarification that may be required. We thank you in anticipation of a positive response and assure you of our full co-operation always.

Yours Faithfully,
For **FINANCE INDUSTRY DEVELOPMENT COUNCIL**

RAMAN AGGARWAL
Chairman

Annexure-1

REFINANCING BY MUDRA – NEED TO SET UP A JOINT WORKING GROUP

In terms of numbers, more than 80% of the NBFCs registered with RBI are small and medium sized. They have been doing an excellent job of furthering the Govt's agenda on financial inclusion by providing need based credit to the "unbanked" segment of the society. It is a well known that NBFCs take the first credit call on an "unbanked" borrower and thus make him part of the mainstream financial system. On the other hand, these small and medium sized NBFCs have been complying to the prescribed RBI norms, thereby posing a low risk to the system (a fact that was recognized by the Usha Thorat Committee).

MUDRA's Exposure to NBFCs is Negligible

MUDRA was setup with the prime objective of refinancing banks, NBFCs and MFIs for on-lending to non-corporate small businesses. For this purpose three categories of loans have been prescribed – Shishu (upto Rs.1.0 lakh), Tarun (Rs.1.0-5.0 lakhs) and Kishore (Rs. 5.0-10.0 lakhs). While the "Shishu" category is primarily the forte of MFIs, it is the "Tarun" and "Kishore" categories which are a perfect fit for NBFCs.

However, till date MUDRA's exposure to NBFC sector has been negligible. This has been primarily due to the refinancing policy and eligibility criteria for NBFCs set by MUDRA which are not favorable for small and medium NBFCs and lack attraction for the big NBFCs. FIDC has had detailed discussion with officials at MUDRA and SIDBI on this matter and it is felt that the matter needs to be discussed at length by all the stakeholders.

Request

We hereby request that a Joint Working Group may be set up comprising of officials from MUDRA ,SIDBI, Ministry of Finance, RBI, Ministry of MSME and Representative from FIDC. The joint working group may prepare a policy document for refinancing of NBFCs by MUDRA keeping all the stakeholders interest in mind.

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Annexure-2

DIRECT TAX

1. Tax Benefits For Income Deferral u/s.43D Of The Income Tax Act

Section 43D of the Income Tax Act recognises the principle of taxing income on NPAs only in the year in which they are received. It is also logical to recognise income on NPAs on receipt basis and not on accrual basis in order to present the correct picture. In accordance with the directions issued by the RBI, NBFCs like banks and FIs, follow prudential norms and are required to defer income in respect of their non-performing accounts.

However, the provision of Section 43D are only applicable to scheduled banks, public financial institutions, state financial corporations, state industrial corporations and housing finance companies (which are also non-bank entities). Union budget 2017 has extended the coverage of this section to cooperative banks also.

Request

NBFCs are the only financial institutions which have been left out. This discrimination against NBFCs is disappointing and discouraging, especially even after the sustained growth and high levels of compliance shown by the sector. This has been one of our long standing demand.We therefore request you to kindly do justice and extend the scope of Sec 43D to RBI registered NBFCs also.

2. TDS On Interest (Sec 194A) – Request For Exemption

As per section 194A of the Act, any person making payment of interest is required to deduct tax at source ('TDS') @ of 10%. There are certain exemptions given under this section wherein the person making payment to various institutions like Banking Company, Life Insurance Companies and UTI etc., is not required to deduct TDS. Accordingly, any person making payment of interest to Banks is not required to deduct tax

However, no such exemption has been provided to NBFCs from the applicability of section 194A. Accordingly, tax is required to be deducted at the rate of 10 percent from interest paid to NBFCs. This creates severe cash flow constraints since NBFCs operate on a thin spread/ margin on interest which at times is even lesser than the TDS on the gross interest. Further, due to enormous transactions, NBFCs have to face severe administrative hardship in terms of collection of TDS certificates from their thousands of customers.

The additional limitations of the existing system are the following:

a) Follow up with every customer for TDS certificates every quarter (details of which are mandatory for claiming the same in the I. T. return) becomes almost impossible. NBFCs have clients who number in thousands and it is practically very difficult to collect details from everyone.

b) Even if the TDS certificate is issued by the customer, if TDS return has not been filed or not filed properly, the credit for such TDS would not be granted to the NBFC as the details of such TDS would not appear in the NSDL system.

c) Once the TDS credit is disallowed, the NBFCs have a hard time following up with the customers and the exchequer has a hard time clearing outstanding demands against NBFCs which, in reality, do not exist.

Request

Therefore, *NBFCs, like banks, should also be given exemption under section 194A, to bring parity and increase the ease of doing business.*

3. NBFCs to be Exempted From the Provisions of Section 94B of The Income Tax Act, 1961

Union Budget 2017 introduced Section 94B with a view to incorporate some of the recommendations of Base Erosion and Profit Shifting (BEPS) project Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments). The objective of the BEPS project is to combat international tax avoidance by multinational enterprises (MNEs) through artificially shifting profits to low tax jurisdictions and eroding the tax bases of their primary high tax jurisdictions of operation.

Relevant extract of Section 94B of the ITA has been reproduced below:

"Limitation on interest deduction in certain cases.

> *94B. (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :*
> *Provided that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.*
> *(2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.*

(3) Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.
(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):
Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed."

A quick analysis of the Section is as under-

a. Interest deduction for an Indian entity is restricted to 30% of its earnings before interest, tax, depreciation and amortisation ("EBITDA") in the following situations:

   i. Interest or similar expenditure on money borrowed by Indian company is in excess of INR One crore;
   ii. Such expenditure is deductible while determining taxable income under the business income head in India; and
   iii. The expenditure is in respect of a debt from a non-resident AE.

b. As specifically provided, the proviso to the main section also covers interest expenditure in respect of debt from non-AEs where an AE provides an implicit or explicit guarantee.

c. <u>Banking and insurance companies are exempted from the application of such limitation of interest deduction.</u>

As can be seen from the Explanatory Memorandum to Finance Act, 2017, the rationale for introduction of Section94B of the ITA is to counter cross-border shifting of profits through excessive interest payments arising from high levels of debt in a company. However, given that banks are in the business of money lending which necessarily requires greater leveraging, the same have been kept out of the purview of Section 94B of the ITA.

We wish to draw your attention to the fact that the needs of NBFCs (also engaged in money lending) are similar to that of banks. Just like banks, Systemically Important, Non-Deposit taking NBFCs (NBFC-ND-SI) are regulated by the RBI and are required to follow prudential regulations which covers capital adequacy and debt equity ratios. As per the RBI prudential norms, NBFCs-ND-SI are required to maintain a minimum capital ratio of at-least 15% of its aggregate risk weighted assets. The minimum capital requirement directly allows for debt to be 5-6 times of the equity/ net owned funds and it is a prevalent practice in the NBFC sector.

These NBFCs resort to market funds and borrowings for balance/ additional funding requirements. This results in substantial interest costs – however, the borrowing is imperative for it to sustain its commercial operations.High debt-equity ratio and substantial finance costs are common phenomenon across the NBFC sector i.e. even in cases of non-MNC entities/ entities having no overseas borrowings from AEs. However, the provisions of Section 94B of the ITA would have no impact on the interest costs of such entities. This gives rise to discrimination towards MNC NBFCs who may have borrowings/ guarantees from foreign AEs.

In addition to the above, if one bifurcates, finance costs incurred by NBFCscould typically comprise of various elements – cost of capital, service (letter of support) fees, hedging costs, etc. Components not related to the debt obtained such as the hedging costs and service fees more likely than not amount to a substantial portion of the finance costs. Such costs, since unrelated to the debt, are either not payable directly to the AEs or if payable so, are in the context of an overall hedging transaction and is not ultimately for the benefit of the AE.

Further, there could be cases where the borrowings are from a non-AE but guaranteed by an AE. Such cases also get covered under Section94B of the ITA due to the proviso to the Section 94B of the ITA. In this regard, it may be pertinent to note that in cases where no base erosion or profit shifting arises from India, such interest expenses should not be covered.

Further, in view of the Transfer Pricing provisions in the ITA, transactions with AEs are required to be compliant with the Arm's Length Price ("ALP"). Therefore, any interest payable to non-resident AEs have to be in line with the ALP and any interest expense above such threshold is liable to be disallowed. With Transfer Pricing check already in place, there is no question of base erosion or profit shifting arising and hence, should not warrant further disallowance.

Lastly, even the OECD, in Chapter 10 of its BEPS Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments) (extract enclosed as Annexure 4) states that the exclusion provided to banking and insurance companies shall not apply to other non-regulatedentities carrying out quasi-banking or other financial activities. In other words, regulated entities are to be exempted from the applicability of the best practice approach (fixed ratio rule or a group ratio rule) and a different approach is to be recommended for them. However, Section 94B of the ITA, even if introduced to incorporate the BEPS recommendations, does not currently provide an exemption to other regulated entities such as NBFCs.

Request

Banks are exempted from the provisions of Section 94B keeping in view the special nature of their business. NBFCs being engaged in the business of lending, borrowing money is an integral part of doing/ sustaining its business operations. Hence, Systemically Important Non Deposit Taking NBFCs (NBFC-ND-SI) , owing to the similarity of their business as that of banks, should also be treated at par with banks and not a manufacturing or service company and thus should be exempted from the provisions of Section 94B

4. Request For Allowing Higher Depreciation Rates For Construction Equipment

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The I. T. Act allows depreciation at the rate of 100% in case of certain equipment meant for pollution control, solid waste control, mineral oil concerns, mines and quarries, energy saving devices and renewable energy devices. The Act also allows high rate of depreciation (30%) to motorcars, buses, lorries and taxies used in the business of running them on hire.

However, construction equipment which contribute immensely to infrastructure development are not given this benefit of higher depreciation rate when they are financed, instead the depreciation rate for such vehicles is only 15%. For other plant and machinery too, the rate is 15%. This acts as a roadblock to infrastructure development.

Request

In today's age of rapid technological progress, assets like construction equipment and plant and machinery become obsolete faster. Thus, keeping in mind the nature of the asset, its average life-cycle and the pace of technological development, the depreciation rate should be at least at par with commercial vehicles ie; 30%. This will also give an impetus to the infrastructure spend and will incentivize such investments.

INDIRECT TAX – ISSUES RELATING TO GST

1. GST @5% On Lease / Hire Purchase Rentals – Need to Promote Leasing

World over "Leasing" has been promoted as an important tool for capital formation. Today, the country is making huge investments in the Infrastructure sector and there is a special impetus being given to the MSMEs and the Farm sector. In this scenario, there is a crying need to promote "Leasing" in India, which has suffered a body blow due to imprudent taxation. Prior to the introduction of GST, Lease / Hire Purchase rentals were subject to the levy of VAT @ 4-14% at the state level and in addition, the interest component (to the extent of 10%) of the rental was subject to the levy of Service Tax @ 15%.

While GST has done away with the issue of dual taxation, the rate of GST on rentals of lease of any movable asset is equal to the rate of GST levied on normal sales/purchase of that asset, which does not give any incentive to lease.

Request

The rate of GST on lease rentals should be reduced to 5% in order to promote and encourage lease as a tool of capital formation.

2. Securitization Transactions to be Exempted from GST – Request for Clarification

Securitization is an important source of funds for NBFCs. Under this transaction, the future instalments are discounted at the rate agreed with the Investors, who in general are Banks or a Consortium of Bankers, represented through a Trustee company. Thus, the Loan receivables are moved to a Trust, which issues Pass Through Certificates or PTC's to the investors as per the investments made. Upon necessary documentation of the transaction between the Investor Trust and the NBFC, the identified receivables are stripped off the books of the NBFC at a discounted value to the Trust.

The difference between the book value of the receivables and the discounted value received from the Investors is accounted as income in our books over the tenure of the transaction. Such resultant value, otherwise called as "Excess interest spread"/Interest Only Strip" is nothing but the difference in value between the contracted rate of interest of the underlying loan documents of the NBFC and the contracted rate of interest between the NBFC and the Investors for acquiring the receivables. In case of most securitization transactions, the NBFC is required to offer credit enhancement (protection to the investors against NPAs arising in the pool) as mandated by the credit rating agencies.

It is therefore clear that securitization is a money transaction and one of the modes of obtaining funds by the NBFC for its business purposes. Further, securitization transactions are clearly governed by the RBI regulations and duly monitored.

<u>Securitisation Transactions - under earlier service tax regime</u>: -

- Securitization was not subjected to tax, since the term "Service" as per Sec.65B(44)(a)(iii) - "Interpretations" - under Chapter-V of the Finance Act, 1994, clearly excluded "transactions in money".

- Further, para 2.8.9 of the Education Guide issued by CBEC in 2012 had also clarified that a secured debt was held to be transaction in money and not a 'service', extract of the same is reproduced below:

  "2.8.9 Would sale, purchase, acquisition or assignment of a secured debt like mortgage also constitute a transaction in money?
  <u>Ans</u>. Yes. However, if any service fee or processing fees or any other charges is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax."

<u>Securitisation Transactions - under GST regime</u>: -

Before advancing on the position of securitisation transactions under the current GST regime, the definitions provided for "Goods" and "Services" under GST law are reproduced below:

Goods

As per the Section 2(52) of CGST Act 2017, *"Goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"*.

Services

As per section 2(102) of CGST Act, 2017, "*Services means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate*

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consideration is charged".
Under Schedule-III of the GST Act, *actionable claim* is clearly excluded from the purview of GST.

Our comments:

- From the above definitions "Goods" means to include every kind of movable property other than money and securities and the definition for "Services" means to include anything other than goods, money and securities.

- Further, securitization transaction may not fit within the definition of "Securities" as provided under Sec.2(101) of the CGST Act.

- Securitization transactions are simple money transactions, wherein a secured debt is assigned to a Trust/Bank. Thus, it is very similar to actionable claims.

- While actionable claim is clearly excluded from the purview of GST under Schedule-III of the GST Act, same position needs to be extended to securitization transactions.
- Transfer of secured debt would involve transfer of receivables from one person to another and would amount to a transaction in money between two distinct persons, thus should not fall under the definition of 'Goods' as well as 'Services' under the GST Law.

- Though inference can be drawn from the Education Guide issued by CBEC in 2012 *wherein secured debt was held to be transaction in money and not a 'service'*, absence of appropriate clarification from the Government may lead to unnecessary interpretations and litigations.

Request

Hence it will bring great relief for the NBFC business if the GST council through a Notification/Circular confirms the position about the non-applicability of GST on securitization transactions.

3. Sale of Repossessed Assets Should Be Exempted

If a borrower commits default in case of asset backed financing, the asset is repossessed by the Financier (Bank/NBFC) and after giving sufficient opportunities, if the default continues, such Financier sells the asset and appropriates the sale proceeds towards the account of the borrower. In this scenario, there won't be any value addition and only value dilution, as the asset is depreciated.

As such, the asset is never reflected in the books of NBFCs, and NBFCs merely facilitate sale on behalf of the defaulting borrower to recover our dues and settle his account. Further, the input at the time of purchase would not have been utilised by the customer. So, in case of any levy of GST on sale of repossessed assets,

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No ITC shall be possible as the asset is owned by the defaulting borrower and the invoice of the asset is also with the borrower.

In a scenario, where banks and financial institutions are grappling with the menace of NPAs, repossession and subsequent sale of repossessed assets, is an important tool to fight this menace. During the pre GST era such sales were not subject to the levy of VAT except in two or three states.

Request

Hence sale of assets repossessed in case of default (ITC not utilised cases) should be exempt from the levy of GST.

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Annexure-3

RECOVERY - ENFORCEMENT OF SEUCRITY INTEREST UNDER THE SARFAESI ACT COMES WITH A RIDER OF MINIMUM LOAN TICKET SIZE OF Rs.1.0 CRORE

Union Budget 2015 had announced coverage of NBFCs (with asset base of 500crs and above) under the SARFAESI Act. This came as a welcome move since the asset classification (NPA) norms for NBFCs were brought at par with banks by RBI. However, in the gazette notification issued on 5th August 2016 to this effect, a clause was inserted whereby sections 13 to 19 of the SARFAESI Act, which cater to the "enforcement of security interest", shall be applicable only in cases where the minimum ticket size of lending is Rs 1crore. This has come as a big surprise to the NBFC sector.

The Underlying Need to Bring Parity with Banks, Housing Finance Companies (HFCs) and Other Financial Institutions (FIs) Is Not Fully Addressed

The prime objective of giving NBFCs coverage under the SARFAESI Act was to bring parity with banks, HFCs and other FIs, and providing NBFCs with an all important tool of recovery. This has been done in the light of the Revised Regulatory Framework for NBFCs, issued by RBI which is aimed to "address regulatory gaps and arbitrage arising from differential regulations, both within the NBFC sector as well as vis a vis other financial institutions". As a result, the Asset Classification (NPA classification norms) were brought at par with banks.

However, the above said rider of Rs 1crore does not fully justify the objective of bringing parity, since no such clause exists for banks, HFCs and other FIs.

Size of The Loan Should Not Be The Criteria

As per the Prudential Norms for Asset Classification (NPA Classification) for banks, HFCs and NBFCs, it is the duration of the overdue period of a loan,and not the ticket size, which determines whether the loan (Asset) is to be classified as "nonperforming" or not. It is therefore, imprudent and unjustified to make the ticket size of the loan as a determining factor for use of tools of recovery of that particular loan.

The Deterrence Factor Gets Diluted

In addition to enable Financial Institutions make recoveries, such recovery tools play a very important role of being a "deterrent to default". The above said rider of minimum ticket size of Rs1crore, dilutes the deterrence factor of an important recovery tool like the SARFAESI Act.

Request

1. *Based on the facts explained above we hereby request you to kindly do full justice by bringing complete parity with banks, housing finance companies and FIs in matters relating to recovery.*

2. *For this , kindly delete the following words from the Notification dated 5th August 2016:*
   "…….with the exception that the provisions of Sections 13-19 shall apply only to such security interest which is obtained for securing repayment of secured debt with principal amount of Rs 1crore and above"