



APAC NEWSLETTER

Legal, Compliance and ESG

10 February 2022

Dear Readers,

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A. LEGAL AND REGULATORY UPDATES:

1. Master Circular - Bank Finance to Non-Banking Financial Companies (NBFCs)

Date of Master Circular: January 05, 2022

Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12218&Mode=0%27>

RBI, vide its circular dated January 05, 2022, has issued a master circular on Bank Finance to Non-Banking Financial Companies (NBFCs) which shall be applicable to all Scheduled Commercial Banks (excluding Regional Rural Banks).

- The credit-related matters of banks have been progressively deregulated by the Reserve Bank of India. Consistent with the policy of bestowing greater operational freedom to banks in the matter of credit dispensation and in the context of mandatory registration of NBFCs with the Reserve Bank, most of the aspects relating to the financing of NBFCs by banks have also been deregulated.

- However, in view of the sensitivities attached to the financing of certain types of activities undertaken by NBFCs, restrictions on financing of such activities continue to be in force. The ceiling on bank credit linked to Net Owned Fund (NOF) of NBFCs has been withdrawn in respect of all NBFCs which are statutorily registered with RBI and are engaged in the principal business of asset financing, loan, factoring and investment activities. Accordingly, banks may extend need-based working capital facilities as well as term loans to all NBFCs registered with RBI and engaged in infrastructure financing, equipment leasing, hire-purchase, loan, factoring and investment activities.

- Banks should not execute guarantees covering inter-company deposits/loans thereby guaranteeing refund of deposits/loans accepted by NBFCs/firms from other NBFCs/firms. The restriction would cover all types of deposits/loans irrespective of their source, including deposits/loans received by NBFCs from trusts and other institutions. Further Banks should not invest in Zero-Coupon Bonds (ZCBs) issued by NBFCs unless the issuer NBFC builds up sinking fund for all accrued interest and keeps it invested in liquid investments/securities (Government bonds).

2. Highlights of the Union Budget, 2022-23

- a) No changes in tax slabs.
- b) Updated ITR can be filed within 2 years from the end of relevant AY.
- c) Income tax relief to cooperative societies with reduction in rate of surcharge from 12% to 7% for income upto Rs 10 crores
- d) Long term capital gains to be subject to surcharge only at 15% for all assets as against graded surcharge.
- e) Tax relief for person with disability.
- f) Tax deduction limit to NPS Account by state government employees raised to 14% from 10% in line with Central Government employees.
- g) Digital rupee to be issued using blockchain and other technologies; to be issued by RBI starting 2022-23.
- h) Gain on Virtual Digital Asset (VDA) taxed @ 30%. No deduction allowed except cost of acquisition and no set off allowed.
- i) TDS @ 1% on transfer of Virtual Digital Assets .
- j) No set off of loss with the income arises during search operations.

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- k) Date of tax incentive for startup extended to March 2023.
- l) Custom Duty on umbrellas 20%
- m) E-Passports to be launched by 2022-23
- n) Rs 6,000 crore program to rate MSMEs to be rolled out over 5 years, Additional credit cover of Rs 2 lakh crore to MSMEs, Duty relief on steel scrap MSMEs extended by a year
- o) One class-one TV channel for supplementary education for Classes 1-12 under PM Vidya Yojana, Digital university to be established.

3. Stamp Duty in Maharashtra on common Bank Documents as at- 20.1.2022

Document [Article]	For Amount	Stamp Duty (from Date)
Acknowledgement of Debt [Article 1(1)]	Up to Rs 5,000/-	Nil
	Above Rs 5,000/- but less than Rs 10,000/-	Re. 1
	Rs 10,000/- and above but less than Rs 10 lacs	Rs 50
	Rs 10 lacs and above	Rs 100
Loan Agreement [Article 5(h)(iv)]	Up to Rs 10 lacs	0.1% Minimum Rs.100 (from 24.4.2015)
	Above Rs 10 lacs	0.2% (from 24.4.2015)
Deposit of Title Deeds (EM) [Article- 6(1)] *Please see Note below	Up to Rs 5 lacs	0.1% Minimum Rs.100 (from 24.4.2015)
	Above Rs 5 lacs	0.3% (from 9.2.2021) Maximum Rs 20 lacs (from 20.1.2022) Maximum Rs 50 lacs on consortium document (from 20.1.2022)
Pledge/ Hypothecation [Article 6(2)] *Please see Note below	Up to Rs 5 lacs	0.1% Minimum Rs.100 (from 24.4.2015)
	Above Rs 5 lacs	0.3% (from 9.2.2021) Maximum Rs 20 lacs (from 20.1.2022) Maximum Rs 50 lacs on consortium document (from 20.1.2022)
<p>*Note: If Deposit of Title Deeds (EM) is already held as principal or primary security then the stamp duty on Pledge/ Hypothecation to be taken as collateral or auxiliary or additional security would be only Rs 500 (from 9.2.2021) [Article 6(3)]</p> <p>If Pledge/ Hypothecation is already held as principal or primary security then the stamp duty on Deposit of Title Deeds (EM) to be taken as collateral or auxiliary or additional security would be only Rs 500 (from 9.2.2021) [Article 6(3)]</p>		
Further Charge	Further Charge Up to	0.1% Minimum Rs. 100 (from 20.1.2022)

Where mortgage deed (registered mortgage) under Article 40(b) is held without possession of property [Article 33(b)(ii)]	Rs 5 lacs	
	Further Charge Above Rs 5 lacs	0.3% (from 20.1.2022) Maximum Rs. 20 lacs (from 20.1.2022)
Indemnity [Article 35]	Rs.500	
Guarantee [Article 37]	Same as Loan Agreement; see above	
Mortgage Deed (registered mortgage) without possession of property [Article 40(b)]	Up to Rs 5 lacs	0.1% Minimum Rs. 100 (from 9.2..2021)
	Above Rs 5 lacs	0.3% (from 9.2..2021) Maximum Rs. 20 lacs (from 20.1.2022) Maximum Rs. 50 lacs on consortium document (from 20.1.2022)
Power of Attorney [Article 48]	-General -For registration	Rs 500 (from 24.4.2015)
	For consideration and authorizing to sell an immoveable property	Same as for conveyance under Article 25 on market value (from 25.4.2012)

B. LOK-ADALAT EXPLAINED

~ Yogesh A. Babar, Assistant Manager- Legal

National Legal Services Authority along with other Legal Services Institutions conducts Lok Adalats. Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.

There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties. The persons deciding the cases in the Lok Adalats are called the Members of the Lok Adalats, they have the role of statutory conciliators only and do not have any judicial role; therefore they can only persuade the parties to come to a conclusion for settling the dispute outside the court in the Lok Adalat and shall not pressurize or coerce any of the parties to compromise or settle cases or matters either directly or indirectly. The Lok Adalat shall not decide the matter so referred at its own instance, instead the same would be decided on the basis of the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

Nature of Cases to be Referred to Lok Adalat

1. Any case pending before any court.
2. Any dispute which has not been brought before any court and is likely to be filed before the court.

Provided that any matter relating to an offence not compoundable under the law shall not be settled in Lok Adalat.

Which Lok Adalat to be Approached

As per section 18(1) of the Act, a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of -

- (1) Any case pending before; or
- (2) Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

Provided that the Lok Adalat shall have no jurisdiction in respect of matters relating to divorce or matters relating to an offence not compoundable under any law.

How to Get the Case Referred to the Lok Adalat for Settlement

- (A) Case pending before the court.

(B) Any dispute at pre-litigative stage.

The State Legal Services Authority or District Legal Services Authority as the case may be on receipt of an application from any one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for amicable settlement of the dispute for which notice would then be issued to the other party.

Levels and Composition of Lok Adalats:

At the State Authority Level -

The Member Secretary of the State Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court or a sitting or retired judicial officer and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes.

At High Court Level -

The Secretary of the High Court Legal Services Committee would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes.

At District Level -

The Secretary of the District Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

At Taluk Level -

The Secretary of the Taluk Legal Services Committee organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

National Lok Adalat

National Level Lok Adalats are held for at regular intervals where on a single day Lok Adalats are held throughout the country, in all the courts right from the Supreme Court till the Taluk Levels wherein cases are disposed off in huge numbers. From February 2015, National Lok Adalats are being held on a specific subject matter every month.

Permanent Lok Adalat

The other type of Lok Adalat is the Permanent Lok Adalat, organized under Section 22-B of The Legal Services Authorities Act, 1987. Permanent Lok Adalats have been set up as permanent bodies with a Chairman and two members for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc. Here, even if the parties fail to reach to a settlement, the Permanent Lok Adalat gets jurisdiction to decide the dispute, provided, the dispute does not relate to any offence. Further, the Award of the Permanent Lok Adalat is final and binding on all the parties. The jurisdiction of the Permanent Lok Adalats is upto Rs. Ten Lakhs. Here if the parties fail to reach to a settlement, the Permanent Lok Adalat has the jurisdiction to decide the case. The award of the Permanent Lok Adalat is final and binding upon the parties. The

Lok Adalat may conduct the proceedings in such a manner as it considers appropriate, taking into account the circumstances of the case, wishes of the parties like requests to hear oral statements, speedy settlement of dispute etc.

Mobile Lok Adalats are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism.

As on 30.09.2015, more than 15.14 lakhs Lok Adalats have been organized in the country since its inception. More than 8.25 crore cases have been settled by this mechanism so far.

C. LATEST JUDGMENTS ON ARBITRATION

~ Kiran Thakur, Manager- Legal

Important judgments on arbitration from 2021:

The year 2021 has seen some important case law developments in arbitration law in India.

Section 7

Whether an arbitration clause that allows the arbitration proceeding to be abandoned at the will of one party would be valid in law?

Tata Capital Finance Limited v. Shri Chand Construction and Apartment Pvt. Ltd. (Judgment dated 24.11.2021 in FAO(OS) 40/2020)

The High Court of Delhi held that an arbitration agreement that confers unequal power on one party to unilaterally abandon the arbitration proceedings, would be invalid in law, as such an agreement would lack 'mutuality', which is an essential feature of an arbitration agreement.

Section 8

Whether a party can file a writ petition against an order referring the parties to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (Act)?

Arun Srivastava v. M/S Larsen & Toubro Ltd. (Judgment dated 09.11.2021 in CM(M) 1520/2018)

The High Court of Delhi held that a petition under Article 227 would not be maintainable against an order referring the parties to arbitration under Section 8. The court observed that no provision for appeal against an order allowing Section 8 application is there in the Act, therefore, the legislative intent is clear in terms that if there is a valid arbitration agreement, the court must refer the parties to arbitration and all the issues related to existence and validity of the arbitration agreement must be raised before the tribunal.

Section 9

What is the meaning that is to be ascribed to the term "constitution of the tribunal."?

Quippo Infrastructure Ltd. v. A2z Infrservices Ltd. (Judgment dated 03.06.2021 in APO 29 of 2021)

The Calcutta High Court held that the constitution of the tribunal has to be given a wider interpretation so as to include assumption of jurisdiction by the arbitral tribunal after the arbitral proceedings have commenced in terms of Section 21 of the Act.

Section 11

Patil Rail Infrastructure Pvt. Ltd v. Ministry Of Railway (Judgment dated 22.07.2021 in ARB.P. 327/2021)

The Delhi High court held that in view of the foregoing, at pre-arbitral stage the court have to necessarily decide whether the fact of the dispute that is sought to be raised before it and it's covered by arbitration clause. Relying on Datar Switchgears v. Tata Finance Ltd., the Delhi High Court held that a party forfeits its right to make an appointment once the petition under section 11 is filed. Further, it held that the party cannot unilaterally make an appointment in view of the law laid down in Perkins Eastman.

Section 12

Whether the panel of Arbitrators maintained by the Respondent will be hit by Section 12 of the Act?

BCC Developers & Promoters Ltd. v. DMRC (Judgment dated 28.10.2021 in ARB.P. 813/2021)

Relying on the judgment in Central Organisation for Railway Electrification, the High Court of Delhi held that merely because the arbitrators on the panel are the ex-employees of one of the parties, it would not make them ineligible to be appointed as arbitrators to decide on the dispute. When the parties agreed on a procedure to appoint the arbitrators, the appointment shall be made in accordance with the agreed procedure only.

Section 14

Whether the mandate of an officer of the department who is appointed as an Arbitrator owing to his designation, shall come to an end on his retirement?

Laxmi Continental Construction Company v. State of Uttar Pradesh (Judgment date 20.09.2021 in Civil Appeal)

The Supreme Court held that once a person with specific designation has been appointed as the arbitrator, he would not incur disqualification on the retirement of his service, unless the agreement provides otherwise, or he incurs disqualification under the Act.

Section 17

Whether the award passed by an Emergency Arbitrator is an award within the meaning of Section 17 of the Act?

Amazon.com NV Investment Holdings LLC v. Future Retail Limited (Judgment dated 06.08.2021 in Civil Appeal)

The Supreme Court reiterated that party autonomy is an inherent feature of the Arbitration Act. The parties are at liberty to choose Institutional Rules to get their dispute resolved which also includes the power of the Emergency Arbitrator to grant interim reliefs to the parties. An order passed by the Emergency Arbitrator would be an order within the meaning of Section 17(1), enforceable under Section 17(2). Further, it held that there lies no appeal under Section 37 against an order of enforcement under Section 17(2).

D. EXECUTION PETITION EXPLAINED (EP)

~ Vivek Ugale, Senior Officer- Legal

What do you mean by Execution Petition?

Execution Petition means the process for enforcing the decree that is passed in favour of the decree holder by a competent court/ Tribunal.

As per Rule 2 (e) of civil Rules of practice Execution Petition means a petition to the court for the execution of any decree or order.

Who can apply for execution petition?

Following persons may file an application for Execution: 1. Decree- holder 2. Legal representative of the decree holder 3. Representative of a person claiming under the decree-holder etc.

Definition & Uses of EP (Execution Petition):

The expression 'execution' means enforcement or implementation of the order or judgment passed by the Court/ Tribunal. A Decree means an operation or conclusiveness of a judgment and the execution of a Decree is complete when the decree-holder gets satisfied as to its enforcement against the judgment-debtor i.e. receiving of the awarded amount or property, as the case may be. It is the medium by which a decree-holder compels the judgment-debtor to carry out the mandate of the Decree. To take the benefit of a decree, execution proceedings - an Application under Order XXI of the Code of Civil Procedure, 1908 (CPC) have to be filed before the appropriate court/authority within 12 years from the date of Decree.

Different types of Decrees include Preliminary Decree, Final Decree, Partly Preliminary and Partly final, Consent Decree, Ex-parte Decree, Decree passed in appeal, Decree on a compromise petition, and Conditional Decree - Decree with inbuilt conditions forming part of the Decree. The general rule as laid down under Section 38 of CPC is that 'the Decree may be executed either by the court which passed it or by the court to which it is sent for execution. The words 'Court which passed the Decree' includes courts which passed the Decree (court of the first instance) and courts of the first instance in appellate Decree. The executing court cannot question the validity of a Decree or entertain an objection as to the legality or otherwise of the Decree. It must take the Decree as it stands and executes it according to its terms. The executing court must abide by the directions contained in the Decree.

It is true that an executing court cannot question the Decree and has to execute the Decree as it stands, however, this principle has no operation when the objection is based on the effect of the provision of the Act, which deprived the party of his proprietary rights. In these circumstances, the executing Court can refuse to execute the Decree holding that, it has become inexecutable on the account of change in the law.

The procedure of Execution (Approximate timelines)

- A written application is to be filed in the court that originally passed the decree or the court to which it has been transferred for execution. It shall contain all the essential information such as suit number, name of parties, date of the decree, any appeal preferred or pending, amount due, name

of the person against whom execution is sought, and most importantly the mode in which the assistance of the court is required. On filing the Application a lodging number is given for raising of defects – Time limit three weeks from the filing of Application, defects are raised by the registry.

- On raising of defects, the Decree holder must remove all defects and get the same certified by the registry – Time limit one week from raising of the defect by the registry.
- After the executing court has satisfied itself that all defects if any have been cured in the application and has provisionally evaluated, without prejudice to the right of the parties, the correct amount for the execution of the decree concerning the value of the immovable property, it finally gives a number to the Application for further movement. On obtaining of a final number to the Application, process or a show-cause notice is issued by the registry to the judgment debtor, only if, the execution petition is filed after 2 years of the passing of the decree, or is against a legal representative or assignee or receiver where DH is declared to be insolvent – Time limit two weeks from date of the final number.
- Where the person to whom notice is issued under rule 22 does not appear or does not show cause to the satisfaction of the court why the Decree should not be executed, the court shall order the Decree to be executed, by the issuance of Warrant of Sale and/or Warrant of Attachment. Where such person offers an objection to the execution of the decree, the court shall consider such objection and make such order as it thinks fit – Time limit is about four weeks to eight weeks for the hearing to take place and decision of the registry.
- Once after the court has decided upon the claims or objections (if any), raised by the judgment debtor, against the execution of a decree, the DH shall move an application requesting attachment of immovable property preceding the sale. Though sale can take place without attachment, this shall further help in protecting the interests of the Decree Holder – Time limit is about two weeks from the decision on claims/objection if any and/or final numbering of the Application, whichever is applicable.
- Once the Warrant of Attachment is issued, the same be drawn in writing and posted at a conspicuous place adjacent to the immovable property in question, and also at collector's office if the said property is a land paying revenue to the government. Besides affixing Warrant of Attachment, it shall be publicly proclaimed with the beating of drums and other means. – The time limit is two weeks from the issuance of the Warrant of Attachment.
- Based on the report submitted by the bailiff of Sheriff office, the registry shall issue a Warrant of Sale order in the name of the bailiff to publicly auction as per the details mentioned in the warrant on the date and place specified and report back to court with an endorsement certifying how sale has been executed or the reason why it has not been executed. – The time limit is two weeks from the submission of the report.