# FIDC NEWS

Finance Industry Development Council

(A Self-Regulatory Organisation for Non-Banking Finance Companies (NBFCs) registered with RBI)

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## Grant fiscal parity to NBFC sector

NBFCs, like banks, serve the cause of financial inclusion without even being directed to do so and have a wide reach in unbanked areas. They are also subjected to almost similar prudential guidelines prescribed by the Regulator. The role played by them is lauded by various official agencies like Parliamentary Standing Committee, RBI and even by credit raters.

But unfortunately the union Government is yet to put NBFCs on par with similar other financial agencies like banks, public financial institutions and to an extent even the housing finance companies. Year after year despite NBFC sectors pleadings parity for parity in fiscal treatment and access to legal infrastructure created for expeditious recovery of dues for banks are being deferred and delayed causing lot of hardship to the sector. It would not be out of place to reiterate the expectations of NBFC sector in respect of tax matters:

- Extend benefit of 'Nil TDS' to the NBFCs as well under Sec. 194A. The option provided to apply for a lower withholding certificate under Sec. 197 of the Income Tax Act is impractical.
- Extend Sec.43D of the Income Tax Act to include in its scope NBFCs registered with RBI by accepting the principle of income deferral in the case of NBFCs also as it is the only segment of the financial sector denied this tax benefit.
- The provision for NPAs made by NBFCs registered with RBI and HFCs registered with NHB be allowed as deduction u/s 36(1)(viia) of the Income tax Act.
- Reviving the investment cycle in infrastructure is of paramount importance now as that would help stimulating domestic demand. However, keeping in mind the fact that high interest rates are discouraging infrastructure investments, Sec. 10(23G) needs to be re-introduced and MAT be also exempted.
- NBFCs registered with RBI should also be exempted from the applicability of Sec. 269T of the Income Tax Act like other banking institutions.
- Since the Payee collects Service tax on behalf of the Central Government and in no situation, it forms part of Income of the payee, the TDS provisions should provide for exclusion of Service Tax component while deducting [Ref: circular No. 4/2008, dated 28-4-2008 of IT Dept.].
- Sec. 206AA should not be applicable on any payment that is made to a non-resident entity, which is covered under DTAA as expecting a non-resident to have PAN in India is impractical.
- The respective laws should be amended so as to state that in case it is established that the transaction is a subject matter of VAT/Service Tax, then the other tax cannot be levied to do away with double taxation. The Government, through its various circulars, has also clarified that service tax is not leviable on a transaction treated as sale of good and subjected to levy of sales tax / VAT.
- A circular under Sec. 65 may be issued to the effect that those NBFCs which deposit an amount of Service Tax in relation to fee based income which is associated with loan transactions must be allowed to avail 100% Cenvat Credit on input services availed instead of arbitrary 50% Cenvat Credit availed as per prevailing provisions.
- Multiple scrutinies/ audit/ verification of the assesses need to be significantly limited and ideally, this should be restricted to only one authority of the Department for a particular period. Moreover to avoid multiple verifications a process of Regular Assessment should be introduced in the Service Tax Act like Income Tax Act, 1961.
- Service Tax law may clearly prescribe the information which an Assessee needs to maintain in Service Tax Rules itself. The formats [prescribed by Service Tax Department as part of EA2000 Audit, to seek voluminous details and information for several years] require an Assessee to prepare detailed reconciliation and voluminous information which is otherwise not maintained in the normal course of business and these are not particularly specified under Service Tax Act and Rules.

FIDC, as you are well aware, has left no stone unturned in this regard and continued to represent on these issues from time to time to authorities at various levels and will pursue relentlessly. A ray of hope is seen in the proposed Direct Tax Code which accepts basic parity in principle by defining 'permitted financial institutions' which covers banks, housing finance companies and NBFCs.

*R Sridhar, Chairman, FIDC*

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**RBI NOTIFICATIONS & CIRCULARS : Implementation of Section 51-A of UAPA, 1967-Updates of the UNSCR 1988 (2011) Sanctions List:** RBI/2013-14/310; DNBS(PD).CC. No 357/03.10. 42/2013-14- Oct. 3.

**Implementation of Section 51-A of UAPA, 1967** - Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List and Consolidated List: RBI/2013-14/311- DNBS(PD).CC. No 358/03.10. 42/ 2013-14; Oct. 3

**Migration of Post-dated cheques (PDC)/Equated Monthly Installment (EMI) Cheques to Electronic Clearing Service (Debit):** RBI/2013-14/359 - DNBS.PD/ CC.NO.359 /03. 10.001/2013-14; Nov. 06.

**Filing of records of equitable mortgages with the Central Registry:**
RBI/2013-14/369 DNBS. (PD). CC. No.360 /03.10.001/2013-14; Nov. 12.

**White Label ATMs (WLAs) in India – Clarification on Cash Handling:** RBI/2013-14/372- DPSS.CO.PD. No. 1088/02.10.003/2013-14; Nov. 14.

**Participation of NBFCs in Insurance sector:** RBI/2013-14/383-DNBS.PD.CC.No.361/03.02.002/2013-14; November 28, 2013.

**Financing of Infrastructure - Definition of 'Infrastructure Lending': RBI/2013-2014/386- DNBS.PD.CC.No. 362/03.10.001/2013-14; 29 Nov.**

## RBI asks NBFCs to file and register all records of equitable mortgages

RBI has asked all NBFCs to file and register the records of all equitable mortgages created in their favour on or after 31st March 2011 with the Central Registry and they are directed also to register the records with the Central Registry as and when equitable mortgages are created in their favour.

The Central Government under Section 21 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [-SARFAESI ], has notified on 31st March, 2011 the establishment of the Central Registry at New Delhi and entrusted the operations and administration of the Central Registry and the maintenance of the Central Register to the Central Registry of Securitisation Asset Reconstruction and the Security Interest of India. (CERSAI)

The financial agencies not notified under SARFAESI Act are not debarred from filing the records with CERSAI. In the absence of the records of all the equitable mortgages obtained even by non-SARFAESI notified banks / financial institutions (including NBFCs) with the CERSAI, the details of the security interest created in favour of these banks / institutions will not be available on a public domain for search by citizens / other banks / FIs as a result of which the potential fraud / multiple financing against the same property may not be fully prevented. [RBI circular, Nov.12]

## Migration of Post-dated cheques (PDC)/EMI Cheques to ECS (Debit)

RBI has advised that considering the protection available under Section 25 of the Payment and Settlement Systems Act, 2007 which accords the same rights and remedies to the payee (beneficiary) against dishonor of electronic funds transfer instructions under insufficiency of funds as are available under Section 138 of the Negotiable Instruments Act, 1881, there is no need for NBFCs to take additional cheques, if any, from customers in addition to ECS (Debit) mandates. Cheques complying with CTS-2010 standard formats shall alone be obtained in locations, where the facility of ECS/RECS is not available.

RBI vide circular dated Nov.8 has directed NBFCs not to accept fresh/ additional Post Dated Cheques (PDC)/Equated Monthly Installment (EMI) cheques (either in old format or new CTS-2010 format) in locations where the facility of ECS/RECS (Debit) is available. The existing PDCs/EMI cheques in locations where the facility of ECS/RECS (Debit) is available may be converted into ECS/RECS (Debit) by obtaining fresh ECS (Debit) mandates. RBI has asked NBFCs that this exercise shall be completed not later than December 31, 2013. [RBI circular, 8 Nov.]

## New bank licences: NBFCs may get priority

For securing banking licences, non-banking financial companies (NBFCs) had an advantage over other applicants, in already having a good customer base, RBI Deputy Governor K C Chakrabarty said on Oct. 9. "NBFCs have an advantage — they have a customer base. If they get a licence, they can convert themselves into banks," he said. "But how it would be done, what are the other factors, I don't know…because a separate committee has been appointed (to award licences)," he added. The panel is headed by former RBI chief Bimal Jalan. [Business Standard, 10 Oct.]

## RBI asks NBFCs to get ready for Settlement of Dues through Lok Adalat

The RBI has appealed to all NBFCs to participate in the all India Lok Adalat being organised by National Legal Services Authority (NALSA) in all districts of the country on November 23, 2013 to settle long pending cases of dues, including those pending under the Negotiable Instruments Act, 1881. [RBI press release, 20 Nov.]

## Industry groups to be self regulatory bodies for NBFC-MFIs: RBI

The Reserve Bank on 26 Nov. said it has decided to accord recognition to industry associations as self regulatory organisations (SRO) of NBFC-MFIs. "To give effect to recommendation of sub-committee under the chairmanship of Y. H. Malegam.to ensure effective monitoring of the functioning of NBFC-MFIs, their compliance with the regulations and code of conduct and in the best interest of the customers of the NBFC-MFIs, RBI has decided to accord recognition to industry associations as SRO of NBFC-MFIs," RBI said in a release.

RBI further said that the membership of NBFC-MFIs in the industry association/SRO will be seen by the trade, borrowers and lenders as a mark of confidence and removal from membership will be seen as having an adverse impact on the reputation of such removed NBFC-MFIs. "While membership to the SRO is not mandatory, NBFC-MFIs are encouraged to voluntarily become members of at least one SRO," RBI said.

Also, the SRO holding recognition from the RBI will have to adhere to a set of functions and responsibilities, such as formulating and administering a code of conduct. "...having a grievance and dispute redressal mechanism for the clients of NBFC-MFIs, responsibility of ensuring borrower protection and education, monitoring compliance with the regulatory framework, surveillance of the microfinance sector, training and awareness programmes for the members, Self Help Groups, and submission of its financials, including Annual Report," it added. [Livemint/ PTI, 27 Nov.]

## RBI clarifies on meaning of Group Company for FDI

The Reserve Bank said that for the purpose of foreign direct investment , the term "group company" would mean two or more enterprises which, directly or indirectly, are in position to exercise 26 per cent, or more of voting rights in other enterprise or appoint more than 50 per cent, of members of the board of directors in the other enterprise. [Business Standard, 22 Nov.]

## RBI Eases Investment Norms for NBFCs In Insurance

The Reserve Bank on 28 Nov. relaxed norms for NBFCs in insurance joint ventures by allowing them to hold more than 50 per cent in such companies. "On a review, it has been decided that in cases where IRDA issues calls for capital infusion into the insurance JV company, the bank (RBI) may, on a case-to-case basis, consider need-based relaxation of the 50 per cent group limit," the RBI said in a notification. The relaxation is subject to compliance by the NBFC with all regulatory conditions, it said.

As per existing norms, an NBFC cannot hold more than 50 per cent of the paid-up capital of an insurance joint venture. A subsidiary or company in the same group of an NBFC or of another NBFC engaged in the business of a non-banking financial institution or banking is not allowed to join the insurance company on a risk participation basis. [Business World, 28 Nov.]

## Priority Sector Lending for MSMED

RBI has vide its circular dated Nov. 18 said the incremental bank loans to medium service enterprises extended after November 13, 2013, up to the credit limit of Rs.10 crores, would qualify as priority sector advances. In line with the above, similar incremental loans to micro and small service enterprises up to the credit limit of Rs.10 crores, (as against the present ceiling of Rs.5 crores), shall also be treated as priority sector advances. This dispensation will remain in force up to March 31, 2014, RBI adds. [RBI circular, 25 Nov.]

# NBFC Sector - improved financial position

“Of the total 209 reporting NBFCs-D, 206 companies had maintained a CRAR in excess of 15 per cent as at end-March 2013. Further, 173 companies had CRAR above 30 per cent.”

“The consolidated balance sheet of NBFCs- ND-SI expanded by 19.5 per cent during 2012-13.”

“The financial performance of the NBFCs-NDSI sector improved as reflected in an increase in their net profit during 2012-13.”

**1.1** Based on liabilities, NBFCs are classified into two categories - Category “A” companies (NBFCs-D), and Category “B” companies (NBFCs not raising public deposits or NBFCs-ND). NBFCs-D are subject to requirements of capital adequacy, maintaining liquid assets, exposure norms (including restrictions on exposure to investments in land, building and unquoted shares), ALM discipline and reporting requirements. Category “B” companies, in contrast, were subject to minimal regulation till 2006. However, since April 1, 2007, non-deposit taking NBFCs with assets of Rs.1 billion and above have been classified as NBFCs- ND-SI and prudential regulations such as capital adequacy requirements and exposure norms along with reporting requirements have been made applicable to them. Capital market exposure (CME) and asset liability management (ALM) reporting and disclosure norms were also made applicable to them at different points of time.

**1.2** In terms of activities undertaken, NBFCs are classified into eight categories, viz., Asset Finance Companies (AFCs), Investment Companies (ICs), Loan Companies (LCs), Infrastructure Finance Companies (IFCs), Core Investment Companies (CICs), Infrastructure Debt Fund - Non-Banking Financial Companies (IDF-NBFCs), Non-Banking Financial Company - Micro Finance Institutions (NBFC-MFIs) and NBFC-Factors.

**1.3** During 2012-13, various policy measures were introduced to improve the regulation and supervision of NBFCs by the Reserve Bank. The Reserve Bank regulates only those NBFCs that conduct financial activity as their principal business and that it has authorised only a few of them to accept deposits and such entities do not enjoy DICGC’s deposit insurance facility.

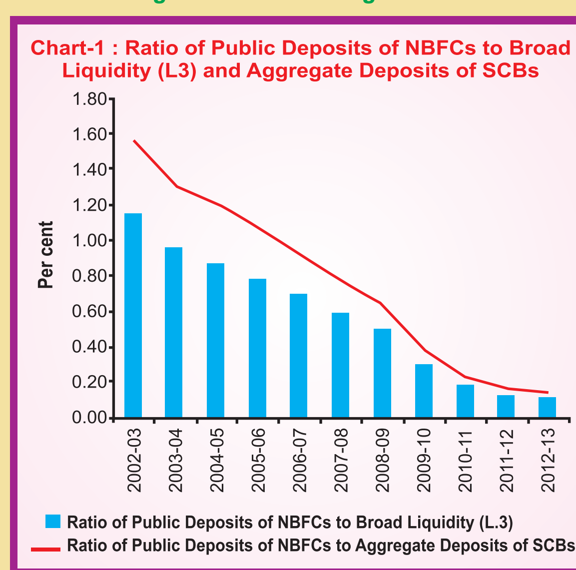
**1.4** In the aftermath of recent global financial crisis, the operations of shadow banking system have come under scrutiny of regulators in large number of economies. The form of shadow banking prevalent in developed economies and other EMEs is very different from what prevails in India. In India, NBFCs, which remain outside the regulatory framework as applicable to banks, in essence, are referred to as shadow banking.

**1.5** As per the ownership structure of NBFCs- ND-SI and deposit-taking NBFCs as at end-March 2013, it is found that a majority of them were non-government Public Limited Companies.

## Profile of NBFCs (including RNBCs)

*The NBFC segment is witnessing consolidation*

Chart-1 : Ratio of Public Deposits of NBFCs to Broad Liquidity (L3) and Aggregate Deposits of SCBs




**1.6** The total number of NBFCs registered with the Reserve Bank declined marginally to 12,225 as at end-June 2013. The number of NBFCs-D during 2012-13 declined mainly due to the cancellation of Certificates of Registration (CoR) and migration to non-deposit-taking category.

**1.7** Though the number of NBFCs in business declined, their total assets, and net owned funds increased marginally. Public deposits mobilised by them also increased. Holding of public deposits by the Residuary Non-Banking Companies (RNBCs) contracted.

**1.8** Despite a rise in deposits mobilised by NBFCs, the ratio of NBFCs’ public deposits to aggregate deposits of scheduled commercial banks (SCBs) continued to decline during 2012-13. The ratio of NBFCs’ deposits to the broadest measure of liquidity aggregates, L3[1], also declined during the year [Chart-1]

## Operations of NBFCs-D (excluding RNBCs)

*The consolidated balance sheet of NBFCs-D expanded modestly*

**1.9** During the year, the consolidated balance sheet of NBFCs-D expanded marginally by 2.2 per cent. On the liability side, during 2012-13, borrowings from banks, albeit declined, constituted the biggest source of funding for NBFCs-D. Debentures and public deposits were the next important sources of finance. Borrowings from FIs were relatively minimal but this picked up dramatically by 170 per cent during the year. On the contrary, borrowings from government and inter-corporate borrowings declined substantially. On the asset side, loans and advances of NBFCs-D constituted close to three-fourth of their assets. The investments declined during the year mainly on the back of a decline in investments in equity shares. The investments in commercial paper also declined substantially. Investment in government securities, debentures & bonds, and mutual funds schemes, however, showed an increase.

## Borrowings by NBFCs-D

**1.10** Total borrowings of NBFCs-D increased in 2012-13 due to a significant rise in the borrowings of AFCs from Rs. 580 billions to Rs. 732 billions, which offset the reduction in the borrowings of Loan Companies [Table-1]. AFCs borrowed mainly from banks and financial institutions *[which rose from Rs.299 billion to Rs. 328 billion]* and through floating debentures *[which was up from Rs. 198 billion to Rs. 298 billion]*.

## Deposits held by NBFCs-D

**1.11** The number of deposit-taking NBFCs declined during the year. Notwithstanding this, deposits mobilised and borrowings increased during the year. Among the NBFCs-D, while the balance sheet of

**Table-1 : Major Components of Liabilites of NBFCs-D by Classification of NBFCs**

(As at end-March)

(Amount in Rs. billion)

| Classification of NBFCs | Number of Companies | | Public Deposits | | Total Borrowings | | Total Liabilities | |
|---|---|---|---|---|---|---|---|---|
| | 2012 | 2013 P | 2012 | 2013 P | 2012 | 2013 P | 2012 | 2013 P |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Asset Finance Companies | 193 | 169 | 43 | 57 | 580 | 732 | 849 | 1047 |
| | | | (76) | (80) | (71) | (86) | (69) | (84) |
| Loan Companies | 49 | 40 | 14 | 14 | 238 | 116 | 373 | 202 |
| | | | (24) | (20) | (29) | (14) | (31) | (16) |
| Total | 242 | 209 | 57 | 71 | 818 | 848 | 1,222 | 1,249 |

P: Provisional. Note: Figures in parentheses are percentage shares.

Asset Finance Companies (AFCs) grew, that of Loan Companies (LCs) shrunk. Larger NBFCs-D mobilised a large chunk of public deposits. Six larger companies, constituting just about 2.8 per cent of the total number of NBFCs-D, mobilised about 95 per cent of total deposits of the NBFCs-D at end-March 2013.

**1.12** The northern zone had the highest number of deposit taking NBFCs followed by the southern region. However, about 60 per cent of the public deposits were mobilised in the southern region. A similar pattern can be observed in the case of metropolitan cities. While New Delhi accounted for the largest number of NBFCs-D, Chennai held the largest share of 63.1 per cent in total public deposits of NBFCs-D. In the western zone, the amount of public deposits held by NBFCs-D increased significantly despite a decline in their numbers during 2012-13. This is particularly evident in Mumbai.

**1.13** In the wake of a tightened liquidity environment, a relatively large chunk of public deposits raised by NBFCs-D were in the interest rate range of 10 to 12 per cent. Accordingly, during 2012-13, the share of deposits having interest rate upto 10 per cent came down to 36.5 per cent from 56.9 per cent last year. During the year, a large proportion of public deposits raised by NBFCs-D belonged to the short to medium-term of the maturity spectrum. There was a notable rise in the share of short-term deposits (less than a year to 25.9 % from 18.9 %) as also long-term deposits with tenure of five years and above to 1.6 %.

## Assets of NBFCs-D

**1.14** Asset size of the NBFCs-D sector expanded moderately during the year. Notwithstanding a decline in the asset size of LCs, the total assets of the NBFCs-D sector registered a marginal increase during

**Table-2 : Category-wise Sources of Borrowings of NBFCs-D**

Asatend-March (Amount in Rs. billion)

| Classification | Government | | Banks and Financial institurions | | Debentures | | Commercial Paper | | Others | | Total Borrowings | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2012 | 2013 P | 2012 | 2013 P | 2012 | 2013 P | 2012 | 2013 P | 2012 | 2013 P | 2012 | 2013 P |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| Asset Finance Companies | 0 | 0 | 299 | 328 | 198 | 298 | 6 | 19 | 75 | 87 | 580 | 732 |
| | (0.0) | (0.0) | (73.2) | (91.6) | (83.3) | (93.7) | (22.7) | (66.3) | (86.6) | (87.5) | (70.9) | (86.3) |
| Loan Companies | 55 | 43 | 110 | 30 | 40 | 20 | 22 | 10 | 12 | 12 | 238 | 116 |
| | (100.0) | (100.0) | (26.8) | (8.4) | (16.7) | (6.3) | (77.3) | (33.7) | (13.4) | (12.5) | (29.1) | (13.7) |
| Total | 55 | 43 | 409 | 358 | 238 | 318 | 29 | 29 | 87 | 100 | 818 | 848 |

P : Provisional. Note : Figures in parentheses are percentages to respective total.
Source : Annual Returns.

2012-13 mainly due to rise in assets of AFCs *[up from Rs.652 billion to Rs.833 billion]*.That enabled rise in share of advances of AFCs from 74.2 % to 88.5 %. Component-wise, advances accounted for a predominant share in total assets followed by investment. Asset Size-wise Distribution of NBFCs-D showed highly skewed distribution of assets. At end-March 2013, about 5 per cent of NBFCs-D had an asset size of more than '5,000 million and accounted for about 97 per cent of total assets of all NBFCs-D.

## Financial Performance of NBFCs-D

**1.15** Financial performance of NBFCs-D sector showed marginal improvement. During the year, though the net profit of NBFCs-D showed marginal improvement, RoA remained at the previous year's level at 2.7 per cent [Chart-2]. In view of increased costs, cost-to-income ratio of the NBFCs-D also rose during the year (Table-3).

**Table-3 : Financial Performance of NBFCs-D**

(Amount in ₹ billion)

| Item | As at end-March 2012 | 2013 P |
|---|---|---|
| A. Income (i + ii) | 179 | 188 |
| (i) Fund-Based | 177 | 187 |
| | (99.2) | (99.4) |
| (ii) Fee-Based | 1 | 1 |
| | (0.8) | (0.6) |
| B. Expenditure (i+ii+iii) | 129 | 138 |
| (i) Financial | 78 | 86 |
| | (60.4) | (62.2) |
| of which : Interest Payment | 6 | 8 |
| | (4.4) | (6.0) |
| (ii) Operating Expenses | 35 | 37 |
| | (27.0) | (27.0) |
| (iii) Others | 16 | 15 |
| | (12.6) | (10.8) |
| C. Tax Provisions | 16 | 16 |
| D. Operating Profit (PBT) | 50 | 50 |
| E. Net Profit (PAT) | 33 | 34 |
| F. Total Assets | 1,222 | 1,249 |
| G. Financial Ratios (as % of Total Assets) | | |
| i) Income | 14.6 | 15.0 |
| ii) Fund Income | 14.5 | 14.9 |
| iii) Fee Income | 0.1 | 0.1 |
| iv) Expenditure | 10.5 | 11.0 |
| v) Financial Expenditure | 6.4 | 6.9 |
| vi) Operating Expenditure | 2.8 | 3.0 |
| vii) Tax Provision | 1.3 | 1.2 |
| viii) Net Profit | 2.7 | 2.7 |
| H. Cost to Income Ration | 72.2 | 73.4 |

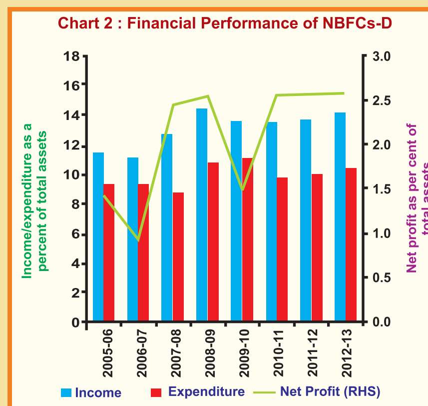
P : Provisional. Note : Figures in parentheses are percentages to total. Source : Annual Returns.

## Soundness Indicators: Asset Quality of NBFCs-D

### *Deterioration in asset quality of NBFCs-D*

**1.16** For the last couple of years, the asset quality of the NBFCs-D has been deteriorating. Continuing with last year's higher level of NPA, it further deteriorated during 2012-13 (Table-4). Weakening of the asset quality of NBFCs-D broadly followed the prevailing trend of rising NPAs in the banking sector and may, inter alia, be attributed to slackened economic activity.

**1.17** A bulk of the NPAs of NBFCs-D were concentrated in AFCs. During 2012-13, the gross NPAs pertaining to AFCs increased by Rs.7 billion, whereas for LCs it went up only by Rs.1 billion. The NPA ratios for both groups of NBFCs-D increased during the year on top of higher increase in NPAs in the previous year (Table-5).




**1.18** Of the three NPA categories, the share of sub-standard assets increased during 2012-13, which reflected deterioration in asset quality. Substandard assets rose, both with respect to AFCs and LCs (Table- 6).

**1.19** Of the total 209 reporting NBFCs-D, 206 companies had maintained a CRAR in excess of 15 per cent as at end-March 2013 (Table-7). Further, 173 companies had CRAR above 30 per cent. The ratio of public deposits to net owned fund (NOF) of NBFCs-D increased marginally *[from 0.26 to 0.34]* as at end-March 2013. Although the number of companies above the NOF of Rs.5,000 million had reduced to seven, their total NOF rose marginally.

**Table-4 : NPA Ratios of NBFCs-D**

(Percent)

| As at end-March | Gross NPAs to Total Advances | Net NPAs to Net Advances |
|---|---|---|
| 1 | 2 | 3 |
| 2002 | 10.6 | 3.9 |
| 2003 | 8.8 | 2.7 |
| 2004 | 8.2 | 2.4 |
| 2005 | 5.7 | 2.5 |
| 2006 | 3.6 | 0.5 |
| 2007 | 2.2 | 0.2 |
| 2008 | 2.1 | # |
| 2009 | 2 | # |
| 2010 | 1.3 | # |
| 2011 | 0.7 | # |
| 2012 | 2.2 | 0.5 |
| 2013 P | 2.4 | 0.8 |

P: Provisional. #: Provisions exceeded NPA.
Source : Half-yearly Returns of NBFCs-D.

**Table-5 : NPAs of NBFCs-D - Category-wise**

(Amount in Rs. billion)

| Item | Gross Advances | Gross NPAs | Net Advances | Net NPAs | NPA Ratios (as a per cent of Gross Advances) | |
|---|---|---|---|---|---|---|
| | | | | | Gross NPAs | Net NPAs |
| **2011-12** | | | | | | |
| All Companies | 875 | 19 | 861 | 5 | 2.2 | 0.5 |
| Asset Finance Companies | 665 | 16 | 652 | 4 | 2.4 | 0.5 |
| Loan Companies | 210 | 3 | 209 | 1 | 1.3 | 0.5 |
| **2012-13 P** | | | | | | |
| All Companies | 1,105 | 27 | 1,087 | 9 | 2.4 | 0.8 |
| Asset Finance Companies | 844 | 23 | 828 | 7 | 2.7 | 0.8 |
| Loan Companies | 261 | 4 | 259 | 2 | 1.5 | 0.7 |

P: Provisional.
Source : Half-yearly Return of NBFCs-D.

## NBFCs-ND-SI

***NBFCs-ND-SI raised more resources through debentures, borrowings from banks and FIs***

**1.20** The consolidated balance sheet of NBFCs- ND-SI expanded by 19.5 per cent during 2012-13. On the liability side, borrowings (secured and unsecured) by NBFCs-ND-SI, which constituted more than two-thirds of total liabilities, increased significantly by 22.2 per cent during the year. The NBFCs-ND-SI borrowed mainly by floating debentures, followed by borrowings from banks and FIs, commercial paper, and intercorporate borrowings. Unsecured borrowings of NBFCs-ND-SI, constituting slightly less than half the total borrowings, expanded significantly and outpaced the growth in secured borrowings during 2012-13. The unsecured borrowings were largely raised through debentures, followed by borrowings from banks, commercial paper, inter-corporate borrowings and borrowings from FIs. Amongst the unsecured modes, "borrowings from FIs" more than doubled (126.4 per cent) during 2012-13, while borrowings from unsecured debentures and commercial paper grew by 32.2 and 25.1 per cent, respectively. Unsecured borrowings from banks increased marginally during 2012-13.

**Table-6 : Classification of Assets of NBFCs-D by Cateogry of NBFCs**

(Amount in Rs. billion)

| | Standard Assets | Sub-Standard Assets | Doubtful Assets | Loss Assets | Gross NPAs | Total Credit Exposure |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| **2011-12** | | | | | | |
| All Companies | 856 | 12 | 5 | 2 | 19 | 875 |
| | (97.8) | (1.4) | (0.5) | (0.3) | (2.2) | (100) |
| Assets Finance Companies | 648 | 10 | 4 | 2 | 16 | 665 |
| | (97.6) | (1.5) | (0.6) | (0.3) | (2.4) | (100) |
| Loan Companies | 208 | 2 | 1 | 0 | 3 | 210 |
| | **(98.7)** | **(0.9)** | **(0.3)** | **(0.1)** | **(1.3)** | **(100)** |
| **2012-13** | | | | | | |
| All Companies | 1,078 | 20 | 4 | 3 | 27 | 1,105 |
| | (97.6) | (1.8) | (0.3) | (0.3) | (2.4) | (100) |
| Assets Finance Companies | 821 | 17 | 3 | 3 | 23 | 844 |
| | **(97.3)** | **(2.0)** | **(0.3)** | **(0.3)** | **(2.7)** | **(100)** |
| Loan Companies | 257 | 3 | 1 | 0 | 4 | 261 |
| | **(98.5)** | **(1.2)** | **(0.3)** | **(0.0)** | **(1.5)** | **(100)** |

P : Provisional.
Note : 1. Figures in brackets are per cent to total advances.
2. Percentage figures are rounded-off.
Source : Half-yearly Return of NBFCs-D.

**Table-7: Capital Adequacy Ratio of NBFCs-D**

(Number of companies)

| CRAR Range | 2011-12 | | | 2012-13 P | | |
|---|---|---|---|---|---|---|
| | AFC | LC | Total | AFC | LC | Total |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1) Less than 15 per cent | 2 | 2 | 4 | 1 | 2 | 3 |
| 2) More than 15 per cent and up to 20 per cent | 9 | 3 | 12 | 7 | 2 | 9 |
| 3) More than 20 per cent and up to 30 per cent | 20 | 4 | 24 | 19 | 5 | 24 |
| 4) Above 30 per cent | 166 | 40 | 206 | 144 | 29 | 173 |
| | **197** | **49** | **246** | **171** | **38** | **209** |

P : Provisional; AFC - Asset Finance Company; LC - Loan Company.
Source : Half-yearly Returns.

**1.21** Analysis of region-wise borrowings of the NBFCs-ND-SI reveals the dominance of northern and western regions; together they constituted more than 70 per cent of the total borrowings during the year ended-March 2013. Compared to other regions, the eastern and southern regions showed higher growth in borrowings.

**1.22** The asset position of NBFCs-ND-SI further strengthened in 2012-13. Loans and advances, which formed a major part of the assets, increased by 22 per cent. The rise in hire-purchase assets and investment also propped up the asset position of NBFCs-ND-SI. The leverage ratio of the NBFCs-ND-SI sector had increased marginally to 3.20 percent. Exposure of this segment to capital market as a per cent of total assets declined from 8.9 per cent to 8.1 per cent during the year.

## Financial Performance

***NBFCs-ND-SI showed improved financial position***

**1.23** The financial performance of the NBFCs-NDSI sector improved as reflected in an increase in their net profit during 2012-13 (Table-8). Net profit as a per cent to total income as also to total assets increased marginally during the year.

1.24 While the ratio of gross NPAs of NBFCs-NDSI to their total assets had increased marginally, the net NPAs to total assets declined during the year (Table-9).

**1.25** As at end-March 2013, a majority of the reporting companies maintained the stipulated minimum norm of 15 per cent capital adequacy as measured by CRAR. Only 12 per cent of the total reporting companies had a CRAR of less than 15 per cent and almost all of them were either investment companies or loan companies. NBFCs-ND-SI have adequate scope to utilise their capital for further expansion. The exposure of the banking system to the NBFCs-ND-SI sector was largely in the form of term and working capital loans; and most of these loans were extended by nationalised banks and the State Bank Group. Debentures and commercial papers floated by NBFCs-ND-SI to the banking sector were, by and large, subscribed to by new private banks and foreign banks, respectively.

**1.26** In the past few years, there has been a surge in gold loans in the country. While banks still dominate the business of lending against the collateral of gold, there has been a significant rise in lending against gold by NBFCs-ND-SI in recent years. The number of NBFCs-ND-SI engaged in the gold loan business also increased from six to eight during the year. In view of concerns relating to financial stability due to heavy concentration of portfolio, prudential guidelines were issued to such NBFCs-ND-SI (gold-loan NBFCs) so

| Table-8: Financial Performance of NBFCs-ND-SI | | |
|---|---|---|
| | (Amount in ₹ billion) | |
| Item | As at end-March | |
| | 2012 | 2013 P |
| 1 | 2 | 3 |
| 1. Total Income | 988 | 1,246 |
| 2. Total Expenditure | 745 | 930 |
| 3. Net Profit | 171 | 222 |
| 4. Total Assets | 9,353 | 11,177 |
| Financial Ratios (%) | | |
| (i) Income to Total Assets | 10.6 | 11.2 |
| (ii) Expenditure to Total Assets | 8.0 | 8.3 |
| (iii) Net Profit to Total Income | 17.3 | 17.8 |
| (iv) Net Profit to Total Assets | 1.8 | 2.0 |

P: Provisional. Source: Monthly Returns of NBFCs-ND-SI.

that they disclosed the percentage of gold loans to the total assets in their balance sheet and maintained a loan-to-value (LTV) ratio not exceeding 60 per cent. Further, to address customer grievances and concerns, NBFCs were also asked to adhere to a revised fair practices code.

| Table-9 : NPA Ratios of NBFCs-ND-SI | | |
|---|---|---|
| | (Per cent) | |
| Item | As at end-March | |
| | 2012 | 2013 P |
| 1 | 2 | 3 |
| (i) Gross NPAs to Gross Advances | 2.12 | 2.20 |
| (ii) Net NPAs to Net Advances | 1.29 | 1.09 |
| (iii) Gross NPAs to Total Assets | 1.54 | 1.63 |
| (iv) Net NPAs to Total Assets | 0.93 | 0.80 |

P:Provisional.
Source : Monthly Returns of NBFCs-ND-SI.

*[Edited and abridged version from chapter on NBFIs in "Report on Trend and Progress of Banking in India 2012-13", Reserve Bank of India. * Matter in Italics in text is added to amplify.]*

## FINANCIAL INCLUSION

Expanding access to finance for small and medium enterprises, the unorganized sector, the poor, and remote and under served areas of the country through technology, new business practices, and new organizational structures; that is, we need financial inclusion.

We have to reach everyone, however remote or small, with financial services. Financial inclusion does not just mean credit for productive purposes, it means credit for paying a doctor to heal your child or to pay lumpy school or college fees. It means a safe mode of remunerated savings, and an easy way to make payments and remittances. It means insurance and pensions. It also means financial literacy and consumer protection. We have made great strides in inclusion, but we are still some distance from our goal.... We created a frugal Indian model, we need a frugal, trustworthy, and effective Indian model for financial inclusion.

The Dr. Nachiket Mor Committee is helping us think through possible models, and I am hopeful that when we outline measures based on its recommendations, our fine banks, NBFCs, IT companies and mobile players will rise to the occasion. The key will be to encourage entities to compete to serve the customers at the bottom of the pyramid. We should tolerate their making profit but not profiteering, and we will enhance our efforts in consumer protection and consumer literacy accordingly.

***Dr. Raghuram G. Rajan, Governor, RBI***

## SBFCs can play much bigger role in financial inclusion: Sinha

FIDC Director General Mr. Mahesh Thakkar with Mr. Yashwant Sinha, Chairman, Parliamentary Standing Committee on Finance at an NBFC Conference on "Promote Small Business Finance, Promote India" organised by Indian Merchants' Chamber at Hotel Taj, Colaba, Mumbai on 7th December, 2013

Small Business Financing Companies (SBFCs) can play a much bigger role in financial inclusion in India provided they are treated differently in terms of opportunity and regulatory environment. For that, there is an immediate need for formation of an independent regulator to formulate framework for sustainable and better functioning of Small Business Financing Companies (SBFCs) that has been doing a wonderful work for promoting growth of small business in India, Yashwant Sinha, former finance minister said. At the conference organized by the Indian Merchant Chambers (IMC) at Mumbai on 7 Dec., Sinha said that SBFCs should be treated differently from banks.

In the light of recent appointment of Nachiket More as head of inclusive Growth, the sector is looking for whole new look. There are multiple NBFCs working in the area of inclusive growth by lending to small businesses. SBFCs had taken more than three decades of an effort to build their infrastructure in the hinterland. This cannot be replicated by any institution or bank in very short period of time. The kind of work SBFCs are presently doing should be recognized and they should be supported through a facilitative regulatory environment to reach out to more number of small business units. If inclusive growth is to be achieved, it would be imperative to give more leeway for SBFCs to grow, Sinha added.

"If inclusive growth is to be achieved, there is no better solution than to give more scope for SBFCs to grow in this country."There is good amount of work has been done in secondhand truck financing, financing of agricultural equipment, small kirana shops and loans for productive purposes. "To address the difficulties faced by them, there is a need to promote with an appropriate policy framework. This understanding is crucial to unlock the most massive and most mass participated growth engine of the Indian economy," Shailesh Vaidya, president IMC said in his address.

With over 42 million enterprises accounting for nearly 50% of manufacturing and over half of exports, the small and medium enterprises represents perhaps the largest disaggregated business ecosystem in the world that directly employs over 100 million people. With the share of this non-corporate sector (which accounts for 45% of India's GDP) in bank finance only 30%, funding for small businesses continues to remain a major problem. [Business Standard, Dec. 9] ■

## Shadow Banking in India: Some Issues

The Financial Stability Board (FSB) has defined "shadow banking" as "credit intermediation involving entities and activities (fully or partially) outside the regular banking system". It is estimated that the global shadow banking system could have been running to $67 trillion at the end of 2011, which is 25 per cent of the total financial intermediation (FSB, 2012).

In order to control burgeoning shadow banking activities, the European Union has put in place some measures, which inter alia include prudential rules concerning securitisation, regulation of credit rating agencies, etc. Further, at the request of the G-20 countries, FSB has been framing policies to strengthen the oversight and regulation of the shadow banking system at international level so that the risks emanating from them may be mitigated.

In India, NBFCs, which perform bank-like credit intermediation activities, while remaining outside the banking regulatory framework, essentially embody the shadow banking system (Sinha, 2013). The form of "shadow banking system" (for example, hedge funds, proprietary funds, special investment vehicles and leveraged funds) as it exists in much of the developed world is largely unrelated to the Indian context. India is essentially a bank-dominated financial system wherein banks account for about 60 per cent of the financial sector's assets. The assets of entire "other financial intermediaries" (OFIs) accounted for approximately 24 per cent of bank assets as on March 31, 2012, whereas the assets of the NBFC sector alone accounted for 12 per cent, which denotes the significance of NBFCs in the shadow banking system (Sinha, op. cit.). Thus, as compared to other advanced economies, the size and activities of shadow banking in India are relatively smaller. Furthermore, unlike many advanced countries, in India, there is a well-defined regulatory framework for NBFCs and overtime, progressive and prudent regulatory measures have brought consolidation in the sector. Albeit, the global financial crisis in 2008 put some pressure on the NBFC sector in the country due to funding inter-linkages among NBFCs, mutual funds and commercial banks, these were duly resolved. The crisis, however, brought to the fore certain regulatory issues concerning the NBFC sector, particularly risks arising from regulatory gaps, arbitrage and systemic inter-connectedness. These are being continually addressed through appropriate regulatory measures. Recently, the Reserve Bank of India also appointed a Working Group to macro-map the shadow banking sector in India. The Working Group is expected to submit the report in due course.

*[Source: Report on Trend and Progress of Banking in India 2012-13, RBI.]* ■

## Deposit Frauds: Govt Proposes Insurance Cover, Hefty Penalties

To safeguard investors from fraudulent money-collection schemes, the government on 22 October proposed mandatory insurance cover for public deposits garnered by companies and hefty penalty of up to 18 per cent annual interest for defaulters. The premium of the deposit insurance cover would need to be paid by companies themselves and a penalty at an annualised interest rate of 15 per cent would be slapped on those which do not provide deposit insurance to their depositors. Besides, any violating company and each of its officers and other persons, who could be in default, would be punishable with be fined Rs 10,000, with a further fine for continuing default of Rs 1,000 for every day of contravention.

The proposed measures, which form part of the draft rules for the new Companies Act, also bar the companies from promising huge returns and hefty agent commissions in excess of the prevailing rates prescribed by RBI for such deposits. All deposit-taking companies would need to maintain a Deposit Repayment Reserve Account with a scheduled bank and this account would need to have at least 15 per cent of the total amount of deposits. [Business World/ PTI, 22 Oct.]

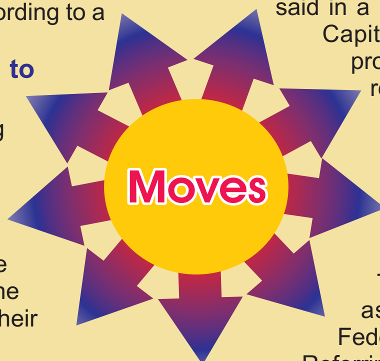
## National Co Law Tribunal likely to be operational by Apr 2014

The National Company Law Tribunal (NCLT), which would replace the Company Law Board, is likely to be operational by April next year, with the principal bench based in the national capital. The tribunal is to be set up under the Companies Act, 2013. The plan is to have to have about 12 to 13 NCLT benches in different parts of the country but a final decision is yet to be taken, according to a source. [Business Standard, 27 Oct.]

## Centre, states for unified GST authority to ease burden on traders and companies

The Centre and state governments are considering a single authority to administer the proposed Goods and Services Tax (GST) to avoid traders and businesses from being subjected to control at both central and state levels with regard to the same transaction. The proposed authority may be modelled on the Canada Revenue Agency and the Australian Taxation Office that administer GST in their countries.

To ease compliance burden for taxpayers, the Centre also wants the GST administration to be entirely based on self-assessment by taxpayers without state scrutiny. It reckons that businesses at successive points in a product's entire value chain claiming input tax credit will ensue that all businesses would file the correct return and pay due taxes. These plans are part of a indirect tax administration rejig at both the levels necessary to implement GST that would replace central taxes — excise and customs taxes (except basic customs duty) and service tax — and state and local levies, including the Value Added Tax (VAT). "The proposed single authority will have officers from both the union and state governments but their salaries would be paid by the authority. If officers draw salaries from different governments, they would serve the conflicting interests of respective governments, not to the cause of a single market that GST seeks to achieve," said a person privy to the discussions between the Centre and states. [Financial Express, 18 Nov.]




## Is it time to consider the economic impact of recent SC judgments?

Supreme Court should consider commissioning a rigorous economic impact analysis on key issues before giving its final ruling. Significant decisions by the Supreme Court often have significant economic consequences. At no other time has this been more obvious than the present.

Over the past two years, a number of judgments have, notwithstanding their rectitude, had enormous macroeconomic impacts. The banning of iron ore mining in Karnataka and Goa significantly reduced exports of ore, which declined by over $4 billion over a two-year period. The coal imbroglio led to the Supreme Court cancelling all the licences that were issued to private entities, making the country dependent on imports for the foreseeable future. India, with its enormous thermal coal reserves, is now importing over $8 billion worth of coal - mainly to run power plants, which, ironically, were set up close to domestic coal beds. Likewise, the 2G telecom scandal, which resulted in the cancellation of several licences, disrupted the plans of several major foreign telecom companies, which had seen India as an attractive market for expansion. Potential foreign investors will now be extremely wary of entering the country with the risk that supposedly legitimate agreements and contracts are suddenly declared illegal. All these instances have contributed to an enormous increase in the economy's external vulnerability, with the first two making a huge dent in the current account deficit and the third likely to make India a less attractive destination for foreign direct investment. [Business Standard, 23 Oct.]

## Now NBFCs 'name and shame' guarantors for loan defaulters

They have begun publishing photographs of such borrowers and their guarantors in newspapers joining banks in naming and shaming willful loan defaulters, NBFCs have also begun publishing photographs of such borrowers and their guarantors in newspapers. Tata Capital Financial Services Ltd, an NBFC entity, published pictures of two persons in connection with default in repayment schedule of Rs 15 crore loan granted to Jalandhar- based Private Limited company. "Subsequent to the availing of the said facility, the borrower and the guarantors have failed to adhere to the repayment schedule of the loan agreement and as such the account has become a non-performing asset," Tata Capital Financial Services said in a public announcement. In view of the default, Tata Capital Financial Services initiated various legal proceedings against them for recovery of money for realising legitimate dues. "Hence the public is hereby cautioned not to deal with the above mentioned collateral/security as well as with the said persons," the public announcement said. [Business Standard, Oct. 30]

## Call for new norms for asset-financing firms

There is a need for exclusive regulatory norms for asset-financing companies, according to the Federation of Indian Hire Purchase Association (FIHPA). Referring to the recent move of the RBI to modify regulatory norms for non-banking finance companies (NBFCs) and unincorporated entities engaged in asset financing, FIHPA President Umesh Revankar said common norms with others NBFCs might not work in asset-financing. "There is a difference between bankable/and non-bankable clients. In asset financing, we deal with a client whose cash flows are steady and regular," he told news persons on the sidelines of FIHPA's national convention at Hyderabad. The convention, attended by over 250 industry representatives, also discussed the need to diversity into new business segments such as business loans and advances to buy machinery. [Business Line, Oct. 2]

## Bigger role for NBFCs, PE firms

The RBI will ask the Government to consider participation of large NBFCs and PE (private equity) firms in auction of stressed assets. "Such entities will have to be provided authority under Sarfaesi Act on selective basis to deal with specific assets. However, a bank/NBFC cannot sell assets to its own promoted ARC or an ARC where it owns at least 10 per cent equity," RBI's discussion paper released on 17 Dec. said. RBI will also push for a bigger role to PE firms and other institutions to bring their expertise and additional funds in restructuring of troubled company accounts. [Business Line, Dec. 17]

The development comes amidst fear of bad loans hitting a record high of around Rs 2.9 trillion by the end of the fiscal or 4.5 per cent of the total banking assets. It also suggests an improvement in the current restructuring process. On the asset sales front, the RBI has shown readiness in allowing a lender to spread any loss over two years provided the loss is fully disclosed. [CNBC, Dec. 17] ■

## Lender to pay VAT on vehicles sold

The Calcutta High Court has dismissed a batch of writ petitions moved by Tata Motors Finance Ltd, ICICI Bank and Family Credit Ltd against the order of the West Bengal Taxation Tribunal, on the question of whether in respect of disposal of a vehicle for recovery of the loan, the lending firms are liable to pay tax as 'dealers' according to the West Bengal Value Added Tax Act. The tribunal had held they were dealers under the VAT Act, as the sales are in course of their business and such sales are effected in exercise of its statutory right under the Banking Companies Regulations Act. Non-banking finance companies were also held to be dealers under the circumstances. The lenders argued they were not owners and the borrowers were the owners of the vehicles sold. The firms also argued they were not agents of the borrowers. Rejecting their contentions, the court ruled that by hypothecation and getting the power of attorney from the borrowers, the lending firms have become agents. The judgment said: "When they are acting on the basis of power of attorney, it cannot lie in their mouth to say that they are not the agents of the borrowers."[Business Standard, 27 Oct.]

## Fine can't be more than twice the amount in bounced cheque: Supreme Court

Courts cannot impose a fine of more than twice the amount in bounced cheques, the Supreme Court has held, stressing that the limit is inviolable and should be respected. "Even in a case where the court may be taking a lenient view in favour of the accused by not sending him to prison, it cannot impose a fine more than twice the cheque amount. That statutory limit is inviolable and must be respected," a bench of justices T S Thakur and Vikramajit Sen said. It set aside the Calcutta High Court order which had directed a person to pay Rs 1,49,500 as against the cheque amount of Rs 69,500. The court after hearing his plea set aside the High Court order and reduced the amount of Rs 69,500 to Rs 20,000. [Economic Times/PTI Oct 16]

## Five elements in cheque bounce cases

The offence of issuing a cheque without sufficient amount in the bank has five ingredients and it is not necessary that all of the components should be present for prosecuting the drawer, the Supreme Court reiterated in its judgment in the case, Devendra Kishanlal vs Dwarkesh Diamonds Ltd. The five elements are drawing of the cheque, presentation to the bank, bouncing, giving notice to the drawer and his failure to make payment within 15 days. It is not necessary that all the above acts should be carried out in the same locality. It is possible that each of those five acts were done at different places. In this case, the business dealing was held at Mumbai, products were supplied from Mumbai to Delhi, cheques were handed over in Mumbai and were dishonoured by the bankers of Delhi and legal notice was issued from Mumbai. When the complaint was filed in Mumbai, it was rejected by the magistrate stating that he has no jurisdiction and Delhi was the right place. The session judge took a contrary view. The Bombay High Court held that the session judge was wrong. On further appeal, the Supreme Court ruled that the high court was wrong and the sessions judge was right in holding that the Mumbai magistrate has jurisdiction, as some of the transactions occurred there. [Business Standard, 1 Dec.]

## SC: No overkill in cheque bounce cases

Once the amount in a dishonoured cheque is paid with interest and compensation, the payee cannot insist on criminal prosecution of the directors of a firm who issued the cheque. The object of Section 138 of the Negotiable Instruments Act, which makes issuing of cheques without sufficient balance in the account an offence, is meant to "inculcate faith in the efficacy of banking operations and credibility of transactions. It is not meant only to punish the guilty," the Supreme Court has stated in the judgment, Lafarge Aggregates & Concrete India Ltd vs Sukarsh Azad.

In this case, directors of a construction company issued a cheque to Lafarge, but it was dishonoured by the bank leading to a criminal complaint before the magistrate. The directors moved the high court and offered to pay the amount with interest. The high court, therefore, quashed the complaint. Lafarge was not satisfied with that and appealed to the Supreme Court for prosecution of the directors. The court dismissed the appeal observing that the directors were willing to pay double the amount. It stated that Lafarge did not appear before the high court without sufficient reason, leading to an ex parte order quashing the complaint. Moreover, it approached the Supreme Court after a long lapse of time. Under these circumstances, "if the amount offered including interest and compensation was not acceptable to Lafarge, it is their choice," the judgment said, "but that would not allow them to prosecute the directors in pursuance of the complaint."[Business Standard, 24 Nov.]

## SC addresses issues on bounced cheques

The Supreme Court decided on two important questions relating to bounced cheques. Resolving the apparent conflict in views between high courts and different benches of the Supreme Court, a larger bench of the apex court laid down that (i) a complaint about a bounced cheque can be filed by a power of attorney holder, and (ii) the power of attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint if he had witnessed the transaction as an agent of the payee/holder in due course or possesses due knowledge regarding the transactions.

The second issue settled in the judgment, Escorts Ltd vs Rama Mukherjee, was whether the court within whose jurisdiction the bounced cheque was presented had jurisdiction to entertain the complaint. The court stated that a complaint could be filed in any of the jurisdictions where transactions took place, including the place of issue and the place of dishonour. [Business Standard, 22 Sept.]

## MCA Clarification on applicability of Section 185 of Companies Act 2013 and Section 372A of the Companies Act, 1956

The Ministry of Corporate Affairs [MCA] has received number of representations consequent upon notifying Section 185 of the Companies Act, 2013 dealing with loans to directors which are corresponding to Section 295 of the Companies Act, 1956. Section 186 of the Companies Act, 2013 is yet to be notified. MCA has now clarified that Section 372A of the Companies Act, 1956 dealing with inter-corporate loans continue to remain in force till section 186 of the Companies Act, 2013 is notified. This will mean that a Company may give loans to its wholly owned subsidiaries even where directorships are common. [Corporate Law Reporter, 20 Nov.]

Pratip Chaudhuri, former SBI Chairman, in an interview to Business Line in September had said that stay orders by DRTs (despite clear instructions from the Supreme Court that they cannot give stay orders on Sarfaesi) led to delay in recoveries.[Business Line, 22 Nov.]

## Bank fraud not a civil dispute

The Supreme Court set aside the judgment of the Madras High Court and ordered prosecution of former directors of a bank who were accused of fraud. Five persons who were managers of various firms were charge-sheeted for siphoning of large amounts from Tamil Nadu Mercantile Bank, one accused person alone presenting 1,278 cheques in sham transactions, with the help of five managers of the bank itself. They moved the high court to quash the charges and the court allowed it. The high court felt that the transactions were basically of a civil nature and the bank could go to the debt recovery tribunal to recover the lost money. The Supreme Court stated that it was not merely breach of contractual terms, but smacked of criminality.[Business Standard, 24 Nov.]

## Sarfaesi Act most effective tool to recover bad loans: Report

Amidst rising non-performing loans, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (Sarfaesi Act) was the most potent tool in the hands of banks for recovering bad loans. The Sarfaesi Act empowers banks and financial institutions to recover their non-performing assets without the intervention of courts. The Act provides three alternative methods for recovery of non-performing assets — securitisation, asset reconstruction and enforcement of security — without the intervention of courts. According to the RBI's Report on Trend and Progress of Banking in India, 2012-13, banks have recovered Rs 18,500 crore through the Sarfaesi route, which is 27.1 % of amount involved. DRTs enabled recovery of 14.0 % while Lok Adalats helped with 6.1 % of recovery. Also, in terms of efficiency, the Act has proved to be more effective than the debt recovery tribunals (DRTs) or mediation by Lok Adalats. ■

# Little-noted provision of Companies Act gives NBFCs parity with banks

- Vinod Kothari

The Companies Act 2013 has several provisions which are reactive–reactions to recent corporate scandals in India and elsewhere hence, the statute is laden with lethal powers of prosecution, may be abused to a large extent

A little-known provision of the Companies Act, 2013 gives non-banking financial companies (NBFCs) parity with banks. This will have far reaching consequences as NBFCs will be able to charge borrowers with "fraud provisions" of the Companies Act if the borrower has induced the lender to lend money by supplying misleading information. There are serious implications of fraud under the Act, with imprisonment for at least six months but going up to 10 years. Not only this. Since auditors of NBFCs are mandatorily required to report fraud, NBFCs may effectively force the auditors to report the fraud to the MCA.

### Genesis of the provision:

The genesis of the new-found parity granted by Companies Act to NBFCs is a newly inserted definition of "financial institution" in section 2 (39) of the Act, whereby financial institution is defined to include a bank, or any "financial institution defined or notified under the RBI Act". At first blush, one would have thought, the financial institutions defined under the RBI Act would include public financial institutions such as the IFCI or IDBI of yester-years. However, if one sees the definition of "financial institutions" in section 45I (c) of the RBI Act, read with section 45I (e), the definition clearly covers non-banking financial companies. Therefore, there is no doubt that the expression "financial institutions" under the Companies Act 2013 includes not only banks but also financial institutions.

### Fraudulent inducement to lend money:

Let us now see an innocuous looking provision in section 36 of the Companies Act. The section deals with fraudulent inducement to invest money. The section provides for prosecution for fraud, if any fraudulently induces an investor to lend. The language of the law uses words "knowingly or recklessly makes any statement, forecast or promise, which is false, deceptive or misleading, or deliberately conceals any material facts". The section is to be applied where promoters may have made false or misleading statements and induced investors to invest money by making tall claims.

Large part of the section has been there in the Companies Act 1956 as well – however, there is an interesting addition here – *it now includes not only investments by shareholders, by also includes credit facilities by banks or financial institutions*. So, read in context of credit or borrowing facilities, if any person (obviously persons in charge of management of the company) knowingly or recklessly makes any statement, forecast or promise, which is false, deceptive or misleading, or deliberately conceals any material facts, and thereby induces a bank or NBFC to lend money to the company, such person is liable for fraud provisions of section 447.

### Use of Fraud provisions by NBFCs:

The Companies Act 2013 is heavily loaded with provisions dealing with fraud. It has over 300 references to fraud, and introduces section 447 which fixes a minimum imprisonment of 6 months, going up to 10 years, and a monetary fine of at least the amount involved in fraud, and going up to 3 times the money.

The Act is laden with anti-fraud measures. The Serious Frauds Investigation Office, almost equivalent of a corporate CBI, is equipped with powers to arrest without warrant, and the offence is non-bailable. The auditor of the company has mandatorily to report frauds to the MCA if he has "reasons to believe that a fraud exists in relation to the company".

Having been defined as a "financial institution", enjoying parity with banks, NBFCs may, therefore, make a case, under appropriate circumstances, that the borrowers made deliberately false or misleading statement to induce the NBFC to lend or grant a credit facility. Therefore, the borrower, or officers of the borrower, should be liable to charged with fraud. The prospect of fraud reporting, or fraud prosecution, will be strong enough deterrent for a borrower to listen to an NBFC very seriously.

### Other implications of bank-NBFC parity:

The newly granted parity with banks as "financial institutions" has several other implications for NBFCs too.

First of all, if there is a default in payment of a credit facility to a bank or NBFC, a company is prohibited from doing any buyback of shares. This is section 70.

Second, the provisions for appointment of nominee directors, as a part of lending contracts, now extends to NBFCs too, if the requisite power is there in the loan agreement.

That is to say, where the loan agreement empowers, an NBFC may appoint its nominee on the board of the borrower company.

While the newly-inserted parity is a great status-booster for NBFCs, equating borrower-lender disputes with frauds undermines the gravity with which the word "fraud" is associated. Needless to say, the Companies Act 2013 has several provisions which are reactive – reactions to recent corporate scandals in India and elsewhere – hence, the statute is laden with lethal powers of prosecution, which may be abused to a large extent. [Moneylife, 28 Oct.] ■

# Small loan credit sector widens potential market for NBFCs: Analysis

The MSME small loan credit market for non-banking financial corporations in India finds that the market size stood at 7,203 crore in financial year 2012 and estimates it to reach 38,417 crore in financial year 2020 at a compound annual growth rate of 23.3 percent, according to a new analysis from Frost & Sullivan.

Micro, small, and medium enterprises (MSMEs) are the key drivers of the Indian economy. As per the 4th annual census of MSME market, it provides employment to about 60 crore people and accounting for 45 % of the country's manufacturing output as well as 40 % of its exports. Despite their obvious importance, only around 5 % of unregistered and 10 % of registered MSMEs have access to finance from banks and financial institutions. This has opened up substantial opportunities for non-banking financial corporations (NBFCs) in the lucrative MSME lending market. As a result, the small loan MSME credit market for NBFCs is expected to grow five times its size from 2012 to 2020.

According to the industry sources, MSMEs in India have a total finance demand of 32.5 trillion, of which the addressable market for financial institutions is 11.8 trillion. However, only 7 trillion is currently provided by the financial institutions. "This demand-supply gap of close to 4.8 trillion has broadened the potential market for NBFCs in the country, which they need to capitalize on through innovative business models," said an analyst from Frost & Sullivan.

Frost & Sullivan is a growth partnership company which works in collaboration with clients to leverage visionary innovation that addresses the global challenges and related growth opportunities.

NBFCs will face intense competition from public, commercial and private banks in the Indian MSME segment, as these organizations offer loans at lower interest rates and are backed by a government credit guarantee scheme. In addition, funding costs are higher for NBFCs as they rely on banks, mutual funds and public deposits for financing. This compels them to operate with low interest margins to maintain the balance between higher cost of funds and interest rates.

To counter this challenge, NBFCs must lobby with the government for access to cheaper international credit and alternative modes of financing. It will be critical for them to focus on lending to a particular industry, along with enhancing credit underwriting and loan sanctioning mechanisms to improve asset quality.

"Decreasing operating costs by refining collection mechanisms, maintaining strict control over overheads and effective risk management will be the key strategies for the growth of NBFCs in India," observed the analyst.

"Moreover, NBFCs need to foster brand equity based on customer needs, reduce paperwork for MSMEs and limit reliance on leverage to cultivate customer loyalty and thrive in the market." [Nitasha Natu, TNN, July 29] ■

## SEBI relaxes norms for infrastructure debt funds

SEBI on 29 Nov.relaxed norms for long term foreign investors eligible to put money into infrastructure debt fund (IDF), as part of efforts to attract more overseas investments into the country. IDFs, which can be set up like mutual funds, can invest funds collected for their schemes in bonds of public financial institutions and infrastructure finance companies. Now, foreign feeder funds—that have at least 20% of their assets under management being managed by certain class of long term overseas investors, would be allowed to invest in IDFs. The list of such long term investors comprise foreign central banks, government agencies, sovereign wealth funds, international/multilateral organizations/ agencies, insurance funds and pension funds, according to SEBI. [Livemint/PTI 29 Nov.]

## SEBI debating allowing raising funds via convertible bonds

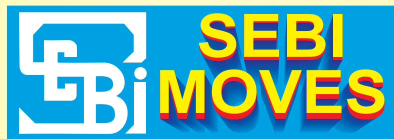
As IPO market still remains tepid, forcing companies to borrow costly funds from other sources, capital markets regulator SEBI on 23rd Oct., said it is looking at allowing them to issue convertible debentures to raise money. "The Primary Market Advisory Committee (PMAC) of SEBI is currently debating an alternative route to allow corporates to issue convertibles (debentures), which after certain time must be converted into either equity or other debt instruments," SEBI chairman UK Sinha said. [CNBC, 23 Oct.]

## SEBI allows infrastructure debt funds & NBFCs to file shelf prospectus for NCDs

SEBI decided on Dec.24 to allow NBFCs, registered with RBI, housing finance companies registered with National Housing Bank (NHB) and entities which have listed their shares/debentures in the stock exchanges for at least three years, to file shelf prospectus. In addition SEBI has allowed issuers authorised by the notification of CBDT to make public issue of tax free secured bonds to come with shelf prospectus.

It has, however, added a few more provisos, including that such NBFCs should have net worth of Rs 500 crore or more, track record of at least three years of distributable profits, credit rating of not less than "AA-" and no default history or regulatory action pending with RBI, SEBI or NHB. It is stipulated that only a maximum of four issuances can be made under a shelf prospectus. Further, companies filing a shelf prospectus with the Registrar of Companies are not required to file prospectus afresh at every stage of offer of securities, within the period of validity of such shelf prospectus i.e. one year. They are required to file only an information memorandum, containing material updations, with respect to subsequent issues.

At present, the Companies Act allows only banks and public financial institutions to file shelf prospectus. [vccircle.com, 27 Dec,]




## IPO grading

SEBI has made grading for IPOs voluntary against the existing norm which makes it mandatory. [vccircle.com, 27 Dec,]

## SEBI (Settlement of Administrative and Civil Proceedings) regulations

While the regulations lay down the stand-alone common substantive procedure for settlement of administrative and civil proceedings under all the securities laws, serious offences such as insider trading, etc. are excluded from the scope of settlement.

The regulations provide for the guiding factors for dealing with the settlement process. They also provide for terms of settlement in monetary as well as non-monetary terms or combination of both. [vccircle.com, 27 Dec,]

## SEBI plugs loopholes in share-pledging disclosures

SEBI has tweaked the share-pledging disclosure format to ensure all types of encumbrances on shares are disclosed by companies. A number of companies were using non-disposal undertaking (NDU) and other innovative methods to circumvent the mandatory disclosure requirement. Under SEBI's takeover regulations, promoter-shareholding, which has been pledged, should be reported with the stock exchanges. UK Sinha, chairman, SEBI, said, "We found that using very innovative methods, advised by very powerful legal firms, companies came out with a method called NDU and various other methods of creating encumbrance. We have not created a guideline, stating any sort of encumbrance has to be reported."

Typically, an NDU is an agreement where shares are transferred into a new demat account for the purpose of pledging. The beneficial ownership on the shares, however, doesn't change and also the new entity (transferee) can't dispose of the shares. Market experts said some companies were forming special purpose vehicles (SPVs) to transfer a part of their shareholding before pledging to avoid making disclosures. Last month, SEBI had issued a circular directing companies to make disclosures about the nature of encumbrance — pledged, lien or NDU. The regulator had also asked companies to disclose not just promoter-encumbered shares but also of persons acting in concert (PAC). [Business Standard/Sifi Finance, 24 Nov.]

## SEBI cuts paper work for public issues

Investors in IPO/FPOs now would not have to pour over voluminous prospectus/application forms. The SEBI on 23 Oct. asked companies planning to float IPOs/FPOs to give them an abridged prospectus with key information, and provide generic details in a separate document. It also asked merchant bankers to the IPOs/FPOs to print an information document which is generic in nature and not specific to the issuer. Lead managers will now have to print five per cent of the print order of the prospectus/application forms or 50,000 copies, whichever is lower. As a result, general information need not be provided in the abridged prospectus, said SEBI. The general information document would contain information on IPOs/FPOs, eligibility criteria, mode of applying for the issue, allotment and refund procedure.[Business Line , Oct.23]

## SEBI seeks better disclosures from companies

SEBI Nov. 18 said it would empower the country's exchanges to enforce rules on corporate disclosures at listed companies, aiming to improve transparency, especially of market-sensitive information. The SEBI would allow the country's stock exchanges to set up a separate monitoring unit for corporate disclosures and report instances of non-compliance to the regulator. SEBI also requested exchanges to beef up their compliance departments and authorised them to seek additional disclosures from listed companies if needed.

Listed companies in India are currently required to disclose details about their shareholding pattern, financial results and other market-moving information regularly, but enforcement has been lax. "Concerns have been raised that even though listed companies make disclosures to stock exchanges within the time frame stipulated under the Listing Agreement, the contents of the disclosures made by such companies are not adequate and accurate," SEBI said in a seven-page order.

Last month SEBI announced more stringent rules to ensure that promoters report their trades in their company's securities, and earlier this year also made it mandatory for listed companies to have at least 25 percent of shares held by the public. [REUTERS/Sify Finance, Nov 18.]

## SEBI to accept UIDAI e- KYC as address, identity proof

Market regulator SEBI said on Oct. 9 that it will accept e-KYC (Know Your Client) service of UIDAI as a valid proof of identity and address for opening accounts with brokerage firms, mutual funds, portfolio managers and other capital market entities. However, the client would have to authorise the intermediary to access his data through UIDAI system. [Business Standard, 9 Oct.]

## SEBI to make frauds disclosures a must

India's capital market regulator plans to announce stringent rules that will make it incumbent upon companies to make disclosures relating to fraud, litigation against senior executives and their financial implications. These are among a series of changes that will help improve transparency and corporate governance standards. According to the guidelines likely to be announced by the SEBI companies will have to make public any fraud committed by directors and employees, litigation against them and the impact of this on financials, reveal details about shareholders and loan agreements besides providing estimates of losses caused by natural calamities.

SEBI also intends to tighten rules on disclosures related to the filing of shareholding patterns and financial results by listed companies, said an official familiar with the matter. In case of a loan agreement, firms will have to reveal details about the nature of the debt, total outstanding amount and security provided and the impact of any default on financial performance. Companies will also have to spell out details of loan realignment under corporate debt restructuring, or CDR. [ET Bureau Nov 18]

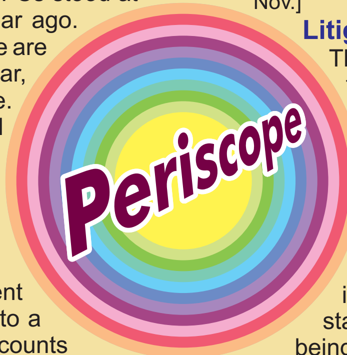
## NBFCs better placed to withstand pressure of bad loans: RBI

NBFCs, are better placed than banks in terms of capital requirement and ability to withstand the pressure of bad loans, the RBI has said in its 'Financial Stability Report - December 2013' released on 30th Dec. According to the report, which incorporates the findings of a stress test conducted on the sector, the NBFCs have a higher level of capital adequacy or capital to risk-weighted assets ratio at 23.5% compared with 15% (comprising both tier-I and tier-II capital) mandated by the central bank. As per the RBI guidelines, an NBFC must have Rs 15 for every Rs 100 that it lends to small borrowers.

The test was carried out for the period ended September on two parameters: a doubling of gross non-performing assets or bad loans and a five-fold spike from the actual levels. In the first instance, the capital ratio fell 1.1 percentage points to 22.4% and, in the second case, it dropped 4.9 percentage points to 18.6% but still remained 3.6 percentage points higher than the benchmark. "It may be concluded that even though there was a shortfall in provisioning under both scenarios, the impact on CRAR (capital-to-risk asset ratio) is negligible," the RBI said in the report.

Banks are required to maintain a minimum CRAR of 9%, while the ratio for NBFCs is 15%. Over the past few years, the rising pile of bad loans has eroded the capital base of the lenders as they are supposed to make provision for bad loans. According to an estimate, gross bad loans of 40 listed banks rose 37% year-on-year to Rs 2.3 lakh crore at the end of September. The government had earlier said that it planned to infuse Rs 14,000-crore capital in 20 public sector banks in 2013-14.

The gross bad loan ratio for non-deposit taking NBFCs stood at 3.5% on September 30, 2013, against 3.1% a year ago. "The margin of profitability is higher for NBFCs as we are in the niche segment," said Umesh Revankar, managing director of Shriram Transport Finance. "Banks do high leveraging and that's why capital adequacy ratio is (relatively) poor. Their ticket (loan) size is much bigger than us (NBFCs)." [ET Bureau Dec 31]




## Delinquency rates in comm vehicle segment up in H1

Delinquency rates in the commercial vehicle segment have increased in the past six months, according to a report. “Delinquencies by a number of CV loan accounts that are more than 30 days outstanding have rose to 13 percent from around 11 percent, a growth of 18 percent in the first half of 2013,” credit information service provider Equifax Credit Information Services said in a report. [CNBC, 21 Oct.]

## E-payment of tax above Rs 1 lakh a must

In a bid to increase compliance and widen the tax net, the government on Nov.27 made it mandatory for traders to make online payment of excise duty and service tax for amounts exceeding Rs 1 lakh with effect from January 1, 2014. Earlier, those with dues of Rs 10 lakh and above were required to electronically pay their taxes. E-filing of service tax and excise duty will help the government make a smooth transition to GST. Since about 80 per cent of the taxpayers who were not mandated to file e-returns were already doing so, the finance ministry thought of making it compulsory to include others in the category.[Business Standard, 28 Nov.]

## India’s corporate tax rates among highest globally: World Bank, PwC report

Tax rates for companies in India are among the highest in the world and the number of payments is also more than the global average, putting the country at a low 158th rank on the Paying Taxes 2014 list. However, time taken for tax payments is relatively less in India, which is rated ahead of China and Japan where it takes 318 hours and 330 hours, respectively, to comply with tax regulations, according to a World Bank and PwC report.

According to the report, the total tax rate in India can be as high as 62.8%, there are as many as 33 payments under the head of profit, labour and other taxes, and the time taken to comply with taxation requirements could be as much as 243 hours. On a global average, a company takes 268 hours to pay taxes, makes 26.7 payments and has a total tax rate of 43.1%. The report noted that in South Asia, India is the only economy (of eight) with a complete online system for filing and paying taxes. [ET Bureau Nov 26]

## India: Motor premiums to shoot up by at least 40%

Third party motor insurance premium rates are likely to soar by at least 40 percent as the insurance regulator has raised the quantum of funds which non-life insurers have to set aside to meet high claims in this business line. In a notice to general insurers, the IRDA increased the provisioning to 210 percent of claims from 140 percent. The increase is because of the claims ratio exceeding 150 percent in the motor business, according to Indian media reports. According to Mr KG Krishnamoorthy Rao, MD & CEO of Future Generali India Insurance, the general insurance industry would have to provide around INR4.5 billion (US$72 million) in additional capital.

Mr R Chandrasekaran, secretary of the General Insurance Council which represents non-life insurers, says that the steep increase in provisioning is a clear indication that premium rates, which are set by IRDA, are inadequate at current levels. A senior general insurance executive said while the insurers had previously sought a 60-65 percent rise in premiums in the third party motor segment, only a 20 percent hike was granted. General insurers incurred total claims of INR175.89 billion in the motor segment in 2012-13, according to data released by the Insurance Information Bureau of India. Third party claims stood at INR91.77 billion whereas own damage claims were INR84.12 billion. While third party insurance is compulsory, own damage motor insurance is not. There is no cap on the amount of third party compensation and insurers have to pay amounts awarded by the courts. [Asia Insurance Review/eDaily 28 Nov.]

## Litigating with tax payers’ money

The Supreme Court has dismissed a batch of appeals from the Commissioner of Income Tax, expressing the hope that the revenue department will implement its litigation policy with “a little more practically and a little more seriously”. Excel Industries claimed deduction benefit, which was denied by the authorities on the ground that any benefit arising from a business is income. In this batch of cases, the court noted the authorities had accepted deductions in certain years, but in other years they took a contrary stand and moved the Bombay High Court and lost. “That being so,” said the Supreme Court, “the revenue authorities cannot be allowed to flip-flop on the issue and it ought to let the matter rest, rather than spend the tax payers’ money in pursuing litigation of its own sake... There was no need for it to continue this litigation when it was quite clear that not only was it fruitless but also that it may not have added anything to the public coffers”. [Business Standard, 27 Oct.]

## Rural finance – from a savers’ to a spenders’ economy

India’s rural economy has outperformed in the past five years, amid the slowdown in the country’s overall growth. Rising minimum support prices and rural employment schemes have lifted rural incomes, while rising gold and land prices have spurred a wealth effect. The overall improvement in sentiment has continued to boost rural spending. Going forward, a good monsoon this year and national elections next year will further boost rural consumer cash flows, which will continue to drive demand. Rural customers are also more sensitive to their own cash flows than interest rates, which imply it has decoupled in the current macro environment. Lastly, while asset quality risks are high, in the current context, we believe these risks are much less. [HSBC Global Research, 9 Oct.]

## India Inc’s credit quality on slippery wicket: CRISIL

CRISIL’s credit ratio — or the proportion of upgrades to downgrades — for the first half of the current fiscal ended September 30 has come in at 0.87 times. The ratio has stayed under 1 for the last two years. This time around, there were 478 downgrades to 417 upgrades. As much as 86 per cent of the downgrades were due to demand slowdown and stretch in liquidity (caused by delays in receivables). CRISIL believes these problems, along with high interest rates, mean credit quality of corporates will remain weak in the near term. [Crisil press release, 7 Oct.] ■

## NBFCs need a regulator as a developer, says Yashwant Sinha

Mr. Yashwant Sinha, Chairman, Parliamentary Standing Committee on Finance at NBFC seminar organised by Indian Merchants' Chamber on 7th Dec. at Mumbai observed that the RBI is not taking enough care of NBFCs as required and many legitimate demands of the sector are being overlooked. There is an urgent need to start Refinance Institution for NBFCs or else, SIDBI can open refinance window for this purpose. If RBI is too busy with banks, a separate regulator may be created for NBFCs, Mr. Sinha, opined. The nomenclature of NBFCs which start with negative (Non) should also be changed to, say, SBFIs (Small Business Financial Institutions), Mr. Sinha added.

## Memorandum to Parthsarthi Shome Forum

FIDC submitted a memorandum on Oct.8 to the Forum constituted by Ministry of Finance under the chairmanship of Dr. Parthasarathi Shome to address tax related issues mainly for granting tax-parity with banks by extending certain tax benefits which are available to banks, public financial institutions [PFIs] etc. but have been denied to NBFCs. FIDC also took up issues affecting indirect tax.

## Restructuring Benefits to NBFCs

RBI has agreed to include NBFCs under the ambit of restructuring benefits in the second quarter review of the Monetary Policy released on Oct. 29. It is finally expected to bring in good news, says Raman Aggarwal former co-chairman, FIDC. Para IV, Part - B of the Monetary Policy states that detailed guidelines shall be issued by December end, he added. Finally, FIDC's efforts have resulted in making RBI aware of this important aspect as FIDC has been aggressively following it up with RBI for the last 18 months, he said. "During the AGM of FIDC held in Mumbai last month, Principal Chief General Manager of Deptt. of Non-Banking Supervision had stated that RBI is seriously considering our request to give restructuring benefits to NBFCs also, as available to banks," he said.

## FIDC moves helps NBFC sector

Inclusion of NBFCs in SARFAESI is under active consideration of authorities, a privy to the source said. This is a long awaited action by NBFCs which was also supported by Smt.Usha Thorat panel. About the FIDC demand for inclusion of HP and loans as well as domestic equipment eligible for external commercial borrowings [ECBs] after the policy announcement was made by RBI allowing ECBs for leasing for the Asset Financing NBFCs is being received a fresh look, he added. FIDC representation about revising guidelines for NCDs is being considered by the RBI and a policy change announcement is likely to be soon, said Raman Aggarwal, former co-chairman of FIDC and Shri Mahesh Thakkar, director general of FIDC after meeting a top official of the RBI.

However, no change is expected for policy regarding Securitisation and Priority Sector status for NBFCs. FIDC proposes to take up the issues with Nachiket Mor Committee set up by RBI, said Shri Thakkar.

It may be recalled that FIDC had represented to SEBI for allowing NBFCs to raise debt through shelf-prospectus as is permitted to banks and public financial institutions. The SEBI has decided on 17th Dec. to allow NBFCs and other listed companies to make frequent debt issuances after filing for a shelf prospectus. As per the existing norms, companies, including NBFCs, have to seek fresh approvals every time they need to sell debt.

**FIDC In Action**

FIDC Managing Committee Meeting in progress at Kolkata on 9th December 2013

RBI decision to consider under definition of 'Asset' only those assets which generate revenue enabling the borrower to repay excludes private cars and two-wheelers. FIDC will take up the issue with SIAM and Ministry of Finance. A representation on this issue, giving details of how two-wheelers are being used for the purposes of commerce, agriculture, dairy etc. is proposed to be made.

## Develop regulatory framework for NBFC-SMEs

Availability of bank financing and other funding sources such as public deposits, NCDs, securitization to NBFC-SME should be significantly expanded to enable them to provide loans to credit starved SME sector and low income families, said Mahesh Thakkar, Director General, FIDC to Nachiket Mor Committee on 'Comprehensive Financial Services for Small Businesses and Low Income Households'.

In order to 'substantially increase availability of credit to the SME enterprises and low income families appropriate regulatory framework should be developed for NBFC-SMEs to expand this sector and attract more capital,' he added. More over 'NBFCs should be exempted from the requirement of maintaining debenture redemption reserve in case of a public issue of debentures' akin to banks and PFIs, Mr. Raman Aggarwal said while giving views on capital market access for NBFCs. *[see item titled: SEBI allows infrastructure debt funds & NBFCs to file shelf prospectus for NCDs on page 10]* NBFC-SME's portfolio would consist of almost entirely priority sector loans, since they are focused on serving small business and low income families. But any imposition of quotas on all NBFCs would be counterproductive. However, they could be incentivised to commence such lending activities, FIDC has suggested.

## Revival of Leasing in India, hope lies in GST

Mr. Sunil Kanoria, SREI Infra Fin. suggested at the meeting to work out the model on how to revive Leasing in India, the tool which is popular in the western world. Mr Umesh Revankar, MD, STFC suggested that once GST comes, perhaps, all issues might be resolved and Leasing will again become attractive financial option.

## A Credit Bureau keen to serve small and medium NBFCs

The NBFC members wanted to become part of some credit bureau where they can provide and receive the data on defaulters have an opening, indicated Mr. Raman Aggarwal. One of the companies in this business has approached him and they are keen to enroll NBFCs, specially small and medium NBFCs as their members. For this they propose to offer attractive rates. FIDC is likely to view the proposal of credit bureau.

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