

## Hot off the Press(Coin): Inside a changing Initial Coin Offering

Dubious legality, flip-flops, and a lack of transparency. This supposed solution could come with its share of journalism's worst problems



The news business in India, like anywhere else, is fighting two battles. Of legitimacy, thanks to the proliferation of fake news and increasing corporate ownership; and of revenue models, thanks to the digital onslaught and shifting reader habits. A purported saviour, according to PressCoin—which describes itself as “crypto-economy for an independent press”—lies in the new cryptocurrency, ‘NEWS’. PressCoin is offering it to collect funds for the development of a news dissemination platform on

blockchain. You read it right; it's the same distributed ledger technology (DLT) most famously known for its association with Bitcoin.

Using blockchain technology, PressCoin wants to build “an entire system that supports a diverse array of independent media companies upon a mesh of interconnected utilities, tools and capabilities,” says a white paper on the PressCoin website.

“Blockchain has multiple uses in a variety of ways in a complex system, a way to transparently store information,” says Amit Rathore, co-founder and director of content at PressCoin. “We are creating a for-profit ecosystem by leveraging the decentralised model.”

An initial coin offering (ICO) of its token, NEWS, which aims to raise \$100 million, is currently underway. In plain speak, an ICO is a form of crowdfunding, where companies raise capital by issuing their own cryptoasset in exchange for established cryptocurrencies like Bitcoin, Ethereum and Litecoin, or local currencies like the Rupee or the Dollar.

London-based contributor to Vice and other periodicals, Nafeez Ahmed is another co-founder and director of Media/Journalism Strategy and Editorial Curation at PressCoin Plc. which was registered in the UK on 31 October 2017.

The company lists journalists like veteran Australian war correspondent and documentary filmmaker John Pilger and independent Australian journalist Antony Loewenstein as advisors. It also had noted Indian journalist Barkha Dutt listed as an advisor, at least when The Ken first came across the project a few weeks ago. It's another matter altogether that when we reached out to Dutt to learn about PressCoin and her involvement in the project, she appeared baffled. “I am not sure what this is, in a meeting right now, let me look it up,” she said. But more on that later.

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The ICO bug bit India last year, with Indico's maiden token sale, which began on 1 October 2017, through which the social services-focused startup raised 900 Ethers (Ethereum tokens), which is equivalent to Rs 7.8 crore as per the current price of Ether. A month later, another ICO by Indian peer-to-peer vehicle-sharing platform Drivezy began. Through the sale of its token Rentalcoin, Drivezy aims to raise a total amount of \$20 million (~Rs 127 crore).

PressCoin's ICO began on 12 November 2017 and ends on 21 January 2018. It's looking to raise \$100 million by issuing 100 million NEWS tokens worth \$1 each. If it successfully raises the target amount, it will become the ninth largest ICO in the world, as per ICO aggregator site TokenData.

PressCoin had aggressively marketed its product in India and enabled the purchase of its token in exchange for both local currencies as well as cryptocurrencies. The minimum purchase amount for an INR transfer was Rs 50,000, and \$1000 for USD. Meaning, to participate in the ICO, one had to buy tokens worth Rs 50,000 or \$1000, which is way more than what ICOs usually ask. For example, if one wanted to participate in the token sale of the next-gen banking platform Cashaa, a minimum limit of \$30 or its equivalent in other currencies was set.

In another departure from the norm, the nature of the NEWS token issued by PressCoin is unique—a hybrid of a utility token and equity shares. Since the ICO boom in 2017, startups have usually tried to raise money by issuing cryptoassets disguised as utility tokens in an attempt to claim that their proposed coins are not securities. This is done because issuing securities creates a lot of legal hassles with market regulators around the world.

When asked about PressCoin's approvals from the US Securities Exchange Commission for issuing a hybrid token, Rathore said, "There is no direct need for the [US] SEC and any other approval" as "PressCoin Plc is a UK-based company and for any fiat related transaction [to buy NEWS tokens] you [only] need to provide your Know Your Customer [documents]."

"It is not like a UK company will go and [seek approval] in every other country, they will just follow the rule and do what has to be done. The right way for all ICOs to work is by becoming regulated and equity-based, you are raising public money, you should give back the value you create."

After the above statement on 8 January, Rathore contradicted himself and said they'd unlink the asset part from the token and make it pure utility. "We'll give back anybody's money who is not happy about it," he added. On 9 January, the very next day, PressCoin posted an update on its website saying "PressCoin now pure utility tokens". As hurried as it was, it still has a problem. There is no mention of a grievance redressal mechanism which is necessary for people to get their money refunded if they are not happy with the change in the token.

On 13 January, The Ken observed that PressCoin did not respond to its email with 19 questions but changed the white paper on its website. Any mention of NEWS being an asset-backed or equity token has been removed. This change comes just a week before the ICO is about to end. And apart from the blog, this information has not been shared on the company's social media pages. (A copy of the old white paper has been shared at the end of this story.)

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NEWS has a bit of a problem

“Call a token what you may, the law looks at what the token really is, and what it seeks to do. If a token is in substance a ‘security’, then labelling it a ‘utility’ does not change anything. The US SEC and many other regulators around the world are clear about this position under the law,” says Anirudh Rastogi, Managing Partner at TRA, a law firm advising on cryptocurrency ventures and ICOs.

Recently, the US SEC, in the matter of the Munchee ICO, went two steps further to declare a ‘utility’ token (by most existing parameters) a ‘security’ token. It did so on the premise that the offeror, through its marketing activities, gave rise to an expectation among its investors that the tokens shall appreciate in value over time, and therefore were akin to securities.

In the case of PressCoin, the company was not shy of branding its NEWS token as a ‘security’.

On the unique property of the NEWS token, the PressCoin (old) white paper says, “It combines the best of utility tokens [such as Bitcoin] with the best of equity shares [such as a share of a public company].”

Even considering the NEWS tokens to be a hybrid that is both a utility and a security, says Rastogi, it will still be treated under law as a ‘security’. Further, in its advertising campaigns in India, PressCoin makes claims such as “Missed the Bitcoin boom, don't miss PressCoin”.

“In raising expectations of an appreciation in value of the tokens over time, the PressCoin ICO may also fail the Munchee test. A securities offering to US citizens or residents will need to be compliant with US securities regulations unless exempted,” Rastogi says.

While buying the NEWS tokens from the company’s website, it does ask you if you are a US citizen, and, if so, if you are an “Eligible Contract Participant” or “ECP”.

On this matter, Rastogi says, “The US securities laws provide various exemptions for offerors if the securities offering is targeted to select individuals; high net worth investors for example that have the sophistication to evaluate investment risks. It is possible that Presscoin is attempting to limit the offering to ECPs to benefit from some exemption from registration under the US securities law. What exemption it is, is unclear to me and was not explained in the white paper, last I checked.”

But an interesting observation is that irrespective of whether you say yes or no, the website displays the money transfer details in any case. Nowhere on the website does it say that if you are, in fact, an Eligible Contract Participant, then you may or may not participate in the token sale.

When asked what the consequences of such a public offering could be, Rastogi says that an offering such as this is likely to run into trouble with the US SEC, unless the offerors have complied with the necessary filing requirements. The (old) white paper, however, does not suggest that they have done so.

It’s not over yet. More regulatory hurdles

In India, though there is no formal framework for crowdfunding, which is what ICOs essentially are, there are many provisions made by market watchdog Securities and Exchange Board of India (SEBI) to protect consumers.

“The Securities Contracts (Regulation) Act, 1956 defines ‘securities’ in a wide and inclusive manner. Tokens which allow for certain attributes such as marketability, and earning of an income stream akin to dividends may come within this definition,” says Arvind Ravindranath, who practices law with the Technology Media and Telecom team at Nishith Desai Associates. “Once it gets classified as a security, SEBI, under the SEBI Act, 1992, gets the power to regulate it, subject to certain requirements such as the issue size, etc.”

As for the specific rules for equity crowdfunding in India, let’s refer to the Section 42 of the Companies Act, 2013. It says that if a domestic company makes a securities offering to more than 200 persons in one financial year, it will be considered an offer to the public. “Any such company will have to draft and file a prospectus containing offer of the securities with the Registrar of Companies and comply with provisions of the securities laws.” Failing this, it can be fined.

As opposed to this, foreign companies “under Section 387, 388 and 389 of the Companies Act provide that no person shall issue or circulate in India any prospectus offering to subscribe for securities of an overseas company”. This, “unless the prospectus complies with certain specific requirements laid out under the Companies Act, including its filing with the RoC for registration.”

The buck does not stop here.

For Rupee deposits from Indian residents, the website displays an Indian bank account in the name of “First Futuristic Shared Services Private Limited.” What the relationship between First Futuristic and the offeror is, is unclear.

Jitender Tanikella, Partner at TRA says that Section 73 of the Companies Act and the so-called deposit rules provide that no company shall invite or accept any deposits from the public unless such a company qualifies for the exceptions provided under the Act. Presscoin may not be eligible for these exceptions. The company did not respond to questions on this.

“Deposits for purchase of securities are exempted so long the offer for securities is in compliance with the Companies Act. But the offer is likely not in compliance with the Act, as I explained,” Tanikella says.

There are also other issues in the manner in which the ICO is planned and being carried out. Like there is no clarity on who will be the fund-keeper of the ICO; there is no Github repository where people with experience in programming could analyse some of the code and the lack of technical details about the project.

Ideally, the money raised from the ICO should live in an escrow account such that if the required amount is not raised, the money will be refunded.

When asked about this, Rathore wrote back saying that for the ICO, Cointype is the fund-keeper, and post-ICO, it will be moved into the PressCoin corporate bank account.

CoinType is a zero-fee bank and exchange for fiat and crypto in which Amit Rathore is an investor and board member. So, in short, the funds are with the developing team and not with an escrow service.

Is blockchain a saviour for journalism?

Revenues will be shared with all participants in the PressCoin system. Investors, writers, curators, contributors, commenters, poll-participants, designers, programmers, and all others will get paid according to their contribution, which is tracked seamlessly on the PressCoin blockchain, claims the company.

While today, Bitcoin is the single largest user of blockchain technology, there are many fields where blockchain can do better than conventional databases. Some think media is one. And PressCoin is not the only venture which wants to solve the problems faced by journalism today. Founded by American marketing entrepreneur Matthew Iles, Civil is another venture that wants to use the blockchain to build a decentralised newsmaking platform for journalists and citizens.

“Our blockchain-based platform and its smart contracts will protect journalists against censorship and intellectual property disputes while fostering transparency across the platform. Meanwhile, properly incentivised collaborative editing and fact-checking will substantially limit misinformation,” the Civil white paper says.

So, is blockchain the messiah journalism was waiting for? It's probably too soon to say, because, while on paper these ideas make sense, they are yet to face the real-life challenges they aim to tackle.

For example, with a decentralised, permissionless platform made with the help of blockchain, the entry barrier for those who want to participate in that ecosystem comes down significantly. So, anyone who wants to spread fake news could come and spread misinformation. How do you stop that and fact-check each submission in such a huge, collaborative open marketplace?

"There's an application process to join as a newsroom or independent journalist; the governing structure for evaluating applications is still being designed," says Maria Bustillos, a journalist who runs an alternative news and politics site Popula, the first publication to come onboard with Civil.

Iles chose to not say much when asked about it, and responded with: "We have a blog post coming out shortly that will explain this in great detail."

Civil raised \$5 million in funding from the blockchain development firm ConsenSys in October 2017 and aims to go live soon this year.

When asked why Civil didn't start off with an ICO to raise capital, Iles said, "We're building the software necessary to launch a token-based publishing platform for journalism. In our view, the token must be instantiated simultaneously with the publishing platform otherwise it's shipping an incomplete product."

In the case of PressCoin, the ICO is raising money for a product which is still in the concept stage or pre-functional in nature. The platform for which the money is being raised is not functional today; there is no immediate exchange of "utility" for the money invested into the tokens, but rather a promise of the creation of utility in the future.

ICO frenzy

Till date around \$3.8 billion has been raised by startups through initial coin offerings globally as per data available on [coindesk.com](http://coindesk.com)