SECURITISATION IN INDIA

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INTRODUCTION

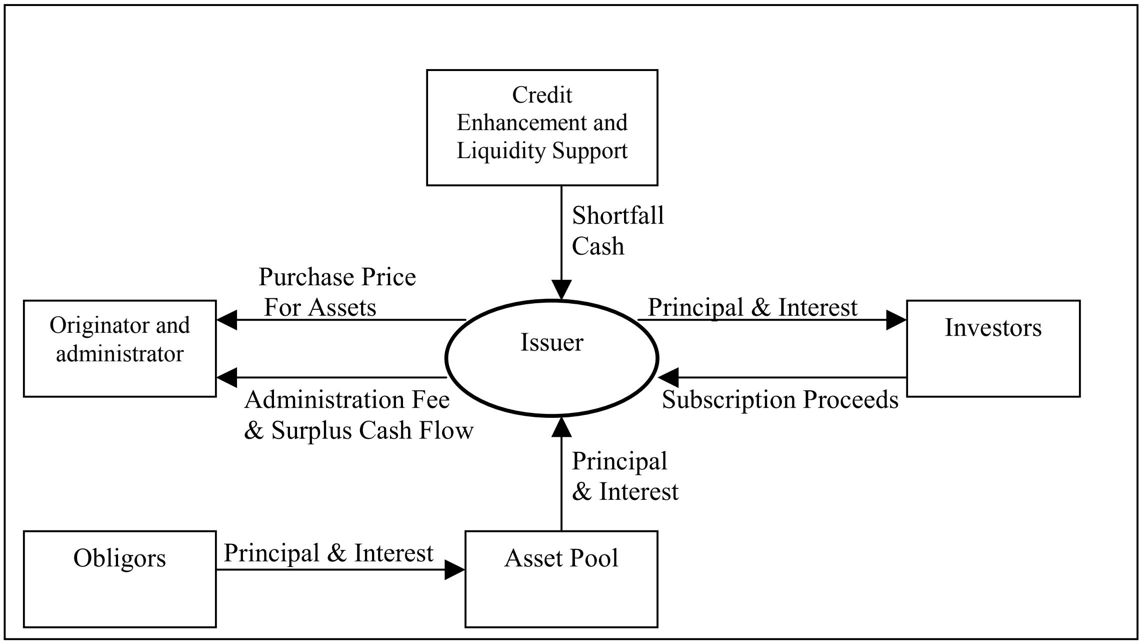
Since the beginning of the 1980s, securitisation has become a global financing tool. Countries such as Mexico, Brazil, USA, Canada, UK, France, Australia, Hong Kong, the Netherlands, Japan, Germany etc. have used some type of securitisation. Some of the assets securitised include credit card receivables, airline tickets, residential mortgages, car loans, swap contracts, tax lien, trade and export receivables, insurance premia, telephone receivables, oil and gas receivables, time-share cash flows, parking fines, cinema tickets, hire purchase / lease receivables and trade receivables. Hence, the range of assets that can be securitised is extensive.

Securitisation of future receivables has started to become increasingly popular in India. Many Indian organisations have already started using this route for raising and investing funds. Banks, financial institutions, NBFCs, petroleum companies and refineries, housing finance companies, power generators and distributors etc. have all in general started exploring the possibilities of raising finance through the securitisation method.

Securitisation is a process whereby non-tradable or illiquid financial assets are transformed into tradable securities. It involves the transfer of an asset or a pool of assets, directly or indirectly, by the owner of the assets ("**Originator**") to a special purpose vehicle ("**SPV**") which is funded through an issue of debt securities or notes backed by the cash flows generated by the assets. Asset-backed securitisation can be defined to mean pooling of assets, which have an income stream, a forecast of which can be made with reasonable accuracy and repackaging of such assets, in the form of marketable securities or derivative product for sale or participation to or by investors or lenders.

Securitisation offers a numbers of advantages to Originators, to the investors and to the financial system of the country. From the Originator's perspective, securitisation improves the liquidity position by replacing receivables by cash. It removes assets from the seller's balance sheet, thus liberating capital for other uses. This leads to restructuring of the balance sheet by reducing large exposures or sectoral concentration. It leads to better asset-liability management by reducing market risks resulting from interest rate mismatches. Assets are more frequently recycled leading to an improvement in the earning. It also leads to transparency in the balance sheet as it results in identifiable assets. Securitisation provides a relatively risk-free investment for the investor. They are basically good-quality assets, helping the investors to diversify their portfolios. For the financial systems of the country, securitisation leads to an increase in the number of debt instruments in the market, and provides additional liquidity in the market. It may widen the market and lead to entry of new players due to the superior quality of assets being available.

Most of the securitisation deals are based on the structure as shown below[1].



TAXATION OF SECURITISATION[2]

The law of income tax in India is contained in the Income-tax Act, 1961 (the Act). The Income-tax Rules have been framed to implement the various provisions of the Act. The taxation laws in relation to securitisation transactions are hazy since the concept although fast growing is fairly new in India. The tax incidence would usually depend on how the documents relating to the transaction are structured, the view taken by the income-tax authorities as to the characterization of the transaction and other issues discussed herein below.

As mentioned above, the main entities involved in the securitisation transaction are the Originator, the SPV and the Investors. Under the provisions of the Act (which is unclear as to tax liability in relation to such transactions), and certain case laws available, the tax liability in relation to securitisation transactions, for each of these may be determined as follows:

1. **Taxability of the Originator**

The tax liability of the Originator would depend on:

(I) whether the securitisation transaction results in the legal transfer of property in the assets being securitised; and

(II) whether the gain or loss (in the case where there is a transfer of the property) is treated as a business gain or a capital gain by the tax authorities

[1] Source: ABN Amro
[2] Ref: "*Securitisation: The financial instrument of the new millenium*" – Vinod Kothari

Where there is a legal transfer of property (true sale) in the assets to be securitised, the tax authorities may levy tax on gains if any arising on the transfer, depending on whether the gain is construed as a capital gain or as a business gain.

Under the provisions of Section 45 of the Act, any profits or gains arising from the transfer of capital assets[3] is chargeable to income tax under the head "Capital Gains". It may be noted that any profits or gains would also be chargeable as Capital Gains, where there is a conversion of an asset to stock-in-trade.

If the tax authorities construe the securitisation transaction as a transfer of capital assets or as a conversion of the assets into stock-in-trade, Capital Gains tax would be applicable.

Capital gains is categorised into long term capital gains and short-term capital gains. Long term capital gains would arise on transfer of the capital assets held by the holder of the asset for more than thirty six (36) months [twelve (12) months in the case of shares held in a company or any other listed security or a unit of the Unit Trust of India or of a specified mutual fund].

Gains on transfer of capital assets held by the holder of the asset for thirty six (36) months or less [twelve (12) months or less in case of shares held in a company or any other security listed in a recognised stock exchange in India, or a unit of the Unit Trust of India or of a specified mutual fund] immediately preceding the date of transfer, would be taxed as short term capital gains.

Currently, the rate of tax on long term capital gains is 22% (basic rate 20% plus 10% surcharge thereon) for resident individuals and companies incorporated in India. Foreign companies (companies which are not domestic[4] companies) are taxed at 20% unless the rate is reduced by a tax treaty between India and the country of residence of the foreign company.

Currently, the rate of tax for short-term capital gains is 38.5% (basic rate 35% plus 10% surcharge thereon) for companies incorporated in India. Foreign companies are taxed at 48%.

On the other hand, where the profit/gain on the securitisation transaction is treated as profit/gain of business, it would be chargeable to tax under the head **"**Profits and Gains of Business" under Section 28(i) of the Act. The term **"**Business" has been defined to include

[3] Section 2(14) defines the term "Capital Asset" as *" property of any kind held by an assessee including property of his business or profession, but excludes non-capital assets*".
[4] Section (22A) defines a "domestic company" as "an Indian company or any other company which, in respect of its income is liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income.

any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture[5].

In the case where there is no legal transfer of property in the assets to be securitised, the tax authorities may characterize the securitisation transaction as a method of financing, on the security of the receivables and levy tax on the Originator, on the gains if any, under the provisions of Section 28(i). In such a situation, the discount charged by the SPV on the receivables would be allowable as a type of a finance expense and deducted from the net amount received by the Originator, which would be liable to tax as business income.

Currently, a company incorporated in India is taxed at 38.5% (35% basic rate plus 10% surcharge thereon) on its business income. A foreign company is taxed at 48% on its net business income.

The situation where the income in the assets has been transferred without a transfer of the property has been stipulated in Section 60 of the Act, which states that "all income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act, where there is no transfer of the assets from which the income arises, be chargeable to income tax as income of the transferor and shall be included in his total income"

The above section makes it clear that the liability to pay tax is on the owner of the assets from which the income arises, and it does not matter if the income is received by any other entity. The tenet involved here would be that of an application of income and not diversion of income before it reaches the Originator. The transfer of income without transferring the assets concerned, is a form of application of income. The tax rules distinguish between the application of income and its accrual and hence the income continues to be taxed in the hands of the owner of the assets. However, it may be noted that in such a situation the Originator would be able to claim capital allowances on the asset.

The two situations envisaged above, in the case of securitisation of receivables transactions would be:

(1) where only the receivables in the securitisation transaction and not the asset is transferred (e.g. in securitisation of lease receivables, housing rent or hotel receipts). In such a situation, under the provisions of Section 60, the income would be deemed to accrue to the asset-owner (Originator) and he would be liable to tax thereon. However, the asset-owner could claim capital allowances on the asset, and
(2) where the asset itself is transferred (e.g. in securitisation of hire purchase receivables, where the only asset claimed by the asset-owner is the right to receive installments and such asset is transferred). In such a case, on transfer, the income generated from the receivable would be deemed to have been transferred to the transferee and he would be liable to pay tax on such income. The gain, i.e. the difference between the sum received

[5] Section 2(13) of the Act

from the transferee and the value of the asset at which it is outstanding, less any expenses incurred by the asset-owner would be considered as either business profit of the asset-owner or capital gains of the asset-owner, depending on whether the asset being transferred is a non-capital or capital asset.

Thus it is important to note whether there is in fact, a transfer of the assets or a mere transfer of income in securitisation transactions.

In the case of *Provat Kumar Mitter v. CIT 37 ITR 91 (Cal)* the High Court's decision, was affirmed by the Supreme Court of India in *41 ITR 624.* Here it was held, that in a situation where the assessee transferred the dividend income out of shares to another entity, without transferring the shares themselves, the dividend income was taxable in the hands of the assessee only. The principle being that it is only application of income.

2. Taxability of the SPV

There are three alternative approaches, which may be taken to tax the SPV.

(i) The SPV may be regarded as a conduit between the Originator and the ultimate investor. In this case, it would receive income flows from the underlying assets and would use the same to service the instruments issued by it. Thus, it would not earn any income nor would it make any profits and would not be liable to pay any tax.

(ii) The SPV may be regarded as a "*representative assessee*" of the investors. The SPV generally acts as the trustee of the investors, and in such cases, relevant provisions of the Act, dealing with the concept of a representative assessee may apply to the SPV.

Under the Act[6], in respect of income of a non-resident or resident, the agent of the non-resident or resident shall be regarded as a representative assessee. It may also be noted that any person in India, who is a trustee of the non-resident or resident, would also be regarded as an agent.

Every representative assessee is subject to the same duties, responsibilities, liabilities, and the tax incidence upon him shall be the same, as if the income received by the beneficiaries were the income received by or accruing to the representative assessee beneficially, under the provisions of Section 161 of the Act.

Accordingly, the SPV may be taxed for the income received by it on behalf of the several investors. However, such tax would be revenue-neutral since the tax payable by the SPV cannot exceed the tax payable by the investors on such income. Under certain circumstances, the SPV would be liable to pay tax at the maximum marginal rate applicable to individuals. The Act enables the representative assessee to recover the tax paid by the representative assessee from the person/s on whose

[6] Under the provisions of section 160 of the Act.

behalf such tax is paid. Thus, ultimately, the SPV, which is regarded as a representative assessee, may have no tax incidence.

(iii) The SPV may be characterized as an independent taxable entity for example in a situation where the SPV re-configures the cash flows received by it by reinvesting them, so as to pay the investors on fixed dates, which do not match with the dates on which the transferred receivables are collected by it.

Where the SPV is treated as an independent entity, any income received or deemed to be received by the SPV would be deemed to be its income. The income distributed by the SPV in the form of interest would be deemed to be the expense of the SPV and income in the hands of the investors. The SPV would be taxed on its net income if any, at 38.5% (35% tax plus 10% surcharge thereon). The investor would be taxed on the interest received at the appropriate applicable rate of tax depending on whether it is resident, non-resident, individual or corporate.

Where the payments made by the SPV are towards equity or towards distribution or application of income, such payment would not be a tax deductible expense for the SPV. The SPV would be liable to pay dividend distribution tax on the dividends paid or declared, at the rate of 10% plus 10% surcharge thereon. However, the dividend income is not taxable in the hands of the recipient.

3. Taxability of the Investors

Where the investors are deemed to be receiving income from the SPV which is regarded as a pass through entity, each individual investor would be liable to pay tax on the income earned in proportion to his investment.

Where the SPV is characterized as a representative assessee and is accordingly taxed, the tax paid by the SPV would be deemed to be paid by the investors. Thus, the investors would not be liable to pay tax individually and the SPV would be entitled to recover the tax paid by it, from the investors.

Where the SPV is characterized as an independent entity and it issues, for example, debt instruments to the investors, the investors would be taxed on what they would earn, by holding such debt instruments or by transferring the same. If the investor receives dividends from the SPV, the investor will not be taxed on the dividends, since dividends are exempt from taxation in India in the hands of the shareholders.

WITHHOLDING TAXES

A person responsible for making payments which are chargeable to tax, is required to deduct tax as per the applicable rate and remit the same to the Government of India.

In a securitisation transaction, there would be three situations when the issue of deducting tax in certain circumstances at source would arise. These are:

(i) when the transferee/SPV makes payments to the Originator, for transfer of the assets
(ii) when the transferee/SPV collects payments from the debtors in relation to the securitised asset; and
(iii) when the transferee/SPV makes payments to the investors

The situations are discussed below:

(i) In the first situation, wherein the SPV makes payment to the Originator for transfer of the assets, there would be no requirement of any withholding tax since the SPV pays for the discounted value of the receivables purchased and there is no income element in the nature which requires deduction of tax at source. As discussed in the section on taxability of the Originator, if the transaction results in taxable profit or gain, it would be on account of business profit or capital gain, for which the tax would be payable by the Originator.

(ii) In the second situation, wherein the SPV collects payments from the debtors, withholding taxes may be applicable depending on the nature of payments collected from the debtors. The securitisation transaction does not change the character of the original transaction between the Originator and the debtors and thus any withholding tax applicable to the payment to be made by the debtor to the Originator, under the original transaction would continue to be applicable. The payer would withhold tax from payments made to the SPV in the same manner as it would have while making payment to the Originator.

(iii) In the third situation**,** wherein the SPV makes payments to investors, withholding tax would be applicable, when such payment is made in the form of interest to the investor.

Where the SPV is treated as a mere conduit, it is likely that the payments made by it would not be treated as interest payments and thus not liable to any withholding taxes.

The decision of the Madras Appellate Tribunal in the case of *Vishwapriya Financial Services & Securities Ltd., v. ITO [1997] 60 ITD 401 (Mad)* is an indication that withholding taxes would be applicable in situations where there is a pay through structure of making payments to the investors i.e. where the SPV is held to be an independent entity.

Parties to a securitisation deal have adopted various mechanisms to reduce or eliminate withholding tax, the most common being taking advantage of the double tax avoidance treaties.

The SPV should thus be located in a suitable treaty country, whereby under the double tax avoidance agreement, the rates of withholding tax are the lowest. The other alternative would be to ensure that the securities issued are initially subscribed for, by a vehicle located in a country with low rates of withholding taxes under the treaty and then the vehicle should repackage the securities and issue them to the ultimate investors, residing in jurisdictions having favourable treaty with the country where the SPV is resident.

STAMP DUTY

Stamp duty is an important aspect that needs to be considered in an asset securitisation deal. High stamp duty would make the transaction unviable. Stamp duty is different in various Indian states and ranges from a low of 0.1 per cent of the value of loans transferred in certain states to more than 3 per cent in other states. Most states had stamp duty regimes that were unclear on how exactly a securitised instrument may be classified.

Some states have now amended their stamp duty regime to clearly provide for a specific regime for securitised instruments. The state of Maharashtra drastically cut down the rates of stamp duty to 0.1% on the value of securitised instruments (from the ad valorem rate of 3%), with effect from April 1994[7]. The state government realised that there was never an intent of stamping such instruments to duty when the duty was originally thought of, and in any case, the basic documents creating the receivables have already been duly stamped.

Following this, in July 1998 the Gujarat Government reduced the stamp duty payable on instruments of securitisation of loans executed by financial institutions for refinancing or raising finances from intermediary investment institutions from as high as 14% chargeable till then to 0.1%. This decision was taken with a view to bring the duty on par with states such as Maharashtra, Karnataka and Tamil Nadu.

In certain circumstances the trust/SPV may also be treated as a non-banking financial company and be subject to the regulations framed by the RBI under the Reserve Bank of India Act, 1948 in this regard. In such a situation, stamp duty may be leviable not only on the assignment of the original pool of loans but also on the securitised instrument. However, stamp duty on transfer of securitized assets by the lender can be reduced or avoided by careful structuring of the transaction.

INSOLVENCY ISSUES

- **True Sale**

The principal concern in a securitisation transaction is the legal isolation of the assets securitised from the bankruptcy risks associated with the entities involved. To achieve this, the assets securitised must be legally transferred to the SPV, so that the SPV is not affected in a situation where there are any claims against the Originator.

In a situation where the Originator is subject to winding up or similar proceedings, a liquidator or similar officer might be able to disclaim some of the obligations owed by the originator to the SPV if the transfer is not regarded as a true sale. It is thus the key to securitisation transactions that the SPV and the assets are remote from the risk of bankruptcy/insolvency of the originator.

[7] Notification No. STP 1094/CR – 369/(B) – M-1 dated 11th May, 1994.

In order to achieve this, the transfer of the assets to the SPV must be regarded as a "true sale" and not merely as being a transfer for obtaining finance. Where the transaction is not regarded as a true sale, it may be treated as a method of financing or a loan by the SPV, in which case, if the Originator goes bankrupt, the liquidator of the Originator would have rights against the underlying assets.

- **Bankruptcy of the SPV**

The bankruptcy risks of the SPV need to be mitigated. This may be achieved by restricting the business activities of the SPV so as to decrease the chances of there being other creditors who could cause the winding up of the SPV. The activities of the SPV should be restricted by incorporating relevant provisions in the constituent and transaction documents.

- **Fraudulent preference**

Another issue that must be borne in mind is that of the concept of "fraudulent preference" under the Indian law. Certain provisions of the Indian Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909 provide that certain transfers of property, if made immediately before bankruptcy of an entity would be annulled or avoided under law, if it is held that the transfers were made in contemplation of bankruptcy. The Provincial Insolvency Act states that where a transferor is adjudged insolvent, within two years of the property being transferred, then such a transfer of property may be annulled by the Court. However, transfers made in good faith and for valuable consideration are excluded.

There is a preference period[8] whereby any transfer of property moveable or immovable, made, taken or done by, or against a company within six months before the commencement of its winding up, may in the event that the company is wound up, be treated as a fraudulent preference and be invalid accordingly. Generally in establishing a case of fraudulent preference it must be shown that the dominant motive of the debtor must be to prefer a creditor and the motive must also be tainted with an element of dishonesty[9].

- **Priority of claims**

There may be a situation where a true sale has been achieved. However, the underlying assets are subject to an overriding interest (prior claims). This may be in a situation for example, where the underlying assets are subject to claims of the originator such as set-off or cross default of any other party, such where rights have been created in favour of creditors of the Originator. Where such prior claims exist, the SPV's rights would be subject to such prior claims.

In certain situations such as bankruptcy under the Indian law, the liquidator is first required to discharge statutory preferential payments before discharging other claims. Further, the liquidator is also under an obligation not to part with any of the assets of the company

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[8] S*ection 531* of the Companies Act 1956.
[9] *Official Liquidator, Kerala High Court v Victory Hire Purchasing Co. (P). Ltd.* (1982), 52 Com Cases 88 at 92 (Ker).

without setting aside an amount equal to the tax which is payable or likely to be payable thereafter by the company.[10]

- **Set-off**

One concern related to insolvency risk is whether or not setting-off of exposures would be permitted in India. The law is well settled that a creditor claiming to prove debt against an insolvent company in liquidation, is entitled to set-off its related claims.

Dealing with the question of set-off, the Supreme Court has taken the view that section 529 and section 530 of the Indian Companies Act, 1956 must be read together when a creditor seeks to prove his debt against the company in liquidation. The effect of such a reading would permit a creditor to take the benefit of the rule enacted in section 46 of The Provincial Insolvency Act, 1920 “whereby only that amount which is ultimately found due from him at the foot of the account in respect of mutual dealings should be recoverable from him and not that the amount due from him should be recovered fully while the amount due to him from the company in liquidation should rank in payment after the preferential claims”[11].

In the case of *McDonald’s Restaurants V. Urbandivide Co. Ltd.*[12]*,* it was observed that "A cross-claim can be relied on by way of set-off if it is shown on the facts of the particular case that there is a sufficiently close relationship between the cross-claim and the subject-matter of the claim itself. The claim and the cross-claim must arise out of the same contract or transaction and must be so inseparably connected that one ought not to be enforced without taking into account the other.”

However, cross claims that arise out of two separate contracts can still be set-off if the two contracts are sufficiently connected and form part of the same transaction[13]. Even where the cross-claim arises out of two separate transactions (cross-product netting)[14] it would be possible to set-off claims between the two parties, by establishing a connection, where the claims for set-off are made within the stipulated time[15]. However, it is advisable to specifically create contractual rights to set-off amounts owed by each party to the other. By providing for such rights, parties need not rely on the general insolvency rules applicable. In order to establish set-off, it is important that the amounts claimed must be liquidated and certain.

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[10] S. 178 of the Income Tax, 1961. However, under the proviso to S. 178 (3) the liquidator may part with such assets or properties for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to the Government on the date of liquidation or for meeting such costs and expenses for the winding up of the company as are reasonable.

[11] *Official Liquidator of High Court of Karnataka v V. Lakshmi Kutty*, (1981) 3 SCC 32: AIR 1981 SC 1483.

[12] *1994, 1 BCLC 306 (Ch D).*

[13] *British Anzani (Felixstowe) Ltd. v International Marine Management (UK) Ltd., (1979) 2 All ER 1063.*

[14] For e.g. can a party set-off currency swap obligation with interest rate swap obligations with the same counterparty.

[15] Under the provisions of *Order VIII rule 6* of the *Civil Procedure Code.*

ASSIGNMENT OF ACTIONABLE CLAIMS

Actionable claims refers to a claim to any debt, other than a debt which is secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, whether such debt or beneficial interest be existent, accruing, conditional or contingent. For example, receivables on account of leases are actionable claims. In India, receivables are taken as actionable claims. As such, transfer of actionable claims is possible only by execution of an instrument in writing, as per section 130 of the Transfer of Property Act. As per this section, transfer on an actionable claim shall be effected only by the execution of an instrument in writing, signed by the transferor, and such transfer shall be complete and effectual upon the execution of such instrument, whether a notice to the debtor is given or not. On the strength of such an instrument, the transferee of an actionable claim gets lawful rights to recover the claim from the debtor, in his own name, without any reference to the transferor. The Indian law differs from the English law, as under the Indian law, notice of assignment (transfer) is not a pre-requisite, although it is advisable.

Although it is essential to prescribe the mode of transfer of actionable claims, Indian courts have over the years taken a very liberal stand on the mode of transfer. The Karnataka High Courts[16] have held that no particular words or any particular form needs to be adopted for transfer of actionable claims. In a recent case, the Calcutta High Court did not enforce compliance with the requirements of section 130 at all for assignment of a fixed deposit in a bank.

Indian courts do not have a tradition of recognising equitable transfers of properties (a transfer that is made without complying with the legal procedure laid down by the law). The Supreme Court in a case[17] gave a virtual carte balance to parties willing to transfer actionable claims, by holding that there can exist an equitable transfer of actionable claims, even outside section 130. Based on the ruling, there would be deemed to be an equitable transfer of actionable claims, if the intention is available as a matter of written record. The Supreme Court's ruling in this case makes it possible in India to look at securitisation with the least amount of difficulties.

The Transfer of Property Act states that assignment of a debt should be in whole and not a part assignment. Further, both the Transfer of Property Act and the Sale of Goods Act hold that only a property currently in existence is capable of being transferred. These laws impede the development of securitisation of future receivables, as transfer of a future property does not fall under the definition of debt.

RECENT DEVELOPMENTS

[16] Simon Thomas v. State Bank of Travancore (1976) KLT 554 (FB)
[17] Bharat Nidhi Ltd. V. Takhatmal (1969) AIR (SC) 595

Securitisation has arrived in a developing country like India much faster than expected. Crisil, a rating agency in India, has reported that rated securitisation transactions have gone up from Rs. 143 crores (Rs. 1,430 million) in 1996-97 to Rs. 2,902 crores (Rs. 29,020 million) in 1997-98.

Asset backed securitisation has come a long way since the first such transaction for Rs. 160 million between Citibank and GIC Mutual Fund. Amongst the most recent developments, the government of the state of Uttar Pradesh has securitized overdue payments to Housing and Urban Development Company (Hudco) through tax-free bonds. The deal involves placement of 10.5 per cent tax-free bonds worth Rs. 50 crores (Rs. 500 million) with Hudco, with Rs. 27 crores (Rs. 270 million) in cash. These bonds are backed by state government guarantees with an escrow charge on a portion of the state revenues to meet the interest and principal obligations during the 5-year tenure of the bonds. This is the first instance of a state government using this route to settle payments. Although this deal was not based on a strong fundamental footing, the very fact that this route is now a part of state government finances makes it a structuring to be recognised. Hudco is now planning to conclude a Rs. 500 crore (Rs. 5000 million) securitisation deal for the infrastructure sector, a first of its kind in this sector. The National Housing Bank has also entered into a securitisation deal involving four counter-parties, including HDFC, LIC Housing Finance, Canfin Homes and Dewan Housing.

Air India, India's national airline, had planned a securitisation deal, as they needed cash. They decided to securitise the future revenue collections of the US routes. With their bond issue being shelved, this was the only route left for Air India. However, recent reports indicate that Air India has deferred its plans for using this method of financing.

The other corporations already using this form of financing or planning for the same include Videocon Power, Larsen & Toubro, IDBI, Citibank and GIC Mutual Fund. Meanwhile, the Karnataka Electricity Board has become the country’s first entity to conclude a securitisation deal in the power sector. It has securitised Rs. 194 crore worth of receivables and placed them with Hudco.

The Reserve Bank of India (RBI) has formed a committee along with the Securities and Exchange Board of India (SEBI) and certain financial institutions for standardization of asset securitisation procedures. The draft guidelines would contain provisions for disclosures to be made for selling loan portfolios, would define the character of the SPV and certain legal issues.

In a recent news article[18], the RBI has constituted an in-house working group, which has called for wide-ranging legal and taxation reforms to enable the introduction of securitisation deals in the country. The group has also asked SEBI to prepare guidelines for disclosure, investor protection and listing guidelines related to public issue or private placement of securitised instruments.

[18] Source: The Economic Times, Mumbai, 30 December 1999

The group has suggested prudential guidelines for banks, development financial institutions, and non-banking financial companies originating or investing in securitised assets. The group has said that the originator should have the flexibility of choosing an appropriate legal structure for the SPV, either in the form of a company, a trust, a mutual fund, a statutory corporation, a society or a firm. However, it feels that a mutual fund (as it is bankruptcy proof, has an independent corporate existence with limited liability and perpetual succession, it is tax neutral and is a closely regulated entity) as an entity is best placed to act as a SPV in securitisation of assets. The committee has also called for rationalisation of stamp duty to make it uniform at 0.1 per cent for all securitisation deals. This subject should be brought under the Indian Stamps Act 1889 from the State Stamps Act.

CONCLUSION

So far, securitisation of debt assets in India has been by and large restricted to domestic shores. However, a few corporate bodies like Air India, Essar Steel, Essar Oil etc. have been successful in receiving funds from the offshore sources.

The RBI's working group and the SEBI are actively working towards making the necessary amendments in the existing laws of the country. There is a scope for securitisation in a wide range of assets in India. It is envisaged that this form of financing would be used more extensively as a source of funds in future, at least as compared with the present-day situation.

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