

Corpsec Hotline

April 09, 2004

SECURITISATION ACT CONSTITUTIONALLY VALID BUT NOT SECTION 17(2): SAYS THE SUPREME COURT

In a landmark judgment, heralded as benefiting the Banks and borrowers, the Supreme Court on April 9, 2004 has upheld the validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**Securitisation Act**") and at the same time struck down the provision that required the borrowers to deposit 75 per cent of the amount claimed by lenders before they could file an appeal with the Debt Recovery Tribunals ("**DRT**"). The judgment was delivered by a Bench comprising Chief Justice V N Khare, Justice Brijesh Kumar and Justice Arun Kumar.

The Securitisation Act was passed in 2002 to give banks and Financial Institutions ("**FI**") more teeth to recover their bad assets. It is contemplated that the judgment may open the floodgates for litigation against the notices sent by banks and FIs to the borrowers under the Securitisation Act.

The background of the case was that, constitutionality of the Securitisation Act had been challenged by around 60 defaulting parties. In December 2002, all defaulting companies, which had challenged the Securitisation Ordinance (as it was then), were asked to move the Supreme Court and 60 Petitions were clubbed to be heard together. Specific challenge was also made on the validity of Section 17(2) of the Securitisation Act, which barred judicial remedies until the borrower deposited 75 per cent of the claim amount.

Section 17(2) of the Securitisation Act lays down that the DRT shall not entertain an appeal preferred by a borrower unless the borrower has deposited 75 per cent of the amount claimed in the notice with the DRT. Power had also been granted to the DRT to waive or reduce the amount to be deposited under the section.

The Supreme Court of India upheld the constitutionality of the Securitisation Act, but in a move to maintain the balance, struck down Sec 17(2). The Confederation of Indian Industry, while applauding the judgment, went on to state that if the borrower had the ability to pay 75 per cent, there would have been little likelihood of default in the first place.

*The Supreme Court upholding the constitutional validity of the Securitisation Act is a welcome move for the banks and FIs as it would enable them to make good their Non-Performing Assets ("**NPA**") by possessing and disposing of the assets of the defaulting borrowers. At the same time, borrowers are not faced with the burden of depositing huge amounts to pursue judicial remedies.*

You can direct your queries or comments to **Prashant Kataria & Vivek Kathpalia**

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Little International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

