Corporate & Commercial

Monthly Newsletter

July 2022

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RBI | Monetary policy meeting highlights

On June 8, 2022, RBI released the results of its June policy meeting. Here are the major highlights of the meeting:

- **Repo rate increased:** The policy repo rate was raised 50 basis points to 4.90 percent with immediate effect, as expected.
- **Inflation expected to remain high:** RBI has increased FY23 consumer price index (**CPI**) inflation forecast to 6.7% from 5.7%. Inflation is likely to remain above 6% in the first three quarters of the current fiscal.
- **Limit enhanced for e-mandates on cards for recurring payments:** The RBI proposed to enhance the limit for e-mandates on cards from INR 5,000 to INR 15,000 per recurring payment.
- **UPI linked to RuPay Credit Cards:** UPI had become the most inclusive means of payment in India, with over INR 26 crore unique users and 5 crore merchants on board. In May alone, UPI processed INR 594.63 crore transactions worth INR 10.40 lakh crore. It is proposed that credit cards be linked to UPI to expand its reach and usage. To begin, Rupay credit cards will be able to use this feature.
- **Review of PIDF:** Payments Infrastructure Development Fund (**PIDF**) Scheme was launched in January 2021 to encourage the development of payment acceptance infrastructure. As of the end of April 2022, the Scheme deployed about INR 1.18 crore new touch points. It is now suggested to make changes to the PIDF Scheme, including increasing the subsidy amount and streamlining the subsidy claim process.
- **Limit enhancement in individual housing loans by cooperative banks:** The Tier I/Tier II Urban Co-operative Banks (**UCB**) limits will be changed from INR 30 lakh/70 lakh to INR60 lakh/140 lakh, respectively. For Rural Cooperative Banks (**RCBs**) having an assessed net worth of less than INR 100 crore, the restrictions will increase from INR 20 lakh to INR 50 lakh, and from INR 30 lakh to INR 75 lakh for other RCBs.
- **RCBs allowed to lend to CRE-RH sector:** State Co-operative Banks (**StCBs**) and District Central Co-operative Banks (**DCCBs**) are now forbidden from making commercial real estate loans. The RBI has decided to allow StCBs and DCCBs to extend finance to Commercial Real Estate – Residential Housing (**CRE-RH**) within the existing aggregate housing finance limit of 5% of their total assets, in response to the growing demand for affordable housing.
- **UCBs allowed to offer door-step banking:** UCBs to offer doorstep banking services to its customers on par with scheduled commercial banks to achieve regulatory uniformity.

RBI | Increased limit for e-mandates

The Reserve Bank raised the Additional Factor of Authentication (**AFA**) limit from INR 5,000 to INR 15,000 per transaction for e-mandates on cards, Prepaid Payment Instruments (**PPIs**) and UPI for recurring transactions. It implies that additional authentication will not be need for payment of INR 15,000 per transaction.

The RBI has, over the past decade, put in place various safety and security measures for card payments, including the requirement of AFA, especially for 'card-not-present' transactions. Under e-mandate, an individual can give standing instruction to the bank to debit a specific amount automatically on recurring basis.

RBI | Fintechs must innovate without resorting to regulatory arbitrage

Fintechs are focused on reaching out to sections of borrowers that do not have access to formal credit. However, many fintech businesses are doing so without the requisite licence and other adherence to other regulatory aspects. As an example, fintechs are creating new products with no clarity on which party owns the customer and who is responsible for ensuring data security.

In India, there is a thin line between an underlying credit line available on a credit card and a running credit line from a lender. In this backdrop, RBI asked the non-bank prepaid payment instruments (**PPI**) issuers to not load their PPI instruments through credit lines, which seems to have affected several fintech players. RBI reiterated that non-bank PPIs should be loaded only through the following ways:

- Cash
- Debiting a bank account
- Debit and credit cards

The amounts that have been disbursed in this manner may be small, but the absence, or near absence, of due diligence by the ultimate lenders or the banks and NBFCs creates systemic risk that can put the country's financial system at risk. The RBI prefers a construct where the underlying lender issues a credit card by tying up with a credit card network. In a circular addressed to the non-bank PPI issuers, the RBI said, that the PPI- master direction does not permit loading of PPIs from credit lines. Such practice, if followed, should be stopped immediately and any non-compliance may attract penal action under provisions contained in the Payment and Settlement Systems Act, 2007.

SEBI | Placement memorandum guidelines for Large Value Funds

On June 17, 2022, SEBI announced new guidelines on filing the placement memorandum for Large Value Fund (**LVF**) schemes and extension for their tenure beyond 2 years, which is applicable for the accredited investors of the Large Value Fund.

LVF refers to an AIF or scheme of an AIF in which each investor (other than the manager, sponsor, employees or directors of the AIF or employees or directors of the manager) is an accredited investor and invests at least INR 70 crore. Last year, the regulator had introduced the concept of 'accredited investors' in the Indian securities market in a bid to open a new channel for raising funds.

Current norms:

- While filing such schemes with SEBI, a duly signed and stamped undertaking by CEO and compliance officer of the manager to the AIF (or person holding equivalent role or position depending on the legal structure of manager) needs to be submitted in a prescribed format.
- In case of LVF schemes already filed with SEBI, similar duly signed and stamped undertaking by CEO of the manager to the AIF is required to be submitted to the regulator by July 31.

Revised norms:

- LVFs are exempt from filing their placement memorandum with SEBI through merchant banker and incorporating comments of the regulator, if any, in their placement memorandum i.e LVFs can launch their scheme under intimation to SEBI.
- LVF is required to obtain approval from its trustee/board of directors/designated partners for extending the tenure beyond two years, at least one month before expiration of the fund tenure or extended tenure.
- In case requisite conditions are not fulfilled, LVF will have to liquidate and wind up in accordance with AIF rules. This extension is subject to terms of the contribution agreement and other fund documents.
- All AIFs shall ensure that manager to AIF designates an employee or director as compliance officer who shall be a person other than CEO of the manager (or such equivalent role or position depending on the legal structure of manager). The compliance officer shall be responsible for monitoring compliance.

SEBI | Clarifications on applicability of Portfolio Manager Rules on AIFs

Alternative Investment Fund (**AIF**) means any fund established or incorporated in India which is a privately pooled investment vehicle which collects funds from sophisticated investors, whether Indian or foreign, for investing in accordance with a defined investment policy for the benefit of its investors. Investment managers of an AIF can provide investment management services to the offshore fund only by getting registered as portfolio managers, according to markets regulator SEBI.

Providing an informal guidance in this regard to Ace Lansdowne Investments Services LLP, which manages SEBI-registered AIF ‘Ace Lansdowne India Investment Fund’, SEBI indicated that its views might be different for different conditions. It had sought clarity whether the applicant, which is already acting as the investment manager of an AIF, can provide investment management services to the offshore fund and whether the applicant is required to obtain registration as a portfolio manager. The applicant was intending to manage an offshore fund, which will be domiciled in Ireland and the offshore fund would make investments primarily in the permissible listed securities of Indian companies through recognized stock exchanges in India.

After looking into submissions, SEBI had emphasized on the following:

- An investment manager of SEBI-registered AIF can provide investment management services to the offshore fund in Ireland only by obtaining the certificate of registration as a portfolio manager under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2021 (**PMS Regulations**).
- No exemption is available to a manager of an AIF from obtaining registration under the PMS Regulations.
- Unlike the SEBI (Investment Advisers) Regulations, 2013 (**IA Regulations**), which exempt an Indian adviser advising persons based outside India exclusively from the requirement of obtaining registration with SEBI as an investment advisor, the PMS Regulations do not provide for any exemptions from registration.

While SEBI has clarified the scope and applicability of the PMS Regulations and has considered the position of AIF managers as ‘regulated,’ the overall flavor of the informal guidance directs towards higher degree of regulation in the asset management space.

SEBI | AMCs gear up to launch new mutual fund schemes

As SEBI's three-month ban on the introduction of New Fund Offerings (**NFO**) is about to end, Asset Management Companies (**AMCs**) are gearing up to launch new mutual fund schemes from the next month. AMCs have the following categories to fill the product gaps:

- Line-up of passive funds on the fixed income
- Equity side funds
- Selective launches of funds

SEBI had discontinued the launch of NFOs until the new systems concerning pool accounts were determined and the regulator had set July 1, 2022 as the deadline for the implementation of the new system.

Pooling of investor's funds and units by stockbrokers and clearing members in any manner and by the mutual fund investment advisors or distributors (wherever it was taking place) for mutual fund transactions was to be discontinued from April 1. However, after mutual discussion and agreement, SEBI gave the mutual fund industry extended timelines until July 1 to enable the industry to bring a high level of operational efficiency in the interest of investors and efficient functioning of mutual fund subscriptions and redemption.

The SEBI's diktat impacted the launch of new schemes as the ongoing Financial Year 2022-23 saw the introduction of only four NFOs that garnered a total of INR 3,307 crore, with ICICI Prudential Housing Opportunities Fund taking in the lion's share of INR 3,159 crore. For comparison, AMCs launched 176 NFOs in Financial Year 2021-22, garnering INR 1.08 lakh crore. In comparison, 84 NFOs were floated in 2020-21 and cumulatively, these funds were able to mobilize INR 42,038 crore.

Till June 2022 the following AMCs have filed offer documents with SEBI seeking its approval to launch new schemes:

- PGIM India MF
- Sundaram MF
- Baroda BNP Paribas MF
- LIC MF and Franklin India MF

Going forward, some AMCs will start launching NFOs as new processes are in place, and they see value in the market due to the correction. NFOs lead to good participation from investors and also increased activity from distributors as well.

SEBI | Streamlined approval process for change in control of portfolio managers

SEBI has streamlined the process of providing its approval to the proposed change in control of a portfolio manager. The new guidelines have come into effect from June 15 and specify the procedure that needs to be followed by portfolio managers in matters which involve scheme(s) of arrangement which needs sanction of the National Company Law Tribunal (**NCLT**).

New guidelines:

- An online application needs to be made to SEBI for prior approval through the Sebi Intermediary Portal.
- The prior approval granted by the regulator will be valid for a period of 6 months.
- Further, applications for fresh registration following change in control will be made to SEBI within six months from the date of prior approval.
- Pursuant to grant of prior approval by SEBI, in order to enable existing investors to take well-informed decision regarding their continuance.
- Otherwise with the changed management, the portfolio manager is required to inform its existing investors about the proposed change prior to effecting the same and give an option to exit without any exit load, within a period of at least 30 calendar days from the date of such communication.
- In matters which involve scheme(s) of arrangement which need sanction of the NCLT, the portfolio manager is required to ensure the application seeking approval for the proposed change in control is filed with Sebi prior to filing the application with NCLT.
- Upon being satisfied with compliance of the applicable regulatory requirements, in-principal approval will be granted by SEBI and the validity of such clearance will be 3 months within which the relevant application will be made to NCLT.
- Within 15 days from the date of order of NCLT, the portfolio manager is required to submit an online application along with the documents, including copy of the NCLT order approving the scheme, statement explaining modifications, if any, in the approved scheme vis-a-vis the draft scheme and the reasons for the same and details of compliance with the conditions mentioned in the in-principle clearance provided by the regulator, to Sebi for final approval.

Ministry of Finance | State-owned NBFCs to issue Letter of Comfort for infra projects

Modifying its earlier order, the Ministry of Finance has permitted state-owned NBFCs to issue Letters of Comfort (**LOCs**) to banks for funds tie-up for infra projects. Earlier in March, the ministry had asked other ministries and departments not to issue LOCs to any hired entity for undertaking projects on their behalf, as part of efforts to improve transparency in fiscal management.

An office memorandum dated June 10, 2022 mentioned that in view of the foregoing and considering that the CPSE-NBFCs are important players in the infrastructure sector, it has been decided that CPSE NBFCs may issue LOCs.

Conditions under which LOCs can be issued:

- The lender should be a RBI-registered NBFC
- NBFC should be involved in infrastructure sector
- LOCs should be provided by banks only for opening a line of credit for supply of goods and services by foreign suppliers
- Under no circumstances the liability under the LOC should devolve on government of India

Ministry of Heavy Industries | Preventing leakage of EV subsidies under FAME scheme

Companies availing of subsidies under the government's flagship electric vehicles (**EV**) promotion scheme are facing increased scrutiny from the authorities, after it came to their notice that many manufacturers were providing misleading information.

Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (**FAME**) scheme's first phase began on April 1, 2015, and was extended till March 31, 2019, and the second phase (FAME-2) that began on April 1, 2019 is to end on March 31, 2022. The government has extended its ambitious scheme to promote electric mobility by two years till March 31, 2024 but has decided to tighten scrutiny to prevent leakage of EV subsidies.

EV makers now must produce a certificate from a chartered accountant empaneled with the Comptroller and Auditor General, verifying the extent of imported components in their vehicles before their products can qualify for subsidies distributed by the Ministry of Heavy Industries under the (FAME-India) scheme. Firms availing these subsidies should conform to strict laws around native sourcing of parts for their EVs such as motor, controller, onboard charger, software panel, chassis, and wheels. It was observed that several companies were routing imported imports via native firms, who did little value-addition in India, to claim the subsidies. The present scrutiny is meant to keep a check on companies that claim Made-in-India status for their products but try and pass off largely imported goods.

NCDRC | Maintenance charges to be levied only after obtaining the Occupancy Certificate

In the recent case of *Gurumurthy Thiagarajan and Anita Rao and Ors v VDB Whitefield Development Pvt Ltd*[1], the National Consumer Disputes Redressal Commission (**NCDRC**) issued several directions which appear to have far-reaching and permanent consequences. The NCDRC in the consumer benefitting order, ruled that the developer cannot charge maintenance charges till they obtain the Occupancy Certificate (OC). The NCDRC relied comprehensively on the case of *Kamal Kishore & Anr v. Mls Supertech Ltd*[2], where it was held that without obtaining the OC, the allottee is not permitted to occupy the building and maintenance charges would be payable only after the date of possession with a valid OC. This has been perceived to be the ratio on the issue and will have serious implications on the developers who will be drawn to their drawing boards to re-calibrate their strategies and construction model. It would be worthwhile to evaluate the orders to see their ramifications and also the chances of it passing the judicial muster in appeal.

The relevant portion from the Kamal Kishore judgement (supra) is extracted hereunder for ease of reference. The next demand raised by the opposite party was towards maintenance charges. Clause 10 of the allotment letter which refers to the maintenance expenses, to the extent it is relevant, reads as follows: 'That an Interest-Free Maintenance Security (**IFMS**) towards the maintenance and upkeep of the complex shall be payable by the Allottee/s to the Company as mentioned in the payment plan on page no. 2/3. The date of commencement of maintenance and upkeep of the complex for which monthly maintenance charges are to be paid by the allottee based on the super area of the unit shall be reckoned from the date of issue of 'Letter of Offer of Possession.'

It would thus be seen that maintenance charges are required to be paid by the allottee from the date of issue of the letter of offer of possession. As stated earlier, the possession in our view could not have been offered to the allottee without completing the construction of the villa in all respects and obtaining the requisite OC. Offering possession without obtaining the OC is meaningless since the allottee is not permitted in law to occupy a house which does not have the requisite OC. Therefore, the maintenance charges would be payable only from the date on which the possession is offered to the complainants, after obtaining the requisite occupancy certificate and providing the construction of the villa is complete in all respects at that time.

Therefore, succinctly put, the finding in the order is distinguishable on facts. In summation, the developer is obligated to procure all the permissions and sanctions including the occupation certificates. However, if the developer is not in default or breaches of contract, maintenance charges in real-time and realistically and justifiably charged and deployed at the pre-occupation certificate stage, not being in conflict with the contract are likely to be sustainable.

Miscellaneous | Key provisions under India's new labour codes

The Government of India has amalgamated, consolidated and converted all earlier existing labour and employment laws in the country into four labour codes, bringing out the much-needed reforms and streamlining of labour and employment related laws and regulations. These codes are introduced with the motive to reduce the complexity, to enable easy compliance of the laws, and to bring the accountability and transparency, which was difficult with the existence of numerous labor laws in the country.

The four simpler labor codes are as follows:

- **The Code on Wages (Wages Code):** The Wages Code consolidates four major legislations on wages. Through this, the actual sector-specific floor wages will be fixed by government notifications (issued from time to time). While certain types of wage deductions will be permitted, such deductions cannot exceed 50 percent of the total wages drawn by an employee or worker. The Wages Code also makes specific provisions for timely wages and payment of bonuses and overtime wages, and it enhances penalties (from current levels) for noncompliance. Further it prescribes equal remuneration to male and female workers.
- **The Industrial Relations Code (IR Code):** By amalgamating 3 labour legislations into the IR Code, the Central Government has taken steps for safeguarding the interests of trade unions as well as the workers. Under the IR Code, several steps have been taken for industrial units and workers so that disputes do not arise in future. Following are the salient features set out under the same:
    - A worker of organized sector who loses his job gets financial aid from the government. This is a type of unemployment allowance, the benefit of which is admissible to the workers covered under the ESI Scheme.
    - At the time of retrenchment, a worker would be provided 15 days' wages for re-skilling. The wages would be credited directly into the bank account of the worker to enable him to learn new skills.
    - Workers disputes to be resolved within a year.
    - Industrial tribunals to have 2 members to facilitate faster disposal of cases.
    - In industrial establishments, a trade union having 51 per cent votes shall be recognized as the sole negotiating union which can make agreements with employers.
    - In industrial establishments in which no trade union gets 51 per cent votes, a negotiating council of trade unions shall be constituted for making agreements with employer.
- **The Code on Social Security:** The Social Security Code replaces nine existing legislations related to social security, retirement, and employee benefit. It is for the first time any code guarantees universal social security i.e., for both organized and unorganized workers. The Social Security Code prescribes welfare schemes related

[1] Consumer Comp No 763 of 2020

[2] 2017 2 CPJ 45 (NC) Consumer Case No 1009 of 2016

to provident funds, employee injury benefits, housing, educational scheme, etc. It has also decreased the gratuity period for the working journalist from 5 to 3 years. Further, in the case of pandemic, endemic, or natural disaster, the Central Government can reduce the contribution of employer and employee (in PF and state insurance)

- **The Occupational Safety, Health & Working Conditions Code:** The Code replaces 13 labour legislations, and primarily regulates the employee's health, safety, and working conditions. The manpower limit on hazardous conditions has been removed, the maximum daily limit to work has been set as 8 hours, women can work in any establishment, there has to be record maintained by Government. A provision has been made for employers to provide travelling allowance annually to an Inter-State Migrant Worker for undertaking a to-and-fro journey to his native place. Further, providing of appointment letters to the workers has been made mandatory. In addition to the above, mandatory free annual health check-up of the workers to be provided by the employers.

The Codes have not been implemented yet. However, it cannot be denied that consolidating these numerous laws has increased the possibility of compliance of the same. These laws will be beneficial in ease of doing business and overall benefit our labor-intensive economy. The labour reforms will help create significant employment while also protecting the worker by ensuring minimum wage reforms, provision for social security for workers in the informal sector, and minimizing government interference. It will ensure timely payment of wages and give priority to occupational safety of the workers, thus contributing to a better working environment.

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