

Bill No. 115 of 2020

THE FACTORING REGULATION (AMENDMENT) BILL, 2020

A

BILL

to amend the Factoring Regulation Act, 2011.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Factoring Regulation (Amendment) Act, 2020.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

12 of 2012.

2. In section 2 of the Factoring Regulation Act, 2011 (hereinafter referred to as the principal Act),—

Amendment of section 2.

10 (i) in clause (a), for the words commencing with "transfer by agreement" and ending with "outside India", the words "transfer by agreement to a factor of an undivided interest, in whole or in part, in the receivables of an assignor due from a

debtor and includes such transfer where either the assignor or the debtor is situated or established outside India" shall be substituted;

(ii) in clause (j),—

(A) in the opening portion, for the words commencing with "acquisition of receivables" and ending with "any receivables but", the words "acquisition by way of assignment of receivables of assignor for a consideration for the purpose of collection of such receivables or for financing, whether by way of making loans or advances or otherwise, against such assignment, but" shall be substituted;

(B) in sub-clause (i), after the word "bank", the words "or a non-banking financial company" shall be inserted;

(iii) for clause (p), the following clauses shall be substituted, namely:—

'(p) "receivables" means the money owed by a debtor and not yet paid to the assignor for goods or services and includes payment of any sum, by whatever name called, required to be paid for the toll or for the use of any infrastructure facility or services;

(pa) "regulations" means regulations made by the Reserve Bank under this Act;'

(iv) after clause (s), the following clause shall be inserted, namely:—

'(sa) "Trade Receivables Discounting System" means a payment system authorised by the Reserve Bank under section 7 of the Payment and Settlement Systems Act, 2007 for the purpose of facilitating financing of trade receivables;'

Amendment of section 3.

3. In section 3 of the principal Act,—

(i) in sub-section (2), the proviso and the *Explanation* shall be omitted;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The Reserve Bank may grant the certificate of registration in such manner as may be specified by regulations."

Amendment of section 19.

4. In section 19 of the principal Act,—

(i) for sub-section (I), the following sub-section shall be substituted, namely:—

"(I) Every factor shall register the particulars of every transaction of assignment of receivables in his favour with the Central Registry set up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within such time from the date of such assignment, in such manner and subject to payment of such fee, as may be prescribed."

(ii) after sub-section (I), the following sub-section shall be inserted, namely:—

"(IA) Where any trade receivables are financed through a Trade Receivables Discounting System, the particulars specified in sub-section (I) and sub-section (3) shall be filed with the Central Registry on behalf of the factor by the Trade Receivables Discounting System concerned, in such manner as may be specified by regulations."

Insertion of new section 31A.

5. After section 31 of the principal Act, the following section shall be inserted, namely:—

Power to make regulations.

"31A. (I) The Reserve Bank may, by notification, make regulations consistent with this Act to carry out the provisions of this Act."

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner of granting certificate of registration under sub-section (4) of section 3;

5 (b) the manner of filing of particulars of transactions with the Central Registry on behalf of factors under sub-section (1A) of section 19;

(c) any other matter which is required to be, or may be, specified by regulations.

10 (3) Every regulation shall, as soon as may be after it is made by the Reserve Bank, be forwarded to the Central Government and that Central Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

20 **6.** In section 32 of the principal Act, in sub-section (2), in clause (a), for the words "the form and manner", the words "the time within which, the form and manner" shall be substituted. Amendment of section 32.

STATEMENT OF OBJECTS AND REASONS

The Factoring Regulation Act, 2011 was enacted to provide for regulating the assignment of receivables to factors, registration of factors carrying on factoring business and the rights and obligations of parties to the contract for assignment of receivables.

2. Though the very purpose of the said Act was to address the problems of delay in payment and liquidity faced by all enterprises, including micro, small and medium enterprises, the said problems persist. These enterprises continue to face delay in payment against their bills for supplies made to various buyers. Due to this, their working capital gets locked and further production activities by such enterprises get hampered. Therefore, in January, 2019, the Reserve Bank of India had constituted an expert committee on micro, small and medium enterprises under the Chairmanship of Shri U.K. Sinha to suggest long-term measures for the economic and financial sustainability of said sector.

3. The expert committee has recommended that, (i) non-banking finance companies, other than those non-banking finance companies whose principal business is factoring, should also be permitted to discount invoices on Trade Receivables Discounting System in order to widen the scope of financiers; (ii) the Trade Receivables Discounting System concerned should be permitted to act as agents of financiers for filing registration of charges with the Central Registry as it would bring operational efficiency; and (iii) the time period for registration of invoice and satisfaction of charge upon it should be reduced in order to check possibility of dual financing.

4. After considering the above recommendations, the Government has decided to amend the Factoring Regulation Act, 2011 on the above lines and has also declared its intention in the Budget speech of 2019-20 and 2020-21. The amendments are expected to help micro, small and medium enterprises significantly, by providing added avenues for getting credit facility, especially through Trade Receivables Discounting System. Increase in the availability of working capital may lead to growth in the business of the micro, small and medium enterprises sector and also boost employment in the country.

5. The Factoring Regulation (Amendment) Bill, 2020, *inter alia*, seeks to—

(i) amend the definitions of "assignment", "factoring business" and "receivables", so as to bring them in consonance with international definitions and also to insert a new definition of "Trade Receivables Discounting System" in section 2;

(ii) amend section 3 to widen the scope of financiers and to permit other non-banking finance companies also to undertake factoring business and participate on the Trade Receivables Discounting System platform for discounting the invoices of micro, small and medium enterprises;

(iii) amend sub-section (1) of section 19 to reduce the time period for registration of invoice and satisfaction of charge upon it, in order to avoid possibility of dual financing; and also to insert a new sub-section (1A.) in that section to allow the concerned Trade Receivables Discounting System to register charge with the Central Registry on behalf of the factors using the platform;

(iv) insert a new section 31A to empower the Reserve Bank of India to make regulations with respect to factoring business.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 3rd September, 2020.

NIRMALA SITHARAMAN.

FINANCIAL MEMORANDUM

The provisions of the Bill do not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new section 31A in the Factoring Regulation Act, 2011 so as to empower the Reserve Bank of India to make regulations in respect of matters relating to, (a) the manner of granting certificate of registration; (b) the manner of filing of particulars of transactions with the Central Registry on behalf of factors; and (c) any other matter which is required to be specified by regulations.

Clause 6 of the Bill seeks to amend clause (a) of sub-section (2) of section 32 of the said Act to empower the Central Government to make rules to provide the time within which every factor shall register the particulars of every transaction of assignment of receivables in his favour with the Central Registry.

The matters in respect of which rules and regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE FACTORING REGULATION ACT, 2011

(12 OF 2012)

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2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "assignment" means transfer by agreement, of undivided interest of any assignor in any receivable due from any debtor in favour of a factor and includes an assignment where either the assignor or the debtor, are situated or established outside India.

Explanation.—For the purposes of this clause, undivided interest of any assignor in any receivable shall not include creation of rights in receivables as security for loans and advances or other obligations by a bank or a financial institution;

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(j) "factoring business" means the business of acquisition of receivables of assignor by accepting assignment of such receivables or financing, whether by way of making loans or advances or otherwise against the security interest over any receivables but does not include—

(i) credit facilities provided by a bank in its ordinary course of business against security of receivables;

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(p) "receivables" means all or part of or undivided interest in any right of any person under a contract including an international contract where either the assignor or the debtor or the assignee is situated or established in a State outside India; to payment of a monetary sum whether such right is existing, future, accruing, conditional or contingent arising from and includes, any arrangement requiring payment of toll or any other sum, by whatever name called, for the use of any infrastructure facility or services;

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CHAPTER II

REGISTRATION OF FACTORS

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3. (1)*

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Registration of factors.

(2) Every factor shall make an application for registration to the Reserve Bank in such form and manner as it may specify:

Provided that a company registered as a non-banking financial company and existing on the commencement of this Act and engaged in factoring business as its principal business before such commencement shall make an application for registration as a factor to the Reserve Bank before the expiry of the period of six months from such commencement and, notwithstanding anything contained in sub-section (1), may continue to carry on the factoring business until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

Explanation.—For the removal of doubts it is hereby clarified that a non-banking financial company engaged in factoring business shall be treated as engaged in factoring business as its "principal business" if it fulfils the following conditions, namely:—

(a) if its financial assets in the factoring business are more than fifty per cent. of its total assets or such per cent. as may be stipulated by the Reserve Bank; and

(b) if its income from factoring business is more than fifty per cent. of the gross income or such per cent. as may be stipulated by the Reserve Bank.

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(4) In the case of existing non-banking financial company the Reserve Bank may issue a fresh certificate of registration as a factor, if the principal business of the non-banking financial company is the factoring business.

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CHAPTER V

REGISTRATION OF ASSIGNMENT

Registration of certain assignments of receivables transactions.

19. (1) Every factor shall file, for the purposes of registration, the particulars of every transaction of assignment of receivables in his favour with the Central Registry to be setup under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within a period of thirty days from the date of such assignment or from the date of establishment of such registry, as the case may be, in the manner and subject to payment of such fee as may be prescribed in this behalf. 54 of 2002.

Explanation.—For the purpose of filing of particulars of every transaction of assignment of receivables with the Central Registry, the receivables may be described specifically or generally with reference to the debtor, or the period to which they relate or by any other general description by which such receivables can be identified.

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Power of Central Government to make rules.

32. (1) * * * * *

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which the transactions of assignment of receivables in favour of a factor shall be filed and the fee for filing such transaction under sub-section (1) of section 19;

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LOK SABHA

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to amend the Factoring Regulation Act, 2011.

(Smt. Nirmla Sitharaman, Minister of Finance and Corporate Affairs)