

## Supreme Court of India rejects RBI's circular on Resolution of Stressed Assets dated 12<sup>th</sup> February 2018

The Supreme Court of India today dismissed RBI's circular on Resolution of Stressed Assets dated 12th February 2018 which mandated banks to immediately resolve all bad loans above Rs 2000 crore or file for insolvency resolution under the Insolvency and Bankruptcy Code (IBC).

The circular asked banks to either resolve or file for insolvency taking away their discretion to not to act on bad loans. The apex court held that in light of section 35AA of the Banking Regulation Act, RBI could not have issued a generic circular mandating reference under the Insolvency and Bankruptcy Code (IBC). The court also held that reference under IBC has to be on case specific basis and with authorisation of Central Government. Since circular has been quashed, all consequential proceedings including IBC proceedings initiated under section 7 of IBC are also quashed.

According to the Supreme Court, the RBI impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders' forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is ultra vires insofar as banks are concerned.

For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est.

**The detailed Judgment of the Supreme Court on dismissing RBI's circular on Resolution of Stressed Assets dated 12th February 2018 is enclosed for your kind reference.**

Please contact for any query related to this mail to Ms. Surbhi Sharma, Associate Economist at [surbhi@phdcci.in](mailto:surbhi@phdcci.in) with a cc to Dr. S P Sharma, Chief Economist at [spsharma@phdcci.in](mailto:spsharma@phdcci.in), PHD Chamber of Commerce & Industry.

Regards,

Dr S P Sharma

Chief Economist

PHD Chamber of Commerce and Industry

PHD House, 4/2 Siri Institutional Area

August Kranti Marg, New Delhi-110016, India

Tel: +91 49545454

Fax: +91 11 26855450

Email: [spsharma@phdcci.in](mailto:spsharma@phdcci.in)

Website: [www.phdcci.in](http://www.phdcci.in)

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PHD CHAMBER OF COMMERCE AND INDUSTRY

PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi - 110 016 (India) • Tel. : +91-11-2686 3801-04, 49545454, 49545400  
Fax : +91-11-2685 5450 • E-mail : [phdcci@phdcci.in](mailto:phdcci@phdcci.in) • Website : [www.phdcci.in](http://www.phdcci.in), CIN: U74899DL1951GAP001947

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