

**39**

**STANDING COMMITTEE  
ON FINANCE  
(2010-2011)**

**FIFTEENTH LOK SABHA**

**MINISTRY OF FINANCE  
(DEPARTMENT OF FINANCIAL SERVICES)**

**THE REGULATION OF FACTOR  
(ASSIGNMENT OF RECEIVABLES) BILL, 2011**

**THIRTY-NINTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*August, 2011/Bhadra, 1933 (Saka)*

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MINISTRY OF FINANCE  
(DEPARTMENT OF FINANCIAL SERVICES)

THE REGULATION OF FACTOR (ASSIGNMENT  
OF RECEIVABLES) BILL, 2011

*Presented to Lok Sabha on 30 August, 2011*

*Laid in Rajya Sabha on 30 August, 2011*



LOK SABHA SECRETARIAT  
NEW DELHI

*August, 2011/Bhadra, 1933 (Saka)*

**COF No. 39**

*Price : Rs. 65.00*

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by National Printers, New Delhi-110 028.

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COMPOSITION OF THE STANDING COMMITTEE ON FINANCE  
(2010-2011)

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Dr. Baliram (Lalganj)
3. Vacant \*\*
4. Shri C.M. Chang
5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Khagen Das
8. Shri Gurudas Dasgupta
9. Shri Nishikant Dubey
10. Shri Bhartruhari Mahtab
11. Shri Mangani Lal Mandal
12. Smt. Jaya Prada Nahata
13. Shri Rayapati Sambasiva Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeshwara
17. Shri N. Dharam Singh
18. Shri Manicka Tagore
19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Dr. Kavuru Sambasiva Rao\*

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\* Nominated to this Committee *w.e.f.* 28.01.2011 *vice* Shri Y.S. Jagan Mohan Reddy, ceased to be a member of the Committee on his resignation from Lok Sabha.

\*\*Shri Sudip Bandyopadhyay, MP ceased to be Member of the Committee *w.e.f.* 12.07.2011 consequent upon his induction to the union Council of Minister.

*Rajya Sabha*

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Y.P. Trivedi

SECRETARIAT

- |                              |   |                        |
|------------------------------|---|------------------------|
| 1. Shri A.K. Singh           | — | <i>Joint Secretary</i> |
| 2. Shri R.K. Jain            | — | <i>Director</i>        |
| 3. Shri Kulmohan Singh Arora | — | <i>Under Secretary</i> |

## INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Thirty-Ninth Report on 'The Regulation of Factor (Assignment of Receivables) Bill, 2011'.

2. 'The Regulation of Factor (Assignment of Receivables) Bill, 2011' introduced in Lok Sabha on 24 March, 2011, was referred to the Committee on 29 March, 2011 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Financial Services).

4. Written views/memoranda were received from the IFCI Factors Limited, New Delhi, Indian Banks' Association (IBA) and Shri Sangeet Shukla, Retired Deputy Managing Director, SBI.

5. The Committee, at their sitting held on 29 July and 18 August, 2011 took evidence of the representatives of the Ministry of Finance (Department of Financial Services).

6. The Committee, at their sitting held on 29 August, 2011 considered and adopted the draft report and authorised the Chairman to finalise the same and present it to the Parliament.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Financial Services) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the IFCI Factors Limited, New Delhi, Indian Banks' Association (IBA) and Shri Sangeet Shukla, Retired Deputy Managing Director, SBI for placing before them their considered views on the Bill in the form of memoranda.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;  
29 August, 2011  
07 Bhadra, 1933 (*Saka*)

YASHWANT SINHA,  
*Chairman,*  
*Standing Committee on Finance.*



## REPORT

### Background

Purchasers of goods and services are often delaying the payments, therefore, resulting in working capital problems for the suppliers, particularly the smaller ones. Many Industrial and Commercial Undertakings, especially the Micro, Small and Medium Enterprises (MSMEs) Units continue to suffer delays in payment or non-payment of their dues by other enterprises. A specific Act called “The interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993” made it mandatory for the buyer to pay to the Small Scale Industry promptly, failing which he is required to pay interest to the supplier. However, the Act was repealed by the Micro, Small and Medium Enterprises Development Act, 2006 after the substantive provisions of the Act of 1993 were suitably incorporated in the said Act of 2006. The Micro, Small and Medium Enterprises Development Act, 2006 also did not improve the situation of delayed payments to MSMEs. Factoring is one of the important mechanisms to address issues of resource constraints, delayed payment from buyers of goods and services and receivable management for the MSMEs Sector.

2. In India, there is no consolidated legal framework with specific provisions covering all aspects of factoring transactions. This could be attributed, to a large extent, to the absence of demand from business community, and the resultant absence of pressure on the legal system to consider appropriate change and innovation. Most of the factoring companies abroad also provide factoring services on ‘without recourse’ basis (without recourse factoring means the factor has no recourse to the supplier or assignor if the factored debt turns out to be irrecoverable). However, in India the factoring services are offered by majority of the companies, including those in public sector, mainly on ‘with recourse’ basis (with recourse factoring means the factor has recourse to the supplier or assignor if the factored debt turns out to be irrecoverable). The reasons for this could primarily be attributed to the inadequate legislative protection in the country in favour of these services. Currently, factoring activities, like other modes of financing, have to operate within the existing laws such as the Indian Contract Act, the Indian Sale of Goods Act, the Transfer of Property Act, etc.

3. The Reserve Bank of India (RBI) constituted a Study Group in 1988 under the chairmanship of Shri C.S. Kalyansundaram, former Managing Director, State Bank of India for examining the feasibility and mechanics of starting factoring organisations in the country and making recommendations regarding its theory, constitution, organisational set up, scope of activities and other related matters. The Committee had noted that inadequacy of working capital finance with its attendant liquidity problem has been one of the major stumbling blocks in the viable running of small scale industries (SSI) units and factoring for SSIs could be mutually beneficial to both factors and SSI units.

4. Pursuant to the acceptance of some of the recommendations of Kalyansaundaram Committee, RBI identified some banks to set up their subsidiaries for factoring operations. Accordingly, SBI factors and Commercial Services Pvt. Ltd. (SBIF) and Canbank Factors Limited (CFL) were established in 1991 as subsidiaries of the State Bank of India and the Canara Bank, respectively. Apart from the two companies mentioned above, a few players have also entered into the field of factoring *viz.*, Export Credit Guarantee Corporation of India Ltd., IFCI Factors Ltd., Small Industries Development Bank of India, Standard Chartered Bank, The Hongkong and Shanghai Banking Corporation Ltd. In addition, a few Non-Banking Financial Companies (NBFCs) have also started factoring services.

5. The Hon'ble Prime Minister announced setting up of a Task Force to formulate an agenda for action within a period of three months after deliberations with all stakeholder, after meeting the representatives of 19 prominent MSME Associations to discuss matters impacting the growth of MSME sector. Several important issues were highlighted by the MSME Associations including shortage of credit, need for a focused procurement policy, prompt payment of MSME dues, simplification of labour laws, formulation of a one-time settlement policy, etc. to strengthen the MSMEs and remove bottlenecks in their development.

6. The Task Force constituted 6 Sub-Groups on the major areas of concern for the MSME sector, namely, credit, marketing, labour, exit policy, infrastructure/technology/skill development and taxation. A separate Sub-Group was constituted to look into specific problems relating to special package for North-East and Jammu and Kashmir.

7. The Task force made many recommendations for enhancing the flow of credit to MSMEs. The Task Force also recommended that workable legal options should be developed for the securitisation of *trade credit receivables* and for the promotion of *factoring services*.

8. In the year 1985, the Committee appointed by the Government for reviewing the working of the monetary system had in its report provided several directions, with respect to future shape of financial sector reforms and made various recommendations in relation thereto. The Committee had *inter-alia* advocated bringing in stricter credit discipline and reduction in the importance in the cash credit, greater resort to financing of working capital through loans, bills, and receivables. Various other committees were set up to review the State of financing in the country, and some of them, including the Vaghul Committee on Money Market Reforms (1987) made references to the need for introducing factoring in India.

9. The report of the S.P. Gupta Group (Study Group on Development of Small Enterprises, 2000) recommended that in order to mitigate the post sale problems of SSI there is a need to encourage bills culture without recourse to SSI. In this context, Government of India be requested to help creating conducive climate for development of factoring services through appropriate policy prescriptions/legislative changes to ease the problems relating to stamp duty, registration fee, assignment of debt etc. A Task Force comprising Government/RBI/SIDBI should be appointed to look into these problems. The provisions of Delayed Payments Act should be extended to factors.

10. Report of the National Commission on Enterprises in Unorganised Sector, 2009 recommended that Innovative financing instruments such as factoring, venture capital, credit rating, and a single multi-purpose Swarojgar Credit Card for the unorganised sector on the pattern of Kisan Credit Card with a limit of up to Rs. 10 lakh may be introduced.

11. In view of the above, the Central Government decided to enact a legislation relating to factoring services and introduce a Bill titled as "The Regulation of Factor (Assignment of Receivables) Bill, 2011", to provide for and regulate the assignment of receivables by making provision for registration therefor and rights and obligations of parties to contract for assignment of receivables and for matters connected therewith or incidental thereto. Factoring service is one of the important mechanisms to address the issue of resources management for the Micro, Small and Medium Enterprises Sector. The Regulation of Factor (Assignment of Receivables) Bill, 2011, provides for a mechanism for assignment of receivables of the industry to a 'factor' and the payment of consideration by the 'factor' to the industrial unit.

## The salient features of the Bill

12. The Regulation of Factor (Assignment of Receivables) Bill, 2011, *inter-alia*, provides,—

- (a) for the process of assignment of receivables due and payable to any assignor (being any enterprise or medium enterprise, micro enterprise or small enterprise as defined in clauses (e), (g), (h) and (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006, respectively engaged in any business activity) by any debtor, to any factor, being the assignee, by an agreement;
- (b) that the debtor shall have the right to notice of assignment and till the notice is given, the assignee shall not be entitled to demand payment of the receivable from the debtor;
- (c) that the liability of the debtor shall not be discharged unless he makes the payment due on an assigned receivable to the assignee;
- (d) that the assignor would be the trustee of assignee for any payment received which is due on an assigned receivable;
- (e) that if the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment on assigned receivables shall be subject to the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 with regard to delayed payments of receivables;
- (f) for regulation of the factoring business;
- (g) for empowering the Reserve Bank to issue directions, call for information from the factor and prohibit the financial institutions from undertaking factoring business, if the factor fails to comply with the direction given by the Reserve Bank;
- (h) that the rights and obligations of the debtor cannot be changed without the express consent of the debtor;
- (i) that any breach of contract with the debtor by the assignor shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee;
- (j) provides for compulsory registration by the factor of every transaction of assignment of receivable with the Central Registry to be set up 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 such assignment or from the date of establishment of such Registry, as the case may be, subject to payment of such fee as may be prescribed and provides that the particulars of transaction would be entered into the Central Register kept at the Head Office of the Central Registry;

- (k) for penal provisions in cases of certain default or contravention of the provisions of the proposed legislation.

13. The Regulation of Factor (Assignment of Receivable) Bill, 2011 was introduced in the Lok Sabha on 24 March, 2011 and referred to the Standing Committee on Finance by the Speaker, Lok Sabha on 29 March, 2011 for examination and report thereon.

14. The Committee received memoranda/suggestions regarding the Regulation of Factor (Assignment of Receivable) Bill, 2011 from Indian Banks' Association, IFCI Factors Limited, Shri Sangeet Shukla, Retired Deputy Managing Director, State Bank of India and Ex-CEO, SBI Global Factors Ltd. The Committee also took oral evidence of the representatives of the Ministry of Finance (Department of Financial Services) in connection with the examination of the Bill.

15. The Committee note that in India since there is no consolidated legal framework with specific provisions covering all aspects involved in factoring business, the Government has proposed this Bill to support the establishment and operations of efficient and viable factoring organizations. Earlier, instead of making a specific law for this purpose, the Government relied on two legislations namely the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 which was repealed by the Micro, Small and Medium Enterprises Development Act, 2006. Both the Acts aimed at improving the situation of delayed payments to MSME but failed to achieve their objectives. The Committee observe in this regard that the Government has taken an unduly long time for introducing the present Bill since RBI accepted the recommendations of the Expert Group headed by Shri C.S. Kalyansundarm (1988) to bring forth a legislation on factoring more than two decades ago. Even after taking such a long time to introduce the Bill, the Government have not done due diligence and in-depth study on the subject suggesting that wider consultations were not held before formulating the proposals. After the Committee pointed out several infirmities, the Ministry at evidence stage agreed to rectify the same. The Committee now hope that the present legislation with these modifications will serve the desired purpose to address the issue of resources management for the Micro, Small and Medium Enterprises Sector. They also desire that the Administrative Ministry

should be made responsible in respect of delayed payment from PSUs to MSMEs. Hence, they recommend this Bill for enactment subject to such modifications as spelled out in the succeeding paragraphs.

## Definitions

16. The Committee during the course of oral evidence pointed out lack of clarity in the present Bill as well as its title. The title of the Bill viz. 'The Regulation of Factor (Assignment) of Receivables Bill, 2011' seemed to give an impression that there exists a law on factors and the Bill is proposing to regulate them. Moreover, in the Hindi Version of the Bill the word 'Adhatia' has been used as translation for the 'Factor' which also creates a doubt that the proposed Bill will create an intermediary/middleman between the Micro, Small and Medium Enterprises (MSME) and the buyers of MSME products and particularly in agricultural operations.

17. When asked to clarify, the Ministry in a written note stated as under:—

"At the outset it may be stated that Factor is not an agent or 'Adhatia' for sale of goods. Factor steps in only after the goods/services are sold. He is not concerned with sale which will continue to be done by MSMEs as per their existing practices. However, a specific exclusion about sale of agricultural produce by farmers to Adhatias will be included in the definition of 'factoring business' under clause 2(j) of the Bill. Further to declare specific exclusion of Adhatia from the scope of the Bill, the word 'factor' will be used as such instead of the word 'Adhati' in the Hindi version of the Bill also.

The Bill defines a Factor as a "Non-Banking Financial Company" as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934. Clause 4 of the Bill further provides that provisions of Chapter III-B of the RBI Act, 1934 relating to NBFCs shall apply to Factors. In terms of definitions contained in section 45-I of the RBI Act, 1934, Non-Banking Financial Companies (NBFCs) are not permitted to carry on, *inter alia*, following business activities:—

- (i) agricultural operations; and
- (ii) the purchase or sale of any goods (other than securities) or providing of any services.

Since factors are NBFCs governed by the RBI Act, 1934, such Factors cannot undertake any agricultural operations or purchase or sale of any goods. In view of this position Factors, as non-banking

financial companies cannot act as agents for sale of goods including agricultural produce.

However, a specific exclusion about sale of agricultural produce by farmers to Adhatias will be included in the definition of 'factoring business' under clause 2 (j) of the Bill by inserting Explanations as below:

*Explanation (1)*

For removal of doubts it is hereby declared that factoring business shall not include any activity as commission agent or otherwise for sale of agricultural produce or goods of any kind whatsoever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provisions of any services other than factoring services.

*Explanation (2)*

For the purpose of this clause the expression 'agricultural produce' shall have the meaning assigned to it under clause (a) of section 2 of the Agricultural Produce (Grading and marking) Act, 1937 (Act of 1937), and the expressions 'commission agent' and 'goods' shall have the meanings assigned to them by and explanation (ii) below clause (i) and clause (d) of section 2 of the Forward Contracts (Regulation) Act, 1952 (Act 74 of 1952)."

18. The Ministry further added as under:—

"Factoring is purchase of receivables with or without recourse to the business entity selling the receivables. Such transactions can be undertaken by any person under the general laws of contracts and transfer of property. If such activity/business of purchase of receivables (Factoring) is undertaken by a company such business is treated as business of financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934. Any company engaged in business of financial institution which includes factoring business is required to obtain registration from RBI as Non-Banking Finance Company and such companies are already subject to regulatory law namely Chapter III-B of the RBI Act, 1934. The present Bill seeks to segregate NBFCs engaged in factoring business and make the proposed law applicable to the business of factoring but at the same time clause 4 of the Bill provides that provisions of Chapter III-B of the RBI Act, 1934 shall continue to apply to such NBFCs save as otherwise provided in the Bill.



It is a settled principle of law that only after a law is enacted can there be any scope of specifying a regulation under that statute. As such the name of the Bill is being changed to "The Factoring Regulation Bill, 2011".

19. The Committee are happy to note that in order to remove ambiguity and to give clarity to the Bill, the Ministry of Finance (Department of Financial Services) have acted upon the suggestions of the Committee and agreed to include the modifications and changes in the Bill appropriately pertaining to the short title and definitions. The Committee are of the considered view that the proposed new name *viz.* the Factoring Regulation Bill will dispel the needless confusion of a non-existent parent Act. The replacement of the word 'Adhatia' by 'Factor' also, will allay the doubt that the proposed Bill deals with mechanism/agency which is different from Commission agents engaged in sale and purchase of agricultural produce. The Committee recommend that these modifications should be suitably incorporated in the Bill.

#### **Exemption of factoring business from Stamp duty**

20. Indian Banks' Association (IBA), IFCI Factors Ltd. and an expert in their memoranda suggested that one major impediment in the development of the factoring business is multiple stamp duties which are payable on document of assignment of receivables. Such stamp duty varies from State to State and on account of high rates of duty and very low margins available to the Factors renders assignment of receivables non-viable. In order to make the law effective and encouraging growth and development of the factoring transactions it is necessary to exempt document of assignment of receivables from Stamp Duty. Similar exemptions have been given under Central Laws enacted by Parliament in the past. One example of such exemption of Stamp Duty is Section 8C of the Indian Stamp Act, 1899 which was inserted by the provisions of Warehousing (Development and Regulation) Act, 2007.

21. The Ministry in their written submission on the above said suggestion stated as follows:—

"Although many experts (including Kalyansundaram Group) have recommended that to make factoring economically viable, it is essential that assignment of receivables in favour of a factor is exempted from stamp duty, we have not made any explicit provision in this Bill. We are proposing to exempt factoring transactions from stamp duty by moving an amendment to the Indian Stamp Act, 1899 as part of a comprehensive exercise to amend that law.



However, it is possible to amend the Indian Stamp Act, 1899 through a schedule to the present Bill.”

22. The Committee note that despite specific recommendation of the Expert Group headed by Shri C.S. Kalyansundaram, the Government has not made any explicit provision in the Bill in this regard. The Committee are convinced that to make factoring economically viable, it is essential that assignment of book debts is exempted from stamp duty. They are happy that the Government has agreed to this view of the Committee and has proposed to bring an amendment to the Indian Stamp Act, 1889 through a schedule to the present Bill. The Committee find that as two Central Acts are being amended by way of the schedule appended to the Bill, the amendment with regard to the stamp duty may also be added in the schedule.

### **Pricing of Factor Services**

23. Provisions of the Bill are silent regarding the amount of commission or discount charged by the factor to the MSME.

24. When asked about the need to stipulate a ceiling on the charges the factor would recover from the MSME in the proposed Bill, the Ministry in a written note submitted as under:—

“The amount of commission charged or discount charged by the factor to the assignor (Micro and Small Industries) would depend upon the bilateral contact between the two and the level of competition in the market. The rate of commission or discount would depend on the risk perception of the factor and business relations between the two parties. The regulator, RBI has moved away from administered rate of interest regime for financial products. Therefore, any suggestion to administratively determine the rates would not be in line with the existing policy.”

25. The Committee have been informed by the Ministry that it would not be feasible to administratively determine the rates/fees/commission chargeable by a factor on the ground that RBI as the regulator has moved away from the regime of administered rates of interest. The Committee are, however, not convinced with this reply, as this is not in harmony with the policy to promote and protect MSMEs. As the Committee believe that unregulated factor pricing will only lead to exploitative practices, they would recommend that a suitable guidelines on pricing should be issued by the RBI with a view to safeguarding the interest of the MSMEs and to reduce their financial costs. In this context, it may also be emphasized that since factors will

be competing with banks in financing receivables, the rate charged by them should not be made higher than that charged by banks. From a larger perspective the Committee would like the Government to ensure that this legislation actually promotes factoring business as a facilitator of MSMEs rather than making it yet another exploitative middleman.

#### **Inconsistency between Clauses 8 and 18 in respect of determining responsibilities of all parties to the factoring assignment**

26. Clause 8 reads as follows:—

“Any assignee of a receivable shall not be entitled to demand payment of the receivable from the debtor in respect of such receivables unless notice of such assignment is given to the debtor by the assignor or the assignee along-with express authority in its favour granted by the assignor.”

27. Clause 18 reads as follows:—

“If the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee.”

28. A doubt has arisen that the two clauses are inconsistent to each other regarding determining responsibilities and powers of the parties to the factoring assignment.

29. When the attention of the Ministry was drawn to the contradiction in the above said clauses, the Ministry in a written note stated as under:—

“The Bill has been prepared to judiciously determine responsibilities of all parties to the factoring assignment. As a matter of debtor protection, it has been provided in Clause 8 that the debtor shall have the right to notice of assignment and till the notice is given, the assignee shall not be entitled to demand payment of the receivable from the debtor. However, since the factor (assignee) is not a party to the bilateral contract between assignor (as a supplier of goods or services) and the debtor (purchaser of goods or services), the deficiency on the part of the assignor towards the debtor should not affect the rights of the factor (assignee), who has purchased the financial asset (receivables of the seller) without knowledge of this deficiency and has acquired rights to recover the receivables from the debtor and any sum received after the assignment even with

the assignor is kept in trust for the factor. So, the inter-se relations of the three parties involved in the factoring business are fixed in an objective manner.

The object of this provision is to provide finality to the transaction of assignment of receivables. If any disputes between the Debtor and Assignor (MSME) are allowed to be raised against the Assignee, there will be no certainty about the payment made to the Assignor by the Factor and to the Factor (Assignee) by the Debtor. While no claims can be made against the Factor (Assignee) the Debtor can claim any losses on account of defective goods or short supply from the Assignor. To remove any doubts such a provision can be added by way of explanation to clause 18 of the Bill."

**30. The plain reading of these two clauses provides that the debtor is responsible to make payment to the factor (assignee) only when the notice has been issued to him either by the assigner or the assignee. But Clause 18 is silent about his (debtor) rights in case there is a breach in the original contract by the assigner. The Committee are happy that the Government has agreed to insert an explanation to Clause 18 with a view to remove any ambiguity with regard to debtor's protection. The Committee desire that the necessary amendment may be brought forward in this regard.**

### **Clause 32 - Rule making powers of the Central Government**

31. Clause 32 of the Bill provides that the Central Government may keep rules in respect of the matters specific in the said clause. Sub-clause (2) (a) specifies as follows:—

"The form and manner in which the transactions of assignment of receivables in favour of a non-banking financial company shall be filed and the fee for filing such transaction under sub-section (1) of Section 19."

32. In this regard, Indian Banks' Association in their written submission suggested that:—

"In clause 32 (2) (a) the words 'Non-Banking Financial Companies' need to be charged to the word Factor."

33. The written comments received from the Ministry of Finance (Department of Financial Services) on the above said suggestion stated as follows:—

"This suggestions is accepted as the registration of transaction of assignment in favour of a 'factor' is to be filed with the

Central Registry. A factor may be a non-banking financial company or a statutory corporation.”

34. The Committee find that the word ‘non-banking financial companies’ used in the clause restricts the scope to the ‘non-banking financial companies’ whereas the factor includes in its ambit other statutory corporations besides non-banking financial companies. The substitution of ‘factor’ in place of ‘non-banking financial companies’ will enlarge its scope and include all the constituents that comes under the purview of definition of factor. The Committee find that the Government has agreed to make necessary amendment in this regard. The Committee, therefore, desire the Government to substitute ‘non-banking financial companies’ by ‘factor’ in clause 32(2)(a) of the Bill.

NEW DELHI;  
29 August, 2011  
07 Bhadra, 1933 (Saka)

YASHWANT SINHA,  
Chairman,  
Standing Committee on Finance.

## APPENDIX I

### MINUTES OF THE TWENTY-SECOND SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Friday, the 29th July, 2011 from 1100 hrs.  
to 1715 hrs.

#### PRESENT

Shri Yashwant Sinha — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Dr. Kavuru Sambasiva Rao
9. Shri Manicka Tagore

##### *Rajya Sabha*

10. Shri S.S. Ahluwalia
11. Shri Raashid Alvi
12. Shri Moinul Hassan
13. Shri Satish Chandra Misra
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ram Kumar Suryanarayanan — *Deputy Secretary*
4. Shri. Kulmohan Singh Arora — *Under Secretary*

PART-I

(1100 hrs. to 1130 hrs.)

- |    |   |   |   |   |   |
|----|---|---|---|---|---|
| 2. | * | * | * | * | * |
|    | * | * | * | * | * |

PART-II

(1130 hrs. to 1300 hrs.)

WITNESSES

**Ministry of Finance (Department of Financial Services)**

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Alok Nigam, Joint Secretary

**Ministry of Micro, Small and Medium Enterprises (MSME)**

Shri Amrendra Sinha, Joint Secretary and DC

**Indian Banks' Association (IBA)**

Shri M.R. Umerji, Chief Legal Advisor, IBA

**IDBI Bank**

Shri R.M. Malla, CMD, IDBI Bank

**Small Industrial Development Bank of India (SIDBI)**

Shri Sushil Muhnot, CMD, SIDBI

**Reserve Bank of India (RBI)**

1. Smt. Archana Mangalagiri, General Manager
2. Shri S.S. Barik, General Manager

3. The Committee heard the representatives of Ministry of Finance (Department of Financial Services) in connection with examination of the

Regulation of Factor (Assignment of Receivables) Bill, 2011'. The major issues discussed during the briefing included, definitions clause, regulation of factors, powers of RBI to regulate factors, assignment of receivables, liability and principle of debtor protection, registration of certain assignments of receivables transactions, exemption of factoring transactions from stamp duties, incorporation of suggestions/recommendations made by the Study Group headed by Shri C.S. Kalyansundram in the proposed Bill. The Committee also drew the attention of representatives of Ministry of Finance (Department of Financial Services) to contradictions in the various provisions of the Bill. The Chairman directed the representatives of Ministry of Finance (Department of Financial Services) to furnish replies to the points raised by the Members during the discussion within ten days.

*The witnesses then withdrew.*

PART-III  
(1400 hrs. to 1715 hrs.)

WITNESSES

4.	*	*	*	*	*
	*	*	*	*	*

*The witnesses then withdrew*

WITNESSES

5.	*	*	*	*	*
	*	*	*	*	*

*A verbatim record of the proceedings was kept.*

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE TWENTY-THIRD SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2010-11)

The Committee sat on Thursday, the 18th August, 2011 from  
1600 hrs. to 1715 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Rayapati Sambasiva Rao
8. Dr. Kavuru Sambasiva Rao
9. Shri G.M. Siddeshwara
10. Shri Manicka Tagore

*Rajya Sabha*

11. Shri Moinul Hassan
12. Shri Satish Chandra Misra
13. Shri Y.P. Trivedi

SECRETARIAT

- |                                  |                           |
|----------------------------------|---------------------------|
| 1. Shri A.K. Singh               | — <i>Joint Secretary</i>  |
| 2. Shri R.K. Jain                | — <i>Director</i>         |
| 3. Shri Ram Kumar Suryanarayanan | — <i>Deputy Secretary</i> |
| 4. Shri. Kulmohan Singh Arora    | — <i>Under Secretary</i>  |



PART-I  
(1600 hrs. to 1630 hrs.)

WITNESSES

**Ministry of Finance (Department of Financial Services)**

1. Shri D.K. Mittal, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Alok Nigam, Joint Secretary

**Indian Banks' Association (IBA)**

Shri M.R. Umerji, Chief Legal Advisor, IBA

3. The Committee took further oral evidence of the representatives of the Ministry of Finance (Department of Financial Services) on 'the Regulation of Factor (Assignment of Receivables) Bill, 2011'. After examining the replies furnished by the Ministry on the queries raised by the Members during their sitting held on 29 July, 2011, the Committee expressed their satisfaction that the Ministry at their behest has agreed to incorporate modifications in the Bill as suggested by them. The representatives of the Ministry further clarified to the queries raised by the Members.

*The witnesses then withdrew.*

PART-II  
(1630 hrs. to 1715 hrs.)

WITNESSES

- |    |     |     |     |     |     |
|----|-----|-----|-----|-----|-----|
| 4. | *** | *** | *** | *** | *** |
|    | *** | *** | *** | *** | *** |

*The witnesses then withdrew.*

*A verbatim record of the proceedings was kept.*

*The Committee then adjourned.*

MINUTES OF THE TWENTY FOURTH SITTING OF THE  
STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, the 29th August, 2011 from  
1500 hrs. to 1600 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Rayapati Sambasiva Rao
7. Shri Magunta Sreenivasulu Reddy
8. Shri Manicka Tagore
9. Shri Anjankumar M. Yadav
10. Dr. Kavuru Sambasiva Rao

*Rajya Sabha*

11. Shri S.S. Ahluwalia
12. Shri Vijay Jawaharlal Darda
13. Shri Moinul Hassan
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ram Kumar Suryanarayanan — *Deputy Secretary*
4. Shri. Kulmohan Singh Arora — *Under Secretary*

2. The Committee took up the following draft Reports for consideration and adoption:—

- (i) The Regulation of Factor (Assignment of Receivables) Bill, 2011; and
- (ii) The Pension Fund Regulatory and Development Authority Bill, 2011.

3. The Committee adopted the draft reports at (i) and (ii) above with some modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

*The Committee then adjourned.*

## APPENDIX II

AS INTRODUCED IN LOK SABHA

Bill No. 24 of 2011

### THE REGULATION OF FACTOR (ASSIGNMENT OF RECEIVABLES) BILL, 2011

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#### ARRANGEMENT OF CLAUSES

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#### CHAPTER I

##### PRELIMINARY

##### CLAUSES

1. Short title, extent and commencement.
2. Definitions.

#### CHAPTER II

##### REGISTRATION OF FACTORS

3. Registration of factors.
4. Provisions of non-banking financial companies apply to factor.
5. Requirement for registration as a factor not to apply to bank or Statutory corporation or Government company.
6. Powers of Reserve Bank to give directions and to collect information from factors.

## CHAPTER III

### ASSIGNMENT OF RECEIVABLES

7. Assignment of receivables.
8. Notice to debtor and discharge of obligation of such debtor.
9. Discharge of liability of debtor on payment to assignee.
10. Payment made to debtor to be held in trust for benefit of assignee in certain cases.

## CHAPTER IV

### RIGHT AND OBLIGATIONS OF PARTIES TO CONTRACT FOR ASSIGNMENT OF RECEIVABLES

11. Rights and obligations of parties to contract for assignment of receivables.
12. Liability of debtor.
13. Assignor to be trustee of assignee.
14. Liability of debtor in case of an assignor being micro or small enterprises.
15. Principle of debtor protection.
16. Defences and right of set off of debtor.
17. Modification of original contract.
18. Breach of contract.

## CHAPTER V

### REGISTRATION OF ASSIGNMENTS

19. Registration of certain assignments of receivables transactions.
20. Public inspection.

## CHAPTER VI

### OFFENCES AND PENALTIES

#### CLAUSES

21. Penalties.
22. Penalties for non-compliance of direction of Reserve Bank.
23. Offences.
24. Cognizance of offences.
25. Offences by factors.

## CHAPTER VII

### MISCELLANEOUS

26. Provisions of this Act to override other laws.
27. Application of other laws not barred.
28. Limitation.
29. Confidentiality of information.
30. Power to exempt.
31. Provisions of this Act not to apply or affect in certain cases.
32. Power of Central Government to make rules.
33. Laying of rules.
34. Power to remove difficulties.
35. Amendments to certain enactments.

### THE SCHEDULE

As introduced in Lok Sabha

**Bill No. 24 of 2011**

THE REGULATION OF FACTOR (ASSIGNMENT  
OF RECEIVABLES) BILL, 2011

A

BILL

*to provide for and regulate assignment of receivables by making provision for registration therefor and rights and obligations of parties to contract for assignment of receivables and for matters connected therewith or incidental thereto.*

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Regulation of Factor (Assignment of Receivables) Act, 2011.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:—

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

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

(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;

(b) “assignee” means a factor in whose favour the receivable is transferred;

(c) “assignor” means any person who is the owner of any receivable;

(d) “bank” means,—

(i) a banking company;

(ii) a corresponding new bank;

(iii) the State Bank of India;

(iv) a subsidiary bank;

(v) such other bank which the Central Government may by notification specify for the purposes of this Act on the recommendations of the Reserve Bank; or

(vi) a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 and licensed to undertake business of banking 39 of 2002.  
20 by the Reserve Bank under the provisions of the Banking Regulation Act, 1949; 10 of 1949.

(e) “banking company” shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.



27 of 2006. (f) “business enterprise” means any enterprise or medium enterprise, micro enterprise or small enterprise as defined in clauses (e), (g), (h) and (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006, respectively engaged in any business activity;

10 of 1949. (g) “corresponding new bank” shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949;

(h) “debtor” means any person liable to the assignor, whether under a contract 30 or otherwise, to pay any receivable or discharge any obligation in respect of the receivable whether existing, accruing, future, conditional or contingent;

2 of 1934. (i) “factor” means a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 which has been granted a certificate of registration under sub-section (1) of section 3 or anybody corporate established under an Act of Parliament or any State Legislature or any Bank or any company registered under the Companies Act, 1956 engaged in the factoring business;

1 of 1956.

(j) “factoring business” means 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;

(k) “financial contract” means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, shares, bonds, debentures or any other financial instrument, any repurchase of securities and

lending transaction or any other similar transaction or combination of such transactions entered into in the financial markets;

(l) “netting agreement” means any agreement among the system participants for the purpose of determination by the system provider of the amount of money or securities due or payable or deliverable as a result of setting off or adjusting the payment obligations or delivery obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or dissolution or winding up of any system participant or such circumstances as the system provider, may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

(m) “notification” means a notification published in the Official Gazette;

(n) “prescribed” means prescribed by rules made under this Act;

(o) “property” means,—

(i) the immovable property;

(ii) the movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iv) the receivables;

(v) the intangible assets, being know-how, patent, copyright, design, trade

mark, licence, franchise or any other business or commercial right of similar nature;

(p) “receivables” mean 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; or

2 of 1934. (q) “Reserve Bank”, means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

23 of 1955. (r) “State Bank of India” means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955;

38 of 1959. (s) “subsidiary Bank” shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

2 of 1934. (t) words and expressions used and not defined in this Act but defined in the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, the Companies Act, 1956, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Credit Information Companies (Regulation) Act, 2005, or the Micro, Small and Medium Enterprises Development Act, 2006, shall have the meanings respectively assigned to them in those Acts.

## CHAPTER II

### REGISTRATION OF FACTORS

Registration  
of factors.

3. (1) No factor shall commence or carry on the factoring business unless it obtains a certificate of registration from the Reserve Bank to commence or carry on the factoring business under this Act.

(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 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.

(3) Every applicant for grant of a certificate of a registration as a factor shall comply, for the purpose of registration, with all the requirements to be fulfilled by an applicant for grant of certificate of registration as non-banking financial company under the Reserve Bank of India Act, 1934 and all the provisions of that Act, so far as they relate to the registration of non-banking financial companies, shall (except those provided for under this Act) *mutatis mutandis* apply. 2 of 1934.

(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.

2 of 1934.	<p>(5) Save as otherwise provided in this Act, every factor including factors not subject to requirement of registration under section 5, shall be governed by the Reserve Bank of India Act, 1934, the rules and regulations made thereunder and the directions or guidelines issued by the Reserve Bank, from time to time.</p>	
2 of 1934.	<p>4. All provisions of Chapter IIIB of the Reserve Bank of India Act, 1934 relating to non-banking financial companies which have been granted a certificate of registration under subsection (5) of section 45-IA of the Reserve Bank of India Act, 1934 shall (except those specifically provided for under this Act) <i>mutatis mutandis</i> apply to a factor which has been granted a certificate of registration under section 3.</p>	Provisions of non-banking financial companies apply to factor.
1 of 1956.	<p>5. Nothing contained in section 3 shall apply to a bank or any corporation established under an Act of Parliament or State Legislature, or a Government Company as defined under section 617 of the Companies Act, 1956.</p>	Requirement for registration as a factor not to apply to bank or Statutory corporation or Government company.
	<p>6. (1) The Reserve Bank may, at any time by general or special order, direct that every factor shall furnish to it, in such form, at such intervals and within such time, such statements, information or particulars relating to factoring business undertaken by the factor, as may be specified by the Reserve Bank from time to time.</p>	Powers of Reserve Bank to give directions and to collect information from factors.
	<p>(2) The Reserve Bank may, if it considers necessary in the interest of business enterprises availing factoring services or in the interest of factors or interest of other stake holders give directions to the factors either generally or to any factor in particular or group of factors in respect of any matters relating to or connected</p>	

with the factoring business undertaken by such factors.

(3) If any factor fails to comply with any direction given by the Reserve Bank under sub-section (2), the Reserve Bank may prohibit such factor from undertaking the factoring business:—

Provided that before prohibiting any factor from undertaking the factoring business, the factor shall be given a reasonable opportunity of being heard.

### CHAPTER III

#### ASSIGNMENT OF RECEIVABLES

Assignment  
of receiv-  
ables.

7. (1) Any assignor may, by an agreement in writing, assign any receivable due and payable to him by any debtor, to any factor, being the assignee, for a consideration as may be agreed between the assignor and the assignee:—

Provided that if the debtor liable to pay the receivable or the factor is situated or established outside India, any assignment of receivable shall be subject to the provisions of the Foreign Exchange Management Act, 1999.

42 of 1999.

(2) On execution of agreement in writing for assignment of receivables, all the rights, remedies and any security interest created over any property exclusively to secure the due payment of receivable shall vest in the assignee and the assignee shall have an absolute right to recover such receivable and exercise all the rights and remedies of the assignor whether by way of damages or otherwise, or whether notice of assignment as provided in sub-section (1) of section 8 is given or not.

(3) Any assignment of receivables which constitute security for repayment of any loan

advanced by any Bank or other creditor and if the assignor has given notice of such encumbrance to the assignee, then on accepting assignment of such receivable, the assignee shall pay the consideration for such assignment to the Bank or the creditor, as the case may be.

8. Any assignee of a receivable shall not be entitled to demand payment of the receivable from the debtor in respect of such receivables unless notice of such assignment is given to the debtor by the assignor or the assignee alongwith express authority in its favour granted by the assignor.

Notice to debtor and discharge of obligation of such debtor.

9. Where a notice of assignment of receivable is given by the assignor or the assignee, as the case may be, under section 8 the debtor on receipt of such notice, shall make payment to the assignee and payment made to such assignee in discharge of any obligation in relation to the receivables specified in the notice shall fully discharge the debtor making the payment, from corresponding liability in respect of such payment.

Discharge of liability of debtor on payment to assignee.

10. Where no notice of assignment of receivables is given by the assignor or under his authority by the assignee, any payment made by the debtor in respect of such receivables to the assignor shall be held in trust for the benefit of the assignee which shall be forthwith be paid over to such assignee, as the case may be, or its agent duly authorised in this behalf.

Payment made by debtor to assignor to be held in trust for benefit of assignee in certain cases.

## CHAPTER IV

### RIGHTS AND OBLIGATIONS OF PARTIES TO CONTRACT FOR ASSIGNMENT OF RECEIVABLES

11. Without prejudice to the provisions contained in any other law for the time being in force, the debtor shall have the right to notice of

Right and obligations of parties to contract for assignment of receivables.

assignment under section 7 and till notice is served on the debtor, the rights and obligations in its contract with the assignor, shall remain unchanged, excepting the change of the party to whom the receivables are assigned which may become entitled to receive the payment of the receivable from the debtor.

Liability of debtor.

**12.** Where a notice of assignment as referred to in section 8 is served, the debtor shall:—

(a) intimate the assignee the details of the deposits or advance or payment on account made to the assignor before the receipt of notice of assignment and also provide any other information to the assignee relating to the receivable as and when called upon by the assignee to do so;

(b) not be entitled to a valid discharge of his liability in respect of assigned receivables, unless he makes the payment due on an assigned receivables to the assignee.

Assignor to be trustee of assignee.

**13.** Notwithstanding anything to the contrary contained in any other law for the time being in force, where a debtor makes any payment to an assignor which represents payment due on an assigned receivable, such payment shall be deemed to be for the benefit of the assignee, and the assignor shall be deemed to have received the amount of such payment as a trustee of the assignee and the assignor shall make payment of such amount to the assignee.

Liability of debtor in case of an assignor being micro or small enterprises.

**14.** If the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment due on assigned receivables shall be subject to the provisions contained in sections 15 to 17 of the Micro, Small and Medium Enterprises Development Act, 2006 with regards to the delayed payments of the receivables.

27 of 2006.



**15.** (1) Save as otherwise provided in this Act, any assignment of the receivable shall not, without the express consent of the debtor in writing, affect the rights and obligations of the debtor, (including the terms and conditions of the contract).

Principle of debtor protection.

(2) Consequent upon the assignment of receivables, the payment instruction under the contract entered into between assignor and debtor may modify the person, address or account to which the debtor is required to make payment, but such instructions shall not modify:—

(a) the amount of debt specified in the original contract; or

(b) the place specified in the original contract at which payment is to be made or at a place other than that in which the debtor is situated; or

(c) the date on which payment is to be made or other terms of the original contract relating to payment.

**16.** In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee,—

Defences and right of set off of debtor.

(a) all defences and rights of set off arising from the original contract, entered into between the assignor and debtor or any other contract that was part of the same transaction, of which the debtor could avail himself as if the assignment had not been made and such claim were made by the assignor instead of assignee;

(b) any other right of set-off if it was available to the debtor at the time notice, under section 8, of the assignment was received by the debtor.

Modifica-  
tion of  
original  
contract.

**17.** (1) Any agreement made before service of notice, under section 8, of the assignment of a receivable between the assignor and the debtor that affects the assignee's rights in respect of that receivable shall be effective as against the assignee, and the assignee shall acquire rights in the assigned receivables, as modified by such agreement.

(2) Any agreement made, after notice of the assignment between the assignor and the debtor that affects the assignee's rights, shall be ineffective as against the assignee unless,—

(a) the assignee consents to it; or

(b) the receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

(3) Nothing contained in sub-sections (1) and (2) shall affect any right of the assignor or the assignee arising from breach of an agreement between them.

Breach of  
contract.

**18.** If the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee.

## CHAPTER V

### REGISTRATION OF ASSIGNMENTS

Registration  
of Certain  
assignments  
of receiv-  
ables  
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 set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

54 of 2002. 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.

*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.

(2) For the purposes of this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to assignment of receivables in favour of a factor.

(3) On realisation of the assigned receivables or settlement of the claim against the debtors, the factor shall file satisfaction of the assignment of receivables in its favour, in such manner and subject to payment of such fees as may be prescribed in this behalf.

54 of 2002. (4) The provisions for registration of transactions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply to the record of assignment of receivables in favour of a factor in the Central Register with the Central Registry.

20. (1) The particulars of transactions of assignment of receivables entered in the Central Register of such transactions under section 19 shall be open during business hours for inspection by any person on payment of such fee as may be prescribed. Public inspection.

(2) The Central Register referred to in sub-section (2) of section 19 maintained in electronic form, shall also be open during the business hours or such extended hours as may be specified by the Central Registry for inspection by any person through electronic media on payment of such fee as may be prescribed.

(3) The provisions for maintenance of Central Register and public inspection thereof contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply. 54 of 2002.

## CHAPTER VI

### OFFENCES AND PENALTIES

Penalties.

**21.** If a default is made in filling under section 19 the particulars of any transaction of assignment of receivables and realisation of receivables by a factor, such company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank.

**22.** If any factor fails to comply with any direction issued by the Reserve Bank under section 6, such factor and every officer of the factor who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Offences.

**23.** If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, for which no specific penalty has been provided for, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

24. (1) No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Reserve Bank.

Cognizance  
of offences.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence punishable under this Act.

25. (1) Where an offence under this Act has been committed by a factor, every person who at the time the offence was committed was in charge of, and was responsible to, the factor, for the conduct of the business of the factor, as well as the factor, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:—

Offences by  
factors.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a factor and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the factor, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*— For the purpose of this section, a “director”, in relation to a factor means any officer entrusted with the management of the whole or substantially the affairs of the factor.

## CHAPTER VII

### MISCELLANEOUS

Provisions of this Act to override other laws.	<p><b>26.</b> The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.</p>	
Application of other laws not barred.	<p><b>27.</b> The provisions of this Act or the rules made thereunder shall be in addition to and not in derogation of the Negotiable Instruments Act, 1881, the Transfer of Property Act, 1882, the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, the Companies Act, 1956, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Micro, Small and Medium Enterprises Development Act, 2006 or any other law for the time being in force.</p>	<p>26 of 1881. 4 of 1882. 2 of 1934. 10 of 1949. 1 of 1956. 54 of 2002. 27 of 2006.</p>
Limitation.	<p><b>28.</b> No assignee of any receivable shall be entitled to take any measures for recovery of any assigned receivable, through any court or Tribunal unless his claim in respect of the receivable is made within the period of limitation specified under the Limitation Act, 1963.</p>	<p>36 of 1963.</p>
Confidentiality of information.	<p><b>29.</b> Save as otherwise provided in this Act, or unless required to do so by an order passed by any Court or Tribunal or any other statutory authority under any provision of law for the time being in force or for the purpose of recovery of the receivable, a factor shall maintain confidentiality and shall not disclose to any person information obtained by it from, any assignor, its present and future customers, its commercial and business activities and the terms of sale between the assignor and any debtor and other detail about the assignor.</p>	
Power to exempt.	<p><b>30.</b> (1) The Government may, on the recommendation of the Reserve Bank, declare by</p>	

notification in the Official Gazette that any or all the provisions of this Act shall not apply to any bank or company or factor or class of or factors either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

(2) A copy of every notification issued under sub-section (1), shall 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 notification or both the Houses agree that the notification shall not be issued or, the notification shall 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 the notification.

31. (1) The provisions of this Act shall not apply to any assignment of receivables arising under or from the following transactions, namely:—

Provisions of this Act not to apply or affect in certain cases.

(a) any merger, acquisition or amalgamation of business activities or sale or change in the ownership or legal status of the business;

(b) transactions on any stock exchange or commodities exchange regulated by the Securities and Exchange Board of India constituted under the provisions of the Securities and Exchange Board of India Act, 1992 or by the Forward Markets Commission under the Forward Contracts (Regulation) Act, 1952, respectively;

15 of 1992.

74 of 1952.

(c) financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(d) foreign exchange transactions except receivables in any foreign currency;

(e) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(f) bank deposits;

(g) a letter of credit or independent guarantee;

(h) rights and obligations of any person under the law governing negotiable instruments, negotiable warehouse receipts under the Warehousing (Development and Regulation) Act, 2007 or to instruments which are for the time being, by law or custom negotiable or any mercantile document of title to goods; 37 of 2007.

(i) sale of goods or services for any personal, family or household use.

(2) Nothing contained in this Act shall affect the rights and obligations of a consumer, manufacturer, trader or service provider under the provisions of the Consumer Protection Act, 1986. 68 of 1986.

Power of  
Central  
Government  
to make  
rules.

**32.** (1) The Central Government may, in consultation with the Reserve Bank, by notification and in the Electronic Gazette as defined in clause (3) of section 2 of the Information Technology Act, 2000 make rules for carrying out the provisions of this Act. 21 of 2000.

(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 non-banking financial company shall be filed and the fee for filing such transaction under sub-section (1) of section 19;

(b) the form and manner in which satisfaction of assignment of receivable or settlement of the claim shall be registered and the fee for filing such transactions under sub-section (2) of section 19;

(c) fee for inspecting the Central Register under section 20; and

(d) any other matter which is required to be or may be prescribed, in respect of which provision is to be made or may be made by rules.

**33.** Every rule made under this Act shall be laid, as soon as may be after it is made, 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 rule or both Houses agree that the rule should not be made, the rule 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 rule.

Laying of rules.

**34. (1)** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in Official

Power to remove difficulties.

Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:—

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

Amend-  
ments to  
certain  
enactments.

**35.** The enactments specified in the Schedule shall be amended in the manner specified therein.

THE SCHEDULE  
(See section 35)

Year	Act No.	Short Title	Amendment
1908	5	The Code of Civil Procedure, 1908	In Order XXXVII, in rule 1, in sub-rule (2), in clause (b), after sub-clause (iii), the following sub-clause shall be inserted, namely:—  “(iv) suit for recovery of receivables instituted by any assignee of a receivable.”.
2005	30	The Credit Information Companies (Regulation) Act, 2005	In section 2, in clause (f), after sub-clause (ii), the following sub-clause shall be inserted, namely:—  “(iii) a factor as defined under clause (i) of the Regulation of Factor (Assignment of Receivables) Act, 2011.”.

## STATEMENT OF OBJECTS AND REASONS

Inadequate working capital in a small scale or an ancillary industrial undertaking caused serious and endemic problems affecting the health of such undertaking. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. With a view to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto, a legislation titled as “The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act” was enacted in 1993. The provisions of the said Act made it mandatory for the buyer to pay to the Small Scale Industry promptly, failing which he is required to pay interest to the supplier.

2. However, the aforesaid Act did not improve the situation of delayed payments and the same was repealed by the Micro, Small and Medium Enterprises Development Act, 2006 which provided for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. This Act made provision for liability for buyer to make payment to the supplier, being a micro or small enterprise and the National Small Industries Corporation, the Small Industries Development Corporation of a State or Union territory and any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises referred to in clause (n) of section 2 of the said Act (hereafter referred to as micro or small enterprises).

3. The Central Government received complaints regarding delay in payment to the micro or small industries. However, the enactment of the Micro, Small and Medium Enterprises Development Act, 2006 also did not improve the situation of delayed payments to small scale industries. The Reserve Bank constituted a Study Group in January, 1998 under the Chairmanship of Shri C.S. Kalyansundaram, former Managing Director, State Bank of India for examining the feasibility and mechanics

of starting factoring organisations in the country and making recommendations regarding its theory, constitution, organisational set-up, scope of activities and other related matters. The Committee had noted that inadequacy of working capital finance with its attendant liquidity problem has been one of the major stumbling blocks in the viable running of small scale industry units and recommended that factoring for small scale industries could be mutually beneficial to both factors and small scale industry units. Besides, the said Committee, various other Committees set-up for alleviating the problems of small scale industry units, by the Government and the Reserve Bank during the last decade [including the Prime Minister's Task Force on Micro, Small and Medium Enterprises (2010)] have also recommended development of factoring services for small scale industries through policy and legislative prescriptions to address the problem of liquidity for the micro or small industries.

4. In view of the above, the Central Government decided to enact a legislation relating to factoring services and introduce a Bill titled as "The Regulation of Factor (Assignment of Receivables) Bill, 2011", to provide for and regulate the assignment of receivables by making provision for registration therefor and rights and obligations of parties to contract for assignment of receivables and for matters connected therewith or incidental thereto. Factoring service is one of the important mechanisms to address the issue of resources management for the Micro, Small and Medium Enterprises Sector. The Regulation of Factor (Assignment of Receivables) Bill, 2011, provides for a mechanism for assignment of receivables of the industry to a 'factor' and the payment of consideration by the 'factor' to the industrial unit.

5. The Regulation of Factor (Assignment of Receivables) Bill, 2011, *inter alia*, provides,—

- (a) for the process of assignment of receivables due and payable to any assignor (being any enterprise or medium enterprise, micro enterprise or small enterprise as defined in clauses (e), (g), (h) and (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006, respectively engaged in any business activity) by any debtor, to any factor, being the assignee, by an agreement;
- (b) that the debtor shall have the right to notice of assignment and till the notice is given, the assignee shall not be entitled to demand payment of the receivable from the debtor;

- (c) that the liability of the debtor shall not be discharged unless he makes the payment due on an assigned receivable to the assignee;
- (d) that the assignor would be the trustee of assignee for any payment received which is due on an assigned receivable;
- (e) that if the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment on assigned receivables shall be subject to the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 with regard to delayed payments of receivables;
- (f) for regulation of the factoring business;
- (g) for empowering the Reserve Bank to issue directions, call for information from the factor and prohibit the financial institutions from undertaking factoring business, if the factor fails to comply with the direction given by the Reserve Bank;
- (h) that the rights and obligations of the debtor cannot be changed without the express consent of the debtor;
- (i) that any breach of contract with the debtor by the assignor shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee;
- (j) provides for compulsory registration by the factor of every transaction of assignment of receivable with the Central Registry to be set up 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 such assignment or from the date of establishment of such Registry, as the case may be, subject to payment of such fee as may be prescribed and provides that the particulars of transaction would be entered into the Central Register kept at the Head Office of the Central Registry;
- (k) for penal provisions in cases of certain default or contravention of the provisions of the proposed legislation.

6. It is expected that the enactment of the proposed legislation would address the delay in payment and liquidity problems faced by the micro or small enterprises, though the proposed legislation applies to all enterprises including micro or small enterprises.

7. The Notes on Clauses explain in detail the various provisions contained in the proposed legislation.

8. The Bill seeks to achieve the above objects.

NEW DELHI;  
*The 17th March, 2011.*

PRANAB MUKHERJEE

## NOTES ON CLAUSES

*Clause 1.*—This clause relates to the short title, extent and commencement of the proposed legislation. This clause enables the Central Government to appoint a date with respect to the commencement of the proposed legislation. However, different dates may be appointed for different provisions of the proposed legislation and any reference in any such provision to the commencement of proposed legislation shall be construed as a reference to the coming into force of that provision.

*Clause 2.*—This clause defines certain expressions used in the Bill.

*Clause 3.*—This clause relates to registration of factors.

Sub-clause (1) of this clause provides that no factor shall commence or carry on the factoring business unless it obtains a certificate of registration from the Reserve Bank to commence or carry on the factoring business under the proposed legislation.

Sub-clause (2) of this clause provides that every factor shall make an application for registration to the Reserve Bank in such form and manner as it may specify. However, a company registered as a non-banking financial company and existing on the commencement of the proposed legislation and engaged in factoring 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-clause (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.

Sub-clause (3) of this clause provides that every applicant for grant of a certificate of a registration as a factor shall comply, for the purpose of registration, with all the requirements to be fulfilled by an applicant for grant of certificate of registration as non-banking financial company under the Reserve Bank of India Act, 1934 and all the provisions of that Act, so far as they relate to the registration of non-banking financial companies shall, *mutatis mutandis*, apply.



Sub-clause (4) of this clause provides that 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.

Sub-clause (5) of this clause provides that every factor including factors not subject to requirement of registration under clause 5, shall be governed by the Reserve Bank of India Act, 1934, the rules and regulations made thereunder and the directions or guidelines issued by the Reserve Bank, from time to time.

*Clause 4.*—This clause relates to the provisions of non-banking financial companies which apply to a factor.

This clause provides that all provisions of Chapter IIIB of the Reserve Bank of India Act, 1934 relating to non-banking financial companies which have been granted a certificate of registration under sub-section (5) of section 45-IA of the Reserve Bank of India Act, 1934 shall (except those specifically provided for under the proposed legislation) *mutatis mutandis* apply to a factor which has been granted a certificate of registration under clause 3 of the proposed legislation.

*Clause 5.*—This clause relates to requirement for registration as a factor which would not apply to bank or statutory corporation or Government company:—

This clause provides that nothing contained in clause 3 shall apply to a bank or any corporation established under an Act of Parliament or State Legislature, or a Government Company as defined under section 617 of the Companies Act, 1956.

*Clause 6.*—This clause relates to powers of Reserve Bank to give directions and to collect information from factors.

Sub-clause (1) of this clause provides that the Reserve Bank may, at any time by general or special order, direct that every factor shall furnish to it, in such form, at such intervals and within such time, such statements, information or particulars relating to factoring business undertaken by the factor, as may be specified by the Reserve Bank from time to time.

Sub-clause (2) of this clause provides that the Reserve Bank may, if it considers necessary in the interest of business enterprises availing

factoring services or in the interest of factors or interest of other stakeholders give directions to the factors either generally or to any factor in particular or group of factors in respect of any matters relating to or connected with the factoring business undertaken by such factors.

Sub-clause (3) of this clause provides that if any factor fails to comply with any direction given by the Reserve Bank under sub-clause (2), the Reserve Bank may prohibit such factor from undertaking the factoring business. However, before prohibiting any factor from undertaking the factoring business, the factor shall be given a reasonable opportunity of being heard.

*Clause 7.*—This clause relates to assignment of receivables.

Sub-clause (1) of this clause provides that any assignor may, by an agreement in writing, assign any receivable due and payable to him by any debtor, to any factor, being the assignee, for a consideration as may be agreed between the assignor and the assignee. However, if the debtor liable to pay the receivable or the factor is situated or established outside India, any assignment of receivable shall be subject to the provisions of the Foreign Exchange Management Act, 1999.

Sub-clause (2) of this clause provides that on execution of agreement in writing for assignment of receivables, all the rights, remedies and any security interest created over any property exclusively to secure the due payment of receivable shall vest in the assignee and the assignee shall have an absolute right to recover such receivable and exercise all the rights and remedies of the assignor whether by way of damages or otherwise, or whether notice of assignment as provided in sub-clause (1) of clause 8 is given or not.

Sub-clause (3) of this clause provides that any assignment of receivables which constitute security for repayment of any loan advanced by any Bank or other creditor and if the assignor has given notice of such encumbrance to the assignee, then on accepting assignment of such receivable, the assignee shall pay the consideration for such assignment to the Bank or the creditor, as the case may be.

*Clause 8.*—This clause relates to notice to debtor and discharge of obligation of such debtor.

This clause provides that any assignee of a receivable shall not be entitled to demand payment of the receivable from the debtor in respect

of such receivables unless notice of such assignment is given to the debtor by the assignor or the assignee along with express authority in its favour granted by the assignor.

*Clause 9.*—This clause relates to discharge of liability of debtor on payment to assignee.

This clause provides that where a notice of assignment of receivable is given by the assignor or the assignee, as the case may be, under clause 8 the debtor on receipt of such notice, shall make payment to the assignee and payment made to such assignee in discharge of any obligation in relation to the receivables specified in the notice shall fully discharge the debtor making the payment, from corresponding liability in respect of such payment.

*Clause 10.*—This clause relates to payment made by debtor to assignor to be held in trust for benefit of assignee in certain cases.

This clause provides that where no notice of assignment of receivables is given by the assignor or under his authority by the assignee, any payment made by the debtor in respect of such receivables to the assignor shall be held in trust for the benefit of the assignee which shall be forthwith be paid over to such assignee, as the case may be, or its agent duly authorised in this behalf.

*Clause 11.*—This clause relates to rights and obligations of parties to contract for assignment of receivables.

This clause provides that without prejudice to the provisions contained in any other law for the time being in force, the debtor shall have the right to notice of assignment under clause 7 and till notice is served on the debtor, the rights and obligations in its contract with the assignor, shall remain unchanged, excepting the change of the party to whom the receivables are assigned which may become entitled to receive the payment of the receivable from the debtor.

*Clause 12.*—This clause relates to liability of debtor.

This clause provides that where a notice of assignment, as referred to in clause 8, is served, the debtor shall, (a) intimate the assignee the details of the deposits or advance or payment on account made to the assignor before the receipt of notice of assignment and also provide any other information to the assignee relating to the receivable as and when

called upon by the assignee to do so; (b) not be entitled to a valid discharge of his liability in respect of assigned receivables, unless he makes the payment due on an assigned receivables to the assignee.

*Clause 13.*—This clause relates to assignor to be trustee of assignee.

This clause provides that notwithstanding anything to the contrary contained in any other law for the time being in force, where a debtor makes any payment to an assignor which represents payment due on an assigned receivable, such payment shall be deemed to be for the benefit of the assignee, and the assignor shall be deemed to have received the amount of such payment as a trustee of the assignee and the assignor shall make payment of such amount to the assignee.

*Clause 14.*—This clause relates to liability of debtor in case of an assignor being micro or small enterprises.

This clause provides that if the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment due on assigned receivables shall be subject to the provisions contained in sections 15 to 17 of the Micro, Small and Medium Enterprises Development Act, 2006 with regards to the delayed payments of the receivables.

*Clause 15.*—This clause relates to principle of debtor protection.

Sub-clause (1) of this clause provides that any assignment of the receivable shall not, without the express consent of the debtor in writing, affect the rights and obligations of the debtor.

Sub-clause (2) of this clause provides that consequent upon the assignment of receivables, the payment instruction under the contract entered into between assignor and debtor may modify the person, address or account to which the debtor is required to make payment, but such instructions shall not modify, (a) the amount of debt specified in the original contract; or (b) the place specified in the original contract at which payment is to be made or at a place other than that in which the debtor is situated; or (c) the date on which payment is to be made or other terms of the original contract relating to payment.

*Clause 16.*—This clause relates to defences and right of set off of debtor.

This clause provides that in a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against

the assignee, (a) all defences and rights of set-off arising from the original contract, entered into between the assignor and debtor or any other contract that was part of the same transaction, of which the debtor could avail himself as if the assignment had not been made and such claim were made by the assignor instead of assignee; and (b) any other right of set-off if it was available to the debtor at the time notice, under clause 8, of the assignment was received by the debtor.

*Clause 17.*—This clause relates to modification of original contract.

Sub-clause (1) of this clause provides that any agreement made before service of notice, under clause 8, of the assignment of a receivable between the assignor and the debtor that affects the assignee's rights in respect of that receivable shall be effective as against the assignee, and the assignee shall acquire rights in the assigned receivables, as modified by such agreement.

Sub-clause (2) of this clause provides that any agreement made, after notice of the assignment between the assignor and the debtor that affects the assignee's rights, shall be ineffective as against the assignee unless, (a) the assignee consents to it; or (b) the receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

Sub-clause (3) of this clause provides that nothing contained in sub-clauses (1) and

(2) shall affect any right of the assignor or the assignee arising from breach of an agreement between them.

*Clause 18.*— This clause relates to breach of contract.

This clause provides that if the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee.

*Clause 19.*— This clause relates to registration of certain assignments of receivables transactions.

Sub-clause (1) of this clause provides that 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

set up 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.

Sub-clause (2) of this clause provides that a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to assignment of receivables in favour of a factor.

Sub-clause (3) of this clause provides that on realisation of the assigned receivables or settlement of the claim against the debtors, the factor shall file satisfaction of the assignment of receivables in its favour, in such manner and subject to payment of such fees as may be prescribed in this behalf.

Sub-clause (4) of this clause provides that the provisions for registration of transactions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply to the record of assignment of receivables in favour of a factor in the Central Register with the Central Registry.

*Clause 20.*— This clause relates to public Inspection.

Sub-clause (1) of this clause provides that the particulars of transactions of assignment of receivables entered in the Central Register of such transactions under clause 19 shall be open during business hours for inspection by any person on payment of such fee as may be prescribed.

Sub-clause (2) of this clause provides that the Central Register referred to in sub-clause (2) of clause 19 maintained in electronic form, shall also be open during the business hours or such extended hours as may be specified by the Central Registry for inspection by any person through electronic media on payment of such fee as may be prescribed.

Sub-clause (3) of this clause provides that the provisions for maintenance of Central Register and public inspection thereof contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply.

*Clause 21.—* This clause relates to penalties.

This clause provides that if a default is made in filling under clause 19 the particulars of any transaction of assignment of receivables and realisation of receivables by a factor, such company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

*Clause 22.—* This clause relates to penalties for non-compliance of direction of Reserve Bank.

This clause provides that if any factor fails to comply with any direction issued by the Reserve Bank under clause 6, such factor and every officer of the factor who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

*Clause 23.—* This clause relates to offences.

This clause provides that if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, for which no specific penalty has been provided for, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

*Clause 24.—* This clause relates to cognizance of offences.

Sub-clause (1) of this clause provides that no Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Reserve Bank.

Sub-clause (2) of this clause provides that no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence punishable under the proposed legislation.

*Clause 25.—* This clause relates to offences by factors.

Sub-clause (1) of this clause provides that where an offence under the proposed legislation has been committed by a factor, every person who at the time the offence was committed was in charge of, and was

responsible to, the factor, for the conduct of the business of the factor, as well as the factor, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, nothing contained in this sub-clause shall render any such person liable to any punishment provided in the proposed legislation, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-clause (1), where an offence under the proposed legislation has been committed by a factor and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the factor, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Clause 26.—* This clause relates to provisions of this Act to override other laws.

This clause provides that the provisions of the proposed legislation shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

*Clause 27.—* This clause relates to application of other laws not barred.

This clause provides that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

*Clause 28.—* This clause relates to limitation.

This clause provides that any assignee can take any measure for recovery of assigned receivable through any court or Tribunal only if his claim is made within the period of limitation specified under the Limitation Act, 1963.

*Clause 29.—* This clause relates to confidentiality of information.

This clause provides that a factor shall maintain confidentiality and shall not disclose to any person information obtained by it from, any



assignor, its present and future customers, its commercial and business activities and the terms of sale between the assignor and any debtor and other detail about the assignor. However, this information could be disclosed on the orders passed by any Court or Tribunal or any statutory authority.

*Clause 30.—* This clause relates to power to exempt.

Sub-clause (1) of this clause empowers the Central Government, on the recommendation of the Reserve Bank, to exempt, by notification in the Official Gazette, any Bank or Company or factor from the applicability of any or all provisions of this Act.

Sub-clause (2) of this clause provides that every such notification made by the Central Government shall be laid before each House of Parliament.

*Clause 31.—* This clause relates to provisions of this Act not to apply or affect in certain cases.

This clause provides that the provisions of the proposed legislation shall not apply, *inter alia*, to any assignment of receivable under or from certain transactions such as merger of business activities, transactions on stock exchange or commodities exchange, netting contracts, inter-bank payments, bank deposits, negotiable instruments and sale of goods or services for any personal, family or household dues.

*Clause 32.—* This clause relates to power of Central Government to make rules.

This clause confers power upon the Central Government to make rules in respect of matters specified in the said clause.

*Clause 33.—* This clause relates to laying of rules.

This clause provides that the rules made by the Central Government under the proposed legislation shall be laid before each House of Parliament.

*Clause 34.—* This clause relates to power to remove difficulties.

This clause empowers the Central Government to remove any difficulty which may arise in giving effect to the provisions of the proposed legislation.

*Clause 35.*— This clause relates to amendments of certain enactments.

This clause provides to amend the Code of Civil Procedure, 1908 to make available the benefits of summary proceedings for recovery of debts or dues under a factoring arrangement to a factor and amends the Credit Information Companies (Regulation) Act, 2005 to define factor as a “credit institution which are consequential nature.”

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 32 empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include, (a) the form and manner in which the transactions of assignment of receivables in favour of a non-banking financial company shall be filed and the fee for filing such transaction under sub-clause (1) of clause 19; (b) the form and manner in which satisfaction of assignment of receivable or settlement of the claim shall be registered and the fee for filing such transactions under sub-clause (2) of clause 19; (c) fee for inspecting the Central Register under clause 20; and (d) any other matter which is required to be or may be prescribed, in respect of which provision is to be made or may be made by rules.

2. Clause 33 provides that the rules made by the Central Government under the proposed legislation shall be laid before each House of Parliament.

3. The matters in respect of which rules may be made by the Central Government are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

4. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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BILL

to provide for and regulate assignment of receivables by making  
provision for registration therefor and rights and obligations  
of parties to contract for assignment of receivables and  
for matters connected therewith or  
incidental thereto.

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*(Shri Pranab Mukherjee, Minister of Finance)*