



# **Non Banking Financial Companies Regulations & Consumers**

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## Preface

With the rise in consumerism and the requirement for quick availability of money, Non-banking financial companies (NBFCs) are fast emerging as an important segment of the Indian financial system. It is a heterogeneous group of institutions (other than commercial and co-operative banks) performing financial Intermediation in a variety of ways - accepting deposits, giving loans and advances, leasing, hire purchase, etc. NBFC presently is the most consumer unfriendly sector due to lack of clarity and consumer misconceptions when it comes to paying off loans or when the deposits are not realized even after maturity.

While the banking sector is controlled and regulated by the Reserve Bank of India and gives a sense of security to depositors, there is no such strong and similar mechanism in the case of deposits with NBFCs. Depositors, being in the nature of unsecured creditors, also do not get adequate protection under the law in the event of liquidation or winding up of the company. But in the present times, there is a need for NBFCs and microfinance institutions to adhere to rules and protect consumer interests.

It has also been observed that Institutions and companies do not deal with complaints expeditiously and professionally with the result that the complaint becomes a dispute as it does not get resolved internally by the institution. This brings us to the fundamental requirement for sound consumer protection mechanism to build up consumer confidence in this financial sector. With the increase in the number of consumer complaints and greater awareness on their part, timely and simplified institutional structure for dispute resolution is desirable so that the consumers are not compelled to resort to costly legal proceedings for protection of their rights. This is particular relevant for small investors. This monograph is to educate consumers about the types of NBFCs that exists today along with the regulatory framework, as well as to inform and build awareness about the consumer grievance redressal system available to Consumers in the regulated areas of the NBFC sector. The objective of the monograph is to give consumers a bird's eye view and knowledge on the different types of NBFCs operating in India.

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# **Non Banking Financial Companies Regulations and Consumers**

## **Financial Sector in India**

The Financial Sector in India is intrinsically strong. The fiscal sector includes banks, financial organization, markets and services. Fiscal transactions in an organized industry are executed by a number of financial organizations which are commercial in nature and offer monetary services to the society. Further classification of the financial sector in India includes banking and non-banking enterprises. The banking sector is classified as organized whereas the non banking sector is governed by loosely held rules which are not so stringent, often recognized as activities that are client specific. The Chief Controller and Regulator of the financial markets in India is the Reserve Bank of India (RBI) and is regarded as the supreme organization in the fiscal structure. Other significant fiscal organizations are business banks, domestic rural banks, cooperative banks and development banks. Non-banking fiscal organizations entail credit and charter firms and other organizations like Unit Trust of India, Provident Funds, Life Insurance Corporation, Mutual funds, General Insurance Corporation, etc. Non Banking Finance Institutions is a constituent of the institutional structure of the organized financial system in India.

Non-banking finance companies (NBFCs) form an integral part of the Indian financial system. They play an important role in nation building and financial inclusion by complementing the banking sector in reaching out to the unbanked segments of society, especially to the micro, small and medium enterprises (MSMEs), which forms the bedrock of entrepreneurship and innovation. NBFCs' ground-level understanding of their customers' profile and their credit needs gives them an edge, as does their ability to innovate and customise products as per their clients' needs. This makes them the perfect conduit for delivering credit to MSMEs. The NBFC sector in India has undergone significant transformation over the past few years. It has come to be recognised as one of the systemically important components of the financial system and has shown consistent year-on-year growth. NBFCs play a critical role in the core development of infrastructure, transport, employment generation, wealth creation opportunities, and financial support for economically weaker sections, they also make a huge contribution to the state exchequer.



## **Banking and Non Banking Financial Institutions**

The financial sector in any economy consists of several intermediaries. Apart from banking entities, there are investment intermediaries (such as mutual funds, hedge funds, pension funds, and so on), risk transfer entities (such as insurance companies), information and analysis providers (such as rating agencies, financial advisers, etc), investment banks, portfolio managers and so on. All such entities that offer financial services other than banking may be broadly classified as non-banking financial institutions.

Banking is commonly understood to mean taking of deposits that can be withdrawn on demand or notice - that is, banks can hold people's deposits and promise to pay them on demand. There are varieties of other entities that may accept deposits - hence, acceptance of deposits is not the essence of banking. In India, the term "non-banking financial companies" acquires a new meaning, and a huge significance. The meaning of the term encircles such entities which are not banks, and yet carry on lending activities almost at par with banks. They may also accept deposits - although these deposits are 'term' deposits and not 'on call' deposits, in the conventional understanding of the term.

The definition of the term NBFC entails a very wide meaning. NBFCs include not just the finance companies that the general public is largely familiar with; the term also includes a wider group of companies that are engaged in investment business, insurance, chit fund, nidhi companies, merchant banking, stock broking, alternative investments, etc. as their principal business. This monograph concentrates only on those NBFCs that are regulated - they either come under the regulatory purview of the Reserve Bank of India or any other regulator of the country in the financial space.

Traditionally, India has had a banking-dominated financial sector. Even so, there have always been NBFCs. In early times, small family run businesses used to take up deposit acceptance and lending activities. Even today, the sector may be small as compared to the banking sector with a total asset size of just around 14 percent of that of scheduled commercial banks (other than RRBs). However, there is no denying that the sector has grown tremendously over the years in size, form and complexity, with some of the NBFCs operating as conglomerates having business interests spread over sectors like insurance, broking, mutual fund and real estate. In keeping with the growth in business, interconnectedness and systemic importance of the NBFC sector also has increased.

NBFCs, being financial intermediaries, are engaged in the activity of bringing the saving and the investing community together. In this role they are perceived to be playing a complimentary role to banks rather than competitors, as it is a known fact that majority of the population in the country do not yet have access to mainstream financial products and services including a bank account. Therefore, the country needs institutions beyond banks for reaching out to areas where the presence of banks may be less and not so frequent. Thus NBFCs, especially those catering to the urban and rural poor namely NBFC-MFIs (Microfinance Institutions) and Asset Finance Companies have a complimentary role in the financial inclusion agenda of the country. Further, some of the big NBFCs viz; infrastructure finance companies are engaged in lending exclusively to the infrastructure sector and some are into factoring business, thereby giving a fillip to the growth and development of the respective sector that they operate in. Thus NBFCs have also carved niche business areas for themselves within the financial sector space and are also popular for providing customized products like second hand vehicle financing, mostly at the doorstep of the customer. In short, NBFCs bring the much needed diversity to the financial sector thereby diversifying the risks, increasing liquidity in the markets and bringing efficiency to the financial sector.

At the same time, their growing size and interconnectedness also raise concerns on financial stability. The Reserve Bank of India's endeavour in this context has been to streamline NBFC regulations, address the risks posed by them to financial stability, address depositors and customers' interests, address regulatory arbitrage and help the sector grow in a healthy and efficient manner. Some of the regulatory measures include identifying systemically important non-deposit taking NBFCs as those with asset size of Rs. 100 crore and above and bringing them under strict prudential norms (CRAR and exposure norms – the capital to risk weighted assets ratio - a standard metric to measure balance sheet strength of banks), issuing guidelines on Fair Practices Code, aligning the guidelines on restructuring and securitization with that of banks, permitting NBFCs-ND-SI to issue perpetual debt instruments etc.

### **Non Banking Financial Companies**

Non Banking Financial Company (NBFC) is a financial Institution that is into Lending or Investment or collecting monies under any scheme of arrangement but does not include any institution which carries on its principal business as agricultural activity, industrial activity, trading and purchase or sale of immovable properties. A company that carries on the business of accepting deposits as its principal business is also a NBFC.

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 and is engaged in the business of loans and advances, acquisition of shares/stock/bonds/debentures/securities issued by Government or a local authority or other securities of marketable nature, leasing, hire-purchase, insurance business, chit fund business but does not include any institution whose principal business is that of agriculture activity, industrial activity, sale/purchase/construction of immovable property. A non-banking institution which is a company and which has its principal business of receiving deposits under any scheme or arrangement or any other manner, or lending in any manner is also a non-banking financial company (Residuary non-banking company).

In terms of section 45-1A of the Reserve Bank of India Act, 1934, it is mandatory that every NBFC should be registered with Reserve Bank of India to commence or carry on any business of non-banking financial institutions.

However, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirements of registration with Reserve Bank of India viz Venture Capital fund/Merchant banking companies/stock broking companies registered with SEBI, Insurance company holding a valid certificate of registration issued by IRDAI, Nidhi companies as notified under section 620 A of the Companies Act, 1956 (as amended in Section 406 of Company Act, 2013), Chit fund companies as defined in clause (b) of Section 2 the Chit Fund Act, 1982 or housing finance companies regulated by the National Housing Bank.

Recent years have witnessed significant increase in financial intermediation by the NBFCs. The focus of regulatory attention is on NBFCs accepting public deposits, and those involved in financial activity as the main business of the company. For the common man, NBFCs have been classified into two categories for regulatory purposes:

- (a) those accepting public deposits,
- (b) core investment companies with 90 per cent of their total assets as investments in the securities of their group/ holding/subsidiary companies.

To fall in the category of financial activity as principal business is when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 per cent of the gross income. A company which fulfills both these

criteria is registered as a NBFC by RBI. The term ‘principal business’ is defined by the Reserve Bank of India so as to ensure that only companies predominantly engaged in financial activities get registered with it and are regulated and supervised by it. Hence if there are companies engaged in agricultural operations, industrial activity, purchase and sale of goods, providing services or purchase, sale or construction of immovable property as their principal business and are doing some financial business in a small way will not be regulated by the Reserve Bank of India.

According to RBI, Non Banking Finance Companies (NBFCs) is a constituent of the institutional structure of the organized financial system in India. NBFCs perform a significant and important role in our financial system. They facilitate the process of channelizing of public savings and provide better return to the depositors. Due to liberalization and globalization, the banking industry, and more specifically - the financial sector have gone through many reforms. In the present economic environment, it is very difficult to cater to the needs of the society by banks alone, so the role of Non Banking Finance Companies and Micro Finance Companies have become very important. The activities performed by the non-banking financial companies (NBFCs) in India have undergone many changes over the years through functional specialization, leading to quality improvements. The role of NBFCs as effective financial intermediaries have been well recognized. Due to their “ear to the ground approach” – knowing the pulse of the consumer where they operate, they have the capability to take quicker decisions, assume greater risks, and customise their services and charges according to the needs of their clients. These features, in comparison to the banking sector have contributed to the proliferation of NBFCs. Unbundling of services can be done by NBFCs as their processes are flexible, and competitive as well. The distinction between banks and non-banks has been gradually getting blurred and becoming seamless, since both the segments of the financial system engages themselves in many similar types of activities. At present, NBFCs in India are prominent in a wide range of activities like hire-purchase finance, equipment lease finance, loans, investments, etc. By employing innovative marketing strategies and devising customized products, NBFCs have also been able to build up a clientele base among the depositors, attract public savings and command large resources. This is reflected in the growth of their deposits from the public, shareholders and directors and borrowings by issue of non-convertible debentures, etc.

According to a KPMG survey – “The Indian Non Banking Finance Company (NBFC) sector has often been relegated to the shadows, in most discussions on the Indian Financial Services (FS) industry. Banks, insurance companies and capital market players take centre stage and invariably, NBFCs attract public attention only during times of crisis. Little attention has been paid to the silent but effective manner in which NBFCs have spread their operations across the country.”

Important regulations relating to acceptance of deposits by NBFCs are:

- (i) The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.
- (ii) The NBFCs cannot offer interest rates higher than the ceiling rate prescribed by RBI from time to time.
- (iii) The NBFCs cannot offer gifts/incentives or any other additional benefit to depositors.
- (iii) The NBFCs (except certain Asset Finance Companies) should have minimum investment grade credit rating.
- (iv) There are certain mandatory disclosures about the company in the application form issued by the company soliciting deposits.
- (v) Their deposits are not insured.
- (vi) The repayment of deposits by NBFCs is not guaranteed by RBI.

Effective April 24, 2004, NBFCs cannot accept deposits from Non Resident Rupee account holders except deposits by debit to a Non Resident Ordinary account of a Non Resident Indian provided such amounts do not represent inward remittance or transfer from Non Resident External Rupee account/ Foreign Currency Non Resident Bank Account. NBFCs have been advised to accept nominations made by the depositors in the form similar to one specified under the said rules viz. form DA-I for the purpose of nominations, and form DA- 2 and DA-3 for cancellation/variation of nomination, respectively.

### **Types of NBFCs**

A broader overview of NBFC companies in India are explained below:

All NBFCs are either deposit taking or Non-deposit taking, based on their Liability Structure:

- Category 'A' companies (NBFCs accepting public deposits or NBFCs-D), and
- Category 'B' companies (NBFCs not raising public deposits or NBFCs-ND)

NBFCs-D are subject to requirements of Capital adequacy, Liquid assets maintenance, Exposure norms (including restrictions on exposure to investments in land, building and unquoted shares), Asset Liability Management discipline and reporting requirements. If they are non-deposit taking, the NBFCs which have asset size of Rs.100 crores or more are known as Systematically Important Non Deposit NBFC. They have been so classified because they can have a bearing on financial stability of the country. The Non-deposit taking NBFCs are denoted as NBFC-NDSI.

Under these two broad categories, the different types of NBFCs are as follows:

- Asset Finance Company (AFC): The main business of these companies is to finance tangible assets such as machines, automobiles, generators, material equipments, industrial machines etc.
- Investment Company (IC): The main business of these companies is to deal in securities.
- Loan Companies (LC): The main business of such companies is to make loans and advances (not for assets but for other purposes such as working capital finance etc.).
- Infrastructure Finance Company (IFC): A company which has net owned funds of at least Rs. 300 crore and has deployed 75% of its total assets in Infrastructure loans is called IFC provided it has credit rating of A or above and has a CRAR of 15%. A systematically important NBFC (assets Rs. 100 crore and above) which has deployed at least 90% of its assets in the form of investment in shares or debt instruments or loans in group companies is called CIC-ND-SI. Out of the 90%, investment in equity shares or those instruments which can be compulsorily converted into equity shares should be 60%. Such companies do accept public funds.
- Infrastructure Debt Fund (IDF-NBFC): A debt fund means an investment pool in which core holdings are fixed income investments. The Infrastructure Debt Funds are meant to infuse funds into the infrastructure sector. The importance of these funds lies in the fact that the infrastructure funding is not only different but also difficult in comparison to other types of funding because of its long gestation

period and long term requirement. In India, an IDF can be set up either as a trust or as a company. If the IDF is set up as a trust, it would be a mutual fund, regulated by SEBI. Such funds would be called IDF-MF. The mutual fund would issue rupee-denominated units of five years' maturity to raise funds for the infrastructure projects. If the IDF is set up as a company, it would be an NBFC; it will be regulated by the RBI. The RBI guidelines governing IDF came in September 2011. According to these guidelines, such companies would be called IDF-NBFC. An IDF-NBFC is a non-deposit taking NBFC that has Net Owned Fund of Rs 300 crores or more and which invests only in Public Private Partnerships (PPP) and post commencement operations date (COD) infrastructure projects which have completed at least one year of satisfactory commercial operation and becomes a party to a Tripartite Agreement.

- **Micro Finance Institution (NBFC-MFI)** NBFC-MFI is a non-deposit taking NBFC which has at least 85% of its assets in the form of microfinance. Such microfinance should be in the form of loans given to those who have annual income of Rs. 60,000 in rural areas and Rs. 120,000 in urban areas. Such loans should not exceed Rs. 50000 and its tenure should not be less than 24 months. Further, the loan has to be given without collateral. Loan repayment is done on weekly, fortnightly or monthly installments at the choice of the borrower.
- **Factors (NBFC-Factors)** Factoring business refers to the acquisition of receivables by way of assignment of such receivables or financing, either by way of loans or advances or by creation of security interest over such receivables but does not include normal lending by a bank against the security of receivables etc. An NBFC-Factoring company should have a minimum Net Owned Fund (NOF) of Rs. 5 crore and its financial assets in the factoring business should constitute at least 75 percent of its total assets and its income derived from factoring business should not be less than 75 percent of its gross income.

NBF's can be classified by the mainstream services that they provide like:

- Deposit taking institutions (e.g. Thrifts, credit unions, savings and loans.)
- Risk-pooling institutions (e.g. insurance Companies)
- Contractual savings institutions (e.g. Mutual funds, pension funds, other investment institutions)

- Market makers (e.g. Investment banks, stockbrokers.)
- Specialized sectoral financiers (e.g. leasing companies, real state finance co., micro-finance institutions.)
- Financial service providers (e.g. Brokers, investment advisers.)

The Non-Banking Finance Companies operating in India in the consumer segment are in the following sub categories.

(1) Equipment Leasing Company is a company which carries on as its principal business of leasing of equipments or the financing of such activity. Apart from their Net Owned Funds (NOF), the leasing companies raise funds in the form of deposits from other companies, banks and other financial institutions. Public deposits and inter-corporate deposits account for 74 percent of their total funds. Leasing is a form of rental system. A lease is a contractual arrangement whereby the lessor grants the lessee the right to use an asset in return for periodical lease-rent payments. There are two types of leases (i) operating lease, and (ii) financial or capital lease. The operating lease is a short-term lease which can be cancelled. Financial lease is a contract, the commitment or is non-concealable.

(2) Hire Purchase Finance Company is a company which carries on as its principle business, hire purchase transactions or the financing of such transactions. The sources of hire-purchase finance are:

- (i) Hire purchase Finance Companies.
- (ii) Retails and Wholesale Traders.
- (iii) Bank and Financial Institutions.

Hire-purchase finance or credit is a system under which term loans for purchase of goods, producer goods or consumer goods and services are advanced which have to be liquidated under an installment plan. The period of credit is generally one to three years. The hire purchase credits are available for a wide range of products and services. Hire-purchase finance companies are public or private limited companies or partnership firms engaged in giving credit for acquiring durable goods.

(3) Housing Finance Company is a company which carries on as its principle business, the financing of the acquisition or construction of houses including the acquisition or development of plots of lands for construction of houses. These companies are supervised by National Housing Bank, which refinances housing loans by scheduled commercial banks, co-operative banks, housing finance companies and the apex co-operative housing finance societies.



- (4) Investment Company means any company which carries on as its principle business the acquisition of securities. These types of companies are investment holding companies formed by business houses. As such they provide finance mainly to companies associated with these business houses.

As compared to open-ended investment companies or mutual funds/units trust, these investment companies are close ended companies having a fixed amount of share capital. Almost all prominent industrial groups have their own investment companies.

- (5) Loan Company is a company which carries on as its principle business, the providing of finance whether by making loans or advances or otherwise for any activity other than its own. (This category excludes No.1 to No. 3 above categories). These types of companies are generally small partnership concerns which obtain funds in the form of deposits from the public and give loans to wholesale and retail traders, small scale industries and self-employed persons. These companies collect fixed deposits from the public by offering higher rates of interest and give loans to others at relatively higher rates of interest.

- (6) Mutual Benefit Finance Company (i.e. Nidhi Company) means any company which is notified by the Central Government under section 620A of the Companies Act, 1956 (as amended in Section 406 of Companies Act, 2013). The main sources of funds for nidhis are share capital, deposits from their members and deposits from the public. Nidhis give loans to their members-for several purposes like marriages, redemption of old debts, construction etc. The nidhis normally follow easy procedures and offer saving schemes and make credits available to those whose credit needs remain unmet by their commercial banks.

- (7) Chit Fund Company is a company which collects subscriptions from specified number of subscribers periodically and in turn distributes the same as prizes amongst them. Any other form of chit or kuri is also included in this category. The chit fund companies operations are governed by the Chit Fund Act, 1982, which is administered by the respective State Government. Their deposit taking activities are regulated by the Reserve Bank. The chit fund companies enter into an agreement with the subscribers that each one of them shall subscribe a certain amount in installments over a definite period and that every one of such subscriber shall in his turn, as determined by lot or by auction or by tender, be entitled to a prize amount.

(8) Residuary Non-Banking Company is a company which receives deposits under any scheme by way of subscriptions/contributions and does not fall in any of the above categories. There are few unhealthy features of the operations of these companies; (i) Negative NOF (Net Owned Fund), (ii) Understatement of their deposit liability, (iii) Forfeiture of deposits, (iv) Levy of service charges on the depositors, (v) Payment of high rates of commission, etc. To remove these features, RBI has extended prudential norms to these companies, introduced compulsory registration requirement, specified minimum rates of interest payable on their deposits under different schemes. Under the RBI (Amendment) Act, 1997, the RBI directly inspects and monitoring the activities of these companies.

### **Difference between Banks and NBFCs**

NBFCs operate almost like banks except for running accounts where money can be easily withdrawn by writing cheques or using a debit card. NBFCs are doing functions similar to that of banks, however, the differences are as follows:

- An NBFC cannot accept demand deposits;
- An NBFC is not a part of the payment and settlement system and hence cannot issue cheques drawn on itself; and
- Not covered under the insurance of deposits and guaranteeing of credit facilities of the Deposit Insurance and Credit Guarantee Corporation.

### **Regulatory Framework for NBFCs**

In terms of Section 45-IA of the RBI (Amendment) Act, 1997, no NBFC can commence or carry on business of a non-banking financial institution without obtaining a certificate of registration from the RBI and without having Net Owned Funds of Rs. 25 lakhs not exceeding 200 lakh rupees, (Rupees two crore since April 1999). Section 45-IA of the RBI Act defines Net Owned Fund as the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting the following:

- i. accumulated balance of loss;
- ii. deferred revenue expenditure;
- iii. other intangible assets;
- iv. Investments of such company in shares of its subsidiaries,

companies in the same group, all other non-banking financial companies; and

- v. the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with subsidiaries of such company and companies in the same group to the extent such amount exceeds ten per cent of Owned Funds i.e. aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting accumulated losses, deferred revenue expenditure and other intangible assets.

RBI vide its press release ‘Temporary suspension of issuing Certificate of Registration (COR for conducting business of NBFI’ dated 1st April, 2014, announced its decision to keep in abeyance the issue of certificate of registration to the companies proposing to conduct business of NBFI in terms of Section 45IA of the RBI Act for a period of one year, except for CIC-ND-SIs, IFCs, IDF-NBFCs and NBFC-MFIs.

### **Exemption from Registration**

Certain categories of NBFCs are exempted from the requirement of obtaining registration from the RBI like Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under the Companies Act, 1956 (as ammended in Section 406 of Companies Act, 2013) or any corresponding legislation for the time being in force, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982, Housing Finance Companies regulated by National Housing Bank, Stock Exchange or a Mutual Benefit company.

Laws governing the Non-Banking Finance Companies:-

- Companies Act, 2013
- Reserve Bank of India Act, 1934
- NBFC (Acceptance of Public Deposits) Directions, 1998
- NBFC (Deposit Accepting or Holding) Prudential Directions, 2007
- NBFCs Auditors Directions, 2008
- Guidelines, directions and instructions issued by RBI through notifications and circulars.

## **Reserve Bank of India and NBFCs**

In terms of Section 45-IA of the RBI Act, 1934, it is mandatory that every NBFC should be registered with RBI to commence or carry on any business of non-banking financial institution as defined in clause (a) of Section 45-I of the RBI Act, 1934.

However, to obviate dual regulation, certain category of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz. venture capital fund/merchant banking companies/stock broking companies registered with SEBI, insurance company holding a valid certificate of registration issued by IRDAI, Nidhi companies as notified under Section 406 of the Companies Act, 2013, chit fund companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982 or Housing finance companies regulated by National Housing Bank.

The Department of Non-Banking Supervision (DNBS) is entrusted with the responsibility of regulation and supervision of Non-Banking Financial Companies (NBFCs) under the regulatory provisions contained under Chapter III B and C and Chapter V of the Reserve Bank of India Act, 1934. The Regulatory and Supervisory Framework of the Reserve Bank provides for, among other things, registration of NBFCs, and prudential regulation of various categories of NBFC, issue of directions on acceptance of deposits by NBFCs and surveillance of the sector through off-site and on-site supervision. Deposit taking NBFCs and Systemically Important Non-Deposit Accepting Companies are subjected to a greater degree of regulation and supervision. The focus of regulation and supervision is three fold, viz., a) depositor protection, b) consumer protection and c) financial stability.

The Reserve Bank has also been empowered under the RBI Act, 1934 to take punitive action which includes cancellation of Certificate of Registration, issue of prohibitory orders from accepting deposits, filing criminal cases or winding up petitions under provisions of Companies Act, in extreme cases.

Developmental activities of the Department of Non Banking Supervision of RBI :-

- a. Co-ordination with State Governments to pass State Legislations to curb unauthorized and fraudulent activities
- b. Conducting public awareness programmes like depositors' education, workshops and seminars for trade and industry organizations

- c. Promoting Self-Regulatory Organization (SRO) for NBFC-MFI which includes monitoring the compliance with the regulations and code of conduct in the best interest of the customers of the NBFC-MFIs for better and effective functioning.
- d. Conducting training programmes for personnel of NBFCs, State Governments, State Police and auditors of NBFCs.
- e. Interacting with co-regulators viz., SEBI, IRDAI, State Governments for greater coordination on related issues.

The current focus of the Department of Non Banking Supervision of RBI is to:-

- a. Identify and review regulatory framework to bridge gaps and align regulations with other financial intermediaries, wherever appropriate;
- b. Identify and monitor areas of systemic risks and unregulated shadow banking activities from the financial stability perspective;
- c. Supervise the regulated entities through Off-Site Reporting, On-Site Inspections and Market Intelligence;
- d. Coordinate with other financial sector regulators and enforcement agencies to check unauthorized financial activities;
- e. Conduct public awareness campaigns on Non-Banking Financial Companies and unauthorized acceptance of deposits through press advertisements, participation in fairs / workshops/ seminars;
- f. Streamline the sector to ensure that only serious players occupy the NBFC space
- g. Enhance disclosure and transparency in the sector.

The list of non-deposit taking NBFCs that hold a valid Certificate of Registration and are allowed to lend and make investments is available on the RBI website: [www.rbi.org.in](http://www.rbi.org.in) → Sitemap → NBFC List → List of NBFCs not accepting public deposits.

### **Securities & Exchange Board of India ( SEBI)**

A Collective investment scheme is any scheme or arrangement which satisfies the conditions, referred to in sub-section (2) of section 11AA of the SEBI Act. It states that any scheme or arrangement made or offered by any company under which the contributions, or payments made by the investors, are pooled and utilised with a view to receive

profits, income, produce or property, and is managed on behalf of the investors is a CIS. Investors do not have day to day control over the management and operation of such scheme or arrangement.

The Securities and Exchange Board of India (SEBI), the Indian market regulator has been taking significant steps over the last couple of years in protecting the interests of retail investors due to their inability to take a well-informed decision about investing in various securities. For this, SEBI has intensified its scrutiny over different companies. Right from initiating action against Sahara Group to the unfolding Saradha Scam, SEBI has acted for the benefit of such investors. To regulate such behaviour and clamp down on entities running illegal schemes, the market regulator introduced the Securities and Exchange Board of India (Collective Investment Schemes), Regulations, 1999 (“Regulations”). These Regulations, among other things, deal with the registration and obligations of the Collective Investment Management Company. To begin with, it would be useful to examine the definition of “Collective Investment Scheme” and “Collective Investment Management Company”.

The term “Collective Investment Scheme” (“CIS”) is defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”). As the name suggests, it is an investment scheme or arrangement where several individuals come together to pool their money for investing in a particular asset(s) and for sharing the returns arising from that investment as per the agreement reached between them. In order to be a CIS, it should satisfy the following conditions:

1. The contributions or payments made by the investors are pooled and utilized solely for the purpose of such scheme or arrangement.
2. The contribution or payments are made by the investors with a view to receive profits or income from such scheme or arrangement.
3. The property, contributions or payments forming part of such scheme or arrangement is managed on behalf of the investors.
4. Investors do not have day-to-day control over the management of such scheme or arrangement.

Moreover, by way of the Securities Laws (Amendment) Act, 2014 a proviso was inserted to section 11 AA stating that any pooling of funds under any scheme or arrangement, which is not registered with SEBI, involving a corpus of Rs. 100 crores or more, shall be deemed to be a

CIS. A Collective Investment Management Company (“Company”) has been defined under regulation 2 (h) of the Regulations as a company incorporated under the Companies Act, 1956 and registered with SEBI, whose object is to organize, operate and manage a collective investment scheme.

SEBI has made it mandatory for every entity that is running the CIS to register itself under section 12(1B) of the Act and Regulation 3 of the Regulations. However, if any person is operating a CIS before the commencement of the regulations, such person shall make an application to SEBI for the grant of registration certificate.

In additions to Collection Investment Scheme (CIS), SEBI registers Foreign Venture Capital Investors (FVCIs) and regulates investments by FVCIs in India under SEBI (Foreign Venture Capital Investors) Regulations, 2000 (“FVCI Regulations”). FVCIs are investors incorporated and established outside India investing primarily in venture capital undertakings in India either directly or through venture capital fund(s)/alternative investment funds.

- b. RBI through Schedule 6 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, also regulates the flow of money through FVCI route. Infrastructure is one of the sectors in which RBI has permitted investment under the FVCI route.
- c. As on September 30, 2014, there are 197 FVCIs registered with SEBI with a cumulative net investment of Rs. 42,776 crore.
- d. Further, FVCI investment in infrastructure sector as on September 30, 2014 amounted to more than Rs. 20,000 crore i.e. more than half of the total cumulative net investment by FVCIs in India. Major investment by FVCIs in the infrastructure sector is in power, telecom, roads, bridges, urban infrastructure, etc.

SEBI is the regulator of Collection Investment Schemes (CIS) in the field of NBFCs. Information on such schemes and grievances against the promoters may be immediately forwarded to SEBI as well as to the EOW/Police Department of the State Government. Collective Investment Schemes (CIS) are schemes where money is exchanged for units, be it time share in resorts, profit from sale of wood or profits from the developed commercial plots and buildings and so on.

Any scheme or arrangement made or offered by a Co-operative society or under which deposits are accepted by non-banking financial

companies (“NBFCs”), or being a contract of insurance, or under which deposits are accepted by a company declared as a Nidhi Company or falling within the meaning of Chit Business shall not be a CIS.

Collective Investment Schemes (CIS) do not fall under the regulatory purview of the Reserve Bank.

### **National Company Law Tribunal**

Company Law Board has been reconstituted as the National Company Law Tribunal with effect from June 2016. The National Company Law Tribunal has been constituted w.e.f. 1st June, 2016 and by virtue of Section 466(1) of Companies Act, 2013, the Company Law Board stands dissolved. The (company Act, 2013 has many provisions for depositors but the Section 45 of the Company Act, 2013 belongs to depositors and its grievance redressal. The Section 45 QA reads as follows:

“Power of National Company Law Tribunal (formerly Company Law Board) to order repayment of deposit.

(1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid and the other persons interested in the matter.

To give effect to the above provisions, Company Law Board Regulations, 1991 have been amended vide Notification No.GSR 433 (E) dated 1st August, 1997-(1997) 26 CLA (ST) 112.

The application for refund of deposits and interest thereon, can be made in prescribed Form No.4 of the Company Law Board Regulations, 1991 in duplicate along with a fee of Rs.50 by way of Demand Draft/ Pay Order in favour of Pay & Accounts Officer, Department of Company Affairs to the Bench Officer, Company Law Board, at New Delhi/ Kolkata/Mumbai/Chennai under whose jurisdiction, the Registered Office of the defaulting company falls. The form of Application is given in the Annexure ‘A’.

The ‘Annexure B’ gives the jurisdiction of various offices of the National Company Law Tribunal -NCLT (Formerly known as Company Law Board) in accordance with the terms and conditions of such deposit.

(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956 (1 of 1956) as amended by Companies Act, 2013) may, if it is satisfied, either on its own motion



or on an application of the depositor, that it is necessary so to do to safeguard the interest of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the National Company Law Tribunal may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company

Where a non-banking financial company fails to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the National Company Law Tribunal (NCLT) either on its own motion or on an application from the depositor directs, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order. As explained above the depositor can approach NCLT Bench by mailing an application in prescribed form to the appropriate bench of the NCLT according to its territorial jurisdiction with the prescribed fee. Addresses of NCLT bench across India are enclosed at 'Annexure-B.'

### **Official Liquidator and its Role**

Official Liquidator is appointed by the court after giving the company reasonable opportunity of being heard in a winding up petition. The liquidator performs the duties of winding up and such duties in reference thereto as the court may impose:

- Where the court has appointed an official liquidator or provisional liquidator, he becomes custodian of the property of the company and runs the day-to-day affairs of the company.
- He has to draw up a statement of affairs of the company in prescribed form containing particulars of assets of the company, its debts and liabilities, names/residences/occupations of its creditors, the debts due to the company and such other information as may be prescribed. The scheme is drawn up by the liquidator and same is put up to the court for approval.
- The liquidator realizes the assets of the company and arranges to repay the creditors according to the scheme approved by the court. The liquidator generally inserts advertisement in the newspaper inviting claims from depositors/investors in compliance with court orders. Therefore, the investors/

depositors should file the claims within due time as per such notices of the liquidator.

Chapter V dealing with deposits was notified in phases in 2014 and the powers to deal with the cases under it were assigned in NCLT. Now the said powers will be vested in NCLT. The law on deposits is quite distinct under the *Companies Act, 2013* as compared to the earlier *Companies Act, 1956*. The provisions for deposits under 2013 Act were already notified. Aggrieved depositors also have the remedy of class actions for seeking redressal for the acts/omissions of the company which hurt their rights as depositors.

## **Registrar of Cooperative Societies**

### **Cooperative Societies**

There are 3 types of institutions recognized by the Banking Regulation Act, 1949 (as applicable to Cooperative Societies). These are:

- (i) primary credit societies, who virtually function like banks, but whose networth is less than Rs.1 lakh; who are not members of the payment system and to whom deposit insurance is not extended.
- (ii) primary cooperative banks, popularly called Urban Cooperative Banks, whose net worth is Rs.1 lakh and above; who are recognised as banks, are members of payment system and who enjoy deposit insurance.
- (iii) cooperative credit societies, who confine their activities to their members alone and who do not perform banking functions. In this chapter, the Committee deals with these cooperative credit societies.
  - Under the provisions of Section 5(ccii) of Banking Regulation Act, 1949 (AACS), a cooperative credit society is defined as a cooperative society, “the primary object of which is to provide financial accommodation to its members and includes a cooperative land mortgage bank”.
  - Multi State Credit society is registered under Multi State Co-Operative Societies Act and rules. Society is not a personal institution owned by an individual but is a fully democratic organization managed by Board of Directors who are elected by

the members of the society in the Annual General Meetings and the Board of Directors also take decisions in a collective manner with total transparency.

The Department of Co-Operatives constantly reviews the functioning of the society at regular intervals. Finance companies are usually owned by individuals and frame the so called policies according to the owners. The general members/ depositors/ investors have no role to play. There are some possibilities of the absence of transparency. Members/ Investors have virtually no knowledge of the affairs/ legal provisions of N.B.F.C. and the statutory liabilities of the NBFC are also limited.

### **Difference between Multi State Credit Co-Operative Society and Banks**

Banks works as per the rules of Reserve Bank of India while Society works as per the Cooperative society Act.

- Audit of Bank is done as per the guideline of Reserve Bank of India, while in society auditors come from the registrar's office for audit.
- Banks can issue cheque books because they have clearing house license, while society do not have a clearing house license, hence cannot issue cheque books.
- When anybody wants to do transaction with society first of all he/she has to become member of society and have to purchase its shares and only then can take a loan or make a deposit. Whereas in Banks, one can take loan and also put FD and other deposit without becoming a member and purchasing shares.

### **Registrar of Cooperative Societies at the State level**

The Registrar/ Department of Co-operative Society at the states level regulates and monitors the activities of Cooperative Societies to ensure their democratic function and to protect the interests of the members of the Cooperative Societies as provided in the Cooperative Act. Cooperative Societies are organizations that are registered under the Cooperative Societies Act of the State. They work as independent economic enterprises. They extend various services that include finance to its members and member organizations. The Cooperative Societies are expected to function on certain cooperative principles and cooperative identity based on certain values of the Societies as a whole, within the framework of the Cooperative Societies Acts and Rules.

## **Functions of Cooperative Societies**

- Disseminate information on how to form and register a Cooperative Society.
- Respond promptly to the proposals for registration.
- Keep up to date records of registration and make this information accessible to the public and supply authenticated copies on demand.

## **Chit Funds and its Regulations**

A Chit fund is a kind of savings scheme practiced in India. A Chit fund company means a company managing, conducting or supervising in any capacity. According to Section 2(b) of the Chit Fund Act, 1982, “Chit means a transaction whether called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money by way of periodical installments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount”. Such chit fund schemes may be conducted by organized financial institutions or may be unorganized schemes conducted between friends or relatives.

Chit funds, a savings avenue that is as popular with housewives as it is with businessmen, have earned a bad name. The reason is the scores of scams in the name of chit funds, the one being allegedly perpetrated by the Saradha Group in West Bengal. In fact, the Saradha Group fraud was perpetrated through a Ponzi scheme, though the group had named it chit fund to avoid scrutiny. In a Ponzi scheme, money from new investors is used to pay the old investors.

## **Drawbacks of Chit Funds**

Chit-funds do not offer any pre-determined or fixed returns. Higher returns are earned when there are more number of members in the group or if the duration of the scheme is long. One would earn more if more members need emergency funds. Thus returns cannot be calculated and decided when one joins the scheme.

## **Regulations in Chit Funds**

Chit fund business is regulated under the Chit Funds Act, 1982 and the Rules are framed under this Act by the various State Governments for this purpose. Central Government has not framed any Rules of operation

for them. Thus, Registration and Regulation of Chit funds are carried out by State Governments under the Rules framed by them. Various state and central laws regulate chit funds. These laws govern only the registered chit funds. There is no redress if one falls prey to a fund that is not regulated. It is not advisable to invest in unregistered chit funds. Further, one should not put money in a chit fund whose other members are unknown to the consumer.

### **Housing Finance Companies (HFCs)**

As compared to other financial services, housing finance is a new concept in India; however, the fast development of various housing activities in the country has led to the growth of the housing finance market in India. With this, a number of housing finance companies are offering their best service to the people who are in need for housing finance.

The first company to be established during 1970s to offer finance to different urban infrastructural and housing activities was HUDCO and the first private sector organization to be established in this respect was HDFC in the year 1977. Since then, this sector has been growing considerably and is expected to grow further in the years to come.

A Housing finance company carries on, as its principal business, the financing of acquisition or construction of houses, including acquisition or development of land in connection therewith. The Housing Finance Company is regulated by the National Housing Bank. Any non-banking finance company can operate as a housing finance company, subject to the fulfillment of basic requirements as specified in the Companies Act, 1956.

- a. The company should have its primary business of providing finance for housing, whether directly or indirectly.
- b. The company should obtain a certificate of registration (COR) from the National Housing Bank (NHB). The company conducting such business without a COR is an offense punishable under the provisions of the National Housing Bank Act, 1987, also the NHB can demand the winding up of such company.
- c. The company should have minimum Net Owned Fund of Rs. 10 Crore. Once these basic requirements are fulfilled, the company should comply with the following conditions to get registered as

a Housing Finance Company:

- i. The company should be in such a position that it is able to meet the full claims of its present as well as future depositors as and when these accrue.
- ii. The affairs of the housing finance company should not be detrimental to the interest of the present and future depositors.
- iii. The management of the company should not be prejudicial towards public interest or to the interest of its depositors.
- iv. The Company should have an adequate capital structure and better income prospects.
- v. The certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country.

All the above conditions must be met by the non-banking finance company to perform the business of financing of houses (construction and acquisition).

Some of Major Housing Finance companies are listed below:

### **Housing Development Finance Corporation Limited**

This company is the leader in the sector of housing finance and the company holds as much as 37% of market share. They have more than 25 lakh customers all over India and the best service offered by them is the customized housing finance to meet the need of every customer.

### **State Bank of India Home Finance**

State Bank of India Home Finance as the name implies, is one among the different financial services offered by the banking leader State Bank of India. SBI home finance has nearly 16% of the market share in the housing finance sector and they offer various types of housing loans to meet the housing finance requirement of each of their customers. They are offering home loans for different purposes like extension/alteration/renovation of existing flat or house, purchase of land, purchase of new flat/home, etc.

### **Housing Urban Development Corporation**

This company offers loans for construction of new flat/house through its Niwas scheme. They are also offering loans for extension/renovation

of existing flat or house. This is the first company to be established in India in the housing finance sector.

### **LIC Housing Finance Limited**

This company offers a market share of 13% in the housing finance sector and as the name implies, it belongs to the insurance leader - LIC of India. They are offering a wide range of housing finance options and they have a strong brand presence that helped them to reach this place in the housing finance sector.

### **ICICI Home Finance Company Limited**

The market share of ICICI Home Finance is 6% and they are offering different types of home loans to customers with tenure of maximum 20 years. The interest rate of the home loan taken by their customers is connected to the ICICI Bank Floating Reference Rate.

### **IDBI Home Finance Limited**

IDBI Home Finance Limited came into existence in the year 2000 and within a short period the company has grown as a leading player in the housing finance market in India. They offer different types of housing finance like loan against home, Plot loans, home loans for NRIs, home extension loan, home improvement loan, home loans, etc.

### **PNB Housing Finance Limited**

This company offers home loans not only to Indians, but to NRIs as well and they are offering loans for renovation, repair and enhancement of immovable properties like home, flat, etc.

### **Dewan Housing Finance Corporation Limited**

This company has extension network all over India with 35 camps, 78 service centers and 74 branches in different parts of the country.

The list of companies approved by NHB to operate as Housing finance companies in India is available on NHB website at the URL link

- <http://www.nhb.org.in/List-of-HFCs-Registered-with-NHB-19-02-2016.pdf>

### **National Housing Bank**

National Housing Bank (NHB) has been established under the National Housing Bank Act, 1987 to operate as a principal agency to promote housing finance institutions and to provide financial and

other support to such institutions. The Act directs NHB to act as a developmental financial institution in the housing finance sector as also play the role of a regulator for the housing finance companies (HFCs).

As per the National Housing Bank Act of 1987, NHB has been mandated to operate as the principal agency to promote and support housing finance institutions, also expected to control the housing finance system of the country, eliminating anything that hampers the interest of depositors or is detrimental to the interest of the housing finance institutions, in general. It also extends finances to different primary lenders with respect to eligible housing loans and project loans. The NHB provides loans and financial assistance to scheduled banks and housing finance institutions or to any authority established by or under any Central, State or Provincial Act. Apart from this, NHB has been playing the promotional role issuing guidelines for participating in the equity of housing finance companies and guaranteeing the bonds to be issued by the housing finance companies. Besides the lending operations, NHB's dedicated Training Division conducts regular training programs in areas relating to housing and housing finance for development of management capabilities of officials working in the financial sector.

The head office of NHB is located in New Delhi and it has regional offices located at Mumbai and representative offices at Ahmedabad, Bengaluru, Chennai, Hyderabad, Kolkata and Bhopal.

### **Regulatory Framework of National Housing Bank**

The most important function of NHB is the regulatory role assigned to it. It has mandate to regulate and supervise housing finance companies in India. Any company incorporated under Companies Act, 1956 has to obtain a certificate of registration from the National Housing Bank before commencing housing finance business. The objective is to create the framework for an effective system of 'responsive regulation' in keeping with the free market approach which would promote the credibility of the housing finance system among the savers and investors. The NHB has issued Directions to the HFCs, called 'Housing Finance Companies (NHB) Directions, 1989.' The directions have been amended from time to time and now fresh Directions have been issued in 2010. Objectives of Regulation by NHB are as follows:

1. To safeguard public interest ;
2. To assist in sound and healthy growth of the sector ;
3. To minimize chances of systemic failures.



The National Housing Bank Act, 1987 defines a Housing Finance Institution as every institution whether incorporated or not, which primarily transacts or has as one of its principal objects the transacting of the business of providing finance for housing, whether directly or indirectly.

The Grievance Redressal Mechanism put in place aims to provide a simple, speedy and cost effective mechanism to the aggrieved parties. The escalation provided is to sensitize that the concerned officials in the NHB/HFC are made aware of the grievance of the aggrieved party and take a considered view in the matter. However, this is in no way a substitute to the existing judicial or quasi-judicial forum/s available to the aggrieved person to get his grievance adjudicated or redressed. The Complainant, therefore, is at liberty to approach the available forum/s at any stage i.e. even before resorting to the above mechanism or during the pendency of the complaint or when she/he is not satisfied with the outcome. The application format to complain to the National Housing Bank against any HFCs is enclosed as Annexure 'C.'

### **NHB Online Complaint Redressal**

The National Housing Bank (NHB) has launched Grievance Registration and Information Database System (GRIDS) for online registration and tracking of complaints against housing finance companies or the apex housing finance bank itself. The new facility is in addition to the existing arrangements in which complaints can be submitted either manually or emailed to the bank and provides "a simple, speedy, and cost-effective mechanism to the aggrieved parties" who may be customers of the NHB or housing finance companies (HFCs). GRIDS brings in transparency in the grievance redressal mechanism and is designed for online updating of responses by the NHB or the housing finance company.

The grievance redressal mechanism has been set up by the NHB in its role as the housing finance regulator. The NHB has declared that ***"the grievance redressal mechanism of an organisation is the gauge to measure its efficiency and effectiveness as it provides important feedback on the working of the organisation and the entities regulated by it."*** The apex housing bank also has an Executive Director, who acts as the Chief Grievance Redressal Officer through its Grievance Redressal Cell.

## **Lack of Financial Literacy in NBFCS**

Financial inclusion, financial literacy and consumer protection are the three major planks of financial stability. While financial inclusion acts from the supply side, providing the financial services that the firms may demand, financial literacy stimulates the demand side, making the community responsive to the services provided. The demand side issues in financial inclusion include knowledge of financial products and services, willingness to avail etc. These issues are faced by both developing and developed countries. *“Financial literacy is about understanding money and finances and being able to confidently apply that knowledge to make effective financial decisions. Financial literacy is considered an important adjunct for the promotion of financial inclusions and ultimately financial stability”* (Nash 2012). The Organisation for Economic Co-operation and Development (OECD) headquartered at Paris, France, defines Financial Literacy as *“a combination of financial awareness, knowledge, skills, attitude and behaviour necessary to make sound financial decisions and ultimately achieve individual financial well being”*.

The significance of Financial Literacy has been gaining momentum globally. Most recently, countries like USA, UK, Czech Republic, Netherlands, New Zealand, Spain and India have come up with detailed strategy for financial literacy. Last year, Credit Card Company VISA has also conducted a survey to know the state of Financial Literacy. *The “VISA Global Financial Literacy Barometer Survey” covered 28 countries and India stood at 23<sup>rd</sup> position.* The survey report reveals that only 35% of Indians are financially literate and ignorance is more among the women.

As the majority of the rural population is still not included in inclusive growth, the concept of financial inclusion becomes a challenge for the Indian economy. Since 2005, many concerted measures have been initiated by the Reserve Bank of India and the Government of India to increase financial inclusion but the impact of these did not yield satisfactory results. The Pradhanmantri Jan Dhan Yojna, focuses on utilizing the existing resources such as Mobile phones, Banking Technologies, India Post Office, Fair Price Shops and Business Correspondents (BCs) thereby making it more efficient and user friendly - both - in the interest of the rural population as well as the formal sector.

Many organizations in India too have been taking Financial Literacy initiatives. RBI has the “Project Financial Literacy”, which is being operationalized through films, comics in English as well as in

other vernacular languages. They are organizing quiz programs among school student to aware them about the financial ecosystem. SEBI has also initiated their financial literacy program as a part of the investor education plan. IRDAI and PFRDA (Provident Fund Regulatory Development Authority) also have initiated financial literacy programs. The present state of Financial Literacy shows that the steps taken by regulatory bodies like RBI, SEBI etc. or banks (Financial Literacy and Credit Counselling Programs) are not able to reach the masses. And most importantly, these initiatives should be successfully catering to the most vulnerable section of the society.

Microfinance institutions (MFI) and NBFCs should take the Financial Literacy initiatives not only to benefit customers, but for their own prosperity too. It is always less risky to lend money to a financially literate customer. The financial literacy among the microfinance clients may minimize the risk of over-lending, ghost loan and Non Performing Assets. Proper loan utilization is a major challenge in this segment. Financial Literacy may help the MFI to overcome the challenge. Another major challenge of microfinance operation is credit appraisal. Financial literacy enables prospective and existing consumers to assess their own creditworthiness. It becomes much easier for the microfinance institution to provide credit remedies in case of a default. Financial Literacy is imperative for the MFIs to build in efficiency and profit maximization. If clients can be motivated to open bank accounts and disbursement can be done in cashless mode, a number of benefits can be garnered. Cashless disbursement will not only minimize the paper work and TAT (Turn Around Time) but can also reduce the cash-in-transit risk.

### **Consumer Problems in NBFCs — An Appraisal**

Non-banking financial companies (NBFCs) are fast emerging as an important segment of Indian financial system. It is heterogeneous group of institutions (other than commercial and co-operative banks) performing financial intermediation in a variety of ways, like accepting deposits, making loans and advances, leasing, hire purchase, etc. Therefore the kinds and nature of complaints in NBFCs are also different from any other regulated sector. Most of the instances where NBFCs Loan Agreements are not in consumer interest and also document are written in very hard to understand language for layman and normally the Terms and Conditions are furnished in very fine letters which a common person cannot read. The NBFCs companies need to clearly furnish the Detailed Terms & Conditions, Options and Exclusions etc on the website and on demand before taking a loan from a NBFC. One cannot make a full fledged assessment of problems faced by consumers in this segment

of industry, but over the years, with experience of National Consumer Helpline, we have observed some Frequently Occurring Problems in this sector. These are listed below:

- Depositors' issues regarding repayment of maturity amount
- Excess charges on loan / advances and service charges etc.
- Wrong Interest on Personal Loans/ Housing loans/ Auto Loans etc
- Preclusive/ Foreclosure charges levied by NBFCs
- Non Receipt of Refund Order/ Allotment Advise related issues
- Non-Receipt of Dividend
- Non-Receipt of Share certificates/Units after allotment/transfer
- Non receipt of Bond Debentures / Interest / Redemption Amount
- Offer for Rights Issue
- Non-receipt of Investments and returns thereon on Collective Investment Schemes / Plantation Companies
- Non-receipt of Fixed Deposits related amounts
- DEMAT ( dematerialized share certificates) related Grievances.

### **Suggestions for Handling Consumer Grievances**

There is no separate Ombudsman for addressing public complaints against Non-Banking Financial Companies (NBFCs) in India. And for all practical purposes, there is no effective regulatory or supervisory authority in India that can properly address public complaints against NBFCs. But on paper at least there are two such public authorities: One - Reserve Bank of India (RBI), and Two – National Company Law Tribunal (NCLT).

Complaint resolution procedures should be made known as a part of Product Offer Documents / Terms and Conditions included in the non-bank credit institutions, code of conduct and monitored by the supervisory authority. Non-banking credit institutions should have written policies in place for the proper handling and resolution of any customer complaint.

A written policy will hold the non-bank credit institution liable for the announced policy. This policy should offer contact points for the consumer that are accessible during business hours without undue waiting times, stated in plain language the main steps of customer

dispute resolution, provide firm and reasonable timelines, guarantee fairness in handling the customer dispute, state the coordination with any ombudsman and/or supervisory authority, and explain in plain language the consumer's rights in the process.

Consumer dispute settlement should not lead to unreasonable costs in terms of time and money for the consumer. A robust internal complaints procedure improves customer relationships, increase trust in the non-bank credit institutions and reduce the cost of adjudication.

In order to strengthen the Formal Dispute Settlement Mechanisms, it is suggested that:

- a). A system should be in place that allows consumers to seek affordable and efficient third-party recourse, similar to ombudsman, in the event the complaint with the non-bank credit institution is not resolved to the consumer's satisfaction in accordance with internal procedures.
- b). The role of an ombudsman or equivalent institution in dealing with consumer disputes should be made known to the public.
- c). The ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the industry and the parties to the dispute.
- d). The decisions of the Dispute Resolution Body {like Ombudsman} or equivalent institution should be binding upon non-bank credit institutions.
- e). The mechanisms to ensure the enforcement of the decisions of the ombudsman should be established and publicized.
- f). Few customers may have the knowledge to realize that their rights have been infringed and, even if they are aware of the infringement, they typically have very few avenues to pursue their claims. If the consumer raises a complaint with the non-banking credit institution and it is not resolved to the consumer's satisfaction, aggrieved consumers are usually recommended to approach the Consumer Foras to seek redressal, and that should be made faster and more efficient as an inexpensive redress system.

## **New Trends in NBFCs in India**

### **Peer-to-Peer (P2P) Lending**

In addition to the different types of Non-banking Finance companies,

a new development in this space of NBFC is the introduction of peer to peer lending (hereinafter referred to as P2P lending). P2P lending is a form of crowd funding which is essentially an online platform designed to bring together lenders and borrowers. A fee is charged from both – the lender and the borrower and this fee goes to providing services such as doing a preliminary assessment on the trustworthiness of the borrower and collecting loan repayments.

Peer to peer lending is a marketplace which allows for loan investments to take place seamlessly. We have the habit of helping friends/relatives in times of need by lending money. P2P makes this an investment instrument by helping lend to third parties who are vetted using proprietary algorithms. There are popularly two business models at work – one is pre-defined interest rates and the second one is fixed interest rates by lenders. Peer to Peer lending concept is in its nascent stage in India, and the entire market currently is miniscule. Information regarding how many loans were advanced, paid back in full or partially are not yet available. Information on these parameters can measure the success of this form of lending. However, a few start-ups have started offering these services and there could be many more business models that could evolve. Some of the parameters that could define success are:

1. Ability to generate good quality demand: This is important as lenders would want to invest in the best possible borrower profiles. Supply follows demand.
2. Accuracy of the algorithms to sift through profiles, select the most appropriate and allocate acceptable interest rates: Obviously, a really low interest rate will not excite lenders while borrowers will shy away if it is too high.
3. Ease of doing business: currently the marketplaces have a lack of regulation but once these are in place then technology as well as their own processes will define the business.

The RBI issued a consultation paper on this in April 2016 and invited responses from various stakeholders. Even though there is no credible data on the total lending through P2P platforms, close to twenty P2P lending platforms were launched in the last year, and presently the number of platforms are around thirty in the country. After looking at the operational business model of these companies, the RBI found that the major regulatory concerns would relate to KYC and recovery practices.

After holding that regulation might lend credibility to P2P lending and therefore cause low-awareness lenders to make high-risk

investments, and might stifle the growth of an innovative and efficient avenue for borrowers who either do not have access to, or have been rejected by traditional loan mechanisms, the RBI argued for regulation in the following ways. Firstly, they held that in its nascent stage, the industry might disrupt the financial sector and it would be better to avoid such disruption. Secondly, the lower operational costs might lead to a softening of lending rates, and the RBI feels that it would benefit the P2P lending platforms if they were regulated. Thirdly, they identified the potential for unethical practices being adopted by any of the players in the market in the absence of regulation. Finally, the RBI held that borrowers and lenders which are brought together by the P2P platform might be perpetrating an illegality under Section 45S of the RBI Act if they are unregulated.

Based on these considerations, the RBI recommended regulations on the P2P platforms in order to *“facilitate the orderly growth of this sector so that its ability to provide an alternative avenue for credit for the right kind of borrowers is harnessed.”* Some of the regulations proposed by the RBI were the limiting of P2P lending platforms to the role of an intermediary between lenders and borrowers, a requirement of minimum capital of Rs. 2 crore and prudential limits on the maximum contribution by a lender (since they may include uninformed individuals), and the enforcement of adequate risk management systems to ensure smooth operations.

### **Consumer Grievance Redressal Mechanism for NBFCs**

The Reserve Bank of India has issued “Guidelines on Fair Practices Code for NBFCs – Grievance Redressal Mechanism - Nodal Officer” vide Circular no. DNBS.CC.PD.No. 320/03.10.01/2012-13 dated February 18, 2013 revising the earlier guidelines on the procedure for redressal of grievance against NBFCs. Guidelines on Fair Practices Code (FPC) have also been revised earlier by the RBI, vide its circular dated March 26, 2012, which were to be adopted by all NBFCs while doing lending business. The earlier revision was done in view of the creation of new category of NBFC viz. NBFC-MFIs. Also, one of the concerns was the hasty growth in NBFCs’ lending against gold jewellery. The purpose of the current revision tends to ensure more transparent grievance redressal mechanism and providing easy access to customers to the redressal officer. Vide the current circular, a new para has been inserted after para 2 A (v) in the existing guideline on FPC, which reads as under:

“(vi) At the operational level, all NBFCs have to display the following information prominently, for the benefit of their customers, at their branches / places where business is transacted:

- the name and contact details (Telephone / Mobile numbers as also email address) of the Grievance Redressal Officer who can be approached by the public for resolution of complaints against the Company.
- If the complaint / dispute is not redressed within a period of one month, the customer may appeal to the Officer-in-Charge of the Regional Office of DNBS of RBI (complete contact details), under whose jurisdiction the registered office of the NBFC falls.

In short, the public notice should serve the purpose of highlighting to the customers, the grievance redressal mechanism followed by the company, together with details of the grievance redressal officer and of the Regional Office of the RBI.”

Para 2 A (v) of the existing guidelines required that the Board of Directors of NBFCs should lay down the appropriate grievance redressal mechanism within the organization to resolve disputes between the company and its customers and the mechanism should ensure that all disputes arising out of the decisions of lending institutions’ functionaries are heard and disposed of at least at the next higher level. Now, the current circular, providing clarity on the grievance redressing mechanism, requires all NBFCs to have one Nodal officer for redressing the grievances of their customers. Further, the NBFCs are required to display at all their branches/offices from where they are doing business, the details of the grievance redressal officer belonging to their company and also the Officer-in-Charge of the local office of Department of Non Banking Supervision, RBI.

### **Guidelines on Fair Practices Code for NBFCs**

#### **A. (i) Applications for loans and their processing**

- (a) All communications to the borrower shall be in the vernacular language or a language as understood by the borrower.
- (b) Loan application forms should include necessary information which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other NBFCs can be made and informed decision can be taken by the borrower. The loan application form may indicate the documents required to be submitted with the application form.
- (c) The NBFCs should devise a system of giving acknowledgement for receipt of all loan applications. Preferably, the time frame



within which loan applications will be disposed off should also be indicated in the acknowledgement.

(ii) Loan appraisal and terms/conditions

The NBFCs should convey in writing to the borrower in the vernacular language as understood by the borrower by means of a sanction letter or otherwise, the amount of loan sanctioned along with the terms and conditions including annualised rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower in its record. As complaints received against NBFCs generally pertain to charging of high interest / penal interest, NBFCs shall mention the penal interest charged for late repayment in bold in the loan agreement.

It is understood that in a few cases, borrowers at the time of sanction of loans are not fully aware of the terms and conditions of the loans including rate of interest, either because the NBFC does not provide details of the same or the borrower has no time to look into detailed agreement. Not furnishing a copy of the loan agreement or enclosures quoted in the loan agreement is an unfair practice and this could lead to disputes between the NBFC and the borrower with regard to the terms and conditions on which the loan is granted.

NBFCs are, therefore, advised to furnish a copy of the loan agreement preferably in the vernacular language as understood by the borrower along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans.

(iii) Disbursement of loans including changes in terms and conditions

- (a) The NBFCs should give notice to the borrower in the vernacular language as understood by the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.
- (b) Decision to recall / accelerate payment or performance under the agreement should be in consonance with the loan agreement.
- (c) NBFCs should release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against the borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full

particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled/paid.

(iv) General

- (a) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of the loan agreement (unless new information, not earlier disclosed by the borrower, has come to the notice of the lender).
  - (b) In case of receipt of request from the borrower for transfer of borrower account, the consent or otherwise i.e. objection of the NBFC, if any, should be conveyed within 21 days from the date of receipt of request. Such transfer shall be as per transparent contractual terms in consonance with law.
  - (c) In the matter of recovery of loans, the NBFCs should not resort to undue harassment viz. persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans etc. Customers also complain about rude behavior from the staff of the companies, hence NBFCs shall ensure that the staff are adequately trained to deal with the customers in an appropriate manner.
- (v) The Board of Directors of NBFCs should also lay down the appropriate grievance redressal mechanism within the organization to resolve disputes arising in this regard. Such a mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level. The Board of Directors should also provide for periodical review of the compliance of the Fair Practices Code and the functioning of the grievances redressal mechanism at various levels of management. A consolidated report of such reviews may be submitted to the Board at regular intervals, as may be prescribed by it.
- (vi) At the operational level, all NBFCs have to display the following information prominently, for the benefit of their customers, at their branches / places where business is transacted:
- the name and contact details (Telephone / Mobile nos. as also email address) of the Grievance Redressal Officer who can be approached by the public for resolution of complaints against the Company.

- If the complaint / dispute is not redressed within a period of one month, the customer may appeal to the Officer-in-Charge of the Regional Office of DNBS of RBI (complete contact details), under whose jurisdiction the registered office of the NBFC falls.
- In short, the public notice should serve the purpose of highlighting to the customers, the grievance redressal mechanism followed by the company, together with details of the grievance redressal officer and of the Regional Office of the RBI.

(vii) Fair Practices Code (which should preferably in the vernacular language as understood by the borrower) based on the guidelines outlined hereinabove should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular. NBFCs will have the freedom of drafting the Fair Practices Code, enhancing the scope of the guidelines but in no way sacrificing the spirit underlying the above guidelines. The same should be put up on their web-site, if any, for the information of various stakeholders.

(viii) Complaints about excessive interest charged by NBFCs (issued vide CC No. 95 dated May 24, 2007)

The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFCs. Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice. Boards of NBFCs are, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges. In this regard the guidelines indicated in the Fair Practices Code about transparency in respect of terms and conditions of the loans are to be kept in view.

(ix) Regulation of excessive interest charged by NBFCs (Notification No. DNBS. 204 / CGM (ASR)-2009 dated January 2, 2009)

- (a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as, cost of funds, margin and risk premium, etc and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application

form and communicated explicitly in the sanction letter.

- (b) The rates of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in the relevant newspapers. The information published in the website or otherwise published should be updated whenever there is a change in the rates of interest.
- (c) The rate of interest should be annualised rates so that the borrower is aware of the exact rates that would be charged to the account.
- (x) Clarification regarding repossession of vehicles financed by NBFCs (issued vide CC No. 139 dated April 24, 2009)

NBFCs must have a built in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable. To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security; (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property. A copy of such terms and conditions must be made available to the borrowers in terms of circular wherein it was stated that NBFCs may invariably furnish a copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans, which may form a key component of such contracts/loan agreements.

A sample of Fair Business Practice as prescribed by RBI is enclosed in the Annexure 'D.'

## Case Laws

### Case Study 1

In the case of **Lathika C. vs Branch Manager, Muthoot Finance** decided by the Hon'ble National Commission on 4 July, 2016. the petitioner / complainant pledged gold ornaments weighing 52 grams with the respondent Muthoot Finance Pvt. Ltd., on September 22, 2003, while taking a loan of Rs. 21,000/-. According to the petitioner / complainant, when she approached the concerned branch of the respondent in April, 2004, to redeem the ornaments by paying the loan amount with interest, they refused, saying that the ornaments had, by mistake been transferred

to their head office. Thereafter, the petitioner / complainant left Nedungolam, where she was at that time living and settled in Ernakulam. On 23.5.2011, she again approached the respondent for redeeming the gold ornaments pledged by her but the said ornaments were not returned to her. Being aggrieved, she approached the concerned District Forum with a complaint.

The respondent took a preliminary objection that it was barred by limitation and alleged that the petitioner / complainant had not turned up after pledging the gold ornaments. The District Forum vide its order dated 10.02.2014 dismissed the complaint. Being aggrieved the petitioner / complainant approached the concerned State Commission by way of an appeal. The said appeal also having been dismissed, she filed a revision before the Hon'ble National Commission.

The first question which arose before NC for consideration in this petition was as to whether the complaint was barred by limitation or not. To which the members of the Commission held that in their view, in a case of this nature, where the goods are held in trust for the depositor, the owner of the gold ornaments has a recurrent / continuing cause of action against the pledgee, till either the gold ornaments are returned to her or the pledgee refuses to return the said ornaments. The respondent, as per the case set out in the complaint, never refused to return the ornaments and when the complainant approached the concerned branch, she was told that by mistake her ornaments had been sent to the head office. She was also assured that the mistake would soon be rectified and she would get back her jewellery. It was only in the reply dated 09.6.2011 that the respondent claimed that as per the terms of the agreement, it was at liberty to realize the loan amount by disposing off the ornaments pledged as a security for the loan. In fact, even in the aforesaid reply dated 09.6.2011, the respondent did not claim that the said ornaments had actually been disposed of by it. If the period of limitation is computed from 09.6.2011 when the said reply was sent by the respondent, the complaint, having been filed in the same year, was within limitation.

Though, in the event of failure of the petitioner/complainant to pay the loan along with interest, the respondent could have sold the jewellery after giving a notice to her, there is no evidence of any such notice having actually been given to her. As noted earlier, this is not the case of the respondent that the gold jewellery pledged by the complainant / petitioner was sold by it any point of time. Being a pledgee the respondent is duty-bound to either return the jewellery pledged by the complainant against payment of the principal amount with interest or to produce the proof

of having sold the same, in case the jewellery stands sold on account of non-payment of the loan taken by the complainant.

At the time of hearing, the counsel for the respondents was asked to either furnish the proof of having sold the gold ornaments of the complainant or in case the same were not sold, tell the court where the said ornaments are. The counsel however expressed his inability to do so, citing the intervening time lag as the reason. However, not satisfied with the stand taken by the respondent the court held that if the ornaments were sold, there has to be proof of sending notice to the complainant, as well as proof of the actual sale. Since no such record is available with the respondent, it must necessarily tell us, where the jewellery of the complainant is. That having not been done, the respondent must necessarily pay the current value of the gold ornaments which was stated to be Rs.1,14,400/- to the petitioner / complainant, after adjusting the principal amount lent to the complainant, along with the agreed interest.

Setting aside the orders of the consumer fora below, directed the respondent to adjust the principal amount lent to the complainant at the agreed rate, till the date of filing of the complaint, from the gold value of Rs.1,14,400/- and pay the balance amount to the complainant / petitioner within four weeks from today, along with interest on that balance amount @ 9% per annum, from the date of filing of the complaint, till the said amount is paid.

## Case Study 2

In another judgement, Hon'ble National Consumer Redressal Commission, in the case of **Lloyds Finance Ltd. vs Ms. Napeena Singh, A.I. Katyal, {(2006) CPJ 163 NC}** had laid down law in favour of consumers. Briefly, in the present case 11 revisions were filed by respondents- complainants who had made deposits with the petitioner, a Non-Banking Finance Company (NBFC) which were not repaid to the complainants as per the terms and conditions of the deposits. These depositors-complainants filed complaints before the different District Forums. Complaints were allowed by the District Forums and the appeals filed by the petitioner-NBFC were dismissed by the respective State Commissions. Therefore, the petitions were filed with the National Commission.

The Hon'ble Commission had observed that-“huge pendency of cases in Consumer Forums against Non-Banking Financial Companies (NBFCs) by the depositors all over the country, is an unfortunate story of loot by NBFCs and then these very NBFCs take shelter in the safe

heaven of schemes framed by the Company Law Board in any of the regions of the country much to the chagrin of the poor depositors. It is unjust for a depositor living in far corner of the country and when he is in a dark even to enforce the payment under the scheme”.

It was submitted before the Commission that the scheme framed by the petitioner covered all the depositors and for non-compliance of the scheme about 8000 complaints were made to the RBI but not a single complaint had been filed against the petitioner in the Criminal court and that the petitioner being NBFC, functions under the guidelines of Reserve Bank of India within the purview of the Reserve Bank of India Act, 1934. Petitioner, it is stated, had received deposits from various depositors from all over the country to the tune of over Rs. 350.00 crores. Strong reliance has been placed by the petitioner on a order dated 9.11.00 rendered earlier by this Commission in the case of *M/s. Allianz Capital & Management Services Ltd. vs. N.P. Grover & Ors.* [I (2000) CPJ (NC) 617] where this Commission took the following view:

“The Company Law Board is now seized of the matter in dispute. It has been stated on behalf of the Company that the Petitioner-Company is adhering to the scheme of payment framed by the Company Law Board. Since the Company Law Board is seized of the matter, we will not hear the case any further. The matter is disposed of finally as above. Any grievance about non-payment according to the schedule drawn by the Company Law Board can be raised before the Company Law Board”.

The Commission referred to a judgement in Andhra Pradesh High Court in the case of *Prudential Capital Markets Ltd. vs. State of Andhra Pradesh & Ors.* -I (2001) CPJ 230 wherein it was held that remedy under Section 45QA of the RBI Act is in addition to that available under the Consumer Act. Depositor may approach either the Consumer Forum or the Company Law Board and there is no exclusion of jurisdiction of the Consumer Forum from entertaining a dispute at the instance of a depositor. It is a profound judgment of the High Court written by Hon’ble Mr. Justice V.V.S. Rao. The Hon’ble Judge has examined various aspects of the matter in detail to come to the following conclusion amongst other:

“(iv) The provisions of Sections 45-Q, 45-QA of the R.B.I. Act and Section 58-A(9) of the Companies Act, do not either expressly or impliedly bar the jurisdiction of the Forums constituted under the Consumer Protection Act, from entertaining a consumer dispute case at the instance of the depositor claiming repayment of the deposit from a non-banking finance company. In view of Section 3 of the Consumer Protection Act, remedy under the said Act is an additional remedy

and the same cannot be taken away either by the R.B.I. Act or by the Companies Act.

(v) The order of the Company Law Board, Eastern Region Bench, Calcutta dated 27.5.1998 cannot be construed as either taking away the right of the depositors in these cases to approach the Consumer Forum or nullifying the orders passed by the District Forum/State Commission.

It is not necessary for us to examine which is the most effective remedy as far as depositor is concerned. It is for him to decide. It may, however, be noticed that if an order of the Company Law Board is not complied a complaint will have to be made only by RBI under Section 58E of the RBI Act. Company Law Board does not seem to have any powers of its own to enforce its order.

It is thus clear that if the complainant has not filed any application before the Company Law Board under Section 45 QA of the RBI Act or has not received any notice from the Company Law Board in the proceedings initiated by any other depositor or has not participated in the proceedings before Company Law Board, he will be entitled to file a complaint before the Consumer Forum under the Consumer Protection Act.

Therefore, the revision petitions filed by the Llyods Ltd were dismissed with costs of Rs. 5000/- to each of the respondents-complainants.

### Case Study 3

In the case of **Muthoot Leasing & Finance Ltd. vs Karnail Singh decided on 7 March, 2013** decided by the National Commission an appeal had been filed by Muthoot Leasing & Finance Ltd., being aggrieved by the order of the Delhi State Commission which had allowed the complaint of Karnail Singh, Complainant before the State Commission.

In his complaint before the State Commission, Respondent had contended that in order to enable him to purchase Tata LPT Truck he had taken a loan of Rs.4,25,000/-from the Appellant, which was engaged in the business of financing. He spent approximately Rs.1,00,000/- towards fabrication charges for the body of the vehicle as per the Appellant. The loan amount was to be repaid by him in 36 Equated Monthly Installments (EMIs) of Rs.17,295/- each. Respondent paid 14 EMIs out of 20 that had become due till October, 1998 and he could not repay the remaining EMIs in time as he had suffered some major financial losses due to the vehicle meeting with an accident in July, 1997 and thereafter getting stuck in floodwater for a period of about two months.



Since Appellant had threatened that they would forcibly repossess the truck, Respondent himself handed it over to them on 25.08.1998 on the assurance from the Appellant that they would release it after receiving the arrears of EMIs. Respondent made arrangements for payment of the remaining amounts but when he approached the Appellant to make the payment with a request to release the truck, Appellant refused to do so, because of which the Respondent was constrained to file a civil suit for injunction. Appellant informed the Civil Court that the truck had already been sold by them on 29.09.2008 for a meager amount of Rs.3,20,000/- whereas the vehicle was in very good condition and could have been sold in the open market for Rs.5,50,000/-. Being aggrieved by the action of the Appellant in selling the truck in this illegal, unjustified and arbitrary manner and without waiting for the Respondent to pay the arrears within the time granted, Respondent filed a complaint before the State Commission and requested that Appellant be directed to pay him a sum of Rs.5,80,000/- as compensation with interest @ 18% per annum as also costs and other reliefs as deemed proper.

Appellant denied that there was any deficiency in service and unfair trade practice on its part. It was admitted that Respondent had taken a loan of Rs.4,25,000/- for purchase of a Truck and another sum of Rs.1,97,620/- was payable towards financial charges, making the total loan amount Rs.6,22,620/-, which was agreed to be repaid by Respondent in 36 EMIs of Rs.17,295/- commencing from 25.02.1997. However, Respondent failed to keep sufficient balance in his account and some of the cheques were dishonoured right from the beginning. Further, after paying 14 EMIs, Respondent defaulted in paying the remaining EMIs despite written letters and reminders. Therefore, Appellant was well within its right to repossess the vehicle after issuing written letters and reminders informing the Respondent of their intent in terms of Clause-9 of the Hire Purchase Agreement dated 25.02.1997 entered into between the parties. After receiving these letters, Respondent himself, as admitted by him, surrendered the vehicle to the Appellant. Since Respondent still was not ready to pay the arrears, Appellant was constrained to sell the vehicle in open market after informing the Respondent about the intention to do so and giving him another opportunity to settle the claim by paying the full and final amount due. However, after he failed to do so, vehicle was sold for Rs.3,20,000/-. It was denied that there was under-valuation of the vehicle as contended by Respondent and this was the price offered in the market taking into account the depreciation as also the fact that the vehicle had been involved in a major accident.

State Commission allowed the complaint by concluding that the

Appellant had taken the law in its own hands by sending musclemen to the house of the Respondent, who took forcible possession of the vehicle. The State Commission observed that the Appellant could have sought mandatory injunction from the Civil Court for taking possession of the vehicle and also recovery of unpaid EMIs. The State Commission concluded that since the entire action of the Appellant was illegal, arbitrary and criminal in nature and the vehicle was also sold at less than its market price after taking unauthorized and illegal possession of the same, deficiency in service and unfair trade practice was clearly established. The State Commission, therefore, directed the Appellant as follows:

The OP shall pay to the complainant compensation and cost of litigation of Rs.50,000/- for mental agony, emotional sufferings, insult and humiliation and physical harassment as the term compensation under the Consumer Protection Act, 1986 encompasses all these factors in its fold.

- OP shall, while adjusting the sale price of the re-possessed vehicle, calculate the market value at the depreciated value i.e. @ 10% per annum and refund the balance amount including the amount contributed by the consumer towards the price of the vehicle after adjusting the loan amount.
- Over and above they shall return the post-dated cheques bearing the date, after the date of the seizure of the vehicle.

Being aggrieved by the order of State Commission, Muthoot Finance filed the present appeal. The National commission observed that it is an admitted fact that the Respondent had taken a loan of Rs.6, 22,620/- for purchase of a vehicle which was to be repaid in 36 EMIs of Rs. 17,295/- each and that out of these EMIs, Respondent had paid 14 EMIs amounting to Rs.2,42,130/- and, therefore, payment of Rs.3,80,490/- through 22 EMIs was still pending. It is also an admitted fact that because of non-adherence to the EMI schedule of payment, to which the Respondent was bound in terms of the Hire Purchase Agreement, Appellant issued notice for repossession of the vehicle and in response to this, respondent himself surrendered the vehicle to the Appellant. Further, prior to sale of the vehicle, two notices were issued to the Respondent giving him time to make the payment after which the vehicle was sold. In view of these facts, we are unable to comprehend on what basis the State Commission concluded that the vehicle was forcibly taken possession of by Appellants musclemen and without giving due notice. In fact, this was not even the contention of the Respondent either in his complaint

or in his evidence before the State Commission. Further, we are also not in agreement with the State Commission that the Appellant sold the vehicle for far less than its actual value at the time of its sale. Admittedly, the cost of the vehicle was Rs.5,50,000/-. As per the Respondents own submission it had an accident because of which it was not mobilized but immobilized for two months and further it got stuck in the floods in Assam and Gauhati for another two months. This no doubt would have taken a toll on the condition of the vehicle and sharply reduced its market value. Apart from this, a depreciation of 30% in the first year in respect of private vehicles is routinely done while assessing its value; depreciation for vehicles used for commercial purposes may be even more.

The National Commission was of the view that the Appellant Company acted well within the terms and conditions of the Hire Purchase Agreement and there is no evidence that they used musclemen or any other unwarranted coercive measure against the Respondent in violation of RBI guidelines and the orders of the Honble Apex Court in this respect. Admittedly, the Respondent had failed to pay most of the EMIs and, therefore, the vehicle was justifiably repossessed and sold after notifying the Respondent and in terms of the Agreement entered into between the two parties. Setting aside the order of the Hon'ble commission allowed the Appeal.

#### **Case Study 4**

In the case of **Reliance Consumer Finance vs Randhir Singh decided** by the State Consumer Disputes Redressal Commission, Chandigarh **on 24 December, 2013** a site/plot underneath the commercial building bearing No.134, Sector 5, Mansa Devi Complex, Panchkula was allotted in favour of the complainants, vide allotment letter dated 17.11.2005 issued by HUDA followed by Deed of Conveyance dated 13.11.200. To pay off a part of the sale price of the said plot, the complainants availed of home loan of Rs.2,24,25,000/- from ICICI Bank Ltd., against security of the aforesaid immovable property. It was further stated that being lured by the offer of the Opposite Party to sanction higher amount of loan, the complainants opted for the transfer of loan from ICICI Bank to the Opposite Party Finance Company. Opposite Party vide sanction letter/loan agreement dated 30.5.2009 sanctioned home loan of Rs.2,12,00,000/- and got signed several blank forms from the complainants and one such loan agreement was executed by them on 30.05.2009. Later on vide sanction letter dated 07.08.2010, the Opposite Party sanctioned another loan of Rs.63,00,000/- and, as such,

it sanctioned two loans aggregating Rs.2,75,00,000/-. The complainant set up two industrial ventures i.e. one at IGC, Phase II Samba, J&K in the name of M/s J&K Aluminium Company and the other at Village Haryoli, Tehsil Raipur Rani, District Panchkula in the name of M/s. Phoenix Transmission Products (P) Limited. To run these units, the complainants had obtained credit facilities from State Bank of India, Specialised Commercial Branch, Sector 17, Chandigarh. However, due to the reasons beyond control, the above units started incurring heavy losses and, ultimately, came to a grinding halt. A request vide letter dated 13.4.2011 was made to State Bank of India to rehabilitate the said units. Due to the aforesaid reasons, some installments cheques bounced and upto 24.5.2011, the complainants paid 23 installments of Rs.3,04,158/- each aggregating Rs.69,95,634/- in the first loan and 8 installments of Rs.93,521/- each aggregating Rs.7,48,168/-. (totaling Rs.69,95,634 + Rs.7,48,168 = Rs.77,43,802). In all, the complainants had paid Rs.77,43,802/-. The complainants decided to sell the units and pay off the entire dues to the Opposite Party in one go. Against two loans totaling Rs.2,75,00,000/-, the complainants had already paid Rs.77,43,8092/-, which included repayment of loan amount as well as up-to-date interest. It was alleged that the Opposite Party illegally demanded for closure charges of Rs.6,25,994.06 and Rs.3,33,621.02, totaling Rs.9,59,615.08. On 20.5.2011 itself, the Opposite Party had reduced the above demand by 50% and scaled it down to Rs.4,79,807.54. The complainants sold the property to one Sh. Sarbpal Singh son of Sh. Kirpal Singh for Rs.2,03,52,500/- and raising rest of the amount from other sources, paid Rs.2,60,61,815/- inclusive of Rs.4,79,807.54 to the Opposite Party on 24.05.2011. It was further stated that since the demand and coerced recovery of Rs.4,79,807.54 was unjust and illegal, notice dated 16.6.2011 was sent to the Opposite Party, to refund the said amount alongwith 18% interest.

It was alleged that charging of upfront/process fee of Rs.1,65,450/-, prepayment/foreclosure charges of Rs.4,79,807.54 and demand of hefty sum towards interest, on the part of lenders surely tantamounted to undue enrichment and that the Government as well as Reserve Bank of India were averse to the very idea of such a charge. It was further stated that in October, 2010, National Housing Bank, a subsidiary of Reserve Bank of India had directed Housing Finance Companies (HFCs) not to levy any penalty in the event of foreclosure of housing loans, if the borrower pays off from its own resources. Further that, at the instance of the Government, all the nationalized Banks stopped levying such charges.

It was, therefore, contended that the Opposite Party wrongfully

recovered Rs.4,79,807.54 as foreclosure chargers and, as such, they were liable to refund the said amount alongwith interest @18% per annum and aforesaid acts of the Opposite Party amounted to deficiency in rendering service and indulgence into unfair trade practice.

When the grievance of the complainant, was not redressed, left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986 was filed seeking directions to the Opposite Party to refund Rs.4,79,807.54 alongwith interest @18% per annum w.e.f. 24.5.2011; pay Rs.5,00,000/- as compensation for physical harassment and mental agony besides Rs.1,00,000/- as cost of litigation.

Opposite Party, in its written version, took up a preliminary objection that any dispute pertaining to the loan agreement was to be referred to arbitration in terms of Clause 17 of the loan agreement. On merits it was stated that the Opposite Parties have now merged with Reliance Capital Limited, which is a non finance company duly incorporated under the provisions of the Companies Act, 1956. That in the year 2009, the complainants approached the Opposite Party for taking a home loan, and pursuant to that, terms and conditions of the loan documents, were duly executed between the parties, vide agreement dated 30.5.2009. It was further stated that complainant No.1 was the borrower while complainant No.2 to 4, were the co-borrowers. It was further stated that home loan of Rs.2,12,00,000/- was disbursed vide loan account No.RLHLCHA000128977, which was to be repaid in 120 monthly installments of Rs.3,04,158/- each. It was further stated that the complainants were granted another loan of Rs.63,00,000/- vide loan account No.RLLPCHA000161701, which was to be repaid in 108 monthly installments of Rs.93,520/- each. That loan agreement dated 7.8.2009 for the second loan was also executed between the parties. It was further stated that the foreclosure/prepayment charges charged from the complainant, were totally in consonance with the loan agreements and now the complainant could not back out of these terms and conditions. And that as per the terms and conditions of the loan agreements, Rs.9,59,615/- i.e. (Rs.6,25,994 + Rs.3,33,621) were the foreclosure/prepayment charges, but since the complainants were in financial hardship, the said amount was reduced to Rs.4,79,807/- by giving a rebate of 50% on prepayment/foreclosure charges. It was further stated that the complainants signed all the documents with open eyes and after going through the details of the loan agreements. District Forum, allowed the complaint against which the instant appeal, had been filed by the Appellant/Opposite Party.

The first question, that arose for consideration, was as to whether, the complainant fell within the definition of a consumer or not? The appellant/Opposite Party has specifically stated in the grounds of appeal that the loan was availed of by the respondents/complainants for purchase of commercial property and the District Forum failed to consider the said issue. Since, the services of the appellant/Opposite Party, in the instant case, were availed of, by the respondents/complainants, for commercial purpose, for earning huge profits, they did not fall within the ambit of a consumer, and, as such, the complaint was not maintainable.

The next question, which arises for consideration, is, as to whether, the complaint under Section 12 of the Consumer Protection Act, was maintainable or not before the District Forum, on account of the arbitration Clause No.17 of the terms and conditions of Loan Agreement. It was held that-The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

The next question, which falls for consideration, is, as to whether, the Opposite Party was right in charging the foreclosure charges of 4,79,807/- on pre-payment of the loan amounts or not? To this the court said that-Clause 2.9 of the loan agreement deals with prepayment charges, which is extracted hereunder:

### **2.9 Pre-Payment of the Loan**

- a) The Lender may in its sole discretion and on sum terms as to pre-payment fees etc., as it may prescribe, permit pre-payment/acceleration of EMIs or pre-payment at the request of the Borrower subject that the Lender may, specify from time to time, the minimum amount of pre-payment/amounts payable on account of acceleration of EMIs. If permitted by the Lender, Borrower shall give prior written notice of his intention to prepay the full amount of Loan and pay to the Lender such pre-payment charges mentioned in the schedule attached hereto, subject to change by the Lender from time to time.
- b) The borrower agrees that no pre-payment shall be made during the first 6 (six) months from the Effective Date or till the Loan is fully disbursed, whichever is later. If the Borrower pre-pays only a part of the amount payable by the borrower to the Lender, the Lender shall be entitled to adjust the amount pre-paid against the amount payable by the Borrower in such manner as the Lender thinks fit. Save and except as mentioned above, the Borrower shall not be entitled to

make any pre-payment. Notwithstanding the above, if the borrower pays the amount to the Lender before the due date, Lender shall be entitled to appropriate the same in such manner as it deems fit. And the Lender will give the Borrower credit for the same only on due date and not before.

- c) In the event the Lender permits any pre-payment, the Repayment schedule shall be altered by the Lender at the request of the Borrower and the Borrower agrees to adhere to the altered pre-payment schedule. Further, as per sanction letter dated 07.08.2010 regarding in-principle sanction for loan of Rs.63,00,000/-, which is duly signed by all the complainants. It is clearly mentioned that type of loan is Loan against Property Commercial Enhancement. Condition relating to Foreclosure charges reads as under:

Foreclosure charges: Foreclosure allowed only after six months from the date of disbursement and charges will be 5% + service tax within 12 months of Disbursement, 3% + service tax after 12 months but upto 24 months, from disbursement date and 2% + Service Tax thereafter.

Thus the demand of prepayment charges to the tune of Rs.6,25,994.06 and Rs.3,33,621.02 aggregating Rs.9,59,615.03 was in accordance with the terms of the loan agreements, as discussed above. However, the appellant/Opposite Party reduced the aforesaid charges to 50% i.e. Rs.4,79,807.54. The purpose of loan as indicated in the schedule/sanction was commercial and, therefore, the exemption applicable for housing loan did not apply to such loans.

The District Forum also erred in relying upon letter dated 11.05.2011. This letter is only with regard to one loan against Account No. RL HL CHA000128977. When prepayment charges @3.31% i.e. Rs.6,25,994.06 at O/S Principal are clearly shown payable, stipulation that Prepayment charges would be NIL for Home loans in case the loan is closed through own source of fund, could not be read in isolation, more so, when as per Schedule to the loan agreement, type of loan is mentioned as commercial. The stipulation could have its effect only, in case, the loan fell under the category of Home loan. The respondents/complainants paid such charges without raising any objection.

Since the appellant/Opposite Party, charged the prepayment charges as per the loan agreements, which was binding between the parties, by no stretch of imagination, it could be said that Opposite Party was either deficient in rendering service or indulged in unfair trade practice.

In view of the above discussion, it was held that the District Forum, erred in allowing the complaint and order passed by it suffers from

illegality and perversity, warranting the interference of this Commission. The appeal was thus accepted, with no order as to costs.

## **Conclusion**

NBFCs have been playing a very important role from the macroeconomic perspective and as a core catalyst in the Indian financial system. NBFCs are certainly emerging as better alternatives to the conventional banks for meeting the financial needs of various sectors. However, to survive and to constantly grow, NBFCs have to focus on their core strengths while improving on weaknesses. They will have to be very dynamic and constantly endeavour to search for new products and services in order to survive in this ever-competitive financial market. Due to the innovative and dynamic nature of the NBFC sector, there is a need to redesign the regulatory framework.

The NBFC segment is a catalyst to the economic development of the country. The RBI is constantly striving to bring necessary changes in the NBFC regulatory space to proactively provide regulatory support to the segment and also to ensure financial stability in the long run. Hopefully the forthcoming changes in the pipeline will further strengthen the robustness of the NBFC sector and allow them to operate in an enabling regulatory environment.

Over time, the industry has also been demanding that NBFCs be given access to refinancing schemes from the National Bank for Agriculture and Rural Development (NABARD), National Housing Bank (NHB), Small Industries Development Bank of India (SIDBI), etc. The government acknowledged the demand and set up the Micro Units Development and Refinance Agency Bank (MUDRA Bank), which may become a prominent source of funding. Same applies for consumer grievance and corporate responsibilities towards consumers. Companies must also make their system robust and make their customer service upto a certain mark. Also regulators who are controlling NBFCs must put in place consumer grievance redressal mechanism within the NBFC level and at the regulator level in case NBFC.

Also the important need of an hour is to penetrate Financial Literacy among consumers especially who are dealing with Non Banking Financial Companies must be taken very seriously by regulators such as RBI, IRDA, SEBI etc and Government Department of Financial Services. New developments in the area like peer to peer lending may give a chance to re-think on the significance of Financial Literacy to the microfinance institutions, Non Banking Financial Companies (NBFCs), regulators, development practitioners and policy makers as well.



## Frequently Asked Question (FAQs) on NBFC

### **Ques. 1. What is a Non-Banking Financial Company (NBFC)?**

Ans. 1.1 Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances, acquisition of shares /stocks /bonds /debentures/ securities issued by Government or local authority or other marketable securities of alike nature, leasing, hire-purchase, insurance business, chit business.

1.2 A non-banking institution, which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company (Residuary non-banking company).

### **Ques. 2. NBFCs are doing functions similar to banks. What is difference between banks & NBFCs?**

Ans. NBFCs lend and make investments and hence their activities are akin to that of banks; however there are a few differences as given below:

- i. NBFC cannot accept demand deposits;
- ii. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;
- iii. Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

### **Ques. 3. Is it necessary that every NBFC should be registered with RBI?**

Ans. In terms of Section 45-IA of the RBI Act, 1934, No Non-banking Financial company can commence or carry on business of a non-banking financial institution without a) obtaining a certificate of registration from the Reserve Bank of India and without having a Net Owned Funds of Rs. 25 lakhs (Rs two crore since April 1999). To obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz. Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under

Section 620A of the Companies Act, 1956, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982, Housing Finance Companies regulated by National Housing Bank, Stock Exchange or a Mutual Benefit company.

**Ques. 4. What are the different types/categories of NBFCs registered with RBI?**

Ans. NBFCs are categorized a) in terms of the type of liabilities into Deposit and Non-Deposit accepting NBFCs, b) non deposit taking NBFCs by their size into systematically important and other non-deposit holding companies (NBFC-NDSI and NBFC-ND) and c) by the kind of activity they conduct. Within this broad categorization the different types of NBFCs are as follows:

**Asset Finance Company (AFC) :** An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.

**Investment Company (IC) :** IC means any company which is a financial institution carrying on as its principal business the acquisition of securities,

**Loan Company (LC):** LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

**Infrastructure Finance Company (IFC):** IFC is a non-banking finance company a) which deploys at least 75 per cent of its total assets in infrastructure loans, b) has a minimum Net Owned Funds of Rs. 300 crore, c) has a minimum credit rating of 'A 'or equivalent d) and a CRAR of 15%.

**Ques. 5 Can all NBFCs accept deposits?**

Ans. All NBFCs are not entitled to accept public deposits. Only those NBFCs to which the Bank had given a specific authorization are allowed to accept/hold public deposits.

**Ques. 6 What are the salient features of NBFCs regulations, which the depositor may note at the time of investment?**

Ans. Some of the important regulations relating to acceptance of deposits by NBFCs are as under:

The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.

NBFCs cannot offer interest rates higher than the ceiling rate prescribed by RBI from time to time. The present ceiling is 12.5 per cent per annum. The interest may be paid or compounded at rests not shorter than monthly rests.

NBFCs cannot offer gifts/incentives or any other additional benefit to the depositors.

NBFCs (except certain AFCs) should have minimum investment grade credit rating.

The deposits with NBFCs are not insured.

The repayment of deposits by NBFCs is not guaranteed by RBI.

Certain mandatory disclosures are to be made about the company in the Application Form issued by the company soliciting deposits.

**Ques. 7 What else should a depositor bear in mind while depositing money with NBFCs?**

Ans. While making deposits with an NBFC, the following aspects should be borne in mind:

**Public Deposits are Unsecured**

A proper deposit receipt is issued, giving details such as the name of the depositor/s, the date of deposit, the amount in words and figures, rate of interest payable and the date of repayment of matured deposit along with the maturity amount. Depositor/s should insist on the above and also ensure that the receipt is duly signed and stamped by an officer authorized by the company on its behalf.

In the case of brokers/agents etc collecting public deposits on behalf of NBFCs, the depositors should satisfy themselves that the brokers/agents are duly authorized by the NBFC.

The Reserve Bank of India does not accept any responsibility or guarantee about the present position as to the financial soundness of the

company or for the correctness of any of the statements or representations made or opinions expressed by the company and for repayment of deposits/discharge of the liabilities by the company.

Deposit Insurance facility is not available to the depositors of NBFCs

**Ques. 8. It is said that rating of NBFCs is necessary before it accepts deposit? Is it true? Who rates them?**

Ans. An unrated NBFC, except certain Asset Finance companies (AFC), cannot accept public deposits. An exception is made in case of unrated AFC companies with CRAR of 15% which can accept public deposit without having a credit rating up to a certain ceiling depending upon its Net Owned Funds. NBFC may get itself rated by any of the five rating agencies namely, CRISIL, CARE, ICRA and FITCH, Ratings India Pvt. Ltd and Brickwork Ratings India Pvt. Ltd.

**Ques. 9. In case an NBFC defaults in repayment of deposit what course of action can be taken by depositors?**

Ans. If an NBFC defaults in repayment of deposit, the depositor can approach Company Law Board or Consumer Forum or file a civil suit in a court of law to recover the deposits.

**Ques. 10. What is the role of National Company Law Tribunal (erst-while Company Law Board) in protecting the interest of depositors? How can one approach it?**

When an NBFC fails to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the National Company Law Tribunal (NCLT) either on its own motion or on an application from the depositor, directs by order the Non-Banking Financial Company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order. After making the payment, the company will need to file the compliance with the local office of the Reserve Bank of India.

As explained above, the depositor can approach NCLT by mailing an application in prescribed form to the appropriate bench of the Company Law Board according to its territorial jurisdiction along with the prescribed fee.

**Ques. 11. Can one approach Consumer Forum, Civil Court, NCLT-simultaneously?**

Yes, a depositor can approach any or all of the redressal authorities, i.e. consumer forum, court or NCLT.

**Ques. 12. Is there an Ombudsman for hearing complaints against NBFCs?**

No, there is no Ombudsman for hearing complaints against NBFCs. However, in respect of credit card operations of an NBFC, if a complainant does not get satisfactory response from the NBFC within a maximum period of thirty (30) days from the date of lodging the complaint, the customer will have the option to approach the Office of the concerned Banking Ombudsman for redressal of his grievance/s.

All NBFCs have in place a Grievance Redressal Officer, whose name and contact details have to be mandatorily displayed in the premises of the NBFCs. The grievance can be taken up with the Grievance Redressal Officer. In case the complainant is not satisfied with the settlement of the complaint by the Grievance Redressal Officer of the NBFC, he/she may approach the nearest office of the Reserve Bank of India with the complaint. The details of the Office of the Reserve Bank has also to be mandatorily displayed in the premises of the NBFC.

**Ques. 13. There are some companies like Multi-Level Marketing companies, Chit funds etc. Do they come under the purview of RBI?**

No, Multi-Level Marketing companies, Direct Selling Companies, Online Selling Companies don't fall under the purview of RBI. Activities of these companies fall under the regulatory/administrative domain of respective state government.

**Ques. 14. Please tell us something about the companies which are NBFCs, but are exempted from registration?**

Housing Finance Companies, Merchant Banking Companies, Stock Exchanges, Companies engaged in the business of stock-broking/sub-broking, Venture Capital Fund Companies, Nidhi Companies, Insurance companies and Chit Fund Companies are NBFCs but they have been exempted from the requirement of registration under Section 45-IA of the RBI Act, 1934 subject to certain conditions.

Housing Finance Companies are regulated by National Housing Bank(NHB), Merchant Banker/Venture Capital Fund Company/stock-exchanges/stock brokers/sub-brokers are regulated by Securities and Exchange Board of India (SEBI), and Insurance companies are regulated by Insurance Regulatory and Development Authority. Similarly, Chit Fund Companies are regulated by the respective State Governments and Nidhi Companies are regulated by Ministry of Corporate Affairs, Government of India.

**Do's and Don'ts (Things to remember)****Do's for Consumers**

1. Investor needs to check that the NBFC – has the specific authorization issued by RBI to accept Public Deposit.
2. The depositor should check and ensure the Deposit scheme offer is as stipulated by RBI- especially in context of its Period, Rate of interest etc.
3. The depositor needs to check the correctness on their Deposit Receipt- especially Name (s) of the Depositor(s), Date of Deposit & its Maturity, Rate of interest offered, (with its compounding, if any), Amount in Words and Figures. Most important –signatures of the Authorised Officials.
4. In the case of brokers/agents etc collecting public deposits on behalf of NBFCs, the identity / credentials of the agent must be verified.
5. The depositor should check the rating of NBFCs before they deposit with the said NBFC, as RBI does not accept any responsibility. Rating is mandatory. So, it must be ascertained. Please note, only 5 rating agencies namely, CRISIL, CARE, ICRA and FITCH, Ratings India Pvt. Ltd and Brickwork Ratings India Pvt. Ltd are authorised.
6. Depositor need to do discrete inquiry about the financial soundness of the NBFC.
7. No investment needs to be made in NBFC having downgraded rating.
8. In case the NBFC defaults in repayment of deposit, the depositor should approach Company Law Board or Consumer Forum or file a civil suit in a court of law to recover the deposits. Please note, a depositor can approach any or all of the redressal authorities i.e. consumer forum, court or NCLT.
9. There is no Ombudsman for hearing complaints against NBFCs, however, in respect of credit card operations of an NBFC, the consumer should approach Banking Ombudsman, if a complainant does not get satisfactory response from the NBFC within a maximum period of thirty (30) days from the date of lodging the complaint.
10. In case of Overdue Deposits of NBFC, the Depositor must claim

the interest as on Date of Maturity of his Deposit with NBFC, otherwise the overdue Interest will be paid only from the date of claim.

11. Customers should note the Name, Address of the Grievance Redressal Officer and controlling Office of the Reserve Bank of India. It must be made available in the premises of the NBFC .

### **Don'ts for Consumers**

1. Do not get lured by any gift or incentives, along with the interest on deposits.
2. NBFCs cannot accept deposits from NRI.
3. Do not invest in Ponzi scheme where returns promised are very high.
4. Do not over commit on any repayment.
5. Don't go for implicit/explicit assurance made by NBFC which are too good to be true.
6. Don't start investing in Debt Instrument of Companies unless you have understood the Risk Disclosure Document.
7. Don't Invest in companies which are into value chain/multilevel Marketing.

**Annexure 'A'****FORM NO.4****(See Regulation 37)**

APPLICATION BY DEPOSITOR UNDER SECTION 58 A (9) OF THE ACT OR SECTION 45 QA of the RBI Act, 1934. BEFORE THE NATIONAL COMPANY LAW TRIBUNAL (..... BENCH)

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956) SECTION 58 A/RBI ACT,1934.

AND

IN THE MATTER OF : (Name of the Depositor-applicant)

AND

IN THE MATTER OF : (Name of the Company)

**1. INTRODUCTION:**

1. Name and address of the Depositor-applicant :
2. Name of the company and address of its Registered Office :
3. Name(s) of Depositor(s) (if being filed jointly by many depositors) with full address and amount of deposit. (To be enclosed as annexure giving details under following heads).

S. NO	NAME	ADDRESS	DEPOSIT AMOUNT	DATE	RATE OF INTEREST	MATURITY AMOUNT	DATED	REMARKS
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**2. TRANSACTION:**

1. Total amount of Deposit :
2. Fixed Deposit Receipt no. & Date (Photostat copy to be enclosed) :
3. Terms and Conditions of Deposit as also date of maturity of Deposit:
4. Details of payment made, by the company, if any :
5. Actual amount due as on date of application (Principal/interest) :
6. Details of correspondence, if any, made between the company and the Depositor (copy of correspondence to be enclosed) :
7. Any other particular(s) as may be considered relevant :



**PRAYER:**

The Depositor -applicant, therefore, prays:

(i) that the company be directed to make repayment of the aforesaid Deposit(s) along with interest due thereon in accordance with the Terms and Conditions of the Deposit.

(ii) that such further orders to be passed as the Company Law Board may deem fit in the circumstances of the case.

(Signature of the Depositor-applicant)

Place .....

Date .....

**Important:**

1. The application is required to be accompanied by a demand draft of Rupees Fifty, drawn in favour of "The Pay and Accounts Officer, Department of Company Affairs, New Delhi/ Bombay/ Calcutta/ Chennai."

**Annexure 'B'**

<b>S. No</b>	<b>Title of Bench</b>	<b>Location</b>	<b>Jurisdiction</b>
1	(a) NCLT, Principal Bench. (b) NCLT, New Delhi Bench.	Block No. 3, Ground Floor, 6 <sup>th</sup> , 7 <sup>th</sup> & 8 <sup>th</sup> Floor, CGO Complex, Lodhi Road, New Delhi-110003	(1) Union Territory of Delhi (2) Rajasthan (3) Haryana
2	NCLT Ahmedabad Bench.	Anand House, Ground Floor, 1 <sup>st</sup> & 2 <sup>nd</sup> Floor, SG Highway, Thaltej, Ahmedabad-380054	(1) Gujarat (2) Madhya Pradesh (3) Dadra and Nagar Haveli (UT) (4) Daman and Diu (UT)
3	NCLT Allahabad Bench.	9th Floor, Sangam Place, Civil Lines Allahabad-211001	(1) Uttar Pradesh (2) Uttrakhand
4	NCLT Bengaluru Bench.	Corporate Bhawan, 12th Floor, Raheja Towers, M.G., Road, Bengaluru-160019	(1) Karnataka
5	NCLT Chandigarh Bench.	Ground Floor, Corporate Bhawan, Sector-27 B, Madhya Marg, Chandigarh-160019	(1) Himachal Pradesh (2) Jammu and Kashmir (3) Punjab (4) Chandigarh
6	NCLT Chennai Bench.	Corporate Bhawan (UTI Building), 3rd Floor, No. 29 Rajaji Salai, Chennai-600001	(1) Kerala (2) Tamil Nadu (3) Lakshadweep (4) Puducherry

7	NCLT Guwahati Bench.	4th Floor, Prithvi Planet Behind Hanuman Mandir, G.S. Road, Guahati-781007	(1) Arunachal Pradesh (2) Assam (3) Manipur (4) Mizoram (5) Meghalaya (6) Nagaland (7) Sikkim (8) Tripura
8	NCLT Hyderabad Bench.	Corporate Bhawan, Bandlaguda Tattiannaram Village, Hayatnagar Mandal, Rangareddy District, Hyderabad-500068	(1) Andhra Pradesh (2) Telangana
9	NCLT Kolkata Bench.	5, Esplanade Row (West), Town Hall Ground and 1st Floor Kolkata-700001	(1) Bihar (2) Jharkhand (3) Odisha (4) West Bengal (5) Andaman and Nicobar Island
10	NCLT Mumbai Bench.	6th Floor, Fountain Telecom Building No.1, Near Central Telegraph, M.G. Road, Mumbai-400001	(1) Chhattisgarh (2) Maharashtra (3) Goa

**Annexure ‘C’**

**FORM OF COMPLAINT (To be filled up by the complainant)**

To, Complaint Redressal Cell  
Department of Regulation and Supervision,  
National Housing Bank, Core 5 A,  
India Habitat Center, Lodhi Road,  
New Delhi – 110 003

Dear Sir/Madam

Sub: Complaint against HFC/ NHB (if HFC, please specify name) \* ....

1. Name of the Complainant/s\* : .....

2. Full Address of the Complainant/s\* : .....

.....

.....

Pin Code : ..... Phone No./ Fax No. : ..... Email :

.....

3. Date of Birth/ PAN No./ Aadhar No./ Driving license No./

Passport No./ Voter Id No./ Identity Card No./ (Any one) \* :

.....

.....

4. Full address of the concerned branch/office of the HFC/NHB: .....

.....

Pin Code : ..... Phone No./ Fax No. :

.....

5. Brief particulars of Complaint (along with concerned deposit/ loan

account No.) \* : .....

.....

.....

.....

.....

.....

6. Date of representation made to the HFC/NHB and reminder, if any of

the same : (Please enclose a copy of the representation) .....

.....

.....

.....

7. Whether any reply has been received from the HFC/NHB? Yes/ No (if yes, please enclose a copy of the reply)

8. If the Complainant is not satisfied with the reply, give brief reasons thereof : .....

9. List of documents enclosed (Please enclose a copy of relevant documents). .....

Yours faithfully,

(Signature of Complainant)

\* Note: The fields marked with asterisk (\*) are compulsory and incompletely filled form may not be taken up as complaint.

**Annexure 'D'****Fair Practices Code for NBFCs & NBFC-MFI\***

“.....At the operational level, all NBFCs have to display the following information prominently, for the benefit of their customers, at their branches/places where business is transacted:

-the name & contact details (telephone/Mobile Nos. as also email address) of the Grievance Redressal Officer who can be approached by the public for solution of complaints against the Company.

-if the complaint/dispute is not addressed, within a period of 1 month, the customer may appeal to the Officer In charge of the Regional Office of Department of Non-Banking Supervision (DNBS) of RBI (complete contact details under whose jurisdiction the Regional office of the NBFC falls).

In short, the Public Notice should serve the purpose of highlighting to the customers, the Grievance Redressal mechanism followed by the Company together with details of the Grievance Redressal Officer and of the Regional Office of the RBI.....”

Example-

Name of the Officer (GRO)

Address and Tel/Mobile No. of the Officer

Email address

Name of the NBFC

Address of the NBFC

Tel/ Mobile No.

Email address

General Manager

Department of Non-Banking Supervision (DNBS)

Reserve Bank of India

(Address of the Regional Office)

(Place of the Regional Office)

Contact details-Tel/Mobile Nos.

Email dnbs(city name)@rbi.org.in

\*(Extracts from the Master Circular No.RBI/2013-14/42/DNBS (PD) CC No.340/03.10.042/2013-14 dated 07.07.2013)

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3. [www.nhb.org.in](http://www.nhb.org.in)
4. [www.sebi.gov.in](http://www.sebi.gov.in)
5. [www.india-financing.com/](http://www.india-financing.com/)
6. [www.legalserviceindia.com](http://www.legalserviceindia.com)





