

24

**STANDING COMMITTEE ON FINANCE
(2020-2021)**

SEVENTEENTH LOK SABHA

**THE FACTORING REGULATION (AMENDMENT)
BILL, 2020**

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

TWENTY – FOURTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2021 / Magha, 1942 (Saka)

TWENTY FOURTH REPORT

**STANDING COMMITTEE ON FINANCE
(2020-2021)**

(SEVENTEENTH LOK SABHA)

**THE FACTORING REGULATION (AMENDMENT)
BILL, 2020**

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

Presented to Lok Sabha on 3rd February, 2021

Laid in Rajya Sabha on 3rd February, 2021



**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2021 / Magha, 1942 (Saka)

CONTENTS

	Page Nos.
Composition of the Committee.....	(iii)
Introduction.....	(v)

REPORT

Background

Salient Features of the Bill

Domestic Factoring Ecosystem vis-à-vis Global Scenario

Issues Discussed

Annexure

- I. Minutes of the sittings of the Committee held on 5th November, 2020, 1st December, 2020 and 12th January, 2021.
- II. The Factoring Regulation (Amendment) Bill, 2020

COMPOSITION OF STANDING COMMITTEE ON FINANCE (2019-2020)

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Shri Shrirang Appa Barne
6. Dr. Subhash Ramrao Bhamre
7. Smt. Sunita Duggal
8. Shri Gaurav Gogoi
9. Shri Sudheer Gupta
10. Smt. Darshana Vikram Jardosh
11. Shri Manoj Kishorbhai Kotak
12. Shri Pinaki Misra
13. Prof. Sougata Ray
14. Shri P.V Midhun Reddy
15. Shri Gopal Chinayya Shetty
16. Shri Parvesh Sahib Singh Verma
17. Dr. (Prof.) Kirit Premjibhai Solanki
18. Shri Manish Tewari
19. Shri Balashowry Vallabbhaneni
20. Shri Rajesh Verma
21. Shri Giridhari Yadav

RAJYA SABHA

22. Shri Rajeev Chandrasekhar
23. Shri A. Navaneethakrishnan
24. Shri Praful Patel
25. Shri Amar Patnaik
26. Shri Mahesh Poddar
27. Shri C.M. Ramesh
28. Shri Bikash Ranjan
29. Shri G.V.L Narasimha Rao
30. Dr. Manmohan Singh
31. Smt. Ambika Soni

SECRETARIAT

1. Shri V.K. Tripathi - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director
4. Ms. Yugma Malik - Committee Officer

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance having been authorised by the Committee present this Twenty-Fourth Report on the Factoring Regulation (Amendment) Bill, 2020.

2. The Factoring Regulation (Amendment) Bill, 2020, introduced in Lok Sabha on 14 September, 2020 was referred to the Committee on 24 September, 2020 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took evidence of the representatives of Ministry of Finance (Department of Financial Services) at their sitting held on 5 November, 2020.

4. The Committee at their sitting held on 1 December, 2020 heard the views of the representatives of the Reserve Bank of India (RBI), Small Industries Development Bank of India (SIDBI), Industrial Development Bank of India (IDBI) and IFCI Factors Limited on the subject.

5. The Committee considered and adopted this report at their Sitting held on 12th January, 2021.

6. The Committee wish to express their appreciation to the officials of the Ministry of Finance (Department of Financial Services), the Reserve Bank of India (RBI), Small Industries Development Bank of India (SIDBI), Industrial Development Bank of India (IDBI) and IFCI Factors Limited concerned with the Bill for their co-operation and all the organisations for their valuable suggestions on the Bill. The Committee would like to also thank Indian Banks' Association (IBA) for their views on the Bill.

7. For facility of reference, observation/ recommendations of the Committee have been pointed in thick type in the body of the Report.

New Delhi
12 January, 2021
22 Pausha, 1942(Saka)

Shri Jayant Sinha
Chairperson,
Standing Committee on Finance

Report

1. Background

1.1 Factoring can be defined as a transaction where an entity (like Micro, Small and Medium Enterprises) 'sells' its receivables (dues from a customer) to a third party (a 'factor' like a bank or NBFC) for immediate funds (partial or full). Domestic factoring includes invoice discounting, recourse factoring, non-recourse factoring, collections and reverse factoring. International factoring includes export factoring, import factoring, export invoice discounting and reverse factoring. Factoring is advantageous as it leads to prompt payment for seller and addresses liquidity issues; ensures smoother working capital cycle for seller; increases productivity and provides growth opportunity with healthier cash-flow as all or part of invoice can be sold to factor (bank or NBFC) for getting money immediately at competitive interest rate; the factor collects payment from buyer of goods and gains by earning interest.

1.2 In order to address the delay in payment and liquidity problems faced by enterprises, including MSMEs, the Regulation of Factor (Assignment of Receivables) Bill, 2011 was introduced in the Lok Sabha on 24 March, 2011. It was referred to the Standing Committee on Finance on 29 March, 2011 for examination and report thereon and the Committee submitted its Thirty-Ninth Report on the Bill to both the Houses of Parliament on 30th August, 2011 and thereafter the Factoring Regulation Act, 2011 was enacted to provide for regulating the assignment of receivables to factors, making provision for registration for doing factoring business, and the rights and obligations of the parties to the factoring contract.

1.3 As per the Factoring Act, 2011 four types of entities can do factoring in India at present:-

- (i) Banks – Exempted from registration under Section 5
- (ii) Statutory Corporations – Exempted from registration under Section 5
- (iii) NBFCs - Have to obtain registration from RBI under Section 3
- (iv) Companies - Have to obtain registration from RBI under Section 3

1.4 Currently, 7 NBFCs called *NBFC-Factors* do the majority of factoring through the 'principal business' condition. They are Canbank Factors, India Factoring and Finance, SBI Global Factors, Siemens Factoring, Bibby Financial Services, IFCI Factors and Pinnacle Capital Solutions. At present, factoring is carried out both –

- (a) Manually; and

(b) on the Trade Receivables Discounting System (TReDS); an electronic exchange that allows transparent and online selling of receivables by MSMEs. Guidelines regarding TReDS were issued by RBI in December, 2014 and in 2017 TReDS came into existence. Three entities (RXIL, M1xchange and Invoicemart) are running TReDS and have since collectively discounted invoices worth INR 15,000 crores drawn by 25,000 MSMEs. The TReDS platform over the last three years has shown its robustness and scalability in terms of providing low-cost receivables financing to MSMEs across the country.

1.5 However, even today, MSMEs continue to face financing issues especially access to formal credit channels including through factoring. There is often delay in MSMEs getting payment against their bills for supplying to various buyers. Due to this, their working capital gets locked up, and further productive activities by MSMEs get hampered.

1.6 In January, 2019, the Reserve Bank of India constituted an Expert Committee on MSMEs under the Chairmanship of Shri U.K. Sinha to suggest long-term measures for the economic and financial sustainability of the MSME Sector. The Expert Committee, *inter alia*, recommended that Non-Banking Finance Companies (NBFCs) other than NBFC-Factors should be permitted to discount invoices on the Trade Receivables Discounting System (TReDS) in order to widen the scope of financiers, that TReDS entities should be permitted to act as agents for financiers for filing of registration of charge with the Central Registry for gaining operational efficiency, and that the time period for registration of invoice and satisfaction of charge upon it should be reduced in order to check the possibility of dual financing. The Expert Committee recommended that the Factoring Regulation Act, 2011 be amended accordingly, and the Government declared its intention to do so in the Budget speeches of 2019-20 and 2020-21.

1.7 Accordingly, The Factoring Regulation (Amendment) Bill, 2020 was introduced in the Lok Sabha on 24 September 2020 and the purpose of the proposed amendments is to liberalize the restrictive provisions in the Act and at the same time ensure that a strong regulatory / oversight mechanism is in place through the Reserve Bank of India.

1.8 Many government initiatives such as the launch of Unified Payments Interface (UPI), Goods and Services tax (GST), shift to online tax reporting through GST, etc. have helped accelerate formalization and digitization of MSMEs, creating a treasure

trove of digital data from MSMEs that is verified, granular, current, and electronically accessible. The proposed amendments coupled with these initiatives are expected to provide an impetus to factoring as attractive source for short term financing for MSMEs by providing added avenues for getting credit facility, especially through TReDS as the total number of NBFC factors offering finance could go up from 7 to several thousands fostering greater competition, MSMEs will be able to avail cheaper financing and increase in the availability of working capital will lead to growth of the business of the MSME sector, allowing them to supply to more buyers, leading to further increase in business and resultant profitability in a virtuous cycle. This will also boost employment in the country.

2. Salient Features of the Bill

2.1 The amendments proposed through various clauses of the Factoring Regulation (Amendment) Bill, 2020 are as follows:

- a) *Clause 2* seeks to amend the definitions of “assignment”, “factoring business” and “receivables”, so as to bring them in consonance with international definitions and also to insert a new definition of “Trade Receivables Discounting System” in section 2 of the Act.
- b) *Clause 3* seeks to amend section 3 to widen the scope of financiers and to permit other non-banking finance companies also to undertake factoring business and participate on the Trade Receivables Discounting System platform for discounting the invoices of micro, small and medium enterprises.
- c) *Clause 4* seeks to amend sub-section (1) of section 19 to reduce the time period for registration of invoice and satisfaction of charge upon it, in order to avoid possibility of dual financing; and also to insert a new sub-section (1A) in that section to allow the concerned Trade Receivables Discounting System to register charge with the Central Registry on behalf of the factors using the platform.
- d) *Clause 5* seeks to insert a new section 31A to empower the Reserve Bank of India to make regulations in respect of matters relating to (a) the manner of granting certificate of registration; (b) the manner of filing of particulars of transactions with the Central Registry on behalf of factors; and (c) any other matter which is required to be specified by regulations.
- e) *Clause 6* seeks to amend clause (a) of sub-section (2) of section 32 of the Act to empower the Central Government to make rules to provide the time within

which every factor shall register the particulars of every transaction of assignment of receivables in his favour with the Central Registry.

2.2 At the outset, the Committee note that the Factoring Regulation Act, 2011 was enacted to address the delays in payment and liquidity problems faced by enterprises including MSMEs. The Factoring Regulation (Amendment) Bill, 2020 has been introduced to further address the issue and address the still prevalent delays in payments to MSMEs by creating a broader and deeper liquid market for trade receivables. The widening of the factoring ecosystem is expected to enhance credit facilities to MSMEs and lead to increased turnover and growth of businesses and profitability and also give positive impetus to employment in the country. That said, the Committee would like to draw attention to the following pertinent points concerning growth of factoring business in our country:

- (i) With the volume of business expanding as intended through the proposed amendments, it may become necessary to have a credit rating mechanism for receivables in place. This may be accomplished by encouraging the existing credit rating agencies to provide ratings for the MSMEs that are actively seeking to factor their receivables.**
- (ii) RBI as regulator should clarify regarding direct and indirect factoring by way of regulations, which, if warranted, may be incorporated appropriately in the rules that will be defined after the Bill is passed.**
- (iii) Existing mechanisms in the present ecosystem available with Scheduled Commercial Banks (SCBs) to provide more wholesale financing for factors to generate more liquidity in the system should be worked upon in the course of implementation of the statute.**

- (iv) Clarifications regarding import factoring business i.e. highlighting the fact that there is no bar/restriction preventing factoring from being done on import debts should be suitably included in the rules.**

3. Domestic Factoring Ecosystem *vis-à-vis* Global Scenario

3.1 The factoring credit contributes only 2.6% of total formal MSME credit in India versus 11.2% in China. It is estimated that only 10% of the total receivable market is presently covered under formal bill discounting mechanism in the financial system, while the rest is covered under conventional cash credit/overdraft arrangements with banks. As one of the principal instruments of working capital and trade finance, bill discounting and factoring remains underutilized. The Indian factoring market is at a very nascent stage with its size currently pegged at around \$6 billion. As a percentage of GDP, it is significantly lower (0.2%) than comparable developing economies such as Brazil (4.1%) and China (3.2%). Mature factoring markets globally, more specifically Europe continue to dominate the factoring market, with two-third of the world factoring (68%). Within Europe there is high level of concentration with the top 5 countries in 2019 representing 73.6% of entire European market: France (18.3%), United Kingdom (17.3%), Germany (14.5%), Italy (13.8%), and Spain (9.7%). Asia and other emerging markets continue to see an increase in the use of factoring as more business owners get engaged in growth in these markets.

3.2 During 2014, more than USD \$3 trillion changed hands between businesses and companies who provide factoring. A 2019 study published by Reports Monitor (RM) determined that by 2026, more than \$4,600 billion will be handled in this manner. The global factoring market is projected to reach \$ 9.2 trillion by 2025.

3.3 Globally, it is seen that the best factoring services try to bring in cost and operational efficiencies by either not charging start up or termination fees or charging a very low percentage. There is no compulsion to factor all invoices with no insistence for any minimum invoice either and no binding commitments on the MSMEs. The fee structure, upfront payment upto 95% and low processing charges are the key factors that drive global business of this nature.

3.4 The demand for factoring is expected to grow due to the technological advancements, need for financing, efficiency in process of receiving payment for invoices, increasing trade, growing awareness and growing SMEs. The growth potential is driven by enhanced liquidity for efficient working capital management and

improved inventory management. Further, a growing need for an alternative source of financing for MSMEs is anticipated to boost the growth of the market as well. Also, with tighter banking regulations, better security, and block-chain technology, there is further growth potential existing in the factoring market globally.

3.5 The Committee are of the opinion that the best global practices should be adopted to bring domestic factoring companies at par with their global peers and make credit finance more accessible to MSMEs. In this regard, the Committee would recommend the following measures:

- (i) Extend credit insurance for domestic factoring to provide additional protection to the factor and further encourage and promote the factoring companies to lend more aggressively to the MSMEs.**
- (ii) Grant status of specialized MSME funding entity to factoring companies so that a major portion of their corpus is earmarked for the benefit of MSMEs.**
- (iii) Establish guidelines to enable the adoption of best technology and security standards, especially those related to block-chain technology as the Committee are of the opinion that it will be one of the prime drivers of factoring market growth during the coming years.**
- (iv) Promote educational initiatives so as to enable all concerned parties to know in detail the processes and how they can be optimally utilised to their benefit, so that factoring takes off and reaches significant proportion of GDP as in other countries like China.**

4. Issues Discussed

4.1 The following points were discussed during the interaction of the Committee with the nodal Ministry, i.e Department of Financial Services and various other stakeholders like RBI SIDBI, IFCI Factors Ltd. And IDBI :-

(I) Trade Receivables Discounting System (TReDS)

4.2 The Committee enquired from the representatives of the nodal Ministry (Department of Financial Services) about the rationale for defining TReDS as a

'payment system', as with the proposed amendments, the number of players will drastically shoot up and the TReDS platform will be like a marketplace model and would be taking on a role similar to an exchange. The Committee further enquired about making Reserve Bank of India the regulator of this marketplace instead of Securities Exchange Board of India (SEBI), which is the capital markets regulator.

4.3 The Ministry in their post evidence replies submitted the following with regard to defining TReDS as a payment system:

"The TReDS platform, on which factoring is done electronically can be termed as an auction platform. It brings MSME sellers (holders of invoices) and financiers (Banks / NBFCs, etc.) together by allowing financiers to extend upfront payment for the invoices to the sellers. It is not an exchange in the traditional sense a stock exchange is understood to operate since once an invoice is financed, it gets extinguished unlike a share or a debt instruments which can be traded...

....In other words, in exchanges, the same asset (like shares / commodities / forex) can change hands repeatedly by buyers and sellers constantly bidding and re-bidding for it. Whereas the TReDS platform allows a one-time financing of an invoice through auction, i.e., it is a single transaction, after which the asset (invoice) does not exchange hands again".

4.4 And with regard to the regulator, the Ministry in their post evidence replies submitted as follows:-

"Since the core function of the TReDS platform is to enable finance (payment) to be availed upfront and to seamlessly enable such payment to be settled electronically among all parties, TReDS entities are licensed under the Payment and Settlement Systems Act, 2007. As per the Act, RBI is the regulator for entities registered under the Payment and Settlement Systems Act, 2007. Further, regulations / guidelines are also issued by RBI for such entities. It may also be noted that activities of those financiers namely CERSAI, Banks and NBFCs, etc. participating in TReDS are also regulated by RBI."

4.5 The Committee understands the rationale for defining TReDS as a payment system or an auction platform and recognises its role in helping MSMEs improve their working capital, reducing their interest servicing costs and expanding businesses. TReDS is a purely voluntary platform and the Committee desires that it should be made more attractive and seamless and

thus recommends the integration of TReDS platform with GSTN e-invoicing portal leading to automatic uploading of all GST invoices onto the TReDS platform to enable real time sharing of data that will allow buyers and sellers to have a single window access to invoices. The Committee believe that the availability of e-invoices, vetted through GSTN, will provide an added layer of authenticity, which will make the platform more attractive and give more comfort to the financiers, thereby encouraging enterprises to make a shift to TReDS platform, and creating an efficient working capital cycle for MSMEs.

4.6 Therefore, the language of Section 19 (1A) may be modified thus:

(1A) All invoices uploaded on the GST Network above the threshold notified by regulations shall automatically be uploaded on all Trade Receivables Discounting Systems. When any invoice is then financed by the factor, the particulars specified in sub-section (1) and sub-section (3) shall be filed with the Central Registry on behalf of the factor by the Trade Receivables Discounting System concerned, in such a manner as may be specified by regulations.

4.7 The Committee would like to further recommend that receivables coming from the Central and state governments should compulsorily be brought under the ambit of TReDS through this legislation so that payments pending from governments which have already been approved for various MSMEs are made available to them on a timely basis. Government entities can use the TReDS platform to demonstrate that they are good at paying their bills and thus get more bidders for their projects.

4.8 The Committee believes that making GSTN invoices available for factoring will generate tremendous volumes of receivables that can be financed and grow the factoring business manifold. It will increase competition

and ensure a liquid market thereby reducing the price paid for factoring. The Committee's opinion is that the compulsory listing of all GSTN invoices on the TReDS and the consequent tracking of when these payments are made, provides excellent economic data on the state of the economy. It will also provide valuable credit information to enable credit scoring of various companies and government entities.

(II) Change of nomenclature from 'factor' to 'company'

4.9 The Reserve Bank of India furnished the following suggestion in their submission to the Committee:-

“It is necessary to replace 'factor' by 'company' so as to enable all NBFCs to undertake factoring business even if it is not its principal business without obtaining Certificate of Registration (CoR) under ERA. CoR under Factoring Regulation Act (FRA) will be required only if factoring is its principal business.”

4.10 The Ministry furnished the following comments on the above suggestion:

“The definition of “Factor” in Section 2 of the Factoring Regulation Act, 2011 clearly specifies the types of entities who can do factoring business, including inter alia NBFCs (registered under the RBI Act) and companies (registered under the Companies Act). Both NBFCs and companies require a Certificate of Registration from RBI before doing factoring business. The proposed amendments seek to permit all NBFCs to do factoring business, and not only those who do it as their principal business. However, permitting all NBFCs to do such business without obtaining Certificate of Registration (CoR) from RBI (and requiring only companies to obtain CoR) carries the risk of some NBFC entities without much experience/ capability of factoring business undertaking such business without proper risk appraisal and other regulatory checks. It also carries the risk of NBFCs choosing to do factoring business only as their non-principal business, for which no Certificate would be required. From the legislative prudence also word “factor” need not be substituted by “company” as company is a sub-set of factor which is defined under section 2”.

4.11 The Committee desires that the afore-mentioned suggestion of RBI to replace the word 'factor' by 'company' with a view to expand the scope of business be explored by the Ministry. This might cut red-tape by reducing the number of

registrations required and make it easier for NBFCs to participate on the TReDS platform, while making the process seamless for the existing NBFCs to undertake factoring business by removing the mandatory requirement of separate registration as factors.

(III) RBI as Regulator

4.12 During their interaction with the representatives of RBI, the Committee enquired if they had the regulatory capacity, the systems, the processes and the people to be able to take on the onerous and complex task of supervising factoring activities, to which they replied as under:-

“As far as the supervisory capacity of the RBI is concerned, we are confident that we have the wherewithal to train up the required manpower; we are in the process of planning for additional staff to come into the RBI; and we will be able to provide for the additional staff which would be required. We are already in the planning stage of beefing up our supervisory cadre. So, I think, it would be possible for us to supervise this.”

4.13 Further, in their post evidence replies, the RBI submitted the following:

“...However, considering that factoring business is more prone to frauds, additional resources may be required to check the internal control mechanisms. While this aspect is covered in regular onsite inspection, it would require specific focus from factoring business perspective, for which capacity development of supervisors will be required. Our assessment indicates that there may be a 5 to 7.5 percent increase in the supervisory resources currently allocated to the supervision of NBFCs. As already mentioned, at the time of unification of the supervisory function, the Reserve Bank has carried out an assessment on augmentation of supervisory requirements, which may cater to the above additional requirement also”

4.14 While taking note of RBI’s submission regarding their regulatory capacity, the Committee would like to point out that with the expansion in the number of players from the current seven NBFC-Factors to potentially thousands of factors, RBI will be undertaking a mammoth regulatory responsibility. The Committee emphasises the need for RBI to build up sufficient regulatory staff/resources for efficient supervision of factoring

activities so that the intent and purpose of the proposed amendments to address the lingering issues involving factoring industry, particularly the chronic delays in payment and liquidity crunch faced by enterprises is effectively addressed.

4.15 The Committee thus endorses the proposed amendments in the Factoring Regulation (Amendment) Bill, 2020.

New Delhi
12 January 2021
22 Pausha, 1942 (Saka)

Shri Jayant Sinha
Chairperson
Standing Committee on Finance

Minutes of the First sitting of the Standing Committee on Finance (2020-21)

The Committee sat on Thursday, the 05 November, 2020 from 1500hrs. to 1630hrs. in Main Committee Room, Parliament House Annexe Extension, New Delhi.

PRESENT

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri Vallabhaneni Balashowry
3. Dr. Subhash Ramrao Bhamre
4. Smt. Sunita Duggal
5. Shri Sudheer Gupta
6. Smt. Darshana Vikram Jardosh
7. Shri Pinaki Misra
8. Prof. Saugata Roy
9. Shri Gopal Chinayya Shetty
10. Shri Manish Tewari
11. Shri Rajesh Verma
12. Shri Giridhari Yadav

RAJYA SABHA

13. Shri Rajeev Chandrasekhar
14. Shri A. Navaneethakrishnan
15. Shri C.M. Ramesh
16. Shri Bikash Ranjan
17. Shri G.V.L. Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|-----------------|
| 1. | Shri V.K Tripathi | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |
| 3. | Shri Kh. Ginalal Chung | - | Under Secretary |

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. Thereafter, the Secretary, Department of Financial Services (Ministry of Finance) made a brief presentation highlighting key amendments to be made through the Factoring Regulation (Amendment) Bill, 2020. The major issues discussed during the sitting included the plan of expanding factoring business in the country from current 7 NBFCs to 9500 NBFCs, need of bringing more MSMEs on TReDS platform, evaluating the size of factoring in terms of country's GDP, understanding the resource sources of factoring companies,

experience of regulating factoring business till now and need for extensive regulation, global best practices and the lessons learnt, rationale behind making RBI the regulator of TReDS instead of SEBI and whether RBI has the required wherewithal to do so, possibility of an independent regulatory authority and credit insurance for domestic factoring, provision of minimum interest rate / discounting rate on factoring invoices, expected growth of factoring business in future and specific goals to be achieved through the amendment. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

3. The Committee then considered Memorandum No.1 regarding selection of subjects for examination during 2020-21 and decided to examine the subjects as indicated in the Annexure to the Minutes.

The Committee then adjourned.

ANNEXURE

SUBJECTS SELECTED FOR DETAILED EXAMINATION BY THE COMMITTEE ON FINANCE (2020-21)

1. Long term impact of the Covid-19 pandemic on the global economy, trade flows, and financial markets
2. Increasing the availability of equity and debt capital for the rural economy
3. Financing infrastructure requirements including long-term corporate debt
4. Financing the MSME sector; its growth and regulation
5. Providing credit to the agricultural sector including appraisal of NABARD's role
6. Efficacy of overall taxation framework including long-term corporate debt
7. Analysis of disinvestment programme
8. Performance and regulation of insurance and pension sectors
9. Implementation of Insolvency and Bankruptcy Code- Pitfalls and solutions
10. Strengthening RBI and SEBI's regulatory and operational capabilities

Minutes of the Second sitting of the Standing Committee on Finance (2020-21)

The Committee sat on Tuesday, the 01 December, 2020 from 1500hrs. to 1630hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Vallabhaneni Balashowry
4. Smt. Sunita Duggal
5. Shri Sudheer Gupta
6. Smt. Darshana Vikram Jardosh
7. Shri Manoj Kishorbhai Kotak
8. Shri Pinaki Misra
9. Shri P.V Midhun Reddy
10. Shri Gopal Chinayya Shetty
11. Shri Manish Tewari
12. Shri Parvesh Sahib Singh Verma

RAJYA SABHA

13. Shri Rajeev Chandrasekhar
14. Shri Amar Patnaik
15. Shri C.M. Ramesh

SECRETARIAT

1. Shri Ramkumar Suryanarayanan - Director
2. Shri Kulmohan Singh Arora - Additional Director
3. Shri Kh. Ginalal Chung - Under Secretary

PART I (1500 hrs - 1545 hrs)

WITNESSES

Reserve Bank of India (RBI)

1. Shri M. Rajeshwar Rao, Deputy Governor
2. Shri Manoranjan Mishra, Chief General Manager, DNBR

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the 'Factoring Regulation (Amendment) Bill, 2020'. The major issues discussed include rationale behind suggestion of changing nomenclature from factor to company; credit insurance for domestic factoring; import factoring business; estimated increase in liquidity in the economy with the advent of increased players; impact of COVID-19 on factoring; encouragement to Scheduled Commercial Banks to lend to new factoring companies; issue of delay in payments to MSMEs by state governments and whether it can be resolved through factoring; regulatory capacity available with RBI to take on the supervising of factoring activities and additional funding or personnel strength, if any, required to carry out the same.

3. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting within a week.

The witnesses then withdrew.

PART II (1545 hrs - 1630 hrs)

WITNESSES

Small Industries Development Bank of India (SIDBI)

1. Shri Manoj Mittal, Deputy Managing Director , SIDBI
2. Shri Ketan Gaikwad, Managing Director & CEO, Receivables Exchange of India Limited (RXIL)

IFCI Factors Limited

1. Shri Bikash Kanti Roy, Managing Director
2. Shri Ravi Ranjan Singh, Sr. Vice President
3. Shri Mayank Thareja, Sr. Associate Vice President

Industrial Development Bank Of India (IDBI)

1. Shri Rajiv Sharma, Chief General Manager
2. Shri Nityam Kumar, General Manager
3. Shri Abdul Muqteet, General Manager

4. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the 'Factoring Regulation (Amendment) Bill, 2020'. The major issues discussed include integration of Trade Receivables Discounting System (TReDS) and GST platform in a manner that if an invoice above a certain threshold is uploaded into the GST system, it will automatically fillip over onto the TReDS platform and be available for factoring; importance of e-invoicing; increasing quantum of factoring as a percent of GDP and expanding the market for factoring.

5. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting within a week.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Fourth sitting of the Standing Committee on Finance (2020-21)

The Committee sat on Tuesday, the 12th January, 2021 from 1100hrs. to 1310 hrs. in Committee Room No. '3', Parliament House Annexe Extension Block A, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Dr. Subhash Ramrao Bhamre
3. Smt. Sunita Duggal
4. Shri Gopal Chinayya Shetty
5. Shri Rajesh Verma

RAJYA SABHA

6. Shri Rajeev Chandrasekhar
7. Shri Praful Patel
8. Shri Amar Patnaik
9. Shri C.M. Ramesh
10. Shri G.V.L Narasimha Rao
11. Smt. Ambika Soni

SECRETARIAT

1. Shri Ramkumar Suryanarayanan - Director
2. Shri Kulmohan Singh Arora - Additional Director

PART I

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up the draft Report on 'Factoring Regulation (Amendment) Bill, 2020' for consideration and adoption. After some deliberations, the Committee adopted the above draft Report and authorised the Chairperson to finalise them and present the Report to Hon'ble Speaker / Parliament.

PART II

3. XX XX XX XX XX XX XX
- XX XX XX XX XX XX XX.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Bill No. 115 of 2020

THE FACTORING REGULATION (AMENDMENT) BILL, 2020

A

BILL

to amend the Factoring Regulation Act, 2011.

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

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

Short title and commencement.

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

12 of 2012.

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

Amendment of section 2.

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

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

(ii) in clause (j),—

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

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

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

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

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

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

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

Amendment of section 3.

3. In section 3 of the principal Act,—

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

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

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

Amendment of section 19.

4. In section 19 of the principal Act,—

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

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

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

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

Insertion of new section 31A.

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

Power to make regulations.

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

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

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

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

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

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

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

STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

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

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

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

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

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 3rd September, 2020.

NIRMALA SITHARAMAN.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

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

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

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

ANNEXURE

EXTRACTS FROM THE FACTORING REGULATION ACT, 2011

(12 OF 2012)

* * * * *

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

Definitions.

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

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

* * * * *

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

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

* * * * *

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

* * * * *

CHAPTER II

REGISTRATION OF FACTORS

* * * * *

3. (1)*

* * * * *

Registration of factors.

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

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

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

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

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

* * * * *

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

* * * * *

CHAPTER V

REGISTRATION OF ASSIGNMENT

Registration of certain assignments of receivables transactions.

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

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

* * * * *

Power of Central Government to make rules.

32. (1) * * * * *

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

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

* * * * *

LOK SABHA

A

BILL

to amend the Factoring Regulation Act, 2011.

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