

SUPREME COURT REFUSES TO STAY BAN ON DEALING WITH VIRTUAL CURRENCIES

1. INTRODUCTION

In April this year, the Reserve Bank of India (the “**RBI**”) issued a notification prohibiting the use of virtual currencies, preventing entities regulated by the RBI from dealing with virtual currencies or providing services facilitating any person or entity to deal or settle virtual currencies (the “**Notification**”).¹

Pursuant to the Notification, entities were prohibited from maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts on exchanges dealing with virtual currencies and transferring or receiving money in accounts relating to the purchase or sale of virtual currencies. RBI regulated entities, providing any of the above-mentioned services were given 3 (three) months to exit their commercial relationships.

On May 22, 2018, the Internet and Mobile Association of India (the “**IAMAI**”), an industry body representing the interests of online and mobile value-added service providers filed a writ petition in the Supreme Court of India (the “**Supreme Court**”) demanding a stay on the Notification (the “**Petition**”).

Noting the urgency of the matters raised in the Petition, the Court posted the hearing for the matter on July 3, 2018² and passed an order thereafter (the “**Order**”).³

2. THE ORDER

The key aspects of the Order are summarized below.

2.1. Tagged with Siddharth Dalmia Case

The Supreme Court tagged the Petition with the case of *Siddharth Dalmia & Anr. v. Union of India*

¹ Notification no. DBR.No.BP.BC.104 /08.13.102/2017-18 issued by the RBI on 6 April 2018; available at <https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=11243>.

² Available at https://www.supremecourtindia.nic.in/supremecourt/2018/19230/19230_2018_Order_22-May-2018.pdf.

³ Available at https://www.supremecourtindia.nic.in/supremecourt/2018/19230/19230_2018_Order_03-Jul-2018.pdf.

& Ors. (the “**Siddharth Dalmia Case**”).⁴

In this case, the petitioners moved the Supreme Court to:

- (a) declare as *illegal* and ban all illegal virtual currencies, cryptocurrencies or decentralised digital (currencies) such as, *Bitcoins, Litecoins, bbqcoins, dogecoins* and investigate, fix accountability and responsibility for the sale and purchase of such virtual currencies, and prosecute the offenders;
- (b) declare *illegal* and ban all websites, web links and mobile applications, being used to buy, sell or deal in any manner whatsoever, virtual currencies; and
- (c) require the government to publicize the *illegality* of the sale, purchase and dealing of virtual currencies by the general public in India.

The Supreme Court granted the petitioners permission to submit a representation to the RBI and further directed that no High Court shall entertain any petition relating to the Notification. The Supreme Court intends to analyse the validity of the Notification in this matter and has already joined similar matters challenging the Notification with this matter.

There are at least two other matters⁵ with similar points of contention, which have previously been joined with the Siddharth Dalmia Case, including *Dwaipayan Bhowmick v. Union of India & Ors.* (the “**Dwaipayan Bhowmick Case**”), where the Ministry of Finance, the Ministry of Law & Justice, the Ministry of Electronics and Information Technology, the Securities & Exchange Board of India, the RBI, the Income Tax Department and the Enforcement Directorate have been made parties.

In this case, the petitioner moved the Supreme Court to direct the respondents to:

- (a) regulate the flow of *Bitcoin* (and other crypto currencies) ensuring accountability to exchequer;
- (b) constitute a committee for framing appropriate mechanisms to regulate the flow of *Bitcoin*, ensuring accountability to the exchequer; and
- (c) constitute a committee of experts to consider the prohibition or regulation of Bitcoin and other crypto currencies.

⁴ Writ petition no. 1071/2017:
available at https://supremecourtindia.nic.in/supremecourt/2017/34785/34785_2017_Order_17-May-2018.pdf.

⁵ *Dwaipayan Bhowmick v. Union of India & Ors.* (Writ Petition(s) (Civil) No(s). 1076/2017); and *Rajdeep Singh & Anr. v. Reserve Bank of India & Ors.* (Writ Petition(s)(Civil) No(s). 373/2018).

2.2. RBI directed to dispose of any representations filed by IMAI

By way of an interim measure, the Supreme Court directed the RBI to dispose of any representations filed by the IMAI within a week from the date of the Order, where the disposal of the representation shall contain reasons.

3. INDUSLAW VIEW

The Order does not, in itself, definitively declare crypto currency and related services *illegal*, though it does maintain the existing regulatory prohibition, subject to the framing of a regulatory framework ensuring accountability.

Nevertheless, the Supreme Court has upheld the Notification and all RBI regulated entities are now expressly prohibited from dealing with virtual currencies or providing services for facilitating such dealing.

The RBI seems to have taken a rather totalitarian approach. Instead of taking a holistic approach to curb potential misuse of virtual currencies, the RBI has taken a broad-stroke approach of altogether prohibiting its use and the provision of related services.

The Siddharth Dalmia Case has been listed for hearing by the Supreme Court on July 20, 2018⁶ and the final order is still pending.

At this point, it may be premature to assume that the Supreme Court is supporting the RBI imposed ban on virtual currencies. The Ministry of Finance has also not taken a final view on whether to ban or regulate virtual currencies in India. In this context, it should be noted that a committee was set up in early 2018 to provide recommendations on regulating virtual currencies.⁷

The committee's report is expected soon and the virtual currency industry, in its nascent stage in India, is hopeful that it will provide some relief to virtual currency platforms and users in India.

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⁶ *Siddharth Dalmia & Anr. v. Union of India & Ors.* (Writ Petition no. 1071/2017); available at https://www.supremecourtindia.nic.in/supremecourt/2017/34785/34785_2017_Order_17-May-2018.pdf.

⁷ Government constitutes an Inter- Disciplinary Committee chaired by Special Secretary (Economic Affairs) to examine the existing framework with regard to Virtual Currencies; Press Information Bureau; Government of India; available at <http://piib.nic.in/newsite/PrintRelease.aspx?relid=160923>.

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