



LEX NEWSLETTER ZONE

Banking & Finance Bytes

- Complaint under Section 138 of the Negotiable Instrument Act, 1881 filed through power of attorney is maintainable.
- Issue of equity shares and convertibles has been notified by Securities Exchange Board of India vide circular no. SEBI/HO/CFD/DIL2/CIR/P/2018/138.
- The Hon'ble Bombay High Court upholds that banks cannot institute complaint under section 489(b) without providing adequate evidence.
- ~ The developers cannot claim confidentiality or breach of trade secrets to display sanction plan.
- Consent of buyers required for developers to split real estate projects.
- Section 138 Of Negotiable Instrument Act-Complaint Filed Through Power Of Attorney Is Maintainable

-Akshay Ramesh, Associate

In the case of SK. Tamisuddin v. Joy Joseph Creado & Anr¹, a compliant under Section 138 of Negotiable Instrument Act, 1881 was filed by one Sairabee through her Special Power of Attorney Holder. However, Sairabee died while the trial was in progress. The appellant after the death of Sairabee filed an application before the learned trial Court to continue the prosecution as her legal heir.

The said application was quashed by the High Court on the ground that the initiation of complaint by the Special Power of Attorney of Sairabee was invalid and that the continuance of the proceedings after the death of Sairabee by the said Power of Attorney would not be permissible. The aggrieved by the impugned order of High Court, approached the Supreme Court.

The Three-Judge Bench of the Supreme Court, while making reference to its decision in the case of A.C. Narayanan vs. State of Maharashtra and Anr., wherein the Apex Court held that a complaint filed by the power of attorney would be maintainable in law.

The Supreme Court Bench further noted that after the death of Sairabee, the application filed by the appellant was to be continued by the legal heir of the deceased Sairabee.

Issue Of Equity Shares And Convertibles Has Been Notified By SEBI Vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2018/138

-Dhivya U.T., Associate

In order to provide endeavor for an efficient streaming the process of Public Issue of Equity Shares and Convertibles has been notified by SEBI vide circular no. SEBI/HO/CFD/DIL2/CIR/P/2018/138, whereby new payment mechanism Unified Payments Interface (UPI) to be introduced and shall be applicable for all Red Herring Prospectus filed

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¹ MANU/SCOR/30531/2018





for public issues opening on or after January 01, 2019.

<u>Unified Payments Interface (UPI)</u>: UPI is an instant payment system developed by the National Payments Corporation of India ("**NPCI**"). It enables merging several banking features, seamless fund routing & merchant payments into one hood. UPI allows instant transfer of money between any two persons' bank accounts using a payment address which uniquely identifies a person's bank account.

In this payment method, there will be a sponsor bank which will be a banker to the Issuer registered with Securities Exchange Board of India which is appointed by the Issuer to act as a conduit between the Stock Exchanges and NPCI in order to push the mandate collect requests and / or payment instructions of the retail investors into the UPI.

Timelines proposed to be achieved in 3 Phase:

<u>Phase I:</u> From January 01, 2019, the UPI mechanism for retail individual investors through intermediaries will be made effective along with the existing process and existing timeline of T+6 days. The same will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.

Phase II: Thereafter, for applications by retail individual investors through intermediaries, the existing process of physical movement of forms from intermediaries to Self-Certified Syndicate Banks (SCSBs)for blocking of funds will be discontinued and only the UPI mechanism with existing timeline of T+6 days will continue, for a period of 3 months or floating of 5 main board public issues, whichever is later.

<u>Phase III:</u> Subsequently, final reduced timeline will be made effective using the UPI

mechanism. There shall be 4 channels for making applications

 Banks Cannot Institute Complaint Under Section 489(B) Without Providing Adequate Evidence – Bombay High Court Decision

- Vaidya, Associate

As per the order dated October 1, 2018² by the High Court of Bombay invoked its inherent powers under Section 482 of Code of Criminal Procedure to quash criminal prosecution against the Petitioner / Accused. The bank in the said matter launched a complaint under section 489 (B) of the Indian Penal Code against the Petitioner/Accused for keeping in possession counterfeit currency which were attempted to be deposited post demonetization by the Government.

The Court ruled that in the present case there was intention or knowledge on the part of the Accused thereby defeating the essential ingredients of 489 (B). Thereafter it was ruled in favour of the Accused stating that there was no substantial evidence provided by the bank to prove knowledge on the part of the Accused to defraud the bank, hence the prosecution was quashed on this ground by the bench citing the case of Umashankar v. State of Chattisgrah.

Developer Cannot Claim Confidentiality Or Breach Of Trade Secrets To Display Sanction Plan

- Vaidya, Associate

The Supreme Court in its order dated September 27, 2018³ in the case of Ferani

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² Sanskriti v. State of Maharashtra and ors dated 1st October 2018

https://drive.google.com/file/d/1AYBCSSGocU Byi6A0sXsB7f67IEGcg8N3/view

³ Ferani Hotels Pvt.Ltd v. The State Information Commissioner order dated 27 November 2018.





Hotels Pvt.Ltd v. The State Information Commissioner has stated that documents pertaining to the plans, copies of layouts and other information relating to the development of the site can be disclosed by a public authority subject to the provisions under the Right to Information Act, 2005⁴.

Information relating to three plots in Malad West was sought by an RTI applicant under Section 6(1) of the Act, before a Public Information Officer seeking information of plans, layouts of M/s. Ferani Hotels Ltd. The said disclosure of information was challenged under section 11(1) of the said Act, by representatives of Ferani Hotels the Appellants before the Hon'ble Supreme Court stating that it would be in detriment of the Appellant's Intellectual, commercial and competitive position and thereby would not serve any specific purpose.

The Bench consisting of Kurian Joseph and Sanjay Kishan Kaul dismissed the said appeal put forth by Ferani Hotels by stating that the disclosure of the said plans and approvals would not in itself be construed as an infringement as under Section 52(1) (f) of the Copyright Act, 1957 and thereafter directed that the said sanction plan/ layouts should be displayed at the respective sites as provided under sub-section (3) of Section 11 of RERA (Real Estate Regulation and Development Act, 2016).

Consent Of Buyers Required For Developers To Split Real Estate Projects

- Vaidya, Associate

https://drive.google.com/file/d/11q4cjxUumQl Mk3GUezQvvB21SNFdHjNI/view

⁴ Live Law Article dated 29 September 2018 https://www.livelaw.in/developer-shouldmandatorily-display-sanction-plan-layoutplans-at-the-site-itself-sc-read-judgment/

Copyright © King Stubb & Kasiva, Advocates & Attorneys November 18 Series 17.2 In a recent order dated September 24, 20185, delivered by Mr. S. Krishnan Principal Secretary of the TN (Tamil Nadu) RERA (Real Estate Regulatory Authority) it has been stated that a developer cannot split a real estate project without the consent and approval of two thirds of its buyers. The said matter relates to M/s Adinath Srinivasa Foundations LLP (Developer) appointed by the Complainants- Serene Kshetra Owners for the development of their Kancheepuram. plot/project near complainants had stated that the completed structures as listed and published under Rule 2(h) (iii) of the TNRERA Act, 2017 denied the complainants the opportunity to register their property under RERA as the developer knowingly split a single integrated project into two phases to avoid registration under RERA. Due to this said distinction made by the developer the said project which if considered as a single project would fall under the definition of "ongoing projects" but rather due to the completion of certain portions and phases only, it was wrongly included in the list prepared by the Director of Town and Country Department as "structurally completed". The coram consisting of Mr. S. Krishnan stated that only for certain plots in the developer's project, structural completion could have been claimed but stating that the said project as a whole needs to be taken into view and therefore it ought not to be granted the exemption of non-registration under RERA as mentioned under Rule 2(h) (iii) of the TNRERA Act, 2017 and thereby directed the developer to register the said plots and areas under RERA

⁵ Order dated 24 September 2018 - Serene Kshetra Owners v. M/s Adinath Srinivasa Foundation

within 2 weeks.

http://www.tnrera.in/tnrera_judgements/2018/35-2018.pdf



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