



Nishith Desai Associates Wrote to SEBI, MeitY, RBI, CBDT, Finance Ministry Suggesting Regulations on Cryptocurrencies

By **Aheli Raychaudhuri** - February 11, 2019 12:33



As was reported in late January, that an Indian law firm, **Nishith Desai Associates was invited by the Government of India** to pitch in suggestions on introducing regulations on cryptocurrencies.

The paper submitted by the law firm reasons that there are several benefits of cryptocurrencies that had been recognized by the government and some of them included: Control and security, Transparency, Instantaneous settlement of transactions, Reduction of costs of cash, Reduction in instances of tax avoidance.

The letter that was addressed to Subhash Chandra Garg, the Secretary of Department of Economic Affairs, Ministry of Finance, stated, "We note a recent press release by the Ministry of Finance which states that the Committee is considering a "ban [on the] use of private crypto currencies in India. 2 We recognize the concerns of the Committee on the risks associated with crypto-assets. In fact, similar concerns remain true with other financial instruments such as cash and commodities such as gold. We would like to submit that a

complete ban will be against the interests of innovation, liberty, and trade. No developed and democratic country has banned crypto-assets.”

Crypto-News India reached out to the firm in question and we put across some questions pertaining to the invitation as well as attempted to shed some light on the mysterious Committee.

1) a. When was the draft for suggestions on cryptocurrency regulations sent and how long did it take the government to respond?

The draft was sent in late December 2018 and the government responded in about a week’s time inviting us for a presentation.

b. How long did it take for the firm to come up with the draft?

The draft incorporates the firm’s learnings since the start of our crypto-asset and blockchain practice in 2013. We were considering making suggestions to the current committee ever since early last year when we heard it had been constituted. However, we accelerated our work after the Ministry of Finance press release of October 30, 2018, which suggested that [the committee may be looking to ban the use of crypto-assets in India](#) and yet promote the use of distributed ledger technology. As we have shown in the paper, experts agree that blockchain without crypto-assets is a severely hampered technology. On another note, this submission is not on behalf of any organization and is purely in public interest.

2) Since NDA represents IAMAI, could you tell me about or share the document that the body had filed a few months back in the Supreme Court as a counter affidavit against the RBI?

The RBI in its Counter-Affidavit had stated various concerns on virtual currencies, and the Rejoinder filed by IAMAI replies point-wise to each concern. Since neither document is in the public domain, we are unable to share them.

In our independent view, a prohibition on crypto-assets would be counter-productive for the detailed reasons stated in Section 1 of our attached submission (‘Crypto-Assets should be Regulated and not Banned’ (pages 1 – 8).

The reasons to quote a few, included, "Lack of traceability, Money laundering risk, Lack of consumer protection, Lack of market integrity, Loss of tax revenue (With nearly 5-6 million users in India as of date, and a market capitalization of between USD 8.6 (approx. INR 60,000 crore) and 43 billion (approx. INR 3,00,000 crore) in India (based on varied estimates as of May 2018),¹² the crypto-asset industry is a potentially lucrative revenue source for the government, among others."

3) When we say the Government of India could you please specify which government bodies reached out to you inviting the firm to weigh in on regulations?

Our submission was sent to the Secretary of the Department of Economic Affairs, Ministry of Finance, with copies to other relevant officials. We were invited by the Joint Secretary to make the presentation to him and his team. The presentation happened in early January 2019.

Crypto-News India has found that the departments intimated by the law firm included, Securities and Exchange Board of India, Ministry of Electronics and Information Technology, Central Board of Direct Taxes, Reserve Bank of India and NITI Aayog.

4) The Inter Disciplinary body has been very secretive about the progress it has made on the regulations. Could you please tell us, where they are at this point? Can we hope for a pro-cryptocurrency legislation or should we start preparing for the worst?