

(2020) 04 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 5 Of 2020

Anant Raj Limited

APPELLANT

Vs

Yes Bank Limited

RESPONDENT

Date of Decision : 06-04-2020

Acts Referred:

Citation : (2020) 04 DEL CK 0022

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Saket Sikri, Nikhil Singhvi, Mahesh Bansal, Dhruv Khanna, Ashwini Chawla, Navin Trivedi

Judgement

Sanjeev Sachdeva, J

1. The hearing was conducted through video conferencing.
2. Petitioner seeks a direction to respondent no. 1 " Yes Bank not to take coercive/adverse steps as proposed in its e-mail dated 25.03.2020 and 27.03.2020 including but not limited to declaring the account of the petitioner as a Non-Performing Asset (NPA).
3. As per the petitioner, during the period 2010 " 2015, petitioner had availed bank loan facility from the respondent bank to a tune of Rs. 815 crores which has been paid in full. Thereafter between 2016 " 2018, respondent bank extended further loan facilities to the petitioner vide several sanction letters.
4. As per the petitioner, it had availed loan facilities to the tune of Rs. 1570 crores out of which, petitioner has repaid about Rs. 1056 crores apart from interest running into hundreds of crores.
5. The case of the petitioner is that due to out-break of COVID-19 and spread of

the same across the globe in December, 2019, economic condition of the real estates industry was adversely affected. Petitioner had been regularly servicing the loans in terms of the loan conditions till 31.12.2019. It is stated that the instalment for repayment which fell due on 01.01.2020, which is the subject matter of the present petition, could not be paid by the petitioner because of adverse economic conditions brought about by the effects of COVID-19 pandemic.

6. As per the respondent, in terms of the Income Recognition and Asset Classification Guidelines (IRAC Guidelines) of the Reserve Bank of India, if an instalment is overdue by a period of 30 days, the borrower's account is classified as Special Mention Account "1 (SMA-1) and if the instalment is overdue by 60 days, the account is classified as Special Mention Account "2 (SMA-2) and if the instalment is overdue by a period of 90 days, the account is classified as Non-performing Asset (NPA).

7. As per the respondent, since the instalment that was due on 01.01.2020 was not paid within 30 days, the account of the petitioner was classified as SMA-1 and thereafter since it was not paid within 60 days, the account was classified as SMA-2.

8. Further it is contended on behalf of the respondent that since the instalment was not paid till 31.03.2020, the account of the petitioner was liable to be classified as NPA.

9. It is submitted by learned counsel for the respondent that in terms of the IRAC Guidelines, particularly paragraph 4.2.2 banks have to be put into place an automated system whereby the accounts are classified automatically by the system in the event of default as noticed hereinabove.

10. Learned counsel for the petitioner contends that in view of the pandemic COVID-19, RBI has issued several guidelines and advisories and brought into place regulatory policies to give benefit to the borrowers to ease the financial crisis.

11. Learned counsel for the petitioner relies on the Statement of Development Regulatory Policy dated 27.03.2020 wherein the object of the said policy issued by the RBI stated is to inter-alia ease the financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital and further improving the functioning of markets in view of the high volatility experienced with the onset and

spread of the pandemic.

12. Further reference is drawn to clause 5 of the Statement which talks of moratorium on term of loan. Clause 5 reads as under:-

5. Moratorium on term Loans

All commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial

Institutions, and NBFCs including housing finance companies and micro-finance institutions) (lending institutions) are being

permitted to allow moratorium of three months on payment of instalments in respect of all term loans outstanding as on March 1, 2020.

Accordingly, the repayment schedule and all subsequent due dates, as also the tenure for such loans, may be shifted across the board by

three months.

13. Learned counsel for the petitioner further submits that the COVID -19 Regulatory Package issued by Reserve Bank of India on 27.03.2020, on

account of COVID -19 Pandemic, provides for re-scheduling of the payments of term loans and working capital facilities and clause 2 thereof reads

as under:-

In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural

banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing

finance companies) (lending institutions) are permitted to grant a moratorium of three months on payment of all instalments falling

due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the

board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the

moratorium period.

14. Footnote 1 to the said clause provides that Instalments will include the following payments falling due from March 1, 2020 to May 31, 2020: (i)

principal and/or interest components; (ii) bullet repayments; (iii) Equated Monthly instalments; (iv) credit card dues.

15. The package also deals with the classification as Special Mention Account and Non-performing Asset pursuant to the economic fallout from

COVID-19 and stipulates as under:-

Classification as Special Mention Account (SMA) and Non-Performing Asset(NPA)

5. Since the moratorium/deferment/recalculation of the drawing power is being provided specifically to enable the borrowers to tide

over economic fallout from COVID-19, the same will not be treated as concession or change in terms and conditions of loan agreements due

to financial difficulty of the borrower under paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution

of Stressed Assets) Directions, 2019 dated, June 7, 2019 ("Prudential Framework"). Consequently, such a measure, by itself, shall not result

in asset classification downgrade.

6. The asset classification of term loans which are granted relief as per paragraph 2 shall be determined on the basis of revised due

dates and the revised repayment schedule. Similarly; working capital facilities where relief is, provided as per paragraph 3 above, the SMA

and the out of order status shall be evaluated considering the application of accumulated interest immediately after the completion of the

deferment period as well as the revised terms, as permitted in terms of paragraph 4 above.

7. The rescheduling of payments, including interest, will not qualify as a default for the purposes of supervisory reporting and reporting to

Credit Information Companies(CICs) by the lending institutions. CICs shall ensure that the actions taken by lending institutions pursuant to

the above announcements do not adversely impact the credit history of the beneficiaries.

16. Learned counsel for the petitioner has also relied on Frequently Asked Questions (FAQs) issued by the Ministry of Finance and uploaded by Press

Information Bureau particularly to Question No. 8. Question 8 reads as under:-

QUESTION 8: What will be the impact of this relief by RBI on borrowers as far as reporting of default is concerned?

ANSWER: Any delay in payment leads to default and gets reported to Credit Bureaus. For business loans of Rs. 5 Crores and above, the

banks report the overdue position to RBI also through CRILC. As a result of this

relief package, the overdue payments post 1st March 2020

will not be reported to Credit Bureaus/CRILC for three months. No penal interest or charges will be payable to the banks. Similarly, SEBI

has allowed that Credit Rating Agencies (CRAs) may not consider the delay as default by listed companies if the same is owing to lockdown

conditions arising due to COVID-19.â??

17. Learned counsel for the respondent contends that RBI guidelines and package are not applicable to the case of the petitioner, in as much as, the

petitioner was already in default as on 01.03.2020 and the package is applicable only to those instalments which fall due on 01.03.2020 and also only to

those borrowers who were properly servicing their account till 01.02.2020 and were not in default.

18. Reference is made by the learned counsel for the respondent to a clarification issued by letter dated 31.03.2020 by the Chief General Manager

â?"in â?" charge Department of Regulation of the Reserve Bank of India to the Chairman, Indian Banks Association, wherein it is stated that if a

borrower has been in default even before March 1, 2020, such default cannot be said to be as a result of economic fall due pandemic and benefit of

moratorium can be extended to such borrower in respect of payment falling due during the period March 1, 2020 to May 31, 2020. However,

payments overdue on or before February 29, 2020 will attract current IRAC norms.

19. It is an admitted position of the Respondent that the Statement on Development and Regulatory Policies issued by RBI on 27th March, 2020 along

with Regulatory Package issued on March 27, 2020 is applicable to the Respondent.

20. Reading of the Statement on Development and Regulatory Policies issued by RBI on 27th March, 2020 along with Regulatory Package issued on

March 27, 2020 prima facie shows that the intention of the RBI is to maintain status quo as on 01.03.2020 with regard to the all the instalments

payment for which had to be made post 01.03.2020 till 31.05.2020.

21. Paragraph 5 to 7 of the Regulatory Package with regard to Classification of Accounts also indicates that the intention of RBI is to maintain status

quo with regard to the classification of accounts of the borrowers as they existed as on 01.03.2020.

22. As per the contention of the learned counsel for the respondent, prior to declaration of an account as NPA, the account has to go through the process of declaration as SMA-1 and SMA-2.

23. If a borrower was duly servicing the account until 01.03.2020 and no instalment was overdue, the borrower's account would have been classified as a Standard Asset, i.e., there being no default, which means that the account would not be classified as a SMA 1 or SMA 2.

24. If an account is a standard account and not classified as SMA 1- or SMA 2, it would have to go through the process of SMA-1 and SMA-2 prior to being declared as a non-performing asset.

25. If the Regulatory Package is applicable only to Standard Asset accounts, there was no necessity for the RBI to refer to Classification of an account as a Non-Performing Asset (NPA) in its Regulatory Package and RBI could have only referred to the change of classification as a SMA.

26. If the interpretation given by learned counsel for the respondent were to be accepted, then an account which was classified as a Standard Asset as on 29.02.2020, cannot become an NPA post 01.03.2020 unless it goes through the process of SMA. Since the account cannot be classified as SMA for instalments falling due post 01.03.2020, where was the question of stipulating a moratorium for classification as a Non-Performing Asset (NPA).

27. The restriction on change in classification as mentioned in the Regulatory Package shows that RBI has stipulated that the account which has been classified as SMA-2 cannot further be classified as a non-performing asset in case the instalment is not paid during the moratorium period i.e. between 01.03.2020 and 31.05.2020 and status quo qua the classification as SMA-2 shall have to be maintained.

28. The effect of the same would be that for a period of three months there will be a moratorium from payment of that instalment. However, stipulated interest and penal charges shall continue to accrue on the outstanding payment even during the moratorium period. If post the moratorium period borrower fails to pay the said instalment, classification would then automatically change as per the IRAC guidelines.

29. Prima facie, I am of the view that the classification of the account of the petitioner as an NPA on 31.03.2020 could not have been done by the respondent. Accordingly, status quo ante is restored qua the classification of the

account of petitioner and the account classification as it stood on 01.03.2020 shall stand restored.

30. Mr. Saket Sikri, learned counsel appearing for petitioner under instructions submits that petitioner without prejudice to its rights and contentions shall make necessary arrangements and shall pay on or before 25.04.2020, the instalment which fell due as on 01.01.2020 along with interest accrued thereon till the date of the payment irrespective of the lockdown position.

31. The statement is taken on record. Petitioner shall pay on or before 25.04.2020, the instalment which fell due as on 01.01.2020 along with interest accrued thereon till the date of the payment irrespective of the lockdown position.

32. It is clarified that the payment would be without prejudice to the rights and contentions of the parties.

33. List before the concerned Roster Bench on 04.05.2020.

34. The order be uploaded on the website forthwith.

35. Copy of the order be also forwarded to the counsels through email.