



## LITIGATION



## ELP Litigation: Update



**DELHI HIGH COURT HOLDS THAT THE BANK CANNOT DECLARE THE ACCOUNT AS A NON-PERFORMING ASSET IN VIEW OF THE STATEMENT OF DEVELOPMENT REGULATORY POLICY AND THE COVID-19 REGULATORY PACKAGE (BOTH DATED MARCH 27, 2020), IF THE ACCOUNT WAS NOT CLASSIFIED AS A NON-PERFORMING ASSET BEFORE MARCH 1, 2020.**

*Anant Raj Limited Vs Yes Bank<sup>1</sup>*

### INTRODUCTION

- The case concerns the interpretation of the clauses of the Statement of Development Regulatory Policy dated March 27, 2020 issued by the Reserve Bank of India (**RBI**) inter alia to ease the financial stress caused by COVID-19 on individual and businesses by offering them a three-month moratorium for repayment of loans.

### FACTUAL BACKGROUND

- The Petitioner had, between 2016-2018, availed loan facilities from the Respondent Bank to the tune of INR 1570 crore vide several sanction letters. Out of the total loan of INR 1570 crore, the Petitioner had repaid approximately INR 1056 crore plus interest adding to several hundred crores.
- The Petitioner had been regularly servicing the loan account till December 31, 2019. However, the instalment that fell due on January 1, 2020 was not paid.
- As per the Income Recognition and Asset Classification Guidelines (**Guidelines**), if the instalment is overdue by a period of 30 days, the account is classified as Special Mention Account – 1 (**SMA-1**). If the instalment is overdue by a period of 60 days, then the account was classified as Special Mention Account – 2 (**SMA-2**) and if the instalment is overdue by a period of 90 days, the same is classified as a Non-Performing Asset (**NPA**).
- In accordance with the Guidelines, as the instalment was overdue by a period of 30 days, the account was classified as SMA-1 and subsequently, it was classified as SMA-2.
- On March 25, 2020 and March 27, 2020, the Respondent Bank addressed emails to the Petitioner *inter alia* stating the Petitioner's account would be classified as NPA.

<sup>1</sup> [http://delhihighcourt.nic.in/writereaddata/OrderSAN\\_PDF/URGENT/wpcurgent5202006042020.pdf](http://delhihighcourt.nic.in/writereaddata/OrderSAN_PDF/URGENT/wpcurgent5202006042020.pdf)

- Aggrieved by the aforesaid communication from the Respondent Bank, the Petitioner filed a Writ Petition *inter alia* for a direction restraining the Respondent Bank from taking any coercive steps including declaring the Petitioner's account as NPA.

## ISSUES AND ARGUMENTS

- The issue which arose for consideration before the Hon'ble Delhi High Court was whether the Respondent Bank could declare the account of the Petitioner as NPA in view of the Statement of Development Regulatory Policy and the COVID-19 Regulatory Package both dated March 27, 2020 issued by RBI.
- On behalf of the Petitioner it was contended that:
  - Due to the outbreak of COVID-19, the economic condition of the real estate sector was adversely affected and hence, the Petitioner could not service the instalment that fell due on January 1, 2020.
  - The Statement of Development Regulatory Policy was issued *inter alia* to ease the financial stress caused by COVID-19 and to relax repayment pressures.
  - The COVID-19 Regulatory Package *inter alia* provided for rescheduling of the payment of the terms loans and working capital facilities by providing a moratorium of three months i.e. till May 31, 2020 on repayment of all instalments falling due between March 1, 2020 and May 31, 2020.
  - The COVID-19 Regulatory Package also specifically deals with classification of the accounts as SMA and NPA.
- On behalf of the Respondent Bank, it was contended that:
  - Since the instalment was not paid till March 31, 2020, the account was liable to be classified as NPA;
  - The Statement of Development Regulatory Policy and the COVID-19 Regulatory Package was not applicable to the Petitioner as the same is applicable to only those instalments which fall due on March 1, 2020.

## OBSERVATIONS AND FINDINGS

- The Court observed that the intention of the RBI is to maintain status quo as on March 1, 2020 in respect of all instalments to be paid after March 1, 2020.
- If the COVID-19 Regulatory Package is applicable only to accounts that were duly serviced till March 1, 2020, then there was no necessity for RBI to refer to classification of the accounts as SMA and NPA.
- It was clear from paragraphs 5 and 7 of the COVID-19 Regulatory Package that an account which has been classified as SMA-2 could not further be classified as NPA if the instalment is not paid during the moratorium period i.e. from March 1, 2020 to May 31, 2020. However, stipulated interest and penal charges would continue to accrue on the outstanding instalment even during the moratorium.
- Accordingly, the Court has *prima facie* held that the classification of the Petitioner's account as NPA was incorrect and restored *status quo ante* as of March 1, 2020.

## CONCLUSION AND ANALYSIS

- In the present case, the default in payment of instalment occurred way back on January 1, 2020. At that point of time the outbreak of COVID in India was at a nascent stage. Even then the Court has considered the Petitioner's contention that due to the outbreak of COVID-19, the economic condition of the real estate sector was adversely affected and therefore, the Petitioner could not service the instalment that fell due on January 1, 2020.
- As per the Order, the account which has been classified as SMA-2 could not further be classified as NPA even though the default in payment of instalment that occurred on January 1, 2020. However, COVID-19 Regulatory Package clearly states that "*moratorium/deferment/recalculation of the 'drawing power' is being provided specifically to enable the borrowers to tide over economic fallout from COVID-19*". As regards the moratorium/deferment, as far as term loans/working capital is concerned, the COVID-19 Regulatory Package states that the lending institutions are permitted to grant moratorium/deferment for instalments falling due only between March 1, 2020 and May 31, 2020. Further, such moratorium/deferment/recalculation of the 'drawing power' will not be treated as concession or change in terms and conditions of loan agreements due to

financial difficulty of the borrower and consequently, such a measure, by itself, will not result in asset classification downgrade.

- The Order will have an impact on all banks/ lending institutions who may have already taken steps and declared the accounts of their borrowers as SMA or NPA as the case may be, on and after March 1, 2020, even for defaults that happened much before March 1, 2020.

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