

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

W.P. (C) DIARY NO. 11127 OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

GAJENDRA SHARMA

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO.2 i.e. RESERVE BANK OF INDIA

PAPER-BOOK

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**ADVOCATE FOR THE RESPONDENT NO. 2: RAMESH
BABU M.R.**

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I, Prashant Kumar aged about 38 years, S/o of Arvind Kumar Prasad Sinha, R/o 346, Pocket-E, Mayur Vihar, Phase-II, Delhi- 110091 do hereby solemnly affirm and declare as under:

1. That I am working as Assistant General Manager with Department of Supervision (Banking) of Reserve Bank of India having its office at 6 Sansad Marg, New Delhi- 110001. I am fully aware of the facts of the present case and the issues involved in the matter, and as such am competent as well as authorised on behalf of the Reserve Bank of India i.e. Respondent No. 2 to file the present Affidavit.
2. That I have gone through the subject writ Petition and have understood the contents of the same. The answering

Respondent denies each and every allegation, averment and statements in the writ petition except those which are specifically admitted hereinafter in the present Counter Affidavit. The Deponent craves for the leave of this Hon'ble Court to reserve its right to file an additional Affidavit if necessary, as and when required at a later stage of the present proceeding, with a prior permission of this Hon'ble Court.

PRELIMINARY SUBMISSION:

3. It is submitted that the Reserve Bank of India (hereinafter referred to as RBI or Respondent No. 2 interchangeably) has been constituted by the provisions of Section 3 of the Reserve Bank of India Act, 1934 (hereinafter also referred to as “the RBI Act”) and the preamble to that Act enjoins RBI “*to regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage; to have a modern monetary policy framework to meet the challenge of an increasingly complex economy, to maintain price stability while keeping in mind the objective of growth*”. It has also been vested with the responsibility of superintendence and control of the banking business in the country under the provisions of the Banking Regulation Act, 1949 (hereinafter also referred to as “BR Act”). In view of the various provisions of BR Act and RBI Act, the Reserve Bank is obliged to see that the banking business is carried on by banks, prudently and adhering to sound principles of banking.

4. It is submitted that the BR Act has conferred upon RBI the powers to issue directions under Section 35A to the banking companies generally or to any banking company in particular, in public interest or in the interest of the Banking Policy or to prevent the affairs of the banking company being conducted in a manner detrimental to the interest of its depositors or in a manner prejudicial to the banking company. As regards the issuance of directions / guidelines / circulars etc. by Reserve Bank of India, the necessary actions as empowered under the law and as considered appropriate and essential in the given situations, have always been issued from time to time, keeping the larger interest of banking companies, depositors and the banking sector as a whole. Furthermore, under Section 21 of the BR Act, the Reserve Bank of India is conferred with specific powers to determine the policy in relation to advances to be followed by the banking companies generally or by any banking Company.
5. It will be pertinent to mention here that the Legislature has conferred various powers on Reserve Bank of India empowering it to determine the banking policies to be followed by the banking companies. That it is submitted that the Reserve Bank of India being the regulator of the banking sector, took cognizance of the probable stress caused in the financial situation and conditions of the citizens of this country - the consequent stress upon the economy due to outbreak of Covid-19 pandemic - and issued a Statement on Developmental and Regulatory Policies dated March 27, 2020 with the following objective and purpose:

To set out various developmental and regulatory policies that directly addresses the stress in financial conditions caused by COVID-19 i.e.

- i. Expanding liquidity in the system sizeably to ensure that financial markets and institutions are able to function normally in the face of COVID-19 related dislocations;*
- ii. Reinforcing monetary transmission so that bank credit flows on easier terms are sustained to those who have been affected by the pandemic;*
- iii. Easing financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital; and*
- iv. Improving the functioning of markets in view of the high volatility experienced with the onset and spread of the pandemic.*

Therefore, with a view to ease the financial stress by relaxing “repayment” pressures, clause 5 of the said Statement on Developmental and Regulatory Policy provides as follows:

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 a 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 tenor for such loans, may be shifted across the board by three months.

It is submitted that following the aforesaid Statement on Developmental and Regulatory Policies, a circular was issued titled Covid-19 - Regulatory Package dated March 27, 2020 thereby providing detailed instructions qua the regulatory measures issued by way of the said Statement. The relevant paragraph No.2 under the heading rescheduling of Payments is reproduced hereinbelow:

(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. 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 instalments¹ 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.

6. It is submitted that the aforesaid circular dated March 27, 2020 was further modified by the answering Respondent vide circulars dated April 17, 2020 titled COVID19 Regulatory Package - Asset Classification and Provisioning (“**Regulatory Package 2**”) and May 23, 2020 titled “Covid-19 Regulatory Package” whereby the moratorium period is extended by another three months i.e. from June 1, 2020 to August 31, 2020 on payment of all instalments in respect of term loans (including agricultural term loans, retail and crop loans). A true copy of the Circular dated March 27, 2020 is annexed

and marked as **ANNEXURE R-1**. A true copy of the Circular dated April 17, 2020 is annexed and marked as **ANNEXURE R-2**. The true copy of the Circular dated May 23, 2020 is annexed and marked as **ANNEXURE R-3**.

7. It is submitted that the regulatory dispensations permitted by the Reserve Bank of India vide the aforesaid circulars dated March 27, 2020 which subsequently stood modified on April 17, 2020 and May 23, 2020 were with the objective of mitigating the burden of debt servicing brought about by disruptions on account of Covid-19 pandemic and to ensure the continuity of viable businesses. Therefore, the regulatory package is, in its essence, in the nature of a moratorium/deferment and cannot be construed to be a waiver.
8. However, in order to ameliorate the difficulties faced by borrowers in repaying the accumulated interest for the moratorium/deferment period, it has been further announced in terms of the circular dated May 23, 2020 that in respect of working capital facilities, lending institutions may, at their discretion, convert the accumulated interest for the deferment period up to August 31, 2020, into a funded interest term loan (FITL) which shall be repayable not later than March 31, 2021. Further, in respect of term loans, it has been provided that the repayment schedule for such loans, including interest as well as principal, as also the residual tenor, will be shifted across the board.
9. Further, lending institutions are required to frame Board approved policies for providing the above-mentioned reliefs to all eligible borrowers and disclosed in public domain. Since

the customer profile, organizational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers. Therefore, the discretion regarding deciding the eligibility of customers and manner in which the customers are on-boarded for availing this benefit, including the manner of recovery of the interest accrued during the moratorium period, has been left to the lending institutions concerned.

10. It is submitted that the banks are commercial entities that intermediate between the depositors and the borrowers and are expected to run on viable commercial considerations. Moreover, the banks being custodians of depositors' money, their actions need to be guided primarily by the protection of depositors' interests. Any borrowing arrangement is a commercial contract between the lender and the borrower and the interest rates reflect the same. It is further submitted that the interest on advances forms an important source of income for banks and after meeting the cost of funds, the banks also need to sustain reasonable interest margins for viable operations.

11. The Reserve Bank has deregulated the interest rate on advances sanctioned by Scheduled Commercial Banks since the year 1994 and the interest rates are determined by banks with the approval of their respective Board of Directors, subject to broad regulatory guidelines in place in terms of the Master Direction - Reserve Bank of India (Interest Rate on Deposits) Directions, 2016.

12. It is submitted that the mandate of the Reserve Bank as far as regulation of banks is concerned draws upon the considerations of protection of depositors' interest and maintenance of financial stability, which also require that the banks remain financially sound and profitable. While the Reserve Bank is taking all possible measures to provide relief to the real sector with regard to debt repayments on account of the fallout of Covid-19, it does not consider it prudent or appropriate to go for a forced waiver of interest, risking the financial viability of the banks it is mandated to regulate, and putting the interests of the depositors in jeopardy.

PARAWISE REPLY ON MERITS:

Without prejudice to the aforesaid submissions and relying on the same, I crave the leave of this Hon'ble Court to deal with in seriatim the various averments made in the writ Petition. I say that save and except what is specifically admitted herein, all the allegations made by the Petitioner against the answering Respondent are denied.

1. That the contents of Para No. 1 of the writ Petition, except those which are a matter of record, are absolutely wrong and vehemently denied. It is vehemently denied that the circular dated 27.03.2020 issued by the answering Respondent No. 2 i.e. Reserve Bank of India is ultra vires the fundamental rights of the Petitioner or that it creates hardship. The averments are baseless, vague and misleading as the objective behind issuing circular while mitigating the immediate burden of the borrowers by deferring the term of instalment, is also to take care the effective source of income of the banks, which

are commercial entities and needs to sustain and remain financially sound to achieve its primary objective of being guardian of the depositors.

2. That the contents of Para No. 2 of the writ Petition, except those which are a matter of record, are absolutely wrong and vehemently denied. It is vehemently denied that the action of imposition of interest during the moratorium period is completely devastating, wrong or in a way has taken away the benefit of imposing moratorium. It is further vehemently denied that this has caused hindrance and obstruction in right to life guaranteed by the Article 21 of the Constitution of India. The allegations are partisan and motivated, turning a blind eye towards the fact that a borrowing arrangement is a commercial contract executed between the lender and the borrower and the interest rates reflect the same. It is further submitted that the interest on advances forms an important and vital source of income for banks, which allows the banks to sustain and remain financially sound and profitable. It will be pertinent to mention here that the reliefs allowed by the RBI cannot be claimed as a right by any borrower as it does not create any vested rights. The lending institutions are required to frame Board approved policies for providing the above-mentioned reliefs to all eligible borrowers and disclosed in public domain. Since the customer profile, organizational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers. Therefore, the discretion regarding deciding the eligibility of customers and manner in which the customers are on-boarded for

availing this benefit, including the manner of recovery of the interest accrued during the moratorium period, has been left to the lending institutions concerned. It is submitted that the benefit and intention of moratorium is not to waive any payment obligations to the borrowers; the benefit was intended to only provide for a brief interlude in payment pressures. The objective was that when the country is under lockdown and the businesses are closed and consequently the employed persons are facing cash flow constraints, loan obligations should not come as a double whammy during this period. The moratorium period merely permits the lending institutions to postpone the payments that will fall due during the moratorium period. The Petitioner has thus grossly erred in understanding the objective of the moratorium and has misconstrued it to suit his own personal situation. Furthermore, the requirement that the interest should accrue during the moratorium period is to ensure that the losses does not propagate to the financial sector in such a way that the solvency of the system falls into question when the sector is required to be in a strong and resilient state to aid the eventual recovery from the fallout of the pandemic. A brief calculation will illustrate the amount of losses that would be required to be absorbed by the financial sector in case the moratorium period is required to be declared as an interest-free period. The weighted average lending rate for banks as on December 31, 2019 was 10.40 per cent, and the outstanding of term loans was Rs.59,52,192 crores. Assuming that moratorium is granted to only 65 per cent of the above outstanding, the monthly interest that will be foregone by the banks in case moratorium period has to be declared interest free will be

approximately Rs.33,500 crore. Since the moratorium period has been permitted for six months, the total interest income thus foregone will be about Rs.2,01,000 crore. This amount is close to 1 per cent of the national GDP. And this is only for the banking system, without counting the NBFCs and all-India financial institutions. If the banks are required to forego the above amount, there would be huge consequences for the stability of the banking system. The answering Respondent most respectfully submits that the mandate of the Reserve Bank as far as regulation of banks, draws upon the considerations of protection of depositors' interest and maintenance of financial stability, which also require that the banks remain financially sound and profitable. While the Reserve Bank is taking all possible measures to provide relief to the real sector with regard to debt repayments on account of the fallout of Covid-19, it does not consider it prudent or appropriate to go for a forced waiver of interest, risking the financial viability of the banks it is mandated to regulate, and putting the interests of the depositors in jeopardy.

3. That the contents of Para No. 3 of the writ Petition do not call for any response on behalf of the answering Respondent since the same are a matter of record.
4. That the contents of Para No. 4 of the writ Petition are replied as follows:
 - (i) That the contents of Para No. 4(i) of the writ Petition do not call for any response on behalf of the answering Respondent since the same pertains to the personal information with respect to the Petitioner.

(ii)-(iii) That the contents of Paras No. 4(ii) and 4(iii) of the writ Petition are absolutely wrong and hence denied for the want of knowledge.

(iv)-(vi) That the contents of Paras No. 4(iv) to 4(vi) of the writ Petition do not call for any response on behalf of the answering Respondent since the same are a matter of record.

(vii) That the contents of Para No. 4(vii) of the writ Petition also do not call for any response on behalf of the answering Respondent since it is a matter of record that a nationwide lockdown for 21 days was imposed vide an Order dated 24.03.2020 issued by the National Disaster Management Authority.

(viii) That the contents of Para No. 4(viii) of the writ Petition are a matter of record. It is submitted that it is a matter of record that the answering Respondent No. 2 issued a circular dated 27.03.2020 and permitted all term loans to grant a moratorium of 3 months on payments of all instalments falling due between March 01, 2020 and May 31, 2020. It is also a matter of record that while doing so the answering Respondent has clearly mentioned that the interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. However, it will be pertinent to mention here that the Reserve Bank i.e. answering Respondent being a regulatory authority and obligated with the colossal responsibility to enhance and aid the financial stability in the economy by ensuring the financial viability of banks, considered it to be at utmost

beneficial and viable for the entire financial sector to only defer the instalment of the term loans with a view to mitigate the prevailing problems of the borrowers so that the loan obligations should not come as a double whammy during this period. Therefore, the whole intention is to merely permit the lending institution to postpone the payments that will fall due during the moratorium period. It will also be apposite to mention here that the moratorium period is further extended for another period of 3 months i.e. from June to August 2020.

(ix)-(x) That the contents of Paras No. 4(ix) and 4(x) of the writ Petition do not call for any response on behalf of the answering Respondent since the same pertains to the Respondent No. 1 herein.

(xi)-(xii) That the contents of Paras No. 4(xi) and 4(xii) of the writ Petition are absolutely wrong and hence denied for want of knowledge.

(xiii) That the contents of Para No. 4(xiii) of the writ Petition, except those which are a matter of record, are absolutely wrong and vehemently denied.

(xiv) That the contents of Para No. 4(xiv) of the writ Petition do not call for any response on behalf of the answering Respondent since the same pertains to the Respondent No. 1 herein.

5. That the contents of Para No. 5 of the writ Petition are a matter of record. However, it is most respectfully submitted that the subject writ Petition is devoid of any merits and is

liable to be rejected and dismissed in view of the preliminary submissions made by the answering Respondent. Moreover, the subject writ Petition has been filed by the Petitioner on baseless and vague averments thereby and relying on an erroneous understanding of the circular issued by the Reserve Bank of India.

PARAWISE REPLY TO GROUNDS:

A-B That the contents of Paras No. A & B of the Grounds are absolutely wrong and vehemently denied. It is denied that the circular dated 27.03.2020 issued by the answering Respondent No. 2 is ultra vires to the extent it charges interest on the loan amount during the moratorium period or that the same created hardship in the present scenario of complete national lockdown being extended from time to time due to covid-19 outbreak. It is also vehemently denied that the relief of moratorium during the lockdown to borrowers and the action of imposition of interest in a way has taken away the benefit of imposing moratorium. It is emphatically denied that this has caused hindrance and is obstructive of the right to life guaranteed by Article 21 of the Constitution of India, 1950. It is submitted that the two-fold intention behind issuing the circular is to mitigate the burden of debt servicing brought about by disruptions on account of Covid-19 as well as to ensure the viability of the businesses. It will be not out of relevance to mention here that as already explained by the answering Respondent in the preceding paragraphs, the waiver of interest would cause a huge consequence for the stability of the entire banking system. The answering Respondent's mandate is drawn upon the

considerations of protection of depositors' interest and maintenance of financial stability, i.e. to ensure that the banks remain financially sound and profitable. Furthermore, to ensure that the losses suffered by the real sector does not propagate to the financial sector, that too when the sector is required to be in a strong and resilient state to aid the eventual recovery from the fallout of the pandemic, it is not considered to be prudent or appropriate to go for a forced waiver of interest, risking the financial viability of the banks, and putting the interests of the depositors in jeopardy. Therefore, the fact that the waiver of interest is having far reaching effect on the economy of the country cannot be ignored. It will be also relevant to mention here that it is well settled proposition of law that the larger public interest of the economy takes precedence over the individual cases of hardship and in this regard, the answering Respondent refer and rely upon the judgment of this Hon'ble Court titled "Mardia Chemicals Ltd. and others v. Union of India and others" reported in (2004) 4 SCC 311 where this Hon'ble Court has held as follows:

"66.As discussed earlier as well, it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public

money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio- economic drive of the country. The two aspects are intertwined which are difficult to be separated. (Emphasis supplied)

- C. That the contents of Para No. C of the Grounds are absolutely wrong and vehemently denied. It is submitted that the benefit of the moratorium is not to waive any payment obligations to the borrowers, the benefit was intended to only provide for a brief interlude in payment pressures. The objective was that when the country is under lockdown and the businesses are closed and consequently the employed persons are facing cash flow losses, loan obligations should not come as a double whammy during this period. The moratorium period merely permits the lending institutions to postpone the payments that will fall due during the moratorium period. Towards this end, the moratorium period has been announced by giving a margin for recovery post lockdown – the moratorium period ends on August 31, 2020 which is two months after the scheduled end of the nationwide lockdown. Thus, even after the lockdown ends, the moratorium period allows the borrowers to not worry about repayment obligations and rather focus on reviving the businesses or

employment status. The petitioner has thus grossly erred in understanding the objective of the moratorium and has misconstrued it to suit his own personal situation.

D-I. That the contents of Paras No. D to I of the Grounds are absolutely wrong and hence denied.

J. That the contents of Para No. H of the Grounds are absolutely wrong and vehemently denied. It is vehemently denied that the impugned portion of circular dated 27.03.2020 is arbitrary or capricious or that it imposes an over burden upon the borrowers. It is submitted that the Petitioner has embarked to presume the intentions of the RBI in allowing the reliefs under the circulars dated March 27, 2020 and May 23, 2020 in an expanded scope suiting to his own interest. The reliefs allowed by the RBI cannot be claimed as a right by any borrower as it does not create any vested rights. The Lending institutions are required to frame Board approved policies for providing the above-mentioned reliefs to all eligible borrowers and disclosed in public domain. Since the customer profile, organizational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers. Therefore, the discretion regarding deciding the eligibility of customers and manner in which the customers are on-boarded for availing this benefit, including the manner of recovery of the interest accrued during the moratorium period, has been left to the lending institutions concerned. Moreover, the benefit of moratorium is not to waive any payment obligations to the borrowers; the benefit was intended to only provide for a brief interlude in payment

pressures. The objective was that when the country is under lockdown and the businesses and consequently the employed persons are facing cash flow losses, loan obligations should not come as a double whammy during this period. The moratorium period merely permits the lending institutions to postpone the payments that will fall due during the moratorium period. It will be not out of relevance to mention here that it is a well settled legal position that lending institutions can charge interest in the manner that is contracted and agreed upon by the parties. The allegation of “interest on interest” as implied by the Petitioner is an insinuation demonstrating poor understanding of the concept of compound interest. Compounding or “interest on interest” is a natural part of any lending decision, to cover the opportunity cost of funds lent by a lending institution while lending to an obligor in the light of alternative investment opportunities. It essentially reflects the capitalization of the unpaid interest at periodic intervals. This Hon’ble Court, in its judgement titled “Central Bank of India vs. Ravindra and Others” reported in 2001 (4) Suppl. SCR 323 has clearly upheld the practice of compounding as a valid, long-established practice. The relevant excerpts from the judgment are reproduced hereinbelow for ready reference of this Hon'ble Court:

“Recognition of the method of capitalisation of interest so as to make it a part of the principal consistently with the contract between the parties or established banking practice does not offend the sense of reason, justice

and equity. As we have noticed such a system has a long established practice and a series of judicial precedents upholding the same. Secondly, the underlying principle as noticed in several decided cases is that when interest is debited to the account of the borrower on periodical rests, it is debited because of its having fallen due on that day. Nothing prevents the borrower from paying the amount of interest on the date it falls due. If the amount of interest is paid there will be no occasion for capitalising the amount of interest and converting it into principal.”

Furthermore, it is reiterated at the cost of repetition that the Banks are commercial entities that intermediate between the depositors and the borrowers and are expected to run on viable commercial considerations. Moreover, being custodians of depositors’ money, their actions need to be guided primarily by the protection of depositors’ interests. Any borrowing arrangement is commercial contract between the lender and the borrower, and the interest rates reflect the same. The interest on advances forms an important source of income for banks and after meeting the cost of funds, the banks also need to sustain reasonable interest margins for viable operations.

- K. That the contents of Para No. H of the Grounds are absolutely wrong and vehemently denied.
- L. That the contents of Para No. L of the Grounds are absolutely wrong and vehemently denied. It is vehemently denied that the circular dated 27.03.2020 violates the constitutional right

of right to life. It is further vehemently denied that the action of the Respondent is not guided by the reason for the public good or that is whim, caprice or abuse of power. The allegations are baseless and misleading and do not deserve any consideration from this Hon'ble Court. On the contrary, it is submitted that the Petitioner conveniently ignores the fact that the motivation and intention behind moratorium for instalments is the fact that insisting of payment of EMIs during a lockdown will be impractical, and hence it will not be just and fair to impose payment obligations at the same time. However, any economic relief has an opportunity cost, and if the argument of the Petitioner is accepted the same would amount to shifting the opportunity cost of the reliefs enjoyed by the borrowers by virtue of moratorium to the lending institutions and depositors of the country.

- M. That the contents of Para No. M of the Grounds are absolutely wrong and vehemently denied. It is reiterated herein at the cost of repetition that larger interest of the economy prevails and have precedence over the individual interests,
- N. That the contents of Para No. N of the Grounds are absolutely wrong and vehemently denied. It is emphatically denied that the circular issued by the answering Respondent interfere in any manner with the employment or livelihood of any citizen of this country. As already explained in the preceding paragraphs of the present counter Affidavit, the cost of opportunity availed by the Petitioner and other borrowers cannot be permitted to be shifted upon the lending institutions and depositors of the country.

O. That the contents of Para No. O of the Grounds are absolutely wrong and vehemently denied. However, it is a matter of record that this Hon'ble Court in its judgment titled "Delhi Transport Corporation D.T.C. v. Mazdoor Congress and others" reported in AIR1991SC 101 has held that the right to life includes right to livelihood and the right to livelihood therefore cannot hang on the fancies of individuals in authority. It is vehemently denied that the said judgment is applicable upon the facts and in the circumstances of the present case and bears no relevance in the subject matter.

P-Q. That the contents of Paras No. P & Q of the Grounds are absolutely wrong and vehemently denied. It is well settled that fundamental right to life includes all the components of right to life; however, the subject matter before this Hon'ble Court holds greater importance qua the economy of the country and the argument of the Petitioner if accepted would effectively shift the cost of opportunity availed by the Petitioner and borrowers upon the lending institutions and its respective depositors thereby jeopardizing the interest of all; whereas, the aim and object of the Reserve Bank by allowing moratorium is to only defer the payment obligations and the same cannot be construed to be waiver of the payment obligations which in sum and substance being contended by the Petitioner by way of the present Writ Petition. The payment obligation of the borrowers is not waived off or renounced, the same has been merely deferred.

R-V. That the contents of Paras No. R to V of the Grounds are absolutely wrong and vehemently denied. It is submitted that the averments made in the Grounds under reply are

substantial reproduction of the contentions raised in the previous paras of the Ground, therefore, the answering Respondent No. 2 craves for the leave of this Hon'ble Court to refer and rely upon the submissions made in the preceding paras of the present counter Affidavit as for brevity sake and to avoid repetition the same are not being repeated here.

6. That the contents of Para No. 6 of the Writ Petition are absolutely wrong and vehemently denied.
7. That the contents of Para No. 7 of the Writ Petition do not call for any response on behalf of the answering Respondent.
8. That the contents of Para No. 8 of the Writ Petition are absolutely wrong and vehemently denied for want of knowledge.

REPLY TO PRAYER CLAUSE

That the contents of prayer clause of the Writ Petition deserves no consideration from this Hon'ble Court and as such, the present Writ Petition is liable to be dismissed in the light of the detailed facts, circumstances and grounds narrated hereinabove. It is prayed accordingly.

DEPONENT

VERIFICATION

I the above deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and belief and is based on the records available in my office. No part of the

affidavit is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the day of June 2020.

DEPONENT



भारतीय रिजर्व बैंक
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RBI/2019-20/186

DOR.No.BP.BC.47/21.04.048/2019-20

March 27, 2020

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks)
All Primary (Urban) Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks
All All-India Financial Institutions
All Non-Banking Financial Companies (including Housing Finance Companies)

Madam / Dear Sir,

COVID-19 – Regulatory Package

Please refer to the [Statement of Development and Regulatory Policies released on March 27, 2020](#) where inter alia certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses. In this regard, the detailed instructions are as follows:

(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. 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 instalments¹ 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.

¹ 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.

3. In respect of working capital facilities sanctioned in the form of cash credit/overdraft (“CC/OD”), lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 (“deferment”). The accumulated accrued interest shall be recovered immediately after the completion of this period.

(ii) Easing of Working Capital Financing

4. In respect of working capital facilities sanctioned in the form of CC/OD to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may recalculate the ‘drawing power’ by reducing the margins and/or by reassessing the working capital cycle. This relief shall be available in respect of all such changes effected up to May 31, 2020 and shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19. Further, accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from COVID-19.

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.

Other Conditions

8. Lending institutions shall frame Board approved policies for providing the above-mentioned reliefs to all eligible borrowers, *inter alia*, including the objective criteria for considering reliefs under paragraph 4 above and disclosed in public domain.

9. Wherever the exposure of a lending institution to a borrower is ₹5 crore or above as on March 1, 2020, the bank shall develop an MIS on the reliefs provided to its borrowers which shall *inter alia* include borrower-wise and credit-facility wise information regarding the nature and amount of relief granted.

10. The instructions in this circular come into force with immediate effect. The Board of Directors and the key management personnel of the lending institutions shall ensure that the above instructions are properly communicated down the line in their respective organisations, and clear instructions are issued to their staff regarding their implementation.

Yours faithfully,

(Saurav Sinha)

Chief General Manager-in-Charge



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2019-20/220

DOR.No.BP.BC.63/21.04.048/2019-20

April 17, 2020

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks)
All Primary (Urban) Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks
All All-India Financial Institutions
All Non-Banking Financial Companies (including Housing Finance Companies)

Madam/Dear Sir,

COVID19 Regulatory Package - Asset Classification and Provisioning

Please refer to the [Governor's Statement of April 17, 2020](#) announcing certain additional regulatory measures aimed at alleviating the lingering impact of Covid19 pandemic on the businesses and financial institutions in India, consistent with the globally coordinated action committed by the Basel Committee on Banking Supervision. In this regard, the detailed instructions with regard to asset classification and provisioning are as follows:

(i) Asset Classification under the Prudential norms on Income Recognition, Asset Classification (IRAC)

2. In terms of the [circular DOR.No.BP.BC.47/21.04.048/2019-20 dated March 27, 2020](#) ('Regulatory Package'), the lending institutions were permitted to grant a moratorium of three months on payment of all term loan instalments falling due between March 1, 2020 and May 31, 2020 ('**moratorium period**'). As such, in line with the clarification provided by the Basel Committee on Banking Supervision, in respect of all accounts classified as standard as on February 29, 2020, even if overdue, the moratorium period, wherever granted, shall be excluded by the lending institutions from the number of days past-due for the purpose of asset classification under the IRAC norms.

3. Similarly in respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), the Regulatory Package permitted the recovery of interest applied during the period from March 1, 2020 upto May 31, 2020 to be deferred ('**deferment period**'). Such deferment period, wherever granted in respect of all facilities classified as standard, including SMA, as on February 29, 2020, shall be excluded for the determination of out of order status.

4. NBFCs which are required to comply with Indian Accounting Standards (IndAS) shall, as hitherto, continue to be guided by the guidelines duly approved by their Boards and as per ICAI Advisories for recognition of the impairments.

(ii) Provisioning

5. In respect of accounts in default but standard where provisions of paragraphs (2) and (3) above are applicable, and asset classification benefit is extended, lending institutions shall make general provisions of not less than 10 per cent of the total outstanding of such accounts, to be phased over two quarters as under:

(i) Quarter ended March 31, 2020 – not less than 5 per cent

(ii) Quarter ending June 30, 2020 – not less than 5 per cent

6. The above provisions may be adjusted against the actual provisioning requirements for slippages from the accounts reckoned for such provisions. The residual provisions at the end of the financial year can be written back or adjusted against the provisions required for all other accounts.

7. The above provisions shall not be reckoned for arriving at net NPAs till they are adjusted against the actual provisioning requirements as under paragraph 6 above. Further, till such adjustments, these provisions shall not be netted from gross advances but shown separately in the balance sheet as appropriate.

8. All other provisions required to be maintained by lending institutions, including the provisions for accounts already classified as NPA as on February 29, 2020 as well as subsequent ageing in these accounts, shall continue to be made in the usual manner.

Other Conditions

9. The exclusions permitted in terms of para 2 and 3 above shall be duly reckoned by the lending institutions in their supervisory reporting as well as reporting to credit information companies (CICs); i.e., the days past due and SMA status, where applicable, as on March 1, 2020 will remain unchanged till May 31, 2020.

10. The lending institutions shall suitably disclose the following in the 'Notes to Accounts' while preparing their financial statements for the half year ending September 30, 2020 as well as the financial years 2019-20 and 2020-2021:

- (i) Respective amounts in SMA/overdue categories, where the moratorium/deferment was extended, in terms of paragraph 2 and 3;
- (ii) Respective amount where asset classification benefits is extended.
- (iii) Provisions made during the Q4FY2020 and Q1FY2021 in terms of paragraph 5;
- (iv) Provisions adjusted during the respective accounting periods against slippages and the residual provisions in terms of paragraph 6.

Yours faithfully,

(Saurav Sinha)

Chief General Manager-in-Charge



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2019-20/244

DOR.No.BP.BC.71/21.04.048/2019-20

May 23, 2020

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks)
All Primary (Urban) Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks
All All-India Financial Institutions
All Non-Banking Financial Companies (including Housing Finance Companies)

Madam/Dear Sir,

COVID-19 – Regulatory Package

Please refer to the [Circular DOR.No.BP.BC.47/21.04.048/2019-20 dated March 27, 2020](#) and [Circular DOR.No.BP.BC.63/21.04.048/2019-20 dated April 17, 2020](#) announcing certain regulatory measures in the wake of the disruptions on account of COVID-19 pandemic and the consequent asset classification and provisioning norms. As announced in the [Governor's Statement of May 22, 2020](#), the intensification of COVID-19 disruptions has imparted priority to relaxing repayment pressures and improving access to working capital by mitigating the burden of debt servicing, prevent the transmission of financial stress to the real economy, and ensure the continuity of viable businesses and households. Consequently, the detailed instructions in this regard are as follows:

(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. In view of the extension of lockdown and continuing disruption on account of COVID-19, all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, All-India Financial Institutions, and Non-banking Financial Companies (including housing finance companies) ("lending institutions") are permitted to extend the moratorium by another three months i.e. from June 1, 2020 to August 31, 2020 on payment of all instalments in respect of term loans (including agricultural term loans, retail and crop loans). Accordingly, the repayment schedule for such loans as also the residual tenor, will be shifted across the board. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

3. In respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to allow a deferment of another three months, from June 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities. Lending institutions are permitted, at their discretion, to convert the accumulated interest for the deferment period up to August 31, 2020, into a funded interest term loan (FITL) which shall be repayable not later than March 31, 2021.

(ii) Easing of Working Capital Financing

4. In respect of working capital facilities sanctioned in the form of CC/OD to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may, as a one-time measure,

(i) recalculate the 'drawing power' by reducing the margins till August 31, 2020. However, in all such cases where such a temporary enhancement in drawing power is considered, the margins shall be restored to the original levels by March 31, 2021; and/or,

(ii) review the working capital sanctioned limits upto March 31, 2021, based on a reassessment of the working capital cycle.

5. The above measures shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19. Further, accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from COVID-19.

6. Lending institutions may, accordingly, put in place a Board approved policy to implement the above measures.

Asset Classification

7. The conversion of accumulated interest into FITL, as permitted in terms of paragraph 3 above, and the changes in the credit terms permitted to the borrowers to specifically tide over economic fallout from COVID-19 in terms of paragraph 4 above, will not be treated as concessions granted 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'), and consequently, will not result in asset classification downgrade.

8. In respect of accounts classified as standard as on February 29, 2020, even if overdue, the moratorium period, wherever granted in respect of term loans, shall be excluded by the lending

institutions from the number of days past-due for the purpose of asset classification under the IRAC norms. The asset classification for such accounts shall be determined on the basis of revised due dates and the revised repayment schedule.

9. Similarly, in respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), where the account is classified as standard, including SMA, as on February 29, 2020, the deferment period, wherever granted in terms of paragraph 3 above shall be excluded for the determination of out of order status.

10. All other provisions of [circulars dated March 27, 2020](#) and [April 17, 2020](#) shall remain applicable *mutatis mutandis*.

Yours faithfully,

(Saurav Sinha)

Chief General Manager-in-Charge

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. _____ OF 2020

IN

W.P. (C) DIARY NO. 11127 OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

GAJENDRA SHARMA

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

**APPLICATION FOR SEEKING EXEMPTION FROM
FILING COURT FEES AND NOTARIZED COUNTER
AFFIDAVIT ON BEHALF OF THE RESPONDENT
NO. 2 i.e. RESERVE BANK OF INDIA**

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA

AND HIS HON'BLE COMPANION JUDGES OF

THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE

RESPONDENT NO. 2 ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. That the Respondent No. 2 i.e. Reserve Bank of India is filing the accompanying Counter Affidavit to the writ Petition in compliance with the Order dated May 26, 2020 passed by this Hon'ble Court in the subject Petition. The contents of the counter Affidavit shall be read as part and parcel of the subject Application as for brevity sake the same is not being repeated herein.
2. That it is submitted that in view of the prevailing situation caused due to outbreak of novel coronavirus concerning the global pandemic and subsequent lockdown orders issued by the Government of India with a view to combat the spread, the accompanying counter Affidavit is being filed without getting the same notarized along. The Respondent No. 2 undertakes to file the same as soon as the normal functioning of this Hon'ble Court resumes.
3. Therefore, in view of the above the Respondent No. 2 seeks indulgence of this Hon'ble Court to exempt the Respondent No. 2 from filing the notarized Affidavit. It is further submitted that in view of the same, the Respondent No. 2 is also seeking exemption from filing Court fees as well. Furthermore, the Respondent No. 2 also undertakes to file the appropriate and required amount of Court fees as soon as the normal functioning of this Hon'ble Court resumes.
4. That the present Application is being moved bonafide and in the interest of Justice.

PRAYER

In view of the aforesaid circumstances, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Allow the present Application and exempt the Respondent No. 2 from filing notarized counter Affidavit and Court fees;
- b. Pass any other Order this Hon'ble Court may deem fit and necessary, in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE RESPONDENT NO. 2 SHALL DUTY BOUND PRAY

FILED BY



RAMESH BABU M.R.

(ADVOCATE ON RECORD)

ADVOCATE FOR THE RESPONDENT NO. 2

FILED ON: 02.06.2020

NEW DELHI

IN THE SUPREME COURT OF INDIA
 (CIVIL ORIGINAL JURISDICTION)
 W.P. (C) DIARY NO. 11127 OF 2020
 (UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

GAJENDRA SHARMA

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

AFFIDAVIT

I, Prashant Kumar aged about 38 years, S/o of Arvind Kumar Prasad Sinha, R/o 346, Pocket-E, Mayur Vihar, Phase-II, Delhi-110091 do hereby solemnly affirm and declare as under:

1. That I am working as Assistant General Manager with Department of Supervision (Banking) of Reserve Bank of India having its office at 6 Sansad Marg, New Delhi- 110001. I am fully aware with the facts of the present case and as such am competent as well as authorised on behalf of the Reserve Bank of India i.e. Respondent No. 2 to swear the present Affidavit.
2. That the accompanying Application has been drafted under my instructions and I have read and understood the facts stated therein and state that the facts stated are true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION:

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I the above deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and belief and is based on the records available in my office. No part of the affidavit is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 02nd day of June 2020.

DEPONENT

VAKALATNAMA**IN THE SUPREME COURT OF INDIA
WRIT PETITION (CIVIL) DIARY NO.11127 OF 2020****IN THE MATTER OF:****GAJENDRA SHARMA****....PETITIONER****VERSUS****UNION OF INDIA & ANOTHER****....RESPONDENTS**

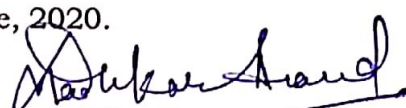
I, Madhukar Anand, Assistant General Manager, Department of Supervision (Banking), having office at 6, Sansad Marg, New Delhi-110 001, Reserve bank of India, New Delhi, Respondent No. 2, in the above Petition do hereby appoint and retain Shri. RAMESH BABU M.R., Advocate-on-Record, of Supreme Court of India, to act and appear for us in the above Petition and on our behalf to conduct prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for review, to file and obtain return of documents and receive money on our behalf in the said Petition and to represent us and to take all necessary steps on our behalf in the above matter settle or compromise the matter. I agree to ratify all acts done by the aforesaid Advocate-on-record in pursuance of this authority.

Dated this the 02nd day of June, 2020.

Accepted:

**RAMESH BABU M. R.**

Advocate, Supreme Court of India
407, M.C. Sethalwad
New Lawyers Chamber
Opposite Supreme Court of India
Bhagwan Das Road, New Delhi


Signature of the Respondent
MEMO OF APPEARANCE

To,
The Registrar
Supreme Court of India
New Delhi

Sir,

Please enter my appearance on behalf of the Respondent No. 2 namely, Reserve Bank of India.

Dated 02nd day of June, 2020.

Yours faithfully,

**RAMESH BABU M. R.**

Advocate, Supreme Court
407, M.C. Sethalwad
New Lawyers Chamber
Opposite Supreme Court of India
Bhagwan Das Road, New Delhi