



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.6775 OF 2020 (GM-RES)

BETWEEN:

VELANKANI INFORMATION SYSTEMS LIMITED
NO 43, ELECTRONICS CITY PHASE - I
DODDATHOGURU VILLAGE
BENGALURU - 560100
REPRESENTED BY ITS MANGING DIRECTOR
MR KIRON D SHAH

...PETITIONER

(BY SRI. BASAVA PRABHU PATIL, SENIOR COUNSEL FOR
MS. SMITHA SINGH, ADVOCATE)

AND:

1. SECRETARY, MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI - 110001
2. SECRETARY, MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI - 110001
3. STATE OF KARNATAKA
VIDHANA SOUDHA
BENGALURU KARNATAKA - 560001
BY ITS CHIEF SECRETARY
4. THE GOVERNOR
RESERVE BANK OF INDIA
CENTRAL OFFICE BUILDING, 18TH FLOOR
SHAHID BHAGAT SINGH ROAD
MUMBAI - 400001
5. HDFC BANK LIMITED
SALCO CENTRE RICHMOND RAOD
BENGALURU-560025
REPRESENTED BY BOARD OF DIRECTORS

6. FEDERAL BANK LIMITED
MARUTHI ARCADE NO.7
20TH MAIN ROAD
7TH BLOCK KORAMANGALA
BENGALURU - 560095
REPRESENTED BY ITS
BOARD OF DIRECTORS

7. ADITYA BIRLA HOUSING FINANCE LIMITED
NO.1 (78), STAR AVENUE, 6TH CROSS
VICTORIA LAYOUT, VICTORIA ROAD
BENGALURU - 560025
REPRESENTED BY BOARD OF DIRECTORS

... RESPONDENTS

(BY SRI. M.B.NARAGUND, ASG AND
SRI M.N. KUMAR, CGC, ADVOCATE FOR R1 & 2;
GOVERNMENT ADVOCATE FOR R3;
SRI. R.V.S. NAIK, SENIOR COUNSEL FOR
SRI. T. SURYANARAYANA, ADVOCATE FOR
M/S KING AND PARTRIDGE FOR R4;
SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. H.N. VASUDEVAN FOR R5;
SRI. VIJAY KUMAR. V, ADVOCATE FOR R6;
SRI. DYAN CHINNAPPA, SENIOR COUNSEL FOR
SRI. RAWLEY MUDDAPPA.I.P, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-1 TO 4 TO ENFORCE THE REGULATORY PACKAGE ANNOUNCED BY THE RESERVE BANK OF INDIA IN LETTER AND SPIRIT AS DIRECTD BY THE HON'BLE SUPREME COURT AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 1.07.2010, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The Petitioner is before this Court seeking

1.1. for directions to Respondent Nos.1 to 4 to enforce the
Regulatory Package announced by the Reserve Bank of
India (RBI, for short) in letter and spirit

- 1.2. for quashing and setting aside the decision of Respondent No.5-HDFC Bank as per communications dated 06.04.2020 and 08.04.2020, the decision of Respondent No.6 as per communication dated 28.04.2020, the decision of Respondent No.7 as per communication dated 24.04.2020 and 22.02.2020,
- 1.3. a direction to Respondent Nos.5, 6 and 7 to grant moratorium as regards payment of all term loan instalments falling due.
- 1.4. consequently to restrain Respondent Nos.5 to 7 from recovering loan repayment instalments/EMI due in respect of Loan Account Nos.009LN18173530003 and 009LN18173530002 of Respondent No.5, Loan Account Nos.14377600006908 and 14377600006916 of RespondentNo.6 and Loan Account Nos.80001471 and 80001472 of Respondent No.7 in any manner;
- 1.5. to direct Respondent No.5 to reverse the recovery of EMI of Rs.3,45,47,459.96 effected for March and April 2020 and Respondent No.6 to reverse the recovery of EMI of Rs.2,29,48,565/- effected for March and April 2020

1.6. To direct the Respondents to transfer forthwith as and when received, all the credits corresponding to loan repayment instalments/EMIs for March, April and May 2020 into Escrow account Nos.5750000106944 and 57500000286555 (maintained with HDFC Bank Limited), to the Petitioner's current account No.57500000131681 (maintained with HDFC Bank Limited).

2. The facts, according to the Petitioner, are as under:

2.1. The Petitioner had availed term loan facilities from Respondent Nos.5 to 7 viz., HDFC Bank Limited, Federal Bank and Aditya Birla Finance Limited, out of which, a sum of Rs.190.57 crores was advanced by Respondent No.5-HDFC Bank, Rs.124.43 crores by Respondent No.6-Federal Bank and Rs.160 crores by Respondent No.7-Aditya Birla Finance Limited totalling up to Rs.475 crores. According to the Petitioner, the Petitioner is in the business of running an Information Technology Park (Technology park or Tech Park) and a 5 star Hotel, both of which have been constructed on the land belonging to the Petitioner.

2.2. In order to service the aforesaid loan, there is an agreement arrived at between lenders i.e., the Respondent Nos.5 to 7 that the revenue from the lease rentals of the Technology Park would be credited into Escrow Account No.57500000106944 and revenue from the Petitioner's hotel business would be credited into Escrow Account No.57500000286555. Respondent Nos.5 and 6 were entitled to appropriate the Equated Monthly Installment (EMI, for short) payable on the loans due to them from the Escrow Account where the lease rentals were deposited; the excess rental was to be released from the Escrow Account to the current account of the Petitioner for utilisation by the Petitioner to meet its expenses. Similarly, the revenue arising out of the hotel business was to be deposited in the Escrow Account relating to the hotel business, from and out of which, the Petitioner was entitled to draw monies to its current account on a daily basis for use in connection with its hotel business and from the balance, make payment of the equated monthly instalment on the loan borrowed on account of the hotel business to Respondent No.7 on the due date that is 13th of every month.

2.3. A *pari passu* first charge by way of hypothecation of all securities, including the Petitioner's cash flows and receivables, rentals from the Technology Park as also the revenues from the hotel business without exception were created in favour of all the Banks viz., Respondent Nos.5 to 7. It is the case of the Petitioner that the Petitioner is regular in repaying the loan amounts and all the EMIs are current in payment. Therefore, the loan account of the Petitioner are standard account, there is no default on the part of the Petitioner in the repayment of any amount due to any of Respondent Nos.5 to 7.

2.4. At this stage, due to the unfortunate spread of Novel Corona Virus – 19 ("*N-Covid-19*"), the Government of India invoked the Disaster Management Act, 2005 ("*DMA*", for short) by its order dated 24.03.2020. Directions were issued to all the Ministries, Departments of Government of India/State, Union Government and State/Union Territory authorities to take effective measures so as to prevent the spread of *N-Covid 19*.

- 2.5. On the very same day, the Secretary, Ministry of Home Affairs, Government of India also issued guidelines under the provisions of DMA as regards the measures to be taken for containment of *N-Covid 19* in the country which included a direction for the closure of all commercial and private establishments, suspension of transportation, etc.
- 2.6. Thereafter from time to time, the Government of India as also the various State Governments have been, under the DMA, issuing directions as regards maintaining of social distancing, closure or restrictive operation of private and public enterprises/establishments etc., These directions being required to be followed by one and all including the Petitioner, its employees, tenants and the persons availing services of the Petitioner, the non-following would result in punitive action under the DMA.
- 2.7. The RBI acting with alacrity realising the potential disturbance that could be caused to the economy and institutions across the country vide a press release dated 27.03.2020 set out the various development and regulatory policies to address the stress in the financial condition caused by *N-Covid 19* so as to ease the financial stress.

2.8. One of the modes for doing so was by relaxing the repayment pressures on the borrowers and by improving access to the working capital by such borrowers. Realising that much of the economic establishment across the country would not be able to operate on account of social distancing, lockdown, the prohibition of transportation, etc., as also realising that there would not be many economic activities and/or revenue generated therefrom, RBI had also proposed a moratorium for a period of three months on the repayment of all loans by way of instalments in respect of loans outstanding as on March 1st, 2020 to be provided by all commercial Banks (including regional rural Banks, small finance Banks, local area Banks), Co-operative Banks, All India Financial Institutions and NBFCs (including Housing Finance Companies and Micro Finance Institutions) – for brevity referred to as lending institution/s.

2.9. On the very same day, the RBI issued a Circular dated 27.03.2020 which contains detailed instructions as regards the above Regulatory Package permitting the aforesaid lending institutions to grant a moratorium of three months

on payment of all term loan instalments falling due between March 1st 2020 and May 31st 2020. Para 2 relating to rescheduling of payments for term loans and working capital facilities would be relevant according to the Petitioner and the same is extracted hereinbelow.

“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 instalments falling due between March 1st, 2020 and May 31st, 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.”

2.10. Para 4 relating to Easing of Working Capital Financing is reproduced hereinbelow:

“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

31st, 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.”

2.11. The manner and methodology of the moratorium being extended is in terms of Para 8 which comes under the heading *Other Conditions*. It is extracted hereunder:

“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.”

2.12. Subsequent to and in furtherance to the said Circular issued by the RBI, the Press Information Bureau, Government of India, Ministry of Finance published the answers to the frequently asked questions given by the Indian Bank Association on April 1st 2002. The relevant questions and answers for the present matter according to the Petitioner are question Nos.1, 2, 3 and 14 which are extracted hereinbelow:

“QUESTION 1: When/what was the RBI announcement?”

ANSWER: Last week, the Reserve Bank of India announced a three-month moratorium on all term loans outstanding as on March 1st, 2020, as well as on working capital facilities.

QUESTION 2” Why has RBI announced the relief package?”

ANSWER: Reserve Bank of India has announced certain regulatory measures 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. It was felt that there may be a temporary disruption in the cash flows, and in some cases loss of income, for the businesses/individuals and the present measures work to bring relief to those businesses/individuals.

QUESTION 3: Which are the facilities eligible for availing the benefits under the RBI COVID-19 regulatory package and whether the facility is extended across the Board to all borrowers?”

ANSWER: All term loans (including agricultural term loans, retail, crop loans and loans under Pool Purchase) and cash credit / overdraft are eligible to avail the benefits under the package. This is available to all such accounts, which are standard assets as on March 1st 2020. Further, to avoid unnecessary paperwork the facility has been extended across the Board to all the borrowers by extending repayment of term loan installments (includes interest) by 90 days. The original repayment period for term loans will get extended by 90 days e.g. a loan repayable in 60 installments maturing on March 1st 2025 will mature on 1st June 2025.

QUESTION 14: Will all these measures of RBI be treated as “restructuring”? What about eh provisions applicable?

ANSWER: *The measures stipulated by RBI under the March 27th, 2020 Circular on COVID-19 Regulatory package will not be treated as “restructuring” and hence will not result in assets classification downgrade. Accordingly, the enhanced provisions for Restructured Accounts will not apply.”*

2.13. The said answers by the Indian Bank Association to the frequently asked questions were also accompanied by the answers by some of the Banks to those and some other frequently asked questions, which are web-hosted on the web site of the respective banks. Some of the answers are extracted hereunder:

2.14. HDFC – 5th Respondent

“RBI Covid-19 Regulatory Package: EMI Moratorium

These are unprecedented times and it is a time that we need to be together to fight this COVID-19 crisis.

In line with the RBI guidelines and to show our solidarity in standing with you, HDFC Bank is offering its customers EMI moratorium and credit card outstanding moratorium as a relief measure.

1. **What is the EMI moratorium provided for loans under COVID 19- regulatory package?**

The prevailing situation may pose a huge challenge for people at large. As a measure of solidarity, RBI has permitted all Indian Banks / Indian Financial Institutions to offer its customers up to 3 months moratorium on their EMI payments falling due between March 1st, 2020 to May 31st, 2020.

2. Who is eligible?

All HDFC Bank customers who have availed of retail instalment loan or any other retail credit facilities prior to March 1st 2020 are eligible.

Customers having overdues prior to March 1st 2020 may also opt for the moratorium, and their requests shall be considered by the Bank based on its merits.

All Agri Loans (Kisan Gold Card) and Microfinance customers under the Bank's Sustainable Livelihood Initiative are also eligible.

All Corporate as well as SME customers are also eligible. Our Relationship Managers will get in touch with you or you can contact them to get further details.

2.15. Federal Bank – 6th Respondent

FAQs - COVID 19 RELIEF PACKAGE PRADHAN MANTRI GARIB KALYAN PACKAGE: *The Reserve Bank of India has announced a regulatory package on March 27th, 2020, permitting Bank's to allow a one-time rescheduling of payments in terms loans and deferment of interest in working Capital facilities, to mitigate the burden of debt servicing on account of the fall-out of COVID-19 pandemic and to ensure the continuity of viable businesses.*

Federal Bank is pleased to extend the benefits of moratorium to our customers in line with the RBI guidelines. The details are given below.

Term Loans

a) Term Loans coming under Business Loans, Retail Loans & Agricultural Loans outstanding as on 01st March 2020 with repayment either in installments / bullet are eligible (The processes for each segment of customers is provided separately)

b) Moratorium shall be extended to term loans is standard status as at the end of February 29th 2020.

c) Moratorium shall be applicable for the installments and interest payments falling due between 01st March 2020 and May 31st 2020.

d) Interest shall continue to accrue on the outstanding balance of term loans during the moratorium period at the contracted rate.

e) If a customer opts for moratorium, repayment schedule for the account shall be shifted / tenor will be increased.

f) The revised installment / EMI to be remitted by the customer after moratorium shall be inclusive of the interest accrued during the moratorium period.

g) If any customer, whose account was standard as at the end of February 29th 2020, requests for reversal of installment/ EMI deducted, if any, after March 1st 2020, the same will be refunded within a reasonable time.

h) Installments, for the purpose of moratorium will include the following payments falling due from 01st March 2020 to May 31st 2020.

- *Principal and/or interest components*
- *Bullet repayments*

- *Equated Monthly installments.*

i) Asset classification of term loans which are granted relief as above shall be determined on the basis of revised due dates and the revised payment schedule.

2.16. Aditya Birla Finance – 7th Respondent

FAQs:

1. *Is the Moratorium applicable for all loans?*

ABFL would be extending moratorium to all its customers as per the latest advice by the Reserve bank of India. Only NPA customers will not be extended the benefit of Moratorium.

2. *Does it mean that my EMI for the next 3 months is waived off? Will I get an interest waiver for 3 months of moratorium?*

The RBI advisory does not mandate an interest waiver and is only a deferment of the payment. Hence, interest will be accrued at the contractual rate of the loan for the principal amount outstanding before the moratorium scheme being availed. The interest accrued during the period will be added to the principal outstanding and leading to an increase in EMI/Tenor, at the sole discretion of ABFL.

3. *If I have availed my loan in March, can I Still avail moratorium?*

Yes you are eligible for moratorium for the instalments payable in April and May 2020.

4. *How do I avail the Moratorium benefit?*

All ABFL customers may send SMS ABFLOPT to 567679 from their registered mobile numbers and avail moratorium for the applicable months.

It is also pertinent to know that ABFL has extended its moratorium benefit by default to all of its personal and Business Loan customers, who have applied through Digital & Non digital channels. However, if our Personal & Business loan customers have:

- *Paid their EMIs for March 2020, moratorium will be applicable for April 2020 & 2020.*

2.17. In view of the above lockdown and other measures announced by the Union of India and the State Government, the Petitioner was constrained to shut down its hotel business since the same could not be carried out adhering to the social distancing. However, the Tech Park was being functioned by the tenants of the Tech Park by following the applicable laws. In view of the shut down of the hotel business, the revenues of the Petitioner was adversely effected and as such, the Petitioner applied to RespondentNo.5 seeking for grant of moratorium on March 27th 2020 itself followed with a request on April 1st 2020. However, Respondent No.5-HDFC Bank vide its letter dated April 6th 2020 had informed the Petitioner that there were rentals which were being received by the Petitioner from the Tech Park, hence the moratorium could not be extended to the Petitioner and therefore rejected the said application.

2.18. Despite the said rejection, the Petitioner once again approached the Respondent No.5 on April 7th 2020 seeking for extension of the moratorium to the Petitioner by reconsidering its earlier position. However, the same was again refused by Respondent No.5.

2.19. The Petitioner had also requested the Respondent No.6– Federal Bank to extend a moratorium on the payment of the loan, which was not responded to by Respondent No.6. So also a similar request to the Respondent No.7 – Aditya Birla Finance Limited went without a response.

2.20. Respondent No. 5 post rejection of the moratorium application made by the Petitioner, debited the amounts due to it from and out of the Escrow Account maintained with the Respondent No.5 by the Petitioner wherein the lease rental amount were being deposited by the concerned tenants. This was also followed up with similar debiting by Respondent No.6, debiting being made for the EMIs payable for the months March and April, 2020.

2.21. The Petitioner once again approached all the three lenders that is Respondent Nos.5 to 7 on April 17th 2020

requesting them to extend a moratorium for a period of three months and in the meanwhile also filed a complaint under the Banking Ombudsman Scheme, 2006 with regards to the refusal of Respondent Nos.5 to 7 to extend the benefit of a moratorium to the Petitioner.

2.22. On April 24th 2020, Respondent No.7 informed the Petitioner that the loan of the Respondent No.7 was secured by way of a *pari passu* charge and though a request had been made by the Petitioner to all three lenders, Respondent Nos.5 and 6 had been unilaterally appropriating the dues from the rents received from the Technology Park without sharing any portion of the cash flow with Respondent No.7 and therefore, informed the Petitioner that they could consider the request of the Petitioner for moratorium along with other lenders provided Respondent No.5 shares the cash flow in the escrow account proportionately.

2.23. In the meanwhile, when the complaint filed by the Petitioner before the Banking Ombudsman was taken up, the Federal Bank-Respondent No.6 submitted before the said Ombudsman that in principle Federal Bank has no

objection for extension of a moratorium to the Petitioner subject however to Respondent No.5 extending a moratorium. In view of the above, the Petitioner once again approached the Respondent No.5 by submitting a representation to consider the request of a moratorium favourably, which was not so considered.

2.24. It is in the above background and aggrieved by said actions on the part of the Respondent Nos.5, 6 and 7 that the Petitioner is before this Court seeking for the reliefs as aforestated.

3. Subsequent to the filing of the petition, the Petitioner has also filed an application for amendment in I.A.No.4/2020 and an application for production of additional documents in I.A.No.3/2020 which came to be allowed by this Court vide its order dated 22.06.2020. Though the Respondents were provided with an opportunity to file their additional statement of objections to the amendment, no such objections have been filed.
4. By way of the amendment, the Petitioner has sought to bring on record, some the subsequent events viz., another press note

issued by the RBI dated 22.05.2020 extending the period of moratorium by another three months. The further representation made by the Petitioner to Respondent Nos.5 to 7 seeking for extension of moratorium facilitates to the Petitioner as also the communication exchanged between the parties in relation thereto etc.; consequently, the Petitioner has sought for extension of a moratorium for the extended period also.

5. Respondent Nos.1 and 2 viz., Union of India represented by Ministry of Home Affairs and Secretary, Ministry of Finance have chosen not to file any objections.
6. Respondent No.3 viz., State of Karnataka, has also not filed any objections to the above petition.
7. Respondent No.4 viz. has filed its objections on 20.06.2020 contending that

7.1. The RBI had come with the Circular permitting the lending institutions to grant a moratorium for a period of three months for payment of all instalments falling due between 01.03.2020 and 31.05.2020.

- 7.2. Towards which, the lending institutions were required to frame Board Approved Policies for providing the reliefs mentioned in the Regulatory Package to all eligible borrowers and disclose the same in the public domain.
- 7.3. The RBI has contended that since the customer profile, organisation structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirement of its customers. Therefore, the discretion regarding deciding the eligibility of customers and the manner in which customers are to be onboarded for availing the benefit including the manner of recovery of interest accrued during the moratorium period was left to the lending institution concerned.
- 7.4. Though the RBI has also contended that matter relating to fiscal and financial matters of the State should be left for implementation to the necessary statutory and expert bodies, it has also contended that it is for the Respondent Nos.5 to 7 to defend their actions/decisions and demonstrate how and why the Petitioner did not qualify for

the benefit of moratorium as per their Board Approved Policy.

7.5. It is further contended that RBI has issued a Policy and thereafter, it is for the Banks to implement it.

7.6. The RBI has also made it clear that the Banks would have to look at the spirit of the reliefs announced by the RBI in the wake of the economic fallout of the pandemic so that eligible borrowers should not have to worry about making debt payments during the lockdown period and the discretion on the part of the lending institutions has to be exercised in a proper and reasonable manner.

8. Respondent No.5 viz., HDFC has filed a detailed objection contending that:

8.1. The Petitioner has suppressed the material facts in that the Petitioner is receiving rentals from the Technology Park, merely because income/revenue is not being received from the hotel, the Petitioner would not be eligible for any moratorium.

- 8.2. The Petitioner is receiving huge amounts towards rental, maintenance, fit-out income, all of which have been appropriated by the Petitioner, there are unutilised amounts lying in the Bank account of the Petitioner, therefore, there was no requirement for the extension of a moratorium facility to the Petitioner.
- 8.3. The Circular issued by the RBI is not mandatory in nature, is only directory. The discretion to extend a moratorium or not is solely that of the lending institution like the Respondent No.5.
- 8.4. On the facts of the matter, it is contended that the Petitioner has sufficient and more income to make payments of the loan installments to Respondent No.5 more so when the same is secured by Lease Rental Discounting facility (LRD) which is a separate and distinct facility and cannot be equated to a term loan or a retail loan.
9. Respondent No.6 in its objections has more or less taken up the same contentions as that raised by Respondent No.5 except to state that

- 9.1. since the LRD limits provided by Respondent No.6 was on account of down selling of the loan by the Respondent No.5 to Respondent No.6, the decision of Respondent No.6 to extend the period of a moratorium would be in-line with the decision of the originating Bank viz., Respondent No.5 and since Respondent No.5 has denied the request for extension of a moratorium,
- 9.2. Respondent No.6 concurs with the said decision and states that it is not required to provide any moratorium. While stating so, Respondent No.6 has conditioned such refusal by stating that it would be willing to provide the moratorium to the Petitioner provided all the other lenders grant such moratorium to the Petitioner.
10. Respondent No.7 though has not filed its objections to the petition has filed a vacate stay application as also an affidavit in response to the statement of objections filed by Respondent No.5 wherein it is contended by Respondent No.7 that
- 10.1. Respondent No.7 is ready and willing to grant a moratorium to the Petitioner as per the Circular issued by the RBI.

10.2. However, the lending facility being a multi-Bank arrangement with common securities like cash flows, Respondent No.7 cannot be individually expected to extend a moratorium to the Petitioner in the absence of Respondent Nos.5 and 6 extending such moratorium more so when all three of them enjoyed a *pari-passu* charge on all the assets including the cash flow of the Petitioner.

10.3. Respondent Nos.5 and 6 cannot unilaterally appropriate the funds from the Escrow Accounts where the lease rentals are being deposited; Respondent No.7 is also entitled to a share out of the money received by the Petitioner from and out of its business.

11. Sri. BasavaprabhuS. Patil, learned Senior Counsel appearing for Ms.Smitha Singh learned Counsel for the Petitioner reiterating the contentions taken up in the petition above also submitted that

11.1. The present situation is a unique and peculiar one in that it is only on account of the policies and directions issued by Government of India and the State Government that the Petitioner is unable to carry out its business activities more

particularly that of the hotel. If these restrictions had not been imposed, the Petitioner could have carried out the said business and earned a revenue out of which payments could have been made to Respondent Nos.5 to 7.

11.2. RBI has permitted the grant of a moratorium realising the effect on the economy as a direct consequence of the implementation of the policies of the Government of India and the State Government by virtue of which much of the economy across the country came to a standstill. It is in order to facilitate borrowers like the Petitioner to continue their business without the fear of being declared as a non-performing asset (NPA) that the moratorium facilities were promoted by the RBI.

11.3. One other aspect of the moratorium Policy is that RBI facilitated the Banks to extend moratorium by coming up regulatory policies relating to Liquidity Management by Targeted Long Term Repos Operations (TLTRO's), Reduction in Cash Reserve Ratio (CRR), increasing the Marginal Standing Facility, Widening of the Monetary Policy Rate Corridor, Permitting banks to deal in Offshore

Non-Deliverable Rupee Derivative market etc., by virtue of which, the Banks benefited by being made available with more cash than what was available so that the same could offset any moratorium facilities extended to any borrower like the Petitioner.

11.4. It was but required for the lenders viz., Respondent Nos.5 to 7 to act in terms of Para 8 of Circular dated 27.07.2020 and for the Board to approve the policies relating to the implementation of the Circular and extending the benefits to all eligible borrowers inter alia by including objective criteria for considering reliefs under the said Circular. He states that in pursuance of the above, it was required for Respondent Nos.5, 6 and 7 to formulate and make available in the public domain the said Policy containing objective criteria for the methodology of considering the extension of a moratorium to an eligible borrower. Despite which Respondents no. 5 to 7 have not complied with the requirement of the RBI. Therefore, the rejection by Respondent No.5 and the subsequent rejection by Respondent Nos.6 and 7 of the request for a moratorium is

not sustainable and is opposed to the letter and spirit of the Circular dated 27.03.2020.

11.5. Referring to the contents of the Circular as also answers to the frequently asked questions published by Indian Bank Association as also that published by the Respondent Nos.5 to 7 on their respective websites, he contends that the Policy is applicable to all borrowers, there is no discretion vested with any of the Banks to reject any application filed by a borrower. The eligibility is decided only on the basis of the account being standard as on March 1st, 2020, that is to say, there is no default in repayment of the loan as on that date and once this condition is satisfied it was, but required, for the Banks, to extend the benefit of a moratorium to the Petitioner.

11.6. The entire methodology of decision making by all the three Banks is contrary to the letter and spirit of the Policy of the RBI and is fallacious in that Respondent No.5 having access to the funds of the Petitioner is appropriating the same towards the loan amount due to it as also facilitating such appropriation on the part of Respondent No.6. However, on account of Respondent No.7 being unable to

appropriate any amounts from and out of the Escrow account, no payments are being made to Respondent No.7. In view thereof, there being no amounts available to make payment to Respondent No.7 the loan account of the Petitioner with the Respondent No.7 is more than likely to become an NPA. Respondent No.7 is more than likely to initiate action against the Petitioner as a whole, since the Tech Park and hotel are only the businesses of the Petitioner and not separate business entities. On that basis, he submits that in the event of Respondent No.7 declaring the loan account of the Petitioner as NPA, the entire business of the Petitioner would come to a halt and Respondent No.7 would initiate proceedings against the Petitioner exercising the right of a *pari-passu* charge that the Respondent No.7 possesses in respect of the entire assets of the Petitioner including all cash flows, more particularly, the cash flowing from the rentals being received from the Tech Park also.

11.7. There is a complete incongruity in the implementation of the Policy of the RBI resorted to by Respondent Nos.5 to 7, such an incongruity was not expected of by the RBI, and

that is the reason why there cannot be any discretion vested with Respondent Nos.5 to 7 in implementation of Circular dated 27.03.2020.

12. Sri. M B Nargund, Learned Senior Counsel and Additional Solicitor General of India appearing for Sri N Kumar, learned Counsel for Respondent No.1 and 2 submitted that:

12.1. any dispute is between the Petitioner and Respondent Nos. 4 to 7.

12.2. The Union or the State cannot be made a party to such a dispute.

12.3. The RBI is an independent and autonomous institution vested with the duty to regulate the financial transactions as that are the subject matter of the present petition.

12.4. There can be no reliefs which can be claimed or granted insofar as Respondent Nos.1 and 2 are concerned since any direction given to Respondent Nos.1 and 2 would have the effect of impinging upon the independence and autonomy of Respondent No.4 - RBI.

13. Learned AGA appearing for the State Government also supports the contention of Sri. M B Nargund, Additional Solicitor General and submitted that the State Government has nothing to do with the disputes between the Petitioner and Respondent Nos.4 to 7.

14. Sri.R.V.S.Naik, learned Senior Counsel on behalf of Shri T SuryanarayanaRao, learned Counsel for Respondent No.4 reiterating the contents of the statement of the objection filed, submitted that:

14.1. Respondent Nos.5 to 7 in terms of Para 8 of the Circular dated 27.03.2020 were required to formulate a board-approved Policy laying down objective criteria for the assessment of loan application received by the Bank and thereafter it is for the Banks to justify as to why an application by any of the borrower was rejected.

14.2. The RBI has issued a Circular believing that the Banks would implement the said Circular in its true letter and spirit so as to keep the economy running, it is for the Banks to objectively assess each and every case while granting or refusing to grant a moratorium in such manner

that the economy continues to be running and the borrower continues to be in operation.

14.3. He further submits that the dispute is purely between the Petitioner and Respondent Nos.5 to 7 and it is for them to sort out the dispute among themselves without involving the RBI.

15. Sri.Udaya Holla, learned Senior Counsel appearing on behalf of Shri H N Vasudevan, the learned Counsel for Respondent No.5 – HDFC Bank reiterating the contents of the statement of objections submitted that

15.1. Principally the Circular dated 27.3.2020 is not at all applicable to the loan availed of by the Petitioner. In that, it is neither a term loan nor a working capital facility. The loan availed of by the Petitioner is a Lease Rental Discounting facility (LRD) which stands on a separate distinct and unique footing not comparable to a term loan or a working capital loan. In that, the Petitioner had received the then present value of the lease rentals to be received by the Petitioner in future towards which the lease rental being paid from time to time by the concerned

lessees is to be appropriated by Respondent No.5. A term loan being taken towards the creation of an asset in future or a working capital loan facility being extended for the working capital requirement are different from an LRD. Therefore, the Circular *per se* does not apply to the present transaction.

15.2. Be that as it may, he submits that HDFC Bank has made a Policy which has been approved by the Board and it is the guidelines prescribed under that board-approved Policy which has been considered while rejecting the application for extension of a moratorium submitted by the Petitioner. In that, as per the Board approved Policy, the Petitioner is not entitled to the benefit of a moratorium in the event of the Petitioner receiving cash flows from regulatory authorities, Government bodies or any other uninterrupted flows so as to enable the repayment of a structured loan. In the present case, as admitted by the Petitioner, the business of the Tech Park is going on without any interruption, the lease rentals are being paid by all tenants without any default, infact, the Petitioner itself has refused the request made by one of the tenants seeking for

deferment of payment of rentals citing that no such deferment could be made available.

15.3. When the Petitioner itself is not extending a similar kind of a moratorium to its tenants, the question of the Respondent No.5 extending a moratorium to the Petitioner will not arise.

15.4. The Petitioner has enough and more revenues coming into its Bank account to enable the servicing of the LRD account, and as such, there is no requirement for the extension of a moratorium to the Petitioner.

15.5. The RBI has left the discretion to the Bank to consider the extension of a moratorium or otherwise taking into consideration the facts of each case, more particularly, taking into account the customer profile, organisation structure and spread of each Banking institution which is peculiar to each Bank and the discretion exercised by a Bank in relation to the fiscal nature of transaction ought not to be interfered with by this Court.

15.6. Apart from the interest of a borrower like the Petitioner, the interest of the Bank also would have to be considered since

the Respondent No.5-Bank has more than 70,000 employees who are also to be paid their salaries. If more or all borrowers were to avail of a moratorium, there would not be any cash flows to the Bank, thereby, coming in the way of the Bank making payments to its employees as also interest payments to the depositors with the Bank. It is in this background that he submits that when there are enough and more funds which are available with the Petitioner which could be appropriated towards servicing of the LRD loans, the same ought to be permitted, and no moratorium could be extended in the present case to the Petitioner.

15.7. The Policy which has been approved by the Bank has also been submitted to the RBI and the RBI not having objected to the contents of the said Policy is deemed to have accepted the contents thereof thereby admitting the discretionary powers of the Bank while considering an application for a moratorium by the said borrower.

15.8. The Writ Petition is also not maintainable in view of no direction in the nature of writ could be issued to a private

Bank like Respondent Nos.5, 6 and 7 and in this connection, he relies upon the following decisions:

1. *Federal Bank Ltd vs. Sagar Thomas and others reported in (2003) 10 SCC 73, (Paras 1, 18, 26, 27, 29, 32 and 34)*

1. Respondent 1 Sagar Thomas was working as a Branch Manager in Karunagappally Branch of the appellant Bank, namely, the Federal Bank, having its registered office at Alwaye, Kerala. He was, however, suspended on 29.5.1982, since a disciplinary enquiry was ordered into some charges against him for having exceeded his authority in grant of loans and advances to different parties. The inquiry officer found him guilty of the charges and ultimately punishment of dismissal was awarded to the Respondent.

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function

26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities

have been carried on by individuals generally. It is a private affair of the company though the case of nationalised banks stands on a different footing. There may well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purpose and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purpose, guidelines are provided by

Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measure to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities, maybe manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardised for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State,, to control the affairs and management of the private companies. Care is take in regard to the industries (Development and Regulation) Act, 1951 that their production, which is important for the economy, many not go down, yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies.

27. Such private companies would normally not be amendable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislation like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and

Control and Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

29. There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, maybe banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of *Ajay Hasia*. Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant

company. For the sake of argument, even if it may be assumed that one or the other test as provided in the case of Ajay Hasia may be attracted, that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection, observations made in the case of Pradeep Kumar Biswas quoted earlier would also be relevant.

32. *Merely because the Reserve Bank of India lays the banking Policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.*

33. *For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ*

jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.

We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. **Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the Bank stands terminated. The action of the Bank was challenged by the Respondent by filing a writ petition under Article 226 of the Constitution of India. The Respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.**

34. In the result, the appeal is allowed and the judgment and order passed by the High Court is set aside and the writ petition is held to be to maintainable. There will, however, be no order as to costs.

... emphasis supplied by me

2. Karnataka Bank Limited vs. Smt. Rekha Rao in Writ Appeal No. 8541 of 1996 (Paras 7, 11, 12, 14)

7. Being aggrieved, the Bank has filed these appeals. On the rival contentions, the following questions arise for consideration:

(1) Whether the acts of a private sector Bank, relating to recruitment to its clerical

cadre, amount to discharges any public duty or public function and therefore can be subjected to challenge under Article 226 of the Constitution.

(2) Whether a Private Sector Bank carrying on Banking activity can be said discharge public duties.

(3) Having held that there was no irregularity in the selection process, whether the learned Single Judge was justified in issuing the above directions.

11. 'A Public duty' is one in the discharge of which the public i.e. the community at large is interested, as affecting their legal rights and liabilities. Of course, 'public' or 'community' does not necessarily or always mean all the citizens of the Country or the State, but may also refer to a defined class of citizens. A duty will not be a 'public duty' if it is to be performed to the benefit of a specified person or persons. On the other hand, a 'public function' is a function traditionally reserved for the State. A private person is said to discharge a public function, if the private person performs a function that is so traditionally reserved for the State. Carrying on trade or business or business or profession or employing persons or doing acts in connection with or incidental to any trade or business or profession, is not performance of a public duty or a public function.

12. In this case, the appellant is a private sector bank. It carries on business of banking. **The recruitment of clerical cadre is in connection with the business of the Bank. Neither its business nor its activities relating to the recruitment of any clerk or other staff is in exercise of public duty or**

performance of public function. They are purely private in nature.

14.As no public duty or public function is involved, in regard to selection of persons by the appellant to its clerical cadre, and as the appellant is not a 'State' under Article 12 of the Constitution, the only inescapable conclusion is that the writ petitions filed by the private Respondents are not maintainable against the appellant bank.

... emphasis supplied by me

3. The Prestige Monte Carlo Apartment Owners Association and others Vs. The Reserve Bank of India, Mumbai and Others reported in ILR 2015 KAR 3333 (Paras 10 and 13)

10. A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) **a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.**

13. It is thus clear that the writ petition against the second Respondent is not maintainable. The decision relied on by the Learned Counsel for Petitioners in Civil Appeal No.4235/2014 and other connected matters disposed of on 22.1.2015 has no application to the facts of this case.

... emphasis supplied by me

4. United Spirits Limited and Another vs.IDBI Bank Limited and Another in Writ Petition No.49864-865/2013 DD: 27/6/2016 (Paras 1, 8, 23, 24, 25)

*1.xxxxxIn these writ petitions under Article 226 and 227 of the Constitution of India, Petitioners inter alia seek a writ of certiorari for quashment of impugned condition contained in the communication dated 06.06.2013 sent by Respondent No.1. **The Petitioners also seek a writ of mandamus directing the Respondent to appropriate a sum of Rs.628 Crores remitted by Petitioner No.1** in cash credit account maintained by Respondent No.1 towards full repayment of all outstanding loans including the interest and charges till 6.6.2013. The Petitioner also seeks a writ of mandamus directing the Respondent No.1 and 2 to release the pledged security including 34, 59, 090 equity shares of the Petitioner No.1 pledged by USL benefit Trust under the agreement of pledge of shares dated 17.06.2010. The Petitioners also seek a writ of mandamus directing Respondent No.1 to issue No Due Certificate.*

***8.xxxx** ‘SARDAR ASSOCIATES AND ORS. VS. PUNJAB AND SIND BANK AND ORS.’, (2009) 8 SCC 257. xxxx It is also urged that guidelines framed by the Reserve Bank of India are binding on Respondent No.1 and a person cannot be compelled to remain a borrower or under adebtbya Bank. In this connection, reliance has been placed on decision of Delhi High Court in ‘DLF LIMITED VS. PUNJAB NATIONAL BANK’, 180 (2011) DELHI LAW TIMES435.*

23. The right of the parties are founded in contract and writ of mandamus in the fact situation of the case is not available to the Petitioners as the duty of the Respondents

to close the loan account and to issue no due certificate and to release the pledged security under the agreement dated 17.06.2010 has no public law element. The writ of certiorari is in the nature of Court's discretion and the Petitioner who is guilty of committing breach of the contract is not entitled to the discretionary relief of writ of certiorari.

... emphasis supplied by me

16. Sri.Vijay Kumar, learned Counsel appearing for Respondent No. 6 more-or-less adopts the submission made by Sri.Udaya Holla learned Senior Counsel and submitted that

16.1. The loan issued by the Respondent No.6 is an LRD loan.

Therefore, Respondent No.6 also should be permitted to appropriate the amounts coming into the Escrow account towards the discharge of the dues by the Petitioner to the Respondent No.6.

16.2. The Circular dated 27.03.2020 only permits Banks like the Respondent No.6 to extend the moratorium. It is not a direction issued by the RBI to the Bank to extend a moratorium.

16.3. The extension post such permission by RBI, is therefore at the discretion of Respondent No.6 – Bank and the Petitioner cannot claim the same as a matter of right.

17. Sri.DhyanChinnappa, learned Senior Counsel appearing on behalf of Sri.Rawley Muddappa learned Counsel for Respondent No.7 submitted that

17.1. The loan extended by the Respondent No.7 to the Petitioner is a part of a down selling mechanism of the loan which was initially advanced by Respondent No.5 – HDFC Bank to the Petitioner. The said loan has been sold by Respondent No.5 to Respondent No.7 promising and holding out that Respondent No.7 would hold a *pari-passu* charge with Respondent Nos.5 and 6 insofar as all assets and cash flows of the Petitioner are concerned.

17.2. There is no distinction between the cash flow relating to the Tech Park business and that of the hotel business. The charge is created on the entire cash flows.

17.3. The appropriation on a monthly basis is only as a matter of convenience where a particular Bank account and particular payments were identified for the purposes of repayment of the facility availed of by the Petitioner.

17.4. Since Respondent Nos.5 and 6 have appropriated the monies from the Escrow account towards the amounts due to them. The account of the Petitioner insofar as Respondent Nos.5 and 6 would continue to be a standard account. However, insofar as Respondent No.7 is concerned, there are no payments which have been received by Respondent No.7 for the last three months and if no payment is received for the next month, the said account would get automatically classified as a non-performing asset without any discretion vested with Respondent No.7, on account of the applicable and prevalent policies and guidelines issued by the RBI.

17.5. In cases where there are structured loans and/or in cases where there are multiple Banks which have extended the security to the borrower all the lenders have to be treated on the same footing, there should be no discrimination between them and if a moratorium were to be granted, it has to be granted by all of them or by none of them so that no lender suffers in such circumstances.

17.6. Respondent No.7 is aggrieved by not receiving any monies over the last three months and all the monies being appropriated by Respondent Nos.5 and 6.

17.7. Sri.DhyanChinnappa, learned Senior Counsel however on instructions submits that Respondent No.7 still has no objections for grant of a moratorium to the Petitioner so long as Respondent Nos.5 and 6 extend a moratorium and Respondent No.7 also receives a proportionate amount from and out of the amount received into the Escrow account of the Petitioner.

18. In reply, Mr.R.V.S.Naik, the learned senior Counsel submitted that it is for the Banks to formulate an appropriate Policy. The RBI does not have a continuing superintendence Policy or framework in respect of such a Board approved Policy. It was not therefore required for the RBI to revert as regards the Board approved Policy sent by Respondent No.5 to the RBI; such non-revertal does not amount to acceptance by the RBI of such Board approved Policy. Any dispute continues to be between the Petitioner and Respondent Nos.5 to 7, and non-revertal by RBI cannot be made a ground by Respondent Nos.5 to 7 to reject the application of the Petitioner.

19. Sri.Basavaprabhu Patil, Learned Senior Counsel in reply, submitted that

19.1. This Court has the necessary jurisdiction to entertain a Writ Petition against the private Banks like Respondent Nos.5 to 7 in connection thereto, he relies upon the decision of the Apex Court in the case of **ANDI MUKTA SADGURU SHREE MUKTAJEE VANDAS SWAMI SUVARNA JAYANTI MAHOTSAV SMARAK TRUST AND OTHERS VS. V.R.RUDANI AND OTHERS** reported in **(1989) 2 SCC 691** wherein at Para 22, it has been held as under:-

“22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: “To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.” We share this view. **The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available ‘to reach injustice wherever it is found’.**

Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.”

19.2. He has also relied on the decision of the Hon’ble Apex Court in the case of **RAMESH AHLUWALLA VS. STATE OF PUNJAB AND OTHERS reported in** (2012) 12 SCC 331, wherein at Paras 12 and 13, it has been held as under:

“12. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in *Andi Mukta Sadguru Shree MuktajeeVandas Swami Suvarna Jayanti Mahotsav Smarak Trust*, there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State Authorities.

13. In the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the *Andi Mukta Sadguru Shree MuktajeeVandas Swami Suvarna Jayanti Mahotsav Smarak Trust*. In those circumstances, this Court has clearly observed as under (*V.R.Rudani case*. SCC pp.700-701. Paras 20 & 22):

“20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the

term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. **Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights.** The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: “To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.” We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances.

Mandamus is a very wide remedy which must be easily available “to reach injustice wherever it is found”. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.”

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgment in Unni Krishnan and Zee Telefilms Ltd.(supra), brought to our notice by the learned counsel for the Appellant Mr.Parikh.”

19.3. The RBI cannot take an handsoff approach, it is for the RBI to see to it that the Circular issued by the RBI is implemented in its true letter and spirit. The Union of India and State Governments cannot also wash off their hands since it is Union of India and the state governments who are responsible for the lockdown and therefore are responsible for the financial distress which has been caused to the Petitioner.

19.4. Neither the Union of India nor the RBI would take a handsoff approach and leave the Petitioner at the mercy of Respondent Nos.5 who is acting as the infamous “Shylock” in the famous play “Merchant of Venice” authored by Sir William Shakespeare.

19.5. What is sought to be done by Respondent Nos.5 and 6 at the cost of Respondent No.7 is not only restricted to taking of a pound of flesh, but such taking of the flesh would kill the Petitioner inasmuch as non-payment of dues to Respondent No.7 would automatically result in the Petitioner's account being treated as an NPA.

19.6. The Circular issued by the RBI has to be implemented in its true letter and spirit. No technical defences or objections could be raised by the Banks which would come in the way of achieving the objectives of the Circular dated 27.03.2020 issued by the RBI inasmuch as the aim and objects of the Circular being to keep the economy and businesses running. The actions of Respondents 5 to 7 would have the effect of closing down the business of the Petitioner, which in today's economic condition would affect not only the Petitioner but also the economy as a whole.

19.7. The Policy is applicable even to the LRD loan and the loan amounts having been obtained by the Petitioner for the

purposes of its business which is similar to that as available under a term loan or a working capital loan.

19.8. As per the Board approved Policy produced by the Respondent No.4, a moratorium is applicable to all retail loan customers who pay a fixed/structured EMI on monthly/bi-monthly/quarterly/half-yearly basis and on this basis, he contends that a structured loan like LRD is also covered under Guideline-1 to the Board approved Policy produced by the Respondent No.5.

19.9. There being no dispute as regards the Petitioner's account is a standard account as on March 1st, 2020, all the due amounts having been paid thereof, he submits that the Petitioner became automatically eligible for availing a moratorium. Availing a moratorium is in the discretion of the Petitioner inasmuch as the Petitioner would continue to make payment of interest amounts even during the moratorium period. Only the payment of the principal amount is deferred for the moratorium period, the Petitioner is not seeking for any waiver of loan or reduction in the loan amount but only a deferment in payment schedule which would not in any manner adversely affect

the Bankers like Respondent Nos.5 to 7 and therefore, the contentions taken up by Respondent Nos.5 and 6 ought not to have come in the way of considering and approving the request of moratorium by the Petitioner.

20. In view of the above contentions in the pleading and submissions made, the points that would arise for consideration of this Court are:

20.1. Whether a Writ of mandamus can be issued against a private bank to implement the Circular issued by the RBI dated 27.03.2020?

20.2. Is the Circular issued by the RBI dated 27.03.2020 mandatory, directory or discretionary?

20.3. Whether the grant of a moratorium is at the discretion of the Bank or as a corollary would it be a right to be exercised by the borrower?

20.4. Can a request made by a borrower be rejected by a lender on the ground that the loan of the lender is structured and therefore, the lender can recover the amounts due on the making of such structured loan like an Escrow account?

20.5. Where multiple banks are involved in a loan transaction, can one Bank deny the extension of moratorium, when another is willing to extend the benefit of a moratorium?

20.6. Can a direction be issued to Respondents 1 & 2, the Union of India to enforce the Circular dated 27.03.2020 issued by the RBI?

20.7. What Order?

21. Whether a Writ of mandamus can be issued against a private bank to implement the Circular issued by the RBI dated 27.03.2020?

21.1. Sri. Udaya Holla, learned Senior Counsel contended that writ petition is not maintainable since no writ could be issued to private banks like Respondents No.5 to 7 relying on the following decisions, the relevant paragraphs having been extracted hereinabove.

21.1.1. *Federal Bank Ltd vs. Sagar Thomas and others reported in (2003) 10 SCC 73, (Paras 1, 18, 26, 27, 29, 32 and 34)*

21.1.2. *Karnataka Bank Limited vs. Smt. Rekha Rao in Writ Appeal No. 8541 of 1996 (Paras 7, 11, 12, 14)*

21.1.3. *The Prestige Monte Carlo Apartment Owners Association and others Vs. The Reserve Bank of India, Mumbai and Others reported in ILR 2015 KAR 3333 (Paras 10 and 13)*

21.1.4. *United Spirits Limited and Another vs. IDBI Bank Limited and Another in Writ Petition No.49864-865/2013 DD: 27/6/2016 (Paras 1, 8, 23, 24, 25)*

21.2. Per contra, Sri.Basavaprabhu Patil by relying on the following decisions has contended that a writ petition is maintainable since the duty discharged by the Petitioner are in the nature of a public duty:

21.2.1. *Andi Mukta Sadguru Shree MuktajeeVandas Swami Suvarna Jayanti Mahotsav Smarak Trust And Others Vs. V.R.Rudani And Others reported in (1989) 2 SCC 691 (Para 22).*

21.2.2. *Ramesh Ahluwalia Vs. State Of Punjab And Others reported in (2012) 12 SCC 331, (Paras 12 and 13)*

21.3. A perusal of the decisions relied upon by Sri. Udaya Holla indicates that the decision in *Federal Bank Ltd vs. Sagar Thomas and others* relates to a dispute raised by an employee relating to a disciplinary enquiry initiated against such employee. The decision in *Karnataka Bank Limited vs. Smt. Rekha Rao* relates to recruitment to the clerical cadre of the Bank. The decision in *Prestige Monte Carlo Apartment Owners Association and others Vs. The Reserve Bank of India, Mumbai and Others* related to a dispute between two rival associations of an apartment complex as to who will operate the bank account. In *United Spirits Limited and Another vs. IDBI Bank Limited and Another* the Petitioner therein had sought for a writ of mandamus directing the Respondent to appropriate certain sums lying in the bank account of the Petitioner, release of pledged security and issuance of No Due Certificate etc., It is in those circumstances that the aforesaid Courts have held that writ petition would not be maintainable.

21.4. At para 33 of the ***Federal Bank's case***, supra the Court held as under:

33. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. Present is a case of disciplinary action being taken against its employee by the appellant Bank The Respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

21.5. At para 11 of the **Karnataka Bank's case** supra it was observed as under:

11. 'A Public duty' is one in the discharge of which the public i.e. the community at large is interested, as affecting their legal rights and liabilities. Of course, 'public' or 'community' does not necessarily or always mean all the citizens of the Country or the State, but may also refer to a defined class of citizens. A duty will not be a 'public duty' if it is to be performed to the benefit of a specified person or persons. On the other hand, a 'public function' is a function traditionally reserved for the State. A private person is said to discharge a public function, if the private person performs a function that is so traditionally reserved for the state. Carrying on trade or business or business or profession or employing persons or doing acts in connection with or incidental to any trade or business or profession, is not performance of a public duty or a public function.

21.6. In both the above matters after considering the above, the courts came to a conclusion that the dispute involved was a private one, that is a dispute between the Petitioner in his/her individual capacity on the one hand and the Bank on the other, there being no public element involved, as such the courts held that a Writ petition was not maintainable, in those circumstances.

21.7. The Apex court, in ***Punjab National Bank and Another Vs. Astamija Dash reported in (2008) 14 SCC 370***, held Punjab National Bank to be covered within the ambit of Article 12 of the constitution and issued a writ, when the dispute before the Court was relating to the enforcement of the principle of equality amongst the employees of the Bank, holding that the same is a public duty of the Bank.

21.8. What is to be seen here is whether the prayers sought for by the Petitioner for implementation of the Circular issued by the RBI would amount to the *enforcement of any statutory obligations or obligations of public nature* casting a positive obligation upon Respondents 5 to 7.

21.9. In terms of Section 3 of the Reserve Bank of India Act, 1934, ("RBI Act" for short) a bank to be called Reserve Bank of India is to be constituted for the purposes of taking over the management of the currency from the erstwhile Central Bank and for carrying on the business of banking in accordance with the provisions of the RBI Act.

21.10. On the constitution of the said Bank, the Central Banking functions as defined under Section 20 has to be discharged by the RBI viz., to accept monies for account of the Central Government, to make payments of the amounts standing to the credit of its account carrying out the exchange, remittance and other banking function viz.,

21.10.1. Regulating of the issuance of the bank notes.

21.10.2. Keeping the reserves with a view of securing monetary stability of the country and of in the country.

21.10.3. Operating the currency and credit system to the advantage of the country.

21.11. This is discharged by RBI by managing:

21.11.1. Currency.

21.11.2. Money supply.

21.11.3. Interest rates.

21.12. The RBI is granted a monopoly in terms of formulating and implementing monetary Policy and its framework in India as can be ascertained from the preamble to the Act. The power of the Bank is to determine Policy and issue direction as stipulated in Section 45JA of the Act, which reads as under:

“45JA. Power of Bank to determine Policy and issue directions.

(1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the Policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off-balance sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or nonbanking financial companies generally, as the case may be, and such nonbanking financial companies shall be

bound to follow the Policy so determined and the directions so issued.

(2) Without prejudice to the generality of the powers vested under subsection (1), the Bank may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any nonbanking financial company in particular as to—

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that nonbanking financial company to any person or a company or to a group of companies.”

21.13. Section 45 (L) speaks of the regulation of the credit system of the country to its advantage towards which RBI could call for information and issue directions. Section 45(L) is reproduced hereunder for easy reference:

“45L. Power of Bank to call for information from financial institutions and to give directions.

(1) If the Bank is satisfied that for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do; it may—

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Bank in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Bank by general or special order.

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

(2) Without prejudice to the generality of the power vested in the Bank under clause (a) of subsection (1), the statements, information or particulars to be furnished by a financial institution may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

(3) In issuing directions to any financial institution under clause (b) of subsection (1), the Bank shall have due regard to the conditions in which, and the objects for which, the institution has been established, its statutory responsibilities, if any, and the effect the business of such financial institution is likely to have on trends in the money and capital markets.”

... emphasis supplied by me

21.14. From the above, it is seen that it is the obligation and duty of the RBI to regulate the financial institutions, its business as also the credit system of the country, by exercising the powers vested with it under the Act.

21.15. Subsequent to the invocation of the DMA apprehending the adverse impact thereof on the economy of the country, the RBI with alacrity had issued the Circular dated 27.03.2020, in order to discharge its above obligation and duty. The aim, object and intention of the said Circular being to mitigate the burden of debt servicing brought about by disruptions on account of Covid-19 pandemic and to ensure the continuity of a viable business, which is in the interest of the country and as such in the public interest.

21.16. The RBI vide its Circular has permitted the grant of a moratorium to all borrowers so as to keep the viable borrowers/businesses running, it is therefore clear that the Circular is issued in the public interest and any aspect relating thereto would attract a public law element.

21.17. In the present case, it is not an Employer-employee dispute, recruitment dispute or one relating to contractual terms, but a dispute relating to the enforcement of a Circular issued by the RBI, as that in the case laws relied upon by Mr Holla, Learned Senior Counsel. The said Circular having been issued to protect and preserve the economy of the country on account of the COVID 19 pandemic. The issuance of the Circular is in the public interest, interest of the economy and the country. The enforcement thereof would also come within the purview of enforcing a public duty.

21.18. The grievance of the Petitioner relates to compliance/non-compliance by Respondent 5 to 7 of the RBI Circular. This being related to the *enforcement of statutory obligations or obligations of public nature*, casting a positive obligation upon Respondents 5 to 7 to implement the same. In terms of the RBI Circular, a right is created in the Petitioner as a borrower from the Bank to avail a moratorium which has been rejected by Respondent No. 5 and consequently by Respondent 6 and 7, which

according to the Petitioner is a violation by them of the said Circular.

21.19. Hence, a writ petition would be maintainable against the Respondents in the present facts and circumstances for the enforcement of the public duty under the Circular dated 27.03.2020.

22. Is the Circular issued by the RBI dated 27.03.2020 mandatory, directory or discretionary?

23. Whether the grant of a moratorium is at the discretion of the Bank or as a corollary would it be a right to be exercised by the borrower?

23.1. Both the above points being connected to each other are considered together.

23.2. Simultaneous with the invocation of the DMA apprehending the impact thereof on the economy of the country, the RBI with alacrity had issued the Circular dated 27.03.2020. The aim, object and intention of the said Circular being to mitigate the burden of debt servicing brought about by disruptions on account of

Covid-19 pandemic and to ensure the continuity of a viable business.

23.3. The Statement on Development and Regulatory Policies

(“Policy” for short) which form the basis for issuance of Circular is hereunder reproduced:

“This Statement sets out various developmental and regulatory policies that directly address the stress in financial conditions caused by COVID-19. They consist of:

- (i) expanding liquidity in the system sizeably to ensure that financial markets and institutions are able to function normally in the face of COVID 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. The Policy initiatives in this section should be read in conjunction with the MPC’s decision on monetary Policy actions and stance in its resolution”

... emphasis supplied by me

23.4. It is in pursuance of the said Policy that rescheduling of payments like term loans and Working Capital Facilities as also Easing of Working Capital Financing as contained in Paras 2 and 4 of the said Circular was formulated and sought to be implemented as stated in para 8 thereof which are reproduced hereinbelow.

*“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 instalments falling due** between March 1st, 2020 and May 31st, 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.”*

*“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 31st, 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.”

*“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.**”*

... emphasis supplied by me

23.5. A perusal of Para 2 of the Circular indicates that permission is granted to the banks concerned to grant moratorium of three months as regards the payment of all instalments falling due between March 1st 2020 and May 31st 2020. Thus, the permission is one which is accorded to a bank or lending institution to permit a moratorium, this on account of the fact that without RBI permitting the same, a bank of its own accord is prohibited from granting any moratorium to a borrower.

23.6. The discretion to grant such a moratorium is that of the bank on the basis of a Board approved Policy containing objective criteria made available in the public domain.

23.7. The consequence of such grant of moratorium is covered by the second part of the said Para 2 states “*The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period.*” This would indicate as if that on the grant of a moratorium, as a matter of course, the repayment schedule of the loan would be shifted.

23.8. The Circular more particularly Para 2,4 and 8 would have to be read along with the statement of development and regulated Policy released by the RBI on 27.03.2020, which *inter alia* addresses the stress in the financial condition or rather *distress* caused to the economy by Covid-19 *inter alia* to ensure the continuity of viable businesses. Thus, the exercise of discretionary power by the Bank or lending institution is predicated on ensuring the continuity of the business of a borrower. The decision of the Bank or lending institution if, were to, fall foul of this intention, then that decision would be contrary to the Policy as also the Circular.

23.9. In the above background, it has to be seen as to, what the banks made of the Circular, their understanding of the same and how they sought to implement it.

23.10. Answers to the frequently asked questions which have been extracted hereinabove would indicate that all borrowers are eligible to avail the benefits of the package as stated in answers to question Nos.3 and 4 by the Indian Bank Association.

23.11. Respondent No.5 in its FAQ has also categorically stated that “in line with the RBI guidelines and to show our solidarity in standing with you, HDFC Bank is offering its customers EMI moratorium and credit card outstanding moratorium as a relief measure”. Thus, the offer of Moratorium was made by Respondent No.5 – HDFC bank, it was for the borrower like the Petitioner to accept such an offer.

23.12. In answer to question No.2 as to who is eligible, it is stated as under:-

“2. Who is eligible?”

All HDFC Bank customers who have availed of retail instalment loan or any other retail credit facilities prior to March 1st 2020 are eligible.

Customers having overdues prior to March 1st 2020 may also opt for the moratorium, and their requests shall be considered by the Bank based on its merits.

All Agri Loans (Kisan Gold Card) and Microfinance customers under the Bank's Sustainable Livelihood Initiative are also eligible.

All Corporate as well as SME customers are also eligible. Our Relationship Managers will get in touch with you or you can contact them to get further details."

23.13. In answer to question Nos.3 and 5, it is stated as under:-

"3. What will happen if I choose the EMI Moratorium?

If you choose EMI moratorium,

- Bank will not ask for any EMI Payment 31st 2020.
- Interest will continue to accrue on the principal outstanding for the period of the moratorium at the contracted rate of the loan.

- The loan tenure will get extended by the corresponding period for which the moratorium has been availed.
- For example, if the EMI for the month of March 2020 has been paid and moratorium for April and May 2020 has been availed, then the loan tenure will be extended by 2 months.

5. Why was my account debited when the RBI has announced a moratorium?

Opting for the Moratorium is entirely the customers choice. We understand that all our customers may not opt for the Moratorium given that there is an additional levy of interest payable under the terms of the Moratorium. If you wish to opt for the Moratorium, we would be happy to refund the EMI debited and register your Loan account under the Moratorium process.

NOTE: Customers who have applied for EMI Moratorium on or before April 12th and if their EMI for April 2020 has already been deducted, they will get an EMI refund by April 17th 2020. Cheque bounce charges on EMI payment will be waived. If any charge is levied on account of cheque bounce, it will be refunded.”

... emphasis supplied by me

23.14. The above answers would indicate that all corporate, as well as SME customers, are eligible for a moratorium and it is for the customer to choose whether to avail a

moratorium that is to say that the offer for a moratorium having been made by the Bank, it is for the customer to accept the moratorium by choosing to do so and making an application in that regard. Once such a choice is made and an application was submitted, the rest of the process is automatic.

23.15. Similar is the answer to the FAQs by Respondent No. 6, Federal Bank.

“COVID-19 RELIEF PACKAGE”

FAQs - COVID 19 RELIEF PACKAGE PRADHAN MANTRI GARIB KALYAN PACKAGE: The Reserve Bank of India has announced a regulatory package on March 27th 2020, permitting Bank's to allow a one-time rescheduling of payments in terms loans and deferment of interest in working Capital facilitates, to mitigate the burden of debt servicing on account of the fall-out of COVID-19 pandemic and to ensure the continuity of viable businesses.

Federal Bank is pleased to extend the benefits of moratorium to our customers in line with the RBI guidelines. The details are given below.

Term Loans

a) Term Loans coming under Business Loans, Retail Loans & Agricultural Loans outstanding as on March 1st 2020 with repayment either in installments / bullet are eligible (The processes

for each segment of customers is provided separately)

b) Moratorium shall be extended to term loans in standard status as at the end of February 29th 2020.

c) Moratorium shall be applicable for the installments and interest payments falling due between 01st march 2020 and May 31st 2020.

d) Interest shall continue to accrue on the outstanding balance of term loans during the moratorium period at the contracted rate.

e) If a customer opts for moratorium, repayment schedule for the account shall be shifted / tenor will be increased.

f) The revised installment / EMI to be remitted by the customer after moratorium shall be inclusive of the interest accrued during the moratorium period.

g) If any customer, whose account was standard as at the end of February 29th 2020, requests for reversal of installment/ EMI deducted, if any, after March 1st 2020, the same will be refunded within a reasonable time.

h) Installments, for the purpose of moratorium will include the following payments falling due from March 1st 2020 to May 31st 2020.

- Principal and/or interest components
- Bullet repayments
- Equated Monthly installments.

i) Asset classification of term loans which are granted relief as above shall be determined on the basis of revised due dates and the revised payment schedule.”

... emphasis supplied by me

23.16. FAQs of Respondent No.7 – Aditya Birla Finance Limited
are as under:

FAQs:

1. Is the Moratorium applicable for all loans?

ABFL would be extending moratorium to all its customers as per the latest advice by the Reserve bank of India. Only NPA customers will not be extended the benefit of Moratorium.

2. Does it mean that my EMI for the next 3 months is waived off? Will I get an interest waiver for 3 months of moratorium?

The RBI advisory does not mandate an interest waiver and is only a deferment of the payment. Hence, interest will be accrued at the contractual rate of the loan for the principal amount outstanding before the moratorium scheme being availed. The interest accrued during the period will be added to the principal outstanding and leading to an increase in EMI/Tenor, at the sole discretion of ABFL.

3. If I have availed my loan in March, can I still avail moratorium?

Yes you are eligible for moratorium for the instalments payable in April and May 2020.

4. How do I avail the Moratorium benefit?

All ABFL customers may send SMS ABFLOPT to 567679 from their registered mobile numbers and avail moratorium for the applicable months.

It is also pertinent to know that ABFL has extended its moratorium benefit by default to all of its personal and Business Loan customers, who have applied through Digital & Non digital channels. However, if our Personal & Business loan customers have:

- Paid their EMI's for March 2020, moratorium will be applicable for April 2020 & May 2020.”

... emphasis supplied by me

23.17. Once the banks have in the public domain on their respective websites expressed their solidarity with all their customers and stated that all the customers are eligible for grant of a moratorium, in accordance with RBI guidelines, it is not permissible for such banks to nit-pick and later on, refuse the grant of a moratorium, to the Petitioner, who is otherwise eligible. That is to say the Banks cannot take one stand in the public domain and a contradictory stand while implementing what they have stated in the public domain. Both the RBI and the banks have held out that all customers are eligible for a

moratorium. The availing of or otherwise of the moratorium is at the sole discretion of the borrower more so when the borrower would be required to make payment of additional interest, during the said moratorium period. There being no waiver of interest and or the principal amount by the mere grant of a moratorium.

23.18. Thus, though the Circular issued by the RBI dated 27.03.2020 is discretionary in so far as the power to grant or not a moratorium by a bank, it is mandatory for the Bank to ensure the continuity of viable businesses, in that, the non-grant of a moratorium should not result in adversely affecting the survival and continuity of a viable business. The understanding of the banks by reference to their respective answers to the FAQ's is also in line with the above. All borrowers are eligible to seek for a moratorium, if a borrower were to seek for grant of a moratorium on the ground that continuity of its business would be affected and establish the same, the borrower would as a matter of right be entitled for the grant of

moratorium so that such continuity is not adversely affected.

24. **Can a request made by a borrower be rejected by a lender on the ground that the loan of the lender is structured and therefore, the lender can recover the amounts due on the making of such structured loan like an Escrow account?**

24.1. Sri. Udaya Holla, learned Senior Counsel appearing for Respondent No.5 – HDFC Bank has contended that the refusal of the request made by the Petitioner is in accordance with the Board Approved Policy of Respondent No.5.

24.2. Reliance is placed on the paragraph of the board approved Policy found under the heading “*Wholesale Banking (Corporate Banking, ECG, Capital Markets & CTG) & SME (BBG, EEG, SAB, CTG WC & Inventory WC)*” which is extracted hereinbelow.

- RMs **will engage with** each borrower **and offer an option of moratorium**& deferment of instalments & interest. Customers seeking moratorium should communicate their intent by email/written request.
- For **customers who are opting** for the

moratorium/deferment and where the March dues are pending the moratorium will be applied on March dues which are unpaid till March 31st.

- Refund/reversal of March dues paid by corporates/firms opting for the moratorium will be examined case-by-case.
- Customers wishing to switch - opt in / Opt out during the 3 months period will be examined case-by-case.
- **Structured loans where loan servicing is from cash flows released by regulatory authority, government bodies, or any other uninterrupted flows, etc., will not fall under the ambit of moratorium unless such cash flows are deferred by the payer.**
- For borrowers where legal & security related deferrals are pending for closure as on April 1st, moratorium will not be extended beyond April 1st 2020, unless it is regularised or specifically approved by officials authorised by the Covid Committees of the Board.
- Sole banking clients with OBCA will not be eligible for moratorium/deferment unless OBCA is closed or are approved by credit to be retained with proper justifications.
- **For consortium or multiple banking cases, moratorium request will be implemented only if all other banks in the consortium or multiple banking arrangement extend moratorium on terms similar to those offered by us.**

On debt management side, the Bank will continue to closely engage with the borrowers to the best possible extent, given the extraordinary situation.

During this period, the Bank will continuously monitor the portfolio performance and progress on moratorium scheme and update the Board in the next board meeting.

We seek approval for providing relief to the borrowers of the Bank to ease financial stress caused by COVID-19 disruptions.

... emphasis supplied by me

24.3. It is contended that because the Petitioner's loan is a structured one and there are uninterrupted flows of cash on account of the lease rentals being paid by the tenants of the Technology Park, and not deferred by the payer, a borrower like the Petitioner would not be entitled for a moratorium.

24.4. It has also been contended on behalf of Respondent No.5 that the Board approved Policy of Respondent No.5 had been sent to RBI which is not objected to by RBI, therefore, it amounts to acceptance of such Policy by RBI, as such, the action taken by Respondent No.5 in terms of the said Policy is deemed to have the blessings of RBI and

the Petitioner cannot agitate any grievance against the said Board Approved Policy before this Court. This contention is devoid of merit, in that as contended by Sri.R.V.S.Naik, learned Senior Counsel it is not required for the RBI to revert on the Policy of each and every Bank. The RBI has laid down a broad framework/broad Policy which is required to be implemented, the prime object being the continuity of viable businesses. All banks are required to act in terms of the Circular and Policy to keep the economy running, it is for the bank to establish that the action taken by it is in accordance and compliance of the Circular and Policy.

24.5. Unfortunately, the RBI Circular does not deal in detail with the mode and methodology of consideration and grant of a moratorium by a lending institution. RBI ought to have envisaged this and laid down a methodology to be followed by all lenders rather than leaving the discretion to each lender, which would result in discriminatory and/or contradictory policies/practices being adopted by each lender at its whims and fancies, justifying such policies/practices on the basis of a so-called board

approved Policy. In the present case, the Board Approved policy of all three banks do not have any objective criteria contained in them, the wording of the Board Approved policy is vague, there being no manner of ascertaining if the actions of Respondents 5 to 7, more particularly Respondent No. 5 is or is not in accordance with the board approved policy.

24.6. Hence, there being no alternative efficacious remedy for the Petitioner, this Court would have to be guided by the aims and objectives of the Policy and Circular in order to ascertain whether the actions on the part of Respondent No.5 is in accordance with or militates against the aims and objectives of the Circular and Policy, Respondent No 6 and 7, for now only following the lead of Respondent No.5, and they having submitted that they would have no objection to extend a moratorium to the Petitioner if Respondent No.5 were to do so.

24.7. It is not in dispute that the business of the Petitioner is viable. It is also not in dispute that the loan account of the Petitioner was standard account as on 1.03.2020, there were no defaults committed by the Petitioner. Till March

1st 2020, the Petitioner had made payments of all dues towards the said loan accounts. It is only on account of the closure of the hotel business that the Petitioner is facing distress and this distress would impact the finances of the Petitioner as a whole. The business of the Tech Park and the hotel cannot be separated out for the Respondent No.5 to rely upon the Board Approved Policy to contend that as a structured loan, the Respondent No.5 could appropriate the amounts deposited by the tenants towards lease amount.

24.8. Though there are certain cash flows from the Tech Park business, which would satisfy the repayment of the LRD loan, however, it is also a fact that the hotel business, has virtually come to a stand-still and there is no income arising therefrom. In this background, when payments are not being made by the Petitioner to Respondent No.7 and further payments cannot also be made on account of the payment received by the Petitioner from the Tech Park being appropriated by Respondent Nos.5 and 6 it is but natural that the loan of the Petitioner from Respondent

No.7 would automatically become an NPA as per the policies laid down by RBI itself.

24.9. Respondent No.7 having purchased the loan advanced by Respondent No.5 to the Petitioner and being a part of the down selling mechanism was admittedly promised to have a *pari-pasu* charge over all assets of the Petitioner including all cash flows made either of the Tech Park or of the hotel. This charge, of course, can only be exercised on default in payment of loans by the Petitioner. Admittedly, there is no payment made to Respondent No. 7 from April till date, and there is all likelihood of the said default continuing hereafter. In view thereof, in terms of the Policy laid down by the RBI itself, the loan account of the Petitioner insofar as Respondent No.7 is going to be automatically classified as an 'NPA' and Respondent No.7 would be constrained to in terms of the applicable policies initiate such action as may be required for the purposes of recovery of the loan amount. This would necessarily entail the invocation of charge by Respondent No.7, which would also include the cash flows arising out of the rentals from the Tech Park. Thus, in essence, the refusal by Respondent No.5 to extend

a moratorium to the Petitioner only on the ground that there are funds coming into the account of the Petitioner which Respondent No.5 can appropriate is only a mirage. In that by doing so, Respondent No.7 would not receive any monies, Respondent No.7 would exercise its rights over the said rental amounts which are sought to be appropriated by Respondent No.5. On such an event occurring, all three lenders viz., Respondent Nos.5 to 7 would not be receiving any money. More importantly once the Petitioner's account is declared NPA, Petitioner would have to repay the entire amount due, which it is admittedly not in a position to do do, the entire business of the Petitioner is more than likely to come to a stand-still which would militate against the prime objective of the Policy and Circular viz., ensuring the continuity of a viable business.

24.10. In the above background it cannot be accepted that the Circular dated 27.03.2020 is not applicable to a structured loan like LRD availed by the Petitioner since the appropriation of the monies of the LRD would have a negative impact on the continuity of the Petitioner itself. There is no distinction in terms of the Policy and Circular,

giving a separate treatment to structured loans. Hence I hold that Circular is applicable to all loans/advances and facilities extended by a lending institution, including structured loans.

25. **Where multiple banks are involved in a loan transaction, can one Bank deny the extension of a moratorium, when another is willing to extend the benefit of a moratorium?**

25.1. The Board approved Policy of Respondent No.5-HDFC apart from not having any objective criteria contained therein, it does not also deal with a situation where there are other loans apart from the structured loan in favour of HDFC Bank. The said Policy reads as if there is only one loan and there is only one lender in respect of such structured loan.

25.2. The Policy relating to a consortium or multiple bank lending only contemplates that a Bank in the consortium ought to extend the moratorium on terms similar to those offered by HDFC. This would presuppose a situation where Respondent No.5-HDFC has approved and formulated the

terms for grant of a moratorium and the other Banks in the consortium have failed to agree to such terms.

25.3. In the present case, the situation is reverse, in that Respondent Nos.6 and 7 have agreed to extend a moratorium to the Petitioner, however it is on account of refusal on part of Respondent No.5 to grant a moratorium that they have not been able to extend a moratorium to the Petitioner. Thus, even this particular Policy of Respondent No.5 would not be of any assistance to Respondent No.5.

25.4. The contention of Sri.Udaya Holla, learned Senior Counsel that Respondent No.5-Bank would also have to balance the interest of its employees and other account holders and therefore, grant of a moratorium would adversely affect the payment of salaries, as also interest to the depositors, if taken on its face value would indicate as if that Respondent No.5-HDFC Bank would not be extending a moratorium to any borrower. Such a contention would be an easy methodology of rejecting any and all request/s for a moratorium and as such would militate against the objective of the Policy and Circular dated 27.03.2020. The interest of Respondent No.5 is safeguarded by the creation

of a charge on the assets and receivables of the Petitioner. By way of grant of a moratorium what happens is only a deferment of payment of the amounts due for a period as indicated by the RBI. The same does not in any manner reduce the liability of the Petitioner and/or reduce the receivables on the part of the lending Institutions.

25.5. The contention of Sri.Basavaprabhu Patil, learned Senior Counsel that Respondent No.5 is acting like Shylock also deserves consideration. In that though in the said famous play Shylock was seeking to enforce his rights in terms of the agreement entered into with Antonio to receive a pound of flesh closest to the heart of Antonio, it was never contemplated that by doing so, the life of Antonio would be lost.

25.6. In the present case, though Respondent No.5 would be entitled to enforce the LRD agreement and appropriate the amounts due from the ESCROW Account, the same would end up in classification of the loan account of the Petitioner with Respondent No. 7 as an NPA thus in effect destroying the Petitioner, which is contrary to the aim and object of the Circular dated 27.03.2020.

25.7. The spirit of the Circular is required to be given due importance, it is to be seen to it that the Petitioner continues to be in business, thus helping the economy. Needless to say that the business of the Petitioner provides employment to various people, taxes are paid to the respective authorities, facilities and services are provided to various other companies who depend on the Petitioner. If the business of the Petitioner is disrupted, it is bound to have a cascading effect on all the above and thereby have an adverse impact on the economy.

25.8. The other contention of Sri.Basavaprabhu Patil, learned Senior Counsel that Respondent No.5 is seeking to kill the golden goose to get all the eggs at one go also deserves consideration. Towards this, Sri.Udaya Holla, learned Senior Counsel has countered by stating that Respondent No.5 is only taking away the eggs already laid and not taking any action against the goose viz., the Petitioner herein. However, the impact of it is what is to be considered in the sense that once all the eggs are taken away by Respondents No.5 and 6, the default as regards the loan to Respondent No.7 would automatically result in

the classification of the loan account of the Petitioner with Respondent No. 7 as an NPA, thus in effect killing of the golden goose. Thus, the cause and effect of such action by Respondent No.7 being attributable to Respondents No.5 and 6, they cannot take up such a technical ground in this regard. Respondents 5 to 7 are required to ensure the survival and continuance of the Petitioner and its business. Thus, I am of the considered opinion that one Bank cannot deny the extension of a moratorium, when another or others are willing to extend the benefit of a moratorium.

26. Can a direction be issued to Respondents 1 & 4 to enforce the Circular dated 27.03.2020 issued by the RBI?

26.1. Mr M BNargund, learned Additional Solicitor General of India, appearing for Respondent 1 and 2, has submitted that RBI is an autonomous and independent entity, Respondent No.1 and 2 cannot issue any direction to Respondent No.4, thus there can be no directions issued to Respondent No. 1 and 2 to in turn issue directions to Respondent No.4 - RBI. This submission is in consonance with the RBI Act, the RBI being vested with several obligations and duties in respect of the banking as also

economic requirements of the country, is always required to be independent and autonomous. Most of the policies formulated, guidelines as also circulars issued by the RBI have long term impact, being predicated both on macro as also microeconomic factors. This would equally apply to Respondent No.3 – State Government, hence no direction can be issued to the state government for the very same reasons.

26.2. The present situation is on account of aspects beyond the control of the petitioner namely initiation of lockdown, social distancing, reduction in number of people working in an establishment, etc., though necessary, have had an adverse impact on the Petitioner's business.

26.3. There is no default on the part of the Petitioner by itself till 1.3.2020. The RBI cannot in the circumstances contend that the discretion is left to the lender to either grant or refuse the grant of a moratorium and in the same breath contend that it is for the Bank to establish as to why the Petitioner did not qualify for the benefit of Moratorium – without stating as to before whom such establishment is to be made. Admittedly, there is no mechanism which is

created for redressal of grievance on account of improper implementation or non-implementation of the recovery package or the Circular, there is no forum which has been created for the Petitioner to complain of as regards any of the actions of the Bank or a forum created for the Bank to establish as to how the Petitioner's request has been property rejected. Pending creation of such a forum, this court would have to intervene to provide for a remedy to the aggrieved Petitioner, to give effect to the principle, *Ubi jus ibi remedium*.

26.4. In view of the above, it is held that no directions could be issued to Respondent 1 and 2 – Union of India or Respondent No. 3 – State of Karnataka, to inturn issue directions to Respondent No.4 – RBI for the implementation of the Circular. The contentions of the RBI that the dispute is between the Petitioner and Respondents No.5 to 7 is not acceptable since the dispute arises out of the implementation or not of a Circular issued by the RBI. RBI is therefore directed to monitor the implementation of the Circular, including verification of whether there are Board-approved policies formulated

by each of the lenders, direct all the banks to submit the Board-approved policies for approval to the RBI, to approve such board-approved policy, verify if such a board-approved policy contains objective criteria, set up a proper and effective grievance redressal forum for any aggrieved borrower to approach on account of the improper or non-implementation of the Policy and/or Circular etc.,

27. In the above circumstances, I pass the following:

ORDER

- i) A mandamus shall ensue to Respondents No.4 directing Respondent No. 4 – RBI to enforce the recovery package as contained in Circular dated 27.03.2020 issued by it and as detailed in para 26.4 above.
- ii) The communication dated 06.04.2020 and 08.04.2020, Annexures-L and N issued by Respondent No. 5, communication dated 28.04.2020 Annexures-Xof Respondent No.6 and communications dated 24.04.2020 and 22.05.2020 Annexures-U and Annexures-Vof Respondent No. 7 are hereby quashed.

- iii) The Petitioner having sought for a moratorium, Respondents No.5 to 7, are directed to grant a moratorium on all payments due by the Petitioner to Respondents No.5 to 7 subject to the Petitioner making payment of interest at the contracted period for the period of the moratorium and a condition that the loan account is not in any manner reduced.
- iv) Respondents No.5 to 7 are hereby directed to grant moratorium for three months from 01.03.2020 to 31.05.2020 as also for the extended period from 01.06.2020 to 31.08.2020.
- v) Respondents No.5 to 7 are restrained from either jointly or severally recovering the loan repayment instalments/EMI due in respect of loan accounts of the Petitioner during the period of moratorium.
- vi) Respondents No.5 and 6 are further directed to reverse the recovery of loan repayment instalments/EMI already effected including that for the months of March and April, 2020 and transfer the same to the Current Account of the Petitioner with the Respondent No.5-HDFC Bank,

forthwith. Petitioner is permitted to make use of the said amounts for its day to day activities with proper accounts being maintained in that regard.

- vii) Parties to bear their respective costs

With the aforesaid directions, the writ petition is accordingly disposed of.

(SURAJ GOVINDARAJ)
JUDGE

Prs*/ln



SGRJ:
08.07.2020

ORDERS

IN

WRIT PETITION NO.6775 OF 2020 (GM-RES)

Prs*/ln
CT-SR