

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
W.P. (Civil) No. 825 of 2020**

IN THE MATTER OF:

Gajendra Sharma Petitioner
Versus
Union of India & Anr. Respondents

ADDITIONAL AFFIDAVIT DATED 02.10.2020

ON BEHALF OF

UNION OF INDIA (RESPONDENT NO. 1)

I, Aditya Kumar Ghosh, S/o Shri G. P. Ghosh, aged about 55 years, working as Under Secretary to the Government of India, having my office at Jeevan Deep Building, Parliament Street, New Delhi, do solemnly state and declare as hereunder:-

1. That I am working as Under Secretary to the Government of India in the Department of Financial Services, Ministry of Finance of the Respondent and am well acquainted with the facts giving rise to the above Writ Petition. Further, I have perused the contents of the instant Writ Petition and understood the contents thereof. Furthermore, I have been duly authorised by the competent authority of the respondent UOI to file the present affidavit.

2. I respectfully state and submit that the Respondent is filing this additional affidavit in respectful compliance of the order dated 10.09.2020 passed by this Hon'ble Court in the captioned matter and also to apprise this Hon'ble Court about various mitigating steps taken by the Central Government to deal with the problems arising out of the global financial situation post COVID. By way of this affidavit, I also beg to place the decision taken by the respondent UOI, after careful consideration of facts and the implication of the decision being taken, with regard to the question of waiver of interest on interest.

3. I state and submit that the question of compound interest and other issues raised in the batch of writ petitions is required to be examined in the context of the larger financial constraints faced by the country in particular and the world in general. It is submitted that as a part of effective fiscal planning, which is being done at a stage where nobody is aware as to the time till when the present situation may continue, with either more or less gravity, a delicate balancing act is required by Government in dealing with the financial impacts of the pandemic. It has to conserve financial resources for a long and uncertain battle on the public health front, which has its own huge financial implications. Businesses need to survive. Lending institutions too must survive and promises made to depositors have to be honoured. Jobs and livelihoods need

to be safeguarded and every attempt made to bring back economic growth. Therefore, use of public resources for any category of stakeholders must be carefully calibrated. Unintended consequences can arise and financial stability itself could be imperilled, if due consideration is not given to all relevant aspects.

4. I state and submit that right from the initial entry of the pandemic in our country, which started facing its effect [including the financial impact], the Central Government has proactively taken steps either itself or through RBI, which already had their financial impact, which was/is required to be kept into consideration while taking further decisions either while granting moratorium which, in fact, is deferment [and not waiver] as well as while taking the present decision regarding relief in compounding of interest. The following steps taken by the Central Government have their own financial impacts which would require the Central Government to rationalise any kind of waiver at this stage as going any further than what is stipulated hereunder may be detrimental to the overall economic scenario, and the economy and the nation or the banking sector may not be able to take the financial constraints resulting therefrom.

5. The following facts are given only to satisfy this Hon'ble Court that there already exists substantial financial burden in the form of various reliefs granted by the Central

Government not only to deal with the economic problems for the post pandemic period but also to deal with several other issues including health infrastructure etc. The following figures, however, reflect only the part of the fiscal measures taken by the Central Government through the Ministry of Finance. Other financial expenditure in health sector etc. would be manifold.

(a) **Pandemic related relief from Government:** It is a fact that the pandemic has caused stress to large and small businesses and to individual borrowers who have lost jobs and livelihoods. They need relief which will help them get back on their feet. This has necessitated multi-pronged relief. The first element of the relief has been through the Garib Kalyan package and the Aatma Nirbhar package announced by Government. The Garib Kalyan package was for **Rs 1.70 lakh crore** involving free food grains, pulses, and gas cylinders and cash payment to women, poor senior citizens and farmers. More than **42 crore poor people** received financial assistance of **Rs. 65,454 crore** under the package. The Aatma Nirbhar package was for **Rs. 20 lakh crore**, involving support to Micro, Small and Medium enterprises (**MSMEs**), Non-Banking Finance Companies, agriculture, sectors allied to agriculture, contractors, street vendors, State Governments, relief in provident fund contribution, extension of subsidy on home loans, etc.

(b) **Measures taken by RBI:** The second element of the relief has been a series of steps by the Reserve Bank of India (RBI) which enhanced availability of liquidity for lenders, reduced interest (repo) rates, extended timelines for implementation of previously approved resolution plans, and announced a moratorium for borrowers and a framework for restructuring of existing loans for borrowers impacted by COVID-19. The framework provides adequate flexibility for waiving penal interest as well as compound or even simple interest on a case by case basis, as warranted. The framework for resolution provides distinct windows for MSME accounts as well as for accounts other than MSMEs, which were up to 30 days overdue as on 1.3.2020, while retaining the prudential framework of 7.6.2019 under which cases not covered under the 6.8.2020 circular can get relief. All personal, MSME and corporate loan accounts are therefore generally covered under one or the other circular.

6. Before dealing with the question of interest on interest, it is submitted that the word “moratorium” is categorically defined by the RBI while issuing various circulars. The relevant circulars of RBI show that “moratorium” was never intended to be “waiver of interest” but “deferment of interest”. In other words, if a borrower takes benefit of the moratorium, his liability to make payment of contractual interest [both normal interest and interest on interest] gets deferred for a period of three months and subsequently

three months thereafter. This decision was taken keeping the larger economic scenario in mind, more particularly the burden which would otherwise fall upon the banks which will have to perforce pass it on to the depositors and/or upon the Government which will have its own detrimental impact on other welfare measures. After a very careful and major consideration of several fiscal and financial criteria, its inevitable effects and keeping the uncertainty of the existing situation in mind, the payment of interest and interest on interest was merely deferred and was never waived.

7. It may not be out of place to mention at this stage that the borrowers have understood the difference between the waiver in the interest on loan and the deferment of payment of instalments for that loan and, therefore, a majority of the borrowers have in fact not taken benefit of the moratorium which is nothing but deferment of payment of instalments. Though it may not be possible to give the exact percentage of the borrowers who have not availed of the moratorium and have deposited payment instalments, approximately such class would be more than 50 per cent.

IMPACT OF WAIVER OF INTEREST

8. If the Government were to consider waiving interest on all the loan and advances to all classes and categories of borrowers corresponding to the six-month period for which

the moratorium [*i.e.*, deferment of payment of instalment] was made available under the relevant RBI circulars, the estimated amount is more than **Rs. 6 lakh crore**.

9. In other words, if the interest is waived on all the loans and advances, with regard to all classes and categories of borrowers, the amount to be foregone would be more than Rs. 6 lakh crore.

10. If the banks were to bear this burden, it would necessarily wipe out a substantial and a major part of their net worth, rendering most of the banks unviable and raising a very serious question mark over their very survival. This was one of the main reasons why waiver of interest was not even contemplated and only payment of instalments was deferred.

11. To illustrate – in case of State Bank of India alone [which is the largest bank in the country], waiver of six months' interest would completely wipe out over half of the bank's net worth which has accumulated over nearly 65 years of its existence. Continued payment of interest [including interest on interest] to depositors is not only one of the most essential banking activities but is a huge responsibility that can never be compromised as most of the depositors are bound to be small depositors, pensioners etc. surviving on the interest from their deposits.

12. Lending activity of any bank is always enabled by the deposits that depositors/customers hold in the lending banks. Such depositors are much more in number than the number of borrowers. It is estimated that in the Indian banking system for every 'loan account' there are about 8.5 'deposit accounts'. The banks can pay interest to depositors only because borrowers pay interest to the bank. This transaction of depositors / banks / borrowers is inevitably a part of a chain that can never be permitted to be broken. This would satisfy this Hon'ble Court that for this reason the contractual interest on all outstanding advances will have to be charged even during the period of deferment and if this compounding interest is not received from the borrowers for any particular period, a commensurate denial of interest to customers holding deposits is inevitable and unimaginable and would obviously be unacceptable considering the categories of depositors.

13. It is submitted that keeping all the aforesaid facts in mind, after examining the possible fiscal scenario in case of a complete/partial waiver and after gathering the material details for reaching the decision-making process, and while keeping in mind the interest of particular class of borrowers during the unprecedented period the country is facing, the following decisions have been taken. These decisions are a part of fiscal policy decisions, taken after an elaborate

exercise of gathering of facts and after careful assessment of the said facts and after considering various alternatives, keeping in mind the economic impact on financial strength of stakeholders and all other relevant factors [more particularly (i) during the pandemic when the global fiscal scenario is equally bad; and (ii) the fact that it is uncertain as to till what date the present global and national economic stress will continue]. The decision of the respondent UOI in this regard is as under:-

COMPOUND INTEREST

14. The relief to all borrowers in respect of compounding of interest during the period of moratorium would be admissible to the categories specified hereinafter irrespective of whether the borrower had availed of moratorium or not. Government will seek due authorisation from Parliament for making appropriate grants in this regard. This endeavour shall be over and above the support of Rs. 3.7 lakh crore to MSMEs, Rs. 70,000 crore for home loans, etc. already extended through the Garib Kalyan and Aatma Nirbhar packages announced by Government earlier.

Relief to distressed borrowers in the form of waiver of compound interest

15. It is submitted that waiving compound interest would result in very substantial and significant financial burden. There are several categories of banks, like Private Sector

Banks, Small Finance Banks, Regional Rural Banks, Cooperative Banks, NBFCs etc. The classes and categories of borrowers also varies throughout the nation, and these can be broadly classified as big borrowers and small borrowers.

16. It is submitted that it is impossible for banks to bear the burden resulting from waiver of compound interest without passing on the financial impact to the depositors or affecting their net worth adversely, which would not be in the larger national economic interest.

17. The only solution, under the circumstances, is that the Government bear the burden resulting from waiver of compound interest. This Hon'ble Court would be satisfied that the Government bearing this burden would naturally have an impact on several other pressing commitments being faced by the nation, including meeting direct costs associated with pandemic management, addressing basic needs of the common man and mitigating the common man's problems arising out of loss of livelihood.

18. In view of the aforesaid cumulative circumstances, after careful consideration and weighing all possible options, the respondent UOI has decided to continue the tradition of handholding the small borrowers. The Government, therefore, has decided that the relief on waiver

of compound interest during the six-month moratorium period shall be limited to the most vulnerable category of borrowers. This category of borrowers, in whose case, the compounding of interest will be waived, would be MSME loans and personal loans up to Rs. 2 crore of the following categories:

- (i) MSME loans up to Rs. 2 crore
- (ii) Education loans up to Rs. 2 crore
- (iii) Housing loans up to Rs. 2 crore
- (iv) Consumer durable loans up to Rs. 2 crore
- (v) Credit card dues up to Rs. 2 crore
- (vi) Auto loans up to Rs. 2 crore
- (vii) Personal loans to professionals up to Rs. 2 crore
- (viii) Consumption loans up to Rs. 2 crore

In other words, any individual/entity whose loan amount is more than Rs. 2 crore will not be eligible for waiver of the compounding of interest, which shall be confined to only the above referred categories of borrowers.

DOWNGRADING OF NPAs

19. A concern has also been expressed regarding possible downgrading of loan accounts from Standard to Non-Performing Asset (NPA) and consequent impact on ratings. The Resolution framework announced by RBI provides that loan accounts which slip into NPA between invocation and

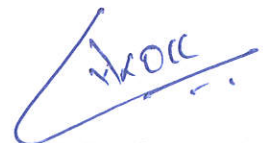
implementation may be upgraded as Standard on the date of implementation itself. To illustrate, if a borrower had defaulted on, say, 10th February 2020, such borrower would be eligible for invoking restructuring as the account was less than 30 days overdue on 1st March 2020. Invocation of restructuring is now done on, say, 9th October 2020 and completed by, say, 9th November 2020. Even if the account slips to NPA on 10th October 2020, it could be Standard on 9th November 2020. Thus, any account becoming Non-performing even due to the bank's or any other delay, need not suffer from being labelled as NPA.

DOWNGRADE OF CREDIT RATING

20. There has been an apprehension that credit rating agencies may record a downgrade to NPA for defaults during the moratorium. The Securities and Exchange Board of India (SEBI) has already issued a circular on 30th March 2020 providing for relaxation from recognition of default due to the moratorium. On 31st August 2020, it has further specified that in cases of restructuring, the same may not be considered a default by rating agencies. A copy each of the circulars dated 30.03.2020 and 31.08.2020 of SEBI is annexed hereto and marked as **Annexure R-1** and **Annexure R-2** respectively. In case of any follow-up decisions being required in this regard, Government would

engage with SEBI, for a holistic and humane view in resolving issues.

21. **Regulatory relief:** Concerns have been raised seeking further relief or/and regulatory dispensation for business other than MSMEs. Government has already suspended the operation from 25th March 2020 of Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 (IBC) to protect corporate borrowers impacted by the COVID-19 crisis. The Kamath Committee set up by RBI has recommended financial parameters for debt restructuring of 26 sectors affected by COVID-19. For corporate accounts (other than MSMEs with up to Rs. 25 crore exposure) which were up to 30 days overdue as on 1st March 2020, the framework of 6th August 2020 provides lenders and borrowers various ways of ensuring viability. At the same time, the prudential framework of 7th June 2019 continues to be available for cases not covered under the 6th August 2020 framework. Active engagement of Government with RBI, which is the regulator of banks, for follow-up decisions on the restructuring framework or on regulatory dispensation, for a holistic and humane view in resolving issues, would continue.



DEPONENT

ए. के. घोष/A. K. GHOSH
अवर सचिव/Under Secretary
वित्तीय सेवाएं विभाग/Deptt. of Financial Services
वित्त मंत्रालय/Ministry of Finance
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

VERIFICATION:

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

Verified at New Delhi on this 2nd day of October , 2020.



DEPONENT

ए. के. घोष/A. K. GHOSH
अवर सचिव/Under Secretary
वित्तीय सेवाएं विभाग/Deptt. of Financial Services
वित्त मंत्रालय/Ministry of Finance
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi



SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/ 53

March 30, 2020

To,

All Credit Rating Agencies (CRAs) registered with SEBI

Dear Sir/ Madam,

Sub: Relaxation from compliance with certain provisions of the circulars issued under SEBI (Credit Rating Agencies) Regulations, 1999 due to the COVID-19 pandemic and moratorium permitted by RBI.

1. In view of the developments arising due to COVID-19 pandemic and in light of the moratorium permitted by Reserve Bank of India (RBI) (vide notification no. RBI/2019-20/186, dated March 27, 2020) on loan servicing, working capital facilities etc. for three months, a need for temporary relaxations in compliance by CRAs is felt. Accordingly, it has been decided to grant relaxations from the requirements stipulated vide circulars as under:
 - A. Currently, CRAs recognize default based on the guidance issued vide SEBI circular dated May 3, 2010 and November 1, 2016.
 - B. In view of the nationwide lockdown and the three month moratorium/ deferment on payment permitted by RBI, a differentiation in treatment of default, on a case to case basis, needs to be made as to whether such default occurred solely due to the lockdown or loan moratorium.
 - C. Accordingly, based on its assessment, if the CRA is of the view that the delay in payment of interest/principle has arisen solely due to the lockdown conditions creating temporary operational challenges in servicing debt, including due to procedural delays in approval of moratorium on loans by the lending institutions, CRAs may not consider the same as a default event and/or recognize default. Appropriate disclosures in this regard shall be made in the Press Release.
 - D. The above shall also be applicable on any rescheduling in payment of debt obligation done by the issuer, prior to the due date, with the approval of the investors/lenders.
 - E. The above relaxation is extended till the period of moratorium by the RBI.

3. Extension in timelines for press release and disclosures on website
 - A. Considering that the CRAs are dependent on the issuers and third parties for information collection which is impaired due to current lockdown, relaxation from timelines for rating action/ issue of press release by CRAs stipulated vide SEBI circular dated June 30, 2017 is being granted. However, CRAs should endeavour to finish the exercise on a best effort basis. Such cases shall be put up for ratification by the Rating Sub-Committee of the Board of CRA.
 - B. Further, an extension of 30 days is being granted for making annual and semi-annual disclosures by CRAs on its website for the period ended March 2020.
4. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Yours faithfully,

Surabhi Gupta
General Manager
Tel No. 022-26449315
Email id: surabhig@sebi.gov.in



SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/ 160

August 31, 2020

To,

All Credit Rating Agencies (CRAs) registered with SEBI

Dear Sir/ Madam,

Sub: Relaxation from default recognition due to restructuring of debt.

1. CRAs recognize default based on the guidance issued vide SEBI circulars dated May 3, 2010 and November 1, 2016. Further, SEBI vide circular dated March 30, 2020 had provided for relaxation from recognition of default owing to moratorium permitted by RBI and lockdown due to COVID-19 pandemic.
2. The Reserve Bank of India (RBI), vide notification no. RBI/2020-21/16 DOR.No.BP.BC/3/21.04.048/2020-21 dated August 6, 2020, has provided for a resolution framework for COVID-19 related stress.
3. Based on its assessment, if the CRA is of the view that the restructuring by the lenders/ investors is solely due to COVID-19 related stress or under the aforementioned RBI framework, CRAs may not consider the same as a default event and/or recognize default. Appropriate disclosures in this regard shall be made in the Press Release.
4. The above relaxation is extended till December 31, 2020.
5. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

Yours faithfully,

Surabhi Gupta
General Manager
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