RBI'S Moratorium Policy: A Contemporaneous Account of Judicial Decisions

Analyzing the courts' approach to the Reserve Bank's policy on loan moratoriums.

Through its "*moratorium*" policy, the Reserve Bank of India ("**RBI**") had permitted institutions that it defined as "*lending institutions*" to defer repayment of term loans by borrowers for a period three months, i.e., from 1 March 2020 to 31 May 2020 ("**period of moratorium**"). To this end, a detailed Circular[1] ("**Circular 1**") was issued by the RBI. On 22 May 2020, the RBI announced that the period of moratorium stood extended by another three months ("**Circular 2**")[2].

Since the announcement, different courts have grappled with diverse aspects surrounding the RBI's moratorium policy. A general trend can be observed in judicial pronouncements – courts have given a purposeful interpretation to the RBI's Circulars and to meet the ends of justice in these difficult times – have granted equitable interim reliefs, in some cases even revising payment schedules.

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Moratorium period to be excluded in the computation of NPAs

The Delhi High Court, in *Anant Raj Limited v Yes Bank Limited*[3], decided that whether while calculating 90 days from the date of default, i.e.,

the time computed to declare an account as a Non Performing Asset ("**NPA**"), the period of moratorium was to be excluded. It answered the question in the affirmative, holding that an account classified as Special Mention Account ("**SMA**") prior to the 1 March 2020 cannot be made a NPA for non-payment of instalments during the period of moratorium.

The Bombay High Court, in *Transcon Skycity Pvt. Ltd. & Ors. v ICICI Bank & Ors*.[4] was called upon to decide a question similar to the one decided by the Delhi High Court in the case of *Anant Raj*. It decided the case with the caveat that the order must not be used as a precedent or a substantive judicial pronouncement on the subject. It held that the clock on the 90-day NPA computation period must stop ticking from the time the lockdown was imposed until the lockdown is lifted. It clarified that such lifting of the lockdown must be complete and not partial. It also formulated a revised payment schedule. It held that in times like these, it was important to protect the rights of both parties. In a subsequent hearing, the order was modified by consent, whereby the bank agreed to grant the benefits of the RBI's circulars to the Petitioner, provided the Petitioner applied to the bank for the same.[5]

The Delhi High Court, in *Shakuntala Educational & Welfare Society v Punjab & Sind Bank*[6], agreed with the decision in *Anant Raj* and held that even though the default occurred prior to 1 March 2020, the period of moratorium would be excluded while computing the 90 days for NPA declaration.

The RBI, vide another circular[7] dated 17 April 2020, clarified that the period of moratorium, *wherever moratorium is granted*, will be excluded in counting the number of days past-due, for the purpose of asset classification. This, it said, extended to working capital facilities too.

Mortarium inapplicable to defaults prior to 1 March 2020

In *Ideal Toll & Infrastructure Pvt. Ltd., Mumbai and Anr. v ICICI Home Finance Co. Ltd., Mumbai & Anr.,[8]* the Bombay High Court held that the moratorium would not apply to defaults that occured before 1 March 2020. In the instant case, the Plaintiff's default had occurred on 12 January 2020, consequent to which the Defendants intended to sell the shares pledged by the Plaintiff to them. The suit sought an injunction on this sale. While holding that the RBI's policy would only apply to default on instalments due during the period of moratorium, the High Court, in the interest of justice, devised a revised payment schedule and held that the account of the Plaintiff be declared a NPA only if the revised schedule was violated.

Moratorium applicable to mutual funds and debentures?

The Delhi High Court, in *Indiabulls Housing Finance Limited v Securities and Exchange Board of India*,[9] granted ad-interim relief to the Petitioner against non-convertible debenture holders, noting "*the peculiar facts of this case and the present lockdown*".

In *Zee Learn Limited v. UTI AMC & Ors.*,[10] a Division Bench of the Bombay High Court held that it is clear "*beyond reasonable doubt*" that the RBI's moratorium policy would not apply to mutual funds and debentures. The Petitioner had moved the court to seek an extension of the redemption date of the redeemable non-convertible debentures issued by it to UTI AMC. The Writ Petition was rejected as being non-maintainable as well as on merits.

Supreme Court takes stock

In *Gajendra Singh v. Union of India & Anr.*[11], the petitioner challenged two aspects of Circular 1 – "*It is submitted that if moratorium is being granted for a period of three months, the entire amount payable including principal and interest should not be charged during moratorium period. Secondly, at least the demand of interest on interest should not be made and these reliefs can be extended by the Central Government and the Reserve Bank of India.*" In view of the Solicitor General's and the Indian Bank Association's request of needing more time to assess if the government and the association can respectively provide any relief, the matter was adjourned to the first week of August.

In *CREDAI MCHI vs Union of India*, the Maharashtra wing of CREDAI, petitioned the Court, seeking issuance of directions to the Centre and RBI to formulate a relief package for its members in the form of loan waivers. On 19 June 2020, notice was issued and the matter was tagged with *Gajendra Singh* matter discussed hereinabove.[12] Accordingly, it will also be taken up in the first week of August. Notably, the Petition seeks a declaration that RBI's moratorium announcement be declared mandatory in nature.

Moratorium : Mandatory or Directory?

The biggest question remains – are the RBI's Circular 1 and 2 mandatory in nature? The wordings would indicate otherwise. The words "are permitted to grant" seem directory at best, allowing a lending institution to defer instalments on term loans, should it so desire.

The Bombay High Court in *Zee's* case (discussed hereinabove) held that these circulars are not mandatory in nature.

The Karnataka High Court in *Velankani Information Systems Limited v. Secretary, Ministry of Home Affairs & Ors.*[13] held that the circulars issued by the RBI are discretionary in so far as the obligation of the bank to grant moratorium is concerned. However, it added, that it was mandatory for such banks to ensure that the non-grant of moratorium should not destroy the viability of a business. This, it held, would mean that any business would be entitled to a moratorium as a matter of right if it could prove that in the absence of a moratorium, its continuity would be adversely affected.

The High Court also directed the RBI to monitor the implementation of Circular 1, in that it ought to ensure that banks implement a board-approved policy on the subject and set up redressal forums to resolve borrowers' grievances. Further, it held that in the case of a consortium of lenders, one bank cannot deny grant of moratorium when others in the consortium have granted a moratorium.

> *However, it is clear that the High Courts across the country have in these extraordinary times, exercised discretion and tailored relief based on the facts of each case, albeit on the touchstone of the RBI's moratorium policy.*

Conclusion

It remains to be seen how the Supreme Court will deal with some questions of significance raised before it. However, it is clear that the High Courts across the country have in these extraordinary times, exercised discretion and tailored relief based on the facts of each case, albeit on the touchstone of the RBI's moratorium policy.

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[1]Circular: https://rbidocs.rbi.org.in/rdocs/Circular/PDFs/NOTI186B27003E9DB3D4FB49BDDF955F4289D68.PDF
Press Statement :

https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR21302E204AFFBB614305B56DD6B843A520DB.PDF

See the Hariani & Co. Newsletter on the subject : RBI permits moratorium on Term Loans and deferment of interest on Working Capital Facilities

[2]Circular:
https://rbidocs.rbi.org.in/rdocs/Circular/PDFs/NT2455D86E6F80D9D4BC29C0DFAA43D76D9A4.PDF
Press Statement :
https://rbidocs.rbi.org.in/rdocs/Content/PDFs/GOVERNORSTA1BE078EC8D2F4F53A8C3A74AE98E4573.PDF

[3] 2020 SCC Online Del 543 (6 April 2020)

[4] 2020 SCC Online Bom 626 (11 April 2020)

[5] Order dated 11 July 2020 in LD-VC-IA-1-2020 IN LD-VC-WP-28-2020

[6] 2020 SCC Online Del 516 (13 April 2020)

[7]https://rbidocs.rbi.org.in/rdocs/Circular/PDFs/ASSETCLASSIFICATIONE5F6BD8C6D574086B7D36DC8CF7E13A9.PDF

[8] Order dated 7 April 2020 in Commercial Suit No. LD-VC-7 of 2020, along with IA No. LD-VC-7(IA) of 2020 (with connected matter)

[9] 2020 SCC Online Del 530 (15 April 2020)

[10] Order dated 13 July 2020 in WP-LD-VC NO. 88 OF 2020

[11] Order dated 17 June 2020 in Diary No .11127 of 2020

[12] Writ Petition (Civil) No. 568 of 2020

[13] Order dated 8 July 2020 in Writ Petition No. 6775 of 2020

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