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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1335 of 2020

Vandana Global Ltd. A Company Incorporated Under The Provisions Of The Companies Act, 1956, Having Its Office At Siltara Industrial Area, Phase II, Siltara, Raipur, Chhattisgarh Through Its Authorized Representative Mr. Ajay Tipte

---- Petitioner

Versus

1. Reserve Bank Of India Through The Regional Director, Subhashish Parisar, Satya Prem Vihar, Mahadev Ghat Road, Sunder Nagar Raipur – 492013, Chhattisgarh
2. Punjab National Bank (Erstwhile Oriental Bank Of Commerce) Through Its Chief Manager, Mid - Corporate Branch, Raj Tower, Tatyapara Chowk, G.E. Road, Raipur - 492001, Chhattisgarh
3. IDBI Bank Ltd. Through Its General Manager, NPA Management Group, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai - 400005, Maharashtra
4. Indian Overseas Bank Through Its Chief Manager, Fafadih, Bilaspur Road, Raipur, Chhattisgarh
5. Jammu And Kashmir Bank Ltd Through Its Branch Head, Lal Ganga Shopping Mall, G.E. Road, Raipur, Chhattisgarh
6. State Of Chhattisgarh, Department Of Industry, Through Its Secretary, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh
7. Union Of India Through Its Secretary, Ministry Of Finance, North Block, New Delhi

---- Respondents

For Petitioner	:	Mr. Ashish Anand Bernard, Advocate
For Respondent no.1	:	Mr. B. P. Sharma with Mr. Viabhav Tiwari, Advocate
For Respondents 2 to 4	:	Mr. S. S. Rajput, Advocate

For Respondent no.5	:	Mr. Virat Verma on behalf of Mr. Mayank Chandrakar, Advocate
For Respondent no.6	:	Mr. Mateen Siddiqui, Dy. A.G.
For Respondent no.7	:	Mr. Ramakant Mishra, ASG

Hon'ble Shri Justice P. Sam Koshy

Order On Board

29.09.2020

1. The present writ petition has been filed by the petitioner claiming for the following relief:

> i) Be pleased to issue a writ of mandamus or any other appropriate holding and or declaring or directing the respondent no. 2 to 5 banks to give effect and benefit of the Circular/Notice dated 27.03.2020, 17.04.2020 and 23.05.2020 (Annexure P/1-colly) which grants moratorium on payment of installments of all term loans and interest due to the global pandemic and economic distress caused by Coronavirus situation, to the petitioner with immediate effect; and

2. The relevant facts in brief are that the petitioner is a borrower of the respondents 2 to 5 banks. The respondents 2 to 5 are a consortium of banks and the respondent no.2 is the leader of the consortium. The claim of the petitioner through the present writ petition is for grant of moratorium on payment of loans and interest granted against all term loans as part of the relief package issued by the Reserve Bank of India especially on account of COVID-19 situation prevailing in the country. The respondent no.2 bank had initially filed a reply which has since been adopted by the respondents 3 & 4. In the response, it was a stand taken by the respondent no.2 that the petitioner would not be entitled for the benefit of moratorium for the reason that the account of the petitioner was restructured and all those borrowers whose accounts were restructured would stand excluded from the package of relief of moratorium granted by the Reserve Bank of India vide their circular dated 27.03.2020, 17.04.2020 and 23.05.2020.

3. Subsequently, the respondent no.1 i.e. the RBI has also filed a reply to the writ petition and in the reply the Reserve Bank of India has taken the following stand:-

> "3. The respondent no.1/answering respondent herein further says and submits that 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 six months on payment of all installments falling due between March 1, 2020 and August 31, 2020 vide 'Covid-19 Regulatory Package' dated March 27, 2020 subsequently modified dated May 23, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period. Further, in respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions were permitted, vide the above circulars, to allow a deferment of a total of six months, from March 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities. Lending institutions were also permitted, at their discretion, to convert the accumulated

interest for the deferment period up to August 31, 2020, into a funded interest term loan (FITL) which shall be repayable not later than March 31, 2021.

4. The respondent no.1/answering respondent herein further says and submits that vide circular dated April 17, 2020, it has been decided that in respect of all accounts classified as standard as on February 29, 2020, even if overdue, the moratorium period, wherever granted, shall be excluded by the lending institutions from the number of days past-due for the purpose of asset classification under the IRAC norms. Similarly in respect of working capital facilities sanctioned in the form of CC/OD, deferment period, wherever granted in respect of all facilities classified as standard, including SMA, as on February 29, 2020, shall be excluded for the determination of out of order status. In this regard, lending institutions are required to frame Board approved policies for providing the above-mentioned reliefs to all eligible borrowers and disclosed in public domain. Since the customer profile, organizational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers. Therefore, the discretion regarding deciding the eligibility of customers and manner in which the customers are on-boarded for availing this benefit, including the manner of recovery of the interest accrued during the moratorium period, has been left to the lending institutions concerned.

5. The respondent no.1/answering respondent herein further says and submits that 'The Reserve Bank of India' has not generally excluded any type of borrower from the applicability of the circulars dated March 27, 2020 and May 23, 2020. However, the Reserve Bank has specified the types of loan for which the benefit of

> moratorium/interest deferment can be considered i.e. term loans and working capital facilities in the form of CC/OD. The circulars have spelt the broad guidelines regarding the grant of the benefits and the specific decision regarding the eligibility of a borrower to avail of the benefit has been left to the discretion of the individual lending institutions based upon the policy approved by their respective Board. However, the reliefs allowed by the RBI cannot be claimed as a right by any borrower as it does not create any vested rights."

4. Subsequent to the Reserve Bank of India taking the aforesaid stand in the Court, learned counsel for the petitioner submits that it needs a decision now at the level of the respondent no.2 as to whether the petitioner would be entitled for the benefit of moratorium so granted by the RBI particularly when the RBI does not exclude the category of the borrowers whose accounts have been restructured from availing the benefit of moratorium. Counsel for the petitioner submits that the petitioner has also in the past approached the bank for an appropriate decision which till date has not been taken and for which respondent no.2 may be directed at this juncture to take a decision keeping in view the reply of the Reserve Bank of India in the present writ petition.

5. Learned counsel for the respondent no.2 bank, however, referring to the reply of the RBI submits that even the RBI has taken a stand in their reply of the discretion that lies with the lending bank to take a decision whether the benefit of moratorium/interest deferment has to be provided to a particular category of borrowers or not in terms of the circular dated 27.03.2020, 17.04.2020 and 23.05.2020.

6. Keeping in view the aforesaid submission and also taking note of the respective stands that the respondents have taken in their reply particularly the reply of the Reserve Bank of India, this Court is of the opinion that the present writ petition at this juncture can be disposed of directing the petitioner to approach the respondents 2 to 5 by way of a detailed representation supported with all relevant documents and information claiming for the benefit of moratorium/interest deferment in terms of the circular of the Reserve Bank of India dated 27.03.2020, 17.04.2020 and 23.05.2020.

7. Subject to the petitioner approaching the respondents 2 to 5 within a period of 15 days, the respondents 2 to 5 in turn shall take a decision in accordance with the guidelines and instructions prevailing the field and also taking into consideration the stand of the RBI in the present writ petition within a further period of 45 days from the date of receipt of representation of the petitioner. The respondents 2 to 5 are expected to take a decision by passing a reasoned & speaking order. The right of the petitioner stands reserved to challenge the outcome afresh in case if the grievance still survives.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
P. Sam Koshy
Judge

Khatai