

# Subhash Kumar Gupta & Ors vs Indian Bank & Anr on 21 August, 2020

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5489/2020 & CM APPLs. 19777/2020, 19778/2020

SUBHASH KUMAR GUPTA & ORS.

Through:

Mr. Navlendu Kumar  
Mittal, Advocate

versus

INDIAN BANK & ANR.

Through:

Mr. Brijesh Kumar  
(M:9811829656)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 21.08.2020

1. This hearing has been held through video-conferencing.
2. The present petition has been filed challenging the notice of the Bank dated 5th June, 2020 and 13th August, 2020 by which the Bank has informed the Petitioners that the EMIs on the Petitioners' home loan are not being paid regularly and there is an overdue of more than Rs.3.7 lakhs up to February, 2020. Further, there is an overdue credit facility of Rs.95.52 lakhs which was extended to the Petitioners. Accordingly, the Petitioners have been notified that the home loan account may slip into a Non-Performing Asset (hereinafter, "NPA").
3. Ld. counsel for the Petitioners relies upon the circulars of the RBI to argue that there is a moratorium for the period from 1 st March, 2020. He further relies upon the order of a Coordinate Bench of this Court dated 6th April, 2020 in Anant Raj Ltd. v. Yes Bank Ltd. [W.P. (C) URGENT 5/2020] wherein after considering the various circulars of the RBI, the ld. Single Judge had granted interim protection from the account being treated as a NPA.
4. On behalf of the Bank, it is submitted that as per the statement of accounts, the dues of the Petitioners are accumulating since October, 2019 and since the default was much prior to the

outbreak of the pandemic, the Petitioners are not entitled to any moratorium benefit. Vide email dated 4th May, 2020 the Petitioners were informed by the Bank that the account is being re-classified to SMA-1 category. The ground on which there was a change in the stand of the Bank was due to an objection of the Auditor that the EMIs prior to the pandemic were not funded through the Petitioners' own sources. Hence, it was found that the Petitioners were not entitled to the moratorium benefit.

5. This reversal of the Bank's decision was communicated to the Petitioners vide the impugned e-mail dated 5th June, 2020. A perusal of the RBI's policy which is placed on record shows that the intention of the RBI is to ease liquidity constraints and accordingly, the moratorium had been imposed w.e.f. 1st March, 2020. The relevant paragraph in the said policy is extracted below:

"5. Moratorium on Term Loans All commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies and micro-finance institutions) ("lending institutions") are being permitted to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as on March 1, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans, may be shifted across the board by three months."

6. This policy of the RBI was again reiterated on 27th March, 2020 wherein re-scheduling of payments was made permissible by the RBI. These different policies of the RBI were interpreted by the Id. Single Judge in the order dated 6th April, 2020 and the Court has come to a conclusion that the intention of the various policies of the RBI was to maintain status quo in respect of classifications of accounts as they existed on 1st March, 2020.

7. The Petitioners in this case do not dispute the fact that they have availed of a term loan and credit facility in December, 2019. Since a substantial sum has been availed of by the Petitioners, the question would arise as to whether the Petitioners are entitled to any benefit from RBI's circulars. The Id. Single Judge in the order dated 6th April, 2020 holds that the Petitioner's account in the said case could not have been re-classified as a NPA. Accordingly, status quo ante was restored in the said case.

8. In the present case, there is a dispute as to whether the EMIs are due from October, 2019 or from January, 2020. The said issue can only be resolved after the Petitioners and Respondent file their complete statements of account showing the payments made and the outstanding amounts due from the Petitioners. At this stage, this Court is unable to arrive at a conclusion on this issue.

9. Be that as it may, if there was a default prior to March, 2020, the Petitioners have to make good the default in order to avail of the moratorium which has been kicked off by the RBI w.e.f. 1 st March, 2020. Accordingly, the following directions are issued:

i) The Petitioners shall make a payment of two monthly instalments within a period of one month from today;

ii) Subject to the said payment, the Petitioners' account shall not be treated as a NPA by the Bank.

10. These directions shall, however, be without prejudice to any other measures that the Bank would take in respect of any facilities extended to the Petitioners in accordance with law.

11. Once the Bank has taken a view on whether or not the Petitioners' account would be treated as a NPA as of October, 2019 or February, 2020, the Bank is permitted to approach the Court to seek modification of this order.

12. List on 19th October, 2020.

PRATHIBA M. SINGH, J AUGUST 21, 2020 Rahul/T