Issue 14

NEWSLETTER
Legal, Compliance and ESG

05 June 2020

Dear Readers,

We bring to your reading and attention following topics:

A) LEGAL AND REGULATORY UPDATES:

~ Anand Asawa

I. COVID 19 – Regulatory Package[1]

RBI vide its circular dated May 23, 2020 has issued detailed instructions regarding the CoVID 19 regulatory package:

(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

(ii) Easing of Working Capital Financing

(iii) Asset Classification

All other provisions of circulars dated March 27, 2020[2] and April 17, 2020[3] shall remain applicable mutatis mutandis.

a. Rescheduling of Payments – Term Loans and Working Capital Facilities

In view of the extension of lockdown and continuing disruption on account of COVID-19, all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, All-India Financial Institutions, and Non-banking Financial Companies (including housing finance

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1 https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NT2455D86E6F80D9D4BC29C0DFAA43D76D9A4.PDF

2 https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI186B27003E9DB3D4FB49BDDF955F4289D68.PDF

3 https://rbidocs.rbi.org.in/rdocs/notification/PDFs/ASSETCLASSIFICATIONE5F6BD8C6D574086B7D36DC8CF7E13A9.PDF

companies) ("lending institutions") are permitted to extend the moratorium by another three months i.e. from June 1, 2020 to August 31, 2020 on payment of all instalments in respect of term loans (including agricultural term loans, retail and crop loans). Accordingly, 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.

In respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to allow a deferment of another three months, from June 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities. Lending institutions are 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.

b. Easing of Working Capital Financing

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, as a one-time measure,

(i) recalculate the 'drawing power' by reducing the margins till August 31, 2020. However, in all such cases where such a temporary enhancement in drawing power is considered, the margins shall be restored to the original levels by March 31, 2021; and/or

(ii) review the working capital sanctioned limits upto March 31, 2021, based on a reassessment of the working capital cycle.

The above measures 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.

c. Asset Classification

The conversion of accumulated interest into FITL, and the changes in the credit terms permitted to the borrowers to specifically tide over economic fallout from COVID-19 will not be treated as concessions granted due to financial difficulty of the borrower, under Paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 ('Prudential Framework'), and consequently, will not result in asset classification downgrade.

In respect of accounts classified as standard as on February 29, 2020, even if overdue, the moratorium period, wherever granted in respect of term loans, shall be excluded by the lending institutions from the number of days past-due for the purpose of asset classification under the IRAC norms. The asset classification for such accounts shall be determined on the basis of revised due dates and the revised repayment schedule.

Similarly, in respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), where the account is classified as standard, including SMA, as on February 29, 2020, the deferment period, wherever granted in terms of paragraph 3 above shall be excluded for the determination of out of order status.

II. Emergency Credit Line Guarantee Scheme

Finance Minister Nirmala Sitharaman on May 13 announced collateral-free loans up to Rs 3 lakh crore backed by government guarantee. Meant to help businesses suffering from a severe cash crunch, the Government has since the announcement come out with the guidelines on how the scheme will operate. Under this Scheme the Government through the trust, National Credit Guarantee Trustee

Company (NCGTC), will guarantee loans provided by banks and Financial Institutions (FIs) to MSMEs and MUDRA borrowers. The Scheme aims to extend additional funding of Rs. 3 lakh crores to eligible borrowers in order to help them through the liquidity crunch faced by them due to the crisis. The Scheme would be applicable to all loans sanctioned under GECL during the period from the date of announcement of the Scheme to 31.10.2020, or till an amount of Rs three lakh crore is sanctioned under the GECL, whichever is earlier.

Based largely on the FAQs released by the National Credit Guarantee Trustee Company (NCGTC), here are the key details of the scheme:

- All MSME borrower accounts with outstanding credit of up to Rs. 25 crore as on 29.2.2020 which were less than or equal to 60 days past due as on that date, i.e., regular, SMA 0 and SMA 1 accounts, and with an annual turnover of up to Rs. 100 crore would be eligible for GECL funding under the Scheme.
- The amount of GECL funding to eligible MSME borrowers either in the form of additional working capital term loans (in case of banks and FIs), or additional term loans (in case of NBFCs) would be up to 20% of their entire outstanding credit up to Rs. 25 crore as on 29th February, 2020.
- The entire funding provided under GECL shall be provided with a 100% credit guarantee by NCGTC to MLIs under ECLGS.
- Tenor of loan under Scheme shall be four years with moratorium period of one year on the principal amount.
- No Guarantee Fee shall be charged by NCGTC from the Member Lending Institutions (MLIs) under the Scheme.
- Interest rates under the Scheme shall be capped at 9.25% for banks and FIs, and at 14% for NBFCs.

B) <u>Case Study</u>: Ishrat Ali v. M/s Cosmos Cooperative Bank Ltd. & Anr.

~Suprabhat Pathak

In this case, M/s Cosmos Cooperative Bank Ltd filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Micro Dynamics Pvt Ltd., the NCLT, Mumbai Bench admitted the said Application by way of the impugned order dated September 23, 2019. Consequently, Ishrat Ali, Director & Shareholder of the Corporate Debtor filed the present Appeal challenging the order of NCLT on the ground that the Application of the Financial Creditor was barred by limitation.

The primary issue was whether action taken under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) can be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963.

The findings of the NCLAT were:

- In terms of Section 14(2) of Limitation Act, for excluding the time period utilized in collateral proceedings, the applicant should have been prosecuting another civil proceeding with due diligence, whether in a court of first instance or of appeal or revision against the same party and for the same relief.
- An action taken by the Financial Creditor under Section 13(2) or Section 13(4) of the SARFAESI Act cannot be termed to be a civil proceeding before a Court of first instance or appeal or revision

before an Appellate Court and other forum, and, therefore, cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963.

- Application under Section 7 of the IBC is sought for resolution of a Corporate Debtor or liquidation on failure and not for money claim or suit. A person can only benefit from Section 14 (2) of Limitation Act when application under Section 7 is prosecuted with due diligence in a court of first instance, appeal or revision which has no jurisdiction.
- In present case, the account of the Corporate Debtor was classified as NPA on March 30, 2014 and the demand notice under Section 13(2) of the SARFAESI Act was issued on December 06, 2014, thereafter. Furthermore, the bank had taken possession of the assets on January 16, 2017.

Taking all the above findings into consideration, the NCLAT held that the Application under Section 7 was barred by limitation and accordingly, set aside the NCLT's order.

Conclusion:

Action taken by the Financial Creditor under Section 13(2) or Section 13(4) of the SARFAESI Act, 2002 cannot be termed to be a civil proceeding before a Court of first instance or appeal or revision before an Appellate Court and the other forum. Therefore, action taken under Section 13(2) of the SARFAESI Act, 2002 cannot be counted for the purpose of exclusion of the period of limitation under Section 14(2) of the Limitation Act, 1963.

C) Credit Linked Subsidy Scheme (CLSS)

~ J. P. Trivedi

The ‘Credit Linked Subsidy Scheme (CLSS)’ under Pradhan Mantri Awas Yojana (PMAY) was announced by our Honourable Prime Minister Shri Narendra Modi with a vision ‘housing for all by the year 2022’. Under this scheme, interest subsidy on purchase/ construction/ extension/ improvement of house is provided by banks/housing finance companies to customers belonging to Economical Weaker Section (EWS)/Lower Income Group (LIG)/Middle Income Group (MIG).

The scheme is offered to families, comprising of husband, wife and unmarried children. (An adult earning member irrespective of marital status can be treated as a separate household in MIG category)

Credit Linked Subsidy Scheme - EWS / LIG

Scheme: Under this scheme credit linked interest subsidy @ 6.50% for 15-20 years or actual tenor of the loan, whichever is lower, will be provided to the eligible beneficiaries in EWS/LIG category by the Government of India.

EWS/LIG categories are defined as follows:

i. EWS households with an annual income upto Rs. 3.00 lacs.

ii. LIG households with an annual income between Rs. 3.00 lacs to Rs. 6.00 lacs.

iii. Maximum subsidy of Rs. 2.67 lacs.

Credit Linked Subsidy Scheme – MIG

Government of India under the aegis of the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) has launched 'Credit Linked subsidy Scheme (CLSS)' for Urban Areas under the ambit of Pradhan Mantri Awas Yojana.

Coverage & Eligibility

The ownership of the house should either in the sole name of the female member of the household or joint ownership with the wife. However, this condition will not be made mandatory in cases of construction of house on an existing plot or extension/renovation of existing Kuccha/Semi-pucca house. The beneficiary family should not own a pucca house

PMAY CLSS Eligibility

i. The Household with an annual income from Rs 6,00,001 to Rs. 12 lacs for MIG-I

ii. The household with an annual income from Rs 12,00,001 to Rs. 18 lacs for MIG-II

iii. In case of married couple, either of the spouses or both together in joint ownership will be eligible for a single house subject to income eligibility of the household under the scheme.

iv. The beneficiary family should not own a pucca house (an all-weather dwelling unit) either in his/her name or in the name of any member of his/her family in any part of India.

v. The carpet area of house under this Scheme should be up to 160 sq. mts. for MIG-I beneficiaries and up to 200 sq. mts. for MIG-II beneficiaries.

Banks/HFCs shall have to submit a consolidated certificate on completion of the housing unit within one-year period from the completion of construction or a maximum of 36 months from the date of the disbursement of the 1st installment of the loan. In case of default in not providing utilization/end use certificate the Bank/HFCs shall refund the amount of subsidy to the Central Nodal Agencies (CNA).

- In case a borrower who has taken a Home Loan under the Scheme and has availed interest subvention benefit under the Scheme but later on shifts its loan to another Bank/HFC, such beneficiary will not be eligible for the benefit of interest subvention again.
- Home Loan under this scheme will be available by way of Term loan and Max gain (for loan limits of Rs. 20 lakh and above) with a maximum tenor of 30 years. However, subsidy is available for a maximum tenor of 20 years only.
- Major earning son / daughter can also own a house & avail subsidy separately for their 1st home. In case of EWS / LIG loan sanctioned on or after 27th June, 2017 will be eligible for the same.
- Carpet Area: The net usable floor area of an apartment, excluding the area covered by the external walls, but includes the area covered by internal partition walls of the apartment.
- Applicable in case of Repair and Renovation
- Subsidy range-3% - 6.50%

D) ESG: World Environment Day 2020

~Saurav Agarwal

Colombia in partnership with Germany is the global host of 2020 World Environment Day which will take place today on June 5, 2020 and this year the theme of World Environment Day 2020 is "*Celebrate Biodiversity*".

Biodiversity - a concern that is both urgent and existential as per the United Nations official website. Recent events, from bushfires to locust infestations and a global disease pandemic, demonstrate the interdependence of humans and the webs of life, in which they exist.

The theme focuses on 'time for nature' and providing the essential infrastructure that supports life on Earth and human development.

On this world Environment Day, let us take a look at the positive effects of the current pandemic - Covid 19. Following the outbreak of the coronavirus, many countries had adopted lockdown procedures that stopped people from moving out and for offices and other establishments to close down. I do not know about humans, but it was definitely a rejoice for the environment.

Before the start of the COVID-19 pandemic, the air around us had been deemed very toxic to breathe in with cities like Delhi and Mumbai being on the verge of being declared as most polluted cities in the world. The Earth faced rising temperatures, which in turn led to the melting of glaciers and rising of sea levels. Environmental degradation was happening fast due to the depletion of resources such as air, water and soil. But after the coronavirus lockdown commenced, there have been slight changes in the environment. After the lockdown was put in place in many countries, there was lesser travelling done by people, whether it be by their own cars, or by trains and flights. Even industries were closed down and not allowed to function. This in turn led to the pollution in the air dropping significantly, as there was a marked decline in nitrous oxide emission. Plants are growing better because there is cleaner air and water, and because yet again there is no human interference. With everything at a standstill, plants are allowed to thrive and grow and produce more coverage and oxygen. Less litter also means lesser clogging of river systems, which is good in the long run for the environment.
In conclusion, though there has been a positive impact on the environment due to the lockdown, there is fear that once people start travelling again or go back to doing what they have been doing, all the positive impact will also disappear.