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NPA IN TIMES OF COVID 19: AN ANALYSIS OF YES BANK -VS- ANANT RAJ

A Non-Performing Assets-layman language

¹ NPA is a terminology used in banking to define those loans/ advances/ etc., wherein no payment has been made towards interest and/or principal amount from the last 90 days.

2 There are three types of NPAs namely:

- ^a Sub-Standard Assets: A Sub-Standard asset is one which has been NPA for a period less than or equal to 18 months.
- ^b Doubtful Assets: A Doubtful asset is one which has been NPA for a period exceeding 18 months.
- ^c Loss Assets: A Loss asset is one where the loss has been identified by the bank, through the internal or external auditor or by the RBI inspection and the amount has not been written off wholly.

B Legislative Framework with regard to Non-Performing Assets

- ¹ The general legal framework for stressed assets is contained in Prudential Framework for Resolution of Stressed Assets Directions, 2019 (for short “Framework for Stressed Assets”) and Master Circular of RBI bearing no. RBI/2015-16/44 dated 01.07.2015 on Income Recognition and Asset Classification Provisioning and Other Related Matters-Urban Cooperative Banks (UCBs) (for short “RBI Master Circular”)
- ² Banks usually categorize loans as NPAs after 90 days of non-payment of interest or principal, which can occur during the term of the loan or for failure to pay principal due at maturity.
- ³ **The RBI Master Circular provides for conditions what would comprise an NPA. Any of the conditions mentioned below will lead to an account be declared as an NPA:**
 - ^a Interest and/or installment of principal remain overdue for a period of more than 90 days in respect of a Term Loan.

- ^b The account remains 'Out of order' for a period of more than 90 days, in respect of an Overdraft/Cash Credit (OD/CC).
- ^c The bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted.
- ^d Any amount to be received remains overdue for a period of more than 90 days in respect of other accounts
- ^e In case of Agricultural advance there are certain conditions specified in Annexure -1 which are not relevant in the present case.
- ⁴ The Framework for Stressed Assets provides for early recognition, reporting and time bound resolution of stressed assets.
- ⁵ The Framework for Stressed Assets is applicable to the following entities (**for short “Financial Institutions”**):
 - ^a Scheduled Commercial Banks (excluding Regional Rural Banks);
 - ^b All India Term Financial Institutions (NABARD, NHB, EXIM Bank, and SIDBI)
 - ^c Small Finance Banks; and,
 - ^d Systemically Important Non-Deposit taking Non-Banking Financial
 - ^e Companies (**NBFC-ND-SI**) and Deposit taking Non-Banking Financial
 - ^f Companies (NBFC-D)
- ⁶ **As per the Framework for Stressed Assets, lenders shall recognize incipient stress on loan accounts immediately on default, by classifying such assets as special mention accounts (SMA) as per the following categories:**
 - ^a If the installment is overdue for a period of 30 days, then the borrower's account becomes a Special Mention Account-1(SMA-1),



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- b If the installment is overdue for a period of 60 days then the borrower's account becomes a Special Mention Account-2(SMA-2), and
- c If the account is overdue for a period of 90 days then it becomes an NPA.

C **RBI and COVID-19**

- 1 Statement on Developmental and Regulatory Policies dated 27.03.2020 published by the Reserve Bank of India (for short "Statement by RBI")
- 2 The Statement by RBI provides for various developmental and regulatory policies that directly address the stress in financial conditions caused by COVID-19.
- 3 The Statement by RBI provides for moratorium on loans in the wake of COVID-19 pandemic is applicable even to loans which were on default as on March 1, 2020.
- 4 The provision on moratorium is applicable to all financial institutions.
- 5 The Statement by RBI provides that all commercial banks are being permitted to allow a moratorium of three months on payment of installments in respect of all term loans outstanding as on March 1, 2020.
- 6 The repayment schedule and all subsequent due dates, as also the tenor for such loans, may be shifted across the board by three months.
- 7 COVID-19 Regulatory Package issued by RBI dated 27.03.2020(for short "Regulatory Package")
- 8 The RBI has permitted all financial institutions to grant a moratorium for up to 3 months on the payment of all principal, interest and repayment installments between March 1, 2020 and May 31, 2020 to their borrowers, for all term loans, including credit card dues.
- 9 In the Regulatory Package, the RBI has stipulated that if a Financial Institution grants the Moratorium to a borrower, it will not constitute a reclassification of an asset. For term loan accounts, which enjoy the Moratorium, any asset reclassification, such as special mention accounts (SMA) or NPAs, will be based on the revised repayment schedule.
- 10 The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

D **Anant Raj Limited -Vs- Yes Bank**

- 1 **Brief Facts**
 - a The Petitioner i.e. Anant Raj Limited had availed bank facility to the tune of Rs.815 crores from the Respondent i.e. Yes Bank in year 2010-2015, which was paid in full.
 - b In the period, 2016 to 2018, the respondent further extended loan facilities through various sanction letters.
 - c The Petitioner had taken loan of Rs. 1570 crores out of which 1056 crores were paid in full.
 - d The Petitioner could not pay the installment due from 01.01.2020, which is the subject matter of the present petition.

- e As per the Respondent, since the installment that was due on 01.01.2020 was not paid within 30 days, the account of the petitioner was classified as SMA-1.
- f Thereafter since it was not paid within 60 days, the account was classified as SMA-2 and thereafter it became an NPA.
- g The Petitioner approached the Delhi High Court that in view of the pandemic COVID-19, his account could not be classified as an NPA.
- h The Petitioner has relied on the Statement by RBI wherein the object of the said policy issued by the RBI stated is to inter-alia ease the financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital and further improving the functioning of markets in view of the high volatility experienced with the onset and spread of the pandemic.

2 **Decision of the Court**

- a The Hon'ble Court held on the perusal of Statement of RBI dated 27.03.2020 along with Regulatory Package issued on March 27, 2020 prima facie shows that the intention of the RBI is to maintain status quo as on 01.03.2020 with regard to the all the installments payment for which had to be made post 01.03.2020 till 31.05.2020.
- b The Hon'ble Court observed that if the Regulatory Package is applicable only to Standard Asset accounts, there was no necessity for the RBI to refer to Classification of an account as NPA in its Regulatory Package and RBI could have only referred to the change of classification as a SMA.
- c The restriction on change in classification as mentioned in the Regulatory Package shows that RBI has stipulated that the account which has been classified as SMA-2 cannot further be classified as a non-performing asset in case the installment is not paid during the moratorium period i.e. between 01.03.2020 and 31.05.2020 and status quo qua the classification as SMA-2 shall have to be maintained.
- d The Hon'ble Court also clarified that interest and penal charges will continue to accrue and that the loan classification will change to NPA if the borrower fails to clear the dues after the moratorium period as allowed by RBI.

E **Conclusion**

- 1 The COVID-19 Regulatory Package by RBI was applicable to NPAs.
- 2 The Court will allow status quo as to classification of loan accounts for a period of three months.
- 3 The order of moratorium is granted only to ease the financial stress on the borrower.