

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 7<sup>th</sup> OF MAY, 2022**

**WRIT PETITION No. 27693 of 2021**

**Between:-**

**PRAMOD KUMAR SETHI**

**1.**

**SMT.RITU SETHI**

**2.**

**ROHAN SETHI**

**3.**

**RAGHAV SETHI**

**4.**

**.....PETITIONERS**

***(BY SHRI AKSHAT AGRAWAL, ADVOCATE)***

**AND**

**1. BANK OF BARODA, A. B. ROAD BRANCH, 13,  
OLD PALASIA, A.B. ROAD, INDORE (M.P.)  
THROUGH ITS ASSISTANT GENERAL  
MANAGER.**

**2. BANK OF BARODA, BARODA CORPORATE  
CENTRE C-26, G-BLOCK BANDRA KURLA  
COMPLEX BANDRA (E) MUMBAI  
(MAHARASHTRA) 400 051**

**RESERVE BANK OF INDIA DEPARTMENT OF  
BANKING OPERATION DEVELOPMENT  
3. CENTRAL OFFICE, 11TH FLOOR, CENTRAL  
OFFICE BUILDING, SHAHID BHAGAT SINGH  
ROAD (MAHARASHTRA) 400 001**

**.....RESPONDENTS**

***(BY SHRI ABHINAV DHANODKAR, ADVOCATE)***

*This petition coming on for order this day, the court passed the following:*

**ORDER**

Heard on the question of admission as well as interim relief.

The petitioners have filed this present petition being aggrieved by the denial of the benefit of restructuring of the loan account of the petitioners in terms of statutory guidelines/circulars issued by RBI being RBI Resolution Framework 2.0 issued on 05.05.2021. According to the petitioners after the issuance of the policy dated 05.05.2021, the Bank of Baroda (in short-‘BOB’) has framed its own policy by changing the eligibility criteria which disentitle the petitioners to avail the benefit of the RBI circular dated 05.05.2021, hence, petitioners before this Court.

The facts, giving rise to the present petition are as follows:

[2] The petitioners made a request vide application dated 31.12.2016 to the BOB for availing the house loan limit of Rs. 1,46,50,000/-. Vide letter dated 14.03.2017 BOB has granted the facility of the term loan under the “Baroda Home Loan”. By doing so the BOB has taken over the housing loan from ICICI Bank already granted to the petitioners. Vide letter dated 14.03.2017 the Bank of Baroda has sanctioned the credit limit under the following terms and conditions apart from other conditions:

**TERMS AND CONDITIONS**

PURPOSE OF LOAN	Takeover of Housing loan from ICICI Bank
FACILITY	Term Loan under Baroda Home Loan
TOTAL COST	Rs.6,50,00,000.00
LIMIT	Rs.1,46,50,000.00
MARGIN	77.46%
RATE OF INTEREST	Under Floating option, 0.00 % above 1 year MCLR + Strategic Premium per annum with monthly rests i.e. applicable rate is 8.35 % (at present), being 1 year MCLR is 8.35 % and Strategic Premium is 0%
TOTAL PERIOD	300 months
REPAYMENT	Repayable in 300 Monthly Installments
EMI	Rs.1,16,489.00
COMMENCING FROM	EMI to Start Next Month after Disbursement
DOCUMENTATION CHARGES	Rs.0.00
PROCESSING CHARGES	Rs.8,625.00
PROCESSING FEE (MISC. CHARGES)	Rs.5000+ SERVICE TAX
LOCATION (In case of Housing Loans)	House at Plot No.1, Gulmohar Extension Colony  Part of Survey No. 1310, 131,312, 1312 & 1316 Kahjrana Indore MP 452001
NAME OF GUARANTOR	NOT APPLICABLE
DISBURSEMENT	Disbursement will be made after obtaining latest foreclosure letter from ICICI Bank, as per the terms & conditions stipulated in circular No. BCC: BR:08/430 dated 01:10:2016 issued b our bank's Retail banking department.
SECURITIES:	

<u>PRIMARY</u> Equitable mortgage of House/Flat bearing Survey No. located at House at Plot No.1, Gulmohar Extension Colony, Part of Surveyy No.130, 1311, 1312, 1315 & 316, Kharana, Indore, M.P. 452001, belonging to Mr. Pramod Kumar S/o Mr. Dashran Lal Sethi & Mr. Rohan S/o Mr. Pramod Kumar Sethi (Owners)	
COLLATERAL:	
NOT APPLICABLE	
SECURIT DOCUMENTS	

- 1). Term loan agreement (Idoc23\_a)
- 2). Memorandum of Entry ( in case of Mortgage of Individuals property (Idoc 90 A)
- 3). Attestation Memo (Idoc1)
- 4). Letter of Installment wit Acceleration Clause (Idoc57).

[3] Vide letter dated 14.03.2017, the credit facility was enhanced up to Rs.2,51,50,000/- out of a total cost of Rs.4,28,00,000/-. The petitioners had jointly purchased a house at Plot No.1, Gulmohar Extension colony, Khajrana, Indore, Madhya Pradesh and mortgaged with ICICI Bank,thereafter, the BOB took over the charge of the same property as secured assets while granting the house loan. According to the petitioners, the loan account was properly maintained by them but due to Covid-19 Pandemic, their business got affected, hence, there was some delay in depositing the EMI to the BOB. The BOB has declared the account of the petitioners' Non-performing Assets (NPA) on 29.05.2021 during lockdown 2.0.

[4] The Reserve Bank of India (RBI) being a statutory authority exercises the supervisory power in the matter of the functioning of the Scheduled Banks under the Reserve Bank of India, 1934. In order to give some relaxation during Covid-19 phase-1 to the individual borrower and small business in repayment of the loan the

RBI has announced "Resolution Framework-1.0". During the second phase of Covid-19, the RBI has again come up with another circular No. RBI/2021-22/31 DOR.STR.REC.11/21.04.048/2021-22 dated 05.05.2021 introduced/ announced "Resolution Framework-2.0". Para 5 of the said circular provides the eligibility criteria to avail of the said benefit. The proviso to para 5 is relevant for consideration in this case which is as follows:

***" Provided further that the credit facilities/ investment exposure to the borrower was classified as standard by the lending institution as on March, 31,2021.***

[5] The BOB which is nationalized bank working under the supervision of the RBI has formulated its Policy for the implementation of Resolution Framework 2.0. Clause 1. deals with the edibility criteria but subclause (b) of which is coming in the way of the petitioners , which read as under:

***b. The accounts should be standard as on 31.03.2021 and as on the date of invocation.***

[6] The petitioners are aggrieved by this additional condition i.e. ***"and as on the date of invocation"*** imposed by the BOB and according to them it runs contrary to the proviso 3 of para 5 of "Resolution Framework-2.0" issued by the RBI. The petitioners vide mail dated 29.05.2021 have expressed their inability to pay the regular EMI's due to Covid-19 and sought restructuring of the loan account under The Policy for implementation of "Resolution Framework-2.0" before the BOB . The petitioners have submitted an aforesaid request in the prescribed format on 31.05.2021 to avail of the relief under the above policy . Since the aforesaid request was not responded to by the BOB, the petitioners made a complaint

to the Banking Ombudsman bearing complaint No. 202122004011960 dated 29.09.2021. During the pendency of the above complaint, the petitioners have been served demand notice under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement Interest Act ( hereinafter referred to as " SARFAESI Act") based on the declaration of NPA on 29.05.2021.

[7] In response to the complaint before the Ombudsman complaint, the BOB has replied that the Bank received the application from the petitioners for account restructure under “Resolution Framework-2.0” duly signed on 31.05.2021 but their account had already got slipped to the NPA account on 29.05.2021 due to which the bank is unable to restructure the account due to regur of the condition1(b) of the Policy for implementation of “Resolution Framework-2.0” framed by the BOB, i.e. “the account should be standard on the date of an invocation”. The petitioners have submitted a reply/objection to the aforesaid letter by stating that they are eligible to apply for restructuring of the account in terms of Resolution Framework 2.0 dated 05.05.2021 issued by RBI. On the basis of the response by the BOB, the banking ombudsman has closed the complaint and informed the petitioners vide mail dated 02.11.2021. The petitioners submitted a representation to the RBI before approaching this Court by way of the writ petition.

***Case of the petitioners***

[8] By way of this writ petition, the petitioners are seeking the following relief:

[i] By issuance of appropriate writ quashing the policy

framed for implantation of the RBI Resolution Framework 2.0 dated 05.05.2021 framed by BOB (Annexure P/3) more specifically the eligibility criteria as laid down in Clause B. of Section A(1) of the policy whereby the criteria has fixed that the accounts should be Standard as on the date of invocation:

[ii] By issuance of appropriate writ in the nature of quo warranto directing the respondent BOB to show the authority to frame the policy for implantation of the RBI Resolution Framework 2.0 (Annexure P/3) against the RBI Resolution Framework 2.0 dated 05.05.2021 (Annexure P/2).

[iii] By issuing direction to the respondent BOB to decide the application for restructuring submitted by petitioners on 31.05.2021 (Annexure P/5) by petitioners de novo strictly in accordance with the RBI Resolution Framework 2.0 dated 05.05.2021; and

[iv] To allow the cost of this petition with any other appropriate relief (s) may kindly be granted to the petitioners; and,

[v] To pass any other or further order(s) deemed fit and necessary in the facts and circumstances of the matter.

Vide order dated 15.12.2021, Shri A.P.Dhanodkar was directed to obtain instructions from the Bank of India.

***Reply by the BOB***

[9]. As per the reply to the writ petition, the BOB through its circular No.BCC: BR:113:285 dated 29.05.2021 came up with “the Policy for implementation of Resolution Framework 2.0’ as empowered by RBI under the master circular issued for Resolution Framework 2.0 to set the eligibility criteria as per their convenience. Para 7 of the aforesaid circular dated 05.05.2021 authorizes the lending institution to frame board approved policy pertaining to the implementation of viable resolution plans for eligible borrowers, which shall, *inter alia*, detail the eligibility of borrowers in respect of whom the lending institutions shall be willing to consider the resolution. Under the aforesaid leverage, the Bank of Baroda has framed its policy which cannot be termed as arbitrary action of the BOB framing of policy contrary to the

Resolution Framework 2.0. Since the petitioners' account had been declared NPA on 29.05.2021, and the duly signed application was registered with the BOB on 31.05.2021, therefore, as per the impugned policy, the account of the petitioners was no more standard, hence, the benefit has been declined.

[10]. It is further submitted in the reply that the Supreme Court of India in the case of *Bijnor Urban Cooperative Bank Limited Vs. Meenal Agrawal & Ors. reported in 2021 SCC Online SC 1255* has held that the High Court in the exercise of powers under Article 226 of the Constitution of India cannot direct to financial institution/bank to positively grant the benefit of OTS to the borrower because the grant of benefit under the OTS is always subjected to the eligibility criteria mentioned under the OTS scheme and the guidelines issued from time to time. It is further submitted by the BOB that petitioner Nos. 1,3 and 4 are absconding in a criminal case registered at Crime No.542/2021 in respect of the offences punishable under Section 420, 409, 506/34 of I.P.C. The SHO Police Station- Tukoganj, Indore has requested Bank to close the housing loan account because the reward of Rs.10,000/- has been declared against them. The bank has replied that being a house loan account it cannot be close without recovering the loan amount, therefore, the petitioners being the chronic defaulters cannot invoke the discretionary remedy of this Court under Section 226 of the Constitution of India.

[11] The petitioners have filed the rejoinder by submitting that, vide mail dated 01.01.2022 the BOB has assured them that if they deposit the remaining amount of Rs. 13.5 lakhs, the bank shall not proceed for sort of newspaper publication or any other action



under SARFAESI Act. The petitioners have deposited Rs. 39 lakhs under the protest in the loan accounts which is 100% of the overdue amount as informed vide mail dated 01.01.2022, therefore, the petitioners are entitled to interim relief in this writ petition. By way of rejoinder, the petitioners have further submitted that the BOB has wrongly curtailed the eligibility of the borrowers otherwise eligible under the Resolution Framework 2.0 issued by the RBI as of 31.03.2021, and the home loan account of the petitioners was the standard account but immediately after framing the scheme the same has wrongly been declared NPA in order to deny the benefit of Resolution Framework 2.0. It is further submitted that the classification of the account of the petitioners' NPA on 29.05.2021 itself is contrary to the master circular- Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2015.

We have heard the learned counsel for the parties and perused the record.

[12] The Reserve Bank of India has issued "Resolution Framework 2.0, Resolution of Covid-19" for related stress of individuals and Small Businesses during the second phase of Covid lockdown. As per clause 4 of Resolution 2.0 the Lending Institutions have been permitted to offer a limited window to individual borrowers and small businesses to implement resolution plans in respect of their credit exposures while classifying the same as Standard upon implementation of the resolution plan subject to the condition specified hereafter. Clause 5 provides the eligibility criteria for the borrowers. According to the petitioners, the third proviso of cl. 5, the credit facilities/ investment exposure to the

borrower shall be eligible who is classified as Standard by the lending institution as of March 31, 2021 and under which the petitioners were eligible to apply for restructuring of the loan, however, para 7 says that the lending institutions shall frame Board approved policies at the earliest but not later than four weeks from the date of circular, about the implementation of viable resolution plans for eligible borrowers under this “Resolution Framework-2.0” ensuring that the resolution under this facility is provided only to the borrowers having stress on account of Covid-19. The Board approved policy, *inter alia*, shall detail the eligibility of borrowers in respect of whom the lending institution shall be willing to consider the resolution, and shall lay down the due diligence consideration. Clauses 4, 5 and 7 are reproduced below:

"4. Lending institutions are permitted to offer a limited window to individual borrowers and small businesses to implement resolution plans in respect of their credit exposures while classifying the same as Standard upon implementation of the resolution plan subject to the conditions specified hereinafter.

5. The following borrowers shall be eligible for the window of resolution to be invoked by the lending institutions:

a. Individual who have availed of personal loans (as defined in the circular DBR No. BP. BC 99/08, 12.100/2017-18 dated January 4, 2018 on “XBRL”. Returns-Harmonization of Banking Statistics), excluding the credit facilities provided by lending institution to their own personal/staff.

b. Individuals who have availed of loans and advances for business purposes and to whom the lending institutions have aggregate exposure of not more than Rs.25 crore as on March 31,2021.

c. Small businesses, including those engaged in retail and wholesale trade, other than those classified as micro, small and medium enterprises as on March 31, 2021 and to whole the lending institutions have aggregate exposure of not more than Rs. 25 crore as on March, 31, 2021.

Provided that the borrower accounts/credit facilities shall not belong to the categories listed in sub-clauses (a) to (e) of the Clause 2 of the Annex to the Resolution Framework 1.0 read with the response to SI. No. 2 of FAQs on Resolution Framework for Covid-19 related stress (Revised on December 12, 2020).

Provided further that the borrower accounts should not have availed of any resolution in terms of the Resolution Framework-1.0 subject to the special exemption mentioned at Clause 22 below.

Provided further that the credit facilities/investment exposure to the borrower was classified as Standard by the lending institution as on March 31, 2021.

7. The lending institution shall frame Board approved policies at the earliest (but not later than four weeks from the date of this Circular), pertaining to implantation of viable resolution plans for eligible borrowers under this framework, ensuring that the resolution under this facility is provided only to the borrowers having stress on account of Covid-19. The Board approved policy shall, inter alia, detail the eligibility of borrowers in respect of whom the lending institution shall be willing to consider the resolution, and shall lay down the due diligence considerations to be followed by the lending institution to establish the necessity of implementing a resolution plan in respect of the concerned borrower as well as the system for redressing the grievance of borrowers who request for resolution under the window and/or are undergoing resolution under this window. The Board approved policy shall be sufficiently publicised and should be available on the website of the lending institutions in an easily accessible manner.

**[13]** The last date of invocation of the Resolution Framework 2.0 was September 30, 2021. As Para 16, if a resolution plan, is implemented in adherence to the provision of this circular, the asset classification of borrowers' accounts classified as Standard may be retained as such upon implementation, whereas the borrowers' accounts which may have slipped into NPA between invocation and implantation may be upgraded as standard, as on the date of

implementation of the resolution plan. Para 16 is reproduced below:-

"16. If a resolution plan is implemented in adherence to the provisions of this circular, the asset classification of borrowers' accounts classified as Standard may be retained as such upon implementation, whereas the borrowers' accounts which may have slipped into NPA between invocation and implementation may be upgraded as Standard, as on the date of implementation of the resolution plan."

As held by the Apex court in the case of *ICICI Bank Limited (supra)*, *Sardar Associates (supra)* and *Central Bank of India (supra)*, the Bank of Baroda is bound to frame the policy and get it approved by its Board. Accordingly, the Bank of Baroda came up with a Policy for implementation of Resolution Framework 2.0 prescribing the eligibility criteria, sanctioning authority, process fee, timelines, identification of stress due to Covid-19, resolution plan for stress borrower etc. As per clause 1 (b) of the Policy of Bank of Baroda the accounts should be standard as on 31.03.2021 and **as on the date of invocation**. According to the petitioners, this additional condition runs contrary to the third proviso of para 5 of Resolution Framework 2.0 of RBI. As per the third proviso, the borrower should be classified as standard as of 31, March 2021 and Bank of Baroda in its policy is following that extent . So far the additional condition *i.e. account should be standard as on date of invocation* is concerned, the same is also in conformity aforesaid para 16 of the RBI's Resolution Framework 2.0. According to which as on the date of the implementation of the resolution plan, the asset classification of the borrower's account should be classified as **Standard** and whereas the borrower accounts have slipped into

NPA after the invocation and its the implementation it may be upgraded as **Standard**. Therefore, at the time of invocation, the account should be Standard and if after the invocation, it has slipped into NPA and before implementation it can be upgraded as standard, therefore, the BOB has rightly put a condition that the borrower's account should be standard as on 31.03.2021 and also as on date of invocation. Petitioners' account had been declared NPA on 29.05.2021. Petitioners have submitted an application duly signed by all the petitioners on 31.03.2021, therefore, as the date of invocation their account was not standard, hence, the BOB has rightly declined to consider the same. The Apex Court in case of recent judgment passed in case of *Small Industries Development Bank of India Vs. Sibco Investment Private Limited (2022) 3 SCC 56* has held that it is not necessary for RBI to mention a specific provision before issuing directions, for it to have statutory consequences, all that is required is the authority under the law, to issue such direction. Since the BOB has already initiated proceedings under SARFAESI Act and the contention of the petitioners that NPA has wrongly been classified in violation of the master circular of RBI, this issue is not required to be examined in this writ petition for which petitioners are having remedy to approach Debt Recovery Tribunal.

In view of the above, the writ petition is hereby dismissed.

( VIVEK RUSIA )  
JUDGE