

Supreme Court Judgment- Interest Waiver during Moratorium

This is to summarise in simple words, the Supreme Court judgment dated 23.3.2021 in the Writ Petitions before it seeking interest waiver during the Covid moratorium and various other reliefs¹.

1. Supreme Court Judgment dated 23.3.2021, says in short:

- (A) Compound interest/ Interest on Interest/ Penal Interest charged for the moratorium period (1.3.2020 to 31.8.2020) in any borrower account to be refunded or adjusted towards future repayment(s).
- (B) No other relief granted.
- (C) Interim Order dated 3.9.2020 by which declaring an account as NPA was barred is now vacated.

2. Implications of Supreme Court Judgment dated 23.3.2021:

Implication of (A): Banks/ NBFCs/ HFCs which have charged any interest other than normal interest for the period 1.3.2020 to 31.8.2020 in any borrower account have to refund to the borrower such interest other than the normal interest or adjust it towards the borrower's repayment(s) in future. This is regardless of whether the moratorium was requested for or not by the borrower/ granted or not to the borrower.

Implication of (B): No implication to Banks/ NBFCs/ HFCs, since no other relief is granted.

Implication of (C): Banks/ NBFCs/ HFCs may now declare an account as NPA in terms of RBI guidelines and report it accordingly to credit rating agencies.

3. Harmonious reading of Supreme Court Judgment dated 23.3.2021 with Supreme Court's prior order:

Supreme Court judgment dated 23.3.2021 could be purposefully read as continuation and extension of the Supreme Court's earlier order dated 19.11.2020 (passed keeping in view of the Ex- Gratia Scheme dated 23.10.2020 of the Government of India²) by which the precursor case³ was disposed of.

The said Ex- gratia scheme had granted relief by way of refund of compound interest for the moratorium period (1.3.2020 to 31.8.2020) only to some category of loan accounts with limit and outstanding up to Rs. 2 crores and the Supreme Court judgment dated 23.3.2021 has considered such classification as discriminatory and extended the relief to all the borrower accounts regardless of category/ limit/ outstanding/ whether moratorium applied for or not/ whether moratorium was granted or not.

The reading as above would bring out the consistency in the relief granted under the said Ex- gratia scheme and the Supreme Court judgment dated 23.3.2021.

4. Observations:

-Supreme Court's judgment dated 23.3.2021 is on the premise that the RBI Circular dated 23.5.2020 on Covid Relief was directory in nature and applicable to all borrowers.

-Supreme Court's interim order dated 3.9.2020 which barred declaration of accounts as NPA was meant in spirit a temporary bar on loan recovery to save further hardship to general public already facing difficulties in the wake of Covid pandemic⁴.

-Supreme Court judgments/ orders do not deal with provisioning, which is the domain of RBI under prudential norms and hence answers to all issues relating to identification/ classification of NPA and provisioning are not be sought from the Supreme Court Judgments/ orders and the same are better answered by RBI.

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¹ Writ Petition (Civil) No. 476 of 2020- Small Scale Industrial Manufactures Association (Registered) Vs Union of India and others (and other Writ Petitions).

² Government of India, Ministry of Finance, Department of Financial Services, F. No. 2/12/2020-BOA.1, dated 23.10.2020- Scheme for grant of *ex-gratia* payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020).

³ Precursor Case: Writ Petition (Civil) No. 825 of 2020- Gajendra Sharma Vs Union of India and another (and other Writ Petitions).

⁴ A notion prevails that recovery of dues cannot be made without first classifying an account as NPA. This is not generally true. Recovery of dues via Civil Courts/ DRT/ Arbitration/ Insolvency Court (NCLT) can be initiated immediately on default and does not require an account to be classified as NPA as prior requirement for such recovery. Only the recovery under SARFAESI Act requires prior classification of account as NPA.