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1. That the above matter is pending before this Honorable court.
2. That the Petitioner is filing this Application for permission to file written Notes in the Writ petition civil PIL No. 945/2020 which has been filed by the petitioner under Article 32 of the Constitution of India praying for the order by this Hon'ble Court for issuing the writ of mandamus for seeking issuance of specific Directions for the Extension of the moratorium period for at least three months from 31<sup>st</sup> August, 2020 to 31<sup>st</sup> December, 2020 [ Last Moratorium Extension Circular RBI/2019-2020/244 DOR. No. BP.BC. 71/21.04.048/2019-2020] till the time court reopens with the direction to all the banks to kindly adhere to the same so as to bring a relief for the public interest at large wherein a lot of legal professionals and also other sectors like transport, Tourist Industry are helpless in this situation.
3. That the Applicant/petitioner for the sake of brevity has avoided to repeat the averments made in the accompanying writ petition Civil PIL No. 945/2020 as the petitioner has comprehensively and substantially substantiated the material facts and relied upon the averments made

herein and the averments made therein may kindly be read as part and parcel of this application.

4. That the present PIL was filed with the following prayers:-

*“i. Issue writ of mandamus/directions to the Respondents to Extend the Moratorium period till 31<sup>st</sup> December 2020 [ Last Moratorium Extension Circular RBI/2019-2020/244 DOR. No. BP.BC. 71/21.04.048/2019-2020 dated 23.5.2020] till the time court reopens with the direction to all the banks to kindly adhere to the same for the Lawyers/Service Sector, Transport and Tourist Industry including Drivers, tourist guides and other covered under these sector and Defer the EMI payment on Term loans;*

*ii. Direct the respondents to ensure that the lending Institutions Shall not use any kind of illegal, Violent, threatning and harassing methods against borrowers for the recovery loan Installments; And further Direct that in case such Acts are committed by the lending Institutions than Strict Action shall be taken against them in Accordance with law.*

***Pass such other appropriate relief which this Hon’ble Court may deemed fit in the facts and circumstances of the case.”***

### **Facts in Brief**

5. The facts in brief of the present pII are that- The emergence of COVID 19 pandemic in India has brought a drastic financial difficulty along with the health disaster that is going on in this country. Various people have lost jobs during this situation of biological emergency and various professionals and independent litigators have gone through real financial hardship. Due to the lockdown scenario in the country because of the pandemic, it has become a real struggling issue to pay off the monthly loan instalments as there is no constant and secured income of the legal professionals and independent litigators due to the closure of the physical hearing in various Courts of the country including the Supreme Court of India. The Reserve Bank of India Notice RBI/2019-2020/186 DOR. No. BP.BC. 47/21.04.048/2019-20 dated 27<sup>th</sup> March, 2020 was brought in to grant the relief of suspension of monthly loan instalment and the Notice RBI/2019-2020/244 DOR. No. BP.BC. 71/21.04.048/2019-2020 dated 23<sup>rd</sup> May, 2020 was again brought in to extend the relief for another 3 months that is till 31<sup>st</sup>, August, 2020. However, the closure of the court as per the lockdown notification till 31<sup>st</sup> August, 2020 without any physical hearing in various courts of the country has brought in the problem to various legal professionals which is a significant number to think upon.

Therefore, if after 31<sup>st</sup> August, 2020, the instalments are demanded by the bank, the individuals will be in a real struggle and hardship to pay such installment with no income in hand and that action would directly lead to the infringement of fundamental right of livelihood and dignity enshrined under Article 21 of the Constitution of India.

6. That in response to this writ petition and other petitions connected a consolidated affidavit has been file by the Respondents on 9<sup>th</sup> of October 2020in compliance of the order dated 5-10-2020 of this court.

7. The Affidavit filed by the respondents does not Support the prayers in this PIL. The present Affidavit has been filed without Analysis of the present pandemic Situation and financial hardship faced by the borrowers and sectors mention in the present petition.

8. The petitioner with the permission of court Submits the following written Notes in Support of his writ petition and prayers and against the Affidavit filed by the Respondents dated 9<sup>th</sup> of October 2020.

A. Today the case has become one of the most crucial case as well as hope for billions of people who has no means to pursuing their justifiable needs and forcedness. The Proceeding of this case has also exposed and thrown several questions on casual approach of the RBI / Government towards the whole matter.

Billions of people are awaiting for a relief and practical resolution from the Court, since policy announced by RBI on 6<sup>th</sup> August 2020 is not practical and feasible for Borrower to get **timely resolution** of their problems and **most important is that by the time they get Bank's decision, their account will be turned to default or NPA.**

**B. The Banks and NBFC have yet not released their guidelines for Resolution Plan applicable for all type of Borrowers, then how it can be ensuring that all Borrower will able get relief timely.**

As per the last circular of RBI moratorium period is already expired on 31/8/2020 and Bank have started raising their demands, deposing EMI's cheques, debiting account for interest and principal repayment. Only the saving grace for all Borrower is last order of SC, by which Bank are barred to classifying their account as defaulted.



Once the final order passed by the SC, Banks system will start counting the numbers of delay from 1<sup>st</sup> September 2020 and start charging all sort of penal interest, demand for EMI, Loan repayment, Interest serving and various other compliances and will marked Borrower as defaulter and then the Borrower will be at mercy of the Banks. That the pandemic is still continuing, rather cases have increasing day by day. Peoples are still under fear and stress. The income / cash-flow generation is still not stabilized for millions of the Individuals as well as businessman, people have lost their jobs. How it will be possible for them to service the loan timely at this stage of time. Cost of medical have increase in many folds. Their productive efficiency of people have been reduced due to this pandemic and if the practical approach is not been followed by the Banks / RBI, Borrowers will be spending their time only with their bankers to resolve their loans problem and not been able to constraint on their business / services.

Most of the borrower will not have reach / influence to reach to top / senior management of the Bankers and will be running after branches to overcome their problems and the same time influence people will able to get their problem resolved within their time.

Please also consider that limitation of common persons, who will not have sufficient means, knowledge, money, support, etc to afford the legal battle with Banks. They will be losing their life saving in this scenario, which is not due to any of their faults. **Hence, decision of Supreme Court is become very crucial for survival of billions of common men. If the Common man / Businessmen loses their interest and savings due to injustice of the Banks and RBI / Govt policies, this will also be loss for nations such as,**

- Bank's NPA will be increase, which will bring the economic down and more pressure on government to pump more money, losing trust on Banks
- Demotivation to several entrepreneurship, which will have negative impact on govt tax collection, economic growth, unemployment etc
- This will Increase Economic Inequality, which will Increases Poverty & Crime and will Decreases Education, Health, Demand, Consumption, etc.

**C. Our Respectful submission to Supreme Court is that there may be a balanced decision, whereby billions of Borrower's is to be saved their dignity and flexibility due to delayed in serving the loan, which is due to Act of God and not by themselves and same**

**time proper credit controlling mechanism of the Banking industry on the Borrower's cash-flow to ensure their loans' repayment, since they have also to repay their fixed depositors, who are again the common man.**

We also sincerely request Supreme Court to kindly also stress upon in their judgment to fix the accountability of officers / management of the RBI / Government for having such casual approach towards their responsibility as well as fixing their accountability for their faulty policies which is not in line with constitutional rights of the common man. It should be alarming for them for not to announce any such policies in future, which adversely affect the Rights of the common man under the Constitution of India.

RBI itself took so much time in announcing the policy frame works for resolution, they have announced their policy just 25 days before expiring of the moratorium period with so many pending points and riders, even though they were having all financial data of the Borrowers. Then how do they expect that billions of borrowers will be able to follow their uncomplete policies and generate cash for serving the loans. The Borrower should be given sufficient time to understand the policy and submit their resolution plan to Banks.

That the time should be allowed to all Borrowers to submit their resolution plan to respective Bank within 45 days from the date of their lending Banks announced their resolution policy and till the Bank dispose-off their application, their account will not be considered as defaulter. Every resolution application should be assigning a file number, through which Borrower can trace the status of their request online.

There should be time-frame for Bank to dispose-off by Borrower request and also to instruct the issue guidelines and application form for every borrower to apply for resolution, whoever wants.

The most important that SC should instruct RBI / Bank to form Grievance cell at every Lending institute, under which Borrower can filed an appeal against the decision and complaint of the Bankers. The same should be monitor online.

**D. Points of Disagreement with Affidavit**

1. The affidavit says that RBI has taken several measures to give relief to the Borrower. In this regards we would like to submit that relief which has given is more for the big borrower and NBFC and not for

the small borrowers. They have said that they have cumulative reduced of 250 basis point in the repo rate since Feb 2019, which is mainly due to slow down of the economy and not because of Covid-19. Pre-Covid-19 the Repo rate was 5.15% effective from 4<sup>th</sup> October 2019 till 20 March 2020. On 20<sup>th</sup> March 2020 RBI has reduced Repo Rate to 4.4% and thereafter on 22<sup>nd</sup> May 2020 they have reduce to 4% which is still the same. Hence, the repo rate has reduced during the **Pandemic** is only 1.15%. So it is a wrong statement that they have reduce repo rate by 2.5% due to Covid-19 relief. We do not understand, why RBI has mis guiding the court and why not they spell specific relief on account of Covid-19 outbreak.

2. Further to above, we would like stress upon that whatever reduction is done to lowering the interest rate for Borrowers by RBI are not getting pass on to the small & medium Borrower, their rate of interest are still same as applicable before the Covid-19, since Borrower interest rate get fixed as period of MCLR they choose while taking the first disbursement and reset in interest rate take place only on end of MCLR maturity period and the new rate interest will be prevailing rate at that time. **Hence it is misguiding statement that Borrower has got relief in interest rate, this can be verified by the Banks also.**

3. We would like to further state that due to slow down in overall economy even before outbreak of Covid-19, many companies external credit rating have gone down and due to which Banks / NBFC have increased their margin over Bank's benchmark rate of interest i.e. MCLR / PLR. Practically borrowers are paying more interest and no relief has been passed on to the Borrower. This can only be possible if the RBI instruct lending agency to change their policy for charging margin over and above their benchmark, which they have not issued any guidelines towards the same. **So again, they are mis-leading to the Court that they have taken necessary measures to providing relief the borrowers. Only relief was moratorium period, which also they have not extended, even though disruption on account of COVID-19 is still continues and same time not giving any sufficient time to the Borrower to submit their resolution plan.**
4. Lots of big loans gets defaulted, every year, which even did not provide the higher return to borrower but the small borrower who pay more interest as well as more security, they really do not get benefited of the lower interest rate and many of the borrower get into stress due to high interest cost.
5. Only benefited parties are always big borrower and influential borrower. If some-one analysis the data of rate of interest being

charged by the Bank on basis of loan size, a right picture can be seen. We would also like to request court to study the details of top 500 loans bank wise disbursed during the pandemic period in terms of loan size and borrower names. Data itself will show actual beneficiaries of the relief, which will be not so as RBI is claiming. This disbursement should not include the renewal of the exiting credit facilities.

6. We further state that we agree that RBI has taken various measure to overcome the economic fallout due to Covid-19 but it is half-hearted / impractical with no long term vision as well as poor in implementation of their policies. They are bringing policies, without seeing the practicality, time involvement in implementation of such polices etc. They are just passing the responsibility on lending agencies and Borrower without check and balance.

**Guidelines being discretionary and not mandatory**

7. We would like to further state that we do not understand that why RBI is now taking different stand and passing the responsibility of extending the moratorium / restructuring on the Banks. We understood their points, but then why RBI has at first stage only allowed moratorium for first six months. The situation of Pandemic is not yet

over, then why they have stopped moratorium and top of it there is no plan to overcome the situations. They should have come out with resolution plan, well before the expiry of the moratorium period, so borrowers could have filed their resolution plan to Bank to get timely relief.

8. We would like to further to state that just announcing resolution policies by RBI does not address the issue of Borrower to servicing the loans in given situation, where COVID-19 disruptions is still continuing and lock-down has not fully uplifted, local traveling is not restores, Covid-19 cases are increasing day by day, jobs of million have not been restores, many of the business are yet to re-established restrictive traveling and functioning of all business & factories are at very low capacity, as at it was running before Covid-19, etc.
9. In view of the above stand of RBI, billions of borrower loan account will categorized defaulter, which will not only due to Act of God & lock-down but also due to delay in implementation of RBI policies. **This will cause hindrance and obstetrical in “right to life” guaranteed by Article 21 of the Constitution of India,1950 in furtherance of right to life including right to livelihood which is a pre-requisite to the fundamental right guaranteed under Article 21 to people of India.**



10. Borrowers are wanting to pay their dues but due to the above situation, they are requesting Government/ RBI for some more time, hence RBI as policy maker has to provide practical, implementable solutions under which every borrower can submit their request of resolution to their respective Bank.
11. In today's date there is no such policy frame-work has been announced by the lending institution (Bank/NBFC) by which all borrower can submit their request of resolution.
12. Our urge to the court that Borrower should not be penalized for non-preparedness of the Banks and RBI, which would be against the constitutional rights of the Borrower.
13. Pending this Court should instruct RBI to extend the moratorium period till Banks are come out with detailed application form applicable for all type of Borrowers under which they have to apply of resolution and same time fixed the time frame with Bank to dispose of the request of borrower and till that time moratorium should be allowed. Hence RBI can extend the moratorium till 31.3.2021.
14. Finally we can submit that we have no problem of government policy towards of loan restructuring whether it is discretionary or

mandatory, the **Borrowers just want sufficient time to submit their resolution plan to their respective lending institution, and time-frame of Lending institution to dispose-off of their request. In case of not approving their request of resolution a reasonable time to clear the dues.**

### **Extension of Moratorium**

15. As we have explain above that On one side, while the comprehensive loan moratorium has expired, on the other hand, Banks & RBI are still under finalizing of policy implementation, internal guidelines, Bank's board approval, policy framework by the Expert Committee as suggested in RBI's notification released on 6<sup>th</sup> August 2020.
16. In this circumstance, Borrowers and Banks are confused as to what to do and how to resolve this situation, where moratorium period is expired, and the option of restructuring as suggested by RBI is still under policy framework. Taking cognizance of this, the Supreme Court has already intervened in the matter and put the stay order for Banks to declare any Borrower as defaulter.
17. In view of the above it is necessary to extend the moratorium period till 31/12/2020 and may be further. This is due to non-preparedness of

the RBI and Lending Agencies, when they know it would involve huge processing time considering the billions of loan account.

18. We would like to submit before court that they should consider that **pandemic is still not over, we have yet to face the 2<sup>nd</sup> wave of pandemic, whereas many of the country has already faced out and put all control system in places, lock-down is not fully opened up and RBI wants Borrower to start servicing their loan from 1<sup>st</sup> Sept 2020.**

19. We would like to further state that RBI has submitted that long term moratorium can impact the credit behavior of borrower and increase the risk of delinquencies post resumption of schedule payments. **It's the contradictory statement of their, in one side they say that Borrower can still avail 2 years of moratorium period under the resolution scheme as announced by them only on 6<sup>th</sup> August 2020, then why they have proposed 2 years of moratorium in their scheme, which can** impact the credit behavior of Borrower.

20. It is incredibly sad to state that RBI has no faith on their Borrowers, on which the whole country has been growing from several years. Banks and RBI has already having several check and balances through which they control the cash-flow of the Borrower. The Borrower cannot steal any money from the account, if Bankers and RBI do their job

promptly. If they do not have trust on their Borrower they should exit from the business and leave to others to run lending business freely and do not regulate its operational issues.

21. If the entrepreneur would have not borrowed money from Banks and run their business, Banks would have not purpose to be exist, plus no job creations, no tax collection etc. Recently we all have seen that due to lock-down Govt. tax collection has reach to lowest and if it would have continued, government would have no money to pay salary of their staff as well as running their maintenance cost.
22. Ultimately customers of Banker are the customer of Government of India also, who are largely contributing to building of the nation by way of taxation, employment, growth, and many more aspects and progress of the Bankers. Without proper banking support in place, it will loss of nation. **Even Mahatma Gandhiji has said that “A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him”**
23. We request Banks and RBI to please have faith and trust on your clients. Certain % of the people will always by in out of order in any segment, that does not mean everyone person is bad. “Please Respect the Customers” and believe in LIVE AND LET LIVE.

**Resolution framework**

24. RBI has announced one-time restructure facility for Borrower wide their notification on 6th August 2020, whereby Borrower is can request Bank for modification in the repayment and service of their existing loan, which is subject to the approval of all respective Bank / Lending Institutions, which carrying uncertainty on the Borrowers.
25. Hence, we request SC to instruct RBI/Govt/Lending Institution to ensure that they should have mechanical / computer-based process, under which Borrower can track their request of resolution and status of resolution plan online.
26. Further we submit before the court that there should be a grievance cell at every bank, which comprises the member of RBI, Bank and independent directors, to address the grievances of Borrower in relation to the outcome of resolution plan submitted by the Borrower.
27. This RBI's circular is with so many riders which are conditional and time consuming and do not provide any surety to Borrower for getting moratorium relief timely. Further it is fully dependent on Bank's decision.

28. The Proposed scheme of the RBI throws lots of questions on its practicalities, in timely implementation and achieving objective, i.e. giving relief to customers adversely affected by Covid-19 as well as saving Lending Institution future to remain in business by avoid unnecessary and unviable NPA, otherwise lending institutions itself will become NPA. The challenges of the proposed restructure plans could be as follows:-

i. Considering the numerous loan account, which running into billions, Whether Lenders will be able to assess each & every cases on merit and take appropriate decision timely by 31st December 2020. The Court should ask RBI to revel the number of loan account which have already opted for moratorium period, which will show the correct picture of the current situations.

ii. The Policy announce is too late considering the moratorium period expired on 31/8/2020. There is no time left for the borrower to do something and come out from such massy situations.

iii. The said RBI policies for restructuring is available till December 31, 2020, under which every Borrower will required to submit the resolution application and Bank Officers will require to assess the same and submit for their internal approval and thereafter they needs to execute the loan & security documents. Will it be practically

possible to achieve the targets considering the facts that Hardly 60 working days will be available to complete such mammoth task considering the billions of accounts involving loans amount from Rs. 10,000 to Rs. 10,000 Crores.

iv. We would like to bring under attention of the Court that all the personal loans were sanction by the Lenders was based on customer's historical financial data (Last three-year Income Tax Return), which does not impose any subjectivity on processing officer to approve the Loan. However, in proposed RBI Policy, every Borrower need to submit their projected cash-flow which will require to be assess/endorse/validate by Lenders' officer for approving resolution plan. Will this not lead to lots of dis-agreement between Lenders and Borrower?

V. The said RBI restructure policies is made keeping in mind of large Borrowers and not small Borrowers, who do not have higher educational background, separate finance departments or the required expertise etc. to fulfill the detailed requirements that Banks may need to form up per the RBI policy.

VI. This exercise will also involve accountability of the assessing officer if the loan become bad in future, this fear of assessing officer

will slow down all the process and will be obstacle for aching the objective for which the policy has been drawn. This itself will throw hundreds on question on successfully implementation of the scheme and caring of genuine customers.

VII. We further submit before the court that weather all Borrower will able to prepare their resolution plan, which will includes projection of future cash-flow & viability assessment of their business considering the continuing COVID-19 disruptions, business instability situation, losses of jobs by millions people, restrictive traveling and business operations, functioning of all business & factories at it was running before Covid-19, etc.

VIII. In the above uncertainty situation of pandemic, how it will be feasible the every Borrower to prepare and provide projections as well as Bank can assess the same at this point of time, may be it will be possible by end of December 2020, where we are already in October 2002 and banks are yet to announced their frame-work, resolution application form, and guidelines towards the resolutions.

IX. We would like to submit the court that is not an amateur approach of RBI, which will lead to various litigation, intermediaries between Borrower and Lenders and finally leads to un-productivity work from both the sides. Another big question is that whether small borrower



(where the loan amount is in range of 10,000 to 10 lakhs) will be capable to prepare required resolution plans as it would be requiring by the Lenders?

X. We further state that the scheme made by RBI is totally unviable for the Banks / Lending Institution to restructure loans of Borrower, since Banks / NBFC/Lending Institutions needs to provide 10% provision for the amount restructured. Thus, these lending institutions will re-structure only selective loans since there would have no incentive to support all the struggling companies which could potentially revive the economy. Due to this provisioning requirement Banks are asking for restructuring fee, which will be hardship for borrower in stress full period.

XI. Selective restructuring would likely support stronger companies (typically large enterprises) which can revive quicker whereas may leave out MSMEs and SMEs which are actually in desperate need of Government support. This will also against the constitutional rights of the Borrower, since their request is due to act of god & lock-down only.

XII. Further the 10% provisioning will impair Banks profitability and financials strength to lend subsequently. Some of the points are highlighted below which will explain why the policy issued by RBI is

not practical and providing viable solution as required in current situations.

**XIII. Instead of 10% provision, RBI should have instructed for creating special reserve, out of their profit or other reserve & surplus, which can be utilized for meeting uncertainty of Covid-19 based resolution. This would have no adverse impacted on the profitability of the Lending Institution. Moreover, this exercise is being carried out due to unavoidable circumstance on which no one has controlled, and not the regular default of the Borrowers.**

### **Eligibility Conditions**

29. We would like to state that the original moratorium policy was allowed for all account, which are standard assets (Non NPA A/c) irrespective of their overdue period as in 1/3/2020, whereas the new proposed policy is applicable only for the Borrower for all Loans but not in default for more than 30 days. Hence defaulter between 31 days to 90 days will be out from the purview of the extended moratorium relief. This will lead to more NPAs.
30. We do not understand that why RBI is having so petty thinking and what it would have difference, if the same applicability norms would

have been kept. The borrowers want to resolve, let them allowed to resolve all their issues.

31. Moreover, delay of 90 days to announced as NPA is also not legal, it's RBI's prerogative and not covered under any constitutional law. A man can sick for more than 90 days, that does not mean that their family members will discard them. It is temporary phenomena, which can be cured. Recently Central Government has not paid GST dues of state for several month then central government should also be classified at NPA. There are millions of instances, where government departments has no paid bills for more than 90 days, that does not mean the department is become NPA. The intention and acts of the Borrower should count while declaring defaulter and not merely numbers of day. Under this pandemic many of the people / organization have not able to fulfill their commitment, that does not mean that they are defaulter. Business does not run on numbers they run on relationship. We request RBI to consider the same.

32. If we only consider delayed in numbers of days and not the intention of the Borrowers then only legal battel will increase and ultimately bankers will be losing, which they have lost billions of rupee in past and still going on. **For god sake change the thinking / policies of making people defaulter only on numbers of days.**

**Observation on Kamat Committee Report**

33. That The RBI issued a above circular on September 7, 2020 for the financial parameters, which was recommended by Expert Committee with Shri K. V. Kamath as the Chairperson and have been broadly accepted by the Reserve Bank. Accordingly, all lending institutions shall mandatorily consider the Financial Parameters / key ratios as per this circular while finalizing the resolution plans in respect of eligible borrowers.
34. It is submitted before the court that It is not only surprise but also felt petty that after waiting so much, they suggested certain ratios which lending institutions are already in uses for last several years then also they are writing off billions of rupees year after year. They have just modified certain parameters of these ratios, which will not provide any relief to borrowers as well as can be implemented practically.
35. The Committee has just made certain changes, which are total illogical and unthoughtful. These ratios ate good for theory but will have no meaningful contribution in resolving the financial problems being

faced by the Borrowers due to pandemic of Covid-19, rather it will create hurdle in arriving resolution for business people.

36. As everyone one knows that due to ongoing unprecedented pandemic situation in decades has put many of the businesses into varying levels of stress on account of reduced cash inflow vis-a-vis cash outflow obligations, including serving of Bank Loans, routine fixed expenses, less output, high input cost, piling of inventories etc. In addition to this several the projects are delayed due to lock-down.

37. Every case will be unique and cannot be fit to any fixed parameters. Restructuring will be requiring for two aspect of business; one is already running and other one is under implementation of projects. But nothing has been discussed in this regard in the said circular.

38.

<b>Restructuring Required For</b>	
<b>Running Business</b>	<b>Under Implementation - New Projects</b>

39. We state that as per the financial parameters as suggested by the committee throws various questions and not addressed properly such as,

- they have said that DSCR should be 1 or more than 1 and Average DSCR should be 1.2 or more than 1.2. If the DSCR is 1, which means that borrower has capacity to service the debt, **then why some will need the restructuring. There is not clarity is the circular that this ratio will be calculated for which year to eligible the resolution plan.**
- Now one question arises that FY 2020-21 will be totally a non-performing year for many of the industry, they will be in operational losses, then how the DSCR can be 1 for FY 2020-21. In these cases, will the resolution plan will not be available. DSCR for every year is practical for new projects estimation. Restructuring will be done to support Borrower to come out from the stress situation and re-established to serve the debt and nation by contribution towards the taxation. They should have suggested only for Average DSR for the period of Loan, which is more practical.
- Likewise, many parameters are there, which they have practically have not thought about. That's why it good in theory but no in practical.
- We analysis some of the points for your knowledge, which shows how they are casual about the whole things and will not help any borrowers. It is for saving some borrowers only and not for the everyone.

Key Ratio	Definition	Points of View
<p>Total Outside Liabilities / Adjusted Tangible Net Worth (TOL/ATNW)</p>	<p>Addition of long-term debt, short term debt, current liabilities, and provisions along with deferred tax liability divided by tangible net worth net of the investments and loans in the group <b><u>and outside entities.</u></b></p>	<p>Reducing Investments from ATNW in group companies and <b>outside entity</b>, is fine if it is from Promoters' fund.</p> <p>If these Investments is out of the loan liability, then it will have double negative impact on Ratio. One side it increases the Total Outside Liability and other side it reduces the ATNW.</p> <p>This is not a prudent business policy and will bring abnormalities in the ratio. It's need to revised the definition to overcome</p>

Key Ratio	Definition	Points of View
		these situations.
Total Debt / EBITDA	Addition of short term and long-term debt divided by addition of profit before tax, interest and finance charges along with depreciation and amortization.	<p>They have not clarified that which type of debt to be included in this ratio. The debt can also be as secured and unsecured debt, debt can be from the Borrowers, Promoters, Group Companies, Friends and Associates, etc.</p> <p>In my view Debt should include the debt from all Bank, NFBC and financial Institution only, irrespective of secured or unsecured.</p>
Current Ratio	Current assets divided by	Current Liabilities also includes the portion of



Key Ratio	Definition	Points of View
	current liabilities	<p>long-terms loans which due in next 12 months, which is mostly towards creation of new assets and does not belongs to the day-to-day business liabilities.</p> <p>Generally Current Ratio are calculated for finding the business/trade cycle of the company.</p> <p>Including current liability of long-term loan into current liability will destruct the purpose of current ratio.</p>
Debt Service Coverage Ratio (DSCR)	For the relevant year addition of net cash accruals	It is very crucial to define the cash accruals. Whether it includes the

Key Ratio	Definition	Points of View
	<p>along with interest and finance charges divided by addition of current portion of long-term debt with interest and finance charges.</p>	<p>profitable cash which is nothing but a Profit after Tax Plus Depreciation.</p> <p>Or these cash accrual means the total operational cash of the Company which includes the cash from new loans, receivables, sale of assets, etc and payment for creation of new assets, addition of new business liabilities.</p> <p><b>We surprise how this aspect is remain unexplained, which is most crucial in current period.</b></p>

Key Ratio	Definition	Points of View
		<p><b>As per their wording DSCR will be calculated for cash accrual of relevant year and loan obligation will be of next year.</b></p> <p>Since in any financials, current portion of long-term debt is shown as due for next year. Whereas DSCR is calculated for finding the capacity of the borrower cash accruals vis-à-vis debt obligation for any particular year.</p> <p>They should have mentioned instead of current portion of long-term debt, amount of loan</p>

Key Ratio	Definition	Points of View
		<p>installments, interest and finance charges due for payment in relevant year.</p> <p><b><u>It shows their casualness and unseriousness about the whole exercises. Just passing the bucket.</u></b></p> <p><b>Whole reason of restructuring is to assess the cash-flow correctly of the Company, which is badly impacted due to Covid-19.</b></p>
Average Debt Service Coverage Ratio (ADSCR)	Over the period of the loan, addition of net cash accruals along with interest and finance charges	Very poorly worded sentence. There is not clarity on what is the numerator and denominator?

Key Ratio	Definition	Points of View
	divided by addition of <u>current portion of long-term debt</u> with interest and finance charges.	

The above table clearly shows the casual approach and unseriousness of the people involved in whole exercise. At end of the day only Borrower will be suffering for delay in getting resolution and same time they have to fight for restoration of their business.

#### **E. Submissions**

- I. Eligibility for moratorium / resolution** should be the same as it was announced by the RBI in their first moratorium policy i.e. allowed for all accounts, which are standard assets (Non NPA A/c) irrespective of their overdue period as in 1/3/2020. Whereas, as per RBI's 6<sup>th</sup> August 2020 policy, they have made this applicable only for the Borrower for loans which not in default for more than 30 days. Hence defaulter between 31 days to 90 days will be out from the purview as per the RBI's new resolution policy.
- II. Moratorium for all Personal Loans**, which includes (a) consumer credit, (b) education loan, (c) loans given for creation/ enhancement of immovable assets (e.g., housing, etc.), and (d) loans given for investment in financial assets (shares, debentures, etc.), should be given a moratorium period of 2 years (as announced by the RBI only).

- Due to this moratorium, the loan period will also be simultaneously increased by two years. The amounts of unpaid interest & installments due during the 2 years of moratorium period will be recovered during the balance period of loan tenor and according future EMI / Installments will be increased. The Banks will be allowed to charge the interest, at same rate of exiting loan, on unpaid interest along with outstanding principal loan amount month to month basis. There will be no waiver in charging of interest on interest charged by the Bank for allowing the moratorium by the Bank.
  - All personal loans above Rs. 50 Crores should be **reviewed** by the Bank within 6 months to ensure the viability of servicing capability of the Borrower and make mutual agreed resolution plan for serving of the said loans. The Bank will also have right to insist on Borrower to closing all other bank accounts (saving /current) with non-lending Banks.
  - The Bank may allow Borrower to convert their Term Loan Account into Overdraft Account, This will facilitate Borrower to reduce their overall loan liability with flexibility of withdrawing the amount lying in Overdraft Account for their needs. For allowing such conversion in credit facility Bank may charge Maximum additional interest of 1% per annum, to compensate their cost of money.
  - **The above structure will benefit both the parties, for Borrower it will reduce the interest cost and for Lender it would ensure the regular cash inflow to their loan account. This will help Bank to reduce probability of future NPA.**
  - RBI / Ministry of Finance alongwith respective Bankers should develop robust monitoring system for loan portfolio to review periodically.
- III. Moratorium for all Other Loans / Funded Credit** (Business Loans, cash credit, term loan, overdraft, working capital facility, debentures, any other debt instruments) should be given a moratorium period of 2 years.

- Due to this moratorium, the Term Loan period will also be simultaneously increased by two years. The unpaid interest and installments due during the two years of moratorium period will be adjusted against the future EMI / Installments.
- In case of Cash Credit / Overdraft or any other short-term working capital facility, the unpaid interest shall be recovered in next 18 months in equal installments. The said facility will also be allowed to continue for another two years.
- The Banks will be allowed to charge the interest on unpaid interest also along with outstanding principal loan amount month to month basis. There will be no waiver of Interest on Interest charged by the Bank for allowing the moratorium by the Bank.
- Borrower having Other Loan / Funded Credit more than Rs. 25 Crores, will be Banking only with lending Bank and all other bank accounts with non-lending Banks shall be closed within 45 days to avail the benefit of the such moratorium, unless and until allowed by the Lending Bank.
- All Other Loan / Funded Credit above Rs. 50 Crores Bank should be **reviewed** by the Bank within 6-9 months to ensure the viability of loan assets, servicing capability of the Borrower and to make mutual agreed resolution plan for serving of the said loans.
- Bank should make priorities while review account considering the level of stress in any loans / Industry / Borrower specific.
- The Bank may allow Borrower to convert their Term Loan Account into Overdraft Account, with charging maximum additional interest of 1% per annum with same repayment obligation with a moratorium of 2 years in betterment of the Borrower's survival.
- Maximum Margin charged by the Bank for their credit facility shall not exceed the 5%, considering the stress faced by the Borrower and for service of their business.
- **External Credit Rating** shall be make applicable only for loans above Rs. 100 Crores, since due to uneven cash-flow as well as opt for resolution / moratorium hence rating agencies in most of the cases

they will be assigning rating below investments grade which will not be in interest of Borrower as well as Bank. This will also have negative impact on charging Interest by the Bank.

- RBI / Ministry of Finance alongwith respective Bankers should develop robust monitoring system for loan portfolio to review periodically.

#### **IV. 2<sup>nd</sup> Option - Moratorium for all Other Loans**

We request SC to allow moratorium time till the disposed of the resolution application by the Bank filed by the Borrower. All the unpaid and accrued dues till that that time shall be allowed to pay in 24 equal installments starting from 4<sup>th</sup> month of date of dispose of relation application by Bank along with other dues. The Bank will not charge any delayed payment interest but allowed to charge interest on interest from 1<sup>st</sup>, September 2020.

The Borrower shall be required to submit their resolution plan to respective Bank within 45 days from the date of their lending Banks announced their resolution policy.

#### **V. Other issues**

- No provision will be required by the Bank for allowing the said moratorium / resolution. RBI has proposed 10% of such restructured amount in their policy 6<sup>th</sup> August 2020. This proposed restructuring / resolution is not on which of the borrower or Bank, it is on account of current pandemic Covid-19, which is Act of God. The norms of the provisioning will be killed the financials of all the Banks.
- The Bank will allow to show the accrued interest levied by the Bank during the moratorium / resolution period as Income.
- The Bank should not charge for any of processing fee towards moratorium / restricting the loan. Which is again against the law



since this exercise is due to Covid-19 (Act of God) and not Borrower own wish.

- **Court to instruct RBI to form separate grievance cell – online as well as offline to hear the complaint of the customers regarding this matter.**

### **PRAYER**

In the said premises it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i. Allow this Application for permission to file Written notes;
- ii. Written notes Submitted by the petitioner may be taken on record and Honorable court may be pleased to consider the same.

**Pass such other appropriate relief which this Hon'ble Court may deemed fit in the facts and circumstances of the case.**

FOR THIS ACT OF KINDNESS THE PETITIONER/APPLICANT  
HEREIN AS IN DUTY BOUND SHALL EVER PRAY.

FILED ON – 12-10-2020

DRAWN AND FILED BY  
**(VISHAL TIWARI Advocate)**  
**Petitioner -In-person**

Vishal Tiwari (Advocate Supreme court of India)  
S/o. Mahendra Prasad Tiwari Age 37, R/o. B-2, Indira Gandhi Nagar,  
Bharatpur, Rajasthan.321001,E-mail vishalnigha@gmail.com  
At present House No.1,Nangli Razapur Near Sarai Kale Khan  
Nizamuddin East. 110013 Mobile 9887681097,

**PETITIONER IN PERSON**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) PIL NO. 945 OF 2020**

IN THE MATTER OF :

Vishal Tiwari ... Petitioner

Versus

Union of India and ors. ... Respondent

**A F F I D A V I T**

I, Vishal Tiwari (Advocate Supreme court of India) S/o. Mahendra Prasad Tiwari Age 37, R/o. B-2, Indira Gandhi Nagar, Bharatpur, Rajasthan. 321001 At present House No.1,Nangli Razapur Near Sarai Kale Khan Nizamuddin East. 110013, at present New Delhi:

1. That I am the petitioner in person of the above Petition (PIL), I am well acquainted with the facts and circumstances of the case, and as such, I am competent to swear this affidavit.
2. I have read and understood the contents of the accompanying application and I say that the contents thereof are true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION:

Verified at New Delhi on this 12 day of October 2020, that the facts stated herein are true to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

DEPONENT

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
PUBLIC INTEREST LITIGATION**

**I.A NO.....OF 2020**

**IN  
WRIT PETITION ( CIVIL ) PIL NO. 945 OF 2020**

IN THE MATTER OF :

Vishal Tiwari ... Petitioner

Versus

Union of India and ors. ... Respondent

**AN APPLICATION FOR EXEMPTION FROM FILING DULY  
AFFIRMED AFFIDAVIT**

To,  
The Hon'ble Chief Justice and his  
Companion judges of the Hon'ble  
Supreme Court of India

The humble petition of  
The above named petitioner

**MOST RESPECTFULLY SHOWETH:**

1. That the petitioner has filed this Application for permission to file written notes the Writ Civil PIL NO. 945/2020.
2. The petitioner for the sake of brevity has avoided to repeat the averments made in the accompanying Application as the petitioner has comprehensively and substantially substantiated the material facts and

relied upon the averments made herein and the averments made therein may kindly be read as part and parcel of this application.

3 That the petitioner seeks exemption from filing the duly affirmed and attested Affidavit as due to COVID19 lockdown the oath commissioner or Notary public is not Available nearby to the place of petitioner.

**PRAYER**

In the above circumstances it is therefore most respectfully prayed that this Hon'ble Court may pleased to :

- (a) Exempt the petitioner from filing duly Affirmed and Attested Affidavit;
- (b) Pass such other order or orders as this Hon'ble would deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS DUTY BOUND SHALL EVER PRAY.**

**FILED ON- 12.10.2020**

Filed by:

Vishal Tiwari  
Advocate  
Supreme Court of India  
**Petitioner-in Person**  
Mobile- 9887681097  
E-mail- vishalnigha@gmail.com