

DECEMBER 2022 | ISSUE

VEDANAM

RBI and IBC Updates

Why Vedanam?

We, Mehta & Mehta present you with our monthly newsletter which cover regulatory updates, case laws and study articles. We hereby release our December, 2022 issue.

Quote for the month:

"Do the best you can until you know better"



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Disclaimer: All views in this Newsletter are expressed by the concerned individuals only and are not the views of the Department or the Company.

I. RESERVE BANK OF INDIA (“RBI”) UPDATES:

A. RBI CIRCULARS AND NOTIFICATIONS:

1. RBI Update- Notification of Significant Benchmark dated 1st December, 2022

Reserve Bank of India vide its Circular dated 1st November, 2022 being satisfied that it is necessary and expedient in the public interest so to do, hereby, amends the instruction issued vide circular DBR.RRB.BC.No.59/31.01.001/2015-16 dated November 19, 2015 on ‘Internet Banking Facility for Customers of Regional Rural Banks’

Reserve Bank of India vide its Circular dated 1st December, 2022 notified six financial benchmarks administered by Financial Benchmarks India Pvt. Ltd. (FBIL) as ‘significant benchmark’ with regard to the Circular on Financial Benchmark Administrators (Reserve Bank) Directions, 2019 (hereinafter referred to as ‘the Directions’), dated June 26, 2019 and RBI circular dated January 01, 2020.

Reserve Bank of India notified Modified Mumbai Interbank Forward Outright Rate (MMIFOR) administered by Financial Benchmarks India Pvt. Ltd. (FBIL) as a ‘significant benchmark’ with reference to paragraph 3(i) of the Directions.

The updated list of ‘significant benchmarks’ administered by FBIL are as follow:

- Overnight Mumbai Interbank Outright Rate (MIBOR)
- Mumbai Interbank Forward Outright Rate (MIFOR)
- USD/INR Reference Rate
- Treasury Bill Rates
- Valuation of Government Securities
- Valuation of State Development Loans (SDL)
- Modified Mumbai Interbank Forward Outright Rate (MMIFOR)

Further, the person administering the ‘significant benchmark’, shall make an application to the Reserve Bank within a period of three months from the date of this notification for authorization to continue administering MMIFOR and shall continue to remain a ‘significant benchmark’ till further notice.

This Circular is applicable to all the Financial Benchmark Administrators and shall come into immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12414&Mode=0>

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2. RBI Update: Change in Bank Rate dated 7th December, 2022

Reserve Bank of India vide its Circular dated 7th December, 2022 with regard to the Circular

DOR.RET.REC.70/12.01.001/2022-23 dated September 30, 2022, announced in the Monetary Policy Statement 2022-23, the Bank Rate is revised upwards by 35 basis points from **6.15 per cent** to **6.50 per cent**.

Further, all penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised as mentioned below:

Item	Existing Rate	Revised Rate (With immediate effect)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (9.15 per cent) or Bank Rate plus 5.0 percentage points (11.15 per cent).	Bank Rate plus 3.0 percentage points (9.50 per cent) or Bank Rate plus 5.0 percentage points (11.50 per cent).

This Circular is applicable to all the Banks and shall come into immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12420&Mode=0>

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3. **RBI Update: Standing Liquidity Facility for Primary Dealers dated 7th December, 2022**

Reserve Bank of India vide its Circular dated 7th December, 2022 announced in the Monetary Policy Statement 2022-23, it has been decided by Monetary Policy Committee (MPC) to increase the policy Repo rate under the Liquidity Adjustment Facility (LAF) by 35 basis points from 5.90 per cent to 6.25 per cent.

Further, Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralized liquidity support) from the Reserve Bank would be available at the revised repo rate of 6.25 per cent.

This Circular is applicable to all primary dealers and shall come into immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12421&Mode=0>

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4. **RBI Update - Review of SLR holdings in HTM category dated 8th December, 2022**

Reserve Bank of India vide its Circular dated 8th December, 2022, has referred to paragraph 1 of Statement on Development and Regulatory Policies of the Monetary Policy Statement, 2022-23 dated December 7, 2022 and Section 6(iv)(a) of Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021 dated August 25, 2021.

Currently, banks have been granted a special dispensation of enhanced Held to Maturity (HTM) limit of 23 per cent of Net Demand and Time Liabilities (NDTL), for Statutory Liquidity Ratio (SLR) eligible securities acquired between September 1, 2020 and March 31, 2023, until March 31, 2023. After analysis, it has been decided to further extend the dispensation of enhanced HTM limit of 23 per cent of NDTL upto March 31, 2024 and allow banks to include securities acquired between September 1, 2020 and March 31, 2024 under the enhanced limit of 23 per cent.

The enhanced HTM limit of 23 per cent shall be restored to 19.5 percent gradually, beginning from the quarter ending June 30, 2024, i.e., the excess SLR securities acquired by banks during the period September 1, 2020 to March 31, 2024 shall be progressively reduced such that the total SLR securities held in the HTM category as a percentage of the NDTL do not exceed:

- 22.00 per cent as on June 30, 2024
- 21.00 per cent as on September 30, 2024
- 20.00 per cent as on December 31, 2024
- 19.50 per cent as on March 31, 2025

Further, all other instructions shall remain unchanged.

This Circular is applicable to all Commercial Banks and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12422&Mode=0>

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5. RBI Update: Master Direction - Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 dated 12th December, 2022

Reserve Bank of India vide its Circular dated 23rd November, 2022 and, with a view to facilitate cash flow-based lending to MSMEs, has decided

Reserve Bank of India vide its Circular dated 12th December, 2022 observation has been made to Authorised Dealer Category - I (AD Cat-I) banks to Regulation 6 and 6A of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 (Notification No. FEMA. 25/RB-2000 dated May 3, 2000) issued under clause (h) of sub-section (2) of Section 47 of Foreign Exchange Management Act, 1999 (Act 42 of 1999) as amended from time to time.

Within the contours of the Regulations, the Reserve Bank issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act, 1999 (Act 42 of 1999). These Directions lay down the modalities for the AD Cat-I banks for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers / constituents.

Master Direction - Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022

The Reserve Bank of India, in exercise of the powers conferred under Sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999), hereby issues the following Directions.

1. Short title and commencement

These Directions shall be called the Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 and come into force on December 12, 2022.

2. Definitions

- Hedging – The activity of undertaking a derivative transaction to reduce an identifiable and measurable risk. For the purpose of these directions, the relevant risks are commodity price risk and freight risk.
- Eligible entities – Eligible entities refers to residents other than Individuals.
- Direct Exposure to Commodity Price Risk – An eligible entity will be said to have direct exposure to commodity price risk if
 - It purchases/sells a commodity (in India or abroad) whose price is fixed by reference to an international benchmark; or
 - It purchases/sells a product (in India or abroad) which contains a commodity and the price of the product is linked to an international benchmark of the commodity.
- Indirect Exposure to Commodity Price Risk – An eligible entity will be said to have indirect exposure to commodity price risk if it purchases/sells a product (in India or abroad) which contains the commodity and the price of the product is not linked to an international benchmark of the commodity.
- Exposure to Freight Risk – An eligible entity will be said to have exposure to freight risk if it is engaged in the business of refining oil or is engaged in the business of shipping.
- Bank(s) – Bank(s) refer to banks licensed as Authorised Dealer – Category I under Section 10 of FEMA, 1999.
- ‘International Financial Service Centre’ shall have the same meaning as assigned to it in the Section 2(q) of the Special Economic Zones Act, 2005.

3. Eligible commodities

Commodities whose price risk may be hedged are:

- In case of direct exposures to commodity price risk: All commodities (except Gems and Precious stones). Price risk of gold may only be hedged as provided at Para 5 (ii) of these directions.

- In case of indirect exposures to commodity price risk: Aluminium, Copper, Lead, Zinc, Nickel, and Tin. This list of eligible commodities would be reviewed annually.

4. Permitted products

Permitted products refer to the following:

- (i) Generic Products
 - (a) Futures and forwards
 - (b) Vanilla options (call option and put option)
 - (c) Swaps
- (ii) Structured Products
 - (a) Products which are combination of either cash instrument and one or more generic products
 - (b) Products which are combination of two or more generic products.

5. Hedging of commodity price risk

- Eligible entities having exposure to commodity price risk for any eligible commodity may hedge such exposure in overseas markets using any of the permitted products.
- (ii) Eligible entities having exposure to price risk of gold may hedge such exposure only on exchanges in the International Financial Services Centre (IFSC) recognised by the International Financial Services Centres Authority (IFSCA).

6. Hedging of freight risk

Eligible entities having exposure to freight risk may hedge such exposure in overseas markets by using any of the permitted products.

7. Other operational guidelines

- (i) Banks may permit eligible entities to hedge commodity price risk and freight risk overseas, including IFSC, using permitted products and may remit foreign exchange in respect of such transactions after satisfying themselves that:
 - (a) The entity has exposure to commodity price risk or freight risk, contracted or anticipated.
 - (b) The quantity proposed to be hedged and the tenor of the hedge are in line with the exposure.
 - (c) In case of OTC derivatives, the requirement to undertake OTC hedges is justified.
 - (d) In case of hedging using a benchmark price other than that of the commodity exposed to, the requirement to undertake such hedges is justified.

- (e) Such hedging is taken up by the management of the entity under a policy approved by the Board of Directors of a company or equivalent forum for other.
 - (f) The entity has the necessary risk management policies in place.
 - (g) The entity has reasonable understanding of the utility and likely risks associated with the products proposed to be used for hedging.
- (ii) OTC contracts shall be booked with a bank or with non-bank entities which are permitted to offer such derivatives by their regulators. For this purpose, a list of acceptable jurisdictions shall be specified by FEDAI.
 - (iii) Structured products may be permitted to eligible entities who are (a) listed on recognized domestic stock exchanges or (b) fully owned subsidiaries of such entities or (c) unlisted entities whose net worth is higher than INR 200 crore, subject to the condition that such product are used for the purpose of hedging as defined under these directions.
 - (iv) All payments/receipts related to hedging of exposure to commodity price risk and freight risk shall be routed through a special account with the bank for this purpose.
 - (v) Banks shall keep on their records full details of all hedge transactions and related remittances made by the entity.
 - (vi) Banks shall obtain an annual certificate from the statutory auditors of the entity confirming that the hedge transactions and the margin remittances are in line with the exposure of the entity. The statutory auditor shall also comment on the risk management policy of the entity for hedging exposure to commodity price risk and freight risk and the appropriateness of the methodology to arrive at the quantum of these exposures.
 - (vii) Banks shall undertake immediate corrective action in case of any irregularity or misuse of these Directions. All such cases should be reported to the Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India.

8. Standby Letters of Credit (SBLC) / Guarantees

Banks are permitted to issue Standby Letters of Credit (SBLC) / Guarantees, for a maximum period of one year, on behalf of their clients in lieu of making a remittance of margin money for commodity hedging transactions entered into by their

customers. Banks should ensure that these SBLCs / Guarantees are used by their clients for the intended purposes.

9. Realisation and repatriation of foreign exchange

Realisation and repatriation of foreign exchange due or accruing to an eligible entity resulting from permitted transactions under this direction shall be guided by the provisions of the Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015.

10. Report to Reserve Bank

Banks shall submit a quarterly report to the Chief General Manager, Financial Markets Regulation Department, Reserve Bank of India through Extensible Business Reporting Language (XBRL) accessible at <https://xbrl.rbi.org.in/orfsxbrl/> in the format provided in Annexure I of the given Circular. In case of no transactions, a “Nil” report shall be submitted by the bank.

11. Repeal

The following circulars issued by the Reserve Bank stand repealed as on the date on which these Directions come into force:

- A. P. (DIR Series) Circular No. 19 dated March 12, 2018 on Hedging of Commodity Price Risk and Freight Risk in Overseas Markets.
- A. P. (DIR Series) Circular No. 16 dated January 15, 2020 on Hedging of Commodity Price Risk and Freight Risk in Overseas Markets - Amendment.

This Circular is applicable to all Authorised Dealer Category - I Banks and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12424&Mode=0>

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6. RBI Update: Hedging of Gold Price Risk in Overseas Markets dated 12th December, 2022

Reserve Bank of India vide its Circular dated 12th December, 2022 has referred to paragraph 4 of the Statement on Developmental and Regulatory Policies announced as a part of the Bi-monthly Monetary Policy Statement for 2022-23 dated December 07, 2022 regarding hedging of price risk of gold in overseas markets. Highlight has been made to the Hedging of Commodity Price Risk and Freight Risk in Overseas

Markets (Reserve Bank) Directions, 2018 dated March 12, 2018, as amended from time to time.

Currently, Resident entities in India are not permitted to hedge their exposure to price risk of gold in overseas markets. On analysis, it has been decided to permit eligible entities to hedge their exposure to price risk of gold on exchanges in the International Financial Services Centre (IFSC) recognised by the International Financial Services Centres Authority (IFSCA).

Further, the Master Direction – Foreign Exchange Management (Hedging of Commodity Price Risk and Freight Risk in Overseas Markets) Directions, 2022 (A. P. (DIR Series) Circular No. 21 dated December 12, 2022) is issued on 12th December, 2022 and enclosed in the given circular.

This Circular is applicable to all Authorised Dealer Category – I Banks and shall come into force with immediate effect.

<u><i>Link to the Circular:</i></u>
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12423&Mode=0

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7. RBI Update: Reserve Bank of India (Financial Statements - Presentation and Disclosures) Directions, 2021 - Disclosure of material items dated 13th December, 2022

Reserve Bank of India vide its Circular dated 13th December, 2022 has referred to the notes and instructions for compilation of Balance Sheet and Profit and Loss Account, for commercial banks, as specified in Annexure II to the Reserve Bank of India (Financial Statements-Presentation and Disclosures) Directions, 2021 (hereinafter referred to as “Directions”).

The following items particulars shall be disclosed under notes to accounts:

- Part A of Annexure II to the Directions, in case any item under the subhead “Miscellaneous Income” under the head “Schedule 14- Other Income” exceeds one per cent of total income.
- Any item under Subhead “Other expenditure” under the head “Schedule 16-Operating Expenses”.
- Any item under Schedule 5(IV)-Other Liabilities and Provisions-“Others (including provisions)” or Schedule 11(VI)-Other Assets-“Others” exceeds one per cent of the total assets.
- Any item under Schedule 14(I)-Other Income-“Commission, Exchange and Brokerage” exceeds one per cent of the total income.

Further, Clause 6 of the Chapter IV of the Directions *ibid*, in terms of which more comprehensive disclosures than the minimum required are encouraged, especially if such disclosures significantly aid in the understanding of the financial position and performance of banks.

This Circular is applicable to all commercial banks and shall come into effect for disclosures in the notes to the annual financial statements for the year ending March 31, 2023 and onwards.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12426&Mode=0>

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8. RBI Update: Data Format for Furnishing of Credit Information to Credit Information Companies and other Regulatory Measures dated 13th December, 2022

Reserve Bank of India vide its Circular dated 13th December, 2022 with regard to the circular DBOD.No.CID.BC.127/20.16.056/2013-14 dated June 27, 2014, among other things setting out a Uniform Credit Reporting Format for reporting credit information to the Credit Information Companies (CICs). Further, the cases admitted with National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT) under the Insolvency and Bankruptcy Code, 2016 are also required to be reported under the suit-filed cases in reporting to the CICs.

This Circular is applicable to all Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks), Primary (Urban) Co-operative Banks/State Co-operative Banks/District Central Co-operative Banks, India Financial Institutions (Exim Bank, NABARD, NHB, SIDBI and NaBFID), Non-Banking Financial Companies (including Housing Finance Companies), Credit Information Companies and shall come into force by February 28, 2023.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12425&Mode=0>

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9. **RBI Update: Sovereign Gold Bond (SGB) Scheme 2022-23 dated 16th December, 2022**

RBI vide its Circular dated 16th December, 2022 announced Series III and IV of Sovereign Gold Bond Scheme 2022-23 vide its Notification No F.No4.(6)-B (W&M)/2022 dated December 15, 2022, there will be a distinct series (Series III and IV) for every tranche. The terms and conditions of the issuance of the Bonds shall be as per the above notification.

⇒ **Date of Issue**

The bonds shall be issued as per the details given below:

S. No.	Tranche	Date of Subscription	Date of Issuance
1.	2022-23 Series III	December 19 - December 23, 2022	December 27, 2022
2.	2022-23 Series IV	March 06 - March 10, 2023	March 14, 2023

⇒ **Period of subscription**

The Subscription of the Gold Bonds under this Scheme shall be open (Monday to Friday) on the dates specified above, provided that the Central Government may, with prior notice, close the Scheme at any time before the period specified above.

⇒ **Application**

In Form A, application shall be made for subscription for the bonds by stating clearly the grams (in units) of gold and the full name and address of the applicant and must be accompanied by valid 'PAN details' issued by the Income Tax Department to the investor(s). Designated Scheduled Commercial Banks, designated Post Offices, Stock Holding Corporation of India Ltd, Clearing Corporation of India Ltd and recognized stock exchanges, viz. National Stock Exchange of India Ltd and Bombay Stock Exchange Ltd are the Receiving Offices which are authorized to receive applications for the Bonds either directly or through agents and render all services to the customers and shall issue an acknowledgment receipt in Form B to the applicant.

Further, all online applications should be accompanied by email Id of the investor/s which should be uploaded on the Ekuber portal of Reserve Bank of India along with the subscription details. Reserve Bank of India has issued Consolidated Procedural Guidelines vide circular IDMD.CDD.1100/14.04.050/2021-22 dated October 22, 2021 (updated as on October 04, 2022), the Receiving Offices shall be guided by these instructions while dealing with all the procedural aspects and providing service to the investors with a view to facilitate availability

of all current operative instructions regarding servicing of these bonds at one place.

This Circular is applicable to Scheduled Commercial Banks (as per the list attached), Designated Post Offices (as per the list attached), Stock Holding Corporation of India Ltd. National Stock Exchange of India Ltd, Bombay Stock Exchange Ltd, Clearing Corporation of India Ltd and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12429&Mode=0>

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10. RBI Updates: Formation of new district in the State of Assam - Assignment of Lead Bank Responsibility dated 20th December, 2022

Reserve Bank of India vide its Circular dated 20th December, 2020 decided to assign the lead bank responsibility for the new district, which was notified by Government of Assam vide Gazette Notification No.GAG(B) 491/2019/107 dated January 12, 2021 as below:

Sr No	Newly Created District	Erstwhile District	Sub-Division under newly created district	Lead Bank Responsibility assigned to	District Working Code allotted to new district
1	Bajali	Barpeta	Existing Bajali sub-division of the district of Barpeta	UCO Bank	01O (to be read as numeral zero, numeral one, alphabet O)

The above District Working Code of the new district has also been allotted for the purpose of BSR reporting by banks and no change in the Lead Banks of the former district and of other districts in the state of Assam.

This Circular is applicable to Lead Banks Concerned and shall come into force with immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12430&Mode=0>

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11. RBI Update: Central Payments Fraud Information Registry - Migration of Reporting to DAKSH dated 26th December, 2022

The Reserve Bank of India (RBI) had operationalised the Central Payments Fraud Information Registry (CPFIR) in March 2020 with reporting of payment frauds by scheduled commercial banks and non-bank Prepaid Payment Instrument (PPI) issuers as was announced by it in the Monetary Policy Statement 2019-20 on August 07, 2019.

The Reserve Bank of India has, vide Circular dated 26th December, 2022, and in order to streamline reporting, enhance efficiency and automate the payments fraud management process, declared that the fraud reporting module be migrated to DAKSH - Reserve Bank's Advanced Supervisory Monitoring System. All the entities have to commence reporting of payment frauds in DAKSH from 1st January, 2023

DAKSH provides additional functionalities besides existing bulk upload facility to report payment frauds such as:

- maker-checker facility
- online screen-based reporting
- option for requesting additional information
- facility to issue alerts / advisories
- generation of dashboards and reports, etc.

The reporting guidelines are mentioned in the Annex of the given Circular, an extract of which is given below.

CPFIR - Reporting Guidelines

- All RBI authorised Payment System Operators (PSOs) / providers and payment system participants operating in India are required to report all payment frauds, including attempted incidents, irrespective of value, either reported by their customers or detected by the entities themselves. This reporting was earlier facilitated through Electronic Data Submission Portal (EDSP) and is being migrated to DAKSH.
- The responsibility to submit the reported payment fraud transactions shall be of the issuer bank / PPI issuer / credit card issuing NBFCs, whose issued payment instrument has been used in the fraud.

- Entities are required to validate the payment fraud information reported by the customer in their own systems to ensure the authenticity and completeness, before reporting the same to RBI on individual transaction basis.
- Entities are required to report payment frauds (domestic and international) to CPFIR as per the specified timelines (currently within 7 calendar days from date of reporting by customer / date of detection by the entity).
- Entities may continue to report payment frauds as per the extant reporting format using the bulk upload facility in DAKSH or report individual payment frauds online using the screen-based facility under the Incident Module of the DAKSH platform.
- After go-live of payment fraud reporting in DAKSH effective January 01, 2023, entities shall not be able to report any payment frauds in EDSP. Entities may, however, continue to update and close payment frauds that were reported in EDSP until December 31, 2022. Reserve Bank shall subsequently migrate the historical data from EDSP to DAKSH.
- The reporting format remains unchanged.
- Though some elements / fields of the Reporting Format are indicated as 'Optional', entities shall strive to include them as part of initial reporting itself and only in exceptional cases be reported as updates.

This Circular is applicable to the Chairman / Managing Director / Chief Executive Officer of Banks, Non-bank Payment System Operators (PSOs) and Credit Card issuing Non-Banking Financial Companies (NBFCs).

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12431&Mode=0>

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12. RBI Update: Individual Housing loans - Revised limits under four-tiered regulatory framework dated 30th December, 2022

Reserve Bank of India vide its Circular dated 30th December, 2022 has referred to circular DOR.REG.No.84/07.01.000/2022-23 dated December 1, 2022, in terms of which UCBs have been categorised into four tiers for regulatory purposes.

With regard to the circular DOR.CRE.REC.42/09.22.010/2022-23 dated June 8, 2022, ceilings on housing loans to individuals are prescribed as ₹60 lakh for Tier-I UCBs and ₹140 lakh for Tier-II UCBs. Subsequent to classification of UCBs into four tiers under the revised regulatory framework, the limits on housing loans sanctioned by UCBs to an individual borrower have been specified as:

- ₹60 lakh for Tier-1 UCBs
- ₹140 lakh for UCBs categorised in Tier-2 to 4.

Further, existing housing loans sanctioned prior to the date of this circular, which may be in breach of the ceiling, will be allowed to run off till maturity and other terms and conditions of the circular *ibid*, remain unchanged.

This Circular is applicable to all Primary (Urban) Co-operative Banks and shall come into immediate effect.

Link to the Circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12432&Mode=0>

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II. INSOLVENCY LAW:

1. Sabarmati Gas Limited v. Shah Alloys Limited - 22nd December, 2022

Delay in filing a CIRP petition can be condoned u/s. 5, Limitation Act, 1963 on proof of 'sufficient cause' - Rules SC

Case Title- Sabarmati Gas Limited v. Shah Alloys Limited

Date of Order - 22nd Dec 2022

Fact of the Case

Aggrieved by an NCLAT order upholding AA's order for dismissal of its Sec 9 petition inter alia on the ground of limitation, the appellant had approached Apex Court seeking condonation of delay on grounds inter alia including the statutory bar (u/s. 22, SICA) that operated and prevented the appellant from initiating legal proceedings against the CD.

Decision

Allowing the appeal, Hon'ble Apex Court held:

When the limitation period for initiating CIRP under Section 9, IBC is to be reckoned from the date of default, as opposed to the date of commencement of IBC and the period prescribed therefor, is three years as provided by Section 137 of the Limitation Act, 1963 and the same would commence from the date of default and is extendable only by application of Section 5 of the Limitation Act, 1963 it is incumbent on the Adjudicating Authority to consider the claim for condonation of the delay when once the proceeding concerned is found filed beyond the period of limitation.

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2. Hem Singh Bharana Vs. M/s Pawan Doot Estate Pvt. Ltd.

Whether after approval of Resolution Plan by CoC u/s 30 of IBC and filing an application before NCLT for its approval, any Settlement Proposal under Section 12A of IBC can be entertained deferring consideration of approval of Resolution Plan by the NCLT? - Hem Singh Bharana Vs. M/s Pawan Doot Estate Pvt. Ltd. - NCLAT New Delhi

Case Title - Hem Singh Bharana Vs. M/s Pawan Doot Estate Pvt. Ltd.

Date of Order- 5th Jan 2023

Fact of the Case

In the present case, the CoC have approved the Resolution Plan by voting share of 100% in voting held on 17.01.2020. The RP has submitted the Application before the Adjudicating Authority for approval of the Resolution Plan on 04.02.2020. The Settlement Proposal by the Ex-Promoter was submitted before the Financial Creditors by letter dated 11.08.2022. It is a case of the Appellant that in the Joint Lenders Meeting held on 18.07.2022, discussion was held regarding submission of Settlement Proposal. It is submitted that all Financial Creditors have given and communicated their approval. The approval of Bank of India is awaited, since there was no Executive Director at the relevant time.

In the present case, the CoC have approved the Resolution Plan by voting share of 100% in voting held on 17.01.2020. The RP has submitted the Application before the Adjudicating Authority for approval of the Resolution Plan on 04.02.2020. The Settlement Proposal by the Ex-Promoter was submitted before the Financial Creditors by letter dated 11.08.2022. It is a case of the Appellant that in the Joint Lenders Meeting held on 18.07.2022, discussion was held regarding submission of Settlement Proposal. It is submitted that all Financial Creditors have given and communicated their approval. The approval of Bank of India is awaited, since there was no Executive Director at the relevant time.

Decision

The intendment of the proviso to Regulation 30A of CIRP Regulations, 2016 is that there has to be special reason for making Application under Section 30A(1)(b), when it is filed after publication of invitation for Expression of Interest. The Regulation clearly indicate that when 'Expression of Interest' is issued inviting Resolution Plan, there has to be sufficient reason justifying withdrawal

Regulation making Authority was well aware about the entire process under the Code, including approval of the Plan by the CoC and filing of the Application before the Adjudicating Authority for approval of the Resolution Plan. Had it intended that 12A Application can be entertained even after Resolution Plan is approved by the CoC, the proviso would not have confined to issue invitation for Expression of Interest, rather, it could have been conveniently mentioned that after approval of Resolution Plan Applicant should justify withdrawal. It was never intended that after approval of Resolution Plan by CoC, Application under Section 12A can be entertained. Hence, the Regulation is framed in that manner

Regulation 30A(2) provides that Application shall be made in Form FA and accompanied by a bank guarantee towards estimated expenses incurred on or by the IRP for the purpose of Regulation 33, till the date of filing of the Application under clause (1) of sub-regulation (1). Regulation 33 deals with the costs of the IRP, whereas Regulation 34 deals with RP costs. In event Section 12A, Application was contemplated to be filed even after approval of the Resolution Plan by the CoC, Regulation 30A(2)(a)

and (b) ought to have included the expenses both under Regulations 33 and 34. Non-mention of Resolution Professional costs in Regulation 30A(2) also give support to the contention that Scheme under the Regulation does not contemplate filing of Section 12A Application after approval of Resolution Plan by the CoC

In the present case, decision of the CoC to approve the Resolution Plan on 17.01.2020 was taken in its commercial wisdom. Whether the CoC can rescind from its decision and accept Settlement Proposal of Ex-Promoter submitted after two and a half years of approval of Resolution Plan, is a question which has arisen in the present case. The present is not a case where the Adjudicating Authority has interfered with any decision of the CoC.

In Maharashtra Seamless Limited the Hon'ble Supreme Court has held that exit route prescribed under Section 12A is not applicable to a Resolution Applicant. The judgment in Maharashtra Seamless Limited was on different facts and circumstances and there is no ratio in the said judgment that after approval of Resolution Plan, Ex-Promoters are entitled to submit a Settlement Proposal.

There is one more aspect of the case, which need to be noticed. When the invitation was issued inviting Expression of Interest, it was open for all who were eligible to submit the Resolution Plan under Section 29A. Whether the Promoter, who has now submitted Settlement Proposal was eligible or not under Section 29A, is also a relevant question and after approval of Resolution Plan, these enquiries cannot be entertained and embarked upon to find out the eligibility of the Applicant.

The learned Counsel for the Appellant lastly submitted that no reason has been given by the Adjudicating Authority in rejecting the Application filed by the Appellant for keeping in abeyance the proceedings for approval of Resolution Plan. The Adjudicating Authority being in seize of Application for approval of Resolution Plan, there had to be strong reason to keep the Application in abeyance. The Adjudicating Authority being not satisfied that there is adequate reason to accept the prayer of the Appellant, no error has been committed by the Adjudicating Authority in rejecting the Application.

We, thus, do not find any merit in this Appeal. The Appeal is dismissed. No costs.

GO UP

THANKYOU
