

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

W.P. (C) NO. 825 OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

GAJENDRA SHARMA

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF
RESPONDENT NO.2 i.e. RESERVE BANK OF INDIA

PAPER BOOK

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ADVOCATE FOR THE RESPONDENT: RAMESH BABU M.R.

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**ADDITIONAL AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 2 i.e. RESERVE BANK OF INDIA**

I, Prasanta Kumar Das aged about 57 years S/o Naresh Kumar Das, R/o Flat No. 157 & 158, RBI Flats, Sector VI, R K Puram, Delhi, do hereby solemnly affirm and declare as under:

1. That I am working as Assistant General Manager with Department of Supervision (Banking) of Reserve Bank of India having its office at 1 Sansad Marg, New Delhi- 110001. I am fully aware of the facts of the present case and the issues involved in the matter, and as such am competent as well as authorised on behalf of the Reserve Bank of India i.e. Respondent No. 2 to file the present Affidavit.
2. That I am filing the present Affidavit in furtherance to the earlier Affidavits filed on behalf of the answering Respondent in the subject matter and proceedings.

3. That I say that the Respondent No. 1 i.e. Union of India through Ministry of Finance, Department of Financial Services in view of the unprecedented and extreme COVID-19 situation vide its letter bearing reference No. F.No. 2/12/2020- BOA.I dated October 23, 2020 has approved a “Scheme for grant of *ex-gratia* payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (01.03.2020 to 31.08.2020)” along with operational Guidelines and mechanism for such grant. A true copy of the said letter bearing reference No. F.No. 2/12/2020- BOA.I dated October 23, 2020 issued by the Government of India through Ministry of Finance, Department of Financial Services is hereby enclosed as **ANNEXURE R-1** to the present Affidavit.
4. That it is submitted that pursuant to the said letter issued by the Ministry of Finance, the answering Respondent i.e. Reserve Bank of India *vide* a circular bearing reference No. RBI/2020-21-61 DOR. No.BP.BC.26/21.04.048/2020-21 dated October 26, 2020 has advised all the Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks), All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks, All All-India Financial Institutions and All Non-Banking Financial Companies (including Housing Finance Companies) to be guided by the provisions of the Scheme and take necessary actions within the stipulated timeline therein. A true copy of the circular bearing reference No. RBI/2020-21-61 DOR. No.BP.BC.26/21.04.048/2020-21 dated October 26, 2020 is hereby enclosed as **ANNEXURE R-2** to the present Affidavit.



DEPONENT

VERIFICATION

I the above deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and belief and is based on the records available in my office. No part of the affidavit is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 01st day of November, 2020.



DEPONENT

F. No. 2/12/2020-BOA.I
Government of India
Ministry of Finance
Department of Financial Services

3rd floor, Jeevan Deep Building
 Sansad Marg, New Delhi – 110 001
 Dated 23rd October 2020

To:

1. State Bank of India (SBI)
2. All India Financial Institutions (AIFIs)
3. All Nationalised Banks
4. All Banking Companies, Urban Co-operative Banks, and Non-Banking Financial Companies (NBFCs) registered with RBI
 [through RBI]
5. All NBFC— Micro Finance Institutions (NBFC-MFIs) that are members of an RBI-recognised Self-Regulatory Organisation
 [through Micro Finance Institutions Network (MFIN) and Sa-Dhan]
6. All State Co-operative Banks, District Central Co-operative Banks and Regional Rural Banks (RRBs)
 [through the rural banking system supervisor {National Bank for Agriculture and Rural Development (NABARD)}]
7. All Housing Finance Companies (HFCs) registered with the National Housing Bank (NHB)
 [through the supervisor of HFCs (National Housing Bank)]

Subject: 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)

Madam/sir,

The undersigned is directed to convey that in view of the unprecedented and extreme COVID-19 situation, the Central Government has approved “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)”. Benefits under the scheme would be routed through lending institutions. Operational guidelines for the scheme are attached.

2. Eligibility criteria for *ex-gratia* payment under the scheme are as follows:
 - (a) Borrowers in the following segments/classes of loans, who have loan accounts having sanctioned limits and outstanding amount of not exceeding Rs. 2 crore [aggregate of all facilities with lending institutions] as on 29.2.2020, shall be eligible under the Scheme:
 - (i) MSME loans
 - (ii) Education loans
 - (iii) Housing loans
 - (iv) Consumer durable loans
 - (v) Credit card dues
 - (vi) Automobile loans

(vii) Personal loans to professionals

(viii) Consumption loans

Any borrower whose aggregate of all facilities with lending institutions is more than Rs. 2 crore (sanctioned limits or outstanding amount) will not be eligible for *ex-gratia* payment under this scheme.

(b) The aforesaid eligibility shall be subject to the following further conditions and stipulations:

(i) Account should be standard as on 29.2.2020, *i.e.*, loan should not be a Non-Performing Asset (NPA) as on 29.2.2020.

(ii) Lending institution must be either a banking company, or a Public Sector Bank, or a Co-operative Bank [*i.e.*, an Urban Co-operative Bank or a State Co-operative Bank or a District Central Co-operative Bank], or a Regional Rural Bank, or an All India Financial Institution, or a Non-Banking Financial Company or a Housing Finance Company registered with RBI or National Housing Bank as the case may be. A Non-Banking Financial Company— Micro Finance Institution should be a member of a Self-Regulatory Organisation (SRO) recognised by RBI.

(iii) The *ex-gratia* payment under this scheme shall be admissible irrespective of whether the borrower in sub-clause (1) had fully availed or partially availed or not availed of the moratorium on repayment announced by RBI *vide* its circular DOR.No. BP.BC.47/21.04.048/2019-20, dated 27.3.2020 and extended on 23.5.2020.

3. The period to be reckoned for crediting of difference between compound interest and simple interest by the lending institutions mentioned in paragraph 2(b)(ii) above to eligible borrowers as per paragraph 2 above would be from 1.3.2020 to 31.8.2020 (six months / 184 days). For accounts closed during the said period, the period for crediting would be from 1.3.2020 and restricted to the date of closure of such account.

4. The benchmarks and modalities for *ex-gratia* payment of difference between compound interest and simple interest under the scheme would be as detailed in the attached operational guidelines. The rate of interest would be as prevailing on 29.2.2020, *i.e.*, in case the rate of interest has changed thereafter, it shall not be reckoned for the purposes of this computation. The payable *ex-gratia* amount shall have to be credited to the account of the borrower by the respective lending institutions as *ex-gratia* payment under the scheme.

5. The aforesaid exercise of crediting the amount as stated above in the respective accounts of the eligible borrowers described in paragraph 2 above by the respective lending institution shall be completed on or before 5.11.2020.

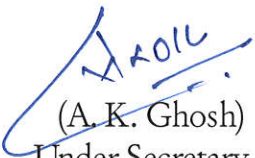
6. After the exercise mentioned in paragraph 5 above has been completed, lending institutions can lodge their claim for reimbursement latest by 15.12.2020. Claims shall be submitted to designated officer(s) / cell at the State Bank of India (SBI). SBI is advised to appropriately equip its designated officer(s) / cell for processing such claims in a timely manner, and to notify details of the same on its website.

7. Issues and concerns relating to claims submitted by the lending institutions shall be handled through the designated cell at SBI in consultation with Government of India. Each lending institution shall put in place a grievance redressal mechanism for the eligible borrowers for redressal of their grievances arising out of the present scheme within one week from the date of issuance of these scheme guidelines, at appropriate level(s). While putting in place such grievance redressal mechanism, lending institutions can keep in mind the communication dated 1.10.2020 issued by the Indian Banks' Association in respect of resolution framework for COVID-19 related stress for guidance. Grievances, if any, of the lending institutions shall be resolved through the designated cell at SBI in consultation with the Ministry of Finance, Government of India.

8. In case of any issues/queries relating to interpretation of this scheme, the decision of Government of India shall be final.

Yours faithfully,

Attachment: as above


(A. K. Ghosh)
Under Secretary

Tel: 011-23748755

Email: boa1-dfs@nic.in

Copy, with the attachment, to:

1. Governor, Reserve Bank of India
2. Chairman, NABARD
3. Managing Director, NHB
4. Chief Executive, Indian Banks' Association
5. Chairperson, Micro Finance Institutions Network (MFIN)
6. Chairman, Sa-Dhan

**Government of India
Ministry of Finance
Department of Financial Services**

COVID-19 Relief

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)

Operational Guidelines

1. Name of the scheme

This scheme shall be called “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)”.

2. Object of the scheme

In view of the unprecedented and extreme COVID-19 situation, the object of the Scheme is to provide *ex-gratia* payment of difference between compound interest and simple interest by ways of relief for the period from 1st March 2020 to 31st August 2020 to borrowers in specified loan accounts. Such payment does not constitute a contractual, legal or equitable liability of the Central Government and is only an *ex-gratia* payment to the following designated class of borrowers in view of the COVID-19 pandemic.

3. Applicability of the scheme

This scheme shall apply to all lending institutions, which must be either a banking company, or a Public Sector Bank, or a Co-operative Bank [*i.e.*, an Urban Co-operative Bank or a State Co-operative Bank or a District Central Co-operative Bank], or a Regional Rural Bank, or an All India Financial Institution, or a Non-Banking Financial Company or a Housing Finance Company registered with Reserve Bank of India (RBI) or National Housing Bank as the case may be. A Non-Banking Financial Company—Micro Finance Institution should be a member of a Self-Regulatory Organisation (SRO) recognised by RBI.

4. Eligibility criteria under the scheme

(1) Borrowers in the following segments/classes of loans, who have loan accounts having sanctioned limits and outstanding amount of not exceeding Rs. 2 crore [aggregate of all facilities with lending institutions] as on 29.2.2020, shall be eligible under the Scheme:

- (i) MSME loans
- (ii) Education loans
- (iii) Housing loans
- (iv) Consumer durable loans
- (v) Credit card dues
- (vi) Automobile loans
- (vii) Personal loans to professionals
- (viii) Consumption loans

Any borrower whose aggregate of all facilities with lending institutions is more than Rs. 2 crore (sanctioned limits or outstanding amount) will not be eligible for *ex-gratia* payment under this scheme.

(2) The aforesaid eligibility shall be subject to the following further conditions and stipulations:

- (i) Account should be standard as on 29th February 2020, *i.e.*, loan should not be a Non-Performing Asset (NPA) as on 29th February 2020.
- (ii) Lending institution must be either a banking company, or a Public Sector Bank, or a Co-operative Bank [*i.e.*, an Urban Co-operative Bank or a State Co-operative Bank or a District Central Co-operative Bank], or a Regional Rural Bank, or an All India Financial Institution, or a Non-Banking Financial Company or a Housing Finance Company registered with RBI or National Housing Bank as the case may be. A Non-Banking Financial Company—Micro Finance Institution should be a member of a Self-Regulatory Organisation (SRO) recognised by RBI.
- (iii) The *ex-gratia* payment under this scheme shall be admissible irrespective of whether the borrower in sub-clause (1) had fully availed or partially availed or not availed of the moratorium on repayment announced by RBI *vide* its circular DOR.No. BP.BC.47/ 21.04.048/2019-20, dated 27th March 2020 and extended on 23rd May 2020.

5. Period to be reckoned

The period to be reckoned for crediting of difference between compound interest and simple interest by the lending institutions mentioned in clause 3 above to eligible borrowers as per clause 4 above would be from 1.3.2020 to 31.8.2020 (six months / 184 days). For accounts closed during the said period, the period for crediting would be from 1st March 2020 and restricted to the date of closure of such account.

6. Benefit under the scheme

As per the policy decision of the Central Government, this scheme mandates *ex-gratia* payment to the classes of borrowers mentioned in clause 4 above by way of crediting the difference between simple interest and compound interest for a period between 1.3.2020 to 31.8.2020 by respective lending institutions mentioned in clause 3 above.

The lending institutions shall credit the difference between compound interest and simple interest with regard to the eligible borrowers mentioned in clause 4 above in respective accounts of such borrowers for the period to be reckoned, irrespective of whether such borrowers have fully availed or partially availed or not availed of the moratorium on repayment of the respective loans as announced by the RBI *vide* its circular DOR.No. BP.BC.47/21.04.048/2019-20, dated 27th March 2020 and extended on 23rd May 2020.

7. Manner of claiming reimbursement

The respective lending institutions as described in clause 3 above shall, after so crediting amounts in the accounts of aforesaid eligible borrowers, claim reimbursement from the Central Government as per provisions hereinafter.

For the purpose of claiming of reimbursement by the lending institutions covered under this scheme, the compounding of interest shall be reckoned on monthly basis, except where the contrary is specified. Further, for the purpose of claiming of reimbursement by respective lending institutions, calculation of the reimbursable *ex-gratia* amount shall be as detailed in clauses 8 and 9 hereof.

8. Rate of interest

- (1) Education loans, Housing loans, Automobile loans, Personal loans to professionals, Consumption loans — The rate of interest to be applied for calculating the difference between simple and compound interest shall be the contracted rate as specified in loan agreement/ documentation in this respect.
- (2) Consumer durable loans — The rate of interest to be applied for calculating the difference between simple and compound interest shall be the contracted rate as specified in loan agreement/ documentation. In cases where, no interest is being charged on Equated Monthly Instalments (EMI) for a specified period, for the purpose of *ex-gratia* payment, interest may be applied at the lender's base rate / Marginal Cost of funds based Lending Rate (MCLR) whichever is applicable.
- (3) Credit card dues — The rate of interest shall be the Weighted Average Lending Rate (WALR) charged by the card issuer for transactions financed on EMI basis from its customers during the period from 1st March 2020 to 31st August 2020. The computation of the WALR shall be certified by the statutory auditor of the card issuer¹.
- (4) MSME loans — The rate of interest to be applied for calculating the difference between simple and compound interest shall be the contracted rate as specified in loan agreement/documentation in respect of the term loan. For cash credit (CC) / overdraft (OD), while the contracted rate of interest would similarly apply, the basis of calculation for simple and compound interest would differ as explained below.
- (5) The rate of interest would be as prevailing on 29th February 2020, *i.e.*, in case the rate of interest has changed thereafter, it shall not be reckoned for the purposes of this computation. Penal interest or penalty for late payment would not be reckoned as part of the contracted rate or WALR.

9. Mode of calculation of simple and compound interest

- (1) As Education loans, Housing loans, Consumer Durable loans, Credit card dues, Auto Loans, Personal loans and Consumption loans are loans that are in the form of a Term Loan / Demand Loan and not a Cash Credit [CC] or an Overdraft facility [OD], the outstanding in the account as at the end of 29.2.2020 will be the reference amount for Term Loans on which the interest (simple as well as compound) will be calculated. While making the calculation, repayments in the loan account during the period to be reckoned will be ignored. This will make the approach of the lending institutions uniform for all borrowers, irrespective of whether they have fully availed or partially availed or not availed of the moratorium on repayment of the respective loans as announced by the RBI *vide* its

¹ Credit card issuers typically rely on a range of rates for financing on EMI basis. As a uniform rate is not available, WALR will be utilised as the benchmark rate.

circular DOR.No. BP.BC.47/21.04.048/2019-20, dated 27th March 2020 and extended on 23rd May 2020.

(2) As MSME loans are sanctioned by way of Term Loan or CC/OD, the following provisions will apply:

(a) For Term Loans:

The outstanding in the account as at end of 29.2.2020 will be the reference amount for Term Loans on which the interest (simple as well as compound) will be calculated. While making the calculation repayments in the loan account during the period to be reckoned will be ignored. This will make the approach uniform for all borrowers, irrespective of whether they have fully availed or partially availed or not availed of the moratorium on repayment of the respective loans as announced by the RBI *vide* its circular DOR.No. BP.BC.47/21.04.048/2019-20, dated 27th March 2020 and extended on 23rd May 2020.

(b) For Cash Credit / Overdraft facilities:

- (i) Simple interest for the period will be calculated on daily product basis (*i.e.*, on the daily outstanding as at end of the day) at the rate of interest as on 29.2.2020.
- (ii) Compound interest will be calculated for the period at the rate of interest as on 29.2.2020 and compounding will be done on monthly rests.

It is clarified that this method will also be used in case some loans under sub-clause (1) have been sanctioned and disbursed by way of Overdraft / Cash Credit facility.

10. Claim processing

(1) Lending institutions can lodge their claim for reimbursement latest by 15th December 2020 only after crediting amounts as aforesaid. Claim should be pre-audited by the statutory auditor of the lending institutions and a certificate in this regard shall be attached to the claim.

(2) Claims shall be submitted to a designated officer(s) / cell at State Bank of India (SBI), which will function as the nodal agency under the present scheme and shall receive funds from the Government of India for settlement of claims of lending institutions. SBI shall evaluate the claims to ensure that they are in conformity with this scheme's guidelines, and shall furnish to the Central Government statements of claims found eligible and claims settled.

11. Grievance Redressal Mechanism

(1) Each of the lending institutions referred in clause 3 above shall put in place a grievance redressal mechanism for the eligible borrowers for redressal of their grievances arising out of the present scheme within one week from the date of issuance of these scheme guidelines, at appropriate level(s).

(2) It is clarified that while putting in place such grievance redressal mechanism, lending institutions can keep in mind the communication dated 1.10.2020 issued by the Indian

Banks' Association in respect of resolution framework for COVID-19 related stress for guidance.

(3) Grievances, if any, of the lending institutions shall be resolved through the designated cell at the State Bank of India in consultation with the Ministry of Finance, Government of India.

12. Interpretation and removal of difficulties

In case of any issues/queries relating to interpretation of this scheme, the decision of Government of India shall be final.



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2020-21/61

DOR.No.BP.BC.26/21.04.048/2020-21

October 26, 2020

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks)
All Primary (Urban) Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks
All All-India Financial Institutions
All Non-Banking Financial Companies (including Housing Finance Companies)

Madam/Dear Sir,

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)

The Government of India has announced the *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)* (the 'Scheme') on October 23, 2020, which mandates *ex-gratia* payment to certain categories of borrowers by way of crediting the difference between simple interest and compound interest for the period between March 1, 2020 to August 31, 2020 by respective lending institutions. The details of the Scheme are available at:

<https://financialservices.gov.in/sites/default/files/Scheme%20Letter.pdf>.

2. All lending institutions are advised to be guided by the provisions of the Scheme and take necessary action within the stipulated timeline.

Yours faithfully,

(Prakash Baliarsingh)
Chief General Manager

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
 I.A. NO. _____ OF 2020
 IN
 W.P. (C) NO. 825 OF 2020

IN THE MATTER OF:

GAJENDRA SHARMA

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

APPLICATION FOR SEEKING EXEMPTION FROM
FILING NOTARIZED ADDITIONAL AFFIDAVIT ON
BEHALF OF THE RESPONDENT NO. 2 i.e. RESERVE
BANK OF INDIA

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA
 AND HIS HON'BLE COMPANION JUDGES OF
 THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
 RESPONDENT NO. 2 ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. That the Respondent No. 2 i.e. Reserve Bank of India is filing the accompanying Additional Affidavit to the writ Petition. The contents of the Additional Affidavit shall be read as part and parcel of the subject Application as for brevity sake the same is not being repeated herein.
2. That it is submitted that in view of the prevailing situation caused due to outbreak of novel coronavirus concerning the global pandemic and subsequent suspension of normal

functioning of this Hon'ble Court with a view to combat the impending threat of the pandemic, the Respondent No. 2/ Applicant is not in position to file a duly notarised Affidavit as per rules of this Hon'ble Court. Therefore, the Applicant seeks kind indulgence of this Hon'ble Court to allow the Applicant to file the accompanying Additional Affidavit without getting the same notarized. The Respondent No. 2/ Applicant herein undertakes to file the same as soon as the normal functioning of this Hon'ble Court resumes.

3. That the present Application is being moved bonafide and in the interest of Justice.

PRAYER

In view of the aforesaid circumstances, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Allow the present Application and exempt the Respondent No. 2 from filing notarized Additional Affidavit;
- b. Pass any other Order this Hon'ble Court may deem fit and necessary, in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE RESPONDENT NO. 2 SHALL DUTY BOUND PRAY.

 FILED BY
RAMESH BABU M.R.

(ADVOCATE ON RECORD)

ADVOCATE FOR THE RESPONDENT NO. 2

FILED ON: 01.11.2020

NEW DELHI

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

W.P. (C) NO. 825 OF 2020

IN THE MATTER OF:

GAJENDRA SHARMA

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

...RESPONDENTS

AFFIDAVIT

I, Prasanta Kumar Das aged about 57 years S/o Naresh Kumar Das, R/o Flat No. 157 & 158, RBI Flats, Sector VI, R K Puram, Delhi, do hereby solemnly affirm and declare as under:

1. That I am working as Assistant General Manager with Department of Supervision (Banking) of Reserve Bank of India having its office at 6 Sansad Marg, New Delhi- 110001. I am fully aware with the facts of the present case and as such am competent as well as authorised on behalf of the Reserve Bank of India i.e. Respondent No. 2 to swear the present Affidavit.
2. That the accompanying Application has been drafted under my instructions and I have read and understood the facts stated therein and state that the facts stated are true and correct to the best of my knowledge and belief.



DEPONENT

VERIFICATION:

I the above deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and belief

and is based on the records available in my office. No part of the affidavit is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 01st day of November 2020.



DEPONENT