REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 476 OF 2020

Small Scale Industrial Manufactures Association (Regd.) …Petitioner

Versus

Union of India and others …Respondents

WITH

WRIT PETITION(C) NO. 542 OF 2020
WRIT PETITION(C) NO. 945 OF 2020
WRIT PETITION(C) NO. 937 OF 2020
WRIT PETITION(C) NO. 1024 OF 2020
WRIT PETITION(C) NO. 1025 OF 2020
WRIT PETITION(C) NO. 1006 OF 2020
WRIT PETITION(C) NO. 959 OF 2020
WRIT PETITION(C) NO. 955 OF 2020
WRIT PETITION(C) NO. 506 OF 2020
WRIT PETITION(C) DIARY NO. 12389 OF 2020
WRIT PETITION(C) NO. 568 OF 2020
WRIT PETITION(C) NO. 606 OF 2020
WRIT PETITION(C) NO. 608 OF 2020
WRIT PETITION(C) NO. 711 OF 2020
WRIT PETITION(C) NO. 785 OF 2020
WRIT PETITION(C) NO. 802 OF 2020
WRIT PETITION(C) NO. 829 OF 2020
WRIT PETITION(C) NO. 826 OF 2020
WRIT PETITION(C) NO. 964 OF 2020
WRIT PETITION(C) NO. 1029 OF 2020
WRIT PETITION(C) NO. 1157 OF 2020
WRIT PETITION(C) NO. 1132 OF 2020
WRIT PETITION(C) NO. 1178 OF 2020
WRIT PETITION(C) NO. 1190 OF 2020

JUDGMENT

M.R. SHAH, J.

1. Writ Petition (Civil) No. 476 of 2020 has been preferred under Article 32 of the Constitution of India by the Small Scale Industrial Manufactures Association, Haryana for an appropriate writ, direction or order directing the Union of India and others to take effective and remedial measures to redress the financial strain faced by the industrial sector, particularly MSMEs due to the Corona Virus Pandemic. It appears that the writ petitioner is not satisfied with the steps taken by the RBI vide notification dated 27.03.2020. According to the petitioner, the Covid-19 Regulatory Package notified by the RBI vide notification dated 27.03.2020 insofar as the terms loans, working capital facilities and restructuring of Stressed Account is inadequate, ineffective and does not offer any substantial relief, aid or assistance to the industries particularly MSMEs. According to the petitioner, the above-mentioned Regulatory Package will not in any manner salvage the MSMEs and help them recover from financial losses

that have been caused due to the unforeseen circumstances.

With the above broad grievances, it is prayed as under:

(a) issue writ/writs including a writ of mandamus or any other writ or direction in the nature thereof, directing the respondents to permit the lending institutions not to recover interest component from the industries particularly MSMEs on Term Loans and Working Capital Facilities availed by them for three months from 01.03.2020 to 31.05.2020;

(b) issue writ/writs including a writ of mandamus or any other writ or direction in the nature thereof, directing the respondents to permit the lending institutions to grant interest free moratorium period for Term Loan and not recovery of interest on Working Capital Facilities for three months from 01.03.2020 to 31.05.2020;

(c) issue writ/writs including a writ of mandamus or any other writ or direction in the nature thereof, directing the respondents to allow restructuring of Stressed Accounts;

(d) issue writ/writs including a writ of mandamus or any other writ or direction in the nature thereof, directing the respondents to extend the date for depositing GST from 20th of every month to 30th of every month for a period of six months;

(e) issue writ/writs including a writ of mandamus or any other writ or direction in the nature thereof, directing the respondents to refund the pending GST amounts and utilise pending GST amounts for payment of Government expenses for the MSMEs industries.

1a. Writ Petition (Civil) No.542 of 2020 under Article 32 of the Constitution of India has been preferred by the petitioners – CREDAI – Maharashtra Chambers of Housing Industry and

another which has been filed for and on behalf of the real estate sector challenging notification dated 27.03.2020 issued by the RBI with a prayer that the same may be declared as *ultra vires* to the extent it charges interest on the loan amount during the moratorium period (which has been declared between March 1, 2020 till August 31, 2020). Therefore, the main grievance in this writ petition is to continue not to charge the interest on the outstanding portion of the term loans during the moratorium period.

1b. By way of Writ Petition (Civil) No. 945 of 2020 preferred under Article 32 of the Constitution of India, the petitioner, a practising Advocate, has prayed for an appropriate writ, direction or order directing the Union of India – Ministry of Finance, Ministry of Home Affairs and the RBI to extend the moratorium period till 31st December, 2020, which was lastly extended vide notification dated 23.05.2020.

1c. Writ Petition (Civil) No. 937 of 2020 has been preferred under Article 32 of the Constitution of India by the Contract Carriage Operators Association to quash notification dated 27.03.2020 issued by the RBI to the extent charging interest during the moratorium period. It is also prayed to direct the RBI

to extend the period of moratorium by another six months, without any interest being levied on the loans availed by the members of the petitioner organisation.

1d. Writ Petition (Civil) No. 1024 of 2020 has been preferred under Article 32 of the Constitution of India by the petitioner – Confederation of Real Estate Developers Association of India (CREDAI), for and on behalf of the private real estate developers in Chhattisgarh, also challenging notification dated 27.03.2020 issued by the RBI to the extent charging interest on the loan amount during the moratorium period. It is also prayed for an appropriate writ, direction or order directing the respondents – Union of India to take adequate measures of reliefs to the disaster affected persons in accordance with letter and spirit of Disaster Management Act, 2005, more particularly Sections 12 and 13 of the said Act, more particularly to the reliefs with respect to waiver of loan and/or interest on all kind of loans availed by the borrowers/disaster affected persons through a well informed and formulated policy.

1e. Writ Petition (Civil) No. 1025 of 2020 under Article 32 of the Constitution of India has been preferred by the Chhattisgarh Sponge Iron Manufacturers Association, also challenging

notification dated 27.03.2020 issued by the RBI, which has been further extended vide notification dated 23.05.2020 to the extent it charges interest on the loan amount during the moratorium period. It is also prayed to direct the Union of India and others to take steps/grant reliefs to the disaster affected persons in accordance with letter and spirit of Disaster Management Act, 2005, more particularly in terms of Sections 12 and 13 of the said Act.

1f. Writ Petition (Civil) No. 1006 of 2020 has been preferred under Article 32 of the Constitution of India by an individual M/s Supertech Limited for an appropriate writ, direction or order directing the RBI and the National Housing Bank to instruct all the banks/financial institutions/non-banking financial companies to restructure all loan accounts availed by the petitioner on its projects and to calculate the repayment @ 8% simple interest from the date of disbursement till its final repayment in the light of paragraphs 28 to 30 of the decision of this Court dated 10.06.2020 passed in Writ Petition (Civil) No. 940 of 2017 (Amrapali group matter) and to protect the interest of the home buyers.

1g. Writ Petition (Civil) No. 959 of 2020 under Article 32 of the Constitution of India has been preferred by Federation of Self- Financing Technical Institutions and others for an appropriate writ, direction or order directing the Union of India – Ministry of Finance, RBI and others to provide such financial relief to its members freezing all financial liabilities of financial institutions of the petitioners – banks and financial institutions. It is also prayed for waiver of the penal interest charged for a period of one year or until such time as it takes for the pandemic to abate. It is also further prayed to direct the Union of India – Ministry of Finance and the RBI to direct the financial institutions to grant additional credit facility of Rs. 2 crores to each member institutions of the petitioners without interest to meet salary cost and other overheads during the Covid-19 pandemic. It is also further prayed to direct to the financial institutions to reschedule the loan instalments for one academic year without any charge of interest over the interest for the unpaid period.

1h. Writ Petition (Civil) No. 955 of 2020 under Article 32 of the Constitution of India has been preferred by the CREDAI – HR for and on behalf of the real estate sector for an appropriate writ directing the respondents – Union of India, RBI and others to

provide such financial relief to its members, freezing all financial liabilities of such members towards banks and financial institutions. It is also further prayed to direct the RBI to apply Circular dated 27.03.2020 to all banks, non-banking financial companies, housing finance companies and other financial institutions compulsorily and mandatorily to all loan accounts without any discrimination or classification.

1i. Writ Petition (Civil) No. 506 of 2020 under Article 32 of the Constitution of India has been preferred by one private limited company challenging notification dated 27.03.2020 issued by the RBI to the extent charging interest on the loan amount during the moratorium period.

1j. Writ Petition (Civil) Diary No. 12389 of 2020 under Article 32 of the Constitution of India has been preferred by the Shopping Centres Association of India (SCAI) for and on behalf of its members who are engaging in Malls and Shopping Centres challenging notification dated 27.03.2020 issued by the RBI to the extent charging interest on the loan amount during the moratorium period. It is also prayed to extend the moratorium period beyond August, 2020. An application has also been filed

for exemption from paying court fee and notarized affidavits. The said prayer is allowed in terms of clause 3 of the application.

1k. Writ Petition (Civil) No. 568 of 2020 under Article 32 of the Constitution of India has been preferred by CREDAI – MCHI, Mumbai for and on behalf of its members – real estate developers for an appropriate writ, direction or order for waiver of interest in respect of its instalments due as on March, 2020 until end of fourth quarter of financial year 2020-2021. It is also further prayed to direct the RBI and financial institutions to make available additional source of finance in the nature of grant of additional loans, working capital facilities, guaranteed emergency credit line and construction finance etc.

1l. Writ Petition (Civil) No. 606 of 2020 under Article 32 of the Constitution of India has been preferred by an individual also challenging notification dated 27.03.2020 issued by the RBI as *ultra vires* to the extent it charges interest on the loan amount during the moratorium period. It is prayed to direct the respondents to provide relief in repayment of loan by not charging interest during the moratorium period declared by notification dated 27.03.2020, further extended by notification dated 23.05.2020.

1m. Writ Petition (Civil) No. 608 of 2020 under Article 32 of the Constitution of India has been preferred by the Association of Power Producers and others for and on behalf of the private power developers in India, owning power plants in the country for an appropriate writ, direction or order directing the RBI to issue directions to lending institutions not to charge interest on interest accrued during the moratorium period in terms of notification dated 27.03.2020. It is also prayed to direct the RBI to extend moratorium on interest and principal for an additional period of six months ending on 31.03.2021 without treating any member of the petitioner no.1 as defaulter. It is also further prayed to direct the RBI to de-link interest rates issued by lending institutions from credit rating till such time that the stress on the power sector caused due to the Covid-19 pandemic is eased. It is also further prayed to direct the RBI to provide a special dispensation to the lenders to allow extension of the Scheduled Commercial Operation Date of projects under construction, due to delays in completion of under-construction projects on account of Covid-19 and the lockdown, by another one year while maintaining the “standard” asset categorisation. It is also further prayed to direct the respondents to include Non-Convertible Debentures as part of

the relief granted by the RBI in its notification dated 27.03.2020, as well as, any other Covid-19 related relief which may be granted.

1n. Writ Petition (Civil) No. 711 of 2020 under Article 32 of the Constitution of India has been preferred by Coimbatore Jewellery Manufacturers Association for and on behalf of its members to declare that part of notification dated 27.03.2020 issued by the RBI, as extended by notification dated 23.05.2020, as *ultra vires* to the extent it charges interest on the loan amount during the moratorium period. It is also prayed to direct the Union of India and the RBI to provide relief in repayment of loan by not charging interest during the moratorium period declared by notification dated 27.03.2020, further extended by notification dated 23.05.2020. It is also further prayed to extend the moratorium period on payment of instalments/interest by a further period of 18 months, in exercise of powers under Section 21 read with Section 35A of the Banking Regulation Act, 1949.

1o. Writ Petition (Civil) No. 785 of 2020 under Article 32 of the Constitution of India has been preferred by CREDAI Tamil Nadu praying for waiver of interest/penal interest for a period of one year or until such time as it takes for the pandemic to abate. It is

also prayed to direct the respondents to provide such financial relief to the members of the association including freezing all financial liabilities of such members towards banks and financial institutions from whom the members of the petitioner's association have taken loans, for a further period of six months. It is also further prayed to direct the respondents to provide such financial relief including one-time restructuring for all accounts of real estate projects which were standard as on 31.12.2019.

1p. Writ Petition (Civil) No. 802 of 2020 under Article 32 of the Constitution of India has been preferred by the Textile and Knitwear Association challenging notifications dated 27.3.2020 and 23.05.2020 issued by the RBI as *ultra vires* to the extent charging interest on the loan amount during the moratorium period. It is also prayed to direct banks and financial institutions not to charge the interest on the due payments towards principal/interest for a period of three years.

1q. Writ Petition (Civil) No. 829 of 2020 under Article 32 of the Constitution of India has been preferred by the Northern India Textile Mills Association also challenging notifications dated 27.03.2020 and 23.05.2020 to the extent charging interest during the moratorium period.

1r. Writ Petition (Civil) No. 826 of 2020 under Article 32 of the Constitution of India has been preferred by the Federation of Industrial and Commercial Organization (FICO) also challenging notification dated 27.03.2020 to the extent charging interest on the loan amount during the moratorium period. It is also prayed to direct the respondent – RBI to direct banks and financial institutions to make all due payments towards principal/interest in a three-year period after expiry of the forbearance period, without charging any interest on the same.

1s. Writ Petition (Civil) No. 964 of 2020 under Article 32 of the Constitution of India has been preferred by Chattisgarh Laghu and Sahayak Udyog Sangh for and on behalf of its members declaring the portion of notification dated 27.03.2020 issued by the RBI, as extended by notification dated 23.05.2020, charging the interest and also interest on interest (penal interest) during the moratorium period as ultra vires.

1t. Writ Petition (Civil) No. 1029 of 2020 under Article 32 of the Constitution of India has been preferred by an individual challenging notifications dated 27.03.2020 and 23.05.2020 to the extent charging interest on the loan amount during the moratorium period.

1u. Writ Petition (Civil) No. 1157 of 2020 under Article 32 of the Constitution of India has been preferred by the Chhattisgarh Udyog Mahasangh also challenging notifications dated 27.03.2020 and 23.05.2020 to the extent charging interest/interest on interest (penal interest) on the loan amount during the moratorium period. It is also prayed to direct the Union of India to take adequate and effective measures of reliefs to the disaster affected persons in accordance with letter and spirit of Disaster Management Act, 2005, more particularly in terms of Sections 12 and 13 of the said Act, and such reliefs including inter alia suitable waiver of loan and/or interest on all kind of loans availed by the borrowers/disaster affected persons through a well informed and formulated policy.

1v. Writ Petition (Civil) Nos. 1132 of 2020 and 1178 of 2020 under Article 32 of the Constitution of India have been preferred by Chhattisgarh Hotel and Restaurant Association and Raipur Automobile Dealers Association (RADA) respectively for the same reliefs as have been prayed in Writ Petition (C) No. 1157 of 2020.

1w. Writ Petition (Civil) No. 1190 of 2020 under Article 32 of the Constitution of India has been preferred by a private limited company – Fabworth Promoters Private Limited for an appropriate

writ, direction or order directing the Union of India – Ministry of Finance and RBI and others challenging the RBI Circular dated August 06, 2020 to the extent mentioned in 10A and 10B. It is also prayed to direct not to charge any additional interest or additional charges of any nature by the lending institutions, including but not limited to, towards grant of additional finance while approving a resolution plan under the RBI Covid-19 Resolution Framework dated August 06, 2020. It is also further prayed for an appropriate writ, order directing the respondents to formulate a relief package/policy to make effective provisions for the hospitality sector including but not limited to make available additional source of finance in the nature of grant of additional loans, working capital facilities, guaranteed emergency credit line etc., without payment of any additional interest on the existing contractual rates of interest or additional charges of any nature. It is also further prayed to direct the respondents to formulate a relief package/policy making it mandatory for all lending institutions to pass on the benefit of reduction of repo rates by RBI to all loans and facilities granted by all lending institutions.

2. Considering the reliefs sought in the respective writ petitions, referred to hereinabove, the reliefs sought by the

respective petitioners in their respective petitions can be broadly bifurcated into four parts, namely, (1) waiver of compound interest/interest on interest during the moratorium period; (2) waiver of total interest during the moratorium period; (3) extension of moratorium period; and (4) there shall be sector-wise economic packages/reliefs.

Submissions on behalf of the respective Petitioners

3. Shri Ravindra Shrivastava, learned Senior Advocate appearing on behalf of the respective petitioners in Writ Petition (C) Nos. 964/2020, 1024/2020, 1025/2020, 1132/2020, 1157/2020 and 1178/2020 has made the following submissions:

i) that this Court ought not to limit the scope for relief and directions only qua waiver of compound interest which is limited to a highly restricted segment of the class of borrowers. It is submitted that shorn of technicalities of pleadings and specific prayers, this Court must take cognizance in public interest of the severity and the magnitude of the disaster and mould the relief accordingly to extend an effective measure of relief to an utterly distressed class of people affected by the pandemic of Covid-19;

ii) that Covid-19 pandemic is a disaster in itself of an unprecedented history. It undoubtedly requires disaster management;

iii) that the "disaster management" must be and can only be addressed under the statutory regime of law enacted by the Parliament. The question of executive response will come into play only after the special law on the aspect of "disaster management" has run its full course. There is no way that the issues arising out of the disaster of Covid-19 can be addressed without travelling the course of path under the Disaster Management Act, 2005 (hereinafter referred to as the "DMA 2005");

iv) that the Statement of Objects and Reasons of DMA 2005 specifically states that the DMA 2005 has been enacted to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. It is submitted that the preamble of the Act states that

it is an Act to provide for the effective management of disasters and for matters connected therewith or incidental thereto;

v) that by reason of the very provision of Section 72 of the Act which accords to it overriding effect, DMA 2005 is a special law and is a complete code in itself;

vi) that the aspects of “disaster management” which inter alia includes grant of relief and concessions to the distressed community of borrowers affected by the disaster, has not at all been considered, addressed and much less sought to be remedied under the statutory framework. Whatever little has been seen is only executive response. The conspectus of the provisions of DMA 2005 simply imposes legal and statutory duty on statutory authorities who have to perform the legal obligation in the interest of the distressed community of people suffering the disaster and its impact. It is submitted that in the matter of grant of reliefs and concessions and adopting measures for minimising the pains and agony of the disaster, the statutory authorities have not risen at all to their task and legal duty;

vii) it is submitted that Covid-19 pandemic is a “disaster” within the meaning of Section 2(d) of the Act. It is submitted that not only disaster but it is a “disaster of severe magnitude” within the

contemplation of Section 13 of the Act. Any disaster inflicted on mankind within the territory of India, requires “disaster management” to be carried out by several tier of authorities as are established under the Act; the National Disaster Management Authority being the foremost, seemingly omnipotent and omnipresent. It is submitted that the “disaster management” is defined in Section 2(e) of the Act;

viii) that the “disaster management” is a continuous and integrated process of planning, organising, coordinating implementing measures which are necessary and expedient for “…Mitigation or reduction of risk of any disaster or its severity or consequences…”. That the issues which arises squarely fall within the meaning and amplitude of “disaster management” which is statutorily mandated under Section 2(e) of the Act;

ix) that the word “mitigation” has been defined in Section 2(i) and the word “resources” has been defined in Section 2(p) of the DMA 2005;

x) that in the present case the steps for disaster management have not been undertaken by the statutory authorities under the Act, which makes out a plain and simple case of issue of

mandamus to put the statutory authorities in action for performing their duties under the law;

xi) that while Section 11 mandates duty to draw up a plan for disaster management for the whole country, at least this Court has not been informed of any such national plan;

xii) that Section 12 of the Act imposes a mandatory duty on the National Authority to recommend guidelines for the minimum standards of relief to be provided to 'persons affected by disaster' which includes inter alia the reliefs mentioned in three sub- clauses in Section 12 of the Act. The width and scope of the Section is widest and admits of no limitations. The expression minimum standards of relief to 'persons affected by disaster' are all such reliefs which are necessary and required for sustenance and survival of meaningful living existence of the 'people affected by disaster'. This will include within its fold monetary relief and concessions, apart from other measures;

xiii) that the Union of India has filed various affidavits but none of them places on record any recommendation of National Authority for guidelines for providing minimum standards of relief for 'persons affected by disaster' in discharge of legal duty under the Act;

xiv) that Section 13 of the Act is more specific and directly pertinent to the issues which have been raised in these petitions. The Parliament is cognizant of the fact that an occurrence of disaster of severe magnitude can inevitably seriously impair the ability and capacity of the borrowers for repayment of loans and further the 'persons affected by disaster' may require for living existence grant of fresh loans. Being aware of such a contingency which is most likely to occur in cases of disaster of severe magnitude, the National Authority has been enjoined upon with legal duty to "recommend relief" – in repayment of loans or grant of fresh loans to persons affected. It is submitted that what would be form of relief in the payment of loan or grant of fresh loans on concessional terms, is the exclusive domain and authority of the National Authority. It is submitted that the relief envisaged under Section 13 of the Act has to be meaningful and substantive; it has to be based on rational consideration and not a pittance. A legal and faithful discharge of duty cast upon the National Authority would require the Authority in minimum to undertake an empirical study of the severity of the magnitude and in proportion the requirement of the number and class of people and the exact nature of relief to be extended which is

possible only after collection of relevant data and undertaking a study by experts;

xv) that Section 13 which casts duty upon the National Authority to recommend relief in the matter of repayment of loans and/or grant of fresh loans on concessional terms does not make any differentiation among the class of 'persons affected by disaster'. The class of persons affected by disaster is one integrated class as the Covid-19 pandemic has affected every single individual person, the difference may be of degree. Section 13 intends to provide relief in the matter of repayment of loans etc. to all the persons affected by the disaster and does not admit of any classification. While this much is the minimum scheme of law, the National Authority has not made any recommendation with regard to relief in the repayment of loans and/or for grant of fresh loans to persons affected by disaster on such concessional terms as may be appropriate. There has been a complete inaction on the part of the National Authority in performing the legal duty. It is submitted that any recommendations of the National Authority under Section 13 of the DMA 2005 have not been brought to the notice of this Court;

xvi) that some of the measures which are suggested to have been taken are only executive measures and are *dehors* of the provisions of Sections 12 and 13 of the DMA 2005. Those measures cannot be read in substitution of the requirements of Sections 12 and 13. The only and exclusive authority to make recommendations either under Section 12 or 13 of the Act is only the National Authority. It is submitted that in view of the clear provision of the Act entrusting the duty of making recommendations for extending reliefs for persons affected by disaster is on the National Authority. The case on behalf of the UOI so stated in paragraph 29 of affidavit dated 31.08.2020 that as the reliefs/measures in financial sector were being examined and supervised by the Ministry of Finance, the NDMA did not step in as, by its very nature, it may not have expertise in dealing with the complex policy decisions effecting the financial stability of the nation in general and that of banking sector in particular, is not only incorrect, unacceptable but rather uncharitable to the highest body of NDMA.

It is submitted that therefore the NDMA has not stepped in despite the clear mandate under Section 13 of the Act. It is submitted that the entire executive government both, at the level

of Centre and the State are under the command of the National Authority and bound to act in aid of the National Authority in discharging its duties. It is submitted that the National Authority is not an expert body is unacceptable. It is submitted that the National Authority has all the powers to seek assistance from other bodies for performing its legal duties. The task of Disaster Management also includes capacity building and augmentation of resources which the National Authority can work on. Lack of resources in terms of funds is neither an answer nor an excuse for not performing its duties and obligations under the DMA to provide relief to the persons affected by disaster;

xvii) that the Ministry of Finance and the RBI do have an important role to play but their role is and can only be to aid and assist the National Authority in formulation of the measures of

relief. The actual decision and based thereon the recommendations to various stakeholders including the lending institutions is solely the jurisdiction and authority of the National Authority, which jurisdiction and power can neither be delegated nor abdicated. The measures formulated by the Ministry of Finance and RBI have to have the approval and sanction of the

National Authority which alone has the authority to make their recommendations;

xviii) that even the government in discharge of executive functions and providing administrative response have to act as "*parens patriae*" which doctrine is embedded in the preamble of the Constitution. It is submitted that the government in democracy or any other government has to act only and only for the welfare of the people. In support of his submission, reliance is placed on the decision of this Court in the case of *Charan Lal Sahu v. Union of India, (1990) 1 SCC 613* (paragraph 35).

It is submitted that therefore when the doctrine of *parens patriae* gets attracted, the lack of resources or financial considerations resulting in denial of relief to the needy persons affected by disaster is no answer and cannot be pressed into service. It is submitted that the government is simply bound to arrange its coffers in such a manner that the relief cannot be denied. Reliance is placed upon the decision of this Court in the case of *Union Carbide Corporation Limited v. Union of India, (1991) 4 SCC 584;*

xix) that the bogey of financial burden and stress on the banks to drive them unviable is raised without any basis on record much less based on empirical study and collection of relevant data which is the basic requirement particularly of rule of law. On the duty of undertaking empirical study based on collection of relevant and quantifiable data, reliance is placed on the decision of this Court in the case of *Kailash Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562;* and the decision of the Constitution Bench judgment in the case of *M. Nagaraj v. Union of India, (2006) 8 SCC 212 (paragraphs 44 to 46);*

xx) that while it is the case of the petitioners that there are no recommendations issued by the NDMA in terms of Section 13 of the DMA 2005, the cryptic correspondence annexed with the affidavit of the Union of India dated 31.08.2020 shows that certain views and recommendations have been expressed by the NDMA vide O.M. dated 28.08.2020. While referring to para 5 of the said affidavit, it is submitted that thus, on the showing of the Union of India itself, whatever is the nature of views and recommendations of the NDMA, it is clear and categorical of one thing that the measures adopted by the RBI and the Government of India, the Ministry of Finance before the NDMA have not found

to be adequate and satisfactory. It is clearly stated by the NDMA that the borrowers may require further relief from the banking sector and that the RBI may consider granting further relief to the borrowers;

xxi) that while the Ministry of Finance vide its letter dated 31.08.2020 seems to have communicated to the RBI the aforesaid views and recommendations of NDMA regarding relief and repayment of loans by borrowers affected by Covid-19 pandemic, there is nothing on record to show any further consideration much less any grant of further relief by the RBI, pursuant to the views and recommendations of the NDMA;

xxii) Now so far as the waiver of compound interest by way of Ex-Gratia Scheme vide memo dated 23.10.2020 is concerned, it is vehemently submitted that the very use of the word “ex-gratia” is inappropriate and indicates complete lack of empathy and a misdirected approach of the Union of India. What the persons affected by the disaster are entitled to at the hands of the statutory authority and also the welfare Government towards disaster management and within its contemplation extension reliefs and concessions, is misconceived as matters of bounty and/or charity described as ex-gratia. The distressed class of

persons affected by the disaster are entitled to reliefs and concessions as a matter of right because that flows from the legal and statutory duty imposed by the statutory law of Parliament – DMA 2005 and the supreme law of the land, i.e., the Constitution of India. It is submitted that it is because of this approach of a gratis underlying the scheme that both the statutory authorities and Union of India have miserably failed to address the issue in right perspective and grant relief and concessions to the persons affected by the disaster in an effective, meaningful and substantial manner;

xxiii) that even the Scheme dated 23.10.2020 contains the eligibility criteria as under:

"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 29.02.2020, 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 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 as the case may be. A Non-Banking Financial Company-Micro Finance Institution should be a member of a Self-Regulatory Organization (SRO) recognized by RBI.

(iii) The ex-gratia payment under this scheme shall be admissible irrespective of whether the borrower in sub-clause (1) has 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."

It is submitted that a perusal of the aforesaid will show that the relief and concession which was announced in the affidavit of the Union of India dated 02.10.2020 has been further restricted making it wholly arbitrary and eyewash. It is submitted that the following restrictions are obvious from paragraph 4:

i. That it is applicable to the borrowers in the 7 class/segments;
ii. It is applicable to the borrowers who have loan accounts having sanction limits and outstanding amount of not exceeding 2 crores;
iii. The aggregate of all facilities with lending institutions should not exceed 2 crores as on 29.02.2020;
iv. That the account should be standard as on 29.02.2020 i.e. the loan should not be a non performing asset as on that date.

It is submitted that the eligibility criteria enshrined in para 4 of the scheme has stark contrast with affidavit dated 02.10.2020. It is submitted that the Ministry of Finance has added more and drastic conditions reducing it to an illusion of reliefs and concessions. The arbitrary and irrational criteria is so striking that the scheme is virtually nugatory. In the first place, para 18 of the affidavit dated 02.10.2020 as well as para 4 of the scheme, both make it evident that if the total exposure of the loan at the grant of sanction is more than Rs. 2 crores, the borrower will be ineligible irrespective of the actual outstanding. For example, if the borrower has been sanctioned a loan of Rs. 5 crores and has availed of the same, even though he might have repaid substantially bringing down the principal amount to less than Rs. 2 crores as on 29.02.2020 but because of the sanction of the loan amount of more than Rs. 2 crores, he stands ineligible. It is submitted that more remarkable is the condition that the outstanding amount should not exceed Rs. 2 crores and for which purpose the aggregate of all facilities with the lending institutions will be reckoned. It means that hypothetically a borrower, for example MSME category, has availed and has outstanding of business loan of Rs. 1.99 crores and also has a due on his credit

card of Rs.1.10 lakh thereby making the aggregate to Rs.2.10 crores, he stands ineligible. This cannot be justified by any logic;

xxiv) that even the categorisation of borrowers limited to 8 categories only is not based on collection of any data and any empirical study in an objective manner, much less a study of the severity of the magnitude and effect of the pandemic disaster on the borrowers, the classification on the borrowers limited to 8 categories has no nexus with the object sought to be achieved. It is submitted that it cannot be suggested nor can it be accepted logically that the borrowers outside 8 categories are not or would not be affected by the severity of the disaster, i.e, the pandemic and make them the class of persons affected by the disaster entitling to a similar treatment on parity. On what basis the categorisation limited to 8 categories has been made is not discernible nor can be comprehended;

xxv) that affidavit dated 02.10.2020 shows that there is a classification between ‘small borrowers’ and ‘big borrowers’. It is submitted that this classification is wholly arbitrary. It is submitted that in the process of this classification a sizable and much bigger class of ‘middle class borrowers’ has been completely excluded and no treatment has been accorded to the class of

borrowers situated between the small and big classes. It is submitted that this classification therefore is clearly unrealistic and unscientific. It is submitted that neither any study has been done nor the classification has been made on any rational basis which has nexus with the ground reality;

xxvi) that the classification of borrowers is both discriminatory and arbitrary and thereby in violation of Article 14 of the Constitution. It is submitted that the classification is solely irrational, unreal, unscientific and highly subjective, thereby suffering from the vice of arbitrariness violating Article 14 of the Constitution;

xxvii) that the classification has no nexus at all with the object sought to be achieved whereas the object is clear, statutory, constitutional and singular, i.e., extending reliefs to ameliorate the distress and miseries of the distress class of persons which are severely hit by the disaster of pandemic and do constitute a sizable and significant class of persons affected by the disaster requiring disaster management;

xxviii) that the impugned classification is based on whims and caprice of the executive rather than an objective and real consideration. No material is available on record to show the

basis of the classification. The Union of India cannot seek to clothe a decision which is so evidently discriminatory and arbitrary under the protective shield of policy decision inasmuch as any policy can neither be arbitrary nor discriminatory. In support of his submissions, Shri Ravindra Shrivastava has heavily relied upon the decisions of this Court in the cases of *Rattan Arya v. State of T.N. (1986) 3 SCC 385; State of W.B. v. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 (paras 83 & 84); and D.S. Nakara v. Union of India, (1983) 1 SCC 305 (paras 13 & 14);*

xxix) that even within the class of classified eligible borrowers, the arbitrariness is writ large because categories and the borrowers of each categories are inherently dissimilar but are sought to be painted with one brush. They are made to wear the shoes of one size to fit in all. The borrowers in 8 categories compared with each other unequal. For example, a business loan to MSME category is considered at par with home loan and educational loan. The conditions of the loans and interests are bound to be different so much so the credit card holders and consumer durable loans and automobile loans are inherently dissimilar, also the personal loans to professional and the MSME loans are

different in content. It is submitted that thus unequals are being treated as equals which itself is a case of classic discrimination. Reliance is placed on the decision of this Court in the case of *Roop Chandra Adlakha v. Delhi Development Authority, 1989 Supp. (1) SCC 116 (paras 19 & 20);*

xxx) that even charging interest on interest/compound interest can be said to be in the form of penal interest. It is submitted that the penal interest can be charged only in case of wilful default. It is submitted that in view of the effect of pandemic due to Covid-19 and even otherwise defer the payment of loan during the moratorium period as per circular dated 27.3.2020, it cannot be said that there is any wilful default which warrants interest on interest/penal interest/compound interest. It is submitted that there shall not be any interest on interest/penal interest/compound interest charged for and during the moratorium period;

xxxi) that even otherwise limiting relief and concessions to the victims of disaster to waiver of compound interest alone is arbitrary, insufficient, irrational and discriminatory. It is submitted that the so-called waiver of compound interest can only be one of the measures but ought not to be allowed to be the

end of the road by closure of the case as has been sought by the Union of India. Only a proper and objective study will reveal whether relief more than the waiver of compound interest is the dire need of the persons affected by the disaster. Sections 12 and 13 of the DMA 2005 envisage reliefs in terms of more than what is sought to be done under the pretence of ex-gratia scheme. It is submitted that even a judicial notice can be taken that the severity of the impact and consequences of the disaster upon the common class of people, such as employees, businessmen, farmers, workers, industrialists, professionals etc. are beyond description. To a significant class of people, the impact of the disaster has threatened their very survival and meaningful existence of life and liberty. It is submitted that therefore it is a complete misconception of the Union of India that relief of waiver of compound interest is sufficient to provide redress within the meaning of Sections 12 and 13 of the DMA 2005. It is submitted that the measures of reliefs were required to be laid down sector and group wise classified on the basis of common denominating factors, which have not been done;

xxxii) Now so far as the measures proposed by RBI vide circular dated 6.8.2020 is concerned, it is vehemently submitted

that the same cannot be said to be a relief of 'disaster management' which otherwise is arbitrary and discriminatory. It is submitted that the RBI Circular dated 6.8.2020 is a sheet anchor of case of both the Union of India and the RBI. This circular seeks to provide for the resolution framework for Covid- 19 based on the "Prudential Framework for Resolution of Stressed Assets Directions 2019" dated 7.6.2019. It is submitted that on the face of it the resolution framework only adopts and incorporates the circular dated 2.6.2019, which is prior to onset of pandemic disaster;

xxxiii) that the RBI is not the authority though it may have supportive role to play to take a decision in regard to the measures of relief and concession to the disaster affected persons arising out of the task of disaster management under DMA 2005. It is submitted that the circular is not a substitute for the decision of the NDMA under Sections 12 and 13 of the DMA 2005;

xxxiv) that though the resolution framework mentions Covid- 19 but is not tailor made suited to the extraordinary and unprecedented impact, consequences and distress caused to the persons affected by the disaster of pandemic Covid-19. The

resolution framework for the stressed assets governed by the prudential framework cannot be ipso facto applied for grant of reliefs and concessions to the disaster affected persons under the task of disaster management. The prudential norms have nothing to do with the peculiarities of impact and consequences of the disaster such as Covid-19 the management of which has entailed into repeated nationwide lockdown unprecedented in history and its continuous cascading impact and consequences hitting across the life and liberties, business, industries and environment. Importation of prudential norms designed for resolution framework for stressed assets for lessor conditions of economic distress is only whimsical and irrational. It is submitted that it is, as such, dereliction of duty;

xxxv) that the resolution framework as per 6.8.2020 has itself been held to be inadequate by none other than the NDMA as is evident from the views and recommendations of NDMA contained in the OM dated 28.08.2020. Having taken cognizance of RBI Circular dated 6.8.2020 the NDMA has observed that the borrowers require further relief from the banking system and exalted the RBI to grant further relief. Such inadequate measure

of so-called resolution framework in the RBI circular dated 6.8.2020 ought not be accepted by this Court;

xxxvi) that the resolution framework in RBI circular is highly bank centric and leans not only heavily but only in favour of the banks and lending institutions rather than walking extra mile for the distress class of persons and borrowers. The resolution framework by virtue of the conditions of eligibility in paragraph 2 thereof is *per se* discriminatory and arbitrary. MSME borrowers whose aggregate exposure to lending institutions collectively is Rs. 25 crores or less on 1.3.2020 are not eligible for resolution framework. This classification is solely arbitrary and is based on no intelligible differentia having nexus with the object. It is submitted that the resolution framework is applicable only to those borrowers who are having distress on account of Covid-19 but in what manner such factor would be determined is not provided for, leaving therefore, the benefit of the resolution framework to subjective satisfactory and arbitrariness of the banks, it has been left to the unguided, ultimate and final discretion of the banks to lay down their individual policies and framework creating gross inequality and introducing total subjectivity;

xxxvii) It is further submitted by Shri Ravindra Shrivastava, learned Senior Advocate appearing on behalf of some of the petitioners that the trigger for filing these petitions and the Court taking the cognizance thereof are conditions of exceeding distress, financial and otherwise which seriously impinge upon the fundamental rights of Article 14, 19 and 21 of the Constitution in their full ramifications. It is submitted that the occasion for this Court is an extraordinary human tragedy of unparallel origin and precedence and therefore requiring extraordinary statutory legal and constitutional response by the statutory authorities and the Government of India. It is submitted that the issues are far more important to be asked to be closed on the basis of few affidavits and circulars which fall far short from the requirements of constitutional and statutory duties. It is submitted that the statutory authorities must act without any more delay, the Government of India being the *parens patriae* has to act in a meaningful manner and meaning of the doctrine as the father of the citizens of the republic and therefore the ultimate custodian and guardian of their welfare. It is submitted that the role of the

parens patriae by the Government of India has not been

discharged as per the doctrine which has been explained by the Constitution Bench in *Charan Lal Sahu (supra)*;

xxxviii) that the very nature of the issues involved in this case and of which cognizance is required to be taken are such that there is an eminent need in public interest of continuous monitoring of the statutory and executive action by this Court and further issuance of continuous directions and mandamus to all the authorities concerned. It is submitted that neither the magnitude and severity of the disaster which has continuous and cascading effect and considering the very concept of "disaster management" under the Act as an integrated and continuous process, the relief and measures adopted or required to be adopted cannot be a sort of one-time grant or package. It is submitted that with the evolution of situation there is a strong public interest and need for this Court to keep exercising its constitutional jurisdiction under Article 32 of the Constitution so that the authorities do not fail, they remain active and vigilant and enormous class of victims of the disaster do not remain crying for the redressal of the grievances. In support of his submission, heavy reliance is placed on the decision of this Court

in the case of *T.N. Godavarman Thirumulkpad v. Union of India (1997) 2 SCC 267.*

4. Dr. Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of the power sector has further submitted in addition to what is submitted by Shri Ravindra Shrivastava, learned Senior Advocate that during the lock down due to Covid-
19 pandemic, power sector is badly affected. It is submitted that therefore there shall be a special package of relief for the power sector. It is submitted that therefore not enabling/considering the impact of lockdown due to pandemic, vis-à-vis power sector and not providing special package for the power sector, unequals are treated equally. It is submitted that therefore the NDMA/UOI/RBI must devise suitable and appropriate sector specific measures essentially for the continued operation of the power generation sector.

4.1 It is submitted that the RBI Circular relating to Covid-19 relief packages viz. impugned RBI notifications, RBI Circulars dated 6.8.2020, 7.9.2020 have left the option of providing relief to the discretion of lenders instead of making it mandatory. It is submitted that as per the aforesaid notifications, the lenders are permitted to grant a moratorium of three months on payment of

all instalments for repayment of term loans and working capital facilities falling due during the moratorium period. It is submitted that as per paragraphs 14 and 15 of Part B of circular dated 6.8.2020, the decision to provide relief has been left to the discretion of the lenders; as per paragraph 18 of circular dated 06.08.2020, the resolution process has to be invoked by not less than 75% of lenders by value and not less than 60% of lenders by number. It is further submitted that paragraph 7 of circular dated 7.9.2020 provides a window to the lenders to vary from the provisions of the circular dated 6.8.2020.

4.2 It is further submitted that in order to ensure that relief is granted to borrowers impacted by the spread of Covid-19 pandemic and the subsequent national lockdown, the above- mentioned circulars ought to be binding on all lenders who would otherwise qualify as “financial creditors” under the Insolvency and Bankruptcy Code, 2016.

4.3 It is further submitted that by leaving the application of the said RBI circulars to the discretion of the individual lenders, borrowers, who are under severe financial stress on account of Covid-19, are denied appropriate relief as lenders tend to focus on their own statutory and internal compliances and interests. It is

submitted that the purpose of providing a relief framework for the borrowers affected by the Covid-19 pandemic stands defeated since lenders are incentivised to recover their costs. It is submitted that in such a scenario, the RBI ought to have made it mandatory for all lenders to provide relief under the impugned RBI notifications, Circulars dated 6.8.2020 and 7.9.2020 available at the option of the borrowers and not at the discretion of the lenders in order to provide relief to borrowers impacted by the outbreak of Covid-19.

5. Shri Kapil Sibbal, learned Senior Advocate appearing on behalf of CREDAI – Real Estate Sector has vehemently submitted that Real Estate Sector is also badly and severely affected due to nationwide lock down. It is submitted that the measures undertaken by the UOI/RBI are arbitrary, discriminatory, illusory and inadequate and does not offer any reliefs to the Real Estate Sector, when Real Estate Sector because of its importance and contribution towards country's economy requires special consideration.

5.1 It is further submitted that the Union of India/NDMA have failed to perform their statutory duty cast under Sections 12 and 13 of the DMA 2005. It is submitted that while providing reliefs,

no data is collected with respect to impact on individual sectors. It is submitted that even as required under the DMA 2005, there is no national plan prepared while considering the disaster – Covid-19 pandemic.

5.2 It is further submitted that even the terms of reference of Kamath Committee are ex-facie contrary to the aim and object of policies framed by the RBI/UOI, which was primarily to mitigate and alleviate the debt burden of the borrowers. It is submitted that the Kamath Committee Report,

(i) proceeds on the basis that businesses which were shut down due to Government action [i.e. National Lockdown] and defaulters.

(ii) The Terms of Reference of Kamath Committee are only aligned for interest of the lending institutions and not for continuous viability of businesses as seen from the chart annexed.

(iii) The stringent conditions so imposed are difficult to comply and will turn all businesses into NPA.

(iv) Restructuring plan is required to be approved by December 2020 although the Real Estate sector has barely commenced functioning due to COVID – 19 restrictions i.e. the “force majeure’ even continues and no proposal is possible.

(v) The ratios of borrowing limits / net asset value which were never there in the original loan agreements are imposed under the Restructuring Policy.

(vi) Moratorium Policy expired on 31.08.2020 and due to the inability of the businesses in the real estate sector to make payments during the months of September, October and November 2020, their credit rating has already been downgraded to Grade “D” and as NPAs. Therefore, they do not qualify for restructuring.

(vii) Being a restructured loan, banks will have to make additional 10% integral provisioning for such lending and as a result of credit rating downgrading, the banks will have to charge few percentage basis points for all such loans.

5.3 It is further submitted that the banks are the beneficiaries of the policies framed by the RBI, who have profiteered at the peril of borrowers who are unable to withstand the effects of the disaster. It is submitted that the real estate sector is seeing a continuous decline in sales, investments, leasing and pricing in 2021 owing to the effect of Covid-19 pandemic. Shri Sibbal, learned Senior Advocate has further submitted that if the moratorium period is not extended till 31st March, 2021 and if the reliefs as sought for in the writ petition are not granted, then majority of all accounts will be qualified as NPA as per RBI Prudential norms on Income Recognition; asset classification and provisioning pertaining to advances; virtually no accounts would qualify for restructuring under the Restructuring Policy, since it is made applicable only to those accounts which are not in default for more than 30 days as on 01.03.2020 and credit rating of members of the CREDAI will be downgraded and permanently impaired, resulting in the witnesses of the members of the association becoming commercially unviable. It is submitted that real estate sector is one of the most affected sectors on account of the lockdown and the ongoing pandemic. The precarious situation has adversely affected not only over 1400 members of

CREDAI – MCHI but also the 270 ancillary industries dependent on the real estate industry. If the sector suffers such irreparable loss, all the allied industries would also be severely affected. Therefore, it is prayed in para 8 to grant the following reliefs:

> 8.1The Moratorium Policy be made mandatory and extended by the Respondent No.2 from 01.09.2020 until 31st March, 2021 or complete normalcy is achieved, whichever is earlier.
>
> 8.2All borrowers in the real estate sector must be granted the benefit of interest waiver (including interest on interest), as the case may be, till complete normalcy is achieved or till the Resolution Plan under Restructuring Policy is approved [if invoked], whichever is earlier.
>
> 8.3Restructuring Policy dated 07.08.2020 and 07.09.2020 to be simplified, broad based and implemented across board without any classification so that the true object of bailing out the borrowers under stress [precipitated by the national disaster / pandemic / force majeure event] and supporting the revival of the Indian economy / its GDP through its focal sector i.e. real estate can be seamlessly achieved.
>
> 8.4All accounts which have not been declared as NPA as on 01.03.2020 are to be made eligible for restructuring without any further provisioning of 10% by banks.

6. The other learned Advocates appearing for the other respective petitioners, such as, Textile Association, Healthcare Sector, Hotelier Association, Shopping Centres and Malls, Travellers and other industries have by and large made the submissions which are narrated hereinabove and therefore they are not repeated again here.

Reply on behalf of the Union of India

7. All these petitions are opposed by Shri Tushar Mehta, learned Solicitor General of India, appearing for the Union of India, Shri Harish Salve, learned Senior Advocate appearing on behalf of the Indian Bank Association, Shri V. Giri, learned Senior Advocate appearing on behalf of the RBI and Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the SBI.

7.1 Shri Tushar Mehta, learned Solicitor General has taken us to various affidavits/additional affidavits filed on behalf of the Union of India. He has also taken us to the various provisions of the DMA 2005, which shall be referred to and dealt with hereinbelow:

Shri Tushar Mehta, learned Solicitor General has submitted that it is a fact and nobody can dispute that the pandemic has caused stress to large and small business and to individual borrowers who have lost their jobs and livelihoods. That they need relief which will help them to get back on their feet. It is submitted that however different segments/sectors have suffered differently. It is submitted that to mitigate the burden of debt servicing brought about the disruptions in the market conditions on account of Covid-19 pandemic, RBI came out with a circular dated 27.03.2020 which permitted lending institutions to grant a

moratorium on payment of all instalments of term loams falling due between 1.3.2020 and 31.5.2020, which came to be extended till 31.08.2020. It is submitted that one of the grievances pertains to grant of waiver from paying interest which has accrued during the moratorium period while making the repayment of loan after the moratorium is over. It is submitted that one other grievance is waiver from paying interest on interest/compound interest accrued during the moratorium period. It is submitted that the Central Government is fully conscious of the difficulties faced by the various sectors and the stakeholders of various sectors within the purview of the Ministry of Finance and other Ministries.

7.2 It is submitted that the Finance Ministry, after the outbreak of the COVID-19 pandemic globally, has taken several measures of relief dealing with the potential problems faced by several sectors and in several spheres of all financial worlds. All these measures were taken as a responsible and measured response to mitigate the problems faced by the sudden outbreak of the pandemic and keeping in mind-

(i) The financial stability of the economy;

(ii) The additional unforeseen and unexpected financial burden imposed on the exchequer to provide relief packages to citizens at large, adversely affected due to the pandemic;

(iii) The very nature of the pandemic whose duration remains uncertain;

(iv) The difference in implications of the reliefs granted for various sectors; and

(iv) The fact that the resources of any country would not be unlimited.

It is further submitted that the Central Government has also taken a number of measures to mitigate financial suffering, which include, *inter alia*, the following: -

(i) **Agriculture loans:** 3% subvention on interest rate payable on prompt repayment has been made admissible despite availing moratorium.

(ii) **Housing loans**: Subvention on interest rate under Pradhan Mantri Awas Yojna has been extended by one more year up to 31.03.2021.

(iii) **Small business borrowers:** 2% subvention on interest rate has been introduced for small business loans under Pradhan Mantri Mudra Yojana.

(iv) **Micro Food Processing Units:** Credit-linked subsidy of Rs.10,000 crore has been introduced for 2 lakh food-processing micro-enterprises.

(v) **Micro, Small and Medium Enterprises (MSMEs):** Emergency credit line of up to Rs.3 lakh crore, backed by 100% guarantee from the Government, at capped rate of interest has been launched.

(vi) **Stressed MSMs:** Financing for stressed MSMEs has been enabled through launch of a subordinate debt scheme.

(viii) **Non-Banking Finance Companies (NBFCs)**: Partial Credit Guarantee Scheme of Rs.45,000 crore and Special Liquidity Facility of Rs.30,000 crore have been launched for liquidity to NBFCs.

7.3 It is further submitted that the Ministry of Finance was fully alive to the problems of the borrowers which obviously cannot be a homogenous class, but by its very nature, has various categories of borrowing, namely, corporate loans, MSME loans and personal loans etc. It is submitted that these three broad categories may have several sub-categories within it, having their own peculiar problems/difficulties and, therefore, needing peculiar remedies and solutions. It is submitted that because of the very nature of the problems faced by various kinds and categories of stakeholders and the wide-ranging difference in the problems faced by several sub-sections of those categories, it was consciously considered that it would not have been possible for the Ministry to provide for a “one size fits all” approach and it would be advisable that steps be taken for grant of relief/solutions for the problems arising during the pandemic through the regulator of the banking sector, viz., the RBI.

7.4 It is submitted that it was for this reason that the Ministry of Finance took the initiative and started interaction with RBI in this behalf, requesting the RBI to provide for various measures of relief to the borrowers. The Finance Ministry and RBI remained

in touch and considering the very nature of the reliefs to be considered and provided, RBI took the decision requiring all banks to take various measures for relief.

It is submitted that while taking such financial policy decisions having implications on the stability of the economy, the decisions are required to be taken keeping in mind several administrative and financial considerations/exigencies, duly keeping in mind the following complex issues that are required to be considered:

(i) That there are a variety of borrows as stated above, namely corporate borrowers (including large industry and large enterprises), Micro, Small and Medium Enterprise (MSME) borrowers, and retail/personal borrowers which include, inter alia, borrowers for housing loans, education loans, vehicle loans, etc.

(ii) That there are several categories of banks and other lending institutions that are required to be kept in view while taking financial and economic decisions that are very sensitive for financial stability of the country. These may include scheduled commercial banks (which include, *inter alia*, Regional Rural Banks, small finance banks, local area banks, nationalized banks, etc.), Urban Co-operative Banks (UCBs), State Co-operative Banks (StCBs) and District Central Co-operative Banks (DCCBs) that cater to rural credit in the country, Non-Banking Financial Companies (NBFCs), Housing Finance Companies (HFCs), all India financial institutions, etc.

(iii) That the structuring of the loan in each category of bank/lending institution and each category of borrower would be different not only in terms of the rate of interest and in terms of duration of the lending facility but also in several other distinct aspects.

(iv) In any banking sector when financial assistance is rendered by way of loans, a balance has to be maintained with the interest of crores of depositors, most of whom are merely depositors and surviving on the interest they receive on their deposits. On an approximate basis, there are over 197 crore deposit accounts in the country in commercial banks alone, in which depositors have deposited their money and are earning interest.

7.5 It is further submitted that to mitigate the burden of debt servicing brought about by disruptions on account of Covid-19 pandemic, the circulars issued by RBI permitted lending institutions to …. (a) to grant a moratorium on payment of all

instalments, including interest, of terms loans falling due between 1.3.2020 and 31.8.2020; and (b) defer recovery of interest on working capital loans for the period from 1.3.2020 to 31.8.2020. It is submitted that under the aforesaid circulars a moratorium on payment of both, principal and interest was by its very nature a temporary standstill arrangement which gives relief to the borrowers in the two ways, namely, (i) the account does not become NPA despite non-payment of dues; and (ii) Credit Information Companies shall ensure that the moratorium does not adversely impact the credit history of the borrowers.

It is submitted that while the standstill applicable to bank loans results in the bank not getting its funds back during the

period of moratorium, the bank continues to incur cost on bank's deposits and borrowings. It is submitted that since a moratorium offers certain advantages to borrowers, there are costs associated with obtaining the benefit of a moratorium.

7.6 It is submitted that immediately upon the serious effects of Covid-19 being felt in the country, the Ministry of Finance addressed a letter to the RBI dated 1.4.2020 which was after moratorium declared by the RBI. Vide the said letter, the Ministry of Finance requested the RBI to do something more than the moratorium.

7.7 It is submitted that any moratorium is transient by its very nature and has to end one day. It is submitted that thus, the best interest of the economic health of the country, as well as that of the respective borrowers would be best served by paving the way for a more durable long-term solution of debt restructuring.

It is submitted that the revival of the stressed borrowers is contingent upon debt restructuring of their loans/dues rather than hinge on extending the moratorium. It is submitted that the RBI has come out with two circulars dated 6.8.2020, facilitating revival of real sector activities and mitigating the impact on the ultimate borrowers by enabling lenders to grant concessions to

borrowers for Covid-19 related stress in personal, MSME and corporate loans. It is submitted that this would enable lenders to implement individual resolution plans in respect of the loans having stress on account of Covid-19 pandemic. It is submitted that the said approach would also enable continuance of classification of such loans as standard, i.e., without treating them as NPA.

7.8. It is submitted that the RBI Circulars dated 6.8.2020 take care of all categories of lending institutions and all categories of borrowings as aforesaid, while leaving the nature and the kind of the relief to be given to the lending institution since each category of lending institution would have its own bank/institution – specific financial scenario in terms of the nature of advance, the nature of borrowers, rate of interest etc.

That Circular dated 6.8.2020 takes care of the MSME Sector, personal loans and corporate loans, keeping in mind the overall financial stability of the economy, economic stability of banking sector and interest of the depositors in mind. It is submitted that considering the fact that the time limit for continuance of the present economic issues is uncertain, as a policy it is undesirable to either give any “one size fit all”

solutions, nor would it be desirable to provide for a static relief formula. Such reliefs are given depending upon the availability of resources and without compromising the financial stability of the banking sector, and are always subject to changes keeping in mind the evolving dynamic situation at various stages.

7.9 It is submitted that with the framework under the RBI Circulars dated 6.8.2020, banks are fully empowered to resolve Covid-19 related stress and customise relief to individual borrowers through grant of various concessions in terms of:-

i) alteration in the rate of interest and haircut on amount payable as interest;

(ii) extension of the residual tenor of the loan, with or without moratorium, by up to two years;

(iii) waiving penal interest and charges;

(iv) rescheduling repayment;

(v) converting accumulated interest into a fresh loan with a deferred payment schedule; and

(vi) sanction of additional loan.

7.10 It is submitted that so far as the question of waiver of compound interest/interest on interest is concerned, the said issues are required to be examined in the context of the larger financial constraints faced by the country in particular and the world in general. It is submitted that as a part of effective fiscal

planning, which is being done at a stage where nobody is aware as to the time till when the present situation may continue, with either more or less gravity, a delicate balancing act is required by Government in dealing with the financial impacts of the pandemic. It has to conserve financial resources for a long and uncertain battle on the public health front, which has its own huge financial implications. Businesses need to survive. Lending institutions too must survive and promises made to depositors have to be honoured. Jobs and livelihoods need to be safeguarded and every attempt is to be made to bring back the economic growth. Therefore, use of public resources for any category of stakeholders must be carefully calibrated. Unintended consequences can arise and financial stability itself could be imperilled, if due consideration is not given to all relevant aspects.

7.11 It is submitted that right from the initial entry of the pandemic in our country, which started facing its effects [including the financial impact], the Central Government has proactively taken steps either itself or through RBI, which already had their financial impact, which was/is required to be kept into

consideration while taking further decisions either while granting moratorium which, in fact, is deferment [and not waiver] as well as while taking the present decision regarding relief in compounding of interest. The following steps taken by the Central Government have their own financial impacts which would require the Central Government to rationalise any kind of waiver at this stage as going any further than what is stipulated hereunder may be detrimental to the overall economic scenario, and the economy and the nation or the banking sector may not be able to take the financial constraints resulting therefrom.

7.12 It is submitted that as such the Central Government has already given various reliefs and by providing various reliefs there already exists substantial financial burden. It is submitted that having realised that the pandemic has caused stress to large and small businesses and to individual borrowers who have lost jobs and livelihoods and they need relief which will help them get back on their feet, it has necessitated multi-pronged relief. It is submitted that the Central Government has announced the following reliefs, (1) Garib Kalyan Package; and (2) Aatma Nirbhar Package.

It is submitted that the Garib Kalyan Package was for Rs.1.70 lakh crore involving free food grains, pulses and gas cylinders and cash payment to women, poor senior citizens and farmers. More than 42 crore poor people received financial assistance of Rs. 65,454 crores under the package. It is submitted that the Aatma Nirbhar Package was for Rs. 20 lakh crores, involving support to MSMEs, Non-Banking Finance Companies, agriculture, sectors allied to agriculture, contractors, street vendors, State Governments, relief in provident fund contribution, extension of subsidy on home loans etc.

7.13 It is submitted that so far as the question of interest on interest is concerned, what is “moratorium” is required to be considered. It is submitted that the word “moratorium” is categorically defined by the RBI, while issuing various circulars. The relevant circulars of RBI show that “moratorium” was never intended to be “waiver of interest”, but “deferment of interest”. In other words, if a borrower takes benefit of the moratorium, his liability to make payment of contractual interest (both normal interest and interest on interest) gets deferred for a period of three months and subsequently three months thereafter. It is

submitted that this decision was taken keeping the larger economic scenario in mind, more particularly the burden which would otherwise fall upon the banks which will have to perforce pass it on the depositors and/or upon the Government which will have its own detrimental impact on other welfare measures. It is submitted that after a very careful and major consideration of several fiscal and financial criteria, its inevitable effects and keeping the uncertainty of the existing situation in mind, the payment of interest and interest on interest was merely deferred and was never waived.

It is submitted that even the borrowers have understood the difference between the waiver in the interest on loan and the deferment of payment of instalments for that loan and, therefore, a majority of the borrowers have, in fact, not taken the benefit of the moratorium, which is nothing but deferment of payment of instalments.

7.14 Now so far as the waiver of interest is concerned, it is submitted that if the Government were to consider waiver of interest on all the loans and advances to all classes and categories of borrowers corresponding to the six-month period for

which the moratorium was made available under the relevant RBI circulars, the estimated amount is more than Rs. 6 lakh crores. It is submitted that if the banks were to bear this burden, it would necessarily wipe out a substantial and a major part of their net worth, rendering most of the banks unviable and raising a very serious question mark over their very survival. It is submitted that this was one of the main reasons why waiver of interest was not even contemplated and only payment of instalments was deferred.

7.15 It is submitted that even otherwise the lending activity of any bank is always enabled by the deposits that depositors/customers hold in the lending banks. Such depositors are much more in number than the number of borrowers. It is submitted that it is estimated that in the Indian Banking system for every ‘loan account’ there are about 8.5 ‘deposit accounts’. The banks can pay interest to depositors only because borrowers pay interest to the bank. This transaction of depositors/banks/borrowers is inevitably a part of a chain that can never be permitted to be broken. It is submitted that therefore the contractual interest on all outstanding advances

will have to be charged even during the period of deferment and if this compounding interest is not received from the borrowers for any particular period, a commensurate denial of interest to customers holding deposits is inevitable and unimaginable and would obviously be unacceptable considering the categories of depositors.

7.16 It is submitted that waiving compound interest/waiving interest would result in very substantial and significant financial burden. There are several categories of banks, like Private Sector Banks, Small Finance Banks, Regional Rural Banks, Cooperative Banks, NBFCs etc. The classes and categories of borrowers also varies throughout the nation, and these can be broadly classified as big borrowers and small borrowers. It is submitted that it is impossible for banks to bear the burden resulting from waiver of compound interest/interest without passing on the financial impact to the depositors or affecting their net worth adversely, which would not be in the larger national economic interest.

It is submitted that the Government bearing this burden would have an impact on several other pressing commitments being faced by the nation, including meeting direct costs

associated with pandemic management, addressing basic needs of the common man and mitigating the common man's problems arising out of loss of livelihood.

7.17 It is submitted that in view of the aforesaid cumulative circumstances, after careful consideration and weighing all possible options, the Central Government has decided to continue the tradition of handholding the small borrowers and, therefore, now the Government has granted the relief of waiver of compound interest during the moratorium period, limited to the most vulnerable categories of borrowers. It is submitted that this category of borrowers, in whose case, the compounding of interest will be waived, would be MSME loans and personal loans up to Rs. 2 crores of the following categories:

(i) MSME loans up to Rs.2 crore

(ii) Education loans up to Rs.2 crore

(iii) Housing loans up to Rs.2 crore

(iv) Consumer durable loans up to Rs.2 crore

(v) Credit card dues up to Rs.2 crore

(vi) Auto loans up to Rs.2 crore

(vii) Personal loans to professionals up to Rs. 2 crore

(viii) Consumption loans up to Rs.2 crore

It is submitted that the aforesaid decision has been taken, after examining the possible fiscal scenario in case of a complete/partial waiver and after gathering the material details for reaching the decision-making process, and while keeping in mind the interest of particular class of borrowers during the unprecedented period the country is facing.

7.18 It is further submitted that the resolution framework announced by the RBI provides that loan accounts which slip into NPA between invocation and implementation may be upgraded as standard on the date of implementation itself. It is further submitted that so far as the apprehension that credit rating agencies may record a downgrade to NPA for defaults during the moratorium, it is submitted that Securities and Exchange Board of India (SEBI) has already issued a Circular on 30.03.2020 providing for relaxation from recognition of default due to the moratorium. On 31.08.2020, it has further specified that in cases of restructuring, the same may not be considered a default by rating agencies.

7.19 It is further submitted that to give further relief, Government has already suspended the operation from

25.03.2020 of Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to protect corporate borrowers impacted by the Covid-19 crises. It is submitted that even the Kamath Committee set up by the RBI has recommended financial parameters for debt restructuring of 26 sectors affected by Covid-

19. It is submitted therefore that whatever best could be done by the Government of India, the same has been done.

7.20 Now so far as the issues raised by a number of petitioners and interveners seeking Sector-specific Reliefs, it is submitted that the various measures taken by the Government and the RBI, referred to hereinabove, include not only reliefs applicable across the board but also reliefs for the specific sectors. The petitioners/interveners cannot pray for sector-specific relief by either waiver or restructuring by way of present proceedings under Article 32 of the Constitution of India as the question of such financial stress management measures require examination and consideration of several financial parameters and its impact and are not suited for being judicially decided or be subjected to judicial review.

It is submitted that even otherwise, the Aatma Nirbhar Package offers sector-specific reliefs for the power sector, real estate sector, MSME sector. It is submitted that more than Rs.90,800 crore liquidity injection for power distribution companies has been sanctioned, substantially enabling power distribution companies to pay their outstanding dues to power producers and transmission companies. It is submitted that the Government advisory has been issued for extension of registration and completion dates of real estate projects under RERA by treating Covid-19 as an event of *force majeure*. It is submitted that Credit-linked Subsidy Scheme for Housing (Pradhan Mantri Awas Yojana) has been extended by one year, providing subsidy for purchase of residential real estate. It is submitted that so far as relief to MSME Sector is concerned, an Emergency Credit line up to Rs. 3 lakh crores, backed by 100% Government Guarantee, has been launched to enable MSMEs to get back to regular operations. It is submitted that Rs.1.87 lakh crore has already been sanctioned with Credit Guarantee Scheme for Subordinate Debt has been launched to help stressed and NPA MSME units. It is submitted that 2% subvention on interest rate is being given for small business loans.

7.21 It is further submitted that with regard to reliefs sought by various petitioners/applicants in terms of extension of moratorium, applicability of the resolution framework, fixation of interest rate, transmission of rate cuts, delinking of interest rate from credit rating of the borrower and moratorium on repayment of non-credit instruments that the setting of interest rates and other norms for restructuring which includes moratorium involves evaluating projections of cash flows and viability. This, in turn, requires expertise, technical knowledge of financing, and experience in dealing with the subject. Therefore, eligibility of proposals, benchmarks for viability, assessment of reasonableness of assumptions and finally acceptance and monitoring of resolution plans are matters best dealt with between the borrowers and the lending institutions concerned.

7.22 It is submitted that the Central Government and all stake holders have discharged their responsibility in the best possible manner under the circumstances which, by themselves, are unprecedented circumstances. It is submitted that all the decisions taken by the Central Government, the RBI as a regulator and the lending institutions are taken keeping in mind

the severe financial stress globally as well as nationally and while ensuring that the sources are utilized so that the national economy and the economy of the banking sector can withstand the present financial situation, the duration of which is unknown.

7.23 Now so far as the submission that the National Plan, as required to be prepared under Section 11 of the DMA 2005 has not been prepared and that the NDMA has failed to perform its duty cast under Sections 12 & 13 of the DMA 2005 is concerned, Shri Mehta, learned Solicitor General has submitted as under:

(i) that the DMA 2005 contemplates a “National Plan” under section 2(l) of the Act. Such plan is to be prepared under Section 11 of the DMA 2005. That the NDMA has, in fact, prepared an exhaustive and comprehensive “National Disaster Management Plan” which takes care of several disaster known to humanity, like cyclone and wind, floods, urban flood, earthquake, tsunami, landslides, snow avalanche, draught, cold waves, thunderstorm, lightening etc. cloud burst and hailstorm, glacier lake outbreak flood, heat wave, chemical (industrial) disaster, nuclear and

radiological emergencies, biological and public health emergencies, fire hazard and forest fire hazard;

(ii) that the present disaster can fall under “biological and public health emergencies” under clause 7.15 of the National Disaster Management Plan. That there are certain disasters which are and have been globally known to be unknown to the humanity as a race. It is submitted that what the entire world is facing in the Covid-19 is, one such unforeseen disaster termed as “global catastrophe”. It is submitted that the National Plan which is made in November, 2019, envisages such rarest of the rare “global catastrophe risk events”. It is submitted that by its very nature, such a global catastrophe cannot be either predicted or prevented nor can any straightjacket procedure for its management be laid down. Each country will have to respond to such global catastrophe in the best possible manner under the circumstances in the spheres of public health, finance etc. The present situation falls in the category of “global catastrophe risk” as stipulated in clause 2.8 of the National Disaster Management Plan.

7.23.1 It is submitted that in light of the aforesaid, the responses and the reliefs measures taken by the nodal Ministries are required to be considered. It is submitted that it was not possible to lay down any straight-jacket methodology of dealing with such disaster and each country in the world is responding to the challenges in the best possible manner with rationalised utilization of resources.

7.23.2 It is submitted that in the context of the unprecedented position, the scheme of DMA 2005 is required to be examined. After referring to the Statement of Objects and Reasons of the DMA 2005, it is submitted by Shri Mehta, learned Solicitor General that the Statement of Objects and Reasons as well as the scheme of the Act, the Act envisages a statutory mechanism to deal with the disaster. It is submitted that so far as the National Disaster Management Authority (NDMA) is concerned, it is established under Section 3 of the Act with the Hon'ble Prime Minister of India as its Chairperson with other members to be nominated by the Hon'ble Prime Minister and discharges the powers and functions enumerated under Section 6 of the Act. It is submitted that the NDMA is an administrative

body having limited function stipulated in Section 6 of the Act. It is not envisaged to be a “Super Government” which becomes repository of all functions and powers of the Ministries and Departments of the Government. It is submitted that it is not that once a disaster as defined under Section 2(d) of the Act takes place, the functions of all Central Government Ministries stand vested in the NDMA and each and every measure shall be taken either only by the NDMA and not by the respective Ministries/Departments or at least vetted or ratified by NDMA.

7.23.3 After referring to Sections 2 (a), (b), (c), (d), (e), (i), (m), (n), (o) and (p) and Section 6 of the Act, it is submitted by Shri Mehta that the disaster management under the Act by NDMA is restricted to Section 6 of the Act, while the nodal ministries under the National Plan take the steps. It is submitted that the NDMA itself would not start taking mitigating or relief measures unless and so long as the Central Government (acting through various Ministries/Departments) fails to do so. Referring to Sections 35 and 36 of DMA 2005, it is submitted that it is for the respective ministries or departments of the Government of India

which take steps for giving relief measures as a part of disaster management.

7.23.4 It is submitted that the NDMA is alert and is functioning much prior to the outbreak of pandemic in our country through Advisory Committee under Section 7, National Executive Committee under Section 8 and sub-Committees under Section 9 of the Act. It is submitted that under the National Plan which is a statutory plan prepared under the Act, an institutional framework is provided which is as under:

1.14.1 National Level

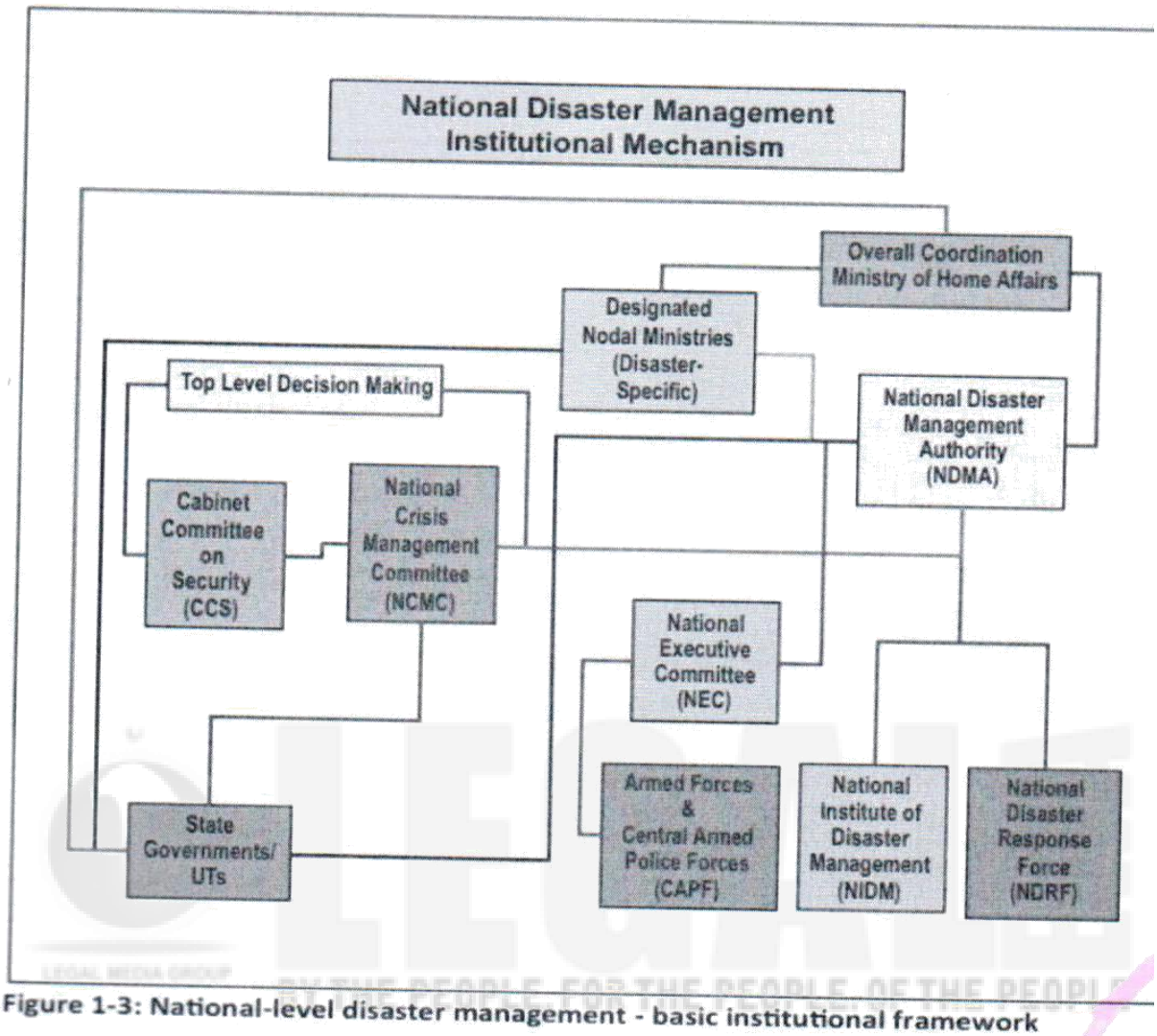

Figure 1-3: National-level disaster management - basic institutional framework

It is submitted that therefore the National Disaster Management Plan also envisages nodal ministries for management of different disasters. It is submitted that National Plan prepared by the NDMA itself envisages that each category of disaster will be dealt with by a nodal ministry.

7.23.5 It is submitted that Covid-19 was a disaster of such a nature that it could not be confined to one nodal ministry.

Whatever measures/reliefs were required to be taken/given were provided by every ministry in each and every way needed. It is submitted that the Ministry of Railways provided free rails for transport of migrants, Ministry of Health and Family Welfare dealt with the substantial part of disaster management namely taking care of public health and hospital infrastructure, Ministry of Agriculture & Farmer Welfare provided for various reliefs in the agriculture sector, Ministry of Housing and Urban Affairs issued separate relief measures for real estate sector etc.

Similarly, Ministry of Finance, whose role otherwise was to finance the measures undertaken by other Ministries also undertook several reliefs in terms of financial package and either directly or through RBI relief ensures for stressed accounts.

7.23.6 It is submitted that considering the very nature of the pandemic which was not confined to any specific geographic location but at PAN-India impact having adversely affecting the various fields of human life, the disaster management authority consisted “Empowered Groups” under Section 10(2)(h) and (i) for comprehensive action and integrated response. The same was published by the Chairperson of National Executive Committee

constituted under Section 8 of the Act. One of the empowered groups was “economic and welfare measure”. It is submitted that the said empowered group functions as a limb of NDMA as the same is constituted under the Act by the Chairman of the National Executive Committee.

7.23.7 It is submitted that the petitioners are under some misconception that the functions of all ministries are to be discharged by the NDMA and the NDMA should take a decision for the area in each ministry. It is submitted that so far as the economic impact of the present disaster is concerned, it is essentially the function of the Ministry of Finance and RBI to take measures under Section 36 of the Act and the question of NDMA stepping into will not arise.

7.24 Now so far as the reliance placed by the petitioners upon Section 13 of the Act is concerned, it is submitted that in Section
13 the word used is “**may”**. It is submitted that the word “**may”** used in Section 13 shall have to be read as an enabling discretionary provision and not mandatory. The legislature has in its wisdom and foresight refrained from using the word “shall”.

It is submitted that the interpretation of the word “**may”** as

"shall" will lead to consequences which are never intended by the legislature. It will also lead to disastrous consequences.

7.24.1 It is submitted that the provision of Section 13 is an enabling provision in which in any given set of facts the NDMA

can **"recommend"** relief in repayment of loans or grant of fresh loans. If the word "may" be used as "shall", the only consequence it may have is a mandate of law to grant relief in repayment of loan or grant of fresh loan despite [and without looking into an over financial and economic impact on the national economy] *en bloc.* The meaning of the word "shall" would mean NDMA giving financial relief only in one sector namely banking sector [as the contingencies mentioned in Section 13 are relatable to Banking Sector] even at the cost of destroying the economy of the nation, destroying the stability of the banking sector and even at the cost of "disaster management" in other areas [like public health, medical infrastructure etc.] other than banking sectors.

7.24.2 Section 13 may perhaps be used in case of localized disasters like Bhopal Gas tragedy or earthquake in Gujarat. However, when a national disaster takes place, the disaster is to be managed through several ministries. Food Ministry will

distribute food which would involve expenditure, agricultural ministry will give boost to the agricultural sector by various relief measures, Health Ministry will take charge of treatment and public health issues, Home Ministry will implement measures for prevention of spread and other ministries will have to do same in their respective spheres.

7.24.3 Use of the word “may” and “shall” would mean the entire economy of the country shall have to be divested and used in and through banking sector leaving all other areas untouched and even at the cost of national economy and the stability of the banking sector. It is submitted that this could never have been the intention of the legislature.

In support of above, Shri Mehta, learned Solicitor General has relied upon the decisions of this Court in the cases of *Pradip Kumar Maity v. Chinmoy Kumar Bhunia (2013) 11 SCC 122 (para 6); Chinnamarkathian v. Ayyavoo (1982) 1 SCC 159 (paras 24 to 26); Official Liquidator v. Dharti Dhan (P) Ltd. (1977) 2 SCC 166 (paras 7 to 10); Bachahan Devi v. Nagar Nigam, Gorakhpur (2008) 12 SCC 372 (para 18); Delhi Administration v. Umrao Singh (2012)*

1 SCC 194 (para 13); and Union of India v. Kumho Petrochemicals Co. Ltd. (2017) 8 SCC 307 (paras 34 &35).

7.24.4 It is further submitted that the NDMA has not done anything is otherwise also factually incorrect. It is submitted that it is uncharitable and unfair to the unprecedented effort made by the NDMA and various ministries including the Ministry of Finance. It is submitted that in view of the hearing which took place before this Court earlier, the NDMA also took cognizance of the issues being dealt with by the RBI and sent its "views and recommendations" vide OM dated 28.08.2020 and opined that in view of the same the RBI may consider granting further reliefs as deemed appropriate after considering and taking into account the financial relief packages issued by the Ministry of Finance, as well as, other relief measures that have already been issued and declared by RBI itself. It is submitted that "views and recommendations" of NDMA were communicated to RBI vide letter dated 31.08.2020.

7.24.5 It is submitted that the "views and recommendations" of the NDMA deal with broad financial policy decisions having economic implications and other implications in the banking

sector. Therefore, the Ministry of Finance, vide letter dated 31.08.2020, forwarded the "views and recommendations" of the NDMA to RBI requesting it to consider the "views and recommendations" of NDMA regarding relief in repayment of loans by borrowers affected by Covid-19, so that RBI may consider the same while charting further course of action depending upon, inter alia, the aforesaid parameters.

7.24.6 It is submitted that therefore in light of the RBI Circulars dated 27.3.2020, 23.5.2020 and 6.8.2020, read with the "views and recommendations" of the NDMA regarding relief in repayment of loans by borrowers affected by Covid-19 expressed vide OM dated 29.08.2020 and also in light of the various measures taken by the Central Government, appropriate reliefs and concessions for repayment of loans by the borrowers affected by Covid-19 have already been granted. The RBI framework under the circulars dated 6.8.2020 also adequately addresses the various concerns expressed by the respective petitioners.

7.25 It is submitted by Shri Mehta, learned Solicitor General that the packages/reliefs offered by the Central Government/RBI/Lenders are in the realm of policy decisions. It

is submitted that a conscious decision has been taken after considering every pros and cons and considering various factors and the priorities in the larger public interest and the economy of the country. It is submitted that as observed and held by this Court in the case of *Arun Kumar Agrawal v. Union of India (2013) 7 SCC 1* that the matters relating to economic issues, have always an element of trial and error and so long as a trial and error is bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal. It is submitted that in the aforesaid decision in paragraph 43, this Court has considered the decision of the Supreme Court of the United States in the case of *Metropolis Theatre Co. v. Chicago*, which took the view that the problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void. Shri Mehta has heavily relied upon paragraphs 41 to 49 of the aforesaid decision, in which this Court considered various earlier decisions.

7.25.1 Relying upon the decision of this Court in the case of *Peerless General Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 343*, it is submitted that as observed by this Court the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is further observed that the Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. It is submitted that it is further observed that the functions of the Court are not to advise in matters relating to financial and economic policies for which bodies like RBI are fully competent. It is further observed that the Court can only strike down some or entire directions issued by the RBI in case the Court is satisfied that the directions were wholly unreasonable or violative of any provisions of the Constitution or any statute. He has relied upon paragraphs 31, 37 and 38 of the aforesaid decision.

7.25.2 It is further submitted that in the case of *Federation of Railway Officers Association v. Union of India (2003) 4 SCC 289,* it

is observed that on matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues.

7.25.3 It is further submitted that in the case of *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal, (2007) 8 SCC 418*, it is observed by this Court that it is well established that courts are ill-equipped to deal with the policy matters. It is further observed that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for courts to consider competing claims and conflicting interests and to conclude which way the balance tilts. It is submitted that it is further observed that the court cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.

7.25.4 On exercise of judicial review, Shri Mehta, learned Solicitor General has relied upon the following decisions of this Court, *Arun Kumar Agrawal (supra); State of M.P. v. Nandlal*

Jaiswal, (1986) 4 SCC 566*; BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333; Peerless General Finance and Investment Co. Ltd. (supra); Dalmia Cement (Bharat) Ltd. v. Union of India (1996) 10 SCC 104; Villianur Iyarkkai Padukappu Maiyam v., Union of India (2009) 7 SCC 561; Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664; and R.K. Garg v. Union of India (1981) 4 SCC 675*.

Reply on behalf of the Reserve Bank of India

8. Shri V. Giri, learned Senior Advocate appearing on behalf of the Reserve Bank of India has made the following submissions:

i) that the RBI has been constituted by the provisions of Section 3 of the Reserve Bank of India Act, 1934 (for short, 'RBI Act'). It has been vested with the responsibility of superintendence and control of the banking business in the country under the provisions of the Banking Regulation Act, 1949 (for short, 'BR Act'). That in view of the various provisions of the BR Act and the RBI Act, the RBI is obliged to see that the

banking business is carried on by banks, prudently and adhering to sound principles of banking. That the BR Act has conferred upon the RBI the powers to issue directions under Section 35A to the banking companies generally or to any banking company in particular, in public interest or in the interest of the Banking Policy or to prevent the affairs of the banking company being conducted in a manner detrimental to the interest of its depositors or in a manner prejudicial to the banking company. Furthermore, under Section 21 of the BR Act, the RBI is conferred with specific powers to determine the policy in relation to advances to be followed by the banking companies;

ii) that the Legislature has conferred various powers on RBI empowering it to determine the banking policies to be followed by the banking companies. That the RBI being the regulator of the banking sector, took cognizance of the probable stress caused in the financial situation and conditions of the citizens of this country – the consequent stress upon the economy due to outbreak of Covid-19 pandemic and issued a statement on Development and Regulatory Policies dated 27.03.2020 with the following objective and purpose:

i) Expanding liquidity in the system sizeably to ensure that financial markets and institutions are able to function normally on the face of COVID-19 related dislocations;

ii) Reinforcing monetary transmission so that bank credit flows on easier terms are sustained to those who have been affected by the pandemic;

iii) Easing financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital; and

iv) Improving the functioning of markets in view of the high volatility experienced with the onset and spread of the pandemic.

iii) that with a view to ease the financial stress by relaxing "repayment pressures", the said Statement on Development and Regulatory Policy provided for moratorium on term loans. That following the aforesaid Statement on Development and Regulatory Policies, a circular was issued titled 'Covid-19 – Regulatory Package dated 27.03.2020', thereby providing detailed instructions qua the regulatory measures issued by way of the said Statement. That it provided for rescheduling of payments – term loans and working capital facilities. That the circular dated 27.03.2020 came to be further modified by the RBI vide Circulars dated 17.4.2020 titled 'Covid-19 Regulatory Package – Asset Classification and Provisioning' and 23.5.2020 titled 'Covid-19 Regulatory Package' whereby the moratorium period came to be

extended by another three months, i.e., from 1.6.2020 to 31.8.2020 on payment of all instalments in respect of term loans;

iv) that the aforesaid policies/circulars were issued with the objective of mitigating the burden of debt servicing brought about by disruptions on account of Covid-19 pandemic and to ensure the continuity of viable business. It is submitted that therefore, the regulatory package is, in its essence, in the nature of a moratorium/deferment and cannot be construed to be a waiver. It is submitted that, however, in order to ameliorate the difficulties faced by borrowers in repaying the accumulated interest for the moratorium/deferment period, it was further provided in the circular dated 23.5.2020 that in respect of working capital facilities, lending institutions may, at their discretion, convert the accumulated interest for the deferment period up to 31.08.2020, into a funded interest term loan which shall be repayable not later than 31.03.2021. Further, in respect of term loans, it has been provided that the repayment schedule for such loans, including interest as well as principal, as also the residual tenor, will be shifted across the board;

v) that the lending institutions are required to frame Board approved policies for providing the reliefs pursuant to circulars issued by the RBI from time to time to all eligible borrowers and disclosed in public domain. Since the customer profile, organizational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers. Therefore, the discretion was left to the lending institutions concerned;

vi) that the banks are commercial entities that intermediate between the depositors and the borrowers and are expected to run on viable commercial considerations. That the banks being custodians of depositors' money, their actions need to be guided primarily by the protection of depositors' interests. Any borrowing arrangement is a commercial contract between the lender and the borrower and the interest rates reflect the same. That the interest on advances forms an important source of income for banks and after meeting the cost of funds, the banks also need to sustain reasonable interest margins for viable operations;

vii) that otherwise the RBI being cognizant of the enormity of the challenges faced in the wake of Covid-19 has already announced several measures to mitigate the immediate impact on the real sector as well as financial sector, namely, Circulars dated 27.3.2020, 17.4.2020 and 23.5.2020. It is submitted that the aforesaid circulars/policies were announced with the primary objective of enabling all key constituents in the economy, most importantly the borrowers, to cope with the economic fallout. The overriding objective was to prevent financial markets from freezing up; ensure normal functioning of financial intermediaries; ease the stress faced by households and businesses; and keep the life blood of finance flowing. It is submitted that many measures/policy decisions have been announced by the RBI to mitigate the impact of Covid-19, which are as under:

	Major Policy Announcements to Mitigate the Impact of COVID-19
I.	Reduction in Policy Rates

March 27, 2020	Policy repo rate was reduced by 75 bps to 4.4 per cent. The reverse repo rate was reduced by 90 bps to 4.0 per cent creating an asymmetrical corridor[1].
April 17, 2020	The reverse repo rate was reduced by 25 basis points to 3.75 per cent.
May 22, 2020	The policy repo rate was reduced by 40 bps to 4.0 per cent and reverse repo was reduced to 3.35 per cent.
	II. Liquidity Operations

1 The purpose of this measure relating to reverse repo rate is to make it relatively unattractive for banks to passively deposit funds with the Reserve Bank and instead, to use these funds for on-lending to productive sectors of the economy.

February 6, 2020	Announcement of long-term repo operations (LTROs) to provide durable liquidity at policy repo rate for 1-3 years to augment credit flows to productive sectors. The first such LTRO was conducted on February 17, 2020.
March 12, 2020	It was decided to undertake 6-month US Dollar sell-buy swap auctions to provide US Dollar liquidity to the foreign exchange market[2]. The first such auction was conducted on March 16, 2020.
March 27, 2020	Introduced targeted long-term repo operations (TLTROs) under which liquidity availed by banks was to be deployed in investment grade corporate bonds, commercial paper, and non-convertible debentures over and above the outstanding level of their investments in these bonds. The first such TLTRO auction was conducted on March 27, 2020.
April 17, 2020	CRR reduced[3] by 100 bps to 3.0 per cent of NDTL effective March 28, 2020 for a period of one year ending on March 26, 2021.
April 27, 2020	It was decided to conduct Targeted Long- Terms Repo Operations (TLTROs) 2.0 at the policy repo rate. Liquidity availed under the scheme by banks is to be deployed in investment grade corporate bonds, commercial paper, and non-convertible debentures with at least 50 per cent of the total amount availed going to small and mid-sized NBFCs and MFIs. The first such TLTRO 2.0 auction was conducted on April 23, 2020.

2 This measure was announced as financial markets worldwide were facing intense selling pressures on extreme risk aversion due to the spread of COVID-19 infections.

3 This reduction in the CRR released primary liquidity of about Rs,1,37,000 crore uniformly across the banking system in proportion to liabilities of constituents rather than in relation to holdings of excess SLR.

April 30, 2020	In order to ease the liquidity pressure on mutual funds, it was decided to open a special liquidity facility for mutual funds (SLF-MF). Liquidity availed under the scheme by banks is to be deployed exclusively for meeting needs of Mutual Funds. The first such SLF-MF auction was conducted on April 27, 2020.
October 9, 2020	It was decided to extend regulatory benefits announced under the SLF-MF scheme to all banks, irrespective of whether they avail funding from the Reserve Bank or deploy their own resources to meet liquidity requirements of mutual funds. It was decided to conduct on tap TLTRO with tenors of up to three years for a total amount of up to Rs.1 lakh crore at a floating rate linked to the policy repo rate. Liquidity availed by banks under the scheme has to be deployed in corporate bonds, commercial papers, and non-convertible debentures issued by entities in specific sectors over and above the outstanding level of their investments in such instruments as on September 30, 2020. The liquidity availed under the scheme can also be used to extend bank loans to these sectors.
	III. Easing Financial Stress for the borrowers
March 27, 2020	Announcement of regulatory measures to mitigate the burden of debt servicing and to ensure the continuity of viable businesses. The salient features included moratorium on payment of instalments for term loans and deferment of interest on working capital facilities, easing of working capital financing and exemption from classification of special mention account (SMA) and NPA on account of implementation of the above measures.

April, 17, 2020	It was decided that in respect of all accounts for which lending institutions decide to grant moratorium or deferment, and which were standard as on March 1, 2020, the 90-day NPA norm shall exclude the moratorium period, i.e. there would be an asset classification standstill for all such account from March 1, 2020 to May 31, 2020. Recognising the challenges to resolution of stressed assets in the current volatile environment, the period for resolution plan under the 'Prudential Framework' was extended by 90 days.
May 23, 2020	Taking forward the COVID-19 regulatory package released in March and April 2020, the moratorium/deferment was extended by another three months till August 31, 2020.
August 6, 2020	Additional measures were announced to improve access to working capital by permitting lending institutions to recalculate the 'drawing power' by reducing the margins till August 31, 2020; and to review the sanctioned limits up to March 31, 2021. The period for resolution plan under the 'Prudential Framework' was extended by another 90 days, i.e. a total of 180 days. A window was provided under the Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 to enable the lenders to implement a resolution plan in respect of eligible corporate exposure without change in ownership, and personal loans, while classifying such exposures as Standard, subject to specified conditions. Only those accounts which were classified as Standard and were not in default for more than 30 days as on March 1, 2020 are eligible for resolution under this window. The window may be invoked by December 31, 2020 and

	the resolution plan has to be implemented within 90 days from date in invocation for personal loans, and 180 days from the date of invocation in the case of other loans. The existing loans to MSMEs classified as standard as on March 1, 2020 and where the aggregate exposure of banks and NBFCs did not exceed Rs.25 crores as on March 1, 2020 were permitted to be restructured without a downgrade in asset classification subject to conditions specified in RBI Circular dated August 06, 2020 on 'Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances'. The restructuring plan has to be implemented by March 31, 2021.
September 7, 2020	The recommendations of the Expert Committee on the required financial parameters with sector specific benchmark range for such parameters to be factored in the resolution plans implemented in terms of the Resolution Framework dated August 6, 2020 were notified. Lending institutions are required to consider five key ratios and the sector-specific thresholds for each while preparing the financial assumptions in respect of resolution plans.
	IV. Facilitating and incentivising bank credit flows
February 6, 2019	Cash reserve ratio (CRR) exemption to scheduled commercial banks (SCBs) for a period of 5 years (from the date of origination of the loan or the tenure of the loan, whichever is earlier) for the amount equivalent to the incremental credit extended as retail loans for automobiles, residential housing and loans to micro, small and medium enterprises (MSMEs) during January 31, 2020 and July 31, 2020.
March 27, 2020	The implementation of net stable funding ratio (NSFR) for banks was deferred by six

	months from April 1, 2020 to October 1, 2020. The implementation of the last tranche of 0.625 per cent of capital conservation buffer (CCB) for banks was deferred from March 31, 2020 to September 30, 2020.
April 1, 2020	Based on the review and empirical analysis of counter cyclical capital buffer (CCyB) indicators, it was decided not to activate CCyB for a period of one year or earlier, as may be necessary.
April 17, 2020	With a view to conserve capital of banks to retain their capacity to support the economy and absorb losses in an environment of heightened uncertainty, it was decided that, banks shall not make any further dividend payouts from profits pertaining to the financial year ended March 31, 2020 until further instructions. This restriction shall be reviewed on the basis of the financial position of banks for the quarter ending September 30, 2020. In order to ease the liquidity position at the level of individual institutions, the LCR requirement for SCBs was brought down from 100 per cent to 80 per cent with immediate effect. The requirement shall be gradually restored back in two phases – 90 per cent by October 1, 2020 and 100 per cent by April, 2021.
May 22, 2020	Special refinance facilities for a total amount of Rs.50,000/- crore were provided to NABARD, SIDBI and NHB to enable them to meet sectoral credit needs[4].
May 23, 2020	A line of credit of Rs.15,000/- crore was extended to EXIM bank for a period of 90

4 This comprised Rs.25,000/ - crore to NABARD for refinancing regional rural banks (RRBs), cooperative banks and micro finance institutions (MFIs); Rs.15,000/- crore to SIDBI for on-lending/refinancing; and Rs.10,000/- crore to NHB for supporting housing finance companies (HFCs). Advances under this facility were provided at the RBI's policy repo rate.

	days from the date of availment with rollover up to a maximum period of one year to enable it to avail a US dollar swap facility to meet its foreign exchange requirements.
June 21, 2020	With a view to facilitate greater flow of resources to corporate that faced difficulties in raising funds from the capital market and predominantly dependent on bank funding, caused by sudden market uncertainties, a bank's exposure under the Large Exposure Framework, to a group of connected counterparties was increased from 25 per cent to 30 per cent of the eligible base of the bank. The increased limit will be applicable up to June 30, 2021.
July 1, 2020	A credit facilities to MSME borrowers, extended under the emergency credit line guarantee scheme of GoI guaranteed by national credit guarantee trustee company (NCGTC), are backed by an unconditional and irrevocable guarantee provided by the GoI, member lending institutions, viz., SCBs (including scheduled RRBs), NBFCs (including HFCs as eligible under the scheme) and AIFIs, were permitted to assign zero per cent risk weight on the credit facilities extended under the scheme to the extent of guarantee coverage.
August 6, 2020	Banks were permitted to reckon the funds infused by the promoters in their MSME units through loans availed under the Credit Guarantee Scheme for Subordinate Debt for stressed MSMEs issued by the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) as equity/quasi equity from the promoters for debt-equity computation.
September 29, 2020	The permissible loan to value ratio (LTV) for loans against pledge of gold ornaments and

	jewellery for non-agricultural purposes was increased from 75 per cent to 90 per cent with a view to further mitigate the economic impact of the Covid19 pandemic on households, entrepreneurs and small businesses. This enhanced LTV ratio will be applicable up to March 31, 2021 to enable the borrowers to tide over their temporary liquidity mismatches on account of COVOD-19.
October 9, 2020	The implementation of net stable funding ratio (NSFR) for banks was deferred by a further six months from October 1, 2020 to April 1, 2021. The implementation of the last tranche of 0.625 per cent of capital conservation buffer (CCB) for banks was deferred again from September 30, 2020 to April 1, 2021. The threshold of maximum aggregated retail exposure of banks to one counterparty, which attracts lower risk weight of 75 per cent, has been increased to Rs.7.5 crore in respect of all fresh as well as incremental qualifying exposures. It has been decided to rationalize the risk weights for all new housing loans sanctioned up to March 31, 2022. Such loans shall attract a risk weight of 35 per cent where LTV is less than or equal to 80 per cent, and a risk weight of 50 per cent where LTV is more than 80 per cent but less than or equal to 90 per cent. This measure is expected to give a fillip to bank lending to the real estate sector.
	V. Crop Loans
March 31, 2020	Circular on short-term crop loans eligible for interest subvention scheme (ISS) and prompt repayment incentive (PRI) extending the timeline till June 20, 2020, for converting all short-term crop loans into KCC loans.
June 4,	Circular on ISS and PRI for short-term crop

2020	loans during the years 2018-19 and 2019- 20 extending moratorium period till August 31, 2020.
	VI. External Trade
April 1, 2020	The period of realization and repatriation to India of the amount representing the full export value of goods or software or services exported was increased from nine months to fifteen months from the date of export, for the exports made up to or on July 31, 2020.
May 22, 2020	The time period for completion of remittances against normal imports, *i.e.,* excluding import of gold/diamonds and precious stones/jewellery (except in cases where amounts are withheld towards guarantee of performance) was extended from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020.
May 13, 2020	Interest equalization scheme for pre and post shipment rupee export credit was extended by GoI for one more year, *i.e.*, up to March 31, 2021, effective from April 1, 2020 and all extant operational instructions issued by the Reserve Bank under the captioned scheme shall continue to remain in force up to March 31, 2021.
May 23, 2020	To alleviate genuine difficulties being faced by exporters in their production and realization cycles, the maximum permissible period of pre-shipment and post-shipment export credit sanctioned by banks was increased from one year to 15 months, for disbursements made up to July 31, 2020.

8.1 Now so far as the prayers for waiver of interest/interest on interest during the moratorium period is concerned, it is

submitted that any waiver of interest on interest/compound interest will entail significant economic costs which cannot be absorbed by the banks without serious debt of their financials, which in turn will have huge implications for the depositors and the broader financial stability. It is submitted that, in fact, the government has come out with the “ex-gratia scheme” and the government has to bear the cost of the ‘interest on interest’ for MSME loans and personal loans up to Rs. 2 crores. It is submitted that therefore waiver of interest and/or interest on interest/compound interest shall not be in the larger country’s economy and the bankers.

8.2 Now so far as the prayer for extension of moratorium beyond 31.08.2020 is concerned, it is submitted that the moratorium was permitted as a part of immediate regulatory response, aimed at providing temporary reprieve to borrowers affected by the pandemic, while attempting to preserve the resilience of the financial system. It entails significant costs to the lenders and a balance needs to be maintained in the overall consideration. A long moratorium exceeding six months can also impact credit behaviour of borrowers and increase the risks of delinquencies

post resumption of scheduled payments. It may result in vitiating the overall credit discipline which will have a debilitating impact on the process of credit creation in the economy. It will be the small borrowers which may end up bearing the brunt of the impact as their access to formal lending channels is critically dependent on the credit culture. It is submitted that mere continuation of temporary moratorium would not even be in the interest of borrowers. It may not be sufficient in addressing deeper cash flow problems of the borrowers and in fact exacerbate the repayment pressures for the borrowers. Therefore, a more durable solution was needed to rebalance the debt burden of viable borrowers, both businesses as well as individuals, relative to their cash flow generation abilities. It is submitted that with this consideration in mind the Reserve Bank has announced the Resolution Framework for Covid19-related Stress ("Resolution Framework") on August 6, 2020, which enabled the lenders to implement a resolution plan in respect of personal loans as well as other exposures affected due to Covid19, subject to the prescribed conditions, without asset classification downgrade. The framework, *inter alia*, permits extension of the moratorium by a maximum of two years.

8.3 It is submitted that the Resolution Framework issued by the Reserve Bank on August 6, 2020 is aimed at facilitating revival of real sector activities and mitigating the impact on the ultimate borrowers, which are under financial stress caused by economic fallout on account of Covid-19 pandemic. It is submitted that in terms of the Resolution Framework, only those borrower accounts shall be eligible for resolution which were classified as standard, but not in default for more than 30 days with any lending institution as on March 1, 2020.

8.4 It is submitted that the resolution plans implemented under framework may *inter alia* rescheduling of payments, conversion of any interest accrued, or to be accrued, into another credit facility, or, granting of moratorium, based on an assessment of income streams of the borrower for two years. The reliefs for each borrower can be tailored by banks to meet the specific problem being faced by each borrower depending on need rather than have a broad-brush approach in dealing with the issue.

8.5 It is submitted that in terms of resolution framework, the RBI had constituted an Expert Committee under Shri K.V. Kamath to recommend to the RBI the required financial parameters, along with the sector specific benchmark ranges for

such parameters, to be factored into each resolution plan. That terms of the reference of the Kamath Committee read as under:

> "(a) To identify suitable financial parameters that should be factored into the assumptions underlying RP finalized by the lending institutions under the Resolution Framework. The parameters shall cover aspects related to leverage, liquidity, debt serviceability, etc.
>
> (b) To recommend sector-specific ranges for such financial parameters that will serve as boundary conditions for the RP [Resolution Plan].
>
> (c) To make any other recommendations relating to financial or non-financial conditions to be considered for the RP, within the contours of the framework announced by the Reserve Bank of India.
>
> (d) To undertake the process validations of RP submitted in respect of borrowers where the aggregate exposure of the lending institutions at the time of invocation of the resolution process is Rs.1500 crore and above. The process validation shall entail verification of the RP in terms of their adherence to the conditions prescribed in the Resolution, without interfering with the commercial judgement exercised by the lenders."

It is submitted that the Committee has undertaken an exhaustive task and has given its report dated 4.9.2020. The recommendations of the Kamath Committee have been broadly accepted by RBI vide circular dated 7.9.2020. It is submitted that the Kamath Committee found variable impact of the pandemic across several sectors, with varying degrees of severity and varying nature of problems. It is submitted that the

Committee found that it is neither possible nor desirable to arrive at any one particular formula, whether sector-specific or otherwise, to deal with the stress situation arising from the unprecedented pandemic. It is submitted that the resolution of such stressed accounts shall have to be made only by and between the borrowers and the lending institutions. It is submitted that the Kamath Committee while identifying 26 sectors, laid down parameters that are to be guidance for the lending institutions while undertaking the process of restructuring/resolution.

8.5.1 It is submitted that Kamath Committee based resolution plans are applicable only to big borrowers having big and specific problems requiring resolution/restructuring, and such resolution can be done only after evaluating projections of cash flows and viability, which requires banking expertise and knowledge of the finance sector and which can be done only by the lending institutions on a case-by-case basis.

8.5.2 It is submitted that so far as the borrowers which are not big borrowers, their accounts are eligible to be restructured by the respective lending institutions as per RBI circular dated 6.8.2020. It is submitted that the banks are fully empowered to

resolve Covid-19 related stress and customize reliefs to individual borrowers through grant of various concessions/reliefs, inter alia, in terms of

i) alteration in the rate of interest and haircut on amount payable as interest;

(ii) extension of the residual tenor of the loan, with or without moratorium, by up to two years;

(iii) waiving penal interest and charges;

(iv) rescheduling repayment;

(v) converting accumulated interest into a fresh loan with a deferred payment schedule; and

(vi) sanction of additional loan.

8.5.3 It is submitted that those accounts which are not covered by Kamath Committee recommendations were not supposed to wait for their restructuring for Kamath Committee Report to come out as the said restructuring is not linked to the parameters to be fixed by the said report. It is submitted that, as such, the RBI resolution framework offers significant and appropriate higher relief to borrowers in the 26 sectors identified as Covid-19 impacted.

9. It is further submitted that the circulars issued by the RBI are policy decisions taken by the RBI in exercise of the statutory powers conferred on the bank under the provisions of the BR Act

and RBI Act. It is submitted that the policy decisions taken by the RBI and as expressed in various circulars issued by the RBI in the wake of Covid-19 pandemic, being economic policy matters, are not amenable to judicial review except when a constitutional infraction or violation of fundamental rights are made out.

9.1 It is submitted that the concessions that have been offered across the board by the RBI are offered with the objective to offset the pervasive impact that the Covid-19 pandemic has had on the country. The circulars granting moratorium for a period of six months on repayment of instalments on all term loans and deferment of interest on working capital facilities; facility for resolution of Covid-19 related stressed assets are all measures taken with the objective of enabling sustainable recovery and facilitating credit flow to the economy, while ensuring financial stability.

9.2 It is further submitted that as the circulars issued by the RBI are under Covid-19 package and the resolution framework issued by the RBI on 6.8.2020 are the policy decisions, the judicial interference by this Court is not warranted. It is submitted that every regulatory forbearance has its trade-offs in terms of adverse incentives and unintended consequences. It is

submitted that the RBI has exercised its expert wisdom in issuing binding guidelines to lending institutions on how to differentiate the risks arising from borrowers with pre-existing financial difficulties from those which were performing well but had been impacted by the pandemic. RBI has taken a balanced view, taking into account the interest of the depositors, borrowers, real sector entities and banks. Financial stability and economic growth of the country were also kept in mind while arriving at its policy decisions by the RBI.

9.3 It is submitted that this Court in a number of decisions have held that the courts are not to interfere with the economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. It is submitted that even in such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts. In support of his submission, Shri V. Giri, learned Senior Advocate has relied upon the following decisions, *Peerless General Finance and Investment Co. Ltd. (supra); Shri Sitaram Sugar Co. Ltd. V. Union of India (1990) 3 SCC 223; Prag*

Ice & Oil Mills v. Union of India AIR 1978 SC 1296; and P.T.R. Exports (Madras) P. Ltd. V. Union of India (1996) 5 SCC 268.

9.4 Making the above submissions and relying upon the above decisions, it is vehemently submitted by Shri V. Giri, learned Senior Advocate appearing on behalf of the RBI that the reliefs sought by the respective petitioners, namely, waiver of interest on interest/compound interest and waiver of interest during the moratorium period; moratorium to be permitted for all accounts instead of being at the discretion of the lenders; extension of moratorium beyond 31.08.2020; packages/reliefs shall be sector- wise' discretion to come under the resolution framework of 6.8.2020 circulars should lie with the borrowers and not with the lenders, the respective petitioners are not entitled to the said reliefs.

9.5 Now so far as the prayer in one of the petitions sought in Writ Petition (Civil) No. 955 of 2020 directing the RBI to apply circular dated 27.3.2020 to all banks, non-banking financial companies, housing finance companies and other financial institutions compulsorily and mandatorily, it is submitted that the circular dated 27.3.2020 shall be applicable to all loan accounts of all banks, non-banking financial companies, housing

finance companies and other financial institutions, subject to fulfilling the eligibility criteria.

Submissions made by Shri Harish Salve, learned Senior Advocate

10. Shri Harish Salve, learned Senior Advocate appearing on behalf of the Indian Banks Association, while opposing the present petitions, has vehemently submitted that the judicial review of the policy decisions, more particularly in the field of economy, would be on very narrow grounds. It is submitted that the government packages cannot be set aside on the ground of violation of Article 14 of the Constitution of India. It is true that it is the duty of the government to bring back the economy on track. It is submitted that however therefore when a conscious decision has been taken by the NDMA/UOI through various ministries, RBI and the lenders, there may be various options/reliefs which may be available, however ultimately, it is for the policy maker to take appropriate decisions/frame appropriate policies after having the expert opinion. It is submitted that once a conscious decision of various reliefs has

been taken, unless it is arbitrary and merely because some sectors are not agreeable, it cannot be set aside. It is submitted that while announcing various packages/reliefs, each and every aspect has been considered from all angle.

10.1 It is submitted that the resolution regarding restructuring of debts is to be considered by the lenders and not by the borrowers. He has also relied upon catena of decisions of this Court on judicial review of the policy decisions, relied upon by Shri Tushar Mehta, learned Solicitor General, referred to hereinabove.

10.2 It is submitted that, as such, various reliefs/measures have been announced by the RBI. The RBI announced a moratorium on the repayment of term loans, initially for a period of three months and further extended by another three months, which came to an end on 31.08.2020. The avowed object of allowing such a moratorium was to ease the financial stress that was being faced by borrowers “by relaxing repayment pressures and improving access to working capital”. Such measures would benefit those whose business was otherwise sound but became victims of the economic meltdown caused by the pandemic. In the case of individual borrowers having personal accounts, an entirely different approach was called for and this was finally

addressed by the government in the package announced by it. It is submitted that on 6.8.2020 the RBI announced “Resolution Framework for Covid-19 related stress” thereby permitting banks to restructure loans of eligible borrowers. This was meticulously complied with by the banks by putting in place Board approved policies to grant relief to the borrowers.

10.3 It is submitted that the RBI constituted a Committee, known as Kamath Committee and Kamath Committee made its recommendations. It is submitted that Kamath Committee recommendations were the next step on addressing the economic problems being faced by businesses in India. It is submitted that in a number of cases the accounts had become irregular although not declared as NPA during this period and therefore it has become necessary to restructure these loans. It is submitted that there cannot be a single formula applied to all loans and to different sectors. The Kamath Committee therefore evolved norms which relaxed the existing norms on which restructuring of loans were to be affected.

It is submitted that for the purposes of restructuring alone, the fundamental premise was that the business is viable and capable of servicing its debt obligations upon restructuring. It is

for this purpose that different norms were prescribed for assessing the inherent financial strength of a business.

It is submitted that all the directions of the RBI have been fully complied with by the banks in letter and spirit and relief has been granted to the borrowers.

10.4 It is further submitted that the Central Government has announced various schemes/packages and the same have been implemented by the banks and have duly granted relief to all the eligible borrowers in terms of the said schemes/packages.

10.5 Now so far as the reliance placed upon Section 13 of the DMA 2005 is concerned, it is vehemently submitted by Shri Salve, learned Senior Advocate that in section 13 the word used is **"may".** It is submitted that the Government has to balance each sector and Section 13 of the Act uses the words "persons affected". It is submitted that different persons/sectors have impact differently and therefore keeping in mind the different impact on different persons/sectors, the Central Government through its various ministries, RBI and the banks have provided different packages/reliefs.

10.6 It is submitted that, as such, as pointed out by Shri Mehta, learned Solicitor General, a conscious decision has been taken by

the NDMA. It is submitted that under the DMA, prevention and mitigation shall be within the statutory framework.

It is submitted that the architecture of the DMA 2005 is clearly a structure of enabling powers to be exercised concurrently with the executive powers of the Government and other statutory powers available to the Governments at the Union, State and District levels. It is submitted that therefore there is no question of there being a power coupled with a duty – overall duties of each of the statutory functionaries are set out in the various provisions and enabling provisions are made to give relief as may become necessary.

It is submitted that there may be a pandemic or a natural disaster which may not have that degree of economic fallout. It is submitted that to suggest that the moment there is a disaster, there is a duty cast upon the NDMA to afford relief from payment of interest would lead to absurd consequences.

It is submitted that there is no power conferred under the Act by which the amount due by a private entity to another private entity can be written off or restructured. The relief under Section 13 can be granted where interest is payable to the

Government or by reimbursing the interest payable to a private entity.

10.7 Now so far as the relief sought of waiver of interest, it is submitted that IBA has 203 member banks including public sector banks, private sector banks, foreign banks and other banks including co-operative banks and regional rural banks. It is submitted that even on the occurrence of other calamities like cyclone, earthquake, drought or flood, banks do not waive interest but provide necessary relief packages to the borrowers. A waiver can only be granted by the Government out of the exchequer. It cannot come out of a system from banks, where credit created out of the depositor's funds alone. Any waiver will create a shortfall and a mismatch between the Bank's assets and liabilities.

It is submitted that the banks have to keep up with their interest payment obligations to the depositors who are paid compound interest with quarterly rests on FDRs. The waiver of interest obligations would impair the financial structure of the banks and unleash a greater economic danger than what has been caused by the pandemic.

It is submitted that the resolution framework put in place by the RBI on 6.8.2020 sets out sectoral parameters and thereby recognizes the difference between the different sectors for restructuring of loans.

10.8 It is submitted therefore that the policy decisions taken by the respective banks/lenders considering the recommendations made by the Kamath Committee and as per the policies/packages offered by the government may take care of the interest of the different sectors for restructuring of loans and the same are in the larger interest of the economy of the country. It is therefore prayed to dismiss all these petitions.

11. Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the State Bank of India has pointed out the resolution/policy dated 1.9.2020 approved by the Board of Directors of the State Bank of India has been framed after considering the recommendations of the Kamath Committee. He has also reiterated on judicial review of the economic policy decisions; adverse effect on the banking system if the prayer of waiver of interest/penal interest is accepted and on interpretation of various provisions of DMA 2005.

12. Having heard learned counsel appearing on behalf of the respective petitioners and the reliefs sought in the respective petitions, the reliefs/submissions on behalf of the petitioners can be summarized as under:

i) a complete waiver of interest or interest on interest during the moratorium period;

ii) there shall be sector-wise relief packages to be offered by the Union of India and/or the RBI and/or the Lenders;

iii) moratorium to be permitted for all accounts instead of being at the discretion of the Lenders;

iv) extension of moratorium beyond 31.08.2020;

v) whatever the relief packages are offered by the Central Government and/or the RBI and/or the Lenders are not sufficient looking to the impact due to Covid-19 Pandemic and during the lockdown period due to Covid-19 Pandemic;

vi) the last date for invocation of the resolution mechanism, namely, 31.12.2020 provided under the 6.8.2020 circular should be extended.

13. While considering the aforesaid submissions/reliefs sought, the scope of judicial review on the policy decisions in the field of economy and/or economic policy decisions and/or the policy

decisions having financial implications which affects the economy of the country are required to be considered.

14. In catena of decisions and time and again this Court has considered the limited scope of judicial review in economic policy matters. From various decisions of this Court, this Court has consistently observed and held as under:

i) The Court will not debate academic matters or concern itself with intricacies of trade and commerce;

ii) It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review;

iii) Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

14.1 In *R.K. Garg (supra)*, it has been observed and held that laws relating to economic activities should be viewed with greater

latitude than laws touching civil rights such as freedom of speech, religion etc. It is further observed that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this particularly true in case of legislation dealing with economic matters.

14.2 In the case of *Arun Kumar Agrawal (supra)*, this Court had an occasion to consider the following observations made the Supreme Court of the United States in the case of *Metropolis Theatre Co. v. Chicago, 57 L Ed 730: 228 US 61 (1913):*

> "…The problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void…"

14.3 This Court in the case of *Nandlal Jaiswal (supra)* has observed that the Government, as laid down in *Permian Basin Area Rate Cases, 20 L Ed (2d) 312*, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The court cannot strike down a policy decision taken by the State Government merely because it feels that

another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide.

14.4 In the case of *BALCO Employees' Union (Regd.) (supra), t*his Court has observed that Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved.

It is further observed that in the case of a policy decision on economic matters, the courts should be very circumspect in conducting an enquiry or investigation and must be more reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.

14.5 In the case of *Peerless General Finance and Investment Co. Ltd. (supra),* it is observed and held by this Court that the function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is further observed that a public body invested with

statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

It is further observed that it is not the function of the Court to amend and lay down some other directions. The function of the court is not to advise in matters relating to financial and economic policies for which bodies like RBI are fully competent. The court can only strike down some or entire directions issued by the RBI in case the court is satisfied that the directions were wholly unreasonable or in violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This Court has repeatedly said that matters of economic policy ought to be left to the government.

14.6 In the case of *Narmada Bachao Andolan (supra), in paras 229 & 233,* it is observed and held as under:

> "229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill- equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.
>
> 233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicial permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law."

14.7 In *Prag Ice & Oil Mills (supra)*, this Court observed as under:

> "We do not think that it is the function of the Court to set in judgment over such matters of economic policy as must necessarily be left to the government of the day to

> decide. Many of them are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

14.8 In *P.T.R Exports (Madras) P. Ltd. (supra)*, this Court observed as under:

> "In matters of economic policy, it is settled law that the Court gives a large leeway to the executive and the legislature-Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country-The Court therefore would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same."

15. What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advise of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy

decisions, unless such policy could be faulted on the ground of mala fide, arbitrariness, unfairness etc.

16. There are matters regarding which Judges and the Lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

17. The correctness of the reasons which prompted the government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the government.

18. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a

policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate.

19. Government has to decide its own priorities and relief to the different sectors. It cannot be disputed that pandemic affected the entire country and barring few of the sectors. However, at the same time, the Government is required to take various measures in different fields/sectors like public health, employment, providing food and shelter to the common people/migrants, transportation of migrants etc. and therefore, as such, the government has announced various financial packages/reliefs. Even the government also suffered due to lockdown, due to unprecedented covid-19 pandemic and also even lost the revenue in the form of GST. Still, the Government seems to have come out with various reliefs/packages. Government has its own financial constraints. Therefore, as such, no writ of mandamus can be issued directing the Government/RBI to announce/declare particular relief packages and/or to declare a particular policy, more particularly when many complex issues will arise in the field of economy and what will be the overall effect on the economy of the country for which the courts do not have any expertise and which shall be left to

the Government and the RBI to announce the relief packages/economic policy in the form of reliefs on the basis of the advice of the experts. Therefore, no writ of mandamus can be issued.

20. No State or country can have unlimited resources to spend on any of its projects. That is why it only announces the financial reliefs/packages to the extent it is feasible. The court would not interfere with any opinion formed by the Government if it is based on the relevant facts and circumstances or based on expert advice. It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, only where it is arbitrary and violative of any Constitutional, statutory or any other provisions of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits.

21. No right could be absolute in a welfare State. Man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. Not every fundamental right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principal equally applies when there is any constraint on the health budget on account of financial stringencies.

It is the cardinal principle that it is not within the legitimate domain of the court to determine whether a particular policy decision can be served better by adopting any policy different from what has been laid down and to strike down as unreasonable merely on the ground that the policy enunciated does not meet with the approval of the court in regard to its efficaciousness for implementation of the object and purpose of such policy decision.

22. With the limited scope of judicial review on the policy decisions affecting the economy and/or it might have financial implications on the economy of the country, the reliefs and submissions stated hereinabove are required to be considered.

Whether there shall be a waiver of interest during the moratorium period or whether there shall be sector-wise relief packages and/or RBI should have issued directions which are sector specific and addressing such sector specific issues and/or whether the moratorium period should be extended beyond 31.08.2020 or the last date for invocation of the resolution mechanism, namely, 31.12.2020 provided in the 6.8.2020 circular should be extended are all in the realm of the policy decisions. Not only that, if such reliefs are granted, it would seriously affect the banking sectors and it would have far reaching financial implications on the economy of the country.

23. Now so far as the relief sought of waiver of interest during the moratorium period is concerned, it is required to be noted that the bankers/lenders have to pay the interest to the depositors and their liability to pay the interest on the deposits continue even during the moratorium period. There shall be administrative expenses also required to be borne by the bankers/lenders. Continue payment of interest to depositors is not only one of the most essential banking activities but it shall be a huge responsibility owed by the banks to crores and crores of small depositors, pensioners etc. surviving on the interest from

their deposits. There may be several welfare funds schemes, category specific and sector specific which might be surviving and are implemented on the strength of the interest generated from their deposits. All such welfare funds would depend on the income generated from their deposits for the survival of their members. Therefore, to grant such a relief of total waiver of interest during the moratorium period would have a far-reaching financial implication in the economy of the country as well as the lenders/banks. Therefore, when a conscious decision has been taken not to waive the interest during the moratorium period and a policy decision has been taken to give relief to the borrowers by deferring the payment of installments and so many other reliefs are offered by the RBI and thereafter by the bankers independently considering the Report submitted by Kamath Committee consisting of experts, the interference of the court is not called for.

24. Now so far as the submission on behalf of the petitioners that the RBI should have issued directions which are sector specific and addressing such sector specific issues is concerned, at the outset, it is required to be noted that as such the Committee headed by Shri K.V. Kamath had gone into such

sector specific issues and gave its recommendations. The recommendations of the Kamath Committee have been substantially accepted by the RBI in its circular dated 7.9.2020 which provides for separate threshold for 26 sectors including power, real estate and construction. Even otherwise, it is required to be noted that every sector might have suffered differently and therefore it will not be possible to provide sector specific/sector-wise reliefs. The petitioners cannot pray for sector specific relief by either waiver of interest or restructuring by way of present proceedings under Article 32 of the Constitution of India and the question of such financial stress management measures requires examination and consideration of several financial parameters and its impact.

25. Now so far as the submission on behalf of the petitioners that as per the notifications/circulars/reliefs offered by the RBI and/or Finance Department of the Union of India ultimately it is left to the bankers and it should not have been left to the bankers and the Government/RBI must intervene and provide further reliefs is concerned, at the outset, it is required to be noted that as such the bankers are commercial entities and since the customer profile, organizational structure and spread of each

lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers and therefore, the discretion was left to the lending institutions concerned. Any borrowing arrangement is a commercial contract between the lender and the borrower. RBI and/or the Union of India can provide for broad guidelines while recommending to give the reliefs.

26. Now so far as the submission on behalf of the petitioners that the relief packages which are offered by the UOI/RBI/Bankers/Lenders are not sufficient and some better and/or more reliefs should be offered is concerned, it is not within the judicial scope of the courts to issue such directions. No mandamus can be issued to grant some more reliefs/packages. As observed hereinabove, the court cannot interfere with the economic policy decisions on the ground that either they are not sufficient or efficacious and/or some more reliefs should have been granted. The Government might have their own priorities and the Government has to spend in various fields and in the present case like health, medicine, providing food etc. Even as per the case of the Union of India and so stated in the counter filed on behalf of the Union of India and the RBI,

so many policies have been announced to mitigate the impact of Covid-19 pandemic, which are referred to hereinabove.

As can be seen that as such the Central Government has already given various reliefs and by providing various reliefs, they have already expanded huge financial burden. It is required to be noted that pandemic has caused stress to large and small businesses and the individuals who have lost jobs and livelihoods. By and large, everybody has suffered due to lockdown due to Covid-19 pandemic. Even the Government has also suffered due to non-recovery of GST. From the counter filed on behalf of the Central Government, it appears that the Government has announced and offered 'Garib Kalyan Package' and 'Aatma Nirbhar Package'. The 'Garib Kalyan Package' was for Rs.1.70 lakh crores, involving free food grains, pulses, gas cylinders and cash payment to women, poor senior citizens and farmers. It is reported that more than 42 crore poor people received financial assistance of Rs. 65,454 crores under the said package. The Government has also come out with 'Aatma Nirbhar Package' which was for Rs. 20 lakh crores, involving support to MSMEs, Non-Banking Finance Companies, agriculture, sectors allied to agriculture, contractors, street

vendors, State Governments, relief in provident fund contribution, extension of subsidy on home loans etc. Therefore, it cannot be said that the Central Government and/or the RBI have not done anything and/or have not offered any reliefs whatsoever. While offering the financial relief packages, the financial constraint and/or financial burden on the government is also required to be considered and borne in mind, which can be considered by the experts and the government and the courts have not expertise to assess the financial burden.

From the various steps/measures/policy decisions/packages declared by the Union of India/RBI and the bankers, it cannot be said that the UOI and/or the RBI have not at all addressed the issues related to the impact of Covid-19 on the borrowers. As such, none of the petitioners have specifically challenged the various circulars/policy decisions taken by the UOI/RBI. From the submissions made by the learned counsel appearing for the respective parties, it appears that the borrowers want something more than the reliefs announced. Merely, since the reliefs announced by the UOI/RBI ither may not be suiting the desires of the borrowers, the reliefs/policy decisions related to Covid-19 cannot be said to be arbitrary and/or violative of Article

14 of the Constitution of India. It cannot be said that any of the fundamental rights guaranteed under the Constitution are infringed and/or violated. Economic decisions are required to be taken keeping the larger economic scenario in mind.

27. Similarly, the relief sought that the moratorium period should be extended and/or the last date for invocation of the resolution mechanism namely 31.12.2020 provided under the 06.08.2020 circular should be extended are all in the realm of policy decisions. Even otherwise, almost five months were available to eligible borrowers when circular dated 6.8.2020 was notified providing for a separate resolution mechanism for Covid- 19 related stressed assets. Therefore, sufficient time was given to invoke the resolution mechanism.

Therefore, the petitioners shall not be entitled to any reliefs, namely,

(i) total waiver of interest during the moratorium period;

(ii) to extend the period of moratorium;

(iii) to extend the period for invocation of the resolution mechanism, namely 31.12.2020 provided under the 6.8.2020 circular;

(iv) that there shall be sector-wise reliefs provided by the RBI;

and

(v) that the Central Government/RBI must provide for some further reliefs over and above the relief packages already offered which, as observed hereinabove, can be said to be in the realm of the economic policy decisions and for the reasons stated hereinabove and as observed hereinabove granting of any such reliefs would have a far-reaching financial implication on the economy of the country. It appears, whatever best can be offered has been offered for the different fields and to the common people as well as those persons who are affected due to Covid-10 pandemic. However, the relief/prayer not to charge the penal interest/interest on interest/compound interest during the moratorium period is concerned, it stands on different footing which shall be dealt with hereinbelow.

28. Now so far as the submission of Shri Sibbal, learned Senior Advocate that there is no “National Plan” drawn up for the disaster management due to Covid-19 pandemic and that NDMA has not performed its duty under the DMA 2005 is concerned, to

appreciate the above, the relevant provisions of DMA 2005 are required to be referred to and considered.

Section 3 of the Act provides for establishment of National Disaster Management Authority which shall consist of the Prime Minister of India, who shall be the Chairperson of the National Disaster Management Authority and other members not exceeding nine, to be nominated by the Chairperson of the National Authority. Powers and functions of the National Authority are provided under Section 6, which reads as under:

> "6. Powers and functions of National Authority.—(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.
>
> (2) Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may —
> (a) lay down policies on disaster management;
> (b) approve the National Plan;
> (c) approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;
> (d) lay down guidelines to be followed by the State Authorities in drawing up the State Plan;
> (e) lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;
> (f) coordinate the enforcement and implementation of the policy and plan for disaster management;
> (g) recommend provision of funds for the purpose of mitigation;
> (h) provide such support to other countries affected by major disasters as may be determined by the Central Government;
> (i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;

(j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.

(3) The Chairperson of the National Authority shall, in the case of emergency, have power to exercise all or any of the powers of the National Authority but exercise of such powers shall be subject to ex post facto ratification by the National Authority."

Section 7 provides for constitution of Advisory Committee by National Authority, which shall consist of experts in the field of disaster management and having practical experience of disaster management at the national, State or district level to make recommendations on different aspects of disaster management. Then comes constitution of National Executive Committee as per section 8 of the Act, to assist the National Authority in the performance of its functions under the Act. The National Executive Committee shall consist of the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government having administrative control of the disaster management, who shall be the Chairperson, ex officio, and the Secretaries to the Government of India in the Ministries or Departments having administrative control of the agriculture, atomic etc., as mentioned in Section 8(2)(b) of the Act. As per Section 9 of the Act, the National Executive Committee, as and when it considers necessary, constitute one or more sub-

committees for the efficient discharge of its functions. The powers and functions of the National Executive Committee are as per Section 10 of the Act, and more particularly (a) to act as the coordinating and monitoring body for disaster management…. (b) coordinate and monitor the implementation

of the National policy; (c) monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India; (d) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects; (e) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government; (f) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster; (g) advise, assist and coordinate the activities of the Ministries or Departments….engaged in disaster management. Section 11 of

the Act provides for preparation/drawing up a Plan called the “National Plan” for disaster management for the whole of the country. The National Plan shall include-

> (a) measures to be taken for the prevention of disasters, or the mitigation of their effects;
> (b) measures to be taken for the integration of mitigation measures in the development plans;
> (c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster; (d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c).

Section 12 of the Act provides for issuance of guidelines by the National Authority for minimum standards of relief. Section 13 of the Act provides for relief in repayment of loan etc., which shall be dealt with hereinbelow at an appropriate stage. Section 14 of the Act provides for establishment of State Disaster Management Authority. Similar provisions like National Disaster Management Authority are made with respect to State Disaster Management Authority. Section 33 provides for State Disaster Management Plan. Similar provisions are made with respect to District Disaster Management Authority and the District Plan. Section 35 of the Act provides for measures to be taken by the Central Government for disaster management. Section 35 reads as under:

"35. Central Government to take measures.—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely:—
(a) coordination of actions of the Ministries or Departments of the Government of India, State Governments, National Authority, State Authorities, governmental and non-governmental organizations in relation to disaster management;
(b) ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects;
(c) ensure appropriate allocation of funds for prevention of disaster, mitigation, capacity-building and preparedness by the Ministries or Departments of the Government of India;
(d) ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster;
(e) cooperation and assistance to State Governments, as requested by them or otherwise deemed appropriate by it;
(f) deployment of naval, military and air forces, other armed forces of the Union or any other civilian personnel as may be required for the purposes of this Act;
(g) coordination with the United Nations agencies, international organizations and governments of foreign countries for the purposes of this Act;
(h) establish institutions for research, training, and developmental programmes in the field of disaster management;
(i) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The Central Government may extend such support to other countries affected by major disaster as it may deem appropriate."

Section 36 of the Act provides for responsibilities of the Ministries or Departments of the Government of India, which reads as under:

"36. Responsibilities of Ministries or Departments of Government of India.—It shall be the responsibility of every Ministry or Department of the Government of India to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity-building in accordance with the guidelines laid down by the National Authority;
(b) integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority;
(c) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the guidelines of the National Authority or the directions of the National Executive Committee in this behalf;

(d) review the enactments administered by it, its policies, rules and regulations, with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;
(e) allocate funds for measures for prevention of disaster, mitigation, capacity-building and preparedness;
(f) provide assistance to the National Authority and State Governments for—
(i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;
(ii) carrying out rescue and relief operations in the affected area;
(iii)assessing the damage from any disaster;
(iv) carrying out rehabilitation and reconstruction;
(g) make available its resources to the National Executive Committee or a State Executive Committee for the purposes of responding promptly and effectively to any threatening disaster situation or disaster, including measures for—
(i) providing emergency communication in a vulnerable or affected area;
(ii) transporting personnel and relief goods to and from the affected area;
(iii)providing evacuation, rescue, temporary shelter or other immediate relief;
(iv) setting up temporary bridges, jetties and landing places;
(v) providing, drinking water, essential provisions, healthcare, and services in an affected area;
(h) take such other actions as it may consider necessary for disaster management."

Section 37 of the Act provides for preparation of the Disaster Management Plans of Ministries or Departments of Government of India.

Section 38 provides for measures to be taken by the State Government.

29. From the aforesaid, it can be said that the DMA 2005 is a complete code in itself and different functions and responsibilities by different authorities to be performed at different levels are provided. As per Sections 35 and 36 of the Act, it shall be the responsibility of the Ministry or the Department of the Government of India to take measures necessary for prevention of disaster, mitigation, preparedness and capacity-building which shall include to allocate funds for measures for preparation of disaster, mitigation, capacity-building and preparedness.

Therefore, on conjoint reading of the relevant provisions of the DMA 2005, which are referred to hereinabove, it cannot be said that the functions of all the Ministries are to be discharged by the NDMA which should take decision qua the area in each Ministry. It also cannot be said that the functions of the Ministries will stand transferred to the NDMA and will have to be discharged by the NDMA either directly or indirectly for the purpose of disaster management. Various Ministries under the Central Government have to take various relief measures within their respective spheres for remedying the effects of the disaster. From the pleadings, it is borne out that in fact there is already a National Disaster Management Plan prepared even prior to the

Covid-19 pandemic. Under the National Plan, there is a National Disaster Management Institutional Mechanism, which is reproduced hereinabove. The said plan also envisages nodal ministries for management of different disasters. For example, if the disaster is due to drought, Ministry of Agriculture and Farmers Welfare would be the nodal agency; if the disaster is due to floods, Ministry of Housing and Urban Affairs would be the nodal agency and if the disaster is due to “biological emergencies”, the Ministry of Health and Welfare would be the nodal agency. The disaster due to Covid-19 pandemic would fall under disaster due to “biological emergencies”. However, it appears that Covid-19 pandemic disaster is of such a nature that it could not be confined to one nodal ministry and whatever measures/reliefs are required to be taken/given are provided by every Ministry in each and every day needed. Therefore, various reliefs/packages are provided by different Ministries, such as, Ministry of Railways, Ministry of Finance, Ministry of Health and Family Welfare etc. It also appears that even considering the very nature of the pandemic which would have PAN-India impact, empowered groups were constituted by the National Disaster Management Authority. Therefore, when there is already in

existence a National Plan, which might have been prepared even prior to the Covid-19 pandemic, it cannot be said that there is no National Plan by the NDMA at all. National Plan would be for a long term and even with respect to disaster to happen in future. For every disaster, there shall not be a new National Plan. National Plan would be comprehensive in nature which is already there in existence. Therefore, the submission of Shri Sibbal, learned Senior Advocate that there is no National Plan at all and therefore the NDMA has failed to perform its duty cannot be accepted.

30. Now so far as the submission on behalf of the learned counsel for the respective petitioners that the NDMA has failed to perform its duty cast under Section 13 of the Act is concerned, at the outset, it is required to be noted that the word used in Section

13 is "**may"** and not **"shall"**. As per the settled proposition of law, while interpreting a particular provision, the language used is to be read as it is. On a fair reading of Section 13, it appears that

the legislature has deliberately used the word "**may**". This "**may**" is used after considering the object and purpose of the Act as a whole as well as the role to be placed by the Central Government through different ministries, role to be placed by the State

Government, role to be played by the District Authority at the district level. In the present case, the Ministry of Finance and the RBI have already come out with different packages/reliefs in repayment of loans or grant of fresh loans to the persons affected by disaster.

30.1 Even the Central Government through Ministry of Finance and the RBI has taken various steps for granting reliefs to the disaster affected borrowers. The Central Government has announced the 'Garib Kalyan Package' for Rs.2.00 lakh crores, involving free food grains, pulses, gas cylinders and cash payment to women, poor senior citizens and farmers; 'Aatma Nirbhar Package' for various sectors like power sector, real estate sector, MSME sector. The Central Government also promulgated Emergency Credit-Linked Guarantee Scheme of Rs. 3 lakh crores providing additional credit at lower rate of interest, with 100% Government Guarantee and no fresh collateral. The scheme has been extended with higher financial limits to 27 Covid-19 impacted sectors including restaurant and hotel sectors. The Central Government has also granted Rs. 20,000 crores Subordinate Debt with partial credit guarantee for over two lakhs stressed MSME units including from hospitality sector. The

Central Government has also granted Rs. 50,000 crores Fund of Funds for providing growth equity to MSMEs. The Central Government has also come out with a new definition of MSMEs for improving turnover caps for better access of schemes/benefits. There are other reliefs also announced by the Central Government. The Central Government has also declared the moratorium from March to August, 2020. The proceedings under the IBC are also suspended during the moratorium period. 30.2 As per the provisions of the DMA 2005, the responsibilities and functions of the discharge of functions by the NDMA would be confined to Section 6 of the Act. However, on-ground disaster management and relief measures shall have to be undertaken by the Central Ministries and the State Government Ministries depending upon the need of the disaster and only in a case where the NDMA is satisfied that the reliefs which are already announced are not sufficient and/or no steps are taken at all with respect to the reliefs mentioned in Section 13, the National Authority may recommend the reliefs in repayment of loans etc. Therefore, it cannot be said that the National Authority has failed to perform its duty as cast under Section 13 of the Act.

30.3 At this stage, it is required to be noted and so stated in the affidavit dated 31.08.2020 filed on behalf of the Union of India that NDMA also took cognizance of the issues being dealt with by the RBI and sent its "views and recommendations" given by O.M. dated 28.08.2020 and the NDMA also opined that RBI may consider granting further reliefs, as deemed appropriate, after considering and taking into account the financial relief packages issued by the Ministry of Finance, as well as, other relief measures that have already been issued/declared by the RBI itself. The "views and recommendations" of the NDMA were communicated to the RBI vide letter dated 31.08.2020. Therefore, it cannot be said that the NDMA has not stepped into at all. It is to be noted that even as per Section 13 of the Act, the

National Authority "**may**" and "**recommend**" relief in repayment of loans or grant of fresh loans to the persons affected by disaster on such concessional terms as may be appropriate. Thereafter, as per the "views and recommendations" of the NDMA, RBI has come out with Resolution framework and on the basis of the same the lenders/bankers after getting the approval of their Board of Directors have come out with the policies. Thus, from the above, it cannot be said that NDMA has failed to perform its duty cast

under Section 13 of the Act. From the above, it also cannot be said that there is no National Plan in existence at all.

31. Now so far as the charging of penal interest/interest on interest/compound interest during the moratorium period is concerned, it stands absolutely on a different footing. At this stage, it is required to be noted that in fact the Central Government has come out with a policy decision subsequently by which it is decided not to charge the interest on interest on the loans up to Rs. 2 crores. However, such relief is restricted to the following categories:

(i) MSME loans up to Rs.2 crore

(ii) Education loans up to Rs.2 crore

(iii) Housing loans up to Rs.2 crore

(iv) Consumer durable loans up to Rs.2 crore

(v) Credit card dues up to Rs.2 crore

(vi) Auto loans up to Rs.2 crore

(vii) Personal loans to professionals up to Rs. 2 crore

(viii) Consumption loans up to Rs.2 crore

There is no justification shown to restrict the relief of not charging interest on interest with respect to the loans up to Rs. 2 crores only and that too restricted to the aforesaid categories. What are the basis to restrict it to Rs. 2 crores are not

forthcoming. Therefore, as such, there is no rational to restrict such relief with respect to loans up to Rs. 2 crores only. Even otherwise, it is required to be noted that the scheme dated 23.10.2020 granting relief/benefit of waiver of compound interest/interest on interest contains eligibility criteria and it provides that any borrower whose aggregate of all facilities with lending institution is more than Rs. 2 crores (sanctioned limit or outstanding amount) will not be eligible for ex-gratia payment under the said scheme. Therefore, if the total exposure of the loan at the grant of the sanction is more than Rs. 2 crores, the borrower will be ineligible irrespective of the actual outstanding. For Example, if the borrower has been sanctioned a loan of Rs. 5 crores and has availed of the same, even though he might have repaid substantially bringing down the principal amount of less than Rs. 2 crores as on 29.02.2020, but because of the sanction of the loan amount of more than Rs. 2 crores, he will be ineligible. It also further provides that the outstanding amount should not be exceeded to Rs. 2 crores and for this purpose aggregate of all facilities with the lending institution will be reckoned. Therefore, if a borrower, for example, MSME Category has availed and has outstanding of business loan of Rs. 1.99 crores and also has dues

of its credit card of Rs. 1.10 lakhs, thereby making the aggregate to Rs. 2.10 crores, it stands ineligible. Therefore, the aforesaid conditions would be arbitrary and discriminatory.

31.1 Even otherwise, it is required to be noted that compound interest/interest on interest shall be chargeable on deliberate/willful default by the borrower to pay the installments due and payable. Therefore, it is in the nature of a penal interest. By notification dated 27.03.2020, the Government has provided the deferment of the installments due and payable during the moratorium period. Once the payment of installment is deferred as per circular dated 27.03.2020, non-payment of the installment during the moratorium period cannot be said to be willful and therefore there is no justification to charge the interest on interest/compound interest/penal interest for the period during the moratorium. Therefore, we are of the opinion that there shall not be any charge of interest on interest/compound interest/penal interest for the period during the moratorium from any of the borrowers and whatever the amount is recovered by way of interest on interest/compound interest/penal interest for the period during the moratorium, the same shall be refunded

and to be adjusted/given credit in the next instalment of the loan account.

32. In view of the above and for the reasons stated hereinabove, the present petitions seeking reliefs, namely, (i) total waiver of interest during the moratorium period; (ii)to extend the period of moratorium; (iii) to extend the period for invocation of the resolution mechanism, namely 31.12.2020 provided under the 6.8.2020 circular; (iv)that there shall be sector-wise reliefs provided by the RBI; and (v)that the Central Government/RBI must provide for some further reliefs over and above the relief packages already offered stand dismissed. Connected IAs stand disposed of.

However, it is directed that there shall not be any charge of interest on interest/compound interest/penal interest for the period during the moratorium and any amount already recovered under the same head, namely, interest on interest/penal interest/compound interest shall be refunded to the concerned borrowers and to be given credit/adjusted in the next instalment of the loan account. All these petitions are partly allowed to the aforesaid extent only and as observed for the reliefs, the petitions

are dismissed. Interim relief granted earlier not to declare the accounts of respective borrowers as NPA stands vacated. However, there shall be no order as to costs.

Writ Petition (Civil) No. 955 of 2020

Writ Petition (Civil) No. 955 of 2020 stands disposed of in terms of the statement made by Shri V. Giri, learned Senior Advocate appearing on behalf of the RBI that Circular dated 27.03.2020 shall be applicable to all banks, non-banking financial companies, housing finance companies and other financial institutions compulsorily and mandatorily.

……J.
[ASHOK BHUSHAN]

……..J.
[R. SUBHASH REDDY]

NEW DELHI;
MARCH 23, 2021.

……J.
[M.R. SHAH]