

TELANGANA HIGH COURT ORDER

ground-breaking judgment in the world of FORENSICS

In view of the challenges faced by Banks for dealing with **LOAN FRAUDS**, the Reserve Bank of India (“RBI”) had issued the Master Directions Circular dated 01-07-2016 (as updated on 03-07-2017) which will guide the Bank through the process of preventing, early detection and prompt reporting of any irregularities in loan accounts to RBI and other investigative agencies within the timeframe set in the circular.

TIMELINE given under Clause 8.9.4 and 8.9.5,
Lending under Consortium or Multiple Banking Arrangements
 prescribed in the Master Directions

The initial decision to classify any standard or NPA account as RFA or Fraud will be at the individual bank level.

In case it is decided at the individual bank level to classify the account as **FRAUD STRAIGHTAWAY AT THIS STAGE, then**

Within 21 days
 of classification
 of account as
FRAUD

Report to RBI and Central
 Bureau of Investigation
 (“CBI”)/Police

I
N
S
I
G
H
T

In furtherance to the above compliant,

Within 15 days of RFA/Fraud Classification by Banks

Bank who marked Red Flagged Account (“RFA”) will REQUEST for convening a Joint Lenders Forum (“JLF”) meeting

Within 15 days of RECEIPT of Request

CONVENE a JLF meeting and order for Forensic Audit

Within 3 months

Forensic Audit shall be completed and Report shall be submitted

Within 15 days of COMPLETION of Forensic Audit

Convene a JLF meeting and decide on the status of account. **THE BANK SHALL DECIDE, WHETHER TO CLASSIFY THE ACCOUNT AS FRAUD OR NOT.** In case the decision is to classify as fraud, lift the status from RFA to Fraud and REPORT TO RBI within a WEEK

Within 30 days of RBI Reporting

Lodge a complaint with CBI

** The above timeline is only for the Accounts under Multiple of Consortium Lending. In case of lending under sole banking arrangement, if the account is classified as RFA by FGM, the remedial actions and further investigations including forensic/internal audit has to get completed WITHIN 6 months.*

You are receiving this message as a part of our relationship and is intended solely for the use of the person to whom it is addressed. Any unauthorized distribution or copying of this communication is strictly prohibited. This is for educational purpose only and does not constitute any legal advice.

I
N
S
I
G
H
T

R K Doshi & Co LLP

**Telangana
High Court**

**OPPORTUNITY OF
BEING HEARD TO BE
GIVEN BY BANK/JLF
TO THE BORROWERS**

❖ *Key Analysis of Telangana Judgement on Proceeding in Fraud Account by Banks:*

- ✓ A petition was moved before the bench of Telangana High Court by the aggrieved B. S. Limited through its representative Mr. Rajesh Aggrawal (“Petitioner”).
- ✓ The Petitioner was aggrieved by
 - the non-inclusion of principles of natural justice in the Master Directions i.e. opportunity of being heard was not given to any Borrower to present their facts as evident from the timeline given in clause 8.9.4 and 8.9.5
 - aggrieved by the decision of the JLF
 - aggrieved by the resolution of the Fraud Identification Committee (“FIC”)

whereby both the JLF and the FIC have classified the account of B. S. Limited as ‘fraud’ and ‘willful defaulter’.

The Petition was allowed by the High Court and issued following directions and terms for **BANKS** :

- The principle of opportunity of being heard, as part of the principles of natural justice, **IS TO BE READ IN CLAUSE 8.9.4 AND 8.9.5** of the Master Circular.

- If individually by all banks or based on the Forensic Report and with the votes of Majority, the JLF decides to classify the account as Fraud or Will Full Defaulter, then an **OPPORTUNITY OF BEING HEARD SHOULD BE GIVEN TO THE BORROWER.**

- The JFL shall **FURNISH THE COPY OF FORENSIC REPORT** to the Borrower and only after personally hearing the parties it will take the decision on whether the account shall be classified as a Fraud or Not.

- After JFL takes its decision, the **FIC SHALL PASS ITS RESOLUTION** whether the decision of JLF should be confirmed or not.



THE SUPREME COURT OF INDIA

After the verdict given by Telangana High Court, State Bank of India (“SBI”) and RBI moved to the apex court; **SUPREME COURT OF INDIA** for getting Stay on High Court verdict. However, the **STAY WAS REFUSED** by Supreme Court of India and the **FINAL JUDGEMENT IS AWAITED.**

Does this Judgement by High Court mean Relevant Authority will have to share a copy of Forensic Reports with Defaulters in all cases?

More importantly, does this mean that failure to do so will make the exercise of classifying the account status as “FRAUD”, futile?