



US court stays debt collection on Modi's firm; PNB virtually can't collect from these three firms Source :

SIFY : Fri, Mar 02, 2018

A US court has informally accepted the bankruptcy petition filed by Nirav Modi, the absconding diamantaire who has fled India after cheating Indian Banks, majorly the Punjab National Bank. Mihir Bhansali, a President and Director of three companies connected to Nirav Modi, had filed the bankruptcy on behalf of his boss on Monday. Bhansali filed for bankruptcy of three firms- Fantasy Diamond, Fantasy Inc, and A Jaffe Inc.

Nirav Modi's company had filed for a chapter 11 voluntary petition in a New York Southern Bankruptcy Court. On Monday, news reports broke of how Nirav Modi had not mentioned Punjab National Bank as a creditor in his bankruptcy filing. But bank and investigating officers are yet to confirm if the three companies have to be reported in FIRs. Monday, which co-incidentally also happens to be the birthday of Nirav Modi, was the day he officially filed for bankruptcy.

The New York Court order, which has appeared early on Friday, can be viewed as one that aids Nirav Modi and his accomplices. The court passed an interim order that dissuades creditors and lenders to Nirav Modi's Firestar International from their debt-recovery processes. The order is an auto-stay on collection activities. The court in a two-page order said, "creditors generally may not take action to collect debts from the debtor or the debtor's property."

In what seems worse for investigators, law authorities and the banks, such creditors cannot resort to legal resort such as suing, asserting deficiency in pay-outs, re-assessing of property, or even attempt to contact Nirav Modi through mail, phone or any means.

“Creditors who violate the stay can be required to pay actual and punitive damages and attorneys fees,” court warned creditors. The court noted that the order and copies have been transmitted to multiple stake holders including the creditors of Firestar Diamond Inc. The court has sought to convene a meeting of creditors on March 30.

The court besides bankruptcy filing papers, has additional documents which suggests revenues and consignments estimated at a total of nearly \$40.50 million. Firestar, and Fantasy Inc have consignments and merchandise estimated at \$33.25 million. A Jaffe Inc reported that consignment with customers was valued at \$7.3 million.

In any case, Punjab National Bank, the Indian state-run bank, will have almost nothing to claim since, it has not been even categorised as a creditor in the bankruptcy filing. CBI and Enforcement Directorates are expected to have a tough time in solving this bankruptcy maze. The court was informed that annual sales of Firestar Diamond, Fantasy and A Jaffe was to the tune of \$90 million.

The sales was with major department stores and super-speciality chains such JC Penney, Macy's, US Navy, Jareds, Zales etc. It is astounding at how sales has been reported at only \$90 million, when analysts, creditors, and even banking systems pegged Nirav Modi and his Firestar Inc at over a billion dollars. Is Nirav Modi's Firestar Inc really worth only \$90 million? Or, is this con-artist on his way to dupe the legal system too?

PNB scam fallout: Unions blame non-transfer of senior officials on top management; write to FM

More than 1,400 employees of the bank were transferred.

Beena Parmar. Moneycontrol.com

Bank unions have questioned the sudden mass transfers of 1,400 employees by Punjab National Bank in the wake of the Rs 12,700-crore 'NiMoNia' fraud uncovered last month without any action on the senior management.

After the Delhi-based bank disclosed that two of its junior officials connived with two corporate groups – Nirav Modi-led three firms and his uncle Mehul Chokshi's Gitanjali group - it was alleged the employees remained in the same position, and the same branch, for a very long time in violation of the human resources (HR) policy.

Hence, as a fallout of the fraud, PNB transferred 1,415 employees. "...the Bank has transferred 257 sub staff, 437 clerks and 721 officers (total 1,415 employees) since February 19, 2018, as per the prevailing Rotational Transfer Policy of the Bank," the government-owned bank said in a statement.

Blaming the decision of non-transfer of senior officials, CH Venkatachalam, General Secretary, **All India Bank Employees' Association (AIBEA)**, said, "So many vigilance angles were neglected, supervisions and audits have failed to notice this fraud... The top executive is answerable on why the junior official was not transferred for a long time."

Calling it an over-reaction, Venkatachalam said: "Why not drop senior officials or transfer them? The punishment given to junior officials is in a state of panic. Why this over reaction?"

In a letter to the Finance Minister Arun Jaitley on behalf of the Unions, he has suggested, "...a tripartite meeting of the Finance Ministry, Indian Banks Association/Bank managements and Apex Bank Unions (UFBU) be

convened immediately under your personal guidance so that concrete and concerted measures are taken towards the same.”

In an after effect of the scam, Central Vigilance Committee (CVC) has issued a notification to all banks across the country to transfer employees who have completed more than five years at a single branch.

The letter added that, “We have no conflict with the CVC guidelines as they are well-intended. We may also inform you that by and large these guidelines are being implemented by the Banks. But there is so much of over-reaction after the PNB fraud and bank managements inform us that they are under pressure to transfer enmasse employees and officers based on the cut-off date of 31-12-2017.”

He added that every year people are transferred only after the closing of March. “Although there are exceptions in terms of health or their families’ obligations, etc...which is just five percent. But the rest are transferred only in April or thereafter. Now, they are being transferred at this time just because of the panic due to the PNB fraud. This is a colossal risk of money, disturbance to the functioning of banks and employees at the time of making their financial statements.”

The letter calls for necessary action on the “ongoings in the banking sector on account of the NIMOnia fraud in Punjab National Bank. We believe that the issues raised by us are receiving your attention for necessary action”.

According to other banking sources, there is a nexus between private corporations, banks’ top executives and the government.

The letter also said, “The huge PNB fraud caused on account of the wanton corrupt activities of Nirav Modi in collusion with some bank officials at different levels and compounded by gross negligence in supervision at multiple levels of management, RBI not excluding and auditors...”

It added, “Unfortunately, public sector banks and the entire workforce are being painted with an uncharitable black brush and we feel that restoring

the faith and confidence of the common public in general and banking clientele in particular is the top most priority at the moment.”

FinMin asks PSBs to review risks in 15 days



A lot of people have started talking of privatisation of banks in the aftermath of the PNB fraud. File Photo - The Hindu

NEW DELHI, FEBRUARY 27 BUSINESSLINE

Aiming to prevent more frauds at public sector banks, the Finance Ministry has asked state-run lenders to take pre-emptive action and identify weaknesses within a 15-day period.

Rajeev Kumar, Financial Services Secretary, has also asked bank chiefs to examine all non-performing asset accounts of over Rs 50 crore.

“PSB Managing Directors directed to detect bank frauds & consequential wilful default in time and refer cases to the Central Bureau of Investigation. To examine all NPA accounts over Rs 50 crore for possible fraud,” he said in a tweet on Tuesday, adding that they can also involve the Enforcement Directorate and the Directorate for Revenue Intelligence to look into any violations under PMLA FEMA or Export Import norms.

“15 days deadline for PSBs to take pre-emptive action and identify gaps and weakness to gear up for rising operational and technological risks. To learn from best practices and pinpoint strategies, including tech solutions, clear accountability of senior functionaries,” added Kumar.

Each state-run lender will be expected to form a group of Executive Directors and Chief Technology Officer and will be the responsibility of the panel to “learn” from best practices across the banking sector and identify weakness in existing arrangements.

The norms will be implemented by lenders as part of the bank reforms package – EASE – which was included in the recapitalisation plan of Rs 2.11-lakh crore.

The directive comes at a time when Punjab National Bank, the second-largest PSB, has detected Rs 12,700 crore of fraud by the Nirav Modi Group and the Mehul Choksi Group.

Finance Minister Arun Jaitley has said that all efforts would be made to ensure that unethical businesses pay back dues to banks.

Banks’ NPA from gem and jewellery sector rises to 30%



CARE study: Lenders have a total exposure of Rs 69,000 crore to the sector

MUMBAI, FEBRUARY 27 BUSINESSLINE

The act of ‘loot and scoot’, unleashed by diamond merchant Nirav Modi and Gitanjali Gems promoter-Mehul Choksi, would increase banks’ non-performing assets from the gem and jewellery sector to 30 per cent from 12 per cent.

Punjab National Bank had extended guarantees to jeweller Nirav Modi and his associates to raise Rs 11,400 crore abroad without taking any guarantee.

After the scam broke out, PNB filed complaints against Nirav Modi and his associates, including Mehul Choksi, Chairman, Gitanjali Gems, with the CBI.

Analysing the shutdown of business by the two businessmen, CARE Rating said the banking sector had a total loan exposure of Rs 69,000 crore to the gem and jewellery sector as of December 2017, and its stressed assets accounted for 11.7 per cent.

With money raised by both the companies accounting for Rs 16,000-17,000 crore, the overall gross NPA ratio for this sector would work out to about 30 per cent, it said.

Head count

Gitanjali Gems is among the largest jewellery retailers in the country.

The two companies – Gitanjali and Nirav Modi – employed 648 and 2,200 employees, respectively, as per filings in March 2017.

A combined 3,000 people would be rendered jobless and another 7,000-8,000 temporary workers and employees at franchisees are expected to be affected, it said.

The shutdown of these two companies would pull down the diamond and jewellery foreign trade by six per cent next fiscal.

Imports

India gem and jewellery imports went up to \$28.8 billion last fiscal from \$24.3 billion logged in FY'16, while exports jumped to \$35.6 billion (\$32.6 billion) last financial year.

Modi-owned Firestar Diamonds derived most of its revenue from diamond cutting and polishing business. Its diamond sorting business caters to some of the largest players internationally.

The company was also involved in designing and manufacturing of premium stone and diamond studded jewellery.

Stores

The company operated jewellery stores at New York, Beijing and Hong Kong, apart from flagship stores in Mumbai and Delhi. But revenue from its retail business was insignificant as a percentage of the company's overall revenue.

Gitanjali Gems was present in both import-export of gold and studded jewellery and retail jewellery business in 200 cities in India and top markets abroad.

PNB may hire 'forensic auditor' to crack Modi LoU story

KR SRIVATS BUSINESSLINE

Bank clarifies that it has not placed withdrawal limits

Punjab National Bank (PNB) may appoint a forensic auditor to delve into the Rs 11,300-crore Letter of Undertaking (LoU) fraud perpetrated by Nirav Modi and his relatives.

While appointing a forensic auditor is on the radar of the bank's management, there is no truth to media reports that PricewaterhouseCoopers (PwC) has been engaged to conduct an investigation into the alleged fraud, sources said.

If the bank were to decide on appointing a forensic auditor, the process may not take long as it could be done without calling for bids due to the critical circumstances, they said.

Meanwhile, the CA Institute-appointed special group studying systemic issues in the PNB matter met for the first time in Mumbai on Friday.

The CA Institute, which is the regulator of the audit profession, has been suffering negative public perception about the efficacy of its disciplinary mechanism.

Ever since the PNB fraud came to light, there has been a clamour among policymakers and retired bankers that an independent authority be set up to ensure oversight of auditors. The government, after taking some steps towards setting up of a National Financial Reporting Authority, has developed cold feet on the matter and was showing no urgency for such a reform despite the situation on the ground, economy watchers rued.

Brand ambassador

On Friday evening PNB issued a statement denying media reports that Virat Kohli, its brand ambassador, was going to discontinue his endorsement of the bank. "Virat Kohli is our brand ambassador," a PNB release said.

PNB also denied reports on social media and other platforms that withdrawals by customers have been capped at Rs 3,000. "It is absolutely incorrect, no such limit has been fixed by the bank and normal banking activities are going on as usual. No restrictions on withdrawals have been imposed," the PNB release said.

The Enforcement Directorate on Friday tweeted that Rs 30 crore in bank accounts and shares worth Rs 13.86 crore held in a Nirav Modi company have been frozen. Acting on a tip, the ED also recovered a huge quantity of "imported watches" stacked in 176 steel almirahs, 158 corrugated boxes and 60 plastic containers.

PNB's audit committee (with a government representative) knew bank's fraud checks were weak

The bank did not have enough independent members on its board of directors between 2015 and 2017.

Punjab National Bank is in the eye of the storm for not having nipped the alleged Rs 11,400-crore Nirav Modi scam in the bud. By now, both senior bank functionaries and junior officials of the branch where the scam took place have been questioned. Finance Minister Arun Jaitley has raised concerns about auditors, regulators and top bank functionaries being unable to detect the scam in time.

Part of the blame may lie with the government itself, particularly the finance ministry. One of its nominees, a senior Indian Administrative Services officer, is a member of the audit committee of the bank's board of directors. This committee, a subset of the board, is meant to supervise audits and ensure that they are conducted with due diligence and that proper checks are in place to ensure such scams do not go undetected. Documents of the bank show that the audit committee was well aware of how weak its audit and scrutiny system was. As recently as September, another branch of the bank had been found embroiled in a Rs 464-crore scam involving foreign exchange, black money and shell companies.

But, for two years, between 2015 and 2017, the Punjab National Bank did not have an adequate number of independent board members on the audit committee. These independent members are individuals who are not employees or have any stake in the bank's business.

Regulations of the Securities and Exchange Board of India require two-thirds of the members on the audit committee to be independent to ensure better scrutiny. But the bank's statutory auditors, signing off the consecutive annual reports, found that the bank was in breach of this regulation. Instead of fixing this breach, the bank justified it saying that it followed instructions and regulations of the Reserve Bank of India in electing the audit committee members. All the while, the government nominee continued to be a member of the audit committee.

Total oversight

To understand the possible lapses that allowed the scam in Punjab National Bank to go undetected, **Scroll.in** talked to a senior forensic auditor working for a public sector bank, and to several other officials

working in senior positions. They laid bare the different stages within Punjab National Bank where red flags should have been raised over the past several years.

In its First Information Report to the Central Bureau of Investigation on the scam, Punjab National Bank explained how the key reason the scam went undetected internally for so long was that two key softwares to log transactions were not connected. These two softwares are SWIFT, short for Society for Worldwide Interbank Financial Telecommunications, and the Core Banking Solution, or the main online account keeping software. Consequently, the bank said, its employees were able to send messages on SWIFT that provided credit to Nirav Modi's companies (in the name of Letters of Understanding), which they did not log into the Core Banking Solution.

It is true that the two softwares are not linked in this bank. But that could not have created a blind spot for auditors, explained the forensic auditor, who did not want to be identified. "The guidance note of the Institute of Chartered Accountants of India specifically requires auditors to check the SWIFT records independently and cross verify them against the bank's main accounts," he said. "There are specific detailed guidelines for verifying detailed audit trail from SWIFT records with the main bank accounts. This is mandated so because many public sector banks do not have the two softwares linked at the moment."

The Institute of Chartered Accountants of India is a self-governing body of all auditors, which regularly puts out advisories on how to audit different kinds of entities.

The guidance note for auditing banks, revised as recently as 2017, notes, "Following documents are required to be verified by the statutory auditors during review...SWIFT messages originated by overseas bank specifying the terms of Buyer's Credit."

The auditor explained: "The internal auditors of the bank, the concurrent auditors of the branch and the statutory auditors of the bank should have all been checking this every year."

from its customer;

- 8) With respect to liability towards Letter of Comfort, the Indian banks accounts for the same as a "Contingent Liability".

The entries of the inward and outward remittances (specified in steps 3 and 4) are to be recorded in the books of accounts (NOSTRO Mirror Account) of the Indian bank.

Following documents are required to be verified by the statutory auditors during review of Buyers' Credit Transaction and its accounting treatment in the Indian Bank's books.

- 1) (Loan) Agreement, if any, entered between the Indian importer (borrower), overseas bank (lender), the Indian bank (facilitator);
- 2) SWIFT messages originated by overseas bank specifying the terms of Buyer's Credit;
- 3) The calculation of contingent liability towards LoC/ LoU is inclusive of interest accrued on the Buyer's Credit as on financial statement date;

Advances-Other than Agriculture

- 4) Documentation / Agreement between overseas bank and Indian bank, and, any further confirmatory documents exchanged between overseas bank and Indian bank;
- 5) Review of documents specifying right of recovery against borrower, in case if the borrower defaults in repayment of Buyer's Credit;
- 6) Balance confirmations obtained from the overseas bank;
- 7) Charge created in records of RoC related to the security offered for Buyer's Credit vis-à-vis disclosure of Buyer's Credit in the financials of borrowers as secured / unsecured loan;
- 8) Acknowledgement of debt, if any, obtained from the borrower;
- 9) The calculation of drawing power for working capital finance availed by the borrower is net of the Buyer's Credit;
- 10) Form 15CA / Form 15CB compliance made by the borrower.

Bank branches dealing with foreign exchange – such as the Punjab National Bank’s Brady House branch in South Mumbai from where the scam allegedly took place – must get special approvals by the RBI.

The level of audits and scrutiny prescribed for branches dealing with foreign exchange is of a much higher degree than that prescribed for others. The audit committee of the board oversees a quarterly report particularly on the foreign exchange dealings of such branches.

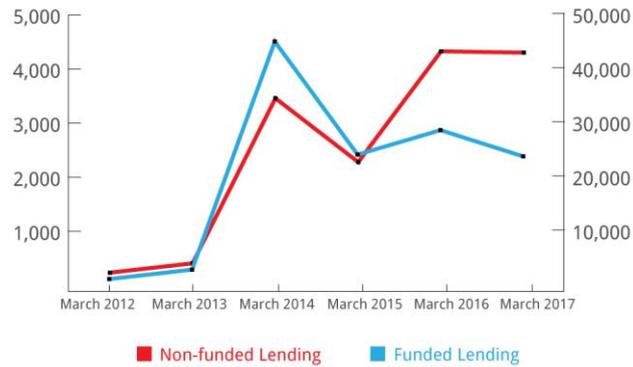
Early signs

“Concurrent and other auditors cannot possibly check every transaction at even such a branch which deals with foreign exchange,” said the forensic auditor. “Therefore, they are required to look particularly at segments of lending where sudden increases and decreases are being noticed through the year or year-on-year. In these segments we should be carrying out a 100% audit of all transactions.”

The Punjab National Bank did see rapid changes in this kind of lending to the gems and jewellery sector, shows data. The loans extended to customers through Letters of Understanding, which Nirav Modi got, are classified as part of the non-fund based offshore loans.

By the end of March 2013, the bank’s overseas non-fund based loans stood at Rs 407 crore. By March 2014, the loans had zoomed to Rs 3,458 crore. By March 2017, they stood at Rs 4,302 crore show the bank’s annual reports. The funded loans – which typically require the bank to give the money right away to the customer – galloped from Rs 2,665 crore to Rs 23,602 crore over the same period. The unpaid loans from this customer segment – non-performing assets in banking parlance – were also above 20% of the total loaned sum in some years, which is far above the bank-wide average.

Overseas funding to the gems and jewellery section by Punjab National Bank (in Rs crore)



Scroll.in

Source: Quarterly reports of Punjab National Bank

“Customers dealing in gems and jewellery have been treated as a risky segment to lend for several years now by bankers,” said S Nagarajan, general secretary of the All India Bank Officers’ Association. “In fact they often complain about how tough it has got to secure low-interest and easy loans these days. Auditors are required to keep a specific eye out for such segments. The audit committee of the board should have ideally delved into these fluctuations and made sure the loans given to them, particularly in foreign exchange, are specially scrutinised. They cannot escape responsibility.”

Cash trail

In a regular loan, the bank advances money to the customer. The customer returns some of the principal amount every month along with interest, which becomes the bank’s income. The kind of loan the Punjab National Bank offered to Nirav Modi’s companies works a bit differently.

Take the following example. A customer approaches Bank A in India wanting to import gems worth Rs 100. For this purpose, Bank A sends a letter of understanding to Bank B, a foreign bank based abroad. Bank B transfers the foreign exchange required in the account of Bank A that it holds (called a Nostro account). The customer withdraws the money from the Nostro account to pay for his import. Within a fixed time, the customer pays back the amount to Bank A, which then remits the funds to Bank B. If the customer does not repay Bank A, that bank has to still repay Bank B. Bank A takes a commission on the transaction at the time of issuing the letter of understanding.

“Auditors are required to check these commissions or fee separately,” said the forensic auditor. “If they had done their due diligence they would have seen a difference in the number of letters of understanding moving through the SWIFT software and the missing commissions against them in the bank’s main accounting system. That is the standard practise.”

Another senior official who has dealt in foreign exchange for over three years at another public sector bank said, "Auditors are required to also specifically check the Nostro accounts. There are detailed guidelines for it. That should have thrown up the fact that Letters of Understanding were being issued but not logged in the main accounts."

A review of the guidance note by the Institute of Chartered Accountants of India confirms that rather detailed guidelines exist for auditors to verify Nostro accounts.

Past lapses

It is not as if the bank's audit committee was not aware of how weak its audit and fraud detection systems are. An official of another public sector bank pointed to a filing to the Bombay Stock Exchange in December in which Punjab National Bank admitted to several lapses. Last September, a Rs 484 crore scam involving foreign exchange transfers by a Chennai branch through shell companies was detected by CBI. This too involved funnelling out money using the bank's Nostro accounts.

In the filing, the Punjab National Bank states: "Regulatory feedback has noted that we have had many instances of lapses relating to our compliance with know your customer norms, anti-money laundering laws...failure to update the risk status of customers".

The report admits that the RBI had earlier stated that the bank has "had no system to monitor large credits to small accounts and money mules, among other matters". The RBI had repeatedly fined the bank for its lapses, the bank management admitted in its filings.

AIBEA THIS DAY – 3 MARCH	
1985	Formation of Haryana Bank Employees Federation at Rothak. Com. N P Munjal General Secretary.
2000	4th Conference of All India Union Bank of India Employees Association at Baroda. Com S V Dange, Com. RK Agarwal elected as President, General Secretary

ALL INDIA BANK EMPLOYEES' ASSOCIATION



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