

Delhi High Court stays the waiver of payment obligations under commercial papers/bonds

30 April 2020

Indiabulls had approached the Delhi High Court in a writ petition, seeking a stay on its payment obligations under commercial papers/bonds (including to several mutual funds). The basis of this prayer was a circular dated 27 March 2020 of the Reserve Bank of India (RBI). The circular permitted commercial banks, NBFCs and other lending institutions to grant a moratorium on payment from its borrowers on all term loans, on account of COVID-19. Indiabulls granted the moratorium to its borrowers and, in turn, sought a stay on its payment obligation from the Single Judge. Securities Exchange Board of India (SEBI) and Association of Mutual Funds in India (AMFI) appealed this order.

AMFI, represented by Trilegal, appealed against the order on grounds, *including* that (a) the moratorium offered by the RBI circular of 27 March 2020, cannot be extended to debentures which is regulated by SEBI; (b) while RBI can act as a lender of last resort for the NBFCs and banks, SEBI cannot possibly do the same for the debt mutual funds industry. Therefore, the moratorium granted by the RBI for borrowers of lending institutions cannot be treated at par with the payment obligations of these lending institutions (like Indiabulls) towards their debenture holders. In any case, the issue is within the regulatory jurisdiction of SEBI and the court cannot, by a writ of mandamus, direct SEBI to exercise its discretion in a particular manner. Further, we argued that this could open the flood gates for similar litigations, which will wreak havoc in the mutual funds industry and prejudice the ability of unit holders to redeem their investments.

The appeal was heard by a Division Bench of the Delhi High Court and the judge agreed with the submissions and granted an ad-interim stay on the operation of the order, until the appeal is finally decided. Accordingly, there is no order in operation that can be used by Indiabulls (or any other company citing this as a precedent) with respect to the redemption of debentures issued to mutual funds.

The Division Bench of Delhi High Court has stayed an ad-interim order that allowed Indiabulls Housing Finance Limited to avoid their redemption obligations under commercial papers/bids issued by it.

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