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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2963/2020 & CM APPLs. 10281-85/2020**

INDIABULLS HOUSING FINANCE LTD. Petitioner

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Rishi Agarwal, Mr. Karan
Luthra and Mr. Ankit Banati,
Advts.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA

..... Respondent

Through: Mr. Neeraj Malhotra, Sr.
Advocate with Mr. Ashish
Aggarwal and Ms. Shefali
Kishore, Advts. Alongwith Mr.
J. Srinivas and Mr. Naveen
Kumar, Officers, SEBI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **15.04.2020**

CM APPL. Nos. 10282-84/2020 (exemption)

1. Allowed, subject to all just exceptions.

2. The Applications are disposed of.

W.P.(C) 2963/2020, CM APPL. Nos. 10281/2020 (stay) & 10285/2020 (exemption from filing court fee)

1. This writ petition has been taken up for hearing on video conferencing, in view of the lockdown, declared by the Government, pursuant to the n-COVID-2019 crisis.

2. The provocation for filing this writ petition is a circular, dated 27th March, 2020, issued by the Reserve Bank of India (RBI), annexed as Annexure P-1 to this writ petition, para 2 of which reads thus:

2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1st, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.”

3. The principal contention advanced by Mr. Rajiv Nayar, Learned Senior Counsel appearing for the petitioner is that, in view of the afore-extracted para 2 of the circular dated 27th March, 2020 of the RBI, which, in turn, has been necessitated owing to regulatory measures announced by the Central Government, consequent to disruption on account of the n-COVID-2019 pandemic and to ensure the continuity of viable businesses, it has become impossible for the petitioner to effect recoveries of debts, owed to it by various institutions, which, in the submission of Mr. Nayar, aggregate to over Rs. 3 crores. In view thereof, the submission of Mr. Nayar is that, as the lockdown has been presently extended till 3rd May, 2020, this matter may be re-notified thereafter and *ad interim* direction be issued, restraining any coercive action being taken against his client, towards the loans allegedly owed by it, which stand set out in tabular form at page 64 of the writ petition.

4 Mr. Nayar has also invited my attention to an order, dated 11th April, 2020, passed by the High Court of Bombay in **Writ Petition LD-VC NO. 28 OF 2020** titled **Transcon Skycity Pvt Ltd & Ors vs. ICICI Bank**, in which the following directions find place, in para 38:

“38. Having regard to the facts of this case, and recognizing the need to sufficiently protect the interests of both sides, I make the following order:

(a) Subject to the conditions set out below, the period of the moratorium during which there is a lockdown will not be reckoned by ICICI Bank for the purposes of computation of the 90-day NPA declaration period. As currently advised, therefore, the period of 1st March, 2020 until 31st May, 2020 during which there is a lockdown will stand excluded from the 90-day NPA declaration computation *until* — and this is the condition — the lockdown is lifted. Thus, irrespective of the continuance of the moratorium until 31st May, 2020, if the lockdown is lifted at an earlier date than 31st May, 2020, then this protection available to the Petitioners will cease on the date of lifting of the lockdown, and the computing and reckoning of the remainder of the 90-day period will start from that earlier lifting of the lockdown-ending date.

(b) In that scenario, should the lockdown be lifted before 31st May 2020, the Petitioners will have 15 days after the ending of the lockdown in which to regularize the payment under the first instalment due on 15th January, 2020 and a further three weeks thereafter to regularize the payment under the second instalment due on 15th February, 2020.

(c) If the lockdown extends beyond 31st May 2020, then these days will be deferred accordingly, irrespective of whether the moratorium itself is extended beyond 31st May, 2020.

(d) The whole of the moratorium period is, evidently, excluded for all amounts that fall due during that moratorium period.”

5. Mr. Neeraj Malhotra, Learned Senior Counsel appearing for the SEBI, submits that it would be appropriate that the persons to whom payments were required to be made in accordance with law, named at pages 64 and 65 of the writ petition, are impleaded as parties. He also disputes the applicability of the aforesaid circular, dated 27th March, 2020, of the RBI, to the facts of the present case, as in the submission of Mr. Malhotra, it does not affect liability arising from non-convertible debentures. He also submits that the applicable Regulations, which admittedly are of 2008 and 2015 vintage, contain certain provisions permitting rolling over of debt securities, which apply to the facts of the present case.

6. Mr. Nayar submits that he is willing to implead the parties, named at pages 64 and 65 of the writ petition, but also submits that, irrespective thereof, the applicability of the circular dated 27th March, 2020, of the RBI can hardly be gainsaid. He also submits, on instructions, that he is willing to pay interest on the principal amounts, to the said parties, as an *ad interim* arrangement, in accordance with the respective agreements, but without creating any equity against his client on that ground.

7. In view of the emergent and peculiar circumstances, which we are placed, consequent to the n-COVID pandemic, and keeping in mind the specific facts applicable to the present case, the petitioner, in the first instance, is directed to implead the relevant parties, named at pages 64 and 65 of the writ petition and to file an amended memo of parties, in that regard, within a period of one week from today. On

such amended memo of parties being filed, issue notice to the respondents.

8. Notice is accepted on behalf of respondent no. 1 by Mr. Ashish Aggarwal, Advocate. Let notices issue to the remaining respondents, additionally by email, for which purpose, their email addresses would be provided in the amended memo of parties to be filed by the petitioner.

9. Counter affidavit be filed within a period of two weeks with advance copy to the petitioner, who may file rejoinder within one week thereof.

10. Notice, as above, would be issued on the writ petition as well as in the CM No. 10281/2020, which shall also stand renotified for the next date.

11. Given the peculiar facts of this case and the present lockdown, till the next date of hearing, there shall be an ad interim order, in terms of prayer (a) in CM Appl. No. 10281/2020, till the next date of hearing.

12. Let the copy of this order be emailed, as soon as it is signed, to the respective parties, who shall also be informed telephonically thereof. Learned counsel appearing for the petitioner undertakes to inform the newly impleaded parties about the passing of the present order.

13. After this order was dictated, Mr. Neeraj Malhotra, learned

Senior Counsel points out that the interim relief, as per prayer (a) in CM Appl. No. 10281/2020 would actually be applicable, not against his client, but against the parties named at pages 64 and 65 of the writ petition, who would be the newly impleaded respondents.

13. The said submission is also noted.

14. Re-notify on 19th May, 2020.

APRIL 15, 2020
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C.HARI SHANKAR, J.