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

+ W.P. (C) 3033/2020, CM No.10558/2020 (exemption from filing court fees)

INDIABULLS HOUSING FINANCE LTD. Petitioner

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

Versus

HDFC BANK LTD & ANR. Respondents

Through: Mr. N.K. Kaul, Senior Adv. with
Mr. Aman Raj Gandhi, Adv. for R1.
Mr. Ramesh Babu, Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE REKHA PALLI

ORDER

% **01.05.2020**

CM No.10555-57 (exemptions)

Allowed, subject to all just exceptions.

W.P. (C) 3033/2020 & CM No.10554/2020 (ex-parte stay)

1. The present application has been taken up for hearing through video conferencing.

2. The present petition filed by a non-banking financial corporation inter alia seeks a direction to respondent no.1 to comply with Circular bearing No.RBI/2019-20/186 DOR No.BP.BC47/21.04.048/2019-20 dated 27.03.2020 issued by respondent no.2 and consequently restrain the respondent no.1 from recovering, in any manner, whatsoever, any amounts

during the moratorium imposed by the respondent no.2.

3. Learned senior counsel for the petitioner submits that the petitioner had availed a term loan of Rs.540 crores from the respondent no.1 pursuant to a term loan agreement dated 03.11.2017 and had never defaulted in making the repayment as per the agreed schedule. He, however, submits that keeping in view the pandemic of covid-19, the respondent no.2 has issued a circular on 27.03.2020 granting a moratorium to all borrowers in respect of all term loans, but the respondent no.1 has in contravention of the said circular raised a demand of Rs.90 crores on the petitioner even though it was not open for the respondent No.1 to raise any demand from the petitioner during this period of 90 days i.e. the moratorium granted vide circular dated 27.03.2020. In support of his contention he places reliance on Order dated 09.04.2020 passed by this Court in W.P(C)2955/2020.

4. Issue notice. Learned counsel for the respondents accept notice. They pray for and are granted three days time to file counter affidavit/reply. Rejoinder thereto, if any, be filed before the next date.

5. Mr. N.K. Kaul, learned senior counsel for the respondent no.1, while opposing grant of any interim relief, submits that the petitioner has selectively filed only some of the relevant documents and has also not given any justification for approaching this Court only at this belated stage, when the payment is due on 02.05.2020 and that too when the respondent

no.1 had rejected the petitioner's request to grant any moratorium on 07.04.2020 itself. He further submits that in any event once the petitioner vide its letter dated 27.03.2020 had made an offer to the respondent to deduct the due instalments of Rs.90,00,00,000/- crores from the existing FDR of Rs.174,75,00,000/-, which the respondent no.1 is holding as security, the petitioner cannot now seek any interim relief especially when the record would show that the petitioner is not facing any liquidity crunch. While praying for time to file reply, he submits that without prejudice to its rights and contentions, the respondent no.1 will instead of demanding the aforesaid amount of Rs.90,00,00,000/- crores from the petitioner till the next date, deduct the same from the aforesaid FDR available with it as per the offer made by the petitioner vide its letter dated 27.04.2020.

6. Mr. Ramesh Babu, learned counsel for respondent no.2 submits that the said respondent has already clarified that the circular dated 27.03.2020 is discretionary in nature and enables the lender to take a decision as to whether moratorium ought to be granted to a particular borrower or not, though the said decision has been taken in an objective manner. He prays for and is granted further submits that presently he is not in a position to state as to whether the said circular is not applicable to NBFCs like the petitioner and therefore prays for and is granted three days time to get instructions on this aspect also.

7. Having considered the rival submissions of the parties,

even though I find merit in Mr. Kaul's submission that the petitioner has approached this Court at a belated stage, in view of the time being granted to learned counsel for the respondent no.2 to obtain instructions as to whether the circular per se would be applicable to the petitioner and also to enable respondent no.1 to place all relevant documents on record, it would be in the interest of justice that till the next date, while the respondent No.1 will be free to deduct the due amount of Rs.90,00,00,000/- crores from the aforesaid existing FDR of the petitioner, it will not insist on replenishment of the said amount till the next date.

8. List the petition along with the application for consideration on 06.05.2020.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

REKHA PALLI, J

MAY 01, 2020

SDP