



EDITORIAL

Greetings to all on behalf of the entire team of SB Partners.

Hope you are keeping safe and doing well.

On account of COVID-19, the government has taken various measures to mitigate the effect of economic disruptions caused by the pandemic. In this issue of *Lex Novus*, we have summarised the amendments made to corporate and financial laws to assuage the difficulties posed by the pandemic.

Most notably, the Reserve Bank of India has required lending institutions to provide a moratorium period for all the instalments falling due between March 01, 2020 and May 31, 2020 without triggering an asset downgrade. In order to prevent triggering of insolvency proceedings due to financial distress caused by the pandemic, (a) the threshold for default under the Insolvency and Bankruptcy Code, 2016 ("**Bankruptcy Code**") has been increased from Rs.1 lac to Rs.1 crore, and (b) the government has decided to suspend the filing of fresh insolvency proceedings under the Bankruptcy Code by financial creditors, operational creditors and the corporates for six (6) months which may be extended up to one (1) year.

In addition to the foregoing, this issue of '*Lex Novus*' also focuses on relaxations and extensions provided by the Ministry of Corporate Affairs and Securities and Exchange Board of India ("**SEBI**") for various compliance requirements, such as relaxations to hold meetings and extensions for filing forms, reports and documents, etc., under the Companies Act and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Further, we have analysed orders of High Courts of Delhi and Bombay, which seek to protect commercial transactions on account of the pandemic, by staying invocation of pledged shares and bank guarantees.

We hope you find this edition of *Lex Novus* informative and insightful.

IN THE NEWS

CORPORATE LAWS

• COMPLIANCE REQUIREMENTS FOR COMPANIES AND LLPs EASED

The Ministry of Corporate Affairs ("**MCA**") has introduced the following changes and relaxations on account of difficulties posed by COVID-19:

- a Companies and LLPs will not be charged any addition fees for late filing during a moratorium period from April 01, 2020 to September 30, 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date:
- b To ease the burden on Companies and their auditors, the Companies (Auditor's Report) Order, 2020 has been made applicable from Financial Year 2020-21, instead of the Financial Year 2019-20, as notified earlier.
- c The requirement under Section 73(2)(c) of Companies Act, 2013, which requires Companies to create a deposit repayment reserve of twenty (20) % of deposits maturing during any Financial year, within one (1) month of the expiry of such Financial Year, has been extended from April 30, 2020 till June 30, 2020 (for Financial Year 2019-2020 only).
- d Likewise, the requirement to invest or deposit at least fifteen (15) % of amount of the deposits or debentures maturing

in specified methods of investments in any Financial year, within the expiry of one month of such Financial Year, in terms of Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 has now been extended from April 30, 2020 till June 30, 2020 (for Financial Year 2019-2020 only).

- e An additional period of one hundred and eighty (180) days have been granted to newly incorporated companies for filing a declaration for '*Commencement of Business*' in terms of Section 10A of the Companies Act.
- f Under Section 149(3) of the Companies Act, every company is required to have at least one (1) resident director who has stayed in India for a period of minimum one hundred and eighty two (182) days in the previous calendar year. Non-fulfilment of the minimum residency norms in India by directors shall not be treated as a non-compliance for the Financial Year 2019-20.
- g A new Companies Fresh Start Scheme, 2020 and revised LLP Settlement Scheme, 2020 have been introduced, in terms of which:
 - i. It provides Companies / LLP's an opportunity to make good any filing related defaults, irrespective of duration of default, and make a fresh start as a fully compliant entity;
 - ii. It is a one-time waiver of additional filing fees for delayed filing by Companies/ LLP's with the Registrar of Companies, during the period starting from April 01, 2020 and ending on September 30, 2020;
 - iii. It gives Companies/ LLP's immunity from penal proceedings, including imposition of penalties for late submissions. Further, it gives them additional time for filing appeals before the concerned Regional Directors against imposition of penalties, if already imposed

However, the immunity is only against delayed filings in MCA-21 and not against any substantive violations of law.

● **NORMS FOR BOARD & SHAREHOLDING MEETINGS RELAXED**

The MCA has granted the following relaxations and guidelines to companies for holding meetings as provided under the Companies Act, 2013 ("**Companies Act**"):

- a The mandatory requirement of holding meetings of the Board of the companies within a period of one hundred and twenty (120) days in terms of Section 173 of the Companies Act has been extended by a period of sixty (60) days. Therefore, the gap between two (2) consecutive meetings of the Board stands extended to one hundred and eighty (180) days for next two (2) quarters ending on September 30, 2020.
- b The companies whose financial year (other than first financial year) ended on December 31, 2019, can hold their Annual General Meeting ("**AGM**") for such financial year within a period of nine (9) months instead of six (6) months from the closure of such financial year. Therefore, such companies can now hold their AGM by September 30, 2020.
- c Under Companies Act, the independent directors are required to hold at least one (1) meeting in a financial year without the attendance of non-independent directors and members of management. For the Financial Year 2019-2020, the non-compliance with this requirement will not be considered as a violation. The independent directors, however, can share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.
- d The requirement of holding Board meetings with physical presence of directors in terms of Section 173(2) of the Companies Act read with Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the restricted matters has been relaxed. All meetings can now be held through video conferencing or other audio visual means, till June 30, 2020.
- e Further, in case of unavoidable circumstances, a company is permitted to hold an extraordinary general meeting ("**EGM**") on or before June 30, 2020 through video conferencing or other audio visual means, provided:
 - i. The use of video conferencing or other audio visual means to conduct such meeting should allow two way teleconferencing for ease of participation. The recorded transcript thereof is required to be maintained by the company or in case of public company, made available on the website, if any;
 - ii. The notice of such EGM should contain disclosure of manner of conducting the meeting along with the instructions on how to access and participate therein. In case of companies that do not have e-voting, then they have to provide designated e-mails address in the notice to the members to enable them to convey their vote, when a poll is required to be taken during the meeting on any resolution;

- iii. Attendance of members in such meeting will be accounted for determining the quorum under Section 103 of the Companies Act;
- iv. For conducting votes, e-voting will be used by companies providing e-voting facility. For companies that do not have e-voting facility, the members can cast their votes by sending e-mails through their registered e-mail addresses to the designated e-mail address of the company as mentioned in the notice; and
- v. All resolutions passed in such meetings are to be filed with the Registrar of Companies within sixty (60) days of such meeting, clearly indicating that mechanism provided in the circular along with the provisions of the Companies Act were duly complied with.

The MCA has issued the following clarification on passing of '*ordinary*' and '*special*' resolution by companies without a holding a general meeting, which requires physical presence of members at a common venue.

- a The companies will take all decisions of urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard, through the mechanism of e-voting or voting by electronic means, without holding a meeting.
- b For companies that do not have e-voting facility, they will send a notice by email to all members informing them of the company's designated email address. The notice will also contain the process of registration of member's email address with the company, if not already registered. The members will cast their votes by sending an email from their registered email address with the company to the designated email address mentioned in the notice.

● **RTHRESHOLD LIMIT TO INVOKE CORPORATE INSOLVENCY RESOLUTION PROCESS INCREASED**

It has been announced that the threshold limit to invoke insolvency under Section 4 of the Insolvency and Bankruptcy Code, 2016 ("**Bankruptcy Code**") will be increased from Rs.1 lac to Rs.1 crore to prevent triggering of insolvency proceedings against MSMEs. This has been done on account of the large-scale economic / financial distress faced by most companies due to the COVID-19 pandemic.

The aforesaid change has been effected vide a notification issued by the Ministry of Corporate Affairs dated March 24, 2020.

● **FRESH CORPORATE INSOLVENCY FILINGS TO BE SUSPENDED TEMPORARILY**

In order to bring relief to corporate borrowers hit hard by the economic difficulties posed by COVID-19, the Government of India has decided to amend the Bankruptcy Code to suspend provisions that trigger insolvency proceedings against defaulters. The Union Finance Minister had, in a press release dated March 24, 2020, indicated the suspension of key provisions of the Bankruptcy Code in case the economic difficulties continue on account of COVID-19.

We understand that an '*ordinance*' would be promulgated to suspend three sections of the Bankruptcy Code, Section 7, 9 and 10 for six (6) months and suspension time can be extended up to one (1) year, based on the economic situation. An enabling provision with respect to extending time would be part of such ordinance.

Section 7 and 9 of the Bankruptcy Code pertains to initiating of corporate insolvency proceedings by a '*financial creditor*' and an '*operational creditor*' respectively. Section 10 relates to filing an application for insolvency resolution by a corporate.

● **LOCKDOWN PERIOD EXCLUDED FROM CORPORATE INSOLVENCY RESOLUTION PROCESS TIMELINE**

To alleviate the hardships faced by various stakeholders and legal fraternity to comply with timelines of the corporate insolvency resolution process in the wake of COVID-19, an amendment was brought in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"). The period of lockdown imposed by the Central Government will be excluded from the time-lines as provided in the CIRP Regulations in relation to the corporate insolvency resolution process.

● **CONTRIBUTIONS MADE TO PM CARES FUND TO QUALIFY AS CSR EXPENDITURE**

The Companies Act enumerates activities that may be undertaken by companies in discharge of their Corporate Social

Responsibility (“CSR”) obligations. Item no. (viii) of the Schedule VII of the Company Act, *inter alia*, provides that contribution to any fund set up by the Central Government for socio-economic development and relief qualifies as CSR expenditure.

The Government of India has set up the Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (“PM-CARES”) Fund to provide relief to those affected by any kind of emergency or distress situation, such as that posed by COVID-19 pandemic.

Accordingly, any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act.

BANKING AND FINANCE

• MORATORIUM ON REPAYMENT OF TERM LOANS & WORKING CAPITAL FACILITIES

The Reserve Bank of India issued the following relaxations on terms loans and working capital facilities to alleviate the economic difficulties posed by COVID-19.

a All commercial banks, co-operative banks, all-India Financial Institutions and Non-Banking Financial Companies are permitted to allow a moratorium of three (3) months on payment of all instalments falling due between March 01, 2020 and May 31, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the residual tenor for such loans, will be shifted across the board by three (3) months.

Further, whenever the moratorium is granted on all the accounts classified as standard on February 29, 2020 (even if overdue) the moratorium period will be excluded by the lending institutions for the purpose of ‘asset classification’ under the Income Recognition and Asset Classification norms.

b In respect of working capital facilities sanctioned in the form of cash credit/overdraft:

i. lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 01, 2020 up to May 31, 2020. The accumulated accrued interest shall be recovered immediately after the completion of this period. The deferment period, wherever granted in respect of all facilities classified as standard (including Special Mention Accounts) as on February 29, 2020, will be excluded for the determination of out of order status.

ii. lending institutions may recalculate drawing power by reducing margins and/or by reassessing the working capital cycle for the borrowers. This relief will be available in respect of all such changes effected up to May 31, 2020. It will be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19.

c Wherever the moratorium or deferment is granted by any lending institution as aforesaid, such lending institution is required to make general provisions of not less than 10% of the total outstanding of such accounts, which will be phased across two quarters:

i. Quarter ending March 31, 2020 – not less than 5%;

ii. Quarter ending June 30, 2020 – not less than 5%.

d The abovementioned provisions will not be reckoned for arriving at net NPAs till they are adjusted against actual provisioning requirements and they can be later adjusted against the provisioning requirements for slippages from the accounts. The residual provisions at the end of the financial year can be written back or adjusted against the provision required for all other accounts. Further, till such adjustments, these provisions shall not be netted from gross advances but shown separately in the balance sheet as appropriate.

e The lending institutions will have to give separate disclosures to RBI for the accounts that have been subjected to the abovementioned asset classification including, *inter alia*, the overdue status of the accounts, if any.

The relaxations, when granted by the lending institutions, will not be considered as changes in terms of loans agreements or changes due to financial difficulties of the borrower or beneficiaries. Therefore, it shall not result in asset classification downgrade or adversely impact the credit history of the beneficiaries.

• CHINESE INVESTMENTS NOW REQUIRE GOVERNMENT APPROVAL

The Department for Promotion of Industry and Internal Trade under the Ministry of Commerce & Industry has reviewed the Foreign Direct Investment (“**FDI**”) Policy, and made an amendment therein to curb the opportunistic takeovers/ acquisitions of Indian companies due to the COVID-19 pandemic.

The position prior to the amendment stated that a non-resident entity could invest in India, subject to the FDI Policy except in those sectors/ activities which are prohibited. However, citizens and/ or entities registered in Bangladesh and Pakistan were allowed to only invest under the Government route, other than the prohibited sectors.

Pursuant to the amendment, all countries which share a land border with India (collectively the “**Neighbouring Countries**”) including China will now be permitted to invest in India only under the Government route. This will also apply to any ‘*beneficial owner*’ of an investment into India, who is incorporated or is a citizen of any of the Neighbouring Countries. Further, if there is any transfer of ownership of any existing or future FDI in an Indian entity, which directly or indirectly, results in the ‘ownership’ or ‘beneficial ownership’ to change where the resulting transferee is an entity/ citizen of the Neighbouring Countries, then such subsequent change in ownership/ beneficial ownership will also require Government approval.

- **EFFECTIVE DATE FOR LEVY OF STAMP DUTY ON FINANCIAL SECURITIES EXTENDED**

The Indian Stamp (*Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories*) Rules, 2019 pertaining to payment of stamp duty through stock exchanges and depositories will be effective from July 1, 2020 instead of the earlier notified date of April 1, 2020.

Accordingly, the amendments made to the Stamp Act, 1899 vide Finance Bill, 2019, to introduce a centralised system of stamp duty with a unified rate for all financial securities transactions, such as (a) issuance of debentures; (b) government securities; (c) securities other than debentures on delivery basis and non-delivery basis; and (d) repo on corporate bonds, will now become effective from July 1, 2020.

CAPITAL MARKETS

- **TIMELINES FOR COMPLIANCE FILINGS UNDER SEBI REGULATIONS EXTENDED**

The Securities and Exchange Board of India (“**SEBI**”) granted the following relaxations and extended the due dates for filings under various regulations to alleviate the difficulties posed by the nationwide lockdown due to COVID-19.

- a Under, Regulations 30(1), 30(2) and 31(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”) shareholders are required to compile, collate, and disseminate information of their consolidated shareholding as on March 31 of each financial year to the company and the stock exchanges within seven (7) working days from the end of such financial year. This deadline has been extended to June 01, 2020 for the Financial Year ending March 31, 2020:
- b Due date to make regulatory filings and compliances for Real Estate Investment Trust (“**REIT**”) and Infrastructure Investment Trusts (“**InvIT**”) for the period ending March 31, 2020 has been relaxed by one (1) month over and above the timelines as prescribed under SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real estate Investment Trusts) Regulations, 2014 and circulars issued thereunder:
- c The due date to make regulatory filings by Alternative Investment Funds and Venture Capital Funds for the periods ending March 31, 2020 and April 30, 2020 has been relaxed by two (2) months, over and above the timelines prescribed under SEBI (Alternative Investment Funds) Regulations, 2012 and circulars issued thereunder.
- d The Stewardship Code will now be effective from July 01, 2020 instead of April 01, 2020. It was introduced on December 24, 2019 for all Mutual Funds and all categories of Alternative Investment Funds, in relation to their investment in listed equities.

- **COMPLIANCE BURDEN ON MARKET PARTICIPANTS REDUCED**

On account of difficulties posed by COVID-19, SEBI has decided to reduce compliance burden on Market Participants by granting the following relaxations, *inter alia*:

- a Implementation of SEBI circular dated September 20, 2019 for risk management framework for liquid schemes of mutual funds has been extended to June 30, 2020.
- b The implementation of SEBI circular dated October 01, 2019 for existing open ended debt oriented mutual fund schemes to comply with the revised limits for sector exposure has been extended to June 30, 2020.
- c The implementation of SEBI circular dated September 24, 2019 for Valuation of money market and debt securities based on mark to market valuation has been extended to June 30, 2020.
- d The half yearly disclosures of unaudited financial results mandated under Regulation 59 of SEBI (Mutual Funds) Regulations, 1996 has been extended by one (1) month, i.e., up to May 31, 2020.
- e The yearly disclosure of investor complaints by Mutual Funds as mandated in SEBI circular dated May 13, 2010 has been extended by one (1) month, i.e., up to June 30, 2020.

- **GENERAL COMPLIANCE NORMS FOR LISTED COMPANIES RELAXED**

Due to hardships faced on account of COVID-19, SEBI has granted the following relaxations from compliance requirements specified under the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (“**LODR**”) to listed entities:

- a Regulation 40(9) of the LODR requires a listed entity to ensure that the share transfer agent and/ or the in-house share transfer facility produces a certificate from a practicing company secretary certifying all share certificates have been timely issued. Such certificate from a practicing company has to be produced within one (1) month from the end of each half of the financial year. The due date for producing the certificate for year ending on March 31, 2020 has been extended by one (1) month, from April 30, 2020 to May 31, 2020.
- b Relaxation of holding Annual General Meeting (“**AGM**”) and meeting of Board/Committee(s):
 - i. The board of directors and Audit Committee of the listed entity are exempted from observing the maximum stipulated time gap, which is one hundred and twenty days (120), between two meetings for the meetings held or proposed to be held between the period December 01, 2019 and June 30, 2020.
However, the board of directors / Audit Committee shall ensure that they meet at least four times a year, as stipulated under LODR Regulations 17(2) and 18(2)(a).
 - ii. The requirement for the Nomination and Remuneration Committee of any listed entity to meet at least once a year as per Regulation 19 (3A) can now be complied with, on or before June 30, 2020.
 - iii. The requirement for Stakeholder Relationship Committee by a listed entity to meet at least once a year as per LODR Regulation 20 (3A) can now be complied with, on or before June 30, 2020.
 - iv. The requirement of the Risk Management Committee of each listed entity to meet at least once a year, in terms of LODR Regulation 21 (3A) has now been extended till June 30, 2020.
 - v. The requirement of holding an AGM under LODR Regulation 44(5) by top 100 listed entities by market capitalisation for Financial Year 2019-20 has been extended until September 30, 2020.
 - vi. The requirement under Regulation 29 (2) of intimating the Stock Exchange five (5) working days prior to the meeting of the board to discuss financial results has been reduced to two (2) days, for such meetings held till July 31, 2020.
- c Timelines for compliance filings under LODR extended:
 - i. The due date under LODR Regulation 7(3) with respect to submission of compliance certificate to the Stock Exchange by a listed entity ensuring maintenance of activities, which is to be filed within one (1) month of the end

of each half of the financial year, has now been extended till 31st May, 2020.

- ii. The due date under LODR Regulation 13(3) relating to filing of Investor complaints by a listed company, which is twenty one (21) days from end of the each financial quarter has now been extended till 15th May, 2020.
 - iii. The due date under LODR Regulation 24A read with circular dated February 8, 2019 relating to filing of the Secretarial Compliance report by a listed entity within sixty (60) days from the end of the financial year has now been extended till June 30, 2020.
 - iv. The due date under LODR Regulation 27(2) relating to Corporate Governance report to be filed by a listed entity, within fifteen (15) days from end of each financial quarter has been extended till May 15, 2020.
 - v. The due date under LODR Regulation 31 relating to Shareholding Pattern to be filed by a listed entity, within twenty one (21) days from end of each financial quarter has been extended till May 15, 2020.
 - vi. The due date relating to Quarterly Financial Results to be filed by issuers of commercial papers / non-convertible debentures / non-convertible redeemable preference shares, within forty five (45) days from end of the quarter and Annual Financial Results to be filed within sixty (60) days from end of the financial year has been extended till June 30, 2020.
- d The effective date of SEBI circular on Standard Operating Procedure (“**SoP**”) dated January 22, 2020 on imposition of fines and other enforcement actions for non-compliance with provisions of LODR has been extended and will now be effective from compliance periods ending on and after June 30, 2020. Meanwhile, the SoP circular dated May 03, 2018 would continue to apply till such date.
- e Under Regulation 47 and 52 (8) of the LODR, listed companies are required to publish information such as, *inter alia*, notice of the board meetings, financial results, in the newspapers as per the times lines prescribe therein. Such compliances have been exempted till May 15, 2020.
- f Regulation 39 (3) of LODR requires listed entities to submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two (2) days of getting such information. For any delay in the intimations which are required to be made between March 01, 2020 to May 31, 2020, the penal provisions laid down vide SEBI circular dated May 03, 2018 will not attracted.
- g Authentication/ certification of any filing/ submission made to the Stock Exchange under the LODR can be done using digital signature certification, until June 30, 2020.

IN THE COURTS

• STAY ON INVOCATION OF PLEDGED SHARES

In the matter of **Rural Fairprice Wholesale Limited & Anr. v. IDBI Trusteeship Services Limited & Ors.**, the High Court of Bombay granted an ad interim relief to the Petitioner by restraining IDBI Trusteeship Limited (“**Trustee**”) from selling the shares pledged to them by Petitioner Company, to secure the repayment obligations of the Petitioner under the debenture trust deed (“**DTD**”).

FACTS

The value of the pledge shares, being Rs. 350 per share on the date of execution date of the DTD had fallen to less than Rs. 100 per share on March 01, 2020 due to the market collapse on account of COVID-19 pandemic.

Consequently, the Petitioner was unable to provide additional security to maintain the security cover in term of the DTD. The Trustee accordingly, issued a mandatory redemption event notice to the Petitioner in terms of the DTD.

Since the Petitioner was unable to redeem the debentures and pay the outstanding amount aggregating to Rs. 600 Crores on the due date, the Trustee also issued a notice to the Petitioner for invocation of pledge of shares, in order to

recover its dues

JUDGEMENT

The High Court of Bombay noted that the fall in security cover for the debentures was on account of an unprecedented collapse in the markets due to COVID-19, and held that if the pledged shares are sold by the Trustee at the present market rate, it would cause 'irreparable' loss to the Petitioners.

Accordingly, in order to provide protection to the Petitioner, the Court stayed the sale of pledged shares till the next hearing of the case. Further, the mandatory redemption notices issued by the Respondent to the Petitioner were declared illegal and/ or invalid and/ or improper by the Court.

• LOCKDOWN PERIOD TO BE EXCLUDED FOR DECLARATION OF NPA

In the matters of **Transcon Skycity Pvt. Ltd v. ICICI Bank & Ors and Transcon Iconica Pvt. Ltd. v. ICICI Bank & Ors**, the High Court of Bombay, held that the period of lockdown will be excluded while calculating the ninety (90) day period for declaration of an account to be a non-performing asset ("NPA").

FACTS

The Petitioners had availed finance facilities from ICICI Bank, which were to be paid in instalments. However, the Petitioners defaulted in making two instalments, namely on January 15, 2020 and February 15, 2020.

Now in terms of the existing RBI circulars, if a borrower is in default account for a period of ninety (90) days, then such account of the borrower is to be classified as an NPA. In order to prevent the classification of their accounts as NPA, the Petitioners wrote to the Respondents, referencing the Reserve Bank of India ("RBI") Regulatory Package dated March 27, 2020 and requested the Respondents, not to include the lockdown period for the purpose determining / classifying its account, as a NPA.

ISSUE

If the borrower is already in default prior to the commencement of moratorium period, i.e. March 01, 2020, will the moratorium period be excluded for the purpose of computation of the ninety (90) day period for declaration of NPA?

JUDGEMENT

The High Court of Bombay held that 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 ninety (90) day period for declaration of NPA. Further it held that:

- a If lockdown is lifted before May 31, 2020, the Petitioners will have fifteen (15) days from the end of lockdown to regularize the payment under the first instalment which was due on January 15, 2020 and three (3) weeks to regularize the payment under the second instalment which was due on February 15, 2020.
- b The relief granted to the Petitioners is only for the duration of the lockdown. It is not granted for the entire moratorium period (March 01, 2020 – May 31, 2020).
- c This case would not serve as a precedent for other borrowers who are in default, and each case will be assessed on its merit.

• ENCASHMENT OF BANK GUARANTEE STAYED

In the matter of **M/s Halliburton Offshore Services Inc. v. Vedanta Ltd & Anr.**, the High Court of Delhi granted an ad interim relief to the Petitioner by restraining the Respondent from invoking and encashing bank guarantees furnished by the Petitioner in connection with a development contract in Rajasthan.

FACTS

The Parties had entered into a contract for development of certain blocks in Rajasthan. In terms of the said contract,

several bank guarantees were furnished by the Petitioner. The deadline for the project had been extended till March 31, 2020.

Due to the lockdown, the Petitioner was unable to perform the contract, pursuant to which it notified the Respondent for invoking and seeking relief under the force majeure clause in the contract. The Respondent refused to accommodate the request of the Petitioner and instead, reserved its right to take recourse under the contract.

Consequently, the Petitioners moved to the Delhi High Court for appropriate relief, including a stay on invocation of bank guarantees.

ISSUE

Whether invocation or encashment of bank guarantees be stayed on account of the COVID-19 / lockdown reasons?

JUDGEMENT

The High Court of Delhi observed that a stay on invocation or encashment of bank guarantees can only be granted if at least one (1) of the following grounds is established:

- a Existence of fraud of egregious nature;
- b Existence of special equities;
- c Encashment/ Invocation of the bank guarantee will cause irretrievable injury to the party.

The Court held that the nationwide lockdown is in the nature of *force majeure*. Such a lockdown is unprecedented and was incapable of being predicted by either the Petitioner or the Respondent. Therefore, the lockdown established the existence of '*special equities*'.

Further, the Court held that the imposition of the lockdown caused a sudden disruption of Petitioner's work. In such a case, encashment of bank guarantees would cause an irretrievable injury to the Petitioner.

Accordingly, an ad interim injunction was granted against the invocation of bank guarantees till the next date of hearing.

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