Applicability of Moratorium to Non-Banking Financial Companies
written by Latha Shanmugam | April 28, 2020

Concise Summary of Moratorium to NBFCs provided by the RBI

Amidst the COVID-19 pandemic, the Reserve bank of India has issued a circular[1] with an intention to mitigate the burden of debt servicing and to ensure the continuity of viable businesses. Further, to ease the financial stress caused by COVID-19 disruptions, RBI has set out various developmental and regulatory policies that directly address the stress in financial conditions, by relaxing repayment pressures and improving access to working capital.

MORATORIUM FOR 3 MONTHS

RBI vide circular dated March 27, 2020[2] ("Circular") announced a moratorium on term loans to all the commercial banks including regional rural banks, small finance banks, local area banks, cooperative banks, all Indian financial institutions,s and non-banking financial companies (NBFCs) for the period of three months for payment of all installments due between March 01, 2020, to May 31, 2020. Further, the interest accrued from working capital facilities sanctioned in the form of cash credit/overdraft during this period shall also be deferred until May 31, 2020.

Further, to ease the working capital financing during the economic fallout, it was advised by the RBI to the lending institutions to recalculate the 'drawing power' by reducing the margins or reassessing the working capital cycle and the same is contingent on the lending institutions as the same is necessitated on account of the economic fallout due to COVID-19. The accounts that are provided the relief under these instructions shall be subject to subsequent supervisory review.

It shall be specifically noted that the moratorium of three months is provided to overcome the economic crises created by the COVID-19 and the same shall not be considered as a concession or change in terms and conditions of loan agreements due to the financial difficulty of the borrower and will not result in asset classification. The accumulated interest for the period will be paid after the expiry of the deferment period.

The intention of the RBI while issuing this regulatory package was to maintain the status quo regarding the classification of accounts of the borrowers as existed on March 1, 2020.

THE PERIOD OF MORATORIUM IS EXCLUDED IN THE COUNT OF 90 DAYS' NPA

Stepping ahead, RBI vides notification3 has relaxed the norms of 90 days NPA

(Non-performing assets) and the period of the moratorium will be excluded in the time for classifying the accounts as NPAs for accounts that were standard as of March 01, 2020. The NBFCs have been given the flexibility to give such relief to their borrowers, which could boost the confidence of banks to start lending.

ICCL Vs SIDBI

Meanwhile, on April 10, 2020, Justice Rekha Palli passed an order in W.P. (C) 2955/2020 *Indiabulls Commercial Credit Limited v/s Small Industries Development Bank of India and another*.,[4] directing the Small Industries Development Bank of India (SIDBI) to not raise any further demand on Indiabulls Commercial Credit Limited (ICCL) for the installments due for the allowed moratorium period until ICCL obtains clarification from the RBI.

In the petition filed by the ICCL, a non-banking financial company, against SIDBI in the Delhi High Court seeking directions to Small Industries Development Bank of India (Respondent No. 1) to comply with the Circular issued by the RBI (Respondent No. 2) and consequently to restrain the Respondent No. 1 from recovering any amounts during the moratorium imposed by RBI.

FACTS OF THE CASE

The ICCL (“petitioner”) had entered into a loan agreement with Respondent No.1 who agreed to disburse the loan amount not exceeding Rs 750 crore to the petitioner. Pursuant to this arrangement, a sum of Rs 575 crore was disbursed. ICCL, being the borrower, had never defaulted on the loan and had been repaying the loan amount in installments as agreed between the parties. On March 09, 2020, ICCL had paid the installment of Rs. 31,94,79,453/-, but on April 03, 2020, SIDBI raised the demand for the payment of instalments superseding the Circular issued by the RBI.

The petitioner submitted to the court that they made a request with the Respondent No.1 for granting a moratorium period of three months in response to which the Respondent no. 1 stated that they were awaiting the clarifications from RBI on whether the Circular dated March 27, 2020, will be applicable to NBFCs like the petitioner and demanded to make the payments until they get the clarification. Hence the petitioner prayed to the court to restrain Respondent No.1 from making any demand until they obtain the clarification from RBI.

Respondent No. 1 submitted that they have already received the installment which was due for April 2020 and they have taken the expeditious steps to get the necessary clarification from RBI, and therefore prayed for the disposal of the present petition as infructuous. Further, Respondent no.1 assured that in any event even if demand for the payment is raised for the following month, the petitioner would not be treated as a defaulter till the clarification is obtained from the RBI and no such information regarding the defaults shall be given to any credit rating agency.

ORDER

Based on the submissions made by both the parties and Respondent no.2 not being represented, the Hon’ble court observed on the stand taken by Respondent No.1 waiting for clarification from RBI and noticing that the due payment is already made, disposed of the matter as infructuous.

The court directed that no further demand should be made for the payment until the clarification is obtained from the RBI. Further, the Hon’ble High court of Delhi also instructed Respondent No. 1 that if the RBI confirms that the Circular dated March 27, 2020, is not applicable to the petitioner then Respondent No.1 shall make the demand for further installments in accordance with the law.

CONCLUSION

The impact of COVID-19 has not left the NBFCs out of its embrace, hence, all the circulars issued by the Reserve bank of India are considered to be issued directing all the commercial banks including regional rural banks, small finance banks, and local area banks, cooperative banks, all India financial institution and NBFCs which is evident from the Circular itself.

Moreover, the benefit of the moratorium for three months is directed to every financial institution, be it commercial banks, small finance banks, or NBFCs, and is allowed to every customer being a company registered under the Companies Act, 2013. As notified in the circular the relief is given to all eligible borrowers. Hence, NBFC being registered under the Companies act 2013, engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities is a company and an eligible borrower.

In my opinion, the main intention of the RBI to issue the moratorium period is to ease the financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital., the ICCL, being the customer of SIDBI, availed the loan facility stepping into the shoes of the borrower and the benefit of moratorium shall be equally applicable to ICCL as it is to any other borrower.

Footnote:

1. https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=49582
2. https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11835&Mode=0
3. https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3853
4. https://www.livelaw.in/pdf_upload/pdf_upload-372924.pdf

Contributed By - Latha Shanmugam
Designation - Associate
King Stubb & Kasiva,
Advocates & Attorneys
Click Here to Get in Touch
New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi
Tel: +91 11 41032969 | Email: info@ksandk.com