

Restructuring of Bonds

-in the context of COVID 19

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SEBI'S MOVE TILL DATE

Circular dated 30th March, 2020

- If the delay in payment of interest/ principal has arisen solely due to the lockdown conditions
- CRAs may not consider the same as a default event and/or recognize default.

Circular dated 23rd April, 2020

- Mutual funds are not required to treat restructuring of a debt security as a case of “default”



DEFAULT- THE GENERIC MEANING

“Default” is a credit event, mostly analogously referred to as “failure to pay”

Under the Guidelines for CRAs issued by SEBI

- “Debt obligations” refers to an obligation to repay a debt on the scheduled repayment date, failing which, the same will be treated as default.
- Therefore, if the payment is not required to be made as per contractual terms between the borrower and lender in the first place, then the same is not a debt obligation



RIGHTS AVAILABLE WITH DEBENTURE HOLDERS

Right to call for meeting of debenture holders by DT (Rule 18(4) of SHA Rules)

- If requisition in writing is made by debenture holders holding at least 1/10th in value of the outstanding debentures for the time being; or
- On the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

Right to make an application before NCLT (Section 71(10) of the Companies Act, 2013)

- an application may be filed by any or all of the debenture holders or DT, seeking redemption of the debentures forthwith on payment of principal and interest due thereon.

Application under IBC (Section 7 of IBC)

- Being financial creditor debenture holders may apply for initiation of corporate insolvency resolution

Right to enforce security interest

- The right of foreclosure is a counter-part of right of redemption.
- In the case of *Baroda Rayon Corporation Limited vs. ICICI Limited*[\[5\]](#) and in *Canara Bank vs. Apple Finance Limited*[\[6\]](#), Bombay High Court upheld the right of the debenture trustee to sell off the properties of the company for the benefit of the debenture holders.
- Depending on the type of lender, i.e. bank/ FI under SARFAESI and other wise under common law procedure

Other Remedies

- The borrower may be sued under the provisions of Contract Act, 1872 and claim compensation
- Seek for compensation under the Terms of debentures



RESTRUCTURING PROCEDURE

SEBI LODR Regulations – Reg. 59

- restructure of debentures in terms of coupon rate, redemption etc. is considered as material modification
- Prior approval of stock exchanges
- Approval of Board of directors and DT

SEBI DT Regulations & Companies Act, 2013 (Rule 18 of SHA Rules)

- DT shall call a meeting of debenture holders
 - on happening of any event which in the opinion of the DT affects the interest of the holders
 - on requisition made by debenture holders holding 1/10 th in value of the outstanding debentures



RESTRUCTURING PROCEDURE

Section/Regulations	Actionable/ Compliance	Remarks
Regulation 50 (3) of LODR Regulations	Prior intimation to the stock exchange (SE) for the meeting board of directors, at which the restructuring is proposed to be considered.	2 working days in before the board meeting. (excl. date of intimation and date of meeting)
Sec. 173 of CA 13	BM to be convened by the Company for proposed restructuring including the revised terms subject to approval of the stock exchanges and the debenture holders.	Through VC considering the COVID 19 Guidelines issued by the Govt. Our FAQs in this regard may be found at : https://www.google.com/url?q=http://vinodkothari.com/2020/03/board-meetings-during-shutdown/&sa=D&source=hangouts&ust=1587820272757000&usg=AFQjCNEictCwK-LNnIH7oiB1GMmdRzO6w
Regulation 59(2)(a) of LODR Regulations	Obtain approval of the DT	Before applying to SEs.
Regulation 59 of LODR Regulations	Seek prior approval from the stock exchange	After taking the consent of the board of directors and DT.
Regulation 15(2) of DT Regulations, 1993	Separate meeting of debenture holders to be called for deferment in repayment due to liquidity crunch in the hour of crisis.	Since the scope of SS 2 issued by ICSI includes meetings of debenture holders also, the company will have to observe the requirements of SS 2 in convening the meeting of debenture holders. However, considering the current crisis situation, such meeting may be convened through VC facility as clarified by MCA Circular dated 13 th April, 2020. Our FAQs in this regard may be found at http://vinodkothari.com/2020/04/general-meetings-by-video-conferencing-recognising-the-inevitable/