

Bombay High Court dismisses petition seeking moratorium on payment under NCDs

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Two mutual fund schemes owned by UTI Trustee Co Ltd (UTI Trustee) and managed by UTI Asset Management Co Ltd (UTI AMC) had subscribed to unlisted redeemable non-convertible debentures issued by Zee Learn Limited (Zee) pursuant to a Debenture Trust Deed (DTD) executed between Zee and IDBI Trusteeship Services Ltd (IDBI Trustee) (as the debenture trustee).

Zee sought a moratorium on the redemption of the debentures under the DTD relying on the circulars dated 27 March 2020 and 23 May 2020 issued by the Reserve Bank of India (RBI Circulars). The RBI Circulars permitted commercial banks, NBFCs and other lending institutions to grant a moratorium on payment from its borrowers on all term loans, on account of COVID-19.

Zee filed a writ petition against UTI Trustee, UTI AMC and IDBI Trustee before the Bombay High Court seeking the following reliefs: (a) a moratorium on redemption of the debentures as per the RBI Circulars; (b) deferral of the redemption dates; and (c) injunction against declaration of default and consequent actions.

The writ petition was dismissed by a Division Bench of the Bombay High Court. The key points of determination in the writ petition were:

- Whether UTI AMC and UTI Trustee are amenable to writ jurisdiction; and
- Whether their refusal to grant a moratorium in respect of redemption obligations is a violation of the RBI Circulars and the underlying policy of the RBI and hence, arbitrary.

The court decided both these issues in favour of UTI AMC and UTI Trustee. Neither of these issues have conclusively been determined by the Supreme Court and are being actively contested in various high courts all over the country. While the current order assumes great significance for the debt mutual funds industry generally (as it relates to a larger issue of the applicability of the RBI Circulars to mutual funds), it also protects the interest of investors in mutual funds, by preventing value erosion on account of investee company defaults. This is the first and only judgment where a division bench has decided the issues discussed above by way of a reasoned judgement. This judgment therefore holds the field on these issues as on date.

Division Bench of the Bombay High Court holds that UTI Asset Management Co Ltd and UTI Trustee Co Ltd are not amenable to writ jurisdiction and the RBI Circulars (dated 27 March 2020 and 23 May 2020) allowing grant of moratorium on payment from borrowers do not apply to debentures issued to mutual funds.

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