

Case Snippets

Volume 03, Number 10 (March 4, 2020)

Vinay Kumar Mittal & Ors. Vs Dewan Housing Finance Corporation Ltd. & Ors.

In this matter appeals are filed against the interim orders passed by the High Court of Judicature at Bombay on 10.10.2019, 17.10.2019 and 13.11.2019.

Reliance Nippon Life Asset Management Ltd. (hereinafter referred to as, 'Respondent No.4') subscribed to Non-Convertible Debentures (NCDs) of DHFL (hereinafter referred to as, 'Respondent No.1') Respondent No.1 failed to pay the entire amount towards the early redemption.

By an order dated 30.09.2019, the High Court of Judicature at Bombay restrained Respondent No.1 from making further payments disbursements to any unsecured creditors and secured creditors except in cases where payments are to be made on a pro-rata basis to all secured creditors out of its current and future receivables in preference to the payments owed to Respondent No.4. It was clarified by the High Court on 13.11.2019 that Respondent No.1 shall not be prevented from making any payments overdue or payable under the assignment agreements in favour of any or all such banks or assignees of loans.

By placing reliance on Section 36 and 36 (A) of the National Housing Bank Act, 1987 and Section 45 (q) (a) of the Reserve Bank of India Act, 1934, Counsel appearing for the Appellants submitted that the repayments of the deposits of the Appellants should be given preference over the contractual claims of the debenture holders.





RBI submitted that they had initiated the CIRP against Respondent No.1. Apex Court noted that an order was passed by the NCLT on 03.12.2019, imposing moratorium under Section 14 of the IBC prohibiting the institution of any suit or continuation of proceedings or execution of any decree against the Financial Service provider i.e. DHFL and transferring, alienating or disposing of any asset of DHFL and any action to foreclose, recover or enforce any security interest created by DHFL in respect of its property with effect from the date of filing the application i.e. 29.11.2019 till the completion of CIRP

The Appellants are depositors who invested in fixed deposits with the Respondent No.1-DHFL. Having been aggrieved by the interim orders passed by the High Court restraining Respondent No.1 from making any payments towards their fixed deposits, the Appellants challenged the orders of the High Court with the leave of Apex Court.

Counsel appearing for the Appellants expressed his apprehension that the interim orders dated 10.10.2019 as modified by the order dated 13.11.2019 might come in the way of consideration of the claims that are made by the depositors before the CoC and the Administrator. After hearing the learned counsel for the Administrator and the RBI on this point, Apex court was of the opinion that the claims that are made by the depositors shall be considered by the CoC and the Administrator without being influenced by the orders passed by the High Court on 10.10.2019 as modified by order dated 13.11.2019, as well as the order passed by the DRT-I, Mumbai on 08.11.2019.

Apex court further added that the depositors are being represented by the AR before the CoC. The Appellants are free to raise all points and contentions before the CoC, the Administrator and if necessary, the NCLT. In view of the above, Apex court was not inclined to interfere with the decision of the CoC. It was also brought to notice of Apex court that there are nearly one lakh depositors who have invested their lifetime earnings with Respondent No.1. Some of the deposits have matured and some of the depositors are critically ill. We have no doubt that the concerns of the depositors and their rights shall be considered in accordance with law.

