

PAYMENT DEFAULTS DURING COVID-19 & CONSEQUENCES



INTRODUCTION

- ❑ COVID 19 pandemic has dipped the global economy into a dark pit.
- ❑ Lockdown has further resulted in operational shutdown and huge liquidity crisis.
- ❑ Current crisis, may worsen position of India Inc., who may face the deadline for redemption of debentures or preference shares, payment of interest or dividend or repayment of loan etc.
- ❑ In this presentation, we have discussed consequences of default of various payment obligations and possible solutions available.

PAYMENT OBLIGATIONS DURING COVID-19

**Non-Convertible
Debentures**

Warrants

**Preference Shares and
Dividend thereupon**

Loan from Banks/FIs

Deposits

Vendors

Salaries/Wages

| S.No | Type of Defaults | Consequences | Solutions available |
|------|--|--|---|
| 1. | Default in payment of Principal and/or interest on Non-Convertible Debentures (NCDs)* | | |
| | NCDs | <ul style="list-style-type: none"> ➤ Creditors may invoke proceedings under the Insolvency & Bankruptcy Code, if the amount of the default is Rs. 1 crore or above. However, the government is also considering to suspend fresh filings under IBC for 6 months to 1 yr. Therefore the risk of insolvency proceedings against the company, presently, is negligible. ➤ Banks & financial institutions will become eligible to proceed against the defaulting company under SARFAESI Act, 2002. | <ul style="list-style-type: none"> ▪ Extension of the period of redemption subject to approval of shareholders/ debenture holders. ▪ Conversion into equity |

Note: Debentures includes Bonds

| S.No | Type of Defaults | Consequences | Solutions available |
|------|---|---|--|
| 1. | Default in payment of Principal and/or interest on Non-Convertible Debentures (NCDs)* Cont.. | | |
| | NCDs | <ul style="list-style-type: none"> ➤ Ineligibility to provide loan, guarantee, security or make investment in securities of other body corporate or entity. ➤ Where default continues for more than a year, all the directors will be disqualified for appointment and vacation of office in other company will come into play. ➤ Restriction to pay remuneration to managerial personnel without the approval of debenture holders. | <ul style="list-style-type: none"> ▪ Restructuring of the terms of NCDs |

Note: Debentures includes Bonds

| S.No | Type of Defaults | Consequences | Solutions available |
|------|--|--|--|
| 1. | Default in payment of Principal and/or interest on Non-Convertible Debentures (NCDs)* Cont... | | |
| | NCDs | <ul style="list-style-type: none"> ➤ Prohibition on buy back of securities for 3 years after such default ceased to subsist. ➤ In case equity shares are listed/ debt is listed, the disclosure be made to the stock exchange if the default/ delay of even for one day is made. ➤ Downgrading of credit rating ➤ May adversely affect the negotiations for fresh borrowings and availing of credit. | <ul style="list-style-type: none"> ▪ If NCD holders are governed by RBI's circular (Prudential Framework for Resolution of Stressed Assets) dated 7.06.2019, they make take appropriate action in terms of said circular. |

Note: Debentures includes Bonds

| S.No | Type of Defaults | Consequences | Solutions available |
|------|---|---|---|
| 2. | Defaults in conversion of warrants within the prescribed time limit | | |
| | Warrants | <ul style="list-style-type: none"> ➤ Disclosure of default to stock exchange(s) ➤ Company can't undertake any further preferential allotment to the warrant holder till 12 months , if warrants were subscribed by promoter or promoter group | <ul style="list-style-type: none"> ▪ Company can approach SEBI for extension of deadline for conversion of warrants. ▪ In case on Foreign Investor, approval of RBI is also required. |
| 3. | Defaults in redemption of Preference Shares or Payment of Dividend thereon | | |
| | Preference Shares | <ul style="list-style-type: none"> ➤ Prohibition on issuance of fresh preference till the default is subsisting. ➤ Prohibition on buy back of securities for 3 years after such default ceased to subsist. | <ul style="list-style-type: none"> • Company can approach NCLT for issuing fresh preference shares to redeem existing preference shares. |

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|------|---|---|---|
| 3. | Defaults in redemption of Preference Shares or Payment of Dividend thereon | | |
| | Preference Shares | <ul style="list-style-type: none"> <li data-bbox="568 318 1460 496">❑ Preference shareholders would become eligible to approach NCLT for obtaining order of redemption against the defaulting company. <li data-bbox="568 589 1460 768">❑ Vesting of voting rights with preference shareholders on all resolutions in case dividend remains unpaid for two or more years. <li data-bbox="568 861 1460 1021">❑ In case of listed redeemable preference shares, disclosure of the default shall be required to be made to the stock exchange(s). | <ul style="list-style-type: none"> <li data-bbox="1460 318 2397 446">• Extend redemption period with the consent of preference shareholders and equity shareholders. |

| S.No | Type of Defaults | Consequences | Solutions available |
|------|--|---|---|
| 4. | Defaults of term loan or working Capital loan from Banks/financial institutions | | |
| | Loan from Banks/FIs | <ul style="list-style-type: none"> ➤ Banks & financial institutions will become eligible to proceed against defaulting company under SARFAESI Act, 2002. ➤ Creditors may invoke proceedings under the Insolvency & Bankruptcy Code, if the amount of the default is Rs. 1 crore or above. However, the government is also considering to suspend fresh filings under IBC for 6 months to 1 yr., therefore the risk of insolvency proceedings against the company, presently, is negligible. | <ul style="list-style-type: none"> ▪ Restructuring in terms of RBI's circular (Prudential Framework for Resolution of Stressed Assets dated 07.06.2019, which result in following: ▪ Restructuring of working capital loan to term loans ▪ Fresh availing of credit ▪ (Lenders may seek some additional security for availing fresh credit, restructuring etc.) |

| S.No | Type of Defaults | Consequences | Solutions available |
|------|----------------------------|--|---------------------|
| 4. | Loan from Banks/FIs | Defaults of term loan or working Capital loan from Banks/financial institutions | |
| | | <ul style="list-style-type: none"><li data-bbox="588 394 1444 515">❑ Restriction to pay remuneration to managerial personnel without the approval of debenture holders.<li data-bbox="588 572 1444 694">❑ Ineligible to provide loan, guarantee, security or make investment in securities of other body corporate or entity.<li data-bbox="588 751 1444 829">❑ Prohibition on buy back of securities for 3 years after such default ceased to subsist | |

| S.No | Type of Defaults | Consequences | Solutions available |
|------|--|--|--|
| 4. | Defaults of term loan or working Capital loan from Banks/financial institutions cont. | | |
| | Loan from Banks/FIs | <ul style="list-style-type: none"> ➤ In case of listed entity, disclosure of default shall be required to be made to the stock exchange(s) if the default continuous beyond 30 days. ➤ Under RBI norms, the company, after default may be termed as NPA. ➤ The aforesaid shall have a considerable effect by imposing restrictions on fresh borrowings , availing credit and on operation of existing bank accounts and opening of new accounts | <ul style="list-style-type: none"> ▪ Company under default may also seek the moratorium announced by RBI as a relief measure to the defaulting creditors with their respective banks. |
| 5. | Defaults on payment of interest and Repayment of Deposits | | |
| | Deposits | <ul style="list-style-type: none"> ➤ Penal interest of 18% p.a. for overdue period on unpaid deposits. | |

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|------|--|--------------|---------------------|
| 5. | Defaults on payment of interest and Repayment of Deposits | | |

Deposits

- Prohibition on buy back of securities for 3 years after such default ceased to subsist.
 - Where default continues for more than a year, all the directors will be disqualified for appointment and vacation of office in other company will come into play.
 - Prohibition on accepting fresh deposits for 5 years after such default ceased to subsist.
 - Depositors would become eligible to approach NCLT against payment of principal and interest, including under the provisions of IBC.
- Can approach NCLT to seek extension in time for repayment of deposits.

| S.No | Type of Defaults | Consequences | Solutions available |
|------|--|---|---|
| 6. | Default in Payment due to Vendors and Service Providers | | |
| | Vendors or Service Providers | <ul style="list-style-type: none"> ➤ Creditors may invoke proceedings under the Insolvency & Bankruptcy Code, if the amount of the default is Rs. 1 crore or above. However, the government is also considering to suspend fresh filings under IBC for 6 months to 1 yr. therefore the risk of insolvency proceedings against the company , presently, is negligible. ➤ The company will be under obligation to report the outstanding amount in form MSME 1. | <ul style="list-style-type: none"> • Creditor can approach NCLT for initiation of corporate insolvency resolution process under IBC. • In case you are debtor, you can renegotiate the terms and seek time for making due payments. • One may also seek, the application of Force Majeure in case the terms between the parties are governed by written agreement. |

| S.No | Type of Defaults | Consequences | Solutions available |
|------|-----------------------|---|---|
| 7. | | Default in Payment of salaries/wages to workmen | |
| | Wages/Salaries | <ul style="list-style-type: none"><li data-bbox="588 354 1447 525">❑ Non-payment of wages can lead to conditional attachment of property of employer or other person responsible for payment of wages. <li data-bbox="588 619 1447 748">❑ An unpaid employee can file a suit against the company for recovery of salary due from the employer. <li data-bbox="588 796 1447 1012">❑ Any employer violating these lockdown measures will be liable to be proceeded against as per the provisions of Sec. 51 to 60 of Disaster Management Act, 2005 besides legal action under section 188 of IPC. | <ul style="list-style-type: none"><li data-bbox="1480 354 2387 434">• Payment of unpaid dues to workman is the only solution. |

THANK YOU