

LEGAL OPINION

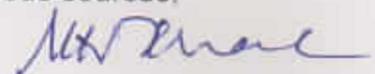
Reliance Home Finance Limited

... Querist

1. My opinion has been sought by Reliance Home Finance Limited (in short 'RHFL'), a company incorporated under the Companies Act, 1956, on the queries stated in Paragraph 15 at Page 5 of the this Opinion. The RHFL has supplied the Case for Opinion along with the Annexures thereto. The facts which emerge from the Case for Opinion so supplied, are set out herein after.

1. FACTS

2. Reliance Home Finance Limited ("RHFL") is a company registered with National Housing Bank ("NHB") as a housing finance company ("NBFC-HFC") without accepting public deposits under the National Housing Bank Act, 1987. It is principally in the business of extending home loans, loans against property and construction finance.
3. RHFL had availed loans from banks and financial institutions in the ordinary course of its business. Post certain adverse events in the financial services sector and NBFCs crisis, all categories of lenders in India, including Banks, Mutual Fund, etc. had put an almost complete freeze on additional lending to NBFC-HFC and instead have only been insisting upon reduction of existing borrowing. These unprecedented actions have severely impacted the financial flexibility of almost all NBFC-HFC in Country including RHFL, resulting in adversely impacting RHFL's ability to meet its debt servicing obligations.
4. In view of the above situation, RHFL has been in negotiation with its lenders to arrive at a debt resolution plan. Accordingly, an Inter-creditor Agreement ("ICA") has been signed by most of the Lenders of RHFL, in terms of Reserve Bank of India ("RBI") Circular dated 7 June 2019 on Prudential Framework for Resolution of Stressed Assets, to arrive at a debt resolution plan for RHFL. The process of restructuring of the assets of RHFL is underway whereby the lenders are seeking to restructure the debt in the interest of all stakeholders.
5. As part of the above process, Bank of Baroda, the Lead Bank acting on behalf of all signatories to ICA, appointed M/s Grant Thornton India LLP, ("GT") to conduct a forensic audit of RHFL vide engagement letter dated 20 August 2019, the scope of which *inter alia* included undertaking of the following:
 - (a) Identifying/ascertaining the actual end use of funds disbursed by the Team Lenders and other working funds including CPs and any other short term funds received from various sources,

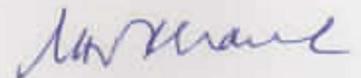


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- (b) to ascertain whether there has been any misrepresentation to the banks while carrying necessary due diligence;
- (c) investigation of transactions involving income and expenditure, which exceeded the normal levels;
- (d) to examine diversion/siphoning of lender's funds if any conducted by the promoters/employees/associates and to gather necessary evidence, modus operandi, motive etc.
- (e) to ascertain the money trail of all major transactions of investments made, unsecured loans given and major collections from loans and receivables;
- (f) establish whether any diversion of funds/ embezzlement/ siphoning of funds has taken place looking into the trail of money borrowed out of bank's fund;
- (g) identification of instances where utilization is different from stated purpose as per the facility agreements/non-compliant with the sanction terms/inconsistent with declaration and certifications provided;
- (h) to pinpoint the real weakness or mala fide operations that the borrower may be engaged in without knowledge of the bank;
- (i) to examine whether accounting standards have been observed and whether there has been falsification of accounts where there are fraudulent transactions which are mere book entry and not backed by any genuine documents;
- (j) to view/judge wherever frauds, if any are observed, the modus operandi, the motive of the suspect and opportunity to commit fraud, whether there is any collusion and physical and documentary evidences to substantiate it, whether there was any attempt to destroy the evidence etc.

A copy of the engagement letter dated 20 August 2019 is annexed as **ANNEXURE "1"**

6. Pending completion of such forensic audit by GT, 4 lenders out of more than 20 lenders 'red flagged' the RHFL account with them, claiming existence of circumstances suggesting Early Warning Signals enumerated in the RBI Circular issued on 1 July 2016 on "Master Direction on Frauds- Classification and Reporting by commercial banks and selected FIs" ("**RBI Directions**"). A copy of the said Master Circular is attached as **ANNEXURE "2"** to the case for opinion.



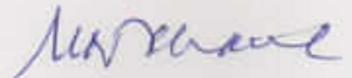
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7. Attention is invited to para 2. 2 of the RBI Directions, as reproduced below:

"Classification of Frauds

2.2.1 *In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:*

- a. *Misappropriation and criminal breach of trust.*
 - b. *Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.*
 - c. *Unauthorised credit facilities extended for reward or for illegal gratification.*
 - d. *Cash shortages.*
 - e. *Cheating and forgery.*
 - f. *Fraudulent transactions involving foreign exchange.*
 - g. *Any other type of fraud not coming under the specific heads as above."*
8. GT conducted the forensic audit of RHFL during August 2019 to December 2019. For this purpose, GT conducted in-depth discussions with key representatives of RHFL to obtain details as regards the Group as well as its operations. GT conducted forensic data analytical procedures on the information provided in order to identify the unusual trends and discrepancies/ exceptions. GT also conducted desktop and public domain searches in order to identify any adverse or conflicting information. It also conducted social media and other checks to identify potentially related parties/potential linkages between key entities, individuals identified and key managerial personnel and conducted thorough review of information and supporting documents.
9. Based on such detailed procedure, GT issued its final report, which was shared by Bank of Baroda with RHFL on 4 January 2020 ("**GT Forensic Report**") as attached to this case for opinion as **ANNEXURE "3"**. The GT Forensic Report mainly contains the following points:
- a. Transactions with Potentially Indirectly Linked Entities
 - b. Potential Regulatory Anomalies
 - c. Loan Disbursement to Valuecorp (exposure to RCom) written off
 - d. Anomalies in the credit appraisal process

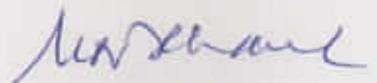


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- e. Loan advanced to other entities
 - f. Anomalies identified during loan file review
10. The key observation in the GT Forensic Report is as regards loans given to alleged potential linked entities, i.e. group exposure. It is pertinent to mention that the said group exposure is duly secured by way of corporate guarantee of Reliance Infrastructure Limited for an amount of INR 2,905 crore and the same forms part of the draft Resolution Plan submitted by the RHFL to Lenders on 5 December 2019. Disclosure with regards to such exposure is mentioned on Page no 72 of the Annual Report for 2018-19 (copy attached as **ANNEXURE "4"**) and is as reproduced below:

"During the Financial Year, the Company had advanced loans under the 'General Purpose Corporate Loan' product to certain bodies corporate including some of the group companies. All the lending transactions undertaken by the Company are in the ordinary course of business, the terms of which are at arms' length basis and the same do not constitute transactions with related parties. However, the Company's borrowers in some cases have undertaken onward lending transactions and it is noticed that the end use of the borrowings from the Company included borrowings by or repayment of financial obligations to some of the group companies."

11. The Regulator, NHB has taken the following action as regards the alleged violation of the regulatory norms:
- a. NHB vide its letter dated 7 August 2019 advised RHFL to bring down its non-housing loan portfolio to below 50% of the total loans (housing plus non- housing). RHFL vide its letter dated 16 August 2019 has sought time from the Regulator to be able to be in compliance with the same.
 - b. NHB vide its letter dated 22 October 2019 Imposed a nominal penalty of INR 45,000 (Indian Rupees Forty-Five Thousand) for the alleged breach of regulatory norms. RHFL has duly paid the said penalty.
12. While some of the lender banks of RHFL insisted on red flagging the RHFL account in accordance with the RBI Directions alleging suspicion of fraudulent activity, the entire GT Forensic Report neither indicate nor conclude commission of any fraud by RHFL. As a matter of fact, GT Forensic Report does not even use the word 'misappropriation', 'siphoning' or 'diversion of funds' leave alone the use of word 'fraud' in the entire GT Forensic Report.



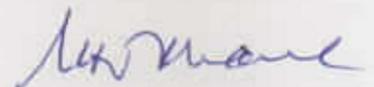
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13. In this regard attention is invited to audit report of the statutory auditors of RHFL who conducted statutory audit of the financial statements for the financial year ended 31 March 2019, which specifically *inter alia* mentions as follows:

"...The Company did not raise any money by way of initial public offer or further public offer (including debt instruments) during the year. In our opinion and according to the information and explanation provided to us, the money raised by way of term loans during the year generally have been applied for the purposes for which they were obtained."

"During the course of our examination of the books and records of the Company, carried out in accordance with the generally accepted auditing practices in India, and according to the information and explanations given to us by the management, we have neither come across any instance of fraud by the Company or any fraud on the Company by its officers or employees, noticed or reported during the year nor have we been informed of any such instance by the management." We draw your attention to Note No 53 and 54 of Ind AS Financial Statements.

14. Audit reports of the statutory auditors for the previous two financial years 2016-17 and 2017-18 also contained the similar confirmation of 'compliance of application of term loans' and 'no fraud'. Copies of the Annual Reports of RHFL for the years ended 31 March 2017; 31 March 2018 and 31 March 2019 are attached to this case for opinion as **ANNEXURE "5"**. It is pertinent to mention that there were three distinct statutory auditors for all the 3 years namely M/s Chaturvedi & Shah for F.Y. 2016-17, M/s Price Waterhouse & Co Chartered Accountants LLP for F.Y. 2017-18 and M/s Dhiraj & Dheeraj for F.Y. 2018-19 and all the 3 reputed firms have consistently reported the above conclusions.
15. In light of findings of the GT Forensic Report read with the RBI Directions, my opinion is sought on the following:
1. Whether the observations and overall conclusions set forth in the GT Forensic Report constitute commission of 'fraud' as contemplated under the RBI Directions?
 2. Whether the observations and overall conclusions made in the GT Forensic Report qualify for filing of a Fraud Monitoring Return as provided under the RBI Directions?
 3. In the absence of any observations or conclusions about fraud in RHFL account under the GT Forensic Report, what would be the appropriate course of action for the banks?



II. OPINION

I have reviewed the case for opinion and the annexures attached thereto, some of which I have referred to in my opinion, which may be treated as part of this Opinion. I have reviewed the RBI Directions on Classification and Reporting of Frauds. I have reviewed the GT Forensic Report and the responses submitted by RHFL to Bank of Baroda to the observations and conclusions under the GT Forensic Report. I have obtained relevant explanations and clarifications pertaining to the transactions in question and confirm my opinion as follows:

RBI Directions and Legal Framework concerning Fraud

- 1.1. The RBI Directions have been issued in public interest in exercise of the powers conferred by section 35A of the Banking Regulation Act, 1949. The RBI Directions have been issued with a view to providing a framework to banks enabling them to detect and report frauds early and taking timely consequent actions like reporting to the Investigative agencies so that fraudsters are brought to book early, examining staff accountability and do effective fraud risk management. These directions also aim to enable faster dissemination of information by the RBI to banks on the details of frauds, unscrupulous borrowers and related parties, based on banks' reporting so that necessary safeguards / preventive measures by way of appropriate procedures and internal checks may be introduced and caution exercised while dealing with such parties by banks. Further, the Banks are required to send the Fraud Monitoring Returns to RBI. In order to have uniformity of such reporting, the RBI directions classify the 'frauds' as follows, mainly based on the provisions of the Indian Penal Code:
- a. Misappropriation and criminal breach of trust.
 - b. Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.
 - c. Unauthorised credit facilities extended for reward or for illegal gratification.
 - d. Cash shortages.
 - e. Cheating and forgery.
 - f. Fraudulent transactions involving foreign exchange
 - g. Any other type of fraud not coming under the specific heads as above.
- 1.2. The RBI Directions provide for new framework for dealing with loan frauds. The objective of the framework is to direct the focus of banks on the aspects relating to prevention, early detection, prompt reporting to

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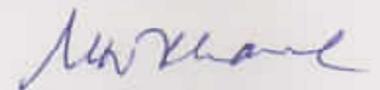
the RBI (for system level aggregation, monitoring & dissemination) and the investigative agencies (for instituting criminal proceedings against the fraudulent borrowers) and timely initiation of the staff accountability proceedings (for determining negligence or connivance, if any) while ensuring that the normal conduct of business of the banks and their risk taking ability is not adversely impacted and no new and onerous responsibilities are placed on the banks. In order to achieve this objective, the framework has stipulated timelines with the action incumbent on a bank. The timelines / stage wise actions in the loan life-cycle are expected to compress the total time taken by a bank to identify a fraud and aid more effective action by the law enforcement agencies. The early detection of fraud and the necessary corrective action are important to reduce the quantum of loss which the continuance of the fraud may entail.

- 1.3. The RBI Directions also provide for early warning signals and red flagging of loan accounts. A Red Flagged Account ("RFA") is one where a suspicion of fraudulent activity is thrown up by the presence of one or more Early Warning Signals ("EWS"). These signals in a loan account should immediately put the bank on alert regarding a weakness or wrongdoing which may ultimately turn out to be fraudulent. Such suspicion may lead to detailed investigation into an RFA. It is most pertinent to note that 'red-flagging' an account does not mean that the Banks or Consortium of Banks have concluded about the existence of fraud. An RFA may be subjected to forensic audit to establish whether there exists a fraud. If it is concluded that actual fraud has been committed under an RFA, the RBI Directions prescribe as to what further measures should be adopted by the lender banks for initiating appropriate proceedings against the borrower and report the existence of fraud to RBI. The Banks also have an obligation to continue to monitor these RFAs and update the Central Fraud Registry of RBI.

Change of Status of RFA

- 1.4. Under the RBI Directions, within 15 days from the conclusion of the forensic audit, the Joint Lenders Forum is required to reconvene and decide the status of RFA as to whether such status should be changed to Fraud. For this purpose, the findings of the Forensic Report would be the most crucial. It would be necessary to review the Forensic report in depth to ascertain whether the offence of fraud or any class of fraud is observed or concluded by such forensic report. Needless to say, that such conclusion, if drawn will have to be well founded on empirical evidence. The RBI Directions would also expect the Banks and the forensic auditors to conduct themselves responsibly and not form opinions on the basis of assumptions, presumptions, suspicions, surmises or conjectures.

Defining Fraud legally



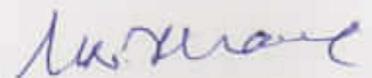
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- 1.5. 'Fraud', in general, refers to a wrongful or criminal deception practiced which is intended to result in financial or personal gain to oneself and a financial or personal loss to the other. 'Fraud' is an act or course of deception, an intentional concealment, omission, or perversion of truth, to:
- Gain unlawful or unfair advantage,
 - Induce another to part with some valuable item or surrender a legal right, or
 - Inflict injury in some manner.
- 1.6. Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss.

Fraud under Indian Penal Code, 1860 ("IPC")

- 1.7. The RBI Directions have classified 'frauds' mainly based on the provisions of the Indian Penal Code. The term 'Fraud' is not defined in the Indian Penal Code per se, but Section 25 defines as to what would amount to 'fraudulently'. As per the definition, fraudulently refers – A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. Thus, fraud does not involve a mere act or omission that results in a gain for one party or a loss to another unless it is proved that the purported act or omission originated from a deliberate motive to deceive.
- 1.8. Implications of fraud is found in the following sections of IPC namely, 421, 422, 423 and 424.
- Fraudulent removal or concealment of property to prevent distribution among creditors.
 - Fraudulently preventing debt being available for creditors.
 - Fraudulent execution of deed of transfer containing false statement of consideration.
 - Fraudulent removal or concealment of property.
- 1.9. Based on various illustrative offences above, and the established Indian jurisprudence, one of the essential conditions to be fulfilled for any action or omission to be termed as fraud, the purported act of deceit must be intentional, deliberate and calculated.

Provisions under IPC



1.10. The Supreme Court of India in *Dr. S. Dutt v. State of Uttar Pradesh*¹, while dilating upon the words "with intent to deceive" has observed that it does not indicate a bare intent to deceive, but an intent to cause a person to act, or omit to act, on account of deception practiced upon him, to his advantage. The words 'but not otherwise' after the words 'with intent to deceive' in the definition of 'fraudulently', it has been observed, clearly show, ".....that the words intent to defraud are not synonymous with intent to deceive and requires some action resulting in some disadvantage which but for the deception, the person deceived would have avoided". So, under the Indian law a penal offence of fraud, demands for successful prosecution, the twin elements of 'intent to defraud' of the offender i.e.—

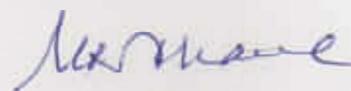
- (i) An intent to deceive another; and
- (ii) An intent to cause, by that deception, injury to some person

1.11. The essential elements of fraud are listed below :

- (a) False and wilful representation or assertion;
- (b) Perpetrator of Representation;
- (c) Intention to deceive;
- (d) Representation must relate to a fact;
- (e) Active concealment of facts;
- (f) Promise made without intention of performing it;
- (g) Representation must have actually deceived the other party;
- (h) Any other act fitted to deceive;
- (i) Any such Act or omission that the law specially declares as void;
and
- (j) Wrongful Loss and Wrongful Gain is Immaterial

1.12. Section 421 of the IPC reads as follows:

"Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be property according to law among his creditors or the creditors of any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

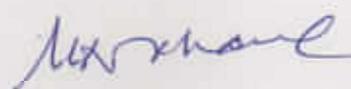


¹ AIR 1966 SC 523

- 1.13. I wish to reiterate that the observations in the GT Forensic Report has inter- alia highlighted issues of regulatory anomalies in complying with the requirements of the Master Circular – Housing Finance Companies (NHB) Directions, 2010, however, the GT Forensic Report has not indicated absolute non-compliance with the same. Similarly granting of loans to potential indirectly linked entities does not amount per se to or is conclusive of fraud as outlined in the RBI Directions. Further, the observations in the GT Forensic Report does not indicate presence of any of the essential elements of fraud, as listed above.
- 1.14. In the case of *Ramautar Choukhany Vs. Hari Ram Todi and Ors*², the High court of Gauhati held that to prove an offence under section 421 of the IPC, the prosecution must show:
- (i) that the accused removed, concealed or delivered the property or that he transferred it or caused it to be transferred to someone;
 - (ii) that such transfer was without adequate consideration;
 - (iii) that the accused thereby intended to prevent, or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person;
 - (iv) that he acted dishonestly and fraudulently.
- 1.15. Basis the observations highlighted in the GT Forensic Report, it is evident that none of the ingredients that are necessary to prove fraud on part of RHFL are observed.
- 1.16. In the case of *Navinchandra Vishnuprasad Shah Vs State of Gujarat*³, the High Court of Gujarat held that an offender must deceive, such deception must result into fraudulent or dishonest inducement and a consequent delivery of a property or a consent in favour of an offender to retain such property or an inducement to the person so deceived to omit to do or to do a thing favourable to an offender and thereby exposing the person deceived to a loss of damage or harm to his body, mind, reputation or property etc.
- 1.17. It is imperative that to appreciate the contents of section 420 of the IPC reference of section 415 of the IPC is necessary as it provides for definition of cheating as contemplated in section 420 of the IPC. The person must dishonestly or fraudulently induce the complainant to deliver any property and the person should intentionally induce the

² 1982 Cri LJ 2266

³ Cri GJ 1241/2013



complainant to do or omit to do a thing. It is evident that a guilty intention is an essential ingredient of the offence of cheating. There is no material in the GT Forensic Report to show dishonest or fraudulent removal or concealment against RHFL which attracts the ingredients/essential elements of fraud.

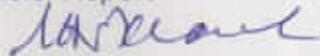
GT Forensic Report and analysis

1.18. In my view while initiating the process of classifying a loan account can be based on mere suspicion, the RBI Directions have mandated a deep dive into the specific facts and circumstances of the RFA by conducting a forensic audit. The purpose of such forensic audit ought to be to validate or negate the suspicion raised among the lenders. It is for this reason that the forensic audit report should bring out specific facts that would demonstrate existence of each essential ingredient of fraud. Only if the forensic report is able to place such material on record, the banks or the consortium lenders would be empowered to conclude existence of fraud. In absence of specific evidence being recorded by the forensic report, the Banks cannot assume or presume such existence. The necessity of this evidence is also fortified by the provisions of the RBI Directions which obligate the Banks to take initiative and primary responsibility to prosecute the fraudsters by reporting to the investigating authorities. In view of the above, it would be obligatory on part of the reporting banks to ensure that they have all relevant facts and adequate and appropriate evidence (which can be proved beyond reasonable doubt). On receipt of the forensic report, if the Banks decide to change the status of RFA into a fraud account mechanically and without applying mind to every essential attribute of the legal definitions of fraud, such decision may be subjected to challenge as one taken arbitrarily or even with mala fide intent.

1.19. The GT Forensic Report makes the following observations:

- a. Transaction with Potentially Indirectly Linked Entities
- b. Potential Regulatory Anomalies
- c. Loan Disbursement to Valuecorp (exposure to RCom) written off
- d. Anomalies in the credit appraisal process
- e. Loan advanced to other entities
- f. Anomalies identified during loan file review

1.20. While the GT Forensic Report has made the above observations, it is clear that the GT Forensic Report does not conclude existence of a fraud but makes a qualitative statement about the manner in which certain business practices have been carried out by RHFL. It is relevant that the GT Forensic Report fails to pin-point any particular breach or violation of a law or regulation. In particular, the GT Forensic Report



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also is conspicuously silent on the intent of the management that is whether the alleged lapses or irregularities were intentional. The GT Forensic Report thus omits to mention the most crucial test of establishment of fraud i.e. whether the alleged acts or omissions were intentional, deliberate or calculated to deceive.

- 1.21. I have reviewed the Audit Report for RHFL for the year ended 31 March 2019. The audit report explicitly states as follows:

"The Company did not raise any money by way of initial public offer or further public offer (including debt instruments) during the year. In our opinion and according to the information and explanation provided to us, the money raised by way of term loans during the year generally have been applied for the purposes for which they were obtained. In our opinion and according to the information and explanations given to us, the Company has not raised any money by way of initial public issue offer or further public offer (including debt instruments) during the year. The Company has utilised the money raised by way of term loans during the year for the purposes for which they were raised."

"During the course of our examination of the books and records of Company carried out in accordance with the generally accepted auditing practice in India, and according to the information and explanation given to us by the management we have neither come across any instance of fraud by the Company or any fraud on the Company by its officer or employee noticed or reported during the year nor have we been informed of any such instance by the management except a case of fraud on the Company for commercial purchase loan for an identified property amounting to Rs 2.04 Crore which was identified by management and reported to the National Housing Bank (NHB) and the said amount was written off by the Company in the statement of profit and loss of the year". We also draw your attention to Note No 53 and 54 of Ind AS Financial Statements.

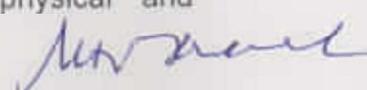
- 1.22. It is pertinent that the above observations are also set out in the reports of the statutory auditors for the financial years 2016-17 and 2017-18. Interestingly, these remarks and audit observations are not contradicted by the GT Forensic Report. This is a significant aspect since the scope of the forensic audit is expected to be much invasive as compared to the statutory audit.

- 1.23. I have carefully reviewed the response issued by RHFL to BOB which are included in the GT Forensic Report read with the Annual Report for the year ended 31 March 2019 and note that RHFL has furnished details of the entire fund flow of utilization of loans by the borrower

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entities. This transparent disclosure by RHFL virtually eliminates any allegation of misappropriation, diversion of funds or criminal breach of trust. From the RHFL response to the GT Forensic Report, I observe that RHFL has furnished to GT full details of loans given including its end use, evidencing that such end-use was for debt servicing to banks and lenders. To conclude, it is my view that the GT Forensic Report does not contain any allegation or evidence of fraud as contemplated under the RBI Directions.

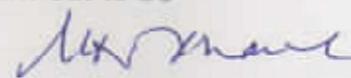
- 1.24. I have carefully reviewed the scope of work assigned to GT in respect of this forensic audit of RHFL:
- (i) Identifying/ascertaining the actual end use of funds disbursed by the Team Lenders and other working funds including CPs and any other short term funds received from various sources;
 - (ii) to ascertain whether there has been any misrepresentation to the banks while carrying necessary due diligence;
 - (iii) investigation of transactions involving income and expenditure, which exceeded the normal levels;
 - (iv) to examine diversion/siphoning of lender's funds if any conducted by the promoters/employees/associates and to gather necessary evidence, modus operandi, motive etc.
 - (v) to ascertain the money trail of all major transactions of investments made, unsecured loans given and major collections from loans and receivables;
 - (vi) establish whether any diversion of funds/embezzlement/siphoning of funds has taken place looking into the trail of money borrowed out of bank's fund;
 - (vii) identification of instances where utilization is different from stated purpose as per the facility agreements/non-compliant with the sanction terms/inconsistent with declaration and certifications provided;
 - (viii) to pinpoint the real weakness or mala fide operations that the borrower may be engaged in without knowledge of the bank;
 - (ix) to examine whether accounting standards have been observed and whether there has been falsification of accounts where there are fraudulent transactions which are mere book entry and not backed by any genuine documents;
 - (x) to view/judge wherever frauds, if any are observed, the modus operandi, the motive of the suspect and opportunity to commit fraud, whether there is any collusion and physical and



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documentary evidences to substantiate it, whether there was any attempt to destroy the evidence etc

- 1.25. I have already pointed out that RHFL had submitted the entire fund flow and end-use to the Regulator as well as GT.
- 1.26. In the forensic audit conducted as per the specified scope of work, GT in its GT Forensic Report contains no finding suggesting any fraud. Specifically:
- (a) There has not been no finding as regards any misrepresentation to the banks;
 - (b) There has been no finding as regards diversion/siphoning of lender's funds by the promoters/employees/associates, including any evidence, modus operandi, motive suggesting the same.
 - (c) There has been no finding as regards any diversion of funds / embezzlement / siphoning of funds taking place looking into the trail of money borrowed out of bank's fund;
 - (d) There has been no finding as regards identification of instances where utilization is different from stated purpose as per the facility agreements/ non-compliant with the sanction terms/inconsistent with declaration and certifications provided;
 - (e) GT Forensic Report does not pinpoint mala fide operations that the borrower may have engaged in without knowledge of the bank;
 - (f) There has been no finding as regards any violation of the accounting standards and whether any instance of falsification of accounts, fraudulent transactions or mere book entry and not backed by any genuine documents;
 - (g) There has been no observation as regards any frauds leave alone any finding as regards modus operandi, the motive of the suspect and opportunity to commit fraud. GT Forensic Report contains no observation as regards any collusion or physical and documentary evidences to substantiate the same, or whether there was any attempt to destroy the evidence etc.
- 1.27. GT has thus concluded that there was no instance of fraud, diversion of funds, siphoning, embezzlement, misrepresentation to banks, mala fide transactions, falsification of accounts, motive to commit fraud, collusion or attempt to destroy evidence by RHFL and that RHFL was in compliance with the accounting standards
- 1.28. In my view, the aforesaid observations in GT Forensic Report neither amount to fraud as outlined in para 2.2.1 of the RBI Directions nor suggest any wrongdoing in the loan accounts which may turn out to be fraudulent.



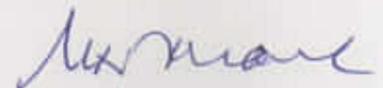
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Fraud Monitoring Returns ("FMR")

- 1.29. RBI Directions aims to enable faster dissemination of information by the RBI to banks on the details of frauds, unscrupulous borrowers and related parties, based on banks' reporting so that necessary safeguards / preventive measures by way of appropriate procedures and internal checks may be introduced and caution exercised while dealing with such parties by banks.
- 1.30. RBI Directions states that the banks shall frame internal policy for fraud risk management and fraud investigation function. The banks with the approval of their respective boards are empowered to set up dedicated organisational set up and operating processes.
- 1.31. Further, the banks need to furnish the Fraud Monitoring Returns through the XBRL system in individual fraud cases, irrespective of the amount involved to RBI within three weeks from the date of detection and ensure that the data furnished are complete/accurate and up-to-date.
- 1.32. The reporting and setting the criminal investigation mechanism in motion can be triggered only on foundation of relevant facts. In the present case, the GT Forensic Report does not disclose existence of any fraud. It is also relevant to note that the GT Forensic Report indirectly confirms the conclusions of the statutory auditors of RHFL i.e. absence of fraud.

Further course of action by lenders under RBI Directions on Classification and Reporting of Frauds

- 1.33. RBI Directions deals with closure of fraud cases but does not provide for measures wherein the frauds are not found or observed during a forensic audit. It is however natural that while some of the banks may have raised the suspicion of fraudulent activity and red-flagged the RHFL account, such red-flagging status needs to be changed by dropping RHFL from RFA status. I am informed that RHFL is already negotiating for an overall restructuring of its loans and proposed a resolution plan. In my view, it would be in the interest of the banks and secured lenders to proceed to sign and implement an inter-creditor agreement and consider the proposed resolution plan with a positive mindset. Needless to say, that the consortium of banks are required to continue the monitoring such accounts on an ongoing basis.
- 1.34. The banks should take the GT Forensic Report on record and proceed to close the current procedures initiated under Chapter VIII of the RBI Directions. Any other course of action, in my view, would be contrary to the letter and spirit of the RBI Directions.



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- 1.35. In view of the aforesaid facts, my answer to Query No.1 is in the negative. GT in its entire Forensic Report does not find or suggest that any fraud as contemplated in Paragraph 2.2.1 of the RBI Directions, is attributable to the RHFL.
- 1.36. In view of the aforesaid stated facts, my answer to Query No.2 is in the negative. A careful perusal of the entire GT Forensic Report, in my opinion does not qualify expressly or impliedly for any filing of Fraud Monitoring Return as provided under the RBI Directions.
- 1.37. In view of the aforesaid facts, my answer to Query No.3 is that in the absence of any finding/observation/conclusions attributable to RHFL in the GT Forensic Report for having committed any fraud, the lender banks ought to alter the red-flagging status of the RHFL by dropping RHFL from RFA status. The same may be carried out by the lender banks by taking the GT Forensic Report on record and closing the procedures under the RBI Directions against the RHFL. Further, in my view, it would also be in the interest of the banks and secured lenders to proceed to sign and implement the inter-creditor agreement and consider the proposed resolution plan with a positive mindset, afresh.
- 1.38. Needless to say, that the consortium of banks is required to continue the monitoring such accounts on an ongoing basis.

The queries asked for are answered accordingly.

I have nothing further to add at this stage.

Opined accordingly.

Place: Noida, Uttar Pradesh

Date: 12.01.2020



JUSTICE V.N. KHARE
Former Chief Justice of India