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Reliance Home Finance Limited (RHFL)

A. FACTS AS DISCLOSED.

1. Reliance Home Finance Limited ("RHFL") is a company that is registered with the National Housing Bank ("NHB") as a Housing Finance Company ("NBFC-HFC") without accepting public deposits under the National Housing Bank Act, 1987. RHFL was incorporated in 2008. It is principally in the business of providing housing finance.
2. RHFL had availed loans from banks and financial institutions in the ordinary course of its business. Due to sudden adverse events in the financial sector, all categories of lenders in India (including Banks, Mutual Funds, etc.) have put near complete freeze on additional lending to NBFC-HFC and have been insisting on reducing the existing level of borrowings. These unprecedented actions have severely impacted the financial flexibility of majority of NBFC-HFC including RHFL, resulting in adversely impacting RHFL's ability to meet its debt servicing obligations.
3. 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.

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4. 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;
- (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

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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.

5. The total loans disbursed by RHFL during the FY 2016-17, 2017-18, 2018-19, as per the GT Report was as follows

- 2016-17 – Rs 7,380 crores
- 2017-18 – Rs 11,763 crores
- 2018-19 – Rs 11,708 crores

6. GT has pointed out certain anomalies in its report. Some of them are mentioned below.

- i. During the period under review a total of Rs 14,577.68 crores was disbursed as GPCL, out of which approx. 88.76% was loans disbursed to PILE, amounting to Rs 12,487.56 crores.
- ii. The total outstanding, including interest, as on 31st October 2019 against loans disbursed to PILE was approx. Rs 7,984.39 crores – out of which dues amounting to Rs 2,727.59 crores was declared NPA as on 31st October 2019.
- iii. On review by GT of the GPCL portfolio, they observed 2 instances where entities were entities (PILE) to whom RHFL had disbursed the loan cease to be related parties of Reliance Power Ltd. And Reliance Infrastructure Ltd. Prior to disbursal of the loans. A total of 8 entities being PILE were disbursed loans aggregating Rs 1,323.43 crores during the review period.

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B. Observations – Legal Opinion

I have gone through the relevant portions of GT report. My observations are mentioned below.

1. Following are the directions of RBI for identifying frauds.

“Classification of Frauds

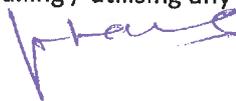
“In order to have uniformity of such reporting, the RBI directions classify the ‘frauds’ as follows, mainly based on the provisions of the Indian Penal Code:

- 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.”*

2. There is difference between **“Business Risk and Malafide Decisions”** in the banking business.

*Decisions to grant loans / credit facilities without observing the norms, procedures and guidelines would definitely come under malafide decisions wherein the elements of misrepresentation, cheating and cause or attempt to cause undue benefit to self or others may also be present. In such cases, there will be **quid – pro - quo** in cash or in kind and element of conspiracy between the private persons / companies involves and the bankers.*

GT has not pointed any violation of RBI guidelines in its report or regulations particularly with regard to the fact of misappropriation, criminal breach of trust, forgery in any of the documents used for the purpose of availing / utilising any of the facilities.



3. Further no misrepresentation of any fact or concealment of any relevant information to which the RHFL is legally bound to disclose it to the bank authorities at the time of commencement of proposal for grant of loans/credit facilities. It is important to mention here that the documents which were executed by RHFL were reported to be complete and all terms and conditions of the loan were mutually discussed between banks and RHFL before sanction and execution of the documents (Management Response in the GT Report).
4. The definition of Section 415 & Section 420 of IPC is reproduced below.

Section 415 in The Indian Penal Code

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation. —A dishonest concealment of facts is a deception within the meaning of this section.

Section 420 in The Indian Penal Code

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 421 in The Indian Penal Code

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.—Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfer or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that 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 CLASSIFICATION OF OFFENCE *Punishment—Imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by any Magistrate—Compoundable by the creditor who are affected thereby with the permission of the court.*

5. There is a catena of judgements of the Hon'ble Supreme Court that to make out a case of cheating or criminal breach of trust there must be dishonest or fraudulent intention of

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the person at the time of commencement of the agreement. The apex court in following cases has given the observation in this regard.

- A. S.V.L.Murthy Versus STATE represented by CBI, Hyderabad and others – Criminal Appeal no. 942 of 2009 with nos. 945 of 2009 and 943 of 2009, decided on May 06, 2009.**

Allowing the Appeals, the Hon'ble Supreme Court Held:

"One of the ingredients of cheating, as defined in Section 415 IPC is existence of an intention to cheat at the time of making initial promise or existence thereof from the very beginning of formation of contract. The complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on part of the accused to keep his promise, in absence of a culpable intention at time of making initial promise being absent, no offence under section 420 of IPC can be said to have been made out."

- B. The Hon'ble Supreme Court has also expressed following view in the offences of cheating reported in 2008 Cr. LJ page 353 titled as "Anil Ritolia Vs. State of Bihar". The relevant portion of the judgement is as under:**

"

8. Section 23, 24 and 415 of the Indian Penal Code read as under : Section 23 Wrongful gain "Wrongful gain" is gain by unlawful means of property which the person gaining is not legally entitled.

"Wrongful loss".--"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully. --A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

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Section 24 - Dishonestly Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 415 - Cheating Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation, --A dishonest concealment of facts is a deception within the meaning of this section."

9. Ingredients of Section 420 of the Indian Penal Code are as under :

- i) Deception of any person;
- ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

11. The question came up for consideration before this Court recently in Indian Oil Corporation v. NEPC Indian Ltd. & Ors. [(2006) 6 SCC 736] wherein, upon consideration of a large number of decisions, it was held : "The essential ingredients of the offence of "cheating" are : (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

It is not a case where the appellants can be said to have induced the respondent to enter into a transaction so as to deceive them with a view to cause unlawful losses to them and to make unlawful gain for themselves."



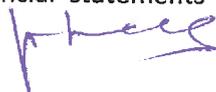
C. The Hon'ble High Court of Gujrat has also expressed following view in the offences of cheating and criminal misconduct in case reported in 2011 Cr. LJ page 1395 titled as "Rameshchandra Bhogilal Patel Vs. State of Gujarat.

- i- Penal Code (45 of 1860), Ss. 415, 420, 34 – Cheating – Mens rea – Grant of bill Purchase facilities by bank – Case depending upon railways receipts – Accused, branch Manager of bank and accountant allegedly caused wrongful loss to bank in granting advances to firm – Criminal misconduct in official duty also alleged – However, no evidence produced to prove dishonest intention of Branch manager with a view to obtain any illegal gratification from concerned firm – Fraudulent and dishonest intention on part of accused, not also proved beyond reasonable doubt – Thus, criminal misconduct on their part cannot be proved – Conviction of accused, held, liable to quashed. **(Para 26 to 29)**
- ii- Penal Code (45 of 1860), S. 415 – Cheating – To say a person had committed act of cheating – It is necessary to show that said person had fraudulent or dishonest intention at the time of making promise – Mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. **(Para 28)**
- iii- Penal Code (45 of 1860), S. 420 – Cheating – Prosecution has failed to prove principal allegation of forgery – Therefore, offence of cheating cannot stand.

6. It is relevant to mention the response of the RHFL management in the GT report (page – 19) which is reproduced below:

"Breach of regulatory norms – voluntarily disclosed by company

- The alleged breach of group exposure norms is the main observation of GT and is referred to in its draft report as loans to PILE. While we do not agree to the observations of the alleged linkage of entities, we draw your kind attention that the said group exposure had already been disclosed by the company voluntarily in its annual audited financial statements duly audited by the statutory auditors.



- The company has also disclosed transparently the end use of such group exposure. The said loans were provided to enable the group entities to meet their debt servicing obligations and these loans were sanctioned under the extra ordinary circumstances to avoid payment defaults to banks, which otherwise would have resulted in a systemic crisis. The end use by group entities also included repayment of debt to banks, who were also lenders to the Company.
 - The Company has also furnished to GT the details of the group exposure including its end use, evidencing that such end use was for debt servicing to banks.”
7. From the above response it prima facie appears that RHFL had disclosed its purpose of availing the facility and its end use to the banker’s/consortium members and it cannot be said that the facility was obtained by the company by adopting any illegal means/procedures. Rather it appears that it was a conscious decision of the bankers. Facts mentioned in the GT report do not reveal any inducement/deception on the part of RHFL.

In view of the above case laws and Management responses, I am of the considered opinion that there is no material to infer any dishonest/fraudulent intent on the part of Reliance Home Finance Limited (RHFL), its promoters, associates and employee in the transaction.


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