



11 January 2020

**Reliance Home Finance Limited**

Reliance Centre, 6th Floor, South Wing,  
Off. Western Express Highway,  
Santacruz (East), Mumbai 400 055.

**Kind Attn: Mr. Ravindra Sudhalkar, Executive Director and CEO**

Dear Sirs

**Re: Opinion on impact of GT Forensic Report**

**FACTS:**

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. 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.
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 work for the period 1 April 2016 to 30 June 2019:
  - (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 fraudulent transactions which are mere book entry and not backed by any genuine documents; and
- (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"**.

5. 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 RBI Directions is attached as **Annexure "2"** to the case for opinion.
6. Attention is invited to para 2.2.1 of the RBI Directions as reproduced below:  
**"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."*
7. 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.
8. GT issued its final report with Bank of Baroda who has in turn shared it with RHFL on 4 January 2020 ("**GT Forensic Report**"). A copy of the GT Forensic Report is annexed as **Annexure "3"** to the case for opinion. The GT Forensic Report mainly contains the following:
  - a. Transactions with Potentially Indirectly Linked Entities
  - b. Potential Regulatory Anomalies
  - c. Loan Disbursement to Valuecorp (exposure to RCom) written off
  - d. Loan advanced to other entities
  - e. Anomalies in the credit appraisal process
  - f. Anomalies identified during loan file review
9. The key observations 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 RHFL to Lenders on 5 December 2019. Disclosure with regards to such exposure is mentioned on Page no 72 of the Annual Report for the 2018-19 (copy attached as **Annexure "4"** to the case for opinion) 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.”*

10. 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.

11. 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 indicates nor concludes commission of any fraud by RHFL. As a matter of fact, GT Forensic Report does not even use the word ‘misappropriation’, ‘siphoning of funds’ or ‘diversion of funds’ leave alone the use of the word ‘fraud’ in the entire GT Forensic Report.

12. In this regard attention is invited to the audit report of the statutory auditors of RHFL who conducted statutory audit of the financial statements of RHFL for the year ended 31 March 2019 which *inter alia* specifically 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 the Ind AS financial statements.*

13. 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 “4”**. At this juncture, 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.

## QUERIES FOR OPINION

In light of findings of the GT Forensic Report read with the RBI Directions, our 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 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 consortium of banks?

## OPINION

- A. Whether the observations and overall conclusions set forth in the GT Forensic Report constitute commission of 'fraud' as contemplated under the RBI Directions?**

### Meaning of Fraud

- 1.1. Fraud is intentional deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. Fraud is an act or omission to act or concealment by which one person obtains an advantage against conscience over another as being prejudicial to another.
- 1.2. Fraud is a criminal deception, use of false representation to gain unjust advantage, dishonest artifice or trick. Fraud is proved when it is shown that a false representation has been made:
  - Knowingly; or
  - Without belief in its truth; or
  - Recklessly, careless whether it be true or false.

### Fraud under Companies Act 2013

- 2.1. Fraud in relation to affairs of a company or any corporate body as defined in the explanations of Section 447 of Companies Act 2013, includes:
  - a. Any act;
  - b. Omission;
  - c. Concealment of any fact; or



- d. Abuse of position committed by any person or any other person with the connivance in any manner:
- with intent to deceive;
  - to gain undue advantage from; or
  - to injure the interests of:
    - the company; or
    - its shareholders; or
    - its creditors or any other person

Whether or not there is any wrongful gain or wrongful loss.

- 2.2. It is clear from the above definition that not all acts, omissions, concealment of fact or abuse of position will lead to fraud. In order to fall within the meaning of 'fraud' these actions, omissions, concealment of fact or abuse should be done with an intent to deceive or to gain undue advantage or to injure the interest of the company or its shareholders or creditors or any other person. In such a scenario, fraud would exist even if such acts, omissions, concealment of fact or abuse of position results in 'wrongful gain' or 'wrongful loss' i.e. commission of crime with wrongful intent is important not merely the results thereof.
- 2.3. 'Wrongful gain' has been defined to mean gain by unlawful means of property to which the person gaining is not legally entitled. Similarly, 'wrongful loss' has been defined to mean loss by unlawful means of property to which the person losing is legally entitled.
- 2.4. In view of the above, to fall within the meaning of fraud, the following facts must be present:
- a. acts, omissions, concealment of fact or abuse of position should have taken place;
  - b. such acts, omissions, concealment of fact or abuse of position should have essence of *mens rea* in them; and
  - c. they may or may not result in 'wrongful gain' or 'wrongful loss'.

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

- 3.1. The RBI Directions while classifying fraud for reporting have relied upon a number of offences defined in the IPC. Further, any criminal prosecution to be sustained, facts and circumstances that would demonstrate each and every aspect of the offence defined in the IPC is crucial. Commission of every offence leads to consequences such as imposition of penalty or imprisonment depending upon the nature and gravity of such offence. Since the consequences of committing a criminal offence are serious, typically two principles need to



be scrupulously followed in any diligent prosecution: (a) demonstration of facts and circumstances co-relating to each attribute of the offences as defined under IPC; and (b) proof or evidence “beyond reasonable doubt”. Another important principle that forms the basis of criminal jurisprudence is that under Indian law there is no presumption of guilt and the burden is cast on the prosecution to establish the above two facets.

3.2. 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 means – A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

3.3. Section 415 of the IPC reads as follows:

*“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”.”*

3.4. The Supreme Court of India in *S N Palanitkar and Ors Vs State of Bihar and Ors*<sup>1</sup> held that it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. It was observed that an act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a Civil Court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well.

3.5. The Supreme Court of India in *Jaswantrai Maniklal Akhanev Vs State of Bombay*<sup>2</sup> held that a guilty intention is an essential ingredient of the offence of cheating. Therefore, to secure conviction of a person for the offence of cheating, “*mens rea*” on the part of that person, must be established. It was also observed in *Mahadeo Prasad Vs State of West Bengal*<sup>3</sup> that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time of inducement was offered.

3.6. Extrapolating on the above, the essential ingredients in order to constitute a criminal breach of trust as defined in section 405 of IPC have been spelt out as whoever, being in any manner entrusted with property or with any dominion over property:

- (a) dishonestly or misappropriating or converts that property to his own use; or
- (b) dishonestly uses or disposes of that property in violation:
  - of any direction of law prescribing the mode in which such trust is to

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<sup>1</sup> AIR Cri SC 953 of 2001

<sup>2</sup> AIR SC 575 of 1956

<sup>3</sup> AIR SC 724 of 1954



be discharged;

- of any legal contract, express or implied, which he has made touching the discharge of such trust; or
- willfully suffers any other person so to do so commits “criminal breach of trust”.

3.7. It is imperative to note that every breach of trust in the absence of *mens rea* or dishonest intention cannot successfully legally justify a criminal prosecution. Moreover, it is clear that the expression “entrusted” has wide and different implication in different contexts and the expression “trust” has been used to denote various kinds of relationships like trustee, beneficiary, bailor and bailee, master and servant.

3.8. It is evident that a guilty intention is essential ingredient of the offence of cheating, *mens rea* on the part of that person must be established.

#### **RBI Directions on Classification and Reporting of Frauds**

4.1. The RBI Directions have been issued in public interest in exercise of the powers conferred under section 35A of the Banking Regulation Act, 1949. The RBI Directions *inter alia* provides for a framework channelizing the banks to enable them to detect, investigate and report frauds cases promptly as well as accurate reporting to appropriate regulatory and law enforcement authorities including RBI.

4.2. RBI Directions focuses primarily on the aspects relating to early detection, prompt reporting to the RBI 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).

4.3. Paragraph 2.2.1 of the RBI Directions reads as follows:

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

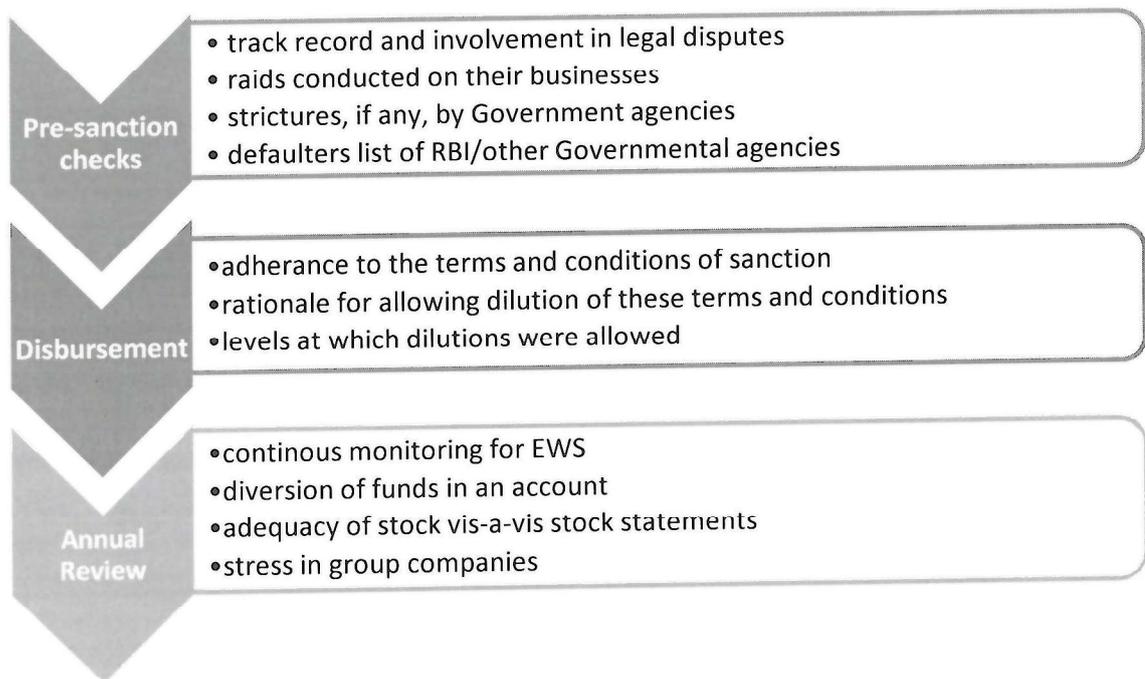
- a. Misappropriation and criminal breach of trust.*
- b. Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.*
- c. Unauthorised credit facilities extended for reward or for illegal gratification.*
- d. Cash shortages.*
- e. Cheating and forgery.*



- f. *Fraudulent transactions involving foreign exchange.*
- g. *Any other type of fraud not coming under the specific heads as above."*

4.4. The RBI Directions outlines the framework for prevention, early detection, prompt reporting to 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). RBI has recommended certain effective ways of preventing frauds in loan accounts based on different stages of the loan life cycle. It is also recommended in this regard that the banks establish a risk management group or any other appropriate group of the banks to undertake such actions.

A representation of the recommended actions at various stages of loan-life cycle are as below:



4.5. The objective of the RBI Directions is to direct the focus of the banks on the aspects relating to prevention and adopt measures to ensure necessary corrective action to reduce the quantum of loss which the continuance of fraud may entail.

4.6. 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.

- 4.7. RBI Directions has structured the mechanism of the Early Warning Signs (“EWS”) and Red Flag Account (“RFA”). RFA is where a suspicion of fraudulent activity is thrown up by the presence of one or more EWS which shall be used as a trigger to launch a detailed investigation into an RFA. It is not clear as to which of the events in RHFL have prompted only some of the consortium banks (and not all the lender banks) to red flag the RHFL account.
- 4.8. Once an account is red flagged, it should be subjected to forensic audit commissioned or initiated by the consortium leader. Forensic audit is, referred to as an examination of evidence regarding an assertion to determine its correspondence to established criteria carried out in a manner suitable to the court. A forensic audit can be conducted in order to prosecute a party for fraud, embezzlement or other financial claims.
- 4.9. In general, forensic auditing, is described as a specialized field of accountancy which investigates fraud and analyses financial information to be used in legal proceedings. Forensic audit is an apt tool in the contemporary times, ensuring financial health of the companies through aiding in the prevention, regulation and penalization of financial frauds and scams.
- 4.10. Forensic audit Involves the critical assessment through the audit of all evidential matter and maintaining a higher degree of professional skepticism such as assuming for example fraud or financial irregularity may have occurred, is occurring, or will occur in the future. Furthermore, forensic thinking is a mind shift where the auditor believes that the possibility of fraud or financial irregularity may exist, and the controls may be overridden to accomplish that possibility. Forensic thinking is used throughout the audit work i.e. from start to finish.
- 4.11. During the audit, the auditor perceives and recognizes the propositions before them for examination, obtains evidence, evaluates the same and formulates an opinion on the basis of his judgment which is communicated through their audit report. As a result of an audit, stakeholders may effectively evaluate and improve the effectiveness of risk management, control, and the governance process over the subject matter.
- 4.12. A forensic auditor is required to have special training in forensic audit techniques and in the legalities of accounting issues. A forensic audit has additional steps that need to be performed in addition to regular audit procedures. A forensic audit is always assigned to an independent firm/group of investigators in order to conduct an unbiased and truthful audit and investigation.
- 4.13. In forensic, auditing specific procedures are carried out in order to produce evidence. Audit techniques and procedures are used to identify and to gather evidence to prove, for example,



how long have fraudulent activities existed and carried out in the organization, and how it was conducted and concealed by the perpetrators. In order to continue, it is pertinent that the planning stage has been thoroughly understood by the investigating team, who are skilled in collecting the necessary evidence.

- 4.14. The reporting stage is the most obvious element in a forensic audit. After investigating and gathering evidence, the investigating team is expected to give a report of the findings of the investigation, and also the summary of the evidence and conclusion about the loss suffered due to the fraud. It should also include the plan of the fraud itself, and how it unfolded, basically the whole trail of events, and suggestions to prevent such fraud in the future.
- 4.15. A fraud triangle is a tool used in forensic auditing that explains three interrelated elements that assist the commission of fraud- Pressure (motive), opportunity (ability to carry out the fraud) and rationalization (justification of dishonest intentions). The pressure to commit fraud can be attributed to factors like sustaining growth or profitability in a volatile economic environment, increasing competition etc. The absence of controls or the inability of the management to override controls provides an opportunity for fraud to be perpetrated. Further, those involved in a fraud are able to rationalize a fraudulent act as being consistent with personal code of ethics which allows them to knowingly and intentionally commit a dishonest act.
- 4.16. Forensic audit is therefore distinct from financial audit, the objective of which is to express opinion as to 'true & fair' presentation whereas forensic audit determines correctness of the accounts or whether any fraud has actually taken place. We note that the techniques used in the financial auditing are more of 'Substantive' and 'compliance' procedures whereas the techniques used in the forensic auditing are analysis of past trend and substantive or 'in depth' checking of selected transactions. Normally all transactions for the particular accounting period are covered under the financial audits. Whereas forensic audits don't face any such limitations. Forensic auditors may be appointed to examine the accounts from the beginning. For ascertaining the accuracy of the current assets and the liabilities financial auditor relies on the management certificate or representation of management. Forensic auditors are required to carry out the independent verification of suspected or selected items.
- 4.17. We have reviewed the scope of work assigned to GT under the Engagement Letter dated 20 August 2019. The period to be covered by forensic audit was from 1 April 2016 to 30 June 2019 (i.e a period of 27 months). We note that in addition to the items listed in para 4 of the facts mentioned above, the following specific scope of work is also entrusted to GT:
- (i) End use of fund and in particular with respect to diversion, if any;
  - (ii) Observations with respect to corporate governance and process issues if any;



- (iii) To try and identify fraudulent disbursement(s), deliberate omission of transaction(s) or disclosure(s), if any;
- (iv) Review of receivables including age-wise analysis, identifications of major receivables, and recoverability of the same and commenting on the genuineness;
- (v) Examination of the group transactions/inter-company transactions/related party transactions with respect to commercial prudence, genuineness, documentation and various approvals under the laws. Highlighted the cases of non-compliances, diversion of funds, if any.

4.18. We also note that in line with general principles governing conduct of forensic audits, GT was required to view / judge whenever frauds, if any, are observed, GT should highlight the *modus operandi*, the motive of the suspect and opportunity to commit fraud, in accordance with the 'fraud-triangle' theory discussed above. GT was also specifically asked to comment upon whether there is any collusion and physical and documentary evidence to substantiate it, as also whether there was any attempt to the destroy the evidence, etc.

4.19. We have reviewed the GT Forensic Report. We note that 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. Loan advanced to other entities
- e. Anomalies in the credit appraisal process
- f. Anomalies identified during loan file review

Given a very specific scope of work set forth in the Engagement Letter dated 20 August 2019 as set out in paragraph 4 of the facts above and paragraph 4.19 above, it is clear that silence speaks louder than words! While the GT Forensic Report has made observations, it is clear that the GT Forensic Report does not indicate existence of a fraud but merely comments on certain business practices of RHFL. Even while commenting on these business practices, GT Forensic Report does not contain any statement indicating presence of any *mala fide* intent or *means rea*. GT Forensic Report also does not indicate that any of the transactions or business conducts was intentionally, deliberately or otherwise calculated to deceive.

4.20. The GT Forensic Report has emphasised on issues of regulatory anomalies in complying with the requirements of the Master Circular on Housing Finance Companies Directions, 2010. However, the GT Forensic Report has not indicated any specific non-compliance with the same. In our view, if the forensic audit report is expected to facilitate the banks, to crystallise a firm view about existence of fraud, the observations have to bring out how different facts put together fulfil the evidentiary expectations of any fact-finding and evidence gathering



exercise. The observations and overall conclusions in the GT Forensic Report, does not indicate presence of any of the essential elements of fraud, as listed above.

- 4.21. Another very important aspect of the offence of fraud, that is the intent to defraud. For successful prosecution of a complaint of fraud, the more crucial element to be established before a criminal court is that there was a deliberate, conscious decisions and intention to cheat or defraud. In our view, none of the observations listed in the GT Forensic Report have identified any fact, that would support the existence of *mens rea*. It is pertinent that the scope of work set out in the engagement letter required GT to comment upon all three vertices of the fraud-triangle. The GT Forensic Report has concluded in negative on all three aspects.
- 4.22. Based on the GT Forensic Report, we are of the opinion that there is no demonstration of intent to defraud which involves two elements namely deceit and injury to the person deceived. The GT Forensic Report does neither lead to evidences that amounts to fraud as outlined in para 2.2.1 of the RBI Directions nor suggest any wrongdoing in the loan accounts which may be construed as fraudulent.
- 4.23. Further, we have reviewed the scope of work assigned to GT in respect of the forensic audit of RHFL and note that in the forensic audit conducted by GT as per the scope of work, the GT Forensic Report contains no finding suggesting any fraud nor any material evidence with regards:
- (a) to any misrepresentation to the banks;
  - (b) to 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;
  - (c) to diversion / siphoning of lender's funds by the promoters /employees / associates, including any evidence, modus operandi, motive suggesting the same;
  - (d) to any diversion of funds / embezzlement / siphoning of funds taking place looking into the trail of money borrowed out of bank's fund;
  - (e) to 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; and
  - (f) to any frauds leave alone any finding as regards modus operandi, the motive of the suspect and opportunity to commit fraud.
- 4.24. The GT Forensic Report also contains no observation as regards any collusion or physical and



documentary evidences to substantiate the same, or instances of any attempt to destroy the evidence etc.

- 4.25. The GT Forensic Report has concluded on a note that RHFL was in compliance with the accounting standards and that there was no instance of fraud, diversion of funds, siphoning, embezzlement, misrepresentation to banks, mala fide transactions, falsification of accounts,, collusion or attempt to destroy evidence by RHFL.

**B. 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?**

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.
- 1.4. The reporting and setting the criminal investigation mechanism in motion can be triggered only on foundation of relevant facts showing existence of fraud. 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. In these circumstances, we are of the view that there is no fraud reporting is required under the RBI Directions.

**C. In absence of any observations or conclusions about fraud in RHFL account under the GT Forensic Report, what would the appropriate course of action for the consortium of banks?**

- 1.1. 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.

- 1.2. 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. When some of the banks may have raised the suspicion of fraudulent activity and red-flagged the RHFL account, it was subjected to a forensic audit with a specific mandate to gather relevant facts and evidence of fraud. Since the GT Forensic Report has not identified any fraud, we are of the view that such red-flagging status needs to be dropped by the consortium of banks. 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 our view, would be contrary to the letter and spirit of the RBI Directions.
- 1.3. We have been given to understand from the Company representatives that RHFL is already negotiating for an overall restructuring of its loans and has proposed a resolution plan. Based on the above, 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.

## **QUALIFICATIONS**

This opinion is subject to the following qualifications:

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& CO**  
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Please contact us if you need any further clarifications.

Yours faithfully

For **Khaitan & Co**

  
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Sharad Abhyankar  
Partner