

IDBI TRUSTEESHIP SERVICES LIMITED.
RELIANCE HOME FINANCE LIMITED – NCLAT APPEALS – STATUS
REPORT.

- i) BOB Vs. ITSL – Company Appeal (AT) 69/2021**
- ii) RHFL Vs. ITSL – Company Appeal (AT) 71/2021**
 - against the NCLT Order dated 21st June, 2021.**

The captioned appeals were listed today, 9 July, 2021 before the National Company Law Appellate Tribunal, New Delhi (“Tribunal”) at Serial Nos. 2, 5, 6 and 7. Solicitor General Mr. Tushar Mehta along with J Sagar Advocates appeared for Bank of Baroda (“BoB”), Senior Advocate Mr. Sudipto Sarkar along with Agarwal Law Associates appeared for Reliance Home Finance Limited (“RHFL”) and Senior Advocate Mr. Arun Kathpalia, Mr. Prateek Seksaria along with SAM Team appeared for on behalf of IDBI Trusteeship Services Limited (“ITSL”).

When the matter was called out, the Tribunal remarked that the pleadings be completed and the appeals be adjourned to a short date. However, Mr. Mehta appearing on behalf of BoB interjected and submitted as follows:

- 1) BoB represents a consortium of lenders that have an exposure of over INR 7000 Crores in RHFL;
- 2) Pursuant to the RBI Circular dated 7 July 2019 (“RBI Circular”), the lenders of RHFL have implemented a resolution plan and have selected Authum as the successful resolution applicant;
- 3) The NCLT in its order dated 21 June 2021 has incorrectly interpreted the term *may* as *shall*, as appearing in Section 71(10), Companies Act, 2013;
- 4) The NCLT incorreced dismissed BoB’s intervention application by not considering its submissions;
- 5) While passing its final orders, NCLT has failed to consider Rule 73, NCLT Rules, 2016 which clearly states that the tribunal ought to consider the financial condition of the issuer company and the public interest;
- 6) The lenders of RHFL are banks and other financial institutions, whose interest has not been considered by the Hon’ble NCLT.

Mr. Kathpalia appearing on your behalf, in response thereto, submitted as follows:

- 1) Section 71(8), Companies Act, 2013 is the mandate of law which provides that every issuer company is under an obligation to redeem the debentures to its debenture holders under the terms and conditions of the debenture trust deed;
- 2) Section 71(10), Companies Act, 2013 is accordingly the remedy provided to the debenture holders/ debenture trustee to approach the NCLT when the issuer company defaults in making payment of principal amount/ interest to the debenture holders;
- 3) RHFL has admittedly defaulted in making payment to the debenture holders and the same is undisputed;
- 4) The only parties concerned in the litigation are the debenture holders, debenture trustee and the issuer company;
- 5) The debenture holders are not bound by the resolution plan undertaken by the lenders of RHFL since the RBI Circular is not applicable to majority of the debenture holders;

- 6) The debenture holders have an exposure of over 3000 crores;
- 7) BoB has absolutely no locus to intervene in the company petitions;
- 8) Moreover, BoB has not sought to challenge the order dated 27 May 2021 dismissing its intervention application.

The Tribunal noted the above submissions and was inclined to grant three weeks' time to complete the pleadings. At which time, Mr. Mehta argued that an interim stay on the impugned order is necessary to prevent any action on part of ITSL in furtherance to order dated 21 June 2021, to which Mr. Kathpalia vehemently objected and submitted that the time period towards payment of interest under the order dated 21 June 2021 is 2 months from the date of order, which expires on 21 August, 2021 and hence there is no requirement whatsoever for a stay or any status quo on the operation of order dated 21 June 2021. Thereafter, Mr. Mehta stated that the order directs payment "within" 2 months which includes any interregnum period, specifically till the next date of hearing. He further submitted that any action by ITSL to this effect will also prejudice the ongoing resolution proceedings of RHFL. At this point, Mr. Sarkar intervened and submitted that the resolution proceedings for RHFL ought to remain unaffected by the present order, specifically in larger public interest. Mr. Kathpalia reiterated his objections to the requirement of any stay/status-quo order.

Upon hearing the parties, the Tribunal directed ITSL to file its replies within 2 weeks from today, physically and rejoinders, if any, one week thereafter and adjourned the appeals to 10 August, high on board. The Tribunal further directed that until such next date of hearing, parties are required to maintain status quo as it exists today.

Status Report of the Hearing Held on 10/08/2021.

The captioned appeals were listed on 10th August, 2021 before the National Company Law Appellate Tribunal, New Delhi ("Tribunal") at Serial Nos. 9, 10, 11 and 12. Solicitor General Mr. Tushar Mehta along with J Sagar Advocates appeared for Bank of Baroda ("BoB"). Senior Advocate Mr. J.J. Bhatt and Advocate Ms. Shaily Bhasin along with Agarwal Law Associates appeared for Reliance Home Finance Limited ("RHFL"). Senior Advocate Mr. Arun Kathpalia and Mr. Prateek Seksaria along with the SAM Team appeared on behalf of IDBI Trusteeship Services Limited ("ITSL").

When the matter was called out, Mr. Kathpalia informed the Tribunal that ITSL, upon a written request of certain publicly placed Debenture Holders, is in the process of calling a meeting of the publicly placed Debentures Holders to consider the Resolution Plan in respect of RHFL. Mr. Kathpalia further informed that the process of the said meeting and the voting thereafter will take approximately 4 weeks. On account of the same, Mr. Kathpalia requested for the matter to be placed for further hearing on any date in the second week of September. The Tribunal noted the same.

The Tribunal enquired if the pleadings in the matter are complete and if RHFL intends to file a reply to the appeal preferred by BoB. Ms. Bhasin responded that RHFL is an assenting Respondent and will not be filing a reply to the appeal filed by BoB. The Tribunal also enquired if Reliance Capital Ltd., Respondent No. 2 to the appeal preferred by RHFL, will be filing a reply to the said appeal. Ms. Bhasin submitted that Reliance Capital is also an assenting Respondent and will not be filing a reply.

The Tribunal noted the same.

The Tribunal was pleased to place the matter for further hearing on 10th September, 2021.

The Tribunal also directed the parties to file short written submissions in the matter before the next date of hearing.

Status Report of the Hearing Held on 10/09/2021.

Court Room No. III of the National Company Law Appellate Tribunal, New Delhi was not available for judicial function on 10th September, 2021. Accordingly, the captioned appeals were adjourned to Monday - 13th September, 2021.

Status Report of the Hearing Held on 13/09/2021.

The captioned appeals were listed on 13th September, 2021 before the National Company Law Appellate Tribunal, New Delhi ("Tribunal") at Serial Nos. 32 - 35. Advocates for BoB and RHFL were present. Mr. Prateek Seksaria along with the SAM Team appeared on behalf of IDBI Trusteeship Services Limited.

As the captioned appeals were listed for fixing of a date for hearing, when the matter was called out, the Tribunal observed that pleadings in the matter are complete and directed that the matter be listed for further hearing and admission (after notice) on 18th November, 2021. The Tribunal directed that the interim order (Status quo) will continue till the next date of hearing.

Status Report of the Hearing Held on 18/11/2021.

The captioned appeals were listed on 18th November, 2021 before the National Company Law Appellate Tribunal, New Delhi ("Tribunal") at Serial Nos. 16 - 19. Advocates for BoB and RHFL were present. Mr. Prateek Seksaria along with the SAM Team appeared on behalf of IDBI Trusteeship Services Limited.

As the Tribunal was not inclined to hear the matters listed before them today and were generally granting dates, when the captioned appeals were called out, the Tribunal indicated that they will not be taking up the same for hearing. The Tribunal directed the parties to file written submissions within 2 weeks. The Tribunal was thereafter pleased to place the matter for further hearing on 11th January, 2022.

The Tribunal directed that the interim order will continue till the next date of hearing.

At this juncture, the Advocates for BoB requested the Tribunal to place the matter on an earlier date, however, the Tribunal indicated that no such earlier date was available .

Status Report of the Hearing Held on 11/01/2022.

The captioned appeals were listed on 11th January, 2022 before the National Company Law Appellate Tribunal, New Delhi ("Appellate Tribunal"). at Serial Nos. 19 – 22 . Solicitor General Mr. Tushar Mehta appeared for the Appellant - Bank of Baroda ("BoB"). Senior Advocate Mr. Krishnendu Datta appeared for the Appellant - Reliance Home Finance Limited ("RHFL"). Senior Advocate Mr. Arun Kathpalia and Advocate Mr. Prateek Seksaria along with the SAM Team appeared on behalf of IDBI Trusteeship Services Limited ("ITSL").

When the matter was called out for hearing, the Appellate Tribunal indicated that they will not be able to take up the matter for a detailed hearing, on account of paucity of time. At this juncture, Mr. Mehta submitted that as the Debenture Holders are in-effect seeking redemption

of their debentures, it is for their best interest that a meeting of the Debenture Holders is conducted in order to enable them to consider and vote on the approved resolution plan in respect of RHFL. He further submitted that various debenture holders have approached ITSL to call for the said meeting and accordingly, ITSL ought to consider the same. Mr. Mehta suggested that the Appellate Tribunal should pass directions against ITSL to conduct such a meeting of the Debenture Holders to consider and vote on the said approved resolution plan.

Mr. Datta adopted the submissions made by Mr. Mehta and sought similar directions against ITSL.

Mr. Kathpalia, in reply, submitted that captioned appeal concerns the Impugned Order which has directed redemption of the debentures by RHFL under Section 71(10) of the Companies Act. Any such order for directions to call for a meeting of the debenture holders as sought by Mr. Mehta is beyond the jurisdiction of the Appellate Tribunal while deciding the present appeal. He further submitted that so far as the meeting of the Debenture Holders is concerned, ITSL could not convene the same on account of certain observations from SEBI. Mr. Kathpalia emphasised that an injunction has been operating against the Impugned Order for a significant period of time and he has instructions to proceed with the hearing of the captioned appeal. In this regard, he requested the Appellate Tribunal to provide a short date for a detailed hearing of the matter.

The Appellate Tribunal noted the above submissions and was pleased to adjourn the captioned matter for hearing to 3rd February, 2022 at 2 p.m.

Status Report of the Hearing Scheduled on 03/02/2022.

The hearing scheduled on 3rd February, 2022 before Court Room No. III of the National Company Law Appellate Tribunal, New Delhi, has been adjourned to 18th February, 2022, vide a notification dated 3rd February 2022 released by the NCLAT Registry.

Status Report of the Hearing Scheduled on 18/02/2022.

The captioned appeals were listed for hearing today – 18th February, 2022 before Court Room No. III of the NCLAT, New Delhi (“Tribunal”). Solicitor General Mr. Tushar Mehta appeared for the Appellant - Bank of Baroda (“BoB”). Advocates for Reliance Home Finance Limited (“RHFL”) were present. Senior Advocate Mr. Arun Kathpalia and Advocate Mr. Prateek Seksaria along with the SAM Team appeared on behalf of IDBI Trusteeship Services Limited (“ITSL”). Advocate Mr. Gaurav Mitra appeared for the Intervener

When the matter was called out for hearing, Mr. Mitra submitted that he appears for a Debenture Holder, concerned with the order impugned in the captioned appeals and has filed an intervention application in respect of the same. He requested the Tribunal to tag the same with the captioned appeals and take it up for hearing, at the earliest. The Tribunal observed that as the said application was not on board before the Bench, they cannot pass any directions in relation to tagging the same and declined the requests made by Mr. Mitra. The Tribunal then called upon Mr. Mehta to begin his submissions.

Mr. Mehta briefly narrated the facts leading to filing of the appeals while emphasising on the ongoing resolution process of RHFL under the RBI Circular. He referred to Section 71(10) of the Companies Act, 2013 to submit that the NCLT has erred in passing the impugned order as Section 71(10) mandates that an order can be passed only after hearing all the parties concerned. He submitted that BoB was a necessary party to the Application preferred by ITSL and the NCLT has erred by dismissing its intervention application and not hearing its

submissions. He further referred to Rule 73 of the NCLT Rules, 2016 to state that the NCLT is required to consider various aspects while passing an order of such nature which includes the financial condition of the company. He emphasised that the financial position of the company can be best assessed by the creditors of the company and hence BoB ought to have been heard. He further submitted that the NCLT has failed to consider various factors such as - if such an order is necessary to safeguard the interests of the company and the debenture holders or is in public interest.

Mr. Mehta also submitted that the said dispute can be put to rest if the Debenture Trustee is directed to convene a meeting of the Debenture Holders to consider the resolution plan which will render the captioned appeals infructuous. The Tribunal remarked that the same is beyond its jurisdiction and the remit of the appeals and hence, any such directions cannot be granted.

In response, Mr. Kathpalia relied on Section 71(6) to submit that a debenture trustee is required to take all steps necessary to protect the interest of the debenture holders. He further emphasised that under Section 71(8), the Company is under an obligation to pay the interest and redeem the debentures in accordance with the terms and conditions of its issue. He submitted that contractual obligations between the Debenture Holder and the Company is in effect converted into a statutory obligation, by effect of the said provisions. He further relied on Section 71(9) and Section 71(10) to distinguish between "*parties concerned*" and "*any other person interested*" to submit that the only "*parties concerned*" relevant for Section 71(10) are the parties to the Debenture Agreement and the Debenture Trust Deed, in this case - RHFL and ITSL. He further submitted that the said provision is limited to parties concerned to the arrangement of issue of debentures and cannot include any other party.

The Bench noted the above submissions. The Bench was thereafter pleased to adjourn the matter to 24th March, 2022 at 2 pm for further consideration.

Status Report/Update of the Hearing Scheduled/listed on 24/03/2022

The captioned matter listed for hearing on 24th March, 2022 before Court Room No. III of the National Company Law Appellate Tribunal, New Delhi, has been adjourned, vide a notification released by the NCLAT Registry.

The next date in the matter will be updated as soon as received from NCLAT.

Matter was listed listed on 27/04/2022 for fixing next date of hearing.

The captioned matter was listed for hearing on 27th April, 2022 before Court Room No. III of the NCLAT, New Delhi ("Tribunal") for settling dates. The Tribunal fixed the matter on 27th July, 2022 for further consideration.

Status Report/Update of the Hearing Scheduled/listed on 27/07/2022

The captioned matter was listed on 27th July, 2022 before Court Room No. III of the NCLAT, New Delhi ("Tribunal"). Advocates for the Appellants - Bank of Baroda ("BoB") and Reliance Home Finance Limited were present. SAM Team appeared on behalf of IDBI Trusteeship Services Limited. Advocates for the Intervener were also present.

When the matter was called out for hearing, Advocates appearing on behalf of BoB sought a short adjournment as their counsel, Solicitor General Mr. Tushar Mehta had tested positive for Covid-19 and was unavailable for the hearing. The Tribunal

noted the same and was pleased to adjourn the captioned appeals to 27th September, 2022.

Status Report/Update of the Hearing held on 27/09/2022

The captioned matter was listed for hearing on 27th September, 2022 before Court Room No. III, comprising of a Special Bench of Justice Anant Bijay Singh and Dr. Ashok Kumar Mishra of the NCLAT, New Delhi (“Tribunal”). Advocates for the Appellant - Bank of Baroda (“BoB”) and Reliance Home Finance Limited (“RHFL”) were present. Senior Advocate Mr. Arun Kathpalia along with our Mr. Ameya Gokhale, Mr. Vaibhav Singh and Bryan Pillai appeared on behalf of IDBI Trusteeship Services Limited (“ITSL”).

When the matter was called out for hearing, Mr. Kathpalia informed the Tribunal that the matter has been pending for long and requested that the same be taken up for hearing. The Tribunal noted the same. The Tribunal observed that the captioned appeals were part-heard as the same were heard on the last occasion. However, as the Technical Member Ms. Shreesha Merla was not available for judicial function, the Tribunal indicated that it will not be able to take up the captioned appeals. At this juncture, Mr. Kathpalia requested the Tribunal to assign a short date for hearing in the matter.

The Tribunal noted the above and placed the captioned appeals for hearing on 4th November, 2022.

Status Report/Update of the Hearing held on 04/11/2022

The captioned appeals scheduled to be listed for hearing on 4th November, 2022 before Court Room No. III of the National Company Law Appellate Tribunal, New Delhi, were adjourned, vide a notification released by the NCLAT Registry. No next date available on the NCLAT website.

Upon enquires with the NCLAT Registry, we have been informed that the tentative next date in the matter is 6th January 2023.

Update of the Hearing held on 06/01/2023

The captioned appeals were listed for hearing on 6th January, 2023 before Court Room No. III of the National Company Law Appellate Tribunal, New Delhi (“Tribunal”) . Senior Advocate Mr. Sajan Poovayya appeared for the Appellant - Bank of Baroda (“BoB”). Advocate Mr. Abhijeet Sinha appeared for Reliance Home Finance Limited (“RHFL”). Senior Advocate Mr. Arun Kathpalia along with our Mr. Ameya Gokhale and the undersigned appeared on behalf of IDBI Trusteeship Services Limited (“ITSL”).

When the matter was called out for hearing, Mr. Poovayya submitted that while he is ready to begin the final arguments in the matter, however, there are some developments qua the resolution process of RHFL which he intends to bring on record. He submitted that RHFL has preferred an SLP before the Supreme Court of India challenging the order dated 16th December 2022 passed by the Bombay High Court in the matter of *R.K. Mohatta Family Trust*. The said SLP is scheduled to come up for hearing In the upcoming week. Mr. Poovayya thereafter requested the Tribunal to adjourn the captioned appeals, considering the SLP may have an impact

on the final decision in the present matter. Mr. Sinha supported the arguments made by Mr. Poovayya.

Senior Advocate Mr. Arun Kathpalia appearing on behalf of IDBI Trusteeship Services Limited (“ITSL”) objected to the above submissions. He emphasised that the said SLP and the matter before the Bombay High Court has no impact or role in the present appeal as the same is limited to the redemption of debentures under Section 71(10) of the Companies Act, 2013. He reiterated that he is ready and willing to argue the matter and requested the Tribunal to take up the matter for hearing.

The Tribunal noted the above submissions. Considering the pendency of the appeal, the Tribunal was pleased to adjourn the matter to 24th January 2023. The Tribunal orally indicated that as the Technical Member Ms. Shreesha Merla will be taking up other assignments after 30th January, 2023, the Tribunal will be taking up the captioned appeals matter for final hearing on the next date and will not be inclined to grant any further adjournments on the basis of pendency of the SLP.

We will keep you posted on the next listing.

Update of the Hearing scheduled on 24/01/2023 which was adjourned to 25/01/2023

O R D E R

25.01.2023 The Ld. Counsel for the Appellant submits that on 16.01.2023 notices were issued by the Hon’ble Supreme Court and the matter is fixed for consideration on 31.01.2023. He is directed to file the hard copy of the orders passed by the Hon’ble Supreme Court in the matter within two weeks.

2. Mr. Arun Kathpalia, Sr. Advocate assisted by Mr. Vaibhav Singh, Advocate for the Respondent No. 2 is present.

3. These matters are not to be treated as “Part Heard”.

4. Let these Appeals go out of our list. The Registry is directed to place these Appeals before the Hon’ble Chairperson for listing these Appeals before the appropriate Bench.

5. Interim order to continue.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

