

IDBI Trusteeship Services Limited

Status Report – Reliance Home Finance Limited –

NCLT Petitions updates.

Reliance Home Finance Limited (“RHFL”) has issued Secured and Unsecured Non-Convertible Debentures (“NCDs”) aggregating to Rs.3500 Crores by way of Public Issue on January 2nd, 2017. IDBI Trusteeship Services Limited (“ITSL”) is acting as the Debenture Trustee for above referred NCDs.

1. Status as on 03.01.2020:-

The payment of interest and or redemption of principal was due on 03.01.2020 for ISIN No. INE217K07AB6, INE217K07AC4, INE217K07AD2, INE217K07AE0, INE217K07AF7, INE217K07AG5, INE217K08271 and INE217K08289. However, RHFL committed default in its payment obligations. ITSL has informed the default committed by RHFL to the Credit Rating Agencies and have hosted the press release on ITSL website (www.idbitrustee.com).

2. Status as on 04.01.2020:-

ITSL has issued Default Notices to the RHFL.

3. Status as on 09.01.2020:-

Pursuant to the default in payment of interest and redemption of principal due on 03.01.2020 committed by the RHFL, we have filed Two Company Petitions bearing no. 138 of 2020 and 139 of 2020 (“Petitions”) for Rs. 3500 Crores Public Issues (Secured and Unsecured) of RHFL, before Hon’ble National Company Law Tribunal (NCLT), Mumbai under Section 71(10) of the Companies Act, 2013 on 09.01.2020.

4. Status as on 15.01.2020:-

The Petitions were listed on 15.01.2020 before Hon’ble NCLT. The outcome of the hearing held on 15.01.2020 is as follows:-

“The Company Petition No. 138 of 2020 a/w Miscellaneous Application No. 114 of 2020 (*IDBI Trusteeship Services Ltd. v. Reliance Home Finance Limited*) and Company Petition No. 139 of 2020 a/w Miscellaneous Application No. 115 of 2020 (*IDBI Trusteeship Services Ltd. v. Reliance Home Finance & Anr.*) were listed today, 15 January 2020 before NCLT Court – I at serial nos. 17 and 18, respectively. The Senior Counsel appeared on behalf of ITSL and the Senior Advocate appeared on behalf of RHFL and a Counsel appeared on behalf of Reliance Capital Limited (“RCL”).

The Senior Counsel appearing on behalf of ITSL apprised the court of the facts and submitted as follows:

- 1) The present petitions have been filed by ITSL, for secured and unsecured debentures, in their capacity as a debenture trustee under Section 71(10) of Companies Act, 2013 for redemption of debentures due to various debenture holders;
- 2) On the date of redemption of debentures, i.e. 3 January 2020, RHFL failed to make payment of principal amount and interest due to the debenture holders;
- 3) ITSL represents various public including individual debenture holders who have subscribed to the debentures of RHFL;
- 4) As part of the secured debentures, there is a first ranking pari passu charge available on various trust properties;
- 5) RHFL failed to make payments of annual interest due to various debenture holders, therefore the entire amount including principal and interest become payable to the debenture holders;
- 6) RHFL has admittedly been making prejudicial payment of interests to banks, as directed by the lead bank to the inter-creditor agreement;
- 7) The inter-creditor agreement does not bind the debenture holders since the requisite consent to accede to the inter-creditor agreement has not been provided by ITSL;
- 8) Given the compelling facts and circumstances, the court should pass the order of making the entire payment of principal as well as interest; and
- 9) During such time that the final order is passed, Senior Counsel of ITSL requested the court to pass interim orders of injunction and disclosures.

After hearing the Senior Counsel of ITSL, the court observed that under Section 71(10), the court has to merely see the default and pass an order of payment. The court thereafter, sought response from the Respondents (RHFL) who sought court's permission to file replies to the petitions and applications. Senior Counsel of RHFL, in brief, submitted the following:

- 1) Orders have been passed by the Delhi High Court, Bombay High Court and Debt Recovery Tribunal restraining the Respondents from making payments to third parties;
- 2) Certain debenture holders of RHFL have acceded to the inter-creditor agreement;
- 3) The meeting conducted on 14 January 2020 has been adjourned to 31 January 2020;
- 4) RHFL is in the process of restructuring its debt and forbearance from the debenture holders, ITSL and the court is required to allow RHFL to restructure its debt;
- 5) RHFL has not paid any amounts to lenders in the past two months;
- 6) RHFL does not have the requisite the amounts to make payments to its debenture holders, therefore a resolution plan will be beneficial to all lenders and creditors including debenture holders; and
- 7) Time period of two weeks be granted to file their affidavits-in-reply.

The court observed that the arguments advanced on behalf of the Respondents are persuasive but not at all compelling. While the court agreed with the submissions made by Senior Counsel of ITSL, it decided to simplicitor adjourn the matter to 29 January 2020 while granting time to the Respondents to file the replies. The court observed that since it is now seized of the matter, it will pass appropriate orders, as and when required.

The matters will now be listed on **29 January 2020**".

5. Status as on 29.01.2020:-

The Petitions were listed on 29.01.2020 before Hon'ble NCLT. The outcome of the hearing held on 15.01.2020 is as follows:-

“The Company Petition No. 138 of 2020 a/w Miscellaneous Application No. 114 of 2020 (*IDBI Trusteeship Services Ltd. v. Reliance Home Finance Limited*) and Company Petition No. 139 of 2020 a/w Miscellaneous Application No. 115 of 2020 (*IDBI Trusteeship Services Ltd. v. Reliance Home Finance & Anr.*) were listed today, 29 January 2020 before NCLT Court – I at serial nos. 102 and 103, respectively. Senior Counsel appeared on behalf of IDBI Trusteeship Services Limited (“**ITSL**”) and Senior Advocate appeared on behalf of Reliance Home Finance Limited (“**RHF**”) and Reliance Capital Limited (“**RCL**”) (“**Respondents**”).

Senior Advocate appearing on behalf of the Respondents submitted that replies on behalf of Respondents to the Company Petitions a/w the Miscellaneous Applications will be filed during the course of the day, today.

Senior Counsel appearing on behalf of ITSL submitted as follows:

- 1) That the present dispute concerns an admitted default on part of RHFL;
- 2) That ITSL represents approx. 20,000 debenture holders holding NCDs aggregating to INR 3500 crores plus interest;
- 3) That the Hon'ble Tribunal direct RHFL to service its interest obligations towards all NCD holders; and
- 4) That the Company Petitions a/w Miscellaneous Applications be heard and disposed of at the next date of hearing.

After hearing the parties, the Hon'ble Tribunal adjourned the matter to 19 February 2020.

The matters will now be listed on **19 February 2020**”.

6. Status as on 19.02.2020:-

The Petitions were listed on 19.02.2020 before Hon'ble NCLT. The outcome of the hearing held on 19.02.2020 is as follows:-

“Counsel of ITSL informed the court that the captioned matters were filed under Section 71(10) of the Companies Act, 2013 and IDBI being a debenture trustee represents approximately 20,000 debenture holders claiming a sum of INR 3,500 Crores from RHFL. He informed the court that despite the earlier orders stating that the matter will be listed high on board, the same has been listed at the end. He informed the court that the matters are unlikely to reach today and bearing in mind the urgency in the matter, he submitted that the court assign a new date hearing in the matter. Upon inquiry, Counsel of ITSL

also informed the court that the Miscellaneous Applications have been filed by ITSL seeking interim reliefs.

After hearing the parties, the court was pleased to adjourn the matter and the same is scheduled to be listed on 12 March 2020 first on board.

The matter will now be listed on **12 March 2020 first on board**".

Further, Debenture holders are advised to visit our website <https://idbitrustee.com/side-navigation/media/rhfl-status-report-on-nclt-petition/> for future updates in the matter.

7. Status as on 12.03.2020:-

The Petitions were listed on 12.03.2020 before Hon'ble NCLT. The outcome of the hearing held on 12.03.2020 is as follows:-

Counsel appeared on behalf of the ITSL and Senior Counsel appeared on behalf of Reliance Home Finance Limited ("**Respondent No. 1**") and another Advocate appeared on behalf of Reliance Capital Limited ("**Respondent No. 2**").

When the matter was taken up, as the regular bench was not sitting and the matter was listed before an alternate bench, the court was not inclined to hear the matter and adjourn the same. However, Counsel of ITSL informed the court that there is urgency in the matter and made the following submissions:

- 1) The petitions have been filed under Section 71(10) of the Companies Act, 2013 on behalf of IDBI Trusteeship in its capacity as a debenture trustee representing approximately 20,000 debenture holders against Respondent No. 1 for redemption of debentures aggregating to INR 3,500 crores;
- 2) The present proceedings are summary in nature and under the provisions of Companies Act, 2013 and NCLT Rules, the NCLT is bound to pass appropriate orders within sixty days, which time has lapsed as of today.
- 3) Respondent No. 1 *vide* its letter dated 18 February 2020 has admitted its liability to pay an amount aggregating to INR 490 crores to individual debenture holders;
- 4) Respondent No. 1 *vide* its press release dated 10 March 2020 has admitted that it has liquid cash in hand amounting to INR 700 crores;
- 5) Given that Respondent No. 1 is willing to make payment of INR 490 crores to the debenture holders and has cash in hand of INR 700 crores, it is just that the NCLT at least direct the Respondent No. 1 to deposit the said amount with the NCLT;
- 6) The injunction granted by the Delhi High Court against Respondents do not assist Respondent No. 1 in so far as injunction is a right *in personam*. In view thereof, the NCLT pass similar orders of injunction as against the Respondents; and
- 7) The petitions be heard finally heard and disposed of by the NCLT.

Senior Counsel appearing on behalf of the Respondents submitted as follows:

- 1) The injunction granted by the Delhi High Court sufficiently protects the Applicant in the present proceedings;
- 2) In the event the order granted by the Delhi High Court is vacated, Respondent No. 1 shall give adequate notification to Applicant;
- 3) Various lenders and debenture holders have acceded to the inter-creditor agreement;
- 4) The Applicant represents only two of the ten debenture trust deeds entered into by Respondent No. 1;
- 5) The lenders and debenture holders who have acceded to the have an exposure of about INR 6760 crores and have restrained Respondent No. 1 from making further payments;
- 6) The amount payable to individual debenture holders is only INR 92 crores;
- 7) The petitions have been preferred pursuant to the accelerated amount flowing from the debenture trust deed;
- 8) Any order of injunction passed by the NCLT shall result into multiplicity of injunctions against the Respondents across forums in the country; and
- 9) Replies to the main petitions will be filed before the next date of hearing.

Counsel of ITSL thereafter made the following submissions:

- 1) The Respondents are seeking to mislead the NCLT by stating that the amount payable to individual debenture holders is only INR 92 crores, whereas by letter dated 18 February 2020 addressed to the Applicant, Respondent No. 1 admitted payment of INR 490 crores to individual debenture holders;
- 2) The petitions have been filed pursuant to Section 71(10) of the Companies Act, 2013 which clearly states that in the event of any default in payment of interest, the principal amount and all interests become due and payable forthwith; and
- 3) The NCLT should provide interim protection of injunction and/ or deposits of amount with the NCLT until the matters are finally heard and disposed of.

After hearing the parties, the NCLT recorded Respondents' statement that adequate notice shall be given to the Applicant in the event the order of injunction passed by the Hon'ble Delhi High Court is vacated and directed the Respondents to complete the pleadings before the next date of hearing when the matter will be heard finally. Accordingly, the court adjourned the matter to **30 March 2020** and directed that the matter be taken up high on board.

The matter will now be listed on **30 March 2020**.

Further, Debenture holders are advised to visit our website <https://idbitrustee.com/side-navigation/media/rhfl-status-report-on-nclt-petition/> for future updates in the matter.

8. Status as on 30.03.2020:-

The Company Petitions filed under Section 71(10) of the Companies Act, 2013 and the Miscellaneous Applications filed thereunder were scheduled to be listed before the NCLT. However, in view of Notice dated 30 March 2020 issued by the NCLT (due to COVID 19) , all matters scheduled to be listed from 23 March 2020 to 14 April 2020 shall be suitably listed from 15 April 2020 onwards. Accordingly, we will keep you posted on further listing and developments.

It is to be informed that as on 19.08.2020, we are yet to receive the next date of the hearing from NCLT. We will keep you posted on further developments once we receive the next date of hearing from NCLT, Mumbai.

9. Status as on 03.12.2020:-

The Company Petitions filed under Section 71(10) of the Companies Act, 2013 (“**Company Petitions**”) and the Miscellaneous Applications were listed on urgent basis on 03.12.2020 before Hon’ble NCLT. The outcome of the hearing held on 03.12.2020 is as follows:-

Upon the matter being called out, Counsel appearing on behalf of Reliance Capital Limited (“RCL”) submitted that since the matters were listed on board without any prior intimation, the Hon’ble Tribunal adjourn the matters to the following week. The Hon’ble Tribunal enquired whether the Company Petitions were connected, to which Senior Counsel, appearing on behalf of IDBI Trusteeship answered in affirmative and submitted as follows:

- a) The Company Petitions have been filed under Section 71(10) of the Companies Act, 2013 on behalf of IDBI Trusteeship Services Limited (“**Applicant**”) in its capacity as a debenture trustee representing approximately 20,000 debenture holders against RHFL for redemption of debentures aggregating to INR 3,500 crores;
- b) Section 71(10), Companies Act, 2013 states that upon failure of the issuer company i.e. RHFL to make payment of principal amount and interest to the its debenture holders, the debenture holders/ debenture trustee have the right to approach this Hon’ble Tribunal and seek redemption of the principal amount and interest from the issuer company, payable forthwith;
- c) The Hon’ble NCLAT in its order dated 9 November 2020 has clearly laid down the law pertaining to Section 71(10), Companies Act, 2013;
- d) During the pandemic, the Applicant has received several emails from its debenture holders who are facing financial difficulties and have requested for payment of monies due and payable by RHFL;

- e) The present proceedings are summary in nature and under the provisions of Companies Act, 2013 and National Company Law Tribunal Rules 2016, the Hon'ble NCLT is bound to pass appropriate orders within sixty days, which time has lapsed as of today;
- f) RCL through its debenture trustee is seeking to sell its assets upon which the Applicant has *pari passu* charge, to prospective buyers which is gravely prejudicing the Applicant as well as the debenture holders;
- g) At this stage, it is imperative that the Respondents file their replies to the Company Petitions and the Company Petitions be listed for final hearing especially since the debt has been admitted by RHFL.

The Hon'ble Tribunal enquired about the reliefs sought by the Applicant in its Miscellaneous Applications, to which Senior Counsel of IDBI Trusteeship submitted that the Miscellaneous Applications were filed seeking interlocutory orders to restrain the Respondents from selling/ transferring/ alienating their properties. He further submitted that on 12 March 2020, the Respondents had undertaken to give a notice to the Applicant in the event the order of injunction passed by the Delhi High Court is vacated. Counsel of RCL, at which time submitted that the Applicant is already protected by the orders passed by the Delhi High Court, Bombay High Court and DRT, Mumbai.

The Hon'ble Tribunal suggested that given the factual circumstances and adequate protection provided to the Applicant through the orders of Delhi High Court, Bombay High Court and DRT, Mumbai, the Miscellaneous Applications should be disposed of and the Company Petitions be listed for "*final hearing*". The Hon'ble Tribunal further stated that the law under Section 71(10), Companies Act, 2013 is a straight-forward law and that it shall accordingly pass appropriate orders in the Company Petitions itself.

At which time, Senior Counsel of IDBI Trusteeship submitted that by this Hon'ble Tribunal's order dated 12 March 2020, it was directed that the matter be listed "*first on board*" and therefore, the Hon'ble Tribunal list the Company Petitions for final hearing "*first on board*". He further submitted that the Miscellaneous Applications be disposed of in terms of this Hon'ble Tribunal's order dated 12 March 2020 *vide* which the Respondents were directed to give notice to the Applicant if the orders passed by the Delhi High Court, Bombay High Court and DRT, Mumbai are vacated. Counsel appearing on behalf of RHFL submitted that RHFL shall inform the Applicant if the injunction operating against the Respondents is vacated.

Senior Counsel of IDBI Trusteeship submitted that in the event any sale of the assets of the Respondents is undertaken with their consent, the present proceedings before this Hon'ble Tribunal should be disclosed to all such prospective buyers especially since the Applicant has a first ranking *pari passu* charge on the assets of the Respondents. Counsel of RCL stated that all disclosures in respect of the present proceedings have been made in the Expression of

Interests. At which time, Senior Counsel of IDBI Trusteeship submitted that the Respondents' statement should be recorded by this Hon'ble Tribunal in its order.

Upon hearing the parties, the Hon'ble Tribunal **disposed of the Miscellaneous Applications in terms of the order dated 12 March 2020**. The Hon'ble Tribunal recorded the submissions of the Respondents' Advocates that they shall comply with the order dated 12 March 2020 and that the Respondents have disclosed the pendency of the present Company Petitions and the Applicant's security interest on the assets of the Respondents to the prospective purchasers and shall make such necessary disclosures to all the prospective purchasers. The Hon'ble Tribunal then directed that the Company Petitions be listed on **7 January 2021 for "final hearing", "top on board"**.

10. Status as on 07.01.2021:-

The Company Petitions filed under Section 71(10) of the Companies Act, 2013 ("Company Petitions") and the Miscellaneous Applications were listed on 07.01.2021 before Hon'ble NCLT. The outcome of the hearing held on 07.01.2021 is as follows:-

Upon the matter being called out, the Hon'ble Tribunal enquired about the facts of the Company Petitions. To which, Senior Counsel appeared on behalf of IDBI Trustee submitted that the Company Petitions have been filed under Section 71(10) of Companies Act, 2013 for redemption of debentures and pertain to secured debentures and unsecured debentures, respectively. He further submitted that the debt has been admitted by RHFL and dues are payable to the debenture holders.

The advocate appearing on behalf of RCL submitted that on 5 December 2020, Counsel of Respondent had mentioned the matter seeking for a short adjournment due to personal reasons, and at which time this Hon'ble Tribunal had directed Counsel of Respondent to make such request for adjournment on the next date of hearing i.e. 7 January 2021. She further submitted that since Counsel of Respondent is unavailable for the scheduled hearing today due to personal reasons, the Company Petitions be adjourned to 11 January 2021. Senior Counsel appeared on behalf of IDBI Trustee, conceded to the request for adjournment and submitted that the Company Petitions be placed for "*final hearing*" on 11 January 2021.

Upon hearing the parties, the Hon'ble Tribunal allowed the request for adjournment as sought by the advocate of Respondents and directed that the Company Petitions be placed for "*final hearing*" on **11 January 2021**.

11. Status as on 11.01.2021:-

The Company Petitions filed under Section 71(10) of the Companies Act, 2013 (“**Company Petitions**”) and the Miscellaneous Applications were listed on 11.01.2021 before Hon’ble NCLT. The outcome of the hearing held on 11.01.2021 is as follows:-

Senior Counsel, appearing on behalf of IDBI Trustee / ITSL apprised the court of the facts and submitted as follows:

- 1) The present Company Petitions have been filed by ITSL, for secured and unsecured debentures, in its capacity as a debenture trustee under Section 71(10) of Companies Act, 2013 for redemption of debentures due and payable to over 20,000 debenture holders.
- 2) The Company Petitions have been preferred under Section 71(10), Companies Act, 2013 which provides that where the issuer company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the NCLT may, on the application of the debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.
- 3) On 10 January 2016, ITSL provided its consent to RHFL to act as the debenture trustee to its prospective issue of non-convertible debentures (“**NCDs**”) amounting to INR 3500 crores.
- 4) On 15 December 2016, RHFL filed its shelf prospectus with the Securities and Exchange Board of India (“**SEBI**”), Bombay Stock Exchange (“**BSE**”), National Stock Exchange (“**NSE**”) and the Registrar of Companies for issue of NCDs amounting to INR 3500 crores.
- 5) ITSL, RHFL and RCL executed a debenture trust deed (“**DTD**”) setting out the terms and conditions of the issue of the NCDs aggregating to INR 2618,27,41,000/-, on 2 January 2017. Consequently, on 3 January 2017, the NCDs were issued to debenture holders carrying an annual coupon interest rate and payable on 3 January 2020, 3 January 2022, 3 January 2027, respectively.
- 6) Between April 2019 to September 2019, the credit rating of RHFL downgraded from AA+ to D.
- 7) On 19 September 2019, RHFL in its letter addressed to NSE and BSE asserted that RHFL has been directed by inter-creditor agreement (“**ICA**”) lenders to service only the interest obligation across all lenders and that debt servicing towards principal repayment irrespective of type of facility is to be made on parity. It is imperative to note that RHFL was making prejudicial and preferential payments to its lenders over the NCD holders.
- 8) The ICA has absolutely no bearing upon ITSL/ debenture holders as (a) the RBI Circular dated 7 June 2019 is not applicable to NCD holders; (b) the NCD holders are governed only by provisions of the DTD and (c) the lenders to the ICA have no authority to supersede the contractual obligations of RHFL towards the NCD holders/ ITSL.
- 9) On 14 November 2019, the Secured NCD holders passed a resolution with 78% majority authorising ITSL to do all such acts to protect the interests of the NCD holders.
- 10) On 19 November 2019, ITSL issued a letter to RHFL setting out various events of defaults under clauses 7.3 (f), (h) and (l) of the DTD and declared an event of default under clause 7.1 of the DTD. ITSL further called upon RHFL to make payment of the principal amount and all interests payable in respect of Secured NCDs aggregating to INR 2822,12,18,791/- to the debenture holders within a period of seven days from the date of such letter along

with further interest. However, RHFL did not respond. A similar notice was issued on behalf of Unsecured NCD holders on 17 December 2019.

- 11) The principal payment and interest became due and payable in respect of NCD Series 1A and NCD Series 1B, and the annual interest became payable in respect of NCD Series 2A, NCD Series 2B, NCD Series 3A, NCD Series 3B, NCD Series 4A and NCD Series 4B on 3 January 2020.
- 12) RHFL in its letter addressed to BSE and NSE informed that upon instructions from the lead bank to the ICA, the amounts due and payable by RHFL on 3 January 2020 in respect of Secured and Unsecured NCDs, are delayed.
- 13) ITSL *vide* notices dated 4 January 2020 called upon RHFL and RCL to forthwith jointly and severally make payment of the principal amount, interests and all other monies to debenture holders in respect of Secured and Unsecured NCDs along with further interest at the rate of 2% per annum over and above the respective coupon rates of Secured and Unsecured NCDs till date of payment and/ or realization.
- 14) Upon non-payment, ITSL preferred the Company Petitions seeking redemption of debentures issued to NCD holders.
- 15) The National Company Law Appellate Tribunal (“NCLAT”) in its judgement of Akhil Kothakota v. Tierra Farm Assets unambiguously laid down the law in respect of Section 71(10) of the Companies Act, 2013. The NCLAT held that the NCLT is under an obligation to direct the issuer company to make payment if the Petitioner has made out such case for repayment.
- 16) The facts in the Company Petitions are identical barring the separate debenture trust deeds, charge of ITSL and claim amounts.
- 17) Section 71(10) of the Companies Act, 2013 confers upon ITSL a purely legal right to approach this NCLT and seek directions and order for repayment to the NCD holders by the issuer company i.e. RHFL.
- 18) Until date, despite directions from the NCLT, no replies to the Company Petitions have been filed.

Counsel appearing on behalf of RHFL submitted as follows:

- 1) RHFL is not seeking to take an adversarial approach.
- 2) The fact remains that RHFL has not made payment of interests and principal amount to its NCD holders and nothing changes.
- 3) Given the current financial condition of RHFL, it is to be ascertained whether the NCLT can pass orders under Section 71(10), Companies Act, 2013.
- 4) Various banks and NCD holders represented by ITSL have acceded to the ICA. For reasons best known to ITSL, the NCD holders to the present Company Petitions have not sought to accede to the ICA and have preferred the present Company Petitions.
- 5) Pursuant to the RBI Circular dated 7 June 2019, the ICA lenders have invited potential bids from buyers to take over the business and assets of RHFL.
- 6) The lenders expect that a resolution plan for RHFL will be executed in the next two months. Such resolution plan will operate only with the consent of all creditors including the debenture holders.
- 7) Any such resolution plan as executed will take into consideration the amounts due and payable to the NCD holders.
- 8) Time and again, Bank of Baroda has requested the NCD holders and ITSL to accede to the ICA and several assurances have been provided to ITSL in so far as that no resolution plan shall be passed without the consent of the NCD holders.

- 9) If in such event the NCLT passes an order directing payment by RHFL, the resolution process will be severely impacted and shall result into multiplicity of processes.
- 10) Under the resolution plan, all such payments will be made on a *pro rata* basis to all creditors of RHFL.
- 11) In view of the above, it is suggested that the NCLT not dispose of the Company Petitions today and place the matters on board on a date two months from today to assess the situation of RHFL and accordingly pass appropriate orders.
- 12) While placing reliance on the decision of the NCLAT in Akhil Kothakota v. Tierra Fam Assets, the NCLT in its wide ambit of powers is entitled to pass reliefs directing parties to arrive at a settlement/ conclusion of a resolution plan.
- 13) If the NCLT passes an order of such nature, all creditors of RHFL will be benefitted.
- 14) Even if the NCLT passes an order directing payment/ redemption of debentures by RHFL, the process of execution will be cumbersome.
- 15) Under Section 71(10), Companies Act, 2013 the term used is “*may*” and therefore it is not incumbent upon the NCLT to pass orders directing payment/ redemption of debentures.

The NCLT enquired whether an order of declaration or a decree of payment by RHFL is required to be passed under Section 71(10), Companies Act, 2013. To which, Senior Counsel of ITSL responded that Section 71(10), Companies Act, 2013 is amply clear as it requires that a decree to be passed directing repayment of amounts due to the NCD holders.

Senior Counsel of ITSL, in his rejoinder submitted as follows:

- 1) The reliance on the decision of NCLAT is misplaced since at paragraph 13 of the judgment, it is stipulated that the NCLT is not empowered to traverse beyond its powers of directing the issuer company to redeem the debentures and repay the principal amount and interest to the NCD holders.
- 2) The scheme of Section 71(10), Companies Act, 2013 is very narrow and straightforward. RHFL has admittedly defaulted on its payment of principal amount and interest payable to all NCD holders and in view thereof, the NCLT ought to pass orders directing RHFL to redeem the debentures.
- 3) The process of execution is on a separate footing as that of a decree for repayment under Section 71(10), Companies Act, 2013.
- 4) The NCLT is not prevented from passing orders of payment by RHFL on the ground that the process of execution shall be difficult/ cumbersome.

Counsel of RHFL, in his sur-rejoinder submitted that as instructed by clients, the bids from prospective buyers of business and assets of RHFL shall close by 15 January 2021 and in view thereof, no orders directing redemption of payment should be passed by the NCLT.

Upon hearing the parties at length, the Hon’ble NCLT reserved the captioned Company Petitions for “*Orders*”.

12. Status as on 15.03.2021:-

The Company Petitions were not listed on 12.03.2021 due to the judicial member's personal exigency. The Bench (NCLT Courtroom-I) could not preside. As per the cause list uploaded on NCLT's website, the Company Petitions were mentioned today, 15 March 2021 before NCLT-I.

Senior Counsel, appearing on behalf of ITSL apprised the court of the facts and submitted as follows:

- 1) The present Company Petitions have been filed by ITSL, for secured and unsecured debentures, in its capacity as a debenture trustee under Section 71(10) of Companies Act, 2013 for redemption of debentures due and payable to over 20,000 debenture holders.
- 2) The Company Petitions have been finally heard by the NCLT, and no further arguments are required to be advanced.
- 3) On 11 January 2021, the NCLT had directed that the Company Petitions be listed on 12 March 2021 awaiting the decision of the resolution plan, if any, and no further time will be granted.
- 4) However, since the Bench did not preside on 12 March 2021, the Company Petitions were adjourned to 6 April 2021.
- 5) Until date, no resolution plan has been finalized by RHFL and its inter-creditor agreement ("ICA") lenders.

At which time, the Bench asked Counsel of RHFL & RCL the status of resolution plan. To which Counsel of RHFL responded that she is yet to receive instructions from RHFL in respect of the resolution plan. She further submitted that additional time be granted to RHFL to place on record an affidavit providing details of events that have transpired since 11 January 2021. The Bench then proceeded to state that the Company Petitions be listed on 6 April 2021 itself, for which only 10 business days remain. Senior Counsel of ITSL intervened and submitted as follows:

- 1) On the last date of hearing i.e. 11 March 2021, the advocates for RHFL had clearly submitted that the resolution plan will be completed within a time-span of two months. However, no such resolution plan has been finalized.
- 2) ITSL represents 20,000 individual debenture holders who have invested small amounts in RHFL.
- 3) If the Company Petitions are adjourned to April, 2021, grave prejudice will be caused to debenture holders who are yet to receive their monies.
- 4) The principal amount and interest of the debentures have become due and payable and RHFL has admitted the debt.

Counsel of RHFL & RCL opposed the submissions advanced by Senior Counsel of ITSL and requested that the Company Petitions be placed on 6 April 2021.

Upon hearing the parties, the NCLT directed that the Company Petitions be listed on **23 March 2021**.

13. Status as on 23.03.2021

The company petitions filed under Section 71(10) of the Companies Act, 2013 (“**Company Petitions**”) were listed today, 23 March 2021 before NCLT-I at Serial Nos. 37 and 38, respectively. We also understand that Counsel / Advocates were present on behalf of Bank of Baroda, however, neither any intervention application nor any praecipe seeking representation has been filed by Bank of Baroda (*as confirmed by the court associate*).

Due to paucity of time, the captioned Company Petitions could not be taken up by the Hon’ble NCLT and the Bench directed that the Company Petitions be listed on 19 April 2021. Senior Counsel of ITSL attempted to mention the matter, however, he was not allowed.

After court working hours, Counsel on behalf of ITSL before the Technical Member and Judicial Member of Courtroom – I in their respective chambers and requested for an earlier date. Our Counsel briefed the members of the facts of the Company Petition and apprised them of the order dated 11 January 2021. Upon hearing the submissions, the Judicial Member directed that the Company Petitions be listed on **8 April 2021**. The Judicial Member is on leave from 25 March 2021 and the NCLT is shut from 29 March 2021 to 2 April 2021, on account of Holi.

14. Status as on 08.04.2021

The company petitions filed under Section 71(10) of the Companies Act, 2013 (“**Company Petitions**”) were listed today, 8 April 2021 before NCLT-I at Serial Nos. 13 and 14, respectively. Counsel along with Advocates were present on behalf **ITSL**, Counsel on behalf of Reliance Home Finance Limited (“**RHFL**”) and Reliance Capital Limited (“**RCL**”) were also present, and Counsel on behalf of Bank of Baroda (“**BOB**”) was also present.

Hearing at 11:30 AM

When the matter was called out, Counsel of BOB submitted as follows:

- (a) The present intervention in the Company Petitions is being sought by BOB in its capacity as the lead bank to the inter-creditor agreement (“**ICA**”);
- (b) At present, a resolution process under RBI’s circular dated 7 June 2019 is being undertaken by BOB and its ICA lenders to resolve the debts of RHFL;
- (c) In this respect, BOB had filed two intervention applications on 23 March 2021, which are not on this Tribunal’s board today;
- (d) BOB has received four non-binding bids from its bidders;
- (e) The resolution process is at a fairly advanced stage as on date;
- (f) 95% of the creditors of RHFL have acceded to the ICA and are agreeable to the bid process;
- (g) Any orders that are passed by this Hon’ble Tribunal will act adversely to the present resolution process.

At which time, Counsel of ITSL intervened and submitted as follows:

- (a) The order passed by this Tribunal on 11 January 2021 is self-operative;
- (b) The Applicant's right to a decree cannot be interfered with by third parties to the present dispute;
- (c) BOB has absolutely no cause of action in intervening in the present Company Petitions;
- (d) The only parties to a dispute under Section 71(10), Companies Act, 2013 can be the holder and issuer of debentures;
- (e) BOB can in no manner debar the Applicant from availing any decree from this Tribunal;
- (f) The present process is not akin to a corporate insolvency resolution process ("CIRP");
- (g) The resolution process of RHFL has been undertaken since August 2019;
- (h) On 11 January 2021, an unequivocal submission was made on behalf of advocate for RHFL that around 5 to 6 bids have been received and the resolution process shall be completed within two months;
- (i) The time period of two months has long expired and the order dated 11 January 2021 should be strictly adhered to;
- (j) Under Section 71(10), Companies Act, 2013, all that the Tribunal is to examine is whether the debt is due by the issuer of debentures;
- (k) The present Company Petitions do not seek enforcement of any security and therefore the apprehension of BOB is misplaced;
- (l) In terms of the NCLAT decision in Akhil R. Kothakota v. Tierra Farm Assets, the Appellate Tribunal had clearly held that the provisions of Section 71(10), Companies Act, 2013 are to be strictly construed and orders as deemed fit should be passed;
- (m) The present proceedings are summary in nature and orders are required to be passed by this Tribunal.

Counsel of BOB further submitted as follows:

- (a) Rule 73 of the NCLT Rules, 2016 clearly provide that all persons interested shall be permitted by the NCLT to advance their submissions;
- (b) The language of Section 71(10), Companies Act, 2013 is not mandatory but discretionary;
- (c) While Counsel of ITSL is right in submitting that the time period of two months has expired, however, the same has been utilized by BOB and RHFL to consider bids received from the bidders;
- (d) The debt owed due to banks is INR 7100 crores and they are relevant stakeholders in the litigation;
- (e) The order dated 11 January 2021 is not self-operative and in no manner contemplates that if by 12 March 2021 no resolution in place, orders will be passed.

Counsel appearing on behalf of RHFL submitted as follows:

- (a) The time period of two months granted by this Tribunal has been utilized towards consideration of bids received by the bidders;
- (b) The process will be finalized shortly and some time be given to BOB and RHFL to finalize the bids to be received.

Upon hearing the parties, the Tribunal inquired whether the intervention applications filed by BOB have been finally numbered and placed on record, to which Counsel of BOB responded that the Registry has not indicated the same to BOB Counsel. Counsel of ITSL, at which time submitted that neither the Applicant nor its advocates have been served upon with copies of the intervention applications.

The Tribunal directed that the status of the intervention applications be identified and the Bench will take up the intervention applications for hearing at 2:30 PM.

Hearing at 2:30 PM

The Tribunal, upon inquiring of the status of the intervention applications stated that the intervention applications have been marked for objections by the Registry and directed Counsel of BOB to upload appropriate copies of the applications at the earliest. By consent of the parties, the Tribunal proceeded to hear the intervention applications on merit.

Counsel appearing on behalf of BOB submitted as follows:

- (a) The RBI in its letter addressed to BOB refused to intervene in the ongoing resolution process conducted by BOB;
- (b) The ICA lenders have direct interest in the present litigation and it is necessary they be heard at length;
- (c) The Tribunal took cognizance of the fact that the interest of other stakeholders will be affected if orders are passed, on 11 January 2021;
- (d) The resolution process is at an advanced stage and shall conclude shortly;
- (e) The voting process by the creditors is yet to fructify;
- (f) The ICA lenders represent debt aggregating to INR 7,100 cores.;
- (g) A larger body of lenders of RHFL have acceded to the ICA;
- (h) The lenders had an option to approach the Tribunal under Section 7, Insolvency & Bankruptcy Code, 2016, however the same was not done in view of the resolution process of RHFL.

Counsel of ITSL, while responding submitted as follows:

- (a) Rule 2(16) of the NCLT Rules, 2016 define “party” to the proceedings and Rule 2(18) of the NCLT Rules,2016 defines “person interested” which includes creditor;
- (b) However, Rule 73 while making use of the term person interested makes it clear that the same shall be used only in the context of outcome of the Company Petitions;
- (c) Therefore, the only parties to the present dispute can be the holder and issuer of debentures and no third category of party involved exists in law;
- (d) The present Company Petitions are a matter of right *in personam* and not right *in rem* for BOB to seek intervention before this Tribunal;
- (e) BOB is seeking to circumvent the contractual provisions existing between RHFL and ITSL, which is not permissible in law and is untenable;
- (f) Counsel of BOB is incorrect in his submission about possibility of a CIRP process by the bankers since RHFL is an NBFC;
- (g) The Hon’ble Supreme Court in *Kasturi v. Iyyamperumal* laid down the law pertaining to necessary party and proper party. In view of the principles laid down therein, BOB has neither a necessary party nor a proper party;
- (h) The Hon’ble Calcutta HC in *Bengal Global Infra Limited v. Chaitanya Alloys Pvt. Ltd.* held that when monies are owed by the debtor, no other person can seek impleadment apart from the creditor to whom the debt is due in respect of that service only;
- (i) The Hon’ble SC in *Dhampur Sugar Mills v. State of Uttar Pradesh* held that the Tribunal is bound to exercise all such powers that are vested upon it by the statute;
- (j) It is within the jurisdictional domain of the present Tribunal to pass relevant orders defors any representation from BOB;
- (k) BOB has failed to establish as to how any orders from this Tribunal will prejudice the resolution process being undertaken by RHFL and BOB;
- (l) The submissions of BOB in its intervention applications run contrary to the submissions made by RHFL on 11 January 2021;
- (m) It is evident from the intervention applications that the resolution process is nowhere close to any completion;
- (n) BOB is attempting to create an artificial prejudice in favour of BOB and RHFL;
- (o) In view thereof, the Tribunal dismiss the intervention applications with exemplary costs and pass orders directing RHFL to redeem the debentures.

Upon hearing the parties at length, the Tribunal directed that the intervention applications be “*reserved for orders*” and that upon pronouncement of orders in the intervention applications, the Company Petitions shall be decided by the Tribunal. The Tribunal further directed that parties shall file their written submissions by 5 PM, 9 April 2021.

The Written Submission on behalf of ITSL is filled in the Tribunal.

Please visit our website for future updates in the matter.