

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

IA No. 1371 /2023)
(Filed under Rule 11 of the National Company Law Appellate
Tribunal Rules, 2016)

in

Company Appeal (AT) (CH) (INS.) No. 375 / 2023
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

**JBM Homes Private Limited &
JBM Shelters Private Limited**

Reliance Commercial Finance Limited,
(Formerly Reliance Home Finance Limited),
Sai JBM Complex, 1st Floor,
D. No. 536/1057, P.No. 5,
Poonamallee High Road,
Arumbakkam, Chennai – 600 106.

**...Applicant /
Appellant**

Versus

1. Mr. Tharuvai Ramachandra Ravichandran, ...Respondent No. 1 /
Resolution Professional of JBM Homes Pvt. Ltd., Respondent No. 1
No. 47 Bazar Road, Pallavaram,
Chennai – 600 043.

2. Mr. Venkatraman Subramanian, ...Respondent No. 2
Liquidator of JBM Homes, Private Limited, / Respondent No. 2
Flat No. 4A, Ramar Kutil, 3/5 Second Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020.

AND

(IA No. 1341 /2023)
(Filed under Rule 11 of the National Company Law Appellate
Tribunal Rules, 2016)

in

Company Appeal (AT) (CH) (INS.) No. 376 / 2023
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

**JBM Homes Private Limited &
JBM Shelters Private Limited**

Reliance Commercial Finance Limited,
Represented by Mr. M. Senthil Kumar
(Formerly Reliance Home Finance Limited),
Sai JBM Complex, 1st Floor,
D. No. 536/1057, P.No. 5,
Poonamallee High Road,
Arumbakkam, Chennai – 600 106.

**...Applicant /
Appellant**

Versus

1. LICHFL Trustee Company Pvt. Ltd.

Acting as trustee for
LICHFL Urban Development Fund,
Acting through its investment Manager,
LICHFL Asset Management Company Limited,
Bombay Life Building, 2nd Floor, 45/47,
Veer Nariman Road, Mumbai – 400 001.

**...Respondent No. 1 /
Respondent No. 1**

2. Vistra ITCL (India) Limited,

(Formerly IL&FS Trust Company Limited)
Acting as the debenture Trustee for Applicant 1,
IL & FS Financial Centre, Plot No. C22,
G Block, Bandra Kurla Complex,
Bandra East,
Mumbai – 400 051.

**...Respondent No. 2 /
Respondent No. 2**

**3. Mr. Tharuvai Ramachandra
Ravichandran,**

Resolution Professional of JBM Homes Pvt. Ltd.,
No. 47 Bazar Road, Pallavaram,
Chennai – 600 043.

**...Respondent No. 3 /
Respondent No. 3**

4. Mr. Venkatraman Subramanian,

Liquidator of JBM Homes, Private Limited,
Flat No. 4A, Ramar Kutil, 3/5 Second Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020.

**...Respondent No. 4 /
Respondent No. 4**

Present :

For Appellants : Mr. V. Prakash, Senior Advocate
For Ms. K. Jayasudha, Advocate
For Appellant in CA (AT) (CH) (Ins.) Nos. 375 & 376/2023
& Applicant in IA No. 1371 and 1341/2023

For Respondents: Mr. E. Om Prakash, Senior Advocate
For Mr. Srinivasan, Advocate
For R1 in CA (AT) (CH) (Ins.) Nos. 375 & 376/2023
Respondent No.1 in IA No. 1371/2023
Respondent No. 3 in IA No. 1341/2023

Ms. Elamathi, Advocate, For Liquidator/ R2 in CA (AT)
(CH) (Ins.) No. 375/2023 and for Liquidator/R4 in CA (AT)
(CH) (Ins.) No. 376/2023
Respondent No. 2 in IA No. 1371/2023
Respondent No. 4 in IA No. 1341/2023

ORDER
(Hybrid Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the Impugned Order in IA/IBC/919(CHE)/2022 in IBA/812/2020 dated 12.09.2023 and in IA/IBC/1779/CHE/2023 in IA/IBC/669/CHE/2022 in IBA/812/2020 dated 11.10.2023, respectively passed by the Adjudicating Authority / Tribunal, NCLT, Bench – II, Chennai, Reliance Commercial Finance Limited, preferred these Appeals. Since both these Appeals refer to common facts and issues, they are being disposed of by this Common Order. IA(IBC)/919/CHE/2022 in IBA/812/2020 & IA(IBC)/972/CHE/2022 in IBA/826/2020, were preferred by the Resolution Professional ('RP') of JBM

Homes Private Limited and JBM Shelters Private Limited, respectively under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'), seeking Liquidation of both the Corporate Debtor Companies and to appoint the Resolution Professional, as the Liquidator.

2. The Adjudicating Authority has disposed of both these Applications, with the following directions:

“38. In order to carry out the process and for completion and handing over of the 71 sold flats to the homebuyers, this Tribunal passes the following orders and directions;

i. The Liquidator appointed by this Tribunal shall be in-charge for the completion of the project 'GRT Grand'.

ii. It is stated that the RP /Liquidator has obtained the quote from the contractors and the same has also been shared to all the stakeholders. Hence, the Liquidator shall take all earnest steps to complete the project 'GRT Grand' within a period of 4 months from the date of this order.

iii. The Liquidator shall open three Bank Accounts viz. (i) for the project GRT Grand, (ii) for the Liquidation of the Corporate Debtor - 1 (iii) for the Liquidation of the Corporate Debtor - 2.

iv. Since the Financial Creditor viz. Reliance Home Finance Limited is in possession of title deeds in respect of various flats of the Corporate Debtor, we direct Reliance Home Finance Limited to hand over the title deeds in respect of the flats which are coming within the purview of "Excluded Assets", if any, to the Liquidator within a period of 10 days from the date of this order.

v. The Home buyers are categorized as follows and are required to deposit their balance amount as follows;

a. 100% of the balance receivables by the Registered homebuyers, who have taken possession / keys of the flat or by unregistered homebuyers who have taken possession / keys of the flat;

b. 95% of the balance receivables by the registered homebuyers who have not taken possession / keys of the flat. The balance 5% can be paid at the time of handing over the respective units;

c. Unregistered homebuyers / allottees who have not taken possession of the units or do not have a registered sale deed in their favour, will have to intimate the RP within 7 days, whether they are interested in registering the flat; and if yes, they pay 95% of the sale consideration on registration. The balance 5% can be paid at the time of handing over of the respective units. If the customers are not interested in registering the flat and would like to cancel the sale, the same can be cancelled and the flat should be allowed to be resold and the proceeds from the re-sale should be utilized for completion of the pending work. Refund for such uninterested homebuyers shall be made from the proceeds available in the 'GRT Grand' account, only after completion of the entire project and obtaining a completion certificate and not before.

d. If no intimation is received from the unregistered homebuyers, within a period of 14 days, the allotment should be treated as cancelled and the flat should be allowed to be resold and the proceeds from the re-sale should be utilized for completion of the pending work. Refund for such uninterested homebuyers shall be made from the proceeds available in the 'GRT Grand' account, only after completion of the entire project and obtaining a completion certificate and not before.

vi. The entire proceeds/receivables collected in respect of the project GRT Grand shall be deposited only in the 'GRT Grand' account and not in any of the Liquidation account of the Corporate Debtor.

vii. None of the Financial Creditors shall have charge or security interest over the amount lying in the said project 'GRT Grand' account.

viii. The Liquidator alone is authorized to use the Bank account opened in the name of 'GRT Grand'.

ix. The amount lying in the said 'GRT Grand' account shall only be used for the completion of the project and not for any other purpose. The said account is required to be audited by a

Chartered Accountant every month and the same shall be filed before this Tribunal.

x. No internal work will be done for the homebuyers who have possession of the respective units.

xi. Since, as on date there are no funds available for the completion of the project, the homebuyers are requested to pay the balance receivables in order to complete the project.

xii. Only after obtaining the completion certificate and service connections; and receipt of the balance dues from the respective homebuyers, the RP/Liquidator shall handover the respective units to the homebuyers.

xiii. After handing over of the units to the homebuyers, the surplus amount lying in the 'GRT Grand' account shall be transferred to the 'Liquidation account of the Corporate Debtor-1' and 'Liquidation account of the Corporate Debtor-2 in the proportion of 25:75.

xiv. In so far as the 30 units that are unsold, the same shall form part of the Liquidation estate of the Corporate Debtor.

xv. After completion of the project and handing over of the 71 units to the homebuyers, the remaining 30 units, which are unsold, shall be sold by the Liquidator and the proceeds of the same shall be paid to the Financial Creditors as per the waterfall mechanism stipulated under Section 53 of IBC, 2016.

xvi. If the Liquidator is facing any difficulty in implementing this order, liberty is granted to approach this Tribunal.”

3. While the Applications for Liquidation were pending adjudication by the Adjudicating Authority, the LICHFL filed an Application IA/IBC/669/CHE/2022, seeking the following reliefs:

“This application has been filed seeking the following reliefs;-

"ü. Pass an interim injunction restraining the 2nd Respondent from enforcing the mortgage, hypothecation or any security interest on the Secured Asset as more fully described in schedule herein, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 or under other applicable laws, pending disposal of IA/IBC/669/CHE/2022 before this Hon'ble Tribunal.

b. Pass an interim injunction restraining the 2nd Respondent from transferring or assigning its entitlement and interest in recovering the Second Loan of Rs.7,96,81,736/- and rights under the memorandum of deposit of title deeds dated 30.06.2017 registered as document no.6543 of 2017 and deed of hypothecation dated 28.04.2015, pending disposal of IA/IBC/669/CHE/2022 before this Hon'ble Tribunal.

c. Pass an order directing the 2nd Respondent to deposit all title deeds and other documents relating to the Secured Asset as more fully described in the memorandum of deposit of title deeds dated 30.06.2017 registered as document no.6543 of 2017, with the Liquidator Mr. Venkataraman Subramanian pending disposal of IA/IBC/669/CHE/2022 before this Hon'ble Tribunal.

d. Pass any such order(s) or direction(s) that this Hon'ble Tribunal may deem fit in light of the facts and circumstances of the case."

(Emphasis Supplied)

4. The Adjudicating Authority has observed that since the Liquidator has started working on the Order dated 12.09.2023 and taken steps in furtherance to the said Order, in order to protect the interests of Home Buyers, certain directions were given as to the completion of the Project and Allotment of Flats to the Home Buyers and the proceeds in respect of the sold flats to be distributed. It is stated in the Impugned Order dated 11.10.2023 that as there was no `Stay' against the Order dated 12.09.2023, considering the facts in totality, the Second Respondent in IA(IBC)/669/CHE/2022 and the Appellant herein was restrained from enforcing the Mortgage, Hypothecation or any Security Interest on the Secured Assets and was also directed to handover all the documents, relating to the

Secured Creditor, pending disposal of the Application, within three days from the date of the Impugned Order.

5. Aggrieved by the aforementioned directions, these Appeals are preferred. The Learned Senior Counsel Mr. V. Prakash, appearing for the Appellants strenuously argued that the Appellants were not a Party to the Liquidation Applications and that the directions given in the Impugned Order affect the interest of the Appellants with respect to the Secured Assets and also prejudice their rights. The Learned Senior Counsel submitted that the Corporate Debtor Company had availed Credit Facility from LICHFL Trustee Company Pvt. Ltd. of Rs.18,39,01,800/- and the said loan amount was secured by mortgage of Vandalur Project Property, Pammal Project Property and Anakaputhur Project and the Appellant was approached by the Corporate Debtor for Construction Finance Loan Facility and the Second Respondent on 31.05.2017 has sanctioned an amount of Rs. 11 Crores for developing a Residential Project (GST Grand) at Vandalur, Chennai. The loan facility advanced by the Appellant herein was secured by 1st Charge on the Project land together with all buildings and structures thereon, both present and future and with further exclusive Charge on the schedule receivables from the customers of the Corporate Debtor Company, with respect to the Project.

6. It is stated that an equitable mortgage by deposit of Title Deeds dated 30.06.2017 was created by the Corporate Debtor Company with express consent of M/s. Vistra ITCL (India) Limited in its capacity as the Trustee of LICHFL Trustee Company Private Limited. It is submitted that the Appellant was given the 1st Charge of the Project land through the Tripartite Agreement and LICHFL also issued a No Objection Certificate (NOC) for ceding of the 1st Charge, in favour of the Appellant by Letter dated 14.06.2017 for the purpose of effecting the mortgage.

7. It is further submitted that as the Corporate Debtor could not discharge the 1st Loan, had sought for restructuring of the said 'Project Loan', the Appellant, on the request of the Corporate Debtor has sanctioned a 'Construction Loan' of Rs.7,96,81,736/- in lieu of the Outstanding Loan Amount due. It is submitted that the Appellant through its Letter dated 12.03.2019 had conveyed the restructuring of the loan facilities to the LICHFL and the Corporate Debtor vide Letter dated 20.03.2019 also sought for an NOC with respect to the said restructuring. The Loan Account of the Corporate Debtor had become an NPA on 23.03.2021 and due to the Default in Repayment of the Loan Dues, the Appellant on 18.06.2021, had issued a Notice under Section 13(2) of the SARFAESI Act, 2002, recalling the Loan amount payable and the same was also communicated to LICHFL as per the terms of the Tripartite Agreement. After the Loan amount become NPA and initiation of SARFAESI measures for recovery of the Loan Dues, LICHFL

issued a Legal Notice dated 11.08.2021 that the 1st Loan having been discharged by the Corporate Debtor, the Appellant has no right over the Project land and even if such a right exists, it shall be sub-servient to the rights of LICHFL, since the NOC for 1st Charge was only with respect to the 1st Loan provided by the Second Respondent. It is argued that the Appellant vide their Reply dated 07.09.2021 had categorically denied that the loan availed by the Corporate Debtor was discharged in full and it was further clarified that the amount due and outstanding arises out of the restructuring of the 1st Loan sanctioned by LICHFL on 31.05.2017 and therefore, the 1st Charge of the Project land remains with the Appellant.

8. The Appellant being a secured Financial Creditor of the Corporate Debtor was a Member of the Committee of Creditors with a Claim of Rs.6,48,54,691/-, as on the date of the initiation of the Corporate Insolvency Resolution Process. During the pendency of the `CIRP`, there was only one Resolution Applicant, who was the Erstwhile Director of the Corporate Debtor and this Plan was rejected by the Corporate Debtor in its 16th Meeting held on 18.07.2022 and it was resolved to appoint the First Respondent as the Liquidator. It is contended by the Learned Senior Counsel for the Appellants that the Adjudicating Authority had erroneously held that the Appellant had filed their Reply in the Applications for `Liquidation` and the Parties were heard and proceeded on the presumption

that the Charge of the Project land vests with only LICHFL and issued directions without hearing the Appellant herein.

9. The Interim Order granted against the Appellant in IA(IBC)/1779/CHE/2023 in IA(IBC)/669/CHE/2022, stems from the directions in the Common Liquidation Order dated 12.09.2023, wherein the unsold 30 Residential Flats mortgaged to the Appellants were directed to be kept as part of the Liquidation Estate of the Corporate Debtor and after the completion of the Project, and handing over of the 71 Units to the Home Buyers, the remaining 30 Units which have the Security Interest of the Appellants were directed to be sold by the Liquidator and the proceeds were to be disbursed to the Financial Creditors as per the Waterfall Mechanism, under Section 53 of the 'Code'.

10. It is vehemently contended by the Learned Senior Counsel that the Declaratory Reliefs sought for by the First Respondent are '*Inter se*' disputes, between the Creditors and the Adjudicating Authority does not have Jurisdiction to entertain these disputes and the subject Reliefs can be granted only by Civil Courts. It is the further case of the Appellants that the 2nd Loan is not a fresh Loan and it was given in lieu of the default committed by the Corporate Debtor in servicing the 1st Loan and therefore, it was to be construed as a restructuring of the 1st Loan as evinced in the Letters dated 12.03.2019 & 20.03.2019. It is also the case of the Appellants that in terms of the Tripartite Agreement dated

14.06.2017, the Appellant is entitled to retain the Security Interest over the Secured Assets for the 2nd Loan. It was argued by the Learned Senior Counsel that the First Respondent had remained silent from 12.03.2019 to 11.08.2021 and therefore, it has to be construed that the First Respondent had consented to the Appellants 1st Charge, by acquiesce.

11. The Learned Senior Counsel Mr. E. Om Prakash, appearing for the First Respondent and Ms. Elamathi, Learned Counsel appearing for the Liquidator strongly supported the Impugned Orders challenged in these Appeals on the ground that the Corporate Debtor Company availed Rs.11 Crores 1st Loan from the Appellant vide Sanction Letter dated 31.05.2017 and in relation to the 1st Loan, the Corporate Debtor, the First and Second Respondents, and the Appellants entered into a Tripartite Agreement dated 14.06.2019, under which, it was agreed that the First Respondent will cede the 1st Charge on the Secured Assets in favour of the Appellant; that the 1st Respondent will have the 2nd Charge, until the 1st Loan is settled; the First Respondent issued an NOC dated 14.06.2017 ceding the 1st Charge over the Secured Assets and took the 2nd Charge subject to the condition that the NOC was in respect of the 1st Loan and on repayment of the 1st Loan, the First Respondent will become the 1st Charge Holder; that based on the NOC, the Mortgage Deed dated 30.06.2017 was executed in favour of the Appellant to secure the 1st Loan; in 2019, the First Respondent received Letters from the Appellant and the Corporate Debtor Company requesting the First

Respondent to provide similar NOC to provide Secured Assets as Collateral for another Loan of Rs.7,96,81,736/-, which is actually a 2nd Loan Sanctioned vide a 2nd Sanction Letter dated 31.03.2019 and that the NOC for the 2nd Loan which was requested was never issued by the First Respondent and therefore, the First Respondent was not aware until June 2021 that the Appellant had claimed the Secured Assets as collaterals towards the 2nd Loan.

12. The Learned Senior Counsel for the First Respondent submitted that the NOC dated 14.06.2017 was issued by the First Respondent only in respect of the 1st Loan and therefore upon repayment of the 1st Loan, the 1st Respondent became the First and Exclusive Charge Holder. It is submitted that in the 'CIRP' of the Corporate Debtor Company, the Appellant was admitted as a Secured Creditor in respect of the 2nd Loan with Security Interest over the Secured Assets, which were provided to secure the 1st Loan. On becoming aware of it, the First and Second Respondents filed IA (IBC) / 669 / CHE / 2022, challenging the Classification of the Appellant as a Secured Creditor. Pending consideration of the said Application, the Corporate Debtor was ordered to be liquidated vide Order dated 12.09.2023 in IA (IBC)/919/CHE/2022.

13. It is further submitted that to protect the 'Home Buyers' interest and for completion of the Project, a direction was issued to restrain the Appellant from enforcing the Security Interest and to handover the Title Deeds to the Liquidator.

14. It is argued by the Learned Senior Counsel of the First Respondent that the Sanction Letter dated 31.01.2019 clearly states that the 2nd Loan is a new Construction Finance Loan and there is no reference to the restructuring of the 1st Loan in the Sanction Letter and that this Sanction Letter required a Fresh NOC which was never given and therefore, both the Loans are distinct and different. In fact, in the email dated 13.03.2019, the Appellant admitted that it did not have the 1st Charge over the Project and requested the First Respondent to issue a Fresh NOC ceding the Charge. It is contended that the Tripartite Agreement was in relation to the 1st Loan only and that the Adjudicating Authority has the Jurisdiction to decide the '*Inter se*' disputes, between the 'Creditors', under Section 60(5) of the I & B Code, 2016 and such disputes need not be relegated to a Civil Court.

Assessment:

15. The main issue which falls for consideration in these Appeals is whether, the 2nd Loan is a Fresh Loan or whether it was given in lieu of the default committed by the Corporate Debtor in servicing the 1st Loan and whether it was given for restructuring of the 1st Loan and hence, the Appellant is entitled to retain the Security Interest over the Secured Assets in terms of the Tripartite Agreement entered into on 14.06.2017.

16. Since the sanctioning and disbursal of the 1st Loan vide Letter dated 31.05.2017, the Tripartite Agreement entered into on 14.06.2017 and the NOC issued on 14.06.2017, are not in dispute, we address to the main point for consideration stated in Paragraph No.15.

17. At the outset, the Sanction Letter dated 31.01.2019 is reproduced as hereunder:



Date: 31st January 2019

To,

M/s JBM Homes Pvt Ltd
M/s JBM Shelters Pvt Ltd
Mr. Anand kumar B
Mr. Nirmal Kumar B
Mr. Kamlesh Kumar B

Dear Sirs,

Sub: Construction Finance Loan By Way of Rupee Loan

With reference to your application dated 31.1.2019 we are pleased to inform you that our sanction authority has sanctioned you construction finance loan of Rs. 7,96,81,736 (Rupees Seven Crores Ninety six lacs Eighty one thousand seven hundred and Thirty Six Rupees only) hereinafter referred as the "Facility", on the terms & conditions mentioned hereunder.

In case the terms & conditions mentioned hereunder are acceptable to you, we request you to return the duplicate copy of this letter duly signed in token of acceptance of the terms & conditions specified therein, within 15 days from the date of receipt of this letter.

Please note that this communication should not be construed as giving rise to any binding obligation on part of Reliance Home Finance Ltd. (RHFL) unless you have returned this letter duly signed by you as a token of acceptance hereof & signed / executed the agreements / documents in connection with the facility within a period of one month or such further time as may be extended by RHFL in writing in its absolute discretion. The terms mentioned in this letter are not conclusive and you will have to sign loan agreement and other ancillary documents in this regard which would be binding on you.

Reliance Home Finance Limited

Registered Office: Reliance Centre, South Wing, 6th Floor, Off Western Express Highway, Santacruz (East), Mumbai - 400 055

T +91 22 3303 6000 / F +91 22 3303 6662, E-mail: rhfl.investor@relianceada.com, Website: www.reliancehomefinance.com

Customer Service: T +91 22 3967 1600 / 1800-300-90909 (toll free) / E-mail: customercare@reliancehomefinance.com

Branch Office: Reliance House, 4th floor, No.6 Haddows Road, Nungambakkam, Chennai - 600 006.

CIN: L67190MH2008PLC183216

A RELIANCE CAPITAL COMPANY

18. The aforementioned Sanction Letter, given to the Corporate Debtor Company by the Appellant for 'Construction Finance Loan' for an amount of Rs.7,96,81,736/- does not anywhere state that it is for restructuring the 1st Loan or that it is in continuation of the 1st Loan. The terms and conditions appended to this Sanction Letter also do not refer to any restructuring of the 1st Loan. It is also seen from the record that the Loan Account Number of the 1st Loan is RHCFCHE000053223 and the Second Loan is RHCFCHE000074642. The Account Statements, which are part of the record also evidence that both the Loans have distinct Loan Account Numbers. The Account Statement as on 21.12.2021 of the Appellant clearly shows the status of the Loan Account as 'CLOSED'. It is also seen from the record that the 2nd Loan which was disbursed on 31.01.2019, vide the aforementioned Sanction Letter, was transferred into the 1st Loan Account as repayment.

19. The Appellant places reliance on the Letters dated 12.03.2019 and 20.03.2019 stating that they have restructured the Loan Facility vide the 2nd Loan Disbursal and requested the First Respondent herein to issue an NOC for the Revised Sanction Letter dated 31.01.2019. It is clear from the Letter dated 20.03.2019, addressed to the First Respondent that the NOC was yet to be issued. At this juncture, we find it relevant to reproduce the email dated 13.03.2019, which substantiates the contention of the First Respondent that the NOC for

ceding of the 1st Charge in favour of the Appellants was still pending and a request was being made for its issuance.

Srinivasan M.D

ANNEXURE - L

From: Laxmi Narayan/RHF/CR-Mort-CF <Laxminarayan.Krishnan@relianceada.com>
Sent: 02 April 2019 16:39
To: ashutosh.hegde@lichflamc.com; sandhya@lichflamc.com;
ullas@lichflamc.com; arpit.agrawal@lichflamc.com; naman@lichflamc.com;
rohit.karale@lichflamc.com; surinder.mohan@lichflamc.com;
ajay_grover@lichflamc.com
Cc: Amey Tadpatrikar/RHF/CR-Mort-CF; Ashok Nehru Chode/RHF/CR-Mort-CF;
Arjun Sankar/RHF/S&D-Mort-CF; Ananth Kumar .B.D/RHF/S&D-Mort-CF; A
Devarajan/RHF/Legal
Subject: Fw: Request for No-Objection Certificate - Funding to JBM Shelters Private
Limited
Attachments: Request Letter for NOC.pdf; Letter from JBM.pdf; NOC from LIC -
June2017.docx

Dear Mr Ashutosh

Please find attached the copy of NOC that was issued in June 2017. We are also enclosing the request letter from JBM in this regard.

We request you to issue the NOC in similar lines for further process.

Regards
S Laxmi Narayan
Real Estate Finance
09566210138

From: Laxmi Narayan/RHF/CR-Mort-CF
Sent: Wednesday, March 13, 2019 11:39 AM
To: ashutosh.hegde@lichflamc.com; sandhya@lichflamc.com; ullas@lichflamc.com;
arpit.agrawal@lichflamc.com; naman@lichflamc.com; rohit.karale@lichflamc.com;
surinder.mohan@lichflamc.com; ajay_grover@lichflamc.com
Cc: Amey Tadpatrikar/RHF/CR-Mort-CF; Ashok Nehru Chode/RHF/CR-Mort-CF; Arjun Sankar/RHF/S&D-Mort-
CF; Ananth Kumar .B.D/RHF/S&D-Mort-CF; A Devarajan/RHF/Legal
Subject: Request for No-Objection Certificate - Funding to JBM Shelters Private Limited

Dear Mr Ashutosh

Greetings!

This is with reference to our discussion regarding NOC for ceding of first charge in favor of Reliance Home Finance Limited. We are enclosing with this email, a request letter in this regard for your consideration.

We request you to help us with NOC for our further processes.

Please let us know for any other information required.

Note : Kindly ignore the attachment in previous email.

Regards
S Laxmi Narayan

20. A perusal of the 'Charges Registered', under the MCA Website also establishes that no Charge was created or registered in relation to the 2nd Loan.

21. The Tripartite Agreement relied upon by the Learned Senior Counsel for the Appellants is with respect to an amount of Rs.11 Crores sanctioned for the purpose of Construction Finance, against which, an NOC was also issued on 14.06.2017. It is clearly recorded that *upon payment* of the 1st Loan, the First Respondent would become the 1st Charge Holder and the Appellant is required to handover the Title documents. The record establishes that the 1st Loan was 'closed' and the amount paid. This is further substantiated by the fact that the Mortgage Deed is confined only to the 1st Loan and the fact that specific requests were made for Issuance of Fresh NOC from the First Respondent and a Fresh Mortgage and ROC Charge Registration.

22. Subsequently, after the matters were heard at length and the Appeals were Reserved for Orders on 01.12.2023 and the Parties were requested to file their short Written Submissions with relevant Citations, the Appellants filed IA No. 1371 / 2023 in Company Appeal (AT) (CH) (INS) No. 375 / 2023 and IA No. 1341 / 2023 in Company Appeal (AT) (CH) (INS) No. 376 / 2023, seeking to Re-open the matter and Re-hear the same. A Notice was issued on these Applications and all Parties were heard to determine, whether these Applications were required to be allowed.

23. It is the main case of the Appellants that the emails dated 08.04.2019, 18.05.2019 and 22.05.2019 were not brought on record and these emails were essential for deciding the subject issue on hand. The Learned Senior Counsel Mr. V. Prakash, appearing for the Applicants / Appellants drew our attention to email dated 22.05.2019 and the Letter dated 08.04.2019, in support of his case that the First Respondent was requested for issue of NOC in favour of the Appellants.

24. The Learned Senior Counsel Mr. E. Om Prakash appearing for the First Respondent, drew our attention to the date and time of retrieval of these emails showing that the emails were printed within a few minutes from the Email ID of the Promoter of the Corporate Debtor Company and that nothing turns on these emails as the fact remains that there is no evidence on record that the 2nd Loan was taken to restructure the 1st Loan. Subsequent to letter dated 08.04.2019, the email dated 20.05.2019, seeking for release of NOC establishes that the restructuring never took place and the NOC was never issued for the 2nd Loan.

25. At this juncture, we find it apposite to reproduce the email dated 31.01.2019, subsequent to the Issuance of the Sanction Letter, which clearly evidences that the Appellants has agreed to ***Sanction of a New Loan***, instead of rescheduling the existing Loan and close the existing Loan. This email clinches the issue that the Sanction of the Loan on 31.01.2019 is indeed a 'Fresh Loan'.

Ashutosh Hegde

From: Kamlesh JbmShelters <kamlesh@jbmselters.com>
Sent: 31 January 2019 16:56
To: Dineshji; Ashutosh; Ullas; Rohit karale
Cc: nirmal; Accounts JbmShelters
Subject: Reliance Loan

Get [Outlook for iOS](#)

Dear Sir

1. M/s.Reliance Home Finance Ltd has agreed to sanction a new loan of Rs.800 lacs instead of re-scheduling the existing loan and close the existing loan.
2. We have submitted the necessary document for Login, Legal and Valuation to them for processing of the new loan.
3. Login and valuation was completed on 30th January 2019
4. Legal is under process.
5. They have to send Draft MODT after getting clearance from their Legal Department.
6. We need to Pay interest till date to the tune of Rs.43 Lacs for closure of the existing Loan.We have paid around 41 lakhs today in that.
7. On receipt in principle sanction letter from RHFL, we will forward the Processing Fees and other terms and conditions.

Thanks & Regards

--

Kamlesh

(Emphasis Supplied)

11

JBM

09 Jul 2019

To
LICHFL Trustee Company Private Limited
LICHFL Asset Management Company Limited
304, Vibgyor Towers, Bandra Kurla Complex,
Bandra (E), Mumbai -400051.

Sub: Request to Issue NOC to Reliance HFL

Kind Attention: Mr.H.S.Shashi Kumar

Dear Sir,

As required by your good selves, we have submitted the Interest waiver request with the Pre - defined internal rate of return (IRR) as per clause 9 of Share Subscription cum Debenture Subscription and Shareholders Agreement (SSDSSA).

As per our ongoing discussions, you have not issued NOC to Reliance HFL confirming

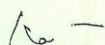
- RHFL would have first charge on future receivable from sold and unsold units of GST Grand Project; and
- that Principal repayment of the loan from LIC HFL to commence only after closure of loan from RHFL

At the same time, as reiterated in various meetings given the dismal market conditions, it is difficult to honour the IRR Obligations as stated in the original agreement. We request you to convene a joint meeting to take up the restructuring of the Initial terms related to IRR to address the current situation.

We appreciate the ever strengthening support of LIC HFL over the years and hope for a positive consideration of our request.

Thanking you,

Yours truly,
For JBM Homes Pvt Ltd


Authorised Signatory

JBM Homes Pvt. Ltd.,

JBM Enclave, # 47 Bazaar Road, Pallevaram, Chennai-600043 | Ph:044-22640666, 22640754
e mail : jbmshelters@gmail.com

26. Additionally, the subsequent correspondence dated 09.07.2019, requesting to issue NOC further establishes that the NOC was never issued and therefore, the First Respondent continues to have the 1st Charge on the subject Assets.

27. For all the foregoing reasons, both these Company Appeal (AT) (CH) (INS) No. 375 / 2023 and Company Appeal (AT) (CH) (INS) No. 376 / 2023 are dismissed relying on the facts of these matters. Having heard the Parties in great detail, we do not see any grounds to Re-open and further Re-hear the matter. Hence, we are of the view that the IA No. 1371/2023 in Company Appeal (AT) (CH) (INS) No. 375 / 2023 and IA No. 1341 / 2023 in Company Appeal (AT) (CH) (INS) No. 376 / 2023 are misconceived and dismissed accordingly. All connected pending Interlocutory Applications in the main Company Appeals (Insolvency) are closed. No order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

17/01/2024

SR / TM