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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION NO.1 OF 2019
INTERIM APPLICATION NO.2 OF 2019
INTERIM APPLICATION NO.3 OF 2019**

IN

COMMERCIAL SUIT(L)NO.1034 OF 2019

Reliance Nippon Life Asset Management
Limited

.. Plaintiff

Vs.

Dewan Housing Finance Corporation
Limited and Ors.

.. Defendants

WITH

**INTERIM APPLICATION NO.1 OF 2019, 2 OF 2019, 3 OF 2019, 4 OF 2019, 5
OF 2019, 6 OF 2019, 7 OF 2019, 8 OF 2019, 9 OF 2019 AND 10 OF 2019**

IN

NOTICE OF MOTION(L)NO.2320 OF 2019

Mr. Iqbal Chagla, Senior Advocate a/w. Mr. Zal Andhyarujina, Mr. Mayur Khandeparkar, Mr. Karan Bhide, Rugved More, and Tejas Gokhale i/b. Mr. Akhil Mahesh, Prateek Mishra, Mr. Venanoo D'Costa Advocate for the Plaintiff.

Mr. Prasad Dhakephalkar Sr. Advocate with Mr. Cyrus Ardeshir, Mr. Ashish Kamat, Mr. Munaf Virjee and Mr. Rushabh Parekh i/b ABH LLP for Defendant No. 1 and 3.

Mr. Rohit Gupta with Ms. Vinita Hombalkar i/b. Orbit Law Services for Defendant no. 2.

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Animesh Bisht, Ms. Saloni Kapadia, Mr. Kaustubh Rai i/b. Cyril Amarchand Mangaldas for the Applicant in IA No.1 OF 2019 in NMCD (L) 2320 of 2019

Mr. Animesh Bisht, Ms. Saloni Kapadia, Mr. Kaustubh Rai i/b. Cyril Amarchand Mangaldas for the Applicant in IA No.3 OF 2019, IA No.4 OF 2019, IA No.5 OF 2019, IA No.6 OF 2019 in NMCD (L) 2320 of 2019.

Mr. Virag Tulzapurkar Sr. Advocate with Mr. Vaibhav Bhure and Ms. Megha Chandra and Mr. Rohit Jadhav i/b NBD Law for Applicant in IA/1/2019 and IA/2/2019 in COMSL/1034/2019.

Mr. Virag Tulzapurkar Sr. Advocate a/w Mr. Sameer Pandit and Mr. Mohit Parekh i/b Wadia Ghandy and Co for Applicant in IA/3/2019 in COMSL/1034/2019.

Mr. Virag Tulzapurkar Sr. Advocate with Ms. Fatema Kachwalla and Mr. Yohaann Limathwalla i/b J.Sagar Associates for Applicant in IA/8/2019 In NMCD (L) 2320 of 2019.

Dr. Birendra Saraf with Mr. Vaibhav Charalwar and Mr. Nikhil Rajani i/b M/s V.Deshpande & Co for Applicant in IA/7/2019 in NMCD (L) 2320 of 2019.

Mr. Darius Khambatta Sr. Advocate with Mr. Mustafa Doctor Sr. Advocate a/w Mr. Aditya Mehta and Mr. Ryan Dsouza i/b DSK Legal for Applicant in IA/9/2019 in NMCD (L) 2320 of 2019.

Mr. Fredun DeVitre, Sr. Advocate with a/w Mr. Aditya Mehta and Mr. Ryan D'Souza i/b DSK Legal for Applicant in IA/10/2019 in NMCD (L) 2320 of 2019.

CORAM : A.K. MENON, J.

DATED : 13TH NOVEMBER, 2019.

P.C. :

1. The above interim applications are filed by State Bank of India, Bank of Baroda, Union Bank of India, Indian Overseas Bank, UCO Bank, Canara Bank, Bank of India, DCB Bank, Standard Chartered Bank, IDFC First Bank, HDFC Bank, Aditya Birla Finance Ltd and Aditya Birla Housing Finance Ltd seeking to intervene in the above suit.

2. On 10th October, 2019 the ad-interim order came to be passed in the following terms:

“(i) The ad-interim order granted on 30th September 2019 in terms of prayer clause (c) shall continue to operate till disposal of the motion. Prayer (c) is reproduced below of ease of reference.

“That pending the hearing and final disposal of the underlying suit, the defendant no.1 be temporarily enjoined and restrained from making further payments and/or disbursements to any unsecured creditors of the defendant no.1 and secured creditors of defendant no.1, except in cases where payments made on pro-rata basis to all secured creditors, including the plaintiff, out of its current and future receivables, in preference to the payments owed to the plaintiff, without the sanction of this Hon’ble Court.”

(ii) It is clarified that defendant no.2 may exercise its rights

to pursue all legal remedies that it may have and the pendency of the suit will not restrict with their rights to adopt suitable proceedings, as they may be advised.

(iii) Liberty to apply for further relief, if so advised.”

3. The applicants also seek modification of the above order by relieving the defendant no.1 (DHFL) to the extent of that the order restrained DHFL from making payment of amounts due to those banks pursuant to securitization and assignment agreements which titled differently in each of these cases and allied documents (collectively-***Assignment Agreements***).
4. After some submissions were made by some of the applicants, Mr. Chagla on behalf of the plaintiffs in above suit states on instructions that if the defendant no.1 confirms that it maintains security cover of 1.1 times the amount of the outstanding non-convertible debetures (NCDs) and as contemplated in the three debenture trust deeds covering the NCDs, the plaintiffs have no objection to DHFL making remittances to all these applicants and in accordance with the diverse Assignment Agreements.
5. Mr. Chagla also confirms that in respect of amounts due under

Assignment Agreements executed prior to the suit Debenture Trust Deeds (DTDs), the plaintiffs do not have a claim. This statement will therefore augur to the benefit of all banks/institutions who have hold Assignment Agreements executed prior to the DTDs.

6. Mr. Dhakephalkar, appearing on behalf of DHFL states, without prejudice to his contentions as to maintainability of the suit, but as a statement of fact and on instructions of Shri Amol Walawalkar, the authorized signatory and the Deputy Vice President Legal who is present in Court, that as per the records and the unaudited results of DHFL as on 30th September, 2019, the security cover is of 1 to 1.2 times of the amounts in terms of the DTDs and that the defendant no.1 shall maintain the same in terms of the DTDs. He states that an affidavit to that effect will be filed on 14th November 2019. He further states that after 30th June, 2019 no Assignment Agreements have been executed by DHFL though DHFL he may be entitled to execute further agreements.

7. In view of the statement, the ad-interim order dated 10th October, 2019 is modified to the extent that DHFL shall make payments in accordance with the various Assignment Agreements entered into between DHFL and the Applicants and the other assignees of such

loans in cases where such assignees have executed similar Assignment Agreements.

8. It is pointed out during the hearing today by Mr.Dwarkadas and Mr. Tulzapurkar that there are other banks who are not before the Court today and who have not filed intervention applications but who are due to receive remittances under similar Assignment Agreements. For avoidance of doubt it is clarified that DHFL is not now prevented from making such payments overdue or payable hereafter under the Assignment Agreements in favour of any or all such banks/ assignees of loans.
9. Three other suits filed by Axis Asset Management Company Ltd., Kotak Mahindra Asset Management Company Ltd., wherein orders similar to the one modified today have been passed are not on board today. The Banks/Assignees would have to be granted similar relief in those suits as well. List those suits tomorrow for passing appropriate orders.
10. Meanwhile Mr. Gupta on behalf of defendant no.2 states that pursuant to the DTDs, defendant no.1 has initiated appropriate action against the defendant no.1 before the DRT by filing AO no.283 of 2019 and have been granted certain reliefs. It is clarified that the order passed today will not in any manner prevent the defendant no.2 from urging

its case before the DRT and seeking reliefs as they may be advised.

11. Needless to mention this order shall be without prejudice to any other rights each of the beneficiaries under the Assignment Agreements may have.

12. In the meantime, Mr. Dhakephalkar tenders an affidavit in reply on behalf of defendant nos. 1 and 3 in Suit no. 1034 of 2019. The same is taken on record.

13. Since the Interim applications seeking intervention are pending, in the event of plaintiffs intend to make any applications for ad-interim relief or other reliefs, all the applicants in the interim applications shall be given notice.

(A.K.MENON, J.)

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