

**न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति**  
**Justice (Retd.) R. M. Lodha Committee**  
**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/  
Ref. No. JRMLC/PACL/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

**BEFORE THE RECOVERY OFFICER, SEBI**  
**ATTACHED TO**  
**JUSTICE (RETD.) R.M. LODHA COMMITTEE**  
**(IN THE MATTER OF PACL LTD.)**

|                            |  |
|----------------------------|--|
| <b>Name of the Parties</b> | 1. Blue Coast Hotels Limited<br>2. IFCI Limited<br>3. SBICAP Trustee Company Limited |
|----------------------------|--|

**Background:**

1. Present matter has been entrusted to the Recovery Officer attached to Justice (Retd.) R. M. Lodha Committee (In the matter of PACL Ltd.) (hereinafter referred to as “**the Committee**”), in view of the order dated 12.12.2024 passed by Hon’ble Supreme Court in I.A. No. 128401 of 2018 filed by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) in Civil Appeal No. 13301 of 2015 – Subrata Bhattacharya Vs. SEBI and other connected matters, whereby it was directed as under:

“I.A. No. 128401/2018

*Learned senior counsel, Mr. Pratap Venugopal, appearing for the applicant-SEBI, seeks permission to withdraw the present application with a view to approach the Lodha Committee, as may be permissible under the law.*

*In view of the above, permission to withdraw the present application, as sought for, is granted.*

*Accordingly, this application is disposed of as withdrawn.”*



The background of filing of aforesaid IA, as culled out from the material available on record, is that during 2011, Blue Coast Hotels Limited (hereinafter referred to as

**Page 1 of 48**

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SEBI Bhavan, BKC, Plot No. C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai - 400051

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**BCHL**) had issued fully secured non-convertible debentures (hereinafter referred to as “NCDs”) worth Rs. 1,00,00,00,000/- to PACL Ltd. For this purpose, a Debenture Subscription Cum Security Agreement dated 08.12.2010 (hereinafter referred to as “DSSA”) was entered between BCHL and PACL Ltd. with Mr. Sushil Suri and Mr. P. L. Suri, as confirming parties. SBICAP Trustee Company Limited (hereinafter referred to as “STCL”) was appointed as debenture trustee to the aforesaid issue of NCDs. Debenture Certificates issued by BCHL in favour of PACL India Ltd. had an inscription “12% SECURED REDEEMABLE NONCONVERTIBLE DEBENTURE OF RUPEES 1,00,000 (ONE LAC) EACH, FULLY PAID UP.” In the terms and conditions of the issue of said NCDs, as printed on the back of the debenture certificates, rate of interest was 12% per annum payable annually. DSSA also contemplated conditional redemption premium of 8% p.a. payable on the respective redemption dates as referred below. It is also mentioned that interest including default interest, if any, shall be computed on a daily basis using a 365-day factor.

3. The said issue of NCDs was primarily secured by first charge on the BCHL’s Gujarat immovable property, the second charge on the BCHL’s immovable properties situated at 263C, Arossim Cansaulim Goa (Goa Hotel Property), and pledge of 26% equity shareholding of BCHL, as held by its promoters and their affiliates in favour of STCL, within a period of 90 days from the receipt of the full subscription amount from PACL Ltd. First charge on the said Goa Hotel Property was of IFCI Ltd. towards security of a loan of Rs. 150 crore availed by BCHL. DSSA also provided that pending creation of security as aforesaid, such number of equity shares of Silver Resort Hotel India Private Limited (hereinafter referred to as “SRHIPL”) as held by BCHL, its promoters, their affiliates, as were equivalent to 2.5 times of the subscription amount, had to be pledged with STCL, as an interim security. Security



*[Handwritten signature]*

Page 2 of 47

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by way of pledge of 26% shares of BCHL, has not been created till date by BCHL, its promoters and their affiliates. In this manner, BCHL issued 10,000 NCDs with face value of Rs. 1,00,000/- each, to PACL Ltd.

4. As per DSSA, NCDs were redeemable in 3 equal instalments of 33.33% of the subscription amount. The first tranche was redeemable at the expiry of 36 months from the date of allotment, i.e. by 02.03.2014. Remaining 2/3<sup>rd</sup> of the NCD were to be redeemed at the expiry of 42 months from the date of allotment i.e. by 02.09.2014 and at the expiry of 48 months from the date of allotment i.e. by 02.03.2015.
5. As mentioned above, in the meantime, SEBI on 22.08.2014 passed an order against PACL Ltd., its promoters and directors, *inter alia* holding the schemes run by PACL Ltd. as Collective Investment Schemes (CIS) and directing them to refund the amounts collected from the investors within three months from the date of the order. By the said order, it was also directed that PACL Ltd. and its promoters/directors, shall not alienate or dispose of or sell any of the assets of PACL Ltd. except for the purpose of making refunds as directed in the order.
6. The order passed by SEBI was challenged by PACL Ltd. and 4 of its directors by filing appeals before Hon'ble SAT. The said appeals were dismissed by Hon'ble SAT vide its common order dated 12.08.2015, with a direction to the appellants to refund the amounts collected from the investors within three months. Aggrieved by the order dated 12.08.2015 passed by Hon'ble SAT, PACL Ltd. and its directors filed appeals before Hon'ble Supreme Court of India.

Hon'ble Supreme Court did not grant any stay on the aforesaid impugned order dated 12.08.2015 of Hon'ble SAT, however, PACL Ltd. and its promoters/directors did



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Page 3 of 47

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not refund the money to its investors. Accordingly, SEBI initiated recovery proceedings under Section 28A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) against PACL Ltd. and its promoters/directors vide recovery certificate no. 832 of 2015 drawn on 11.12.2015 and as a consequence thereof, all bank/demat accounts and folios of mutual funds of PACL Ltd. and its promoters/directors were attached by the Recovery Officer vide attachment order dated 11.12.2015.

8. During hearing on the aforesaid civil appeals filed by the PACL Ltd. and its directors (i.e. Civil Appeal No. 13301 of 2015 – Subrata Bhattacharya Vs. SEBI and other connected matters), Hon'ble Supreme Court vide its order dated 02.02.2016, constituted the Committee, for disposing of the land purchased by PACL Ltd. so that the sale proceeds can be paid to the investors, who have invested their funds in PACL Ltd. for purchase of the land. In the said civil appeals, Hon'ble Supreme Court did not grant any stay on the orders passed by SEBI and confirmed by the Hon'ble SAT. Therefore, direction for refund and direction regarding restraint on the PACL Ltd. and its promoters and directors from disposing, alienating or selling the assets of the PACL Ltd., as given in the order continue till date.

9. In the aforesaid Civil Appeals filed by PACL Ltd. and its promoter/directors, Hon'ble Supreme Court vide its order dated 25.07.2016 restrained PACL Ltd. and/or its Directors/Promoters/agents/employees/Group and/or associate companies from in any manner selling/transferring/alienating any of the properties wherein PACL Ltd. has, in any manner, a right/interest situated either within or outside India.

10. BCHL defaulted in payment of interest, instalments etc. and hence, as instructed by PACL Ltd., a joint Civil Suit was filed by SCTCL and PACL Ltd. in February, 2014

Page 4 of 47

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at Goa, for recovery of Rs.162,50,80,885/- with further interest, premium, costs, charges, expenses etc. against BCHL & others wherein IFCI was also made party/defendant.

11. As BCHL defaulted on repayment of loan given to it by IFCI, IFCI proceeded for recovery of its dues by issuing a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) and subsequently, by taking symbolic possession of the Goa Hotel Property. The notice issued by IFCI was challenged on various grounds by BCHL before the Debt Recovery Tribunal - III (DRT III), Mumbai when the notice issued by IFCI under SARFAESI Act was held to be bad in law and *inter alia* it was held that the provisions of SARFAESI Act did not apply to agricultural property. The said order of DRT III, Mumbai was, however, set aside by DRAT, Mumbai in an Appeal filed by IFCI. Thereafter, BCHL filed a Writ Petition No. 222 of 2015 in the Hon'ble High Court of Judicature at Bombay.

12. In the meanwhile, IFCI issued notices of sale of the aforesaid Goa Hotel Property. Hon'ble Bombay High Court in the aforementioned Writ Petition No. 222 of 2015, directed IFCI to retain the bids in a sealed cover and not open them, subject to BCHL depositing Rs. 10 crores with the Registry of the Court by the next date. However, since the stay granted by the Hon'ble High Court was vacated due to non-fulfilment of the condition by BCHL, therefore, IFCI proceeded with the sale of the Goa Hotel Property on 23.02.2015 to ITC Ltd., for a consideration amount of Rs. 515,44,01,000/-.

After sale of the Goa Hotel Property, IFCI agreed to pay the proportionate balance sale proceeds to STCL/ PACL Ltd. but subsequently, IFCI demanded an indemnity



Page 5 of 47

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cum undertaking from STCL and PACL Ltd. Vide its letter dated 23.03.2015, STCL informed IFCI that it is not possible for it provide any undertaking from its end to repay the debenture holder's share of the sale consideration. Such undertaking may be provided by the debenture holder only. As no such indemnity could be given by STCL, no payment of balance sale proceeds was made by IFCI to STCL/ PACL Ltd.

14. Pursuant to sale of Goa Hotel Property to ITC Ltd., an application was made to District Magistrate in Goa for taking actual possession and accordingly, order was passed on 27.02.2015 by the District Magistrate, Goa. Against the said order, BCHL filed a Writ Petition No. 1150 of 2015 before Hon'ble Bombay High Court when *status quo* order was passed on 03.03.2015. BCHL also filed another Writ Petition No. 2486 of 2015 before Hon'ble Bombay High Court challenging the sale of Goa Hotel Property. Since no amount was received by STCL/ PACL Ltd. from the sale proceeds of Goa Hotel Property, as instructed by PACL Ltd., an Intervention Application was filed by STCL in the pending Writ Petition No. 222 of 2015 filed by BCHL.

15. By a common order dated 23.03.2016 passed by Hon'ble Bombay High Court in aforesaid three Writ Petitions (W. P. No. 222 of 2015, W. P. No. 1150 of 2015 and W. P. No. 2486 of 2015) filed by BCHL, the sale of Goa Hotel Property by IFCI in favour of ITC Ltd. was set aside.

16. IFCI and ITC Limited preferred a Special Leave Petitions ("SLPs") before Hon'ble Supreme Court of India, being SLP (C) Nos. 10196-97 of 2016 and SLP (C) Nos. 10215-17 of 2016, respectively, against the common judgment and final order dated 23.03.2016 passed by the Hon'ble Bombay High Court in W. P. No. 222 of 2015, W. P. No. 1150 of 2015 and W. P. No. 2486 of 2015.



Page 6 of 47

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17. Alongside, Hon'ble Supreme Court passed an order dated 05.04.2016 in W.P. (C) No. 500/2015 titled as PACL Employees and Customers Protection Forum Vs. Union of India & Ors., whereby, *inter alia*, it was directed as under:

*"In pursuance of the above statement, the Committee shall also have right to do the needful as per the order dated 2<sup>nd</sup> February, 2016 in respect of all properties wherein respondent No.3 has a right, even if such properties are situated outside India."*

18. Thus, by virtue of the aforementioned orders passed by Hon'ble Supreme Court (referred in paras 08, 09 and 17 above), all properties wherein PACL has a right is to be sold by the Committee constituted in the matter for effecting refunds to the investors of PACL.

19. Hon'ble Supreme Court passed a common order dated 22.04.2016 in the aforesaid SLPs, as referred in para 16 above, *inter alia*, directing "*Status quo as on today shall be maintained. The amount paid by ITC Limited in the auction purchase shall remain with IFCI Limited until further orders.*".

20. Hon'ble Supreme Court vide a common judgment and order dated 19.03.2018, passed in SLP (C) Nos. 10196-97 of 2016 and SLP (C) Nos. 10215-17 of 2016, directed BCHL to handover possession of the Goa Hotel Property to the auction purchaser ITC Ltd.

In view of the aforesaid order dated 19.03.2018 passed by the Hon'ble Supreme Court, the Recovery Officer, SEBI by a letter dated 28.03.2018 advised IFCI to remit to SEBI, alongwith interest, an amount of Rs. 189,91,18,816/- being dues of PACL

Page 7 of 47

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Ltd. against the NCDs, as on 05.02.2014, and which was subsequently, put in FDR by IFCI.

22. IFCI vide its letter dated 13.04.2018, informed the Recovery Officer, SEBI that a Civil Suit bearing CS (OS) No. 176/2015 titled as Kamal Sharma & Ors. Vs. M/s. Blue Coast Infrastructure Development Pvt. Ltd. & Ors. is pending before the Hon'ble High Court of Delhi wherein the Hon'ble High Court had passed the following order on 31.07.2015:

*"IFCI is directed not to disburse an amount of Rs. 85.00 crore from out of the surplus funds available with it after conducting the auction of the Hotel property. The said amount shall be placed by IFCI in a fixed deposit for a period of six months, till further orders."*

IFCI also informed that it had filed an application for the recall of the said order which is still pending. IFCI informed that as the matter was currently pending before the Hon'ble High Court, it was waiting for further Orders/directions from the Hon'ble High Court with respect to the share of the PACL in the sales proceeds, lying with IFCI.

23. Thereafter, the Recovery Officer, SEBI wrote a letter dated 17.04.2018 to IFCI, *inter alia*, stating that the funds of more than Rs. 200 crore kept by IFCI in the form of Fixed Deposit Receipts (FDRs), is payable to SEBI pursuant to the directions of Hon'ble Supreme Court of India in the matter of PACL Ltd. However, it has been brought to the notice of the Recovery Officer, SEBI that the Hon'ble High Court of Delhi vide order dated 31.07.2015 in the matter of Kamal Sharma Vs. Blue Coast Infrastructure Development Pvt. Ltd. & Ors. has directed IFCI not to disburse an amount of Rs. 85 crore out of the surplus funds received from selling of the properties

Page 8 of 47

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of BCHL. By the said letter dated 17.04.2018, the Recovery Officer, SEBI advised IFCI to remit the balance funds to SEBI, after retaining the amount of Rs. 85 crores in compliance with the directions of the Hon'ble High Court of Delhi.

24. On 25.05.2018, IFCI transferred an amount of Rs. 126,78,37,602/- to the recovery account of SEBI, after retaining Rs. 85 crore, in compliance with direction contained in the order dated 31.07.2015 passed by Hon'ble Delhi High Court.

25. SEBI also filed an Application on 31.05.2018 vide Diary No. 149072/2018, being I.A. No. 9292/2018 in CS (OS) No. 176/2015 before Hon'ble Delhi High Court seeking recall of the order dated 31.07.2015 to enable release of the balance Rs. 85 crore alongwith other amounts, by IFCI in favour of SEBI. Hon'ble Delhi High Court passed order dated 27.08.2018 in the said I.A. No. 9292/2018, as under:

*"I.A. No. 9292/2018*

*Present application has been filed for recall of the order dated 31<sup>st</sup> July, 2015 to enable release of Rs. 85 crores by IFCI in favour of SEBI.*

*Learned senior counsel for the plaintiffs as well as learned counsel for defendant no. 3 state that they have no objection if the order dated 31<sup>st</sup> July, 2015 restraining IFCI from disbursing an amount of Rs. 85 crores from out of the surplus funds available with it after conducting the auction of the Hotel property, is vacated, provided they are given liberty to file independent legal proceedings in accordance with law and for a period of six weeks the said amount is not disbursed by either IFCI of SEBI.*

*In the opinion of this Court, the request made by learned senior counsel for by the plaintiffs and learned counsel for defendant no. 3 is fair and reasonable.*



Page 9 of 47

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*Accordingly, the order dated 31<sup>st</sup> July, 2015 is vacated. However, IFCI as well as SEBI are directed not to disburse the aforesaid amount for a period of six weeks. The rights and contentions of all parties are left open.*

*With the aforesaid directions, present application stands disposed of."*

26. Thereafter, on 06.09.2018, SEBI filed an I.A. No. 128401 of 2018 in Civil Appeal No. 13301 of 2015 before Hon'ble Supreme Court seeking an order directing IFCI to release the amount of Rs. 85 crore alongwith interest accrued to SEBI. In the said I.A., BCHL and IFCI were also impleaded as parties.

27. It is noted that a W. P. No. 924 of 2018 was filed before Hon'ble Bombay High Court, Goa Bench by BCHL, *inter alia*, seeking redemption of the Goa Hotel Property, on payment of Rs. 311,78,75,042/-. In the said writ petition, Hon'ble High Court vide its order dated 12.09.2018, directed as under:

*"2. In case the Respondent No. 1 is proceeding to disburse the balance amount specified in prayer clause (D) and (E), it shall give advance notice of eight working days to the Petitioners. In that eventuality, liberty to apply."*

28. In view of the order dated 27.08.2018 passed by Hon'ble Delhi High Court, as referred in para 25 above, and having regard to the fact that period of 6 weeks had expired without there being any appeal/petition/application filed by any of the parties impugning the order dated 27.08.2018, the Recovery Officer, SEBI vide its letter dated 31.10.2018, advised IFCI to remit Rs.85 crore alongwith interest accrued to SEBI, on urgent basis.



*[Handwritten signature]*

Page 10 of 47

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**Justice (Retd.) R. M. Lodha Committee**  
**(पीएसिएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसिएल/  
Ref. No. JRMLC/PACL/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

29. In response to SEBI's letter dated 31.10.2018, IFCI vide its letter dated 20.11.2018, informed SEBI about the pendency of W.P. No. 924 of 2018 before Hon'ble Bombay High Court, Goa Bench and order dated 12.09.2018 passed by the Hon'ble High Court in the said writ petition, as quoted above. Further, vide its letter dated 19.12.2018, IFCI informed SEBI that in compliance of the order dated 12.09.2018 passed in W.P. No. 924 of 2018, IFCI had issued notice dated 11.12.2018 to BCHL for release of money to SEBI. It was also informed by IFCI, that BCHL by its letter dated 14.12.2018 addressed to IFCI has objected to the release of money to SEBI and that BCHL has also filed an application (Civil Application no. 231 of 2018) in the said writ petition, praying that IFCI be directed not to disburse the balance sale consideration till the pendency of the said writ petition.

30. On 11.01.2019, SEBI filed an MCA No. 160 of 2019 in W. P. No. 924 of 2018, praying for impleadment in W. P. No. 924 of 2018. In the said IA, inter alia, the following was pleaded:

*"9. The Applicant state that although the time period for remittance stipulated in above referred notice has lapsed but the amount has not been released, since the petitioner has objected to release of amount to the Applicant and has also filed Application before this hon'ble Court, seeking direction against Respondent no. 1 preventing it from disbursing the balance sale consideration to the Applicant, till the pendency of the petition, without even making this Applicant a party to the Application or the Petition.*

*10. The Applicant states that any relief granted to the Petitioner in the Civil Application as prayed for in the Application or any other relief in the petition will directly affect the present Applicant as well as the investors of PACL ltd only and hence the Applicant is surely a necessary party to the Petition and no order can be passed in the absence of the Applicant."*



Page 11 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/

31. Thereafter, vide letter dated 23.06.2020, the Recovery Officer, SEBI requested IFCI to make remittance of Rs. 85 crore alongwith accrued interest to SEBI, in view of the fact that no interim/stay order had been passed by the Hon'ble High Court.

32. In response to Recovery Officer's letter dated 23.06.2020, IFCI vide its letter dated 10.07.2020, *inter alia*, informed that in Civil Application No. 231 of 2018 filed by BCHL in W. P. No. 924 of 2018, specific prayers have been made to restrain IFCI from disbursing the balance sale consideration and from changing in any way whatsoever, the *status quo* in respect thereof. It was also informed that SEBI had filed an impleadment application in W. P. No. 924 of 2018, for its restricted interest in Rs. 85 crore, therefore, it may be appreciated that though there is no stay, in view of the facts and circumstances narrated in the letter, IFCI was awaiting the disposal of the pending application to take decision in the matter.

33. BCHL filed its reply dated 30.03.2022 and IFCI Ltd. filed its reply dated 28.09.2022, to the I.A. No. 128401 of 2018 filed by SEBI before Hon'ble Supreme Court of India seeking an order directing IFCI Ltd. to release the amount of Rs. 85 crore alongwith interest accrued to SEBI. The said I.A. was disposed of as withdrawn, by the Hon'ble Supreme Court vide its order dated 12.12.2024, as quoted in para 1 above.

34. Thereafter, BCHL filed a representation dated 14.12.2024 before the Committee, praying therein for sufficient opportunity to BCHL/stakeholders/parties to present their case, lead evidence and of proper hearing in the matter, in order to consider the relevant facts and documents, before entertaining any claim of SEBI. It was also requested that no directions/interim or ex-parte order be passed by the Committee in the absence of BCHL/parties.



Page 12 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

**Hearing:**

35. An opportunity of personal hearing was granted to BCHL, IFCI and STCL on 16.04.2025. On the said dated, Authorised Representatives (ARs) of IFCI, BCHL and STCL appeared for hearing virtually through Webex. AR of BCHL sought an adjournment of hearing due to non-availability of the senior advocate representing BCHL. He also sought permission to file additional statement of facts and other documents before the next date of hearing. The AR of IFCI, on being asked regarding any objection of IFCI to the release of amount to the PACL Committee, referred to paras 6 & 8 of the counter affidavit of IFCI filed in IA No. 128401 of 2018 of SEBI, to show that IFCI has no objection to release of money, however, due to pendency of various other legal proceedings, IFCI has prayed for suitable direction to safeguard its interest. On being asked whether such directions were also prayed & issued, at the time of earlier remittance of Rs. 126 cr. (approx..) made by IFCI, the AR submitted that he will seek instructions regarding the same from his client. Next date of hearing in the matter was fixed on 30.04.2025.

36. During the hearing held on 30.04.2025, ARs of IFCI and STCL attended the hearing through virtual mode whereas AR of BCHL attended the hearing physically. BCHL filed an objection petition praying for direction to IFCI for the release of Rs. 85 Crore along with interest to it. Copy of said objection petition was served on ARs of STCL and IFCI through E-mail. During the hearing, STCL submitted a calculation of amount outstanding towards NCDs subscribed by PACL Ltd. A copy of the said calculation, as submitted by STCL was also provided to BCHL for its response. Referring to the provisions of DSSA and 2 letters dated 08.05.2013 and 18.06.2013 of STCL addressed to BCHL, it was contended on behalf of BCHL that the liability for interest as computed by STCL is not correct and it has resulted into larger amount



Page 13 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

than what BCHL owed to PACL Ltd. It was contended that PACL Ltd. has already been paid more than what it was entitled to receive. BCHL sought liberty to file its own computation of interest and outstanding amount. STCL sought 2 weeks' time to file its response to the calculation of interest and outstanding amount to be submitted by BCHL. BCHL was directed to file its computation of interest and outstanding amount as on that date, within 4 days, with a copy to IFCI and STCL also. IFCI and BCHL were given liberty to file their response to, response to be submitted by STCL.

37. However, vide email dated 01.05.2025, STCL informed that it had not received list of dates and events and objection petition filed by BCHL. Further, STCL sought 4-6 weeks' time to respond to calculation of outstanding amount to be submitted by BCHL. Accordingly, vide letter dated 07.05.2025, documents submitted by BCHL during the hearing held on 30.04.2025 were forwarded to STCL with a request to provide its response within 2 weeks. Vide email dated 22.05.2025, BCHL provided computation of outstanding amount towards NCDs. BCHL also informed that it had emailed the computation to IFCI and STCL. Vide email dated 10.07.2025, STCL forwarded its computation of outstanding amount. As there were certain discrepancies in the calculations, vide email dated 11.07.2025, STCL informed that it shall forward the final calculation by 13.07.2025. Vide email dated 22.07.2025, STCL forwarded revised computation of outstanding amount. As again, computation of outstanding amount provided by STCL was not clear, vide email dated 25.07.2025, STCL was requested to address the following aspects:

- (i) BCHL's contention that Rs. 6,86,24,657/- has been paid by it towards interest dues against NCDs held by PACL Ltd.



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Page 14 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/

- (ii) The computation of BCHL's dues towards the NCDs in light of payment of Rs. 126,78,37,602/- on 25.05.2018, by IFCI to SEBI against NCDs held by PACL Ltd.
- (iii) The basis for applicability of penalty towards delay in creation of security, and whether the said penalty is applicable beyond the tenure of the NCDs.

38. As no response was received from STCL, a reminder email dated 05.08.2025 was sent to STCL, to send its response by 06.08.2025. Vide email dated 06.08.2025, STCL informed that it was working on the reply and will send the same by 08.08.2025. As no response was received from STCL again, an email dated 21.08.2025 was sent to STCL, advising STCL to send its reply by 22.08.2025. Vide email dated 21.08.2025, STCL sent its response to issues raised in email dated 25.07.2025 and also claimed Rs. 27,45,489/- towards it fees for acting as debenture trustee for the issue of NCDs. As the response given by STCL did not respond to the reply dated 22.05.2025 given by BCHL, as was required in terms of the Record of Proceedings dated 30.04.2025, vide email dated 22.08.2025, STCL was requested to make its submission in response to reply dated 22.05.2025 of BCHL, by 27.08.2025. STCL vide its email dated 26.08.2025 informed to furnish its reply by 08.09.2025. As no reply was received from STCL by 08.09.2025, accordingly, an email dated 16.09.2025 was sent to STCL to send its reply by 17.09.2025 with a copy marked to IFCI and BCHL. Vide hearing notice dated 17.09.2025, hearing in the matter was fixed for 09.10.2025 and accordingly, hearing notices were sent to IFCI, STCL and BCHL. Vide its email dated 17.09.2025, STCL sought time till 19.09.2025 for filing its response. Vide email dated 18.09.2025, BCHL submitted its response dated 15.09.2025 to reply dated 21.08.2025 submitted by STCL. Vide email dated 19.09.2025, STCL informed that it will be sharing its reply, shortly. However, no such response was filed by STCL. BCHL vide its email dated 22.09.2025, objected



Page 15 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

सेबी भवन, प्लॉट सं. सी4-ए, 'जी' ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400051  
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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/

to the email 19.09.2025 of STCL whereby STCL had informed that it would be submitting its reply shortly. The main ground taken in the said email was that the pleadings in the matter has got concluded in terms of record of proceedings dated 30.04.2025, after filing of reply dated 15.09.2025 by BCHL on 18.09.2025, and hence, STCL should not be permitted to file any response modifying its response dated 21.08.2025. On 22.09.2025, a letter dated 18.09.2025 was also received from BCHL, whereby it has forwarded physical copy of its reply dated 15.09.2025. STCL filed its reply dated 07.10.2025. In the said reply also, *inter alia*, in addition to providing its computation of the total outstanding towards NCDs, as on date, also made a prayer for payment of its debenture trustee fees. Another hearing in the matter was held on 09.10.2025. ARs of BCHL and STCL appeared for hearing, physically whereas ARs of IFCI appeared virtually through Webex. AR appearing for BCHL made submissions by referring to computation of outstanding amounts submitted by BCHL on 22.05.2025. STCL reiterated submissions made in its reply dated 07.10.2025. BCHL objected to the filing of the reply by STCL, at this belated stage. However, BCHL sought time to respond to the reply of STCL along with its further written submission. BCHL was granted time of 3 weeks. As no response was received from BCHL within the time given, an email dated 31.10.2025 was sent to BCHL to submit its response by 04.11.2025 failing which matter will be decided on the basis of the material available on the record. Vide email dated 04.11.2025, BCHL sought one more day time to file its response and vide its email dated 05.11.2025, BCHL forwarded its written submissions and also its response to the STCL's submissions dated 07.10.2025. In its written submission, BCHL has not raised any new point other than those which were raised in the Objection Petition. Vide its email dated 07.11.2025, BCHL has requested for another hearing specifically to deal with the response dated 07.10.2025 filed by STCL and various computation sheets filed by STCL. In this regard, it is observed that as mentioned above, BCHL vide its email



Page 16 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

सेबी भवन, प्लॉट सं. सी4-ए, 'जी' ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400051  
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**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JBMLG/PACL/

dated 05.11.2025 has already filed its reply to STCL's response dated 07.10.2025 dealing in detail with each and every point raised in the response of STCL. BCHL has also filed its detailed written submissions in addition to its voluminous objection petition filed on 30.04.2025. BCHL has also been given two hearings on 30.04.2025 and 09.10.2025, when it has argued its case comprehensively. In view of this, I find that principles of natural justice have been duly complied with and no purpose would be served by providing another opportunity of hearing as sought by BCHL in its email dated 07.11.2025.

39. BCHL has made *inter alia*, the following submissions:

- (i) That BCHL received the subscription/ principal amount towards the above-mentioned debentures worth Rs.100 Crores over 17 different tranches between 15.12.2010 to 05.05.2011, as per the verified bank records of BCHL. The said payments were belated time and again at the instance of PACL Ltd.
- (ii) That around 2011-12, despite undergoing substantial financial stress, BCHL made its best efforts to ensure timely payments to PACL Ltd. in respect of the NCD account. In fact, BCHL has already made substantial payments directly to PACL Ltd. to the tune of Rs. 6,86,24,657/- (Rupees six crores eighty-six lac twenty-four thousand six hundred and fifty-seven), under DSSA, in FY 2011-12, even prior to the first date of redemption, i.e., on 02.03.2014.
- (iii) That due to financial distress BCHL defaulted on its obligation to service a parallel Corporate Loan Agreement entered into with the IFCI as well as to the DSSA entered with PACL Ltd., respectively. Subsequently, Loan Recall Notices were issued by IFCI, on 26.03.2013. In fact, proceedings under the SARFAESI Act were also initiated by IFCI against BCHL.



Page 17 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

Ref. No. JRMLC/PACL/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

- (iv) That in the midst of these financial constraints faced by BCHL, BCHL was served with an unlawful Notice of Default dated 08.05.2024 by STCL and thereafter, the said NCDs were illegally recalled on 18.06.2013 much prior to 02.03.2014, i.e., first date of redemption of first tranche (33.33%, i.e., Rs. 33,33,33,333/-) which is not only contrary to the terms of DSSA, but which rendered the entire purpose of the financial arrangement with PACL Ltd. stultified/otiose. The said premature recall of the dues proscribes the claim of interest thereafter in respect of the PACL NCD A/c, considering the nature of the financial arrangement with PACL Ltd. Thereafter, after inexplicable delay, the STCL acting on behalf of the PACL Ltd. got issued a Legal Notice dated 30.01.2014 to BCHL with even more inflated and concocted monetary demands that lacked any rational basis.
- (v) That on 06.02.2014, STCL and the PACL Ltd. jointly instituted a Civil Suit against BCHL, the IFCI Ltd. and Others vide Special Civil Suit (COML.) No. 6/2017, tiled as "SBICTCL Trustee Company Ltd. & Anr. Vs. Blue Coast Hotels Ltd. & Ors." before the Court of the Ld. District Judge, South Goa, Margao, for recovery of the fictitious/unilaterally propounded sums and enforcement of security interest with respect to the Goa Hotel Property. However, the said suit/plaint was returned for the want of territorial jurisdiction vide order dated 06.03.2019 therein passed by Ld. District Judge, South Goa, Margao while holding that the Plaint shall be returned to the Plaintiffs to be filed in competent Court at Delhi. There has been no fresh institution of any civil suit/ proceeding by the debenture trustee STCL and the PACL Ltd., etc. with regard to the alleged claim made in the returned suit/ plaint, which is indicative of the fact that in reality no sums are due and pending towards the debenture claim, as on date, vis-a-vis BCHL either to STCL or the PACL Ltd. or



Page 18 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLG/PACL/

SEBI. These facts establish that SEBI acting on behalf of PACL Ltd. has no claim legal and valid claim since all of it stands fully discharged.

(vi) That it is noteworthy to mention herein that pursuant to the SARFAESI Act proceedings preferred by IFCI against BCHL, the Goa Hotel Property of BCHL was sold in auction for the sum of Rs. 515.44 Crores on 23.02.2015 to the auction purchaser-ITC Limited, which was declared the successful bidder. The entire auction proceeds were deposited by ITC Limited with the first charge holder, IFCI by 25.02.2015. It is notable that at no point of time from 23.05.2015, till date BCHL although being the owner of the Goa Hotel Property has received a single Rupee out of the auction proceeds of Rs. 515.44 Crores, despite satisfaction/service/appropriation of all loans plus due and payable interests to all the then financiers of BCHL, especially towards satisfaction of the entire dues towards the PACL NCD A/c. Till date, the said surplus auction proceeds are being held up with IFCI for the past 10 years.

(vii) That BCHL challenged the said auction before the Hon'ble Bombay High Court vide Writ Petition No. 222 of 2015 and other associated proceedings/ issues by way of different writ petitions, inter alia, on grounds of undervaluation. In view of the substantive legal proceedings being pending qua the validity of the concluded auction, IFCI called for an appropriate 'Undertaking' to be given by the remaining charge holders of the Goa Hotel Property, i.e., the State Bank of Mysore and the STCL/PACL Ltd. in order to ensure release out of the auction proceeds, which were already lying with the IFCI. The State Bank of Mysore tendered the said undertaking vide communication dated 06.04.2015 and therefore, the sum of Rs. 8.52 Crores were consequently disbursed to it by IFCI.



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Page 19 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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**(पीएससीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

संदर्भ सं. जेआरएमएलसी/पीएससीएल/

Ref. No. JRMELC/PACL/

(viii) That STCL and PACL deliberately did not provide such undertaking as called for by IFCI, as already admitted in Para 2(vi) of SEBI's IA No. 128401/ 2018 without providing appropriate reference to the appropriate legal correspondences. It is submitted that despite the amount being available for disbursal in the hands of IFCI, PACL Ltd./STCL/SEBI elected not to abide by conditions of disbursal, and the non-disbursal was solely on account of failure of execution of the required Undertaking by PACL/STCL. The auction proceeds were received by IFCI on 25.02.2015 and PACL/ STCL themselves failed to give an appropriate undertaking towards release of money from the said auction proceeds. Moreover, at no point of time was the IFCI's standard pre-condition of providing undertaking ever challenged/impugned by either PACL, STCL or SEBI in the appropriate forum.

(ix) That therefore, in addition to date of their premature recall of the debentures, SEBI/PACL Ltd. further ought to be barred from making any claim whatsoever after its failure to tender the requisite undertaking to IFCI, in line with the basic principle of equity and good conscience as well as statutory scheme as espoused under Order XXI Rule 1(5) and the proviso thereto as time and again upheld/applied by the Hon'ble Courts of the country. In fact, it is also crucial to note that a second charge holder which has engaged in recoupment of its dues through the enforcement of its security interest cannot divorce itself from the fate of the auctioned property.

(x) That though the auction of the Goa Hotel Property was initially set aside by the High Court vide its Judgment dated 23.03.2016, the auction proceedings were later confirmed by the Hon'ble Supreme Court vide the judgment dated 18.03.2018 passed in SLP (Civil) No. 10196-10198 of 2016 [reported in (2018) 15 SCC 99] (@Page Nos. 11-45 of the reply of BCHL in IA No. 128401/2018 in CA No. 13301/2015), in which SEBI on behalf of PACL Ltd. was an impleading party.



Page 20 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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**न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति**  
**Justice (Retd.) R. M. Lodha Committee**  
**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/

- (xi) That BCHL has not received even a Rupee from the sale of the Goa Hotel Property over the past 10 years. Therefore, no claim on the said amounts can be made from BCHL, as BCHL has not enjoyed any portion of the auction proceeds for the past nearly 10 years since the auction of the Goa Hotel Property as the same has been retained by IFCI or disbursed to SEBI towards PACL NCD A/c. Therefore, now BCHL is legally entitled to receive the said balance sum of Rs. 85 Crore with accrued interest, as on date.
- (xii) That it is apposite to mention here that in 2015, various unit holders/ investors of the commercial space in the scrapped Delhi Aerocity Hotel Project preferred a representative Suit bearing CS (OS) No. 176 of 2015, titled as "Kamal Sharma & Ors. Vs. Blue Coast Infrastructure Development Pvt. Ltd and Ors." before the Hon'ble Delhi High Court, wherein, the Hon'ble High Court vide its Order dated 31.07.2015, on an Application by the Plaintiffs therein, directed IFCI not to disburse the amount of Rs. 85,00,00,000/- from the surplus funds received out of the auction of the Goa Hotel Property.
- (xiii) That it is relevant to point here that in discharge of the entire dues of PACL NCD A/c under the DSSA, on 25.05.2018, the IFCI released a sum of Rs. 126,78,37,602/- (Rupees one hundred twenty six thousand seventy eight lac thirty seven thousand six hundred and two only) to the SEBI in the PACL NCD A/c, as part of the 2nd charge of PACL Ltd. over the Goa Hotel Property, which fact can be gathered from the Letter dated 25.05.2018 issued by the IFCI to the SEBI, which was done in response to various demands/communications addressed by the SEBI to IFCI vide its letters dated 28.03.2018 and 17.04.2018.



Page 21 of 47

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(xiv) That therefore, against the 100 Crore Debentures towards the PACL NCD A/c, the sum of Rs. 133,64,62,259/- already stands realised comprising of the sum of Rs. 126,78,37,602/- released by the IFCI and the sum of Rs. 6,86,24,657/- paid by BCHL directly to PACL Ltd., as per the verified records of BCHL, and thus, the claim towards the PACL NCD A/c stands duly satisfied, well beyond the actual payables in the said account.

(xv) That it is a matter of record that as on 25.05.2018, the entire subscription/principal value of the Debentures worth Rs. 100 Crores stood realised by SEBI/PACL Ltd., and in accordance with Section 220(2) Income Tax Act, 1961 which is applicable mutatis mutandis to the proceedings under Section 28A of the SEBI Act, 1992, when the principal component stands duly satisfied, the question of further accrual of interest does not arise in the first place, and no further monies whatsoever can be claimed by SEBI after the said date of 25.05.2018.

(xvi) That it is pertinent to mention herein that the adjudication of the present matter calls for invocation of the sound principles of equity and good conscience in determination of the rights of BCHL as well as factors such as applicability of lower interest rates and other considerations ought to be seen in the light of the peculiar facts and circumstances of the present matter wherein for the past more than 10 years, BCHL has been unjustly deprived of its surplus auction proceeds from the sale of its Goa Hotel Property, but has also been facing dire financial constraints on account of such deprivation. This along with the compelling circumstances highlighted hereinabove call for taking an equitable and considerate view on determination of the rights of BCHL including imposition/ assessment of lower/ modest rates of interest at rates such as the FD Rates, etc. rather than exorbitant rates such as 12%.



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Page 22 of 47

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Ref. No. JRM/LC/PACL/

(xvii) That unfortunately, not being satisfied with the receipt of the sum of Rs.

133,64,62,259/- towards the PACL A/c and in an attempt to usurp the entire auction proceeds out of the sale of the Goa Hotel Property owned by BCHL, without even providing a computation till that date, SEBI preferred an I.A. No. 9292/2018 in CS (OS) No. 176 of 2015 before Hon'ble High Court of Delhi praying for recall the Interim Order dated 31.07.2015, to enable release of Rs. 85 Crore, along with other amounts, by IFCI in favour of SEBI, as prayed therein. The Hon'ble Delhi High Court vide Order dated 27.08.2018, disposed of the said application by vacating Order dated 31.05.2015, while directing the IFCI as well as SEBI not to disburse the amount of Rs. 85 Crore for a period of six weeks, while also granting liberties to the parties to avail independent legal proceedings in accordance with law.

(xviii) That acting under the liberty granted by the Hon'ble Delhi High court vide Order dated 27.08.2018, BCHL herein instituted appropriate proceedings for redemption of the mortgage qua IFCI in respect of the Goa Hotel Property before the Goa Bench of the Hon'ble Bombay High Court, titled as 'Blue Coast Hotels Ltd. & Anr. Vs. IFCI Ltd. & Anr.' numbered as Writ Petition No. 924 of 2018, which is still pending. Vide Order dated 12.09.2018 passed in the said matter, while issuing notice, the Hon'ble High Court was pleased to direct IFCI to give an advance notice of eight working days to the Objector Company before disbursing any amounts to any party form the sale proceeds of the Goa Hotel Property.

(xix) That vide its letter dated 06.02.2019, IFCI has informed BCHL that out of the total sum of Rs. 515,44,01,000/- which has been received by it as sale consideration upon the auction of the Goa Hotel Property, has been apportioned by it in the following manner:



Page 23 of 47

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/LG/PACL/

- (a) IFCI has appropriated to itself a total sum of Rs. 311,71,85,724/-
- (b) State Bank of Mysore (as it was then) has been paid a sum of Rs. 8,52,07, 142/- (as the second Charge Holder of the Goa Hotel Property); and
- (c) A sum of Rs. 126,78,37,602/- (Rupees one hundred and twenty-six thousand seventy-eight lac thirty seven thousand six hundred and two) was paid to the Securities and Exchange Board of India.
- (xx) Further, as per IFCI's said letter, as on 06.02.2019, IFCI held an amount of Rs. 105.96 Crores, as the balance sale proceeds which presumably includes the interest accrued thereon.
- (xxi) That SEBI had preferred the IA No. 128401 of 2018 in CA No. 13301/2015 on 06.09.2018 seeking a direction against the IFCI to release the sum of Rs. 85 Crores along with interest in favour of SEBI, without regard for BCHL's rights under law, wherein BCHL was Respondent No. 1 and IFCI was the Respondent No. 2. Notice upon the said Application was issued by the Hon'ble Apex Court 06.10.2021 and the Application only came to be disposed of as withdrawn on 12.12.2024.
- (xxii) In view of the above submissions, it is clear that SEBI has no legal and rightful claim over Rs. 85 crores with accrued interest lying in the custody of IFCI, and thus the SEBI's prayer as made in the said I.A. be rejected.

**Consideration:**

40. At the outset, it is noted that IFCI has submitted that it is ready to transfer the amounts lying with it to the Committee. Similarly, BCHL has not disputed its liability to redeem NCDs issued to PACL Ltd. and consequential payments required to be made to the Committee, however, it is the case of BCHL that it has paid more

Page 24 of 47



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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/LC/PACL/

than what was owed to the PACL Ltd., to the Committee, and therefore, no further amount is liable to be refunded to the Committee.

41. Another aspect of the matter which requires mention at the fore is that STCL is debenture trustee for the NCDs issued by BCHL. In the present matter, involvement of STCL is as a trustee for the debenture holder, i.e. PACL Ltd. Accordingly, the notice of hearing in present proceedings was also issued to STCL to assist the Recovery Officer to determine the amount payable by BCHL towards redemption of NCDs, in terms of DSSA. However, STCL has forwarded various calculations of outstanding amount making it difficult to take any of them as correct. Accordingly, calculations of the outstanding amount, as provided by STCL have not been taken into consideration, while determining the outstanding amount payable by BCHL. The outstanding amount has been calculated after taking into account the terms and conditions of the DSSA which is the primary document governing the issue of NCDs to PACL Ltd. by BCHL.

42. Debentures are contractual instruments between the issuer and the subscriber. Liability of BCHL to repay/redeem NCDs and amount of interest to be paid on such NCDs, etc. are all governed by the DSSA which represents the terms agreed between the parties, i.e. BCHL and PACL Ltd., for the subscription of NCDs. Therefore, in order to ascertain actual amount payable by BCHL, towards principal and interest on NCDs, it is necessary to refer to certain relevant terms of the DSSA, as signed on 08.12.2010, which are reproduced hereunder:



“.....  
1.1 Unless the context otherwise requires, the following terms used in this Agreement shall have the following meanings:

Page 25 of 47

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/ *"Debentures" means the 12% 10,000 Secured Redeemable Non-Convertible debentures of the face value of Rs. 1,00,000 (Rupees one Lakh only) each having an aggregate nominal value of Rs. 100 Crores, which are being issued and allotted to the Debenture Holders on a private placement basis under this Agreement.*

d. *"Debenture holders" means PACL or the holders of the Debentures for the time being deriving their title to the Debentures.*

h. *"Event of Default" shall mean the events specified in Clause 9.1 of the Agreement.*

j. *"Redemption Premium" means premium payable at the time of redemption according to Clause 4.4 and 4.5 of the Agreement at the rate of 8% per annum of the Subscription Amount, calculated with effect from the date the Subscription Amount stands credited in the bank account of the Company.*

k. *"Default Interest" means interest at the rate of 2% per annum, over and above the normal interest rate payable ("Interest" as mentioned in Clause 4.1) from the date of default till the date of actual payment of interest.*

3.1 *The rights, obligation and duties of the parties envisaged under this agreement shall not come into force until the following Conditions Precedent have been fully complied with to the satisfaction of the Debenture holders:*

a) .....

b) .....

d) *The Company shall create a Security, as stipulated in Section 5, in favour of the Debenture Trustees, and according to the terms therein, to secure the Debentures proposed to be issued to the Debenture holders. For avoidance of doubt, the Company shall deliver to the Debenture holders No Objection Certificates from IFCI, IFCI Factors Limited and State Bank of Mysore in order to create the Security under Section 5 of the Agreement.*

e) .....

f) *The Company shall satisfy the Debenture Holders that such number of equity shares of Silver Resort Hotel India Private Limited as required for creation of Alternate Security under Clause*

Page 26 of 47



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Ref. No. JRMLC/PACL/

5.2 of this Agreement are in existence and have been allotted to the Company, its promoters and affiliates, in a manner which is to the satisfaction of PACL.

- .....
- 4.1 The Company shall, until the Debentures are redeemed or paid off according to Clause 4.4 of this Agreement, pay interest on the said Debentures or such part thereof at the rate of 12% payable annually ("Interest") to the Debenture Holders, Subject to the provisions of this Agreement, in the event of any default in the payment of Interest, the Debenture Holder shall have right to claim Default Interest from the Company. For the avoidance of doubt, the Default Interest shall be charge secured by the Debentures.
- 4.2 The Debentures subscribed under this Agreement shall provide no conversion option to the Debenture holders.
- 4.3 The computation of interest, including without limitation Default Interest, under this Agreement shall always be on a daily basis using a 365 day factor.
- 4.4 The Company agrees and undertakes to redeem the Debentures in 3 (Three) equated instalments starting from the end of 36<sup>th</sup> month from the date of their allotment, 42<sup>nd</sup> month from the date of allotment and ending in the 48<sup>th</sup> month from the date of allotment. Strictly in the manner specified in the table below, Subject to the provisions of Section 9 of this Agreement, this condition may be relaxed by Debenture holder at their sole discretion, subject to applicable laws, on such terms and conditions as they may deem fit.
- 4.5 The Company shall have right to redeem, either in full or in part, at any time during the company of this Agreements, the outstanding Debentures along with Interest thereon (If any) and Redemption Premium after giving an advance notice of 30 days in writing to the Debenture holder stating the number of debentures being redeemed.
- .....
- 4.7 Unless otherwise agreed to by the Debenture holders, any payments by the Company under this Agreement. and/or any other documents being executed for the subscription to Debentures and creation of Security by the parties hereto shall always be appropriated in the following manner only:

- (i) First, towards the payment of Default Interest:
- (ii) Secondly, towards payment of Interest: and
- (iii) Lastly, towards redemption of Principal Amount, or any part thereof, of the Debentures due and payable by the Company to the Debenture holders.
- .....

Page 27 of 47



*[Handwritten signature]*

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संदर्भ सं. जेआरएमएलसी/पीएसिएल/  
Ref. No. JRMLC/PACL/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

5.1 *The repayment of Debentures together with interest, including Default Interest, Redemption Premium and all relevant charges and /or costs payable in respect of the Debentures and under this Agreement shall be secured by both:-*

5.1.1 *Second charge on all the Company's immovable properties, both present and future, on which the Company's bankers and Financial Institutions already have a first charge, as on date, as represented by the Company, against a Corporate loan of Rs. 10 Crores from IFCI Factors Limited and Rs. 13 Crore towards from working capital limits from State Bank of Mysore;*

5.1.2 *And in addition, pledge of 26% percent of equity shareholding of the Company as held by its promoters and their affiliates in favour of the Debenture Trustees, which is currently held by IFCI Limited, after securing release of the same within a period of 90 days from the date of receipt of full subscription amount.*

5.2 *Pending creation of the Security envisaged in Clause 5.1.2, such number of equity shares of Silver Resort Hotel India Private Limited (SRHIPL), as held by the Company, its promoters and their affiliates, equivalent to two and a half times the Subscription Amount shall be pledged with the Debenture Trustee as Interim Security. For the avoidance of doubt, this interim Security shall be deemed to stand released once the Security as envisaged in Clause 5.1.2 has been created in favour of the Debenture Holders.*

5.3 *The Company shall ensure that all relevant documents and security as envisaged under this Section 5 of his Agreement are created and executed to the satisfaction of PACL on or before the expiry of six months from the date of receipt of Subscription Amount by the Company. Upon the expiry of six months, the Debenture Holders shall acquire the right to charge 2% additional interest payable on an annual basis.*

9.1 *The Company agrees and acknowledges that the following events shall constitute "Events of Default". and shall attract consequences as specified in this Agreement. For the avoidance of doubt, it is clarified the list below is illustrative and not exhaustive:*

9.1.1 *Default in the Redemption of Debentures in the manner specified in clause 4.4.*

9.1.2 *Default in the payment of Interest, Including Default Interest, on the Debenture, after 30 days from the date on which interest was payable in the ordinary course of business.*



Page 28 of 47

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संदर्भ सं. जेआरएमएलसी/पीएससीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/9.1.3 *Default in the performance of any covenant or condition of this Agreement on the part of the Company or any other agreement between the Company and the Debenture holder/Trustees.*

9.2 Upon the occurrence of an "Event of Default", the Debenture holder shall have the right to serve a "Notice of Default" upon the Company and the Confirming Parties, specifying the exact nature of default and calling, upon the Company to cure the said default on or before the expiry of 30 days from the date of Notice of Default. The Company agrees and acknowledges that upon the expiry of this 30 day period if the Event of default has not been cured to the satisfaction of the Debenture holder, then the Debentures holder shall enforce the Debentures whereupon the Subscription Amount or Principal or the balance thereof and all accrued Interest, Including Default Interest on the Debentures shall become due and payable with immediate effect and shall constitute a "debt". This debt may be satisfied in the following manner:

9.2.1 The Debenture holders shall first present the PDCs issued by the Company.

9.2.2 In the event the PDCs issued by the Company are dishonoured, the Confirming Parties agrees to jointly discharge the liability of the Company in their capacity as Surety within 7 days from the date of dishonour of the cheques.

9.2.3 In the event the PDCs are dishonoured and the Confirming Parties are unable to discharge the liability of the Company, the Debenture holders shall have right to enforce the charge created under Clause 5.1 of this Agreement.

....."

43. On 16.04.2011, amendment to the aforesaid DSSA dated 08.12.2010 was agreed to amongst the parties to DSSA and "Section 5 Security" was amended as hereunder:

"5.1 The repayment of Debentures to the PACL together with interest, including default interest, redemption premium and all relevant charges and / or costs payable in respect of the Debentures and under this Agreement shall be secured by.

5.1.1 First charge on Gujarat immovable property of the Company as described in the schedule-1 attached to this Agreement.



Page 29 of 47

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**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

5.1.2 *Second Charge on the company's immovable properties of the Company located at 263C Arossim Cansaulim Goa, both present and future.*

5.1.3 *The Charge of the Debentureholder as mentioned in Clause 5.1.1. and Clause 5.1.2 shall be subject/subsequent to the prior following existing charges.*

1 *First charge on all the company's immovable properties, both present and future, on which IFCI Limited and IFCI Factors Limited have their charge for Corporate Loan of Rs 150 Crores and buy back commitment of the company for equity Investment of Rs. 85 Crores together with return on investment made by (FC) Limited in Silver Resort Hotel India Private Limited and another corporate loan of Rs. 10 Crores by IFCI Factors Limited.*

2 *Second Charge on all the company's immovable properties, both present and future, on which State Bank of Mysore have then charge for working capital limits of Rs 16 Crores together with principal amounts, Interest thereon or any other charges due to the bank in the ordinary course of business.*

5.1.4 *Pledge of 26% percent of equity shareholding of the company as held by its promoters and their affiliates in favour of the Debenture Trustees who shall hold for PACL, which is currently held by IFCI Limited, after release of the same within a period of 90 days from the date of receipt of full subscription amount.*

5.2 *Pending creation of Security envisaged in Clause 5.1.4, such number of equity shares of Silver Resort Hotel India Private Limited [SRHIPL) as held by the Company, its promoters and their affiliates, equivalent to two and half times of the subscription amount shall be pledged with the Debenture Trustee who shall hold for PACL as interim security For the avoidance of doubt, this interim security shall be deemed to stand released once the security as envisaged in Clause 5.1.4 has been created in favour of the Debentureholder.*

5.3 *The Company shall ensure that all relevant documents and security as envisaged under this Section 5 of this Agreement are created and executed to the satisfaction of PACL on or before the expiry of three months from the date of receipt of Subscription Amount by the Company.*



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Page 30 of 47

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PAGE/

*Upon the expiry of six months, the Debenture Holder shall acquire the right to charge 2% additional interest payable on an annual basis.*

- 5.4 *The Company as a token of its assurance to repay all the monies payable under this Agreement with admissible returns, Inclusive of costs and expenses, has issued Post Dated Cheques (PDCs) of its own accord. The Company represents that at the time of issuance of these cheques it has sufficient balance for honouring the said cheques, and understands that in the event of its inability to discharge the "debt" as envisaged in Clause 9.2 of the Agreement, the Debenture holder may immediately present the PDCS for encashment towards satisfaction of the said "debt" ..... "*

44. In sum, a perusal of the terms and conditions, reveal following:

- a. NCDs carry a coupon of 12% p.a.
- b. 1/3<sup>rd</sup> NCDs were redeemable at the end of 36 months from the date of subscription, another 1/3<sup>rd</sup> NCDs were redeemable at the end of 42 months from the date of subscription and remaining 1/3<sup>rd</sup> NCDs were redeemable at the end of 48 months from the date of subscription.
- c. In case of default in payment of interest, an interest at the rate of 2% per annum, over and above the normal interest rate is payable from the date of default till the date of actual payment of interest.
- d. At the time of redemption of NCDs, redemption premium at the rate of 8% per annum of the Subscription Amount is payable which is to be calculated from the date of credit of subscription amount to BCHL.
- e. Any payments to be made by BCHL under DSSA is to always be appropriated first, towards payment of default interest then towards payment of interest and lastly, towards redemption of Principal Amount, or any part thereof, of the NCDs due and payable by BCHL to PACL Ltd.



Page 31 of 47

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Ref. No. JRMLC/PAGY/

- f. Default in the redemption of NCDs, default in the payment of interest, including default interest or default in the performance of any covenant or condition of DSSA on the part of BCHL or any other agreement between BCHL and PACL Ltd./SCTCL, have been treated as event of default.
- g. On occurrence of "event of default", PACL Ltd. is allowed to enforce NCDs whereupon the subscription amount or principal or the balance thereof and all accrued interest, including Default Interest on NCDs shall become due and payable with immediate effect and shall constitute a "debt".
- h. Debenture holder shall acquire the right to charge 2% additional interest payable on an annual basis in case BCHL fails to ensure that all relevant documents and security are created and executed to the satisfaction of PACL Ltd. on or before the expiry of three months from the date of receipt of subscription amount by BCHL.

45. Certain relevant dates and events pertaining to the issue of said NCDs is as under:

- (i) **08.12.2010** – The DSSA was signed between PACL Ltd. and BCHL;
- (ii) **16.04.2011** – Amendment to DSSA was signed between PACL Ltd. and BCHL;
- (iii) **04.04.2011** – Share pledge agreement between BCHL and SCTCL was signed;
- (iv) **02.03.2011 to 02.05.2011** – Receipt of Rs. 90 crore out of Rs. 100 crore subscription amount was received by BCHL in different tranches;
- (v) **05.05.2011** – Rs. 10 crore was received by BCHL from PACL Ltd. towards remaining subscription amount;
- (vi) **18.06.2013** – STCL recalled NCDs, calling upon BCHL to pay entire amount alongwith premium and interest aggregating to Rs. 135.98 crore due and



Page 32 of 47

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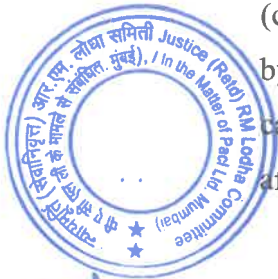
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Ref. No. JRMLC/PACL/

payable, as on 02.03.2013 with further interest 16% per annum from 02.03.2013 till the actual date of payment;

- (vii) **06.02.2014** – STCL and PACL Ltd. jointly instituted a suit before District and Sessions Court, South Goa, Margao bearing no. Special Civil Suit No. 6/2017 seeking enforcement of security interest and recovery of Rs. 162 crore and interest;
- (viii) **23.02.2015** – IFCI auctioned Goa Hotel Property under SARFAESI Act;
- (ix) **23.03.2015** – STCL expressed its inability to provide any undertaking cum indemnity to IFCI, as the same could only be provided by PACL Ltd.;
- (x) **25.05.2018** – Rs. 126.78 crore were remitted by IFCI to SEBI towards dues on NCDs;
- (xi) **06.03.2019** – Civil Court in Goa returned the plaint in the recovery suit instituted by the PACL Ltd. and STCL.

46. In this backdrop, the present controversy is to be understood. Regarding the total outstanding payable by BCHL, BCHL has given 2 calculations, in Table A and Table B, in the computation sheet dated 22.05.2025. Broadly under Table A, BCHL has applied rate of interest at 12% per annum (contractual rate of interest) till 18.06.2013, i.e. the date of premature recall of NCDs by STCL and an interest of 6% per annum (equitable interest) thereafter, till 23.03.2015, i.e. the date on which STCL refused to give undertaking to IFCI for release of part sale proceeds of Goa Hotel Property. This calculation does not contemplate any interest liability of BCHL after 23.03.2015. Under Table B, BCHL has proposed rate of interest at 12% per annum (contractual rate of interest) till 18.06.2013, i.e. the date of premature recall of NCDs by STCL alongwith default interest of 2% per annum till 23.03.2015. In both the calculations there is no mention of redemption premium and liability to pay interest after 23.03.2015. STCL has also submitted its calculation of outstanding amount. In



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Page 33 of 47

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संदर्भ सं. जेआरएमएलसी/पीएसिएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMILC/PACL/

the calculations given on 30.04.2025 and 10.07.2025, STCL has computed the outstanding amount by including principal amount, 12% coupon, 8% redemption premium for all the financial years since issue of NCDs and till date, 2% default interest and 2% interest on delay in creation of security. Whereas, in its computation provided on 22.07.2025, it has excluded 8% redemption premium. In its reply dated 07.10.2025, STCL in addition to 12% coupon, 2% default interest and 2% interest on delay in creation of security, has also added redemption premium at the rate of 8% from the date of allotment till 15.09.2018.

47. Firstly, it is noted that there is confusion regarding the amount paid by BCHL to PACL Ltd. towards interest liability. BCHL has contended that it had paid Rs. 6,86,24, 657/- whereas STCL has informed that BCHL had made a payment of Rs. 5,12, 05,479/- towards interest. BCHL has also provided the copies of the bank statements in support of its claim of payment of interest. It is noted that STCL has not provided any such proof in support of the amount mentioned by it. On a perusal of the documents produced by BCHL, I find that BCHL had made a payment of Rs. 6,86,24, 657/- towards interest.

48. Second, issue is of calculation of redemption premium. As per the two computations given by BCHL as Table A and Table B, no redemption premium has been calculated and added to the amount payable. BCHL has contended that since no redemption of the NCDs took place due to recall of the financial facility by STCL and consequently, Goa Hotel Property was auctioned part of proceeds of which has also been paid towards discharge of liability owed to PACL Ltd. Therefore, redemption premium is not payable in the present case. It has also been submitted that since in the present case event of default has occurred attracting clause 9.2 of DSSA, therefore, in terms of said clause redemption premium is not due/payable, as the redemption premium



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Page 34 of 47

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Ref. No. JRMLC/PACL/

is not mentioned in the said clause. In its email dated 10.07.2025, STCL has calculated redemption premium at the rate of 8% per annum for each of the financial years from date of allotment of the NCDs till date. As mentioned above, in its reply dated 07.10.2025, STCL in addition to 12% coupon, 2% default interest and 2% interest on delay in creation of security, has also added redemption premium at the rate of 8% from the date of allotment till 15.09.2018.

49. As can be noted from the Clause 1.1 j. of DSSA, as quoted above, redemption premium means premium payable at the time of redemption at the rate of 8% per annum of the Subscription Amount, calculated with effect from the date the Subscription Amount stands credited in the bank account of the Company. Issue of debenture is a commercial and contractual transaction between the issuer and the subscriber. Subscribers subscribe to the issue of debenture for return on his investment made in the debentures. As is the case with 12% coupon rate, redemption premium also forms part of the return which a subscriber to the debentures envisages while subscribing to any issue of debentures. It shows that redemption premium is payable at the time of redemption of NCDs. It becomes due and payable at the time of redemption. Such redemption of debenture can be either through voluntary act of the BCHL in accordance with the terms of DSAA or it can be through enforcement of security by the debentureholder in accordance with terms of DSSA. In either case it is redemption of the NCDs which would attract payment of redemption premium as per DSSA. Another contention of BCHL is that redemption premium is payable only for a period of 4 years and not beyond. In this regard, it is noted that as per DSSA 1/3<sup>rd</sup> NCDs were redeemable on 02.03.2014, another 1/3<sup>rd</sup> were to be redeemed on 02.09.2014 and remaining 1/3<sup>rd</sup> NCDs were to be redeemed on 02.03.2015. In terms of DSSA, redemption premium was to be paid at the rate of 8% p.a. at the time of each of the redemption as mentioned above. The redemption



Page 35 of 47

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premium payable as aforesaid, thus got crystallised on the respective date of redemptions and since remained unpaid, is liable to an interest of 1% per month or part thereof. DSSA is silent on the interest to be levied in case of redemption premium remains unpaid. Accordingly, since the present proceedings are being carried out under Section 28A of the SEBI Act, 1992, accordingly, interest provided under Section 220 of the Income-tax Act, 1961, which is applicable to the proceedings under Section 28A of SEBI Act, 1992, has been levied.

50. Another issue is of liability to pay interest for default in making payment of interest. BCHL has submitted two calculations of the amount outstanding. In Table A, it has not considered the default interest at all. Whereas, it has calculated default interest in Table B, however, it has calculated the same till 18.06.2013 i.e. the date on which recall notice was given by STCL to BCHL. In its reply dated 04.11.2025 BCHL has taken default interest till 23.03.2015, i.e. the date on which STCL refused to give undertaking/indemnity to IFCI. STCL, vide its emails dated 10.07.2025 and 22.07.2025 and in its reply dated 07.10.2025, has added the default interest at the rate of 2% per annum from 02.03.2012 till date. Further, vide its letter dated 21.08.2025, STCL has submitted that as per Clause 3.1(A)(e) of the Trustee agreement dated 01.04.2011, STCL is entitled to charge 2% additional interest payable on an annual basis for the period of default. Said Clause 3.1(A)(e) of the Trustee Agreement dated 01.04.2011 is reproduced hereunder:

*“(e) The Company shall ensure that all relevant documents and security as mentioned in Debenture Subscription Cum Security Agreement are created and executed to the satisfaction of PACL on or before the expiry of three months from the date of receipt Subscription amount by the Company. Upon the expiry of six months, the Debentureholders shall acquire the right to charge 2% additional interest payable on an annual basis for the period of default.”*

Page 36 of 47



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51. I note that as per Clause 1.1 k. of DSSA, “default interest” means interest at the rate of 2% per annum, over and above the normal interest rate payable from the date of default till the date of actual payment of interest. The notice dated 08.05.2013 issued by STCL to BCHL, mentions default in payment of interest and creation of security, as the two ‘events of default’. Moreover, at present another “Events of Default” in terms Clause 9.1 of the DSSA has taken place, i.e. default in the redemption of NCDs. Therefore, as per Clause 1.1 k., liability of BCHL to pay default interest is attracted upon happening of any of the event of default. Such liability to pay interest cannot be confined only till 23.03.2015 (i.e. the date when STCL refused to give undertaking to IFCI). Such liability comes to an end when BCHL actually discharges its liability towards NCDs. Till the time such liability towards NCDs is discharged and amount is paid to the Committee, the liability of BCHL to pay default interest shall continue to run. In view of the finding that BCHL is liable to pay default interest in terms of the provisions of DSSA, contention of BCHL with respect to non-applicability of Clause 3.1(A)(e) of the Trustee agreement dated 01.04.2011, is not being gone into.

52. BCHL in its objection petition has also contended that since STCL had recalled the facility illegally on 08.05.2013 and 18.06.2013 under Clause 9.2 of the DSSA and due to contract being frustrated upon passing of the order on 22.08.2014, the contract stood frustrated and further performance was rendered impossible, thereby freezing the liability on 18.06.2013. I note that liability to redeem NCDs alongwith applicable interests and redemption premium shall continue till the NCDs are actually redeemed by BCHL. Recall of NCD facility by STCL was as per the terms of the DSSA, as agreed by the parties including BCHL. Said recalling of facility by STCL, now can not be used by BCHL, as a shield to avoid its liability under the DSSA viz: to return principal amount, to pay coupon interest, to pay default interest for default in

Page 37 of 47



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Ref. No. JRMLC/PACL/

payment of interest, to pay penal interest for not creating interim security, and to pay redemption premium. I note that under the DSSA, PACL Ltd. had already performed its part of promise by paying Rs. 100 crore to BCHL for issue of NCDs. Now the reciprocal promise of redeeming the NCDs alongwith applicable interest, given by BCHL, remains to be performed by BCHL. I note that SEBI's order dated 22.08.2014 which has been relied upon by the BCHL to plead frustration of contract, nowhere contains any direction which prohibits either BCHL from performing its part of contract or PACL Ltd. from accepting the redemption amount. Therefore, contentions of BCHL that its liability came to an end on 20.06.2013 and contract for issue of NCDs stood frustrated after passing of order dated 22.08.2014 by SEBI against PACL Ltd., are untenable.

53. BCHL in its written submissions dated 04.11.2025 has also contended that recall of debenture facility by STCL on behalf of PACL Ltd. was not in accordance with the terms of DSSA. In this regard, as can be noted from the Clause 9.1 of the DSSA default in redemption of debenture, default in payment of interest including default interest, have been specified as the events of default. As per Clause 9.2 of the DSSA, in case of happening of event of default, a 30 days' notice is required to be given to BCHL to make good the default/cure the event. Such a notice to BCHL was issued by STCL on 08.05.2013. Clause 9.2 of DSSA further provides that in case, the event of default is not cured by BCHL in 30 days then PACL Ltd. can enforce debentures. It is an admitted position that BCHL did not cure the event of default in the said 30 days' period, accordingly, vide its letter dated 18.06.2013 to BCHL, STCL recalled the debenture facility. Therefore, recall of debenture facility was totally in accordance with the terms of DSSA and the contention of BCHL in this regard is untenable.



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Page 38 of 47

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

54. Another issue is of payment of penal additional interest at the rate of 2% per annum for not creating security by pledging the shares of BCHL held by promoters and their affiliates, as provided under Clause 5.3 of DSSA dated 08.12.2010, as amended on 16.04.2011. BCHL has contended that it is highly unconscionable to saddle BCHL with the liability of paying penal interest at the rate of 2% per annum for a contractual condition which stood frustrated by impossibility of performance as the pledge over the 26% shares of BCHL was held by IFCI Ltd. which was released only on 23.10.2018. BCHL has contended that though security by way of pledge of 26% shares of BCHL could not be created for the reason as aforesaid, however, PACL Ltd. through STCL always had interim security created by way of pledge of shares of SRHIL. In this regard, it is noted that in terms of amended DSSA, NCDs issued by BCHL to PACL Ltd. were intended to be secured by the following 3 securities:

- (i) First charge on Gujarat immovable property of BCHL;
- (ii) Second charge on BCHL's immovable property at Goa;
- (iii) Pledge of 26% shares of BCHL, as held by its promoters and their affiliates in favour of STCL, which were at that time pledged with IFCI Ltd., after release of the same within 90 days from the date of receipt of full subscription amount.

It was also provided that pending creation of security, as mentioned in (iii) above, shares of SRHIPL equivalent to 2.5 times of the subscription amount shall be pledged with STCL who shall hold them for PACL as interim security. It was also provided that said pledge would come to an end when the pledge on shares of BCHL is created as mentioned at (iii) above. It was also provided that the Company shall ensure that all relevant documents and security as envisaged under amended DSSA are created and executed to the satisfaction of PACL Ltd. on or before the expiry of three months from the date of receipt of Subscription Amount by BCHL. Also that upon the expiry

Page 39 of 47



पता (केवल पत्राचार हेतु) / Address for correspondence only:

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**न्यायमूर्ति (सेवानिवृत्त) आर.एम. लोढा समिति**  
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**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

of six months, the PACL Ltd. shall acquire the right to charge 2% additional interest payable on an annual basis. Pledge on 26% shares of BCHL was to be created within 90 days from 16.04.2011. However, it is an admitted fact that pledge over 26% shares of BCHL was never created and only the interim security by way of pledge of shares of SRHIPL was created on 04.04.2011. Thus, in terms of amended DSSA, after expiry of 6 months, PACL Ltd. is entitled to charge 2% additional interest payable on annual basis. Accordingly, the contentions of BCHL in this regard are untenable.

55. During the hearing held on 09.10.2025, the AR for BCHL argued that attachment only should be to the extent which is sufficient to discharge its liability and if there is any excess amount, BCHL is entitled to it. In this regard, Section 13(7) of the SARFAESI Act, 2002, Rule 34 of Second Schedule to Income-tax Act, 1961 and judgments of the Hon'ble Supreme Court in *Bhikchand S/o Dhondiram Mutha (Deceased) Vs. Shamabai Dhanraj Gugale (Deceased) through LR's*, 2024 SCC Online SC 929 and *Ram Kishun & Others Vs. State of Uttar Pradesh & Others* (2012) 11 SCC 511, were relied upon. In this regard, proposition of law laid down by the Hon'ble Supreme Court regarding the extent of attachment, is not disputed at all. Rather, in the present case, if any, excess amount is found to be lying with IFCI, after discharging of liability of BCHL under DSSA, BCHL shall be entitled to the excess amount.

56. BCHL also contended that no interest can be charged on unpaid interest amount in view of the Section 220 of the Income-tax Act, 1961 which is applicable to present proceedings in terms of Section 28A of the SEBI Act, 1992. In this regard, judgments of Hon'ble Supreme Court in *Gurpreet Singh Vs. Union of India* (2006) 8 SCC 457 and *Bharat Heavy Electricals Limited Vs. R. S. Avatar Singh and Company* (2013) 1 SCC 243, were relied upon. In terms of Section 220 of the Income-tax Act, 1961, interest is payable on the principal amount and not on the interest amount. Same is



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Page 40 of 47

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/PACL/

the position of law which emerges from the aforementioned judgments. Even the terms of DSSA, in accordance with which the liability of BCHL is to be determined, do not provide for charging any interest on the interest amount. Therefore, charging of interest on interest is not an issue in these proceedings.

57. By referring to the provisions of Section 34 of the Code of Civil Procedure, 1908, BCHL has contended that interest of 6% per annum can only be charged from the date of the default. In this regard, it is noted that Section 34 empowers Court to award interest at such rate as the Court deems reasonable to be paid from the date of the suit to the date of the decree and to award interest on principal sum for any period prior to institution of the Suit. Section also, in cases where decree is for the payment of money, empowers Court to award interest at the rate of upto 6% per annum, from the date of the decree to the date of payment. Therefore, interest upto 6% per annum is attracted for the interest awarded for the period commencing from the date of decree till the date of the actual payment. In this regard, first proviso to said Section 34 provides that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. In the present case, contract (DSSA) between the parties itself provides for the chargeable rate of interests, therefore, even as per Section 34, contractual rate of interest is to be followed.

58. BCHL has also contended that it should be visited with lesser interest rates due to financial constraints being faced by it and having regard to equity and compassion. It was also contended that the terms of the DSSA regarding the payment of interest are highly unconscionable. I note that the object of these proceedings is not to rewrite the agreement between the parties. Whatever interest BCHL is liable to pay in the

Page 41 of 47



पता (केवल पत्राचार हेतु) / Address for correspondence only:

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

facts and circumstances of the case is dependent on the terms of the agreements entered into between the parties, viz: DSSA. Parties to an agreement must be hold true to the terms of the agreement. Interest rate cannot be termed as unconscionable because parties with their free will and consent, agreed to the terms of the agreement including the rate of interests to be paid.

59. BCHL has also contended that on the grounds of equity and compassion lesser interest be charged from it. In this regard, it is noted that law of equity has got certain principles. One of the principles of equity is 'equity follows the law'. In the present case, parties had entered into a contract for issue of NCDs. Indian Contract Act, 1872 is a statutory law by which DSSA is governed. Section 37 of the said Act provides that the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of the Contract Act, or of any other law. If a party to the contract does not perform its part of contract, Section 74 of the said Act further provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. In the light of these provisions, it can be said that parties were required to perform their respective obligations under DSSA. The obligation of PACL Ltd. was to provide Rs. 100 crore to BCHL and obligation of BCHL was to repay said amount alongwith interests and premium, as agreed between the parties. BCHL was also required to pay default interest for default in payment of interest and penal interest for not creating interim security. Thus, when there is specific law to deal with the situation, equity has no role to play in such



Page 42 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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**(पीएसीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

situation. Therefore, the contention of BCHL, based on the principles of equity, is untenable.

60. Another contention raised by BCHL is that after 23.03.2015, i.e. the date when STCL refused to give undertaking to the IFCL with respect to release of part amount of sale proceeds of Goa Hotel Property, BCHL is not liable to pay interest. Essentially, by this contention, BCHL is trying to bring the point that not providing of undertaking by the STCL, amounted to refusal to accept performance of the contract because of which BCHL stands discharged from any liability to pay interest. In this regard, it would be appropriate to refer to Section 38 of the Indian Contract Act, 1872 which provides as under:

*“38. Effect of refusal to accept offer of performance. —Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.*

*Every such offer must fulfil the following conditions: —*

- (1) it must be unconditional;*
- (2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;*
- (3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.*

*An offer to one of several joint promisees has the same legal consequences as an offer to all of them.”*

In terms of Section 38, the promisor is not responsible for the non-performance, if he makes an offer of performance to the promisee and the same is not accepted. However, the said statement of law is subject to certain conditions which are

Page 43 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRMLC/BAGL/

provided in the Section 38 itself. One of such condition is that the offer of performance of promise, must be unconditional. In the present case, though the promisor (IFCI acting on behalf of BCHL) offered to make payment of the balance sale consideration to the promisee (STCL acting on behalf of PACL Ltd.), however, said offer was not unconditional, as IFCI demanded an indemnity cum undertaking from STCL. No such indemnity cum undertaking is envisaged under the DSSA. Therefore, effect of refusal to accept offer of performance, as contemplated under Section 38, could not come into being and BCHL did not get a valid discharge from the contractual obligation. Therefore, the contention of BCHL that after 23.03.2015, it is not liable to pay any interest, is untenable.

62. The next issue to be decided is as to how the amount of Rs. 126 crore which was paid by IFCI to the Committee on 25.05.2018, on behalf of BCHL, is to be adjusted. STCL has not provided any clarity in this regard. In its letter dated 21.08.2025, it has simply informed that an amount of Rs. 126,78,37,102/- was paid by the IFCI to the Committee on behalf of BCHL on 25.05.2018. In this regard, it would be appropriate to refer to Clause 4.7 of DSSA, as quoted above, which provides as to how any payment made by BCHL under DSSA or any other document executed for the subscription of NCDs, shall be appropriated. As per said Clause, any payment made by BCHL has to be appropriated, first towards, payment of default interest, second towards payment of interest and lastly towards redemption of principal amount. It is noted that as on 25.05.2018, total outstanding balance towards NCD was Rs. 2,48,21,13,281/- (Rs. 100 crore towards Principal and Rs. 1,48,21,13,281/- towards interest including redemption premium). As on 25.05.2018, outstanding towards various interests including redemption premium, was Rs. 1,48,21,13,281/-. In terms of Clause 4.7 of DSSA, the amount of Rs. 126,78,37,102/- paid by IFCI to the Committee was to be first adjusted towards interests. As mentioned above, as on 25.05.2018, total outstanding towards interests including redemption premium was

Page 44 of 47



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पता (केवल पत्राचार हेतु) / Address for correspondence only:

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**(पीएससीएल लि. के मामले से संबंधित / in the matter of PACL Ltd.)**

संदर्भ सं. जेआरएमएलसी/पीएससीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

Rs. 1,48,21,13,281/-. After adjusting payment of Rs. 126,78,37,102/- made by IFCI towards the liability of BCHL as on 25.05.2018 towards interest including redemption premium, outstanding of Rs. 1,21,42,76,179/- remained out of which Rs. 100 crore is principal and Rs. 21,42,76,179/- is towards interests including redemption premium. Thus, all the payment made by the IFCI on behalf of BCHL on 25.05.2018 got adjusted in satisfying the liability of BCHL towards interest including redemption premium, in terms of DSSA.

63. In view of the all the aforesaid discussions, I find that in terms of the provisions of the DSSA, BCHL is liable to pay coupon interest of 12% p.a., redemption premium at the rate of 8% p.a. (for 3 years period for 1/3<sup>rd</sup> NCDs, for 42 months for another 1/3<sup>rd</sup> NCDs and for 48 months for remaining 1/3<sup>rd</sup> NCDs and, an interest of 1% per month from the date of respective redemptions till actual date of payment), default interest of 2% p.a. and interest on default in creation of security at the rate of 2% p.a., alongwith principal amount of Rs. 100 crore. I also find that BCHL has made a payment of Rs. 6,86,24,657/- and Rs. 1,26,78,37,102/- towards the discharge of its aforesaid liability. From 26.05.2018 onwards (i.e. the day next to the date when last payment of Rs. 126 crore approx. was made by IFCI) and till date, outstanding amount as on 26.05.2018 is Rs. 1,21,42,76,179/-, coupon interest is Rs. 89,52,32,877/-, interest on redemption premium is Rs. 25,25,06,662/-, default interest is Rs. 14,92,05,479 and interest for delay in creation of security is Rs. 14,92,05,479/-. Accordingly, as on date, BCHL is liable to pay Rs. 2,66,04,26,677/- to PACL Ltd. Accordingly, amount of Rs. 85 crore, lying with the IFCI as a part of the sale proceeds of Goa Hotel property, alongwith interest accrued thereon, is liable to be transferred to the Committee. IFCI is directed to remit the said amount to the Committee.



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Page 45 of 47

पता (केवल पत्राचार हेतु) / Address for correspondence only:

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संदर्भ सं. जेआरएमएलसी/पीएसीएल/

*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/LC/PACL/

64. As mentioned above, on 11.01.2019, SEBI filed an MCA No. 160 of 2019 in W. P.

No. 924 of 2018 pending before Hon'ble Bombay High Court, Goa Bench, praying for impleadment in the said W. P. No. 924 of 2018. The said MCA was filed by SEBI *inter alia* pleading that IFCI had refused to remit the Rs. 85 crore alongwith interest to SEBI citing order dated 12.09.2018, passed by Hon'ble Bombay High Court, Goa Bench, which provided as under:

*"2. In case the Respondent No. 1 is proceeding to disburse the balance amount specified in prayer clause (D) and (E), it shall give advance notice of eight working days to the Petitioners. In that eventuality, liberty to apply."*

65. In compliance of the order dated 12.09.2018 passed in W.P. No. 924 of 2018, IFCI had issued notice dated 11.12.2018 to BCHL for release of money to SEBI. BCHL by its letter dated 14.12.2018 addressed to IFCI objected to the release of money to SEBI and BCHL had also filed an application (Civil Application no. 231 of 2018) in the W.P. No. 924 of 2018, praying that IFCI be directed not to disburse the balance sale consideration till the pendency of the said writ petition. As per the status available on the website of Hon'ble Bombay High Court, the WP was last listed on 01.02.2023, when the same was directed to be listed for final hearing in the week commencing from 24.04.2023. It is noted that as on date, as per the status available on the website of the Hon'ble Bombay High Court, said writ petition is still pending for final disposal.

66. Therefore, issue of appropriation of said amount Rs. 85 crore lying with IFCI, is pending for consideration before the Hon'ble Bombay High Court, Goa Bench. In view of this, direction given in para 63 of this order shall be subject to the outcome of the aforesaid W.P. No. 924 of 2018 pending before Hon'ble Bombay High Court,



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Page 46 of 47

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*Order in the matter of NCDs issued by Blue Coast Hotels Ltd.*

Ref. No. JRM/C/PACL/

Goa Bench. However, in the meantime, the Committee may initiate appropriate proceedings for recovery of remaining outstanding amount towards NCDs.

67. Before parting, it would be appropriate to deal with the prayer made by STCL for its claim of debenture trustee fee of Rs. 27,45,489/-. In this regard, it is noted that on 06.09.2018, SEBI filed an I.A. No. 128401 of 2018 in Civil Appeal No. 13301 of 2015 before Hon'ble Supreme Court seeking an order directing IFCI to release the amount of Rs. 85 crore alongwith interest accrued to SEBI. On 12.12.2024 said I.A. was withdrawn by SEBI with a view to approach the Committee, as may be permissible under the law. Accordingly, Hon'ble Supreme Court passed an order dated 12.12.2024, as quoted in para 1 above, thereby allowing withdrawal of I.A. Said I.A. has been sent by the Committee to the Recovery Officer attached to the Committee for deciding the matter. Therefore, the scope of the present proceedings is only to determine whether the amount of Rs. 85 crore lying with IFCI, is to be released to SEBI/the Committee or not. Therefore, the issue of debenture trustee fees of STCL is outside the scope of present proceeding. However, STCL is at liberty to assert and claim its debenture trustee fees, in accordance with law, through appropriate legal proceedings.

Place: Mumbai

Date: November 10, 2025



ANUBHAV ROY

RECOVERY OFFICER

For and on behalf of Justice (Retd.) R. M. Lodha  
Committee (in the matter of PACL Ltd.)

**अनुभव रॉय / ANUBHAV ROY**  
महाप्रबंधक एवं वसूली अधिकारी  
General Manager & Recovery Officer  
न्यायमूर्ति (सेवानिवृत्त) आर. एम. लोढा समिति  
Justice (Retd.) R. M. Lodha Committee  
(पीएसीएल लि. के मामले से संबंधित, मुंबई) / (In the Matter of PACL Ltd. Mumbai.)

Page 47 of 47

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