

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 370 of 2021

IN THE MATTER OF:

**Union Bank of India on Behalf of the
Committee of Creditors of Dewan
Housing Finance Corporation Ltd.**

...Appellant.

Versus

Kapil Wadhawan & Ors.

...Respondents.

Present:

**For Appellant: Mr. Tushar Mehta, Solicitor General of India,
Mr. Shyam Divan, Sr. Adv. Mr. L. Viswanathan,
Mr. Raunak Dhillon, Mr. Animesh Bisht,
Mr. Abhijeet Das, Ms. Richa Ray, Ms. Saloni
Kapadia, Mr. Aditya Marwah, Mr. Shubhankar
Jain, Advocates.**

**For Respondent: Mr. Sudipto Sarkar, Mr. JJ Bhatt, Mr. JP Sen,
Sr. Advocates with Mr. C Rashmikant,
Mr. Rohan Dakshini, Mr. Vishesh Malviya,
Ms. Shweta Jaydev, Mr. Prakhar Paresh,
Mr. Bhavin Shah, Ms. Pooja Vasandani,
Mr. Mahesh Agarwal, Mr. Divyand Gobind
Chandiramani and Mr. Himanshu Satija,
Advocates for R-1.**

**Mr. Ravi Kadam, Sr. Advocate with
Mr. Liz Mathew, Mr. Rohan Rajadhyaksha,
Mr. Navneet R. and Ms. Sonali Jain,
Advocates for R-2.**

Mr. Vivek Shetty, Advocate for R-3.

Mr. Ashish Virmani for FD Holders of DHFL

Ms. Supragya

Dr. Abhishek Manu Singhvi and Dr. Mustafa,

Sr. Advocates with Mr. Avishkar Singhvi,

Mr. Ashish Bhan, Mr. Ashwyn Mishra,

Mr. Ankush Goyal, Ms. Chitra Rentala,

Mr. Aayush Mitruka, Mr. Samriddhi Shukla and

Mr. Anirudh Krishnaa, Advocates for SRA.

ORDER
(Virtual Mode)

25.05.2021 Heard.

2. Issue Notice.

3. Mr. Sudipto Sarkar, Sr. Advocate with Mr. Mahesh Agarwal, Advocate appears on behalf of Respondent No. 1. Service of formal notice is dispensed with. Mr. Ravi Kadam, Sr. Advocate with Mr. Rohan Rajadhyksha, Advocate appears on behalf of Respondent No. 2 for the Administrator. Mr. Vivek Sheety, Advocate appears on behalf of Respondent No. 3-Reserve Bank of India. Service of formal notice is dispensed with.

4. Mr. Tushar Mehta, Learned Solicitor General with Learned Sr. Counsel Mr. Shyam Divan submits on behalf of the Appellant as well as the Administrator that the present Impugned Order is a unique order where the original promoter who was ineligible under Section 29A of Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016 in short) finds out a route to enter by sending settlement proposals which were not even in accordance with

provisions under Section 12A of IBC so as to stall the Corporate Insolvency Resolution Process (CIRP in short) which was initiated against the Respondent No. 1- Dewan Housing Finance Corporation Ltd. (DHFL in short). The CIRP was initiated by Reserve Bank of India under Rule 5 of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (F.S.P.-Rules). According to Ld. Solicitor General, the Reserve Bank of India took decision to proceed under these Rules read with the provisions of IBC considering the governance concerns and defaults of DHFL and mismanagement by the promoters. Reserve Bank of India suspended Board of Directors of Corporate Debtor under Section 45-1E (1) of Reserve Bank of India Act, 1934, and appointed Administrator and constituted a three Member Advisory Committee to assist Administrator under Rule 5 (supra). Subsequently Company Petition was filed under above Rule 5 of F.S.P Rules read with IBC and it was admitted on 03.12.2019. Same Order confirmed the Administrator to discharge functions of Resolution Professional.

5. It is argued that the Respondent No. 1 sent various letters to the Administrator and the same were considered and response was given as can be seen from the particulars stated in the Appeal itself. It is stated that the Respondent No. 1 sent First Offer Proposal which was received on 19th December, 2020. The Ld. Solicitor General referred to extract of minutes of 18th Meeting of the CoC of the Corporate Debtor (DHFL) (Annexure A15 Page 226) and pointed out the discussion which was recorded in CoC for rejecting the first proposal which included discussion that the proposal of Ex-CMD may not be legally tenable. The Learned Solicitor General referred to the Orders of

the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-II) to point out the stand which was taken by the Reserve Bank of India. It is stated that the Adjudicating Authority reproduced the stand of the Reserve Bank of India in paragraph 70 to 80 of Impugned Order. However, the same was not at all discussed and Adjudicating Authority directed that the Second Settlement Proposal dated 29th December, 2020 be placed by the Administrator before CoC and CoC should consider, decide, vote and inform the outcome in 10 days to the Adjudicating Authority. It is stated that the Second Settlement Proposal was nothing different from the First Settlement Proposal and there were already reasons recorded by the CoC in the minutes referred above with regard to the First Settlement Proposal. Stand of RBI showed Rule 5 of F.S.P Rules required specific procedure to the extent that even Resolution Plan approved by CoC would require No Objection of Regulator. All this has not been looked into it is stated.

6. It is argued that in IBC when Resolution Process is initiated there can be only three contingencies: (i) Resolution Plan is approved, (ii) Orders of Liquidation are passed or (iii) the CIRP is disposed under Section 12A. The Learned Solicitor General referred to the Impugned Order to state that the Adjudicating Authority was aware that the settlement proposals do not fall either under the category of Resolution Plan nor the same are procedure under Section 12 A of IBC but still the Adjudicating Authority went on to pass the orders as it did in the Impugned Order which is dated 19th May, 2021.

7. The Learned Solicitor General has further submitted that even the personal guarantee issued by Respondent No. 1 has been invoked and petition has been filed against the Respondent No. 1. It is argued considering all these

and other factors appearing from record the Adjudicating Authority should not have passed the Impugned Order as has been done. It is stated that these aspects require to be considered and in the meanwhile Impugned Order be stayed.

8. Dr. Abhishek Manu Singhvi, Sr. Advocate appeared on behalf of Resolution Applicant and submitted that the Resolution Plan of Piramal Capital and Housing Finance Ltd. was approved by CoC by 93.65 % of CoC. RBI issued No Objection under Rule 5 (d) (iii) of F.S.P. Rules on 16.02.2021 for change of control and ownership to Piramal. The Resolution Plan was placed before the Adjudicating Authority under Section 31 of IBC and even arguments were heard and concluded months earlier. The Orders were not passed and suddenly the Application of Respondent No. 1 was taken up and orders have been passed which was not appropriate. The Learned Sr. Counsel supported the submissions made by Learned Solicitor General.

9. Mr. Shyam Divan, Sr. Advocate appearing for the Appellant submits that the Adjudicating Authority was aware of the provisions of Section 12A as well as Regulation 30A as can be seen from Paragraphs 56 to 57 but still without appreciating the facts in proper perspective and without considering arguments the orders have been passed.

10. Mr. Ravi Kadam, Sr. Advocate mentioned the matter before us to state that even the Administrator has filed separate Appeal against the Impugned Order which is yet to be numbered. He stated that he is also supporting the submissions made by the Ld. Solicitor General.

11. We have heard Mr. Sudipto Sarkar, Sr. Advocate for Respondent No. 1. The Learned Sr. Counsel referred to various portions from the Impugned

Order and has supported the observations made by the Adjudicating Authority to pass the Impugned Order which are found in Paragraph 81 to 95 of the Impugned Order. The Learned Sr. Counsel referred the Judgments relied on by the Adjudicating Authority to pass the Impugned Order.

12. Operative part of Impugned Order 1 reads as under:

“Therefore, in accordance with the provisions of section 60(5)(c) of I&B Code and also by exercising the powers under rule 11 of NCLT Rules 2016 this Adjudicating Authority hereby directs the Administrator to place the 2nd Settlement Proposal of the applicant Mr. Kapil Wadhawan before CoC for its consideration, decision, voting and inform the outcome of the same within 10 days from today and list the matter on 31.05.2021. Accordingly, the IA 2431 of 2020 in CP (IB) 4258 of 2019 is partly allowed and stands disposed of.”

Vide Impugned Order 2 oral request for stay of Impugned Order

1 was declined by Adjudicating Authority.

13. Having heard Learned Counsel for both-sides, and being conscious of the fact that we are at the stage of admission of the Appeal, we at this stage consider on prima facie basis. We find that there are serious issues which are being raised and which need consideration. Annexure A6 (Page 149) shows CoC discussed a letter dated 17.10.2020 of Respondent No. 1 when Administrator pointed out that the letter had been given wide Publicity in Media and had created confusion and was misleading the Fixed Deposit Holders, NCD Holders etc. As such we are unable to appreciate the hurry imposed on the Administrator and CoC to consider the Second Settlement Proposal. The Learned Counsel for the Appellant are raising various legal issues as to how the settlement proposal has been styled as a precursor or pre-stage process of application under Section 12A of IBC. Regulation 30A of

CIRP Regulations requires reasons to be given for application under Section 12A of IBC if filed after issue of Expression of Interest. Here the matter had proceeded to the stage where even Resolution Plan had been approved and was before Adjudicating Authority. There would be no end if such reversals are allowed. There is no dispute regarding the fact that Resolution Plan has already been approved and is before the Adjudicating Authority. Without deciding the same, the present Order has been passed. When, even Resolution Plan requires No Objection of Regulator under Rule 5(d)(iii) it needs to be considered if Section 12A could be resorted to by pass No Objection of Regulator.

14. In the facts of the matter, it appears appropriate to us that till we decide the Appeal, the Impugned Orders should be stayed in terms of prayer A and B made in I.A. No. 885/2021 for stay of the Impugned Orders which reads as under:

“(a) Stay the order and operation of Impugned Order 1 dated May 19, 2021 passed by the Hon’ble National Company Law Tribunal in I.A. No. 2431 of 2020 filed in Company Petition No. 4258 of 2019 till the hearing and final disposal of the present Appeal.

(b) Stay the order and operation of Impugned Order 2 dated May 19, 2021 passed by the Hon’ble National Company Law Tribunal in I.A. No. 2431 of 2020 filed in Company Petition No. 4258 of 2019 till the hearing and final disposal of the present Appeal.”

15. It would be appropriate for the Adjudicating Authority to decide I.A. No. 449 of 2021 in Company Petition No. 4258 of 2019 filed by the Administrator under Section 30 read with Section 31 of IBC at the earliest and pendency of the present Appeal would not be an impediment for the Adjudicating Authority to decide the I.A. No. 449 of 2021.

16. Caveat Petition No. 153 of 2021 is disposed.

17. Respondents to file their Reply-Affidavits within two weeks and the Appellant may file Rejoinder in a week thereafter.

List the Appeal 'For Admission (After Notice)' Hearing on **25th June, 2021.**

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Mr. V.P. Singh]
Member (Technical)**

Basant B./gc.