

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/AN/2021-22/12776)**

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of

Dewan Housing Finance Corporation Limited

(CIN: L65910MH1984PLC032639)

In the matter of Transaction of the shares held by DHFL in DHFL Pramerica Life Insurance Company Ltd. and related matters thereof

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation pertaining to transaction of the shares by Dewan Housing Finance Corporation Limited (hereinafter referred to as **DHFL/Noticee**) in DHFL Pramerica Life Insurance Limited (erstwhile DLF Pramerica Life Insurance Company Limited) (hereinafter referred to as **“DPLI”**) with its wholly owned subsidiary, DHFL Investments Limited (**DIL**) and other related transactions to ascertain whether there was any violation of provisions of SEBI Act, 1992 and/ or SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **“PFUTP Regulations”**). The investigation period was taken as February 01, 2017 (Incorporation date of DIL) to March 31, 2017 (Completion date of the transaction i.e. the sale of stake in DPLI by DHFL to DIL) (hereinafter referred to as **“IP”**). During examination, SEBI observed that the Noticee did not comply with the provisions of regulation 4(1)(e) of SEBI (Listing

Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **LODR Regulations**) r/w Section 21 of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **SCRA**). Accordingly SEBI initiated Adjudication Proceedings against the Noticee for the aforesaid violation of the provisions of LODR Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as the Adjudicating Officer, under Section 23-I of the SCRA and Rule 3 of Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (herein after referred to as **Adjudication Rules**) to inquire into and adjudge under Section 23E of the SCRA, the alleged violation of Regulation 4(1)(e) of LODR Regulations r/w Section 21 of the SCRA.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A Show Cause Notice having reference no. SEBI/HO/EAD-8/PM/AN/10040/1/2021 dated May 07, 2021 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Adjudication Rules, to show cause as to why an inquiry should not be initiated against the Noticee and why penalty, if any, should not be imposed on the Noticee under section 23E of the SCRA for the alleged violation of regulation 4(1)(e) of LODR Regulations r/w Section 21 of the SCRA. The said SCN was delivered to the Noticee. The allegations against the Noticee are as follows:

- a) *DHFL acquired 50% of the equity share capital of DHFL Pramerica Life Insurance Limited (erstwhile DLF Pramerica Life Insurance Company Limited) (hereinafter referred to as “DPLI”) from DLF Limited in December 2013 and the said investment in DPLI (including the original cost of acquisition) was approx. Rs. 31.07 crores.*

- b) On March 31, 2017, DHFL sold its entire stake (i.e. 50% stake) in DPLI to DHFL Investments Limited (hereinafter referred to as “**DIL**”), a wholly owned subsidiary of DHFL, at a value of Rs. 2000.50 Crores. In order to fund the above acquisition in DPLI, DIL issued and allotted 190.10 Crores Compulsorily Convertible Debentures (hereinafter referred to as “**CCDs**”) of face value of ₹10 each to Wadhawan Global Capital Limited (hereinafter referred to as “**WGC**”), a promoter of DHFL. Further, WGC also invested in Optionally Convertible Debentures (OCDs) of DHFL Advisory & Investments Pvt. Ltd (hereinafter referred to as “**DAIPL**”) subsidiary of DHFL.
- c) The above OCDs of a subsidiary of DHFL i.e. DAIPL were backed by a DSRA guarantee issued by DHFL to OCD holders and CCDs of a subsidiary of DHFL i.e. DIL were backed by a put option from DHFL to CCD holders. These OCDs and CCDs were further pledged by WGC to Mutual Funds for the purpose of raising funds.
- d) In view of the nature of transactions and structuring thereof, SEBI conducted an investigation to ascertain whether there was any violation of provisions of SEBI Act and/ or SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) with respect to the transactions of the shares held by DHFL in DPLI with its wholly owned subsidiary, DIL and other related transactions.
- e) The investigation period was taken as February 01, 2017 (Incorporation date of DIL) to March 31, 2017 (Completion date of the transaction i.e. the sale of stake in DPLI by DHFL to DIL) (hereinafter referred to as “**IP**”).
- f) The chronology of events with regard to the transaction is given below:

Date	Event
December 18, 2013	With the approval of the board and the IRDA and NHB, DHFL enters into a JV with Prudential International Insurance Holdings Limited and acquires a 50% equity stake in DPLI from DLF Ltd. DHFL's investment in DPLI as on Feb 2017 was Rs. 31.07 crores
February 2, 2017	DHFL incorporated a 100% subsidiary, DIL, investing Rs. 100.5 crore through equity capital. DIL was constituted with the intent of becoming a Core Investment Company.
February 14, 2017	DHFL's Audit Committee and board, subject to the approval of shareholders of the Company, approved to sell its stake in DPLI (representing 50% of the paid up equity share capital of DPLI) to DIL at a fair market value of Rs. 2000.50 crore as determined by an

	<i>internationally reputed actuarial consultant. This was to unlock the value of DHFL's investment in DPLI.</i>
<i>February 21, 2017</i>	<i>The draft Share Purchase Agreement ("SPA") was executed between DHFL and DIL.</i>
<i>March 17, 2017</i>	<i>Shareholders approved the transaction on a majority of minority basis as it was constituted to be a RPT- Related Party Transaction.</i>
<i>March 30, 2017</i>	<p><i>The Finance Committee of DHFL's board approved the execution of the aforesaid Option Agreement between DHFL and WGC, in order to ensure that the underlying shares of DPLI remain within the DHFL group.</i></p> <p><i>In order to fund the acquisition, over and above the equity contribution received from DHFL, DIL raised Rs. 1,901 crores by CCDs, convertible into equal number of equity shares of DIL after the expiry of 100 months from the date on which the CCDs were issued and mandatorily to be converted after the expiry of 110 months.</i></p> <p><i>WGC funded the acquisition of the CCDs through internal accruals and through a NCD issue of Rs.1900 crore to certain MFs.</i></p>
<i>March 31, 2017</i>	<p><i>On completion of the transaction, DHFL received Rs. 2000.5 crore from DIL on 31st March, 2017.</i></p> <p><i>It sold 18,70,30,934 equity shares of DPLI [equivalent to 50% of the paid-up share capital of DPLI] to DIL. The aforesaid total consideration received by DHFL was utilised for the purpose of its lending activities.</i></p> <p><i>Disclosures made by DHFL to Stock Exchanges as per Regulation 30 of SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015</i></p>

- g) *In order to unlock the value of Company's (DHFL's) investment in DPLI, the Board of Directors and Members of the Company (DHFL) approved the sale of equity shares of DPLI to DIL at the fair market value of Rs. 2,000.50 crores, determined by an actuarial consultant namely Willis Towers Watson.*
- h) *In order to fund the acquisition of DPLI from DHFL, DIL issued and allotted 190.10 crores Compulsorily Convertible Debentures (CCDs) of face value of ₹10 each to WGC. The CCDs were to be converted into equity shares of DIL after the expiry of 100 months and not later than 110 months, from the date on which the CCDs were issued, in accordance with the terms. As per the explanatory statement to the notice of postal ballot, WGC funded the acquisition of the CCDs through its internal accruals and through market borrowings. The aforesaid CCDs were pledged by WGC as collateral in favour of the lenders (i.e. Mutual Funds). Also, an unconditional put option was issued by DHFL in favour of the*

CCD holders. Investment of WGC in the CCDs of DIL was worth Rs. 1901 crores – part financed by ABMF investment of Rs. 1100 crores in NCDs of WGC and by Franklin Templeton investment of 500 crores in NCD of WGC.

- i) WGC would, post conversion of the CCDs, own a majority of the issued and paid-up share capital of DIL. Thus, after 100 months but not more than 110 months, WGC would hold more than 50% in DIL, which was wholly owned subsidiary of DHFL earlier.
- j) Examination was undertaken for the issues such as whether all relevant details of the transactions were made available by DHFL to its shareholders so as to enable them to make an informed decision and whether the transactions were profitable and in favor of promoters of DHFL as against the interests of the public shareholders. Examination revealed that the shareholders were aware about the DHFL's investment in DPLI, reason for the proposed transfer, funding for the transaction etc. However, no concrete details/ information regarding the Put options were available to the shareholders of DHFL while taking the decision for the related party transactions. The same can be seen from the content of the postal ballot, only the term used for options were "certain options or such options".
- k) The following information were not available to the shareholders of DHFL in the notice of postal ballot dated February 14, 2017:
 - i. **The estimated size and amount of the CCDs issued by DIL was not disclosed by the company.** The method for funding for acquisition was known to the shareholders of the Company, however the size and amount was not known. The information related to the upcoming debt of DIL was not available to the shareholders and the cost of that debt also not known which ultimately needs to be borne by the shareholders of DHFL. So, complete and adequate information was not available for decision making for related party transaction.
 - ii. **The conversion ratio of CCD to equity shares, shareholding pattern of DIL post conversion of CCD and the rate of interest on the CCDs were not disclosed by the company.** Conversion ratio of CCD to equity shares was not known and after conversion the shareholding pattern was also not clear to the shareholder. However, it was available that the majority will go to WGC but it was not known that what will be the non-majority part which is going to be with DHFL.
 - iii. **Information about the options like terms of option agreement, cost or fee charged for the options, how CCDs would be transferred to DHFL and**

impact on the shareholders of DHFL if options exercised by WGC etc., were not disclosed by the company. Terms and conditions of Put options were not available to the shareholders of DHFL. It was not known to the shareholder that these put options gives a right to WGC, to transfer the CCDs to DHFL and in that condition what cost would be borne by DHFL was also not known to the shareholders. Further, whether any cost or fee for these options was paid by WGC to the DHFL was also not available to the shareholders. It may be noted that consideration for the put option provided by DHFL was not paid by WGC to DHFL at the time of execution of the agreement. A fee of Rs. 1.9 crores were paid in June 2019, after around 2 years from the agreement execution date.

So, the shareholders of DHFL was only informed about the company's investment in DPLI of Rs. 31.07 crores are getting converted into the range of 1690 crores to 2020 crores but the future cost of these put option which may be bigger than the abovementioned profit was not given to the shareholders. So, complete and adequate information was not available to the shareholder to take informed decision at the time of casting their vote in the resolution passed.

- iv. The fair market valuation ranges for the shares proposed to be transferred from DHFL to DIL is between Rs. 1690 crores to Rs. 2020 Crores. However, the exact fair market value was not disclosed by the company.** The information related to the range of fair market valuation was provided in the notice of postal ballot. However, the exact fair market value for the transaction was not known to the shareholders.

- i) In view of the above, information available to the shareholders was not adequate for an informed decision. The information available to the shareholders was only related to that the Company's investment in DPLI of Rs. 31.07 crores which was getting converted into the range of Rs. 1690 crores to Rs. 2020 crores within a short span of time of around 3 years. The additional capital so raised by the company would be deployed towards expansion of the Company's core business and/ or prepayment of its high cost borrowings. It is a matter of concern when approval was sought for a series of transactions i.e. from stake sale of DPLI to DIL by DHFL, issuance of CCDs to WGC in order to fund such acquisition and pledging of these CCDs by WGC for raising funds for acquisition of CCDs of DIL, the only document which was available for the inspection of shareholders was the "Draft Share Purchase Agreement (SPA)", which only gives information about the stake sale of DPLI. The draft Share Purchase Agreement only gives information about the stake sale of DPLI but does not provide the information regarding estimated size and amount of CCDs issued by DIL, conversion ratio of

CCDs, shareholding pattern of DIL post conversion of CCD, rate of interest of CCDs and the future cost would be borne by DHFL due to conditions of Put options etc. No documents/ information were available to the shareholders related to CCDs and Options. When all the series of events were pre-decided, documents/ draft agreements should have been made available to the shareholders for each and every events in order to enable them to an informed decision. So, the complete and adequate information was not available to the shareholders of DHFL.

- m) *It was also examined whether the transactions were profitable and in favour of promoters of DHFL as against the interests of the public shareholders. To see the profitability of the transaction, there could be two scenarios on the basis of the probability of future performance of DPLI.*

Scenario A: *In the event that DHFL Pramerica Life Insurance did well and the value of DIL shareholding in it went up, say from Rs. 2000 crores to Rs. 4000 crores, WGC would extract this value through the conversion of its CCDs of Rs. 1901 crores and effectively after repaying its lenders along with interest and would be the 100% beneficiary of the profit. While the shareholders of DHFL would benefit in this scenario on account of their shareholding in DIL then would have zero participation in the profit accruing in the CCDs.*

Scenario B: *If DHFL Life Insurance failed and its value falls from Rs. 2000 crores to say, Rs. 1000 crores, the WGC would not be in a position to extract enough value through the CCDs and would potentially be unable to pay the NCD holders. In this scenario as per the put option agreement entered into with DHFL (which has not been placed before the shareholders), the Lender would put the CCD on DHFL, who would have to pay Rs. 1901 crores plus interest of 9.95% p.a, while getting in return, the CCDs of value of only Rs. 1000 crores approx. In this scenario the minority shareholders of DHFL would have to bear 62.62 % of the loss, accruing to the CCDs, the balance 37.38% being borne by WGC by virtue of their holding in DHFL. In view of the above, as against the benefit which they had already got from the stake sale of Rs. 31.07 crores to Rs. 2000.5 crores in DPLI, their net benefit would reduce. As mentioned above, possibility of both the scenario was there and depended on the future performance of the DPLI.*

- n) *As mentioned above, possibility of both the scenarios was there and depended on the future performance of the DPLI. In scenario 1, the minority shareholders of DHFL only gets profit by virtue of their shareholding in DIL, whereas WGC first*

enjoys the benefit of interest received on the CCDs issued by DIL and then profit by virtue of majority shareholding in DIL after the conversion of CCDs into equity shares of DIL. In scenario 2, the minority shareholder of DHFL would have to bear 62.62% of the loss, accruing to the CCDs and only 37.38% being borne by WGC by virtue of their holding in DHFL. With the put option, WGC will be in a win-win situation, if DPLI does well and makes profit, WGC will hold the majority stake in DIL after conversion of CCDs to the equity shares of DIL. However, in case DPLI does not perform well, CCDs of DIL will be transferred to DHFL and DHFL have to pay the consideration to WGC. So, the loss would be borne by the shareholders of the DHFL. The complete and adequate information was not presented before the shareholders of DHFL while taking the approval for the related party transaction. Benefit of the stake sale of DPLI of Rs. 31.07 crore to Rs. 2000.50 crore was showcased but the condition of put option and effects of the put option on the shareholders of DHFL was not disclosed to the shareholders. So the transaction with the put option of DHFL is asymmetric in favour of the promoters of DHFL and against the minority shareholders.

- o) Thus, it was observed during the examination that the complete and adequate information was not disclosed to the shareholders of the Company. (Notice of Postal ballot and Share Purchase Agreement (SPA) are placed at Annexure-2). The whole chain of events/ series of events were designed in such a way as to give benefits to the promoters (WGC) of the Company and could cause future loss for the minority shareholders resulting into asymmetry in favor of the promoters & against minority shareholders of DHFL. Incomplete disclosure defeats the entire purpose of having the resolution approved by the shareholders and is against the principles of good corporate governance.*
- p) In view of the above, Noticee has allegedly violated the principles governing disclosures and obligations prescribed under Regulation 4 (1) (e) of LODR Regulations r/w Section 21 of SCRA by not disclosing the information of CCDs and Put Options and taking the approval from the shareholders of the company for the subjected related party transaction without giving complete and adequate information as mentioned in aforesaid paras.*

4. Vide e-mail dated May 21, 2021, Noticee informed that the aforesaid SCN was received on May 21, 2021 and it will revert on priority. Vide letter dated July 23, 2021 Vajjinath M. Gavarshetty, Chief Executive Officer of DHFL submitted reply to the SCN on behalf of the Noticee. The reply of the Noticee summarized below:

- a) Noticee submitted that the Reserve Bank of India (RBI) superseded the erstwhile board of directors of DHFL in exercise of powers conferred under Section 41-IE(2) of the Reserve Bank of India Act, 1934 on November 20, 2019 and appointed Shri R. Subramaniakumar as the Administrator of DHFL. The RBI issued a press release dated November 20, 2019, wherein it stated that owing to the governance concerns and default by DHFL in meeting various payment obligations, the Board of Directors of DHFL was superseded and the RBI would approach the National Company Law Tribunal (NCLT) for the institution of insolvency proceedings against DHFL and the appointment of the Administrator as the insolvency resolution professional. On November 29, 2019, the RBI, as the appropriate regulator (with respect to nonbanking financial companies with asset size of INR 500 crore and more as notified by the Ministry of Corporate Affairs, in terms of the Notification SO 4139(E) dated November 18, 2019) filed an application for initiating corporate insolvency resolution process (CIRP) against DHFL under Section 227, read with clause (zk) of Subsection 2 of Section 239 of the Insolvency and Bankruptcy Code 2016 ("Code"), read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("ESP Rules").
- b) Subsequently, vide its order dated December 3, 2019, the Mumbai bench of the NCLT admitted the RBI's application for the initiation of CIRP against DHFL and also declared the commencement of the moratorium under section 14 of the Code from the date of the filing of the petition by RBI i.e. November 29, 2019, and appointed Shri. R. Subramaniakumar as the Administrator to perform all the functions of the resolution professional under the Code, to complete the CIRP.
- c) The series of transactions referred to in SCN (DPLI Transactions), pursuant to which the violation under regulation 4(1)(e) LODR Regulations read with section 21 of the SCRA is alleged to have been committed by DHFL, have been entered into prior to November 20, 2019, while DHFL was under the purview of the erstwhile management which has since been superseded by the RBI. The Violation alleged is that the information disseminated to shareholders of DHFL vide notice of postal ballot dated February 14, 2017 was inadequate for the shareholders to take an informed decision in relation to the DPLI Transactions. This notice for postal ballot too, was issued prior to November 20, 2019 and under the purview of the erstwhile management.
- d) Subsequently, during the CIRP of DHFL, following transaction audit report prepared by the transaction auditors appointed by the Committee of Creditors, the DPLI Transactions have been found to be of a fraudulent nature. The Administrator has filed the IA No. 19112 of 2020 in CP(IB) 4258/MB/2019 with

the NCLT, seeking to, inter-alia, avoid the DPLI Transactions in their entirety and the same was also duly disclosed as part of LODR disclosure process vide the Company's letter dated 6th October, 2020.

e) Pursuant to the CIRP of DHFL, the resolution plan dated 22 December 2020, read with the undertaking dated January 21, 2021, (Resolution Plan) submitted by Piramal Capital & Housing Finance Limited (Successful RA), has been approved by the Committee of Creditors of DHFL. The Reserve Bank of India communicated its 'no objection' to the Resolution Plan, as required under the FSP Rules, on February 16, 2021. The Resolution Plan has been approved by the Mumbai bench of the Hon' ble NCLT, vide the order passed on June 7, 2021, under Section 31 of the Insolvency & Bankruptcy Code 2016.

f) The Resolution Plan, inter-alia, provides for the following consequences, reliefs and prayers, as extracted below:

a. *Consequences under Part A paragraph 2.3 of the Resolution Plan:*

- i. *"The Company [DHFL] shall have no liability (whether disclosed or undisclosed) towards any Operational Creditors relating to the period until the Insolvency Commencement Date or such period as be approved by the NCLT."*
- ii. *'Any and all security interest and guarantees created or (where there is a right to create such a security over the assets of the Company [DHFL], to secure any obligations towards the Operational Creditors (whether by of hypothecation, pledge, mortgage or otherwise, and including any right of recompense that the Operational Creditors may have) including but not limited to the details as specified in the Information Memorandum and the List of Creditors, shall stand automatically, irrevocably and unconditionally released, discharged and terminated vis-à-vis the Operational Creditors.'*
- iii. *"All legal proceedings initiated before any forum by or on behalf of the Operational Creditors, to enforce any rights or claims against the Company [DHFL] or enforce or invoke any security interest and/or guarantee over the assets of the Company, shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished."*
- iv. *The Operational Creditors shall have no rights or claims against the Company [DHFL] (including but not limited to, in relation to any past non-compliances by the Company [DHFL]) and all such claims shall immediately, irrevocably and unconditionally stand extinguished vis-a-vis the Operational Creditors."*

b. *Consequences under Part A paragraph 2.6.4 of the Resolution Plan:*

- i. *"The Company [DHFL] shall have no liability (whether disclosed or undisclosed) towards any of the Other Creditors relating to the period*

until the Insolvency Commencement Date or such period as may be approved by the NCLT."

- ii. "All legal proceedings initiated before any forum by or on behalf of the Other Creditors, to enforce any rights or claims against the Company [DHFL], shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished.'*
- iii. 'The Other Creditors shall have no rights or claims against the Company (including but not limited to, in relation to any past non compliances by the Company and all such claims shall immediately, irrevocably and unconditionally stand extinguished vis-a-vis the Other Creditors, all documentation executed in respect of the payment obligations of the Company towards the Other Creditors shall immediately, irrevocably and unconditionally stand terminated without any further obligations of the Company'.*

c. Reliefs under Part C Section E of the Resolution Plan:

(i) Reliefs under Part C Section E Paragraph 6:

"The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all Governmental Authorities (including but not limited to SEBI, the NHB, the IRDAI and the MCA of the Government of India) to waive all past non-compliances of the Company under Applicable Law and licenses/ registrations granted thereunder (including those set out in Schedule 111B), and the Company and the Resolution Applicant shall not be liable for any non-compliances under Applicable Law and licenses/ registrations granted thereunder for the period prior to the Implementation Date"

The aforesaid non-compliances under Schedule 111B include:

- (A) "All existing claims and/or proceedings in respect of any past non-compliances under applicable law, initiated or to be initiated by NHB, IRDAI, MCA, SEBI / stock exchanges and any other governmental authority against the Company [DHFL]. "*
- (B) Any claims that may have arisen or are capable of arising, in relation to any non-compliances by the Company [DHFL] (with the regulations prescribed by the NHB, IRDA], MCA, SEB] / stock exchanges and any other authority during the period prior to the Implementation Date."*

- ii) Reliefs under Part C Section E Paragraph 8 of the Resolution Plan:
The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that all monetary liabilities or obligations of the Company [DHFL], in relation to: (a) any investigation, inquiry or show-*

cause, whether civil or criminal; (b) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permits; (c) change of control, transfer charges, compensation, or any Other such liability (whatsoever under any contract, agreement, lease, license, approval, consent or permission to which the Company [DHFL] or its subsidiaries, joint ventures or associates are entitled; (d) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Company; and (e) any contracts, agreements or commitments made by the Company, in each of the foregoing cases (whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystalized or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, (whether or not set out in the provisional balance sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any period prior to the Implementation Date, will be written off in full and will be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan, and all consequential liabilities, if any, that may arise in the future on account of the aforesaid (including but not limited to any duties, penalties, interest, fines or fees) shall stand extinguished and the Company [DHFL] or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto..

(iii) *Reliefs under Part C Section D Paragraph 25 of the Resolution Plan:*

The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that:

- (b) the Option Agreement, Letter Agreement and the Control Agreement will be deemed to be terminated (without any liabilities, claims or obligations whatsoever arising out of or in relation to such contracts, by virtue of the order of the NCLT approving this Resolution Plan and the Company [DHFL] or the Resolution Applicant still at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.*
- (c) The CCDs are declared as null and void with immediate effect and the rights of WGC pursuant to these CCDs, whether exercised or not, shall automatically fall away and be permanently extinguished with immediate effect.*

g) Noticee submitted that, the Hon'ble NCLT, Mumbai has approved the Resolution Plan vide its order dated June 7, 2021, and further directed that the Resolution Plan shall be binding on DHFL, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan. Further, vide Order dated July 12, 2021, the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) 467/2021, has granted the following reliefs as a consequence to approval of the Resolution Plan:

"All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date the Adjudicating Authority was granting its approval under Section 31 could be continued".

h) Noticee referred to another adjudication proceedings of SEBI against it, wherein the adjudication officer imposed penalty and the same was set aside by the Hon'ble SAT in view of the moratorium imposed on the Noticee. In this regard, SEBI appealed before the Hon'ble Supreme Court and the same is pending. Noticee also submitted that the Hon'ble Supreme Court in a judgement dated March 1, 2021 in the matter of P Mohan Raj & Ors vs Shah Brothers Ispat Pvt Ltd. while referring to section 14 of the Code, has held that "The sweep of the provision is very wide indeed as it includes institution, continuation, judgement and execution of suits and proceedings" and the present proceedings would also be squarely covered under section 14 of the Code.

i) Noticee requested not to take any further action against DHFL as the same would not be maintainable qua DHFL. However it is submitted with respect that there is nothing in the Code which prevents the regulator (SEBI) from initiating proceedings against the erstwhile management/ promoters of the company.

CONSIDERATION OF ISSUES AND FINDINGS:

5. I have considered the allegations levelled against the Noticee, reply of the Noticee and the relevant material available on record. From the submissions made by the Noticee, it is relevant to mention here that the Noticee was under moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) with effect from November 20, 2019 (i.e. the date of application of RBI), pursuant to the Hon'ble

National Company Law Tribunal (NCLT), Mumbai Bench order dated December 03, 2019 having application no. C.P. (IB)-4258/MB/2019. From the available record, it is also noted that in the instant adjudication proceedings, the SCN has been issued to the Noticee on May 07, 2021, i.e. during the period when the Noticee was already under moratorium period under Section 14 of the IBC, with effect from November 29, 2019. Noticee contended that, no further proceedings can be continued or instituted against the Noticee during the pendency of the moratorium under Section 14 of the IBC. Further, Noticee submitted that the Resolution Plan applied by the successful Resolution Applicant, Piramal Capital & Housing Finance Limited has been approved vide NCLT order dated June 07, 2021 in respect of the Noticee and hence, as per the direction of NCLT, the Resolution Plan shall be binding on DHFL, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan. Further, Noticee submitted that NCLAT vide order dated July 12, 2021, has granted the reliefs as a consequence to approval of the Resolution Plan that *“All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date the Adjudicating Authority was granting its approval under Section 31 could be continued”* and therefore, the present proceedings against the Noticee is not maintainable.

6. In this regard, it is noted that the Hon'ble NCLT Mumbai Bench, vide order dated June 07, 2021, approved the resolution plan in the matter of Dewan Housing Finance Corporation Limited (Noticee) under Section 31 of the IBC and the moratorium under Section 14 of the IBC ceased from the date of the NCLT order dated June 07, 2021. The relevant portion of the resolution plan approved by the NCLT, which is extracted hereunder:

“The Application IA No. 449 of 2021 in CP 4258 of 2019 be and the same is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.”

(i) It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

.....

(iv) The moratorium under Section 14 of the Code shall cease to have effect from this date.”

Further NCLAT, vide its order dated July 12, 2021 held that: *“All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date the Adjudicating Authority was granting its approval under Section 31 could be continued”*

7. In view of the above, there is a need to examine the sustainability of the instant adjudication proceedings against the Noticee, wherein the resolution plan has been approved under Section 31 of the IBC. In this regard, the relevant provisions of section 31(1) of the IBC reads as follows:

31. Approval of resolution plan. –

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

8. Bare reading of Section 31 of the IBC makes it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority (NCLT), the resolution plan is binding not only on all the creditors but also on the central government, state government or local authority to whom statutory dues are owed. The immunities applicable to the Noticee will be in accordance with the approved resolution plan. Such a provision is necessitated since one of the dominant purposes of the IBC is revival of the Corporate Debtor and to make it a running concern. The Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, (2019) 153 CLA 275 (SC) held as follows:-

“A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”

9. The Hon'ble Supreme Court in the matter of Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors (order dated April 13, 2021) held as follows:

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding

on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in subsection (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

.....

95. *In the result, we answer the questions framed by us as under:*

- (i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*
- (ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;*
- (iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”*

10. The Hon'ble Securities Appellate Tribunal (SAT), vide order dated October 29, 2020, in the matter of Monnet Ispat & Engineering Ltd, held that:-

“14. In Ultra Tech Nathdwara Cement Ltd. v. Union of India, 2020 SCC OnLine Raj 1097, the Rajasthan High Court referred to a speech of the Hon'ble Finance Minister in the Parliament clarifying the legislative intent of the amendment under section 31(1) of IBC in the following terms: “IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before

them, but, largely, yes, it is IBC. There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan.”

15. In view of the aforesaid, it is clear that once the resolution plan is approved by the appropriate authority the same is binding on all concerned including the respondent.

16. The Rajasthan High Court in Ultra Tech Nathdwara Cement Ltd. v. Union of India (supra) held as under:-

“66. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution Applicant starts running the business of the corporate debtor on a fresh state as it were.

67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. As successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”

[Emphasis supplied]

17. It is also stated here that what could not done by SEBI when the moratorium under section 14(1) of the IBC was in force cannot certainly be done after a

resolution plan is approved and becomes binding on all creditors including government and local authority under section 31 of the IBC.

18. In the light of the aforesaid, we are of the opinion that once a resolution plan has been approved it becomes binding on all creditors including the government and local authorities including the respondent under section 31(1) of the IBC. It is no longer open to the respondent to issue a show cause notice or adjudicate and pass an order of penalty upon the appellant. Consequently, the impugned order cannot be sustained and is quashed. The appeal is accordingly allowed with no order as to costs.”

11. The aforesaid decisions make it clear that the terms of an approved resolution plan are imperative and are binding on all creditors including government and local authorities and all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished. It is also clear that no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

12. The Hon'ble Supreme Court in the matter of Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors (order dated April 13, 2021) held as follows:

“72. In the Rajya Sabha debates, on 29.7.2019, when the Bill for amending I&B Code came up for discussion, there were certain issues raised by certain Members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:

“IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC. [...]

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear

(emphasis supplied)”

73. It could thus be seen, that in the speech the Hon'ble Finance Minister has categorically stated, that Section 238 provides that I&B Code will prevail in case of inconsistency between two laws. She also stated, that there was question about indemnity for successful resolution applicant and that the amendment was clearly making it binding on the Government. She stated, that the Government will not make any further claim after resolution plan is approved. So, that is going to be a major sense of assurance for the people who are using the resolution plan. She has categorically stated, that she would want all the Hon'ble Members to recognize this message and communicate further that I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states, that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company.

.....

86.....one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to

issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in subsection (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief. We therefore hold, that the 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

.....

130. In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.”

13. In light of the above, I am of the view that once a resolution plan has been approved, it becomes obligatory on all creditors including the Central Government, State Government and Local Authorities under Section 31 of the IBC and no proceedings can be initiated or proceeded against the corporate debtor. Therefore, the present proceedings cannot be continued against the Noticee, since the resolution plan in respect of the Noticee has already been approved by the Hon'ble NCLT, vide order dated June 07, 2021, under Section 31 of the IBC.

ORDER

14. In view of the above observations/findings and in exercise of the powers conferred upon me under section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against the Noticee viz. Dewan Housing Finance Corporation Ltd. vide SCN dated May 07, 2021.

15. In terms of the provisions of rule 6 of the Adjudication Rules, copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: July 29, 2021

PRASANTA MAHAPATRA

ADJUDICATING OFFICER