Raghu Ks & Ors vs Mr. R. Subramaniakumar Administrator ... on 7 February, 2022

A

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No 538 of 2021

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Company Appeal (AT) (Insolvency) No. 538 of 2021
[Arising out of Order dated June 7, 2021, in Company Petition No. (I.B.) - 4258/MB/C-II/2019, disposing of IA No.625/2021. passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench]
IN THE MATTER OF:

1. Mr Raghu K S
Aged 43 years
Residing at Mysore, Karnataka
Having Customer ID-1639270 Appellant No.1
2. Mrs Manika Tayal
Aged 36 years
Residing at Mysore, Karnataka
Having Customer ID-1346387 Appellant No.2
3. Mr Sagar Rohitbhai Shah
Aged 35 years
Residing at B-9, Shahi Sabar Apartments
Keshavnagar, Ahmedabad - 380027
Having Customer ID-1589063 Appellant No.3
4. Mrs Neena Chhibber
W/o Vinod Chhibber
Aged about 70 years
Residing at H. No. 117, Saraswati Kunj

Golf Course Road, Sector 53
Gurgaon - 122011
Having Customer ID-1334493 Appellant No.4

5. Vinod Chhibber
Aged 75 years
Residing at H.No. 117, Saraswati Kunj
Golf Course Road, Sector 53
Gurgaon - 122011
Having Customer ID-1334477 Appellant No.5

6. Satya Prasad Siddavatam
Aged about 63 years
Residing at H.No. 50/769, Flat No.503
Karnool, Andhra Pradesh - 518002
Having Customer ID-721489 Appellant No.6

7. Kotnur Vakula Malika Devi
Aged 61 years
Residing at Anuhar Colours
Flat No.405, Ranga Reddy District
Telangana - 500089
Having Customer ID-10036715 Appellant No.7

8. Mr Pradeep Sampath
Aged 51 years
Residing at Bengaluru, Karnataka
Having Customer ID-10090945 Appellant No.8

9. Mr D. Sampath
Aged 84 years
Residing at Bengaluru Karnataka
Having Customer ID-10046839 Appellant No.9

10. Mr Sathya Sampath
Aged 76 years
Residing at Bengaluru Karnataka
Having Customer ID-10110486 Appellant No.10

11. Mrs Suchitra Sampath
Aged 54 years
Residing at Bengaluru Karnataka
Having Customer ID-10082148 Appellant No.11

12. C Eshwari Ramesh
Aged 52 years
Residing at Bengaluru Karnataka
Having Customer ID-10091672 Appellant No.12

13. Mr K Ramesh
Aged 58 years
Residing at Bengaluru Karnataka
Having Customer ID-10086160 Appellant No.13

14. Mrs Savitha B Puttegowda
Aged 43 years
Residing at Bengaluru Karnataka
Having Customer ID-10042757 Appellant No.14

15. Roshan Pavri
And Darius Pavri
Aged 43 years

(Legal Heirs of Later Mr Nadir Jal Pavri)
Residing at Pune Maharashtra
Having Customer ID-1024833 Appellant No.15

16. Mr Laxminarayan DS
Aged 68 years
Residing at Bengaluru Karnataka
Having Customer ID-10107103 Appellant No.16

17. Mr Abhishek A R
Aged 40 years
Residing at Bengaluru Karnataka
Having Customer ID-10100064 Appellant No.17

18. Mr Venkatesh Parthasarathy
Aged 41 years
Residing at Bengaluru Karnataka
Having Customer ID-10089087 Appellant No.18

19. Mr Raghvendra R
Aged 39 years
Residing at Bengaluru Karnataka
Having Customer ID-10090943 Appellant No.19

20. Mr Anup Kumar Shrivastava
Aged 65 years
Residing at Pragyaraj, UP
Having Customer ID-1485678 Appellant No.20

21. Mrs Vibha Srivastav
Aged 60 years
Residing at Pragyaraj, UP
Having Customer ID-10101245 Appellant No.21

22. Mr P R Sreenivasa Babu
Aged 66 years
Residing at Bengaluru Karnataka
Having Customer ID-10113426 Appellant No.22

23. Mrs Sujatha S
Aged 60 years

Residing at Bengaluru Karnataka
Having Customer ID-1672866 Appellant No.23

24. Mr Ankita Prasad

Aged 28 years
Residing at Mumbai, Maharashtra
Having Customer ID-1157637 Appellant No.24

25. Rela Zainul Kantawala
Aged 86 years
Residing at Mumbai, Maharashtra
Having Customer ID-1018501 Appellant No.25

26. S Radhika
Aged 56 years
Residing at Bengaluru Karnataka
Having Customer ID-1016768 Appellant No.26

27. V Srinivasan
Aged 66 years
Residing at Bengaluru Karnataka
Having Customer ID-1647873 Appellant No.27

28. H Y Suneetha
Aged 73 years
Residing at Bengaluru Karnataka
Having Customer ID-1379116 Appellant No.28

29. G B Akhil Kumar
Aged 42 years
Residing at Bengaluru Karnataka
Having Customer ID-1370548 Appellant No.29

30. Nandini Prathap
Aged 52 years
Residing at Bengaluru Karnataka
Having Customer ID-10112360 Appellant No.30

31. Premilaben Rohitkumar Shah
Aged 63 years
Residing at Ahmedabad Gujarat
Having Customer ID-1651062 Appellant No.31

32. V N Sundar
Aged 34 years
Residing at Chennai, Tamilnadu
Having Customer ID-1606588 Appellant No.32

33. Nirmala V

Aged 60 years
Residing at Chennai Tamilnadu
Having Customer ID-1379240 Appellant No.33

34. Asha Lilani
Aged 62 years
Residing at Mumbai, Maharashtra
Having Customer ID-739525 Appellant No.34

35. Roli Gupta
Aged 38 years
Residing at Pune, Maharashtra
Having Customer ID-1606588 Appellant No.35

Versus

1. Mr R. Subramaniakumar
Administrator of Dewan Housing Finance
Corporation Limited
Warden House, 2nd Floor
Sir P.M. Road, Fort, Mumbai
Maharashtra - 400001 Respondent No.1

2. Committee of Creditors of
Dewan Housing Finance Corporation Ltd
Warden House, 2nd Floor
Sir P.M. Road, Fort, Mumbai
Maharashtra - 400001 Respondent No.2

3. Piramal Capital & Housing Finance Limited
4th Floor, Piramal Towers
Peninsula Corporate Park
Lower Parel, Mumbai,
Maharashtra - 400013 Respondent No.3

Present:

For Appellant : Mr Dhruv Gupta, Advocate

For Respondent : Mr Ashish Bhan, Mr Ketan Gaur, Ms Chitra Rentala, Mr Aayush Mitruka, Mr Kaustub Narendran, Ms Samriddhi Shukla, Ms Lisa Mishra and Mr Vishal Hablani, Advocates for Intervenor (Piramal Capital & Housing Finance Ltd., SRA).

Mr Raunak Dhillon, Mr Animesh Bisht, Ms Saloni Kapadia, Ms Madhavi Khanna, Mr Shubhankar Jain, Mr Aniruddh Gambhir, Advocates for COC.

Glossary

DHFL	Dewan Housing Finance Corporation Ltd
CoC	Committee of Creditors
NHB	National Housing Bank
NCLT/ Adjudicating Authority	National Company Law Tribunal
NCLAT/ Appellate Authority	National Company Law Appellate Tribunal
F.D. Holders	Fixed Deposit Holders
AR	Authorized Representative of F.D. Holders
I&B Code	Insolvency and Bankruptcy Code
HFC	Housing Finance Companies
NBFC	Non-Banking Financial Companies
NHB Act	National Housing Bank Act, 1987
CIRP	Corporate Insolvency Resolution Process
BUDSA	Banning of Unregulated Deposit Schemes Act, 2019
ILC report	Insolvency Law Committee Report

CORAM:
Hon'ble Mr Justice M. Venugopal, Member (J)
Hon'ble Mr V. P. Singh, Member (T)
Hon'ble Dr Ashok Kumar Mishra, Member (T)

J U D G M E N T

(Virtual Mode) [Per; V. P. Singh, Member (T)]

1. The present Appeal is being filed by Fixed Deposit holders of the Corporate Debtor who are seriously aggrieved by the treatment meted out to them under Company Appeal (AT) (Insolvency) No. 538 of 2021 6 of 42 the Resolution Plan submitted by the Successful Resolution Applicant and the distribution mechanism approved by the COC in its 18th meeting of the members of COC on 24th - 25 December 2021 which gives them the biggest haircut despite being the most vulnerable class. The Appellants have been recognised as Financial Creditors and equated on their risk appetite with Financial Institutions and Banks purely arbitrarily. The Appellants are aggrieved by the blatant abusive treatment being meted out to them under the garb of 'commercial wisdom of the CoC'.

Factual Background

2. The present Appeal impugns Order dated 07.06.2021, passed by the National Company Law Tribunal, Mumbai Bench, disposing of I.A. No. 625/2021 preferred in C.P. (I.B.)/4258/(M.B.)/C-11/2019.

3. The I.A. No. 625/2021 was preferred by the Appellants under Section 60(5) of the I.B. Code seeking, inter alia, a declaration that the Resolution Plan be declared illegal and violative of the provisions of the I.B. Code, or strictly in the alternative, a direction seeking modification of the

Resolution Plan such that the Appellants herein are refunded their Fixed Deposits along with interest in terms of the provisions of the NHB Act pertinently, in I.A. No: 449/2021, which Mr R. Subramaniakumar preferred.

4. DHFL had offered a fixed deposit scheme, which promised high returns and security of money. The DHFL's scheme was backed by AAA credit ratings Company Appeal (AT) (Insolvency) No. 538 of 2021 7 of 42 from several rating agencies. The Appellants had invested their money in the F.D. scheme of DHFL.

5. By an order 3.12.2019, the captioned Company Petition was admitted, and a moratorium was imposed by Order the Adjudicating Authority and accordingly, Corporate Insolvency Resolution Process was initiated against DHFL.

6. Further on 24.12.2020 / 25.12.2020, the 18th COC meeting is conducted wherein the Fixed Deposit holders are given the biggest haircut in terms of the distribution mechanism envisaged. Out of the admitted claims amount of INR 5,375 crores, only a sum equivalent to Rs. One thousand two hundred forty- three crores (i.e. 23.08%) has been directed to be paid to the Fixed Deposit Holders. This is against the 40% (minimum) of the admitted claims agreed to be paid to the Secured Financial Creditors with a tremendously huge risk appetite.

7. By the Impugned Order, the Adjudicating Authority disposes of the application. The IA No. 625 of 2021 with a direction to, inter alia, requested the CoC to reconsider the Appellants' grievances plights and enhance the percentage of the payment made in the plan to the level of Secured Financial Creditors, i.e. approximately 40% of what the Financial Creditors would be getting in this plan.

8. Similarly, I No. 449 of 2021 disposed to approve the Resolution Plan and reiterate the directions in IA No. 625 of 2021.

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9. The present Appeal impugns Order dated 07.06.2021 passed by Hon'ble NCLT, Mumbai Bench, disposing of IA No. 625/2021, on the following grounds:

> (a) Resolution Plan does not pass muster under Section 30(2)(e) being in contravention of the provisions of NHB Act, read with the NHB Directions.
>
> i) A perusal of the provisions of Section 36A of the NHB Act makes it amply clear that the deposits have to be repaid strictly by the terms of such deposit. The entire scheme of the NHB Act aims to secure the interests of depositors, as evidenced by a perusal of the provisions of Sections 29 B, 29 C, 30 A, 31, and 33 A of NHB Act, 1987.
>
> ii) Further, the NHB Directions make it incumbent upon every Housing Finance Company to secure repayment of the total amount of public deposits. Specifically, a

reference may have to the provisions in Directions Nos. 3, 6, 14, 15. Directions 18 and 39, wherein full cover for public deposits has been mandated under the NHB Directions, 2010.

iii) A perusal of the statement of objects of the NHB Act makes it amply clear that it is aimed at regulating and promoting housing finance institutions. Whereas the I.B. Code is aimed at Insolvency Resolution of Corporate Persons. It is one thing to suggest that the insolvency of the corporate debtor will be governed under the provisions of the I.B. Code.

Still, wholly another to indicate that in the exercise of such powers, the CoC constituted under the I.B. Code will also usurp a Statutory Authority's Company Appeal (AT) (Insolvency) No. 538 of 2021 9 of 42 regulatory functions and powers by resorting to Section 238. A ready resort to Section 238 should not render Section 30(2)(e) nugatory. Section 238 covers cases of inconsistency, whereas the present case is one where the two legislations can be construed harmoniously. Since the NHB Act provides for the regulation of public deposits in a Housing Finance Company, it must be done strictly according to the terms thereof or not at all. [Municipal Corporation of Greater Mumbai (MCGM) Abhilash Lal and Other reported in (2020)13 SCC 234]

iv) Section 36 of the NHB Act provides that the provisions thereof shall have effect notwithstanding anything inconsistent contained in any other law. It is trite law that where two legislations contain non-obstante clauses. Still, they operate in different fields, the question of the earlier legislation yielding to the latter one does not arise

(b) The Resolution Plan and the distribution mechanism are discriminatory and arbitrary.

i) Under clause 2.5.5 of the Resolution Plan, the Resolution Applicant had provided an additional amount to be paid to the Fixed Deposit holders, over and above the amount allocated to them by the COC. However, this clause was rendered otiose by the CoC in as much as the CoC has arbitrarily and whimsically withdrawn the alleged benefit to the Appellants as is evident from a perusal of the 18th CoC minutes wherein it has been Company Appeal (AT) (Insolvency) No. 538 of 2021 10 of 42 recorded that this additional amount shall not be over and above the Resolution Plan amount.

ii) Further, the COC has created an artificial and arbitrary distinction between similarly placed fixed deposit holders by categorising them into different groups and allocating discriminatory payments among the same class of creditors, i.e. based on their fixed deposit amounts. There cannot be discrimination between similarly placed creditors. (Binani Industries Limited v. Bank of Baroda & Anr. (Company Appeal (AT) (Insolvency) No. 82 of 2018)]

iii) Vide the Impugned Order, the Tribunal has erred in equating the risk appetite of the Appellants with banks and financial institutions. The Tribunal proceeded to accord approval to the discriminatory treatment of the F.D. holders despite suggesting that the F.D. holders have not been given their fair share of money under the Resolution Plan.

iv) The treatment of the Appellants under the Resolution Plan runs afoul of Explanation-I to Section 30 of the I.B. Code, wherein the legislature's intention has been codified explicitly to state that the distribution should be fair equitable. The Appellants include ailing, senior citizens who have invested their life savings on the strength of AAA ratings provided by the credit rating agencies.

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v) Finally, treatment of the Appellants, by the provisions of the NHB Act, read with the Directions, shall also be consistent with the observations of the Hon'ble Supreme Court in the case of Vinay Kumar Mittal v. Dewan Housing Finance (Civil Appeal No. 654-660 of 2020)], wherein the Hon'ble Apex Court expressed hopes of redressal of the concerns of the depositors and their rights by law. In terms of the same, the present claims must be considered by the provisions of the NHB Act read with the Directions.

(c) The Corporate Debtor being a Financial Service Provider must be treated on a different footing from a regular Corporate Debtor.

i) The legislature, in its wisdom, notified the provisions for insolvency resolution of FSPs separately and distinctly from the insolvency of a regular Corporate Debtor. The sub-committee report on the insolvency of FSPs provides that the rationale for excluding FSPs from the purview of IBC is that the financial firms differ from other firms, among other things, because they handle large amounts of consumers money. Therefore, they are considered systemically important as their failure might disrupt the financial system. The sub-committee also noted that the HFCs must comply with the directions and instructions issued by the National Housing Bank. [Relevant excerpts of the Report of the Sub-Committee of the Insolvency Law Committee for Notification of Financial Service Providers under Section 227 of the IBC, 2016.] Company Appeal (AT) (Insolvency) No. 538 of 2021 12 of 42

ii) Therefore because the Corporate Debtor is an FSP, the insolvency poses systemic risks to the market; the scrutiny entailed in appreciation of the Resolution Plan must be stricter. The commercial wisdom of the CoC cannot stretch to cover regulatory aspects expressly provided for under the NHB Act read with the Directions, Ist Respondent's Submissions

10. The Appellants in the present Appeal have inter-alia challenged the Order passed by the Hon'ble National Company Law Tribunal ("NCLT") dated June 7, 201 in I.A. Nos. 625 2021 ("Impugned Order") and quash the Resolution Plan approved by the Committee of Creditors ("CoC").

11. Dewan Housing Finance Limited ("DHFL") is a Non-Banking Financial Company ("NBFC") and has been identified as a Financial Service Provider ("FSP"). DHFL was facing a severe liquidity crisis, had defaulted in meeting its repayment obligations, and suffered from governance concerns. Therefore, on November 20, 2019, the Reserve Bank of India ("RBI") superseded the erstwhile Board of Directors of DHFL in the exercise of powers conferred under Section 45- IE(2) of RBI Act and appointed Mr R. Subramaniakumar in the capacity of the Administrator of DHFL. The Administrator was conferred with powers and functions of resolution professional for DHFL under

the provisions of Insolvency and Bankruptcy Code, 2016 ("IBC") read with Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules 2019 ("FSP Rules"). On November Company Appeal (AT) (Insolvency) No. 538 of 2021 13 of 42 29, 2019, RBI, in its capacity as the appropriate regulator' filed an application for initiation of Corporate Insolvency Resolution Process ("CIRP") of DHFL before the NCLT, Mumbai Bench under the provisions of IBC. On December 3, 2019, the NCLT admitted the application above filed by RBI against DHFL; confirmed the Administrator's appointment as the Resolution Professional and ordered that 'moratorium' will commence with effect from November 29, 2019, i.e. on the date of filing of the application .

12. In the present case, the Resolution Plans were received from Prospective Resolution Applicants on December 21, 2021. During the meeting of the CoC held on December 24 and 25 of 2021, all legally compliant Resolution Plans were put before the CoC for voting. The voting on the Resolution Plans submitted by Prospective Resolution Applicants concluded on January 15, 2021. On January 15, 2021, the resolution plan of the Successful Resolution Applicant, i.e. Piramal Capital & Housing Finance Limited ("Respondent No. 3/Piramal"), was approved by the Committee of Creditors ("CoC") with 93.65% votes cast in its favour. Additionally, the distribution of proceeds was also put to the vote before the CoC, which the CoC approved by 86.95% majority voting in favour of the. On January 25, 2021, the Administrator filed an application with RBI seeking no-objection concerning the Successful Resolution Applicant as required under Rule 5(d) of the FSP Rules. On February 16, 2021, RBI granted its no-objection in terms of Rule 5(d)(iii) of the FSP Rules. On February 24, 2021, an application seeking approval of the Resolution Plan was filed under Section 31 of IBC before the Company Appeal (AT) (Insolvency) No. 538 of 2021 14 of 42 NCLT. The NCLT heard objections raised by various stakeholders, including the public deposit holders, to the resolution plan and, by its Order dated June 7, 2021, approved the Resolution Plan submitted by Respondent No. 6 (Para 12, Pg. 4-5, Reply). As per the directions by NCLT in its Order dated June 7, 2021, the Administrator convened a meeting of CoC for reconsidering distribution mechanism, i.e. higher payouts to public depositors/ small investors; however, the same was rejected by the CoC.

13. There are approximately 77000 public deposit holders of DHFL. The IBC and rules framed thereunder provide a mechanism for representing the interests of the fixed deposit holders through an Authorized Representative. In the present case, fixed deposit holders of DHFL are represented through Ms Charu Desai/Respondent No. 4. Under IBC, individual fixed deposit holders do not have the right to challenge the Resolution Plan approved by CoC or file separate action to challenge same and/or similar grievances regarding the CIRP of DHFL before different forums (Para 11, Pg. 4, Reply). It is submitted that the total claim amount of public depositors was Rs.5.433 crores, approximately claim of Approximately five thousand three hundred seventy-four crores were admitted (i.e.-6.18% of the overall admitted claims) (Para 26, Pg. 9, Reply). The Appellants have participated in the CIRP process by filing their claim and have been adequately represented on the CoC through an Authorized Representative who has attended all the meetings of the CoC. The Appellants, through the Authorized Representative, received and had knowledge about the meetings of CoC and were Company Appeal (AT) (Insolvency) No. 538 of 2021 15 of 42 also supplied with the minutes of the CoC meetings attended by the Authorized Representative on behalf of the entire class of public depositors.

14. Further, the Appellants through the Authorized Representative have also participated in the voting. While exercising their voting rights by Section 25A(3A) of IBC, they have dissented with the Resolution Plan and the manner of distribution of proceeds under it. Therefore, the Appellate Tribunal ought not to sit in judgment over the commercial wisdom of the CoC and the reasoned Order passed by the NCLT after taking into account the provisions of the IBC.

15. The Hon'ble Supreme Court in Essar Steel (para 88) has reinforced the position that the CoC is the key decision-maker in the rehabilitation of Corporate Debtors. It observed that the commercial wisdom of the CoC in accepting a Resolution Plan by a majority must drive decisions, including the distribution of proceeds under a Resolution Plan. The CoC may approve a Resolution Plan by a vote of not less than 66% of the voting share of the Financial Creditors after considering the 'feasibility and viability of such Resolution Plan and other requirements as may be prescribed under IBC and regulations framed thereunder. Such evaluation considers all aspects of the plan, including distributing funds among various creditors. It is submitted that having participated in the CIRP, the Appellants cannot challenge the decision of CoC to approve the Resolution Plan, which is otherwise in compliance with the provisions of the IBC. In light of the Hon'ble Supreme Court's decision in Essar Steel, it is unequivocally clear that the CoC members have the important task of Company Appeal (AT) (Insolvency) No. 538 of 2021 16 of 42 not only running the resolution process but also working towards maximisation of value (Swiss Ribbons (Paras 26, 27 and 28)] of the Corporate Debtor for all stakeholders (not fixed deposit holders alone) and providing for the manner of distribution of funds as obtained by way of a Resolution Plan. By seeking payments outside the resolution process, the Appellants who also are CoC members (other CoC members being banks etc.), are acting in a silo for obtaining funds at the outset, which is not only against the interest of all stakeholders but also against a holistic resolution for maximisation of value and distribution of funds between different classes of creditors.

16. Fixed deposit holders had challenged the CIRP before the Hon'ble Supreme Court in Vinay Kumar Mittal & Ors. v. DHFL & Ors by seeking a full refund/repayment of their respective deposits. The Hon'ble Supreme Court observed that the fixed deposit holders could raise their contentions before the CoC, the Administrator, and, if necessary, the NCLT, which would be dealt with in accordance with the law. Accordingly, the Authorized Representative of the public depositors had raised the issue of refund/payment of deposits before the CoC. However, the CoC was of the view that differential treatment cannot be given to one class of Financial Creditors during CIRP. Therefore, during the CIRP of any Corporate Debtor, it is not permissible in law to repay any creditor due to the moratorium imposed under Section 14 of the IBC. As per the decision of the Hon'ble Supreme Court in Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority and Another 2020 SCC OnLine SC 292 (para 26), it is Company Appeal (AT) (Insolvency) No. 538 of 2021 17 of 42 settled that provisions of Section 14 of IBC must be strictly observed. Section 14 of IBC inter alia prohibits alienation, transfer, disposal of any asset of Corporate Debtor. The object behind Section 14 of IBC is to maintain the status quo concerning the Corporate Debtor's assets. Since IBC is a time-bound process and every delay is the death knell for the Corporate Debtor, the object behind imposing moratorium under Section 14 is to introduce statutory freeze qua the Corporate Debtor so that CIRP can be resolved quickly without any disposal of assets of Corporate Debtor. This, in turn, would lead to maximisation of value of assets and larger recovery to

the creditors of Corporate Debtor. Therefore, it is respectfully submitted that any payment to the Appellants (whether payment regarding matured fixed deposits or interest) would violate Section 14 of IBC.

17. Respondent contends that one class of creditors cannot be paid in preference to other creditors during CIRP. The Hon'ble Supreme Court in the case of Chitra Sharma v. Union of India, (2018) 18 SCC 575 (Para 48.1 and 48.2) held that it is impermissible for the Court to direct a preferential payment being made to a particular class of Financial Creditors, whether secured or unsecured [Para 46, Pg. 15-16, Reply). It is submitted that once the moratorium is in force as in the present case (on November 29, 2019), it is not open for any Financial Creditor to recover any amount from the account of the Corporate Debtor, nor is it an appropriate amount towards its dues. The aforesaid has been held by this Appellate Tribunal in Indian Overseas Bank v. Mr Dinkar Venkatsubramaniam (2017) SCC Online NCLAT 608 (Para 5). The CoC comprises Financial Creditors, Company Appeal (AT) (Insolvency) No. 538 of 2021 18 of 42 which includes both secured and unsecured creditors. The payment to any creditors for pre-resolution claims will be a preference of only a segment of Financial Creditors over other similarly situated creditors or secured creditors and amount to an abuse of the process statutorily set out in the IBC. There is no mechanism for payments during CIRP to a segment of Financial Creditors (with admitted claims in the resolution process) to prefer a payment outside the IBC. The Hon'ble Supreme Court in the case of Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 (Para 90) has held that "……equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code - to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational."

18. It is submitted that there is no rationale for treating the deposit holders as a separate class and providing them preferential treatment. The IBC already contains various safeguards for public deposit holders, including the appointment of an Authorized Representative who can effectively represent that class of creditors. The Hon'ble Supreme Court has already examined the Constitutional validity of the provisions relating to authorised representatives and upheld the same. The ILC Report in its report dated October 4, 2019 (para

17) has highlighted that the depositors in an FSP are to be classified as Financial Creditors and be treated accordingly". Public deposit holders stand on an equal footing with other Financial Creditors of DHFL. In case Appellants prayer seeking Company Appeal (AT) (Insolvency) No. 538 of 2021 19 of 42 refund and repayments of fixed deposits are granted, similar claims regarding dues will be made on behalf of NCD holders and other creditors, which would be detrimental to CIRP DHFL. Even otherwise, any monies that can be raised during the resolution process is towards keeping the business alive as a going concern and not for out of turn or pre-resolution process claims, that too outside the scheme of the IBC. If payments were to be made to fixed deposit holders whose fixed deposits have matured, it would result in a situation where matured fixed deposit holders would obtain a preference and a special dispensation as opposed to fixed deposit holders whose fixed deposits have not matured, thereby resulting in a differential and unequal treatment within similarly situated creditors. Therefore, it is humbly submitted that no special dispensation ought to

be granted outside the mechanism/process envisaged under the IBC, which provides for the commercial wisdom of the CoC to reign supreme for distribution of funds' [Para 47, Pg. 16, Reply).

19. Respondent further submits that after the initiation of CIRP of DHFL, the rights and issues of the Appellants will be governed as per the provisions of IBC. IBC has been enacted with the objective of the revival of the Corporate Debtor. The same is a complete code in itself and exhaustively deals with the rights of all stakeholders [Para 27, Pg. 9, Reply). The Hon'ble Supreme Court in the case of Embassy Property Developments Pvt. Ltd. vs State of Karnataka & Ors, 2019 SCC OnLine SC 1542 (Para II) has held that IBC is a unified umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate Company Appeal (AT) (Insolvency) No. 538 of 2021 20 of 42 entities in a time-bound manner. On a combined reading of the FSP Rules read with the provisions of IBC and the various judgments as relied upon hereinabove, it is clear that IBC provides for a detailed mechanism where under the claims of the fixed deposit holders, including the Appellants, have been sufficiently dealt with. IBC provides for the mechanism through which the interest of the fixed deposit holders as a class of creditors, including the Appellants, is represented and protected in the CIRP and has been found to be adequate and valid in law (Pioneer Urban Land and Infrastructure Limited and Anr. v. Union of India and Ors, (2019) 8 SCC 416 (Paras 49, 65)]. Therefore, it is submitted that the claims of the Appellants must be considered only in terms of the statutory mechanism under IBC and the FSP Rules.

20. Section 238 of IBC provides explicitly that the provisions of IBC override other laws which are inconsistent with it. As noted by the Hon'ble Supreme Court, the rationale behind IBC is to ensure, inter alia, that the rights of all creditors are addressed adequately in a single forum, and there is clarity of priority in the rights of the creditors. (see Innoventive Industries v. ICICI Bank Ltd. (2018) I SCC 407, (Para 16) - where the scheme and the objectives of the Code have been discussed in detail. Accordingly, the Appellants cannot place reliance on the NHB Act, NHB Directions, and Deposit Act to assert any payment to them since provisions of IBC overrides provisions of NHB Act, NHB Directions, and any right to payment claimed by the Appellants under any Act must be read to be subject to the provisions IBC and the FSP Rules.

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21. Further, NHB directions are in the nature of delegated legislation and, in any event, cannot override a statute, i.e. IBC. The letter dated August 14, 2019, addressed by NHB, also cannot apply since the same was issued before the initiation of the CIRP of DHFL. The Appellants have also placed reliance on Section 36 of the NHB Act, which provides for overriding effect and begins with a non-obstante clause. It is settled law that "Where there are two special statutes which contain non-obstante clauses the later statute must prevail." (Solidaire India Ltd. v. Fairgrowth Financial Services Ltd; (2001) 3 SCC 71 (Paras 8 to 10)]. Therefore, IBC, a latter statute, must prevail over the NHB Act and the directions issued thereunder.

22. It is contended that once the statute has conferred a power to do an act and has laid down the method in which the power is to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The terms of the IBC are unambiguous,

especially dealing with the facts in the present matter. Therefore, this Hon'ble Appellate Tribunal ought not to divulge from the settled provisions of law. It is submitted that the IBC guarantees a minimum of liquidation value to dissent financial creditors like the Appellants herein. In the present case, the fixed deposit holders are provided with the liquidation value of their debt, which is by the provisions of the IBC. Hence for the Appellants to seek relief beyond the scheme of the IBC is not permissible and expressly barred as per the provisions of IBC.

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23. It is submitted that neither the RBI Act nor the NHB Act gives any right to the depositors to be paid in full in case of insolvency. The RBI Act and the NHB Act merely provide that the license of an HFC or NBFC may be cancelled if the deposit holders are not paid. However, neither enactment mandates that full payment be made to deposit holders, especially when NBFC or HFC is under insolvency

24. Section 238 of IBC gives IBC overriding effect over other enactments. Therefore, IBC being a later enactment and a special statute, and in view of Section 238 of IBC, shall prevail over RBI Act (including Chapter III-B & Section 45-Q) and NHB Act (Para 49, Pg. 16, Reply).

25. It is also submitted herein that the fixed deposit holders (including the Appellants) are secured Financial Creditors whose rights are secured to the extent of floating charge created over assets in terms of the circular issued by National Housing Bank dated November 27, 2006. The floating charge was created over the assets of the DHFL in terms of Section 29B of the NHB Act and the circulars therein for an amount aggregating to approx. Rs. 1433 crore. Therefore, the fixed deposit holders shall be paid by the terms of the resolution plan approved by NCLT. Further, since the fixed deposit holders of DHFL are dissenting Financial Creditors, they shall be paid upfront cash and not debt securities before making any payment to other Financial Creditors as per the Resolution Plan.

Company Appeal (AT) (Insolvency) No. 538 of 2021 23 of 42 IInd RESPONDENT's / COMMITTEE OF CREDITORS OF DEWAN HOUSING FINANCE CORPORATION LIMITED, SUBMISSIONS

26. The Appellants / Raghu KS and Ors filed the present Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code / IBC) aggrieved by the impugned order dated June 07, 2021 ("Impugned Order") passed by the National Company Law Tribunal, Mumbai Bench ("NCLT") in L.A. No. 625 of 2021 in Company Petition (I.B.) No. 4258 of 2019 A. There is no provision in the NHB Act or any other law which mandates Depositors have to be paid in full.

(i) Neither the National Housing Bank Act, 1987 ("NHB Act") nor any other law guarantees that full payment must be made to deposit holders, especially when such Non-Banking Financial Company or Housing Finance Company is under insolvency.

(ii) A plain reading of the NHB Act and the Reserve Bank of India Act, 1934 ("RBI Act") makes it amply clear that neither enactment guarantees full payment to the F.D. Holders.

(iii) The same has also been acknowledged by the Reserve Bank of India ("RBI") in its replies to the Writ Petitions filed by F.D. Holders before the Hon'ble Delhi High Court and the Hon'ble Bombay High Court (Refer to Annexure R-1 (Colly) of the Reply @ Pgs. 20-76 @ 68-69]. Company Appeal (AT) (Insolvency) No. 538 of 2021 24 of 42

(iv) Further, the Banning of Unregulated Deposit Schemes Act, 2019 ("BUDSA") enacted on July 19, 2019 (being later than the Code) to protect the interests of the depositors also gives primacy to the Code and clearly states that the rights of the F.D. Holders will have priority save and otherwise as provided under the Code.

(v) Thus, any doubts about the legislative intent as far as the rights of F.D. Holders are concerned have been entirely laid to rest as per the provisions of BUDSA.

(vi) Accordingly, since no provision in the law requires F.D. Holders are to be paid in full; there is no infirmity in the Impugned Order or the approved Resolution Plan.

B. The Code being a subsequent enactment, overrides the provisions of the NHB Act and RBI Act

(i) No full payment right exists under the NHB Act, the RBI Act, or other legislation. Moreover, any such right, even if it exists, would be wholly repugnant with provisions of the Code which provides for a specific manner and priority of payment and sets out the right and extent to which a creditor is mandatorily required to be paid in a resolution plan, i.e. the liquidation value.

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(ii) There cannot be any harmonious construction of the statutes in case of direct repugnancy and inconsistency. Accordingly, in such cases, Section 238 of the Code would apply.

(iii) It is well-established that when two special statutes contain non- obstante clauses, the later statute (being the Code in this case) will prevail over the earlier statute (NHB Act / RBI Act).

(iv) Further, it has been held by the Hon'ble Supreme Court in numerous judgments that in case of any inconsistency between the provisions of the Code and any other enactment, the provisions of the Code will prevail.

(v) Thus, the provisions of the Code will override the NHB Act or the RBI Act, and no preferential treatment can be granted to the Appellants in the CIRP of DHFL based on these enactments.

C. The F.D. Holders are financial creditors of DHFL and have been treated accordingly as per the provisions of the Code

(i) The Appellants have filed their claims with the Administrator in 'Form C' as Financial Creditors. As a result of admission of their claims, the Appellants have been recognised as Financial Creditors under the Code.

(ii) Consequently, the dues of the Appellants as F.D. Holders are financial debt, and there is no rationale for treating the Appellants as a Company Appeal (AT) (Insolvency) No. 538 of 2021 26 of 42 separate class. Additionally, the Sub-Committee Report of the Insolvency Law Committee for Notification of Financial Service Providers under Section 227 of the Code ("ILC Report") dated October 4, 2019, also clarifies that the amounts deposited by the depositors with a Financial Service Provider ("FSP") would be treated as financial debt and that such depositors would be classified as Financial Creditors.

(iii) Further, F.D. Holders (including the Appellants) were represented as a class of Financial Creditors through a duly appointed Authorised Representative ("AR") of their choice as per express provisions of Section 21(6A) of the Code and have participated and exercised their rights as Financial Creditors in the entire CIRP.

(iv) The legislative intent is explicit that Appellants being F.D. Holders are entitled to the same rights and protections as every other Financial Creditor as per the terms of the Code and thus, cannot claim any preferential treatment under the duly approved Resolution Plan. D. There is no provision under the Code providing any preferential treatment to the F.D. Holders (including the Appellants)

(i) No payment can be made to any creditor during the CIRP period due to the moratorium. Further, the Appellants as F.D. Holders can only be paid by the Resolution Plan approved by Order dated June 07, 2021, Company Appeal (AT) (Insolvency) No. 538 of 2021 27 of 42 passed by the Hon'ble Adjudicating Authority in IA. 449 of 2021 in Company Petition (I.B.) No. 4258 of 2019.

(ii) The AR is aware that the Code does not allow payments to F.D. Holders, during the moratorium, addressed a letter dated January 17, 2020, to the Insolvency and Bankruptcy Board of India (IBBI) and RBI requesting that the relevant regulations be amended so that the F.D. Holders can be paid.

(iii) During the 2nd and the 3rd CoC meetings, the Administrator maintained that claims of the F.D. Holders can only be by the provisions of the law.

(iv) Further, in the 6th CoC Meeting held on July 29, 2020, upon request by A.R. for payment of dues, the Administrator again expressed his inability given that deviation from the applicable rules and regulations of the Code would result in non-compliance.

(v) The same stand was also taken by the Administrator in his letter dated February 13, 2020, to the Authorised Representative. Further, by its Order dated January 31, 2020, the Hon'ble Supreme Court has also categorically held that the rights of F.D. Holders must be decided in accordance with the law.

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vi) It is a well-established principle of law (Chitra Sharma v. Union of India [(2018) 18 SCC 575] (paragraphs 48.1 and 48.2)] that the Code prohibits repayment of one class of creditors in

preference to other creditors during CIRP. Hence, if the submissions of the Appellant are accepted, it would amount to giving priority to one class of creditors during CIRP, which is against the provisions of the Code.

E. The Appellants have no basis in law to seek priority payment and have sought to base their case on equity.

(i) No legal provision has been cited by the Appellants to establish a right to priority payment of dues, and the Appellants has sought to base its case on equity.

(ii) It is settled law that equity, no matter how well-founded, cannot override express law provisions. In case of any conflict between law and equity, the law will prevail. [Nasiruddin v. Sita Ram Agarwal (2003) 2 SCC

577) (paragraph 35, p. 588); Raghunath Rai Bareja v. Punjab National Bank [(2007) 2 SCC 230] (paragraphs 29 to 36), B. Premanand v. Mohan Koikal [(2011) 4 SCC 266] (paragraphs 4, 7); Indian School Certificate Examination Isha Mittal and Anr. [(2000) 7 SCC 521] (paragraph 4); P.M. Latha v. State of Kerala [(2003) 3 SCC 541] (paragraph 73).] Company Appeal (AT) (Insolvency) No. 538 of 2021 29 of 42

(iii) Accordingly, the Appellants' contention, based on equity, must yield to the distribution mechanism and the Resolution Plan approved by the Code.

(iv) It has further been laid down by the Hon'ble Supreme Court in Pratap Technocrats (P) Ltd. & Ors. v. Monitoring Committee of Reliance Infratel Limited & Anr., Civil Appeal No. 676 of 2021 @ Para 31, 39 ("Pratap Technocrats Judgment") that the Hon'ble NCLT and this Hon'ble Appellate Tribunal have been endowed with limited jurisdiction as specified in the Code and not to act as a court of equity or exercise plenary powers and that there is no residual equity-based jurisdiction with the Hon'ble NCLT or this Hon'ble Appellate Tribunal.

(v) The Code is a beneficial legislation that envisages equitable treatment of all creditors. But, further, the legislature, in its wisdom, has not granted priority treatment to any Financial Creditor under the express provisions of the Code. Therefore all Financial Creditors must be paid per the approved distribution mechanism and Resolution Plan.

(vi) It is a well-established principle of law that for payments to creditors under the Code, what is fair and equitable must be determined within the framework of the Code, which is the commercial wisdom of the Committee of Creditors, subject to certain minimum guidelines to be observed, i.e. that minimum liquidation value must be given to creditors. (CoC of Essar Company Appeal (AT) (Insolvency) No. 538 of 2021 30 of 42 Steel v. Satish Kumar ((2020) 8 SCC 531) paras 36, 88). The Appellants are being paid more than the minimum liquidation value, which is in line with the concept of fairness and equitability incorporated under Explanation 1 of Section 30 of the Code.

(vii) Other creditors of DHFL comprise retail debenture holders, including individuals and public sector banks who are custodians of public money. They are also similarly placed and have all been treated equally.

(viii) Priority payment to the Appellants on the grounds of equity alone would be discriminatory and gravely prejudicial to the other similarly placed creditors of DHFL and would result in the breakdown of the entire CIRP, which is directly contrary to the objectives of the Code. F. Sections 14, 20 and 25 of the Code have to be read harmoniously to preserve the assets of the Corporate Debtor

(i) On a harmonious reading of Section 20(1) and Section 25, it is transparent that the primary obligation of the resolution professional / administrator is to protect and preserve the assets of the Corporate Debtor.

(ii) There is also a duty to keep the Corporate Debtor a pong concern. However, this duty does not entail an obligation to carry on the business in the same results in direct breach of Section 14 of the Code Sections 14, 20 and 25 of the Code need to be read harmoniously; There is no Company Appeal (AT) (Insolvency) No. 538 of 2021 31 of 42 stipulation in the Code which provides that DHFL could not have offered other loans without payment to F.D. Holders.

(iv) Without prejudice, loans were granted for limited amounts only to ensure that the business of DHFL is kept as a going concern in line with the duty of the Administrator.

(v) The CoC has not voted or passed any resolution for disbursement of any funds for granting any loans as the same is not within the power of CoC. However, it is part of the duties and functions exercised by the Administrator.

G. CoC, in its commercial wisdom, had approved the distribution mechanism providing full repayment to certain small-scale F.D. Holders

(i) The Plan Approval Order categorically holds that the Resolution Plan is compliant with the law and Code according to which the F.D. Holders (dissenting financial creditors) can receive the minimum liquidation value.

(ii) It is well-established that what amounts to fair and equitable payments to the creditors must be determined within the framework of the Code and must fall within the commercial wisdom of the CoC. However, it is subject to specific minimum guidelines to be observed, i.e., minimum liquidation value must be given to creditors.

(iii) Further, it is well established that the commercial wisdom of CoC is not amenable to judicial review on any grounds. In its commercial wisdom, Company Appeal (AT) (Insolvency) No. 538 of 2021 32 of 42 the CoC had decided, voted, and approved the distribution mechanism, which had a provision for certain small-scale F.D. Holders to be paid over and above the liquidation value if the F.D. Holders were assenting Financial Creditors.

(iv) However, the F.D. Holders voted against the Resolution Plan as a class and thus are being paid as dissenting Financial Creditors. H. Without prejudice and in addition thereto, the CoC as a body has voted against granting any further amounts to the F.D. Holders

(i) Pursuant to the direction of the Hon'ble NCLT vide the Plan Approval Order to reconsider the distribution mechanism and give F.D. Holders equal benefits as the assenting secured Financial Creditors, CoC deliberated to vote on a partial modification to the distribution mechanism on June 17, 2021.

(ii) The resolution for modification of distribution mechanism inter alia provided for enhanced payment of an amount to the Appellants. The resolution was voted upon and rejected by 89.19% of the voting share of the CoC. It is pertinent that the F.D. Holders themselves have voted against the resolution. Thus, the Appellants being F.D. Holders are now bound by the resolution passed by the CoC and cannot be permitted to challenge the distribution mechanism before this Hon'ble Appellate Tribunal.

Company Appeal (AT) (Insolvency) No. 538 of 2021 33 of 42 I. The jurisdiction of the NCLT and this Appellate Tribunal is limited

(i) Without prejudice to all those above, it is now a settled position of law that neither the NCLT nor this Appellate Tribunal has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC on any ground, much less on the opinion of minority creditors of the CoC. (Pratap Technocrats Judgment @ paragraph 39)]

(ii) It is well established that the commercial wisdom of CoC is not amenable to judicial review on any grounds. [K.Shashidhar v. Indian Overseas Bank [(2019) 12 SCC 150] (paragraph 52), Kalparaj Dharamshi & Anr v. Kotak Investment Advisors Ltd. (Civil Appeal No. 2943-2944 of 2020) (paragraphs 154, 155); Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs NBCC (India) Ltd. & Ors, 2021 SCC OnLine SC 253 (paragraph 380)

(iii) The jurisdiction of this Appellate Tribunal to review the Resolution Plan is circumscribed by the Code. [Pratap Technocrats Judgment @ paragraph 31)]

(iv) The Resolution Plan and the distribution mechanism are in line with the Code's provisions and the law for the time being in force. The Hon'ble NCLT has recognised this in the Plan Approval Order. (Refer to Annexure A-2 of the Appeal @ Pg. 171].

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(iv) The distributions of funds under the approved Resolution Plan are a commercial decision of the CoC.

27. IIIrd RESPONDENT's (PIRAMAL CAPITAL & HOUSING FINANCE LIMITED), SUBMISSIONS

1. Appellants do not have locus to challenge the Impugned Order 1.1 The Appellants, being fixed deposit (F.D.) holders of Dewan Housing Finance Corporation Limited (DHFL / Corporate Debtor), are Financial Creditors of DHFL. Consequently, in terms of Section 21(6A) of the Insolvency and Bankruptcy Code of India, 2016 (Code), the Appellants, along with other F.D. holders, were represented on the committee of creditors (CoC) through an authorised representative, Ms Charu Desai. As such, after approval of the Resolution Plan dated December 22 2020 (Resolution Plan) by a majority of 93.65% of the CoC, wherein the authorised representative of the Appellants participated in the voting process, the Appellants cannot now maintain an independent challenge to the Resolution Plan nor could be treated as carrying any legal grievance. Case - Jaypee Kensington Boulevard Apartments Welfare Assn. V. NBCC (India) and Ors, (2021) SCC Online SC 253) (Para 435)]

2. The present case does not warrant any interference from this Hon'ble Appellate Tribunal 2.1 The Ld. Tribunal in the Impugned Order disposing of 1. A. No. 625 of 2021(as filed by the Appellants praying for declaration of the Resolution Plan as illegal) directed the CoC to reconsider the amount payable to F.D. holders. This Company Appeal (AT) (Insolvency) No. 538 of 2021 35 of 42 direction is in line with the decision of the Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments v. NBCC India Ltd. & Ors., 2021 SCC Online SC 253 [Case 1: (Para 278)] that states that the Ld. Tribunal does not have the power to modify the terms of the resolution plan but can direct the CoC to reconsider altering the terms of the resolution plan. Under the said direction, in its 20th meeting dated June 17 2021, CoC put to the vote the resolution for maintaining parity between the Appellants/F.D. Holders and secured financial creditors. However, this resolution was rejected by 89% (approx.) of the voting members of the CoC. [@Pg. 203 of the Appeal) 2.2 Given the above, the Hon'ble Appellate Tribunal ought to adopt a "hands- off approach" and should not act as a court of equity or exercise plenary powers while dealing with objections to the Resolution Plan that an overwhelming majority has approved of the CoC. Case 2: K. Sashidhar v Indian Overseas Bank & Ors., (2019) 12 SCC 150 (Paras 55-56); Case 3: Maharashtra Seamless Ltd. v Padmanabhan Venkatesh & Ors., (2020) 11 SCC 467 (Para 30)]. Moreover, the treatment of recoveries arising out of avoidance applications is a matter of commercial wisdom of the CoC and ought not to be interfered with by the Ld. Tribunal or now by this Hon'ble Appellate Tribunal. [Case 4: JSW Steel v. Mahendra Kumar Khandelwal, Company Appeal (Ins.) No. 957 of 2019 (Paras 136-138); Annexure 1: Report of the Insolvency Law Committee dated February 2020] Company Appeal (AT) (Insolvency) No. 538 of 2021 36 of 42 2.3 Further, neither the Code nor the allied regulations make any distinction between the Corporate Insolvency Resolution Process (CIRP) of a Financial Service Provider (FSP) or a non-FSP. Even the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 (FSP Rules), do not provide a broader extent of review of the commercial wisdom of the CoC that is required to be exercised by the Ld. Tribunal and the Hon'ble Appellate Authority in the CIRP of an FSP against that of a non-FSP. The FSP Rules instead state that the Code's provisions relating to CIRP of Corporate Debtor apply mutatis mutandis to the CIRP of FSPs (with certain identified exceptions that do not involve stricter scrutiny of the commercial wisdom of the CoC in case of the CIRP of an FSP). (Annexure 2: Report of the Sub-Committee of the Insolvency Law Committee for Notification of Financial Service Providers under Section 227 of the Code dated October 4 2019]

3. RBI Act or NHB Act does not guarantee the right of full payment against their deposits 3.1 Appellants have relied on the NHB Act and the RBI Act to contend that they have a right to repay their deposits fully. However, the above provisions do not provide for the right of F.D. holders to be paid in full when the concerned non-banking financial company undergoes insolvency under legislation that came about later, i.e., the Code.

Company Appeal (AT) (Insolvency) No. 538 of 2021 37 of 42 3.2 Once the CIRP is initiated under the Code, the rights of all creditors, including the Appellants (i.e. dissenting financial creditors), to receive payments will be governed by Section 30(2)(b) of the Code. They cannot claim any priority/ special treatment under any other law. It is clarified that neither the RBI Act nor NHB Act contains any provision that would entitle the Appellants to any priority payment.

3.3 The purported rights of the Appellants to receive payments instead of their deposits under the predated NHB Act and the RBI Act will have to yield to the distribution mechanism for payment to creditors under the Code due to the overriding effect of Section 238 of the Code. (Case 5: M/S Innoventive Industries Ltd. V. ICICI Bank, (2018) 1 SCC 407 (Para 61); Case 6: Embassy Property Developments Pvt Ltd. v State of Karnataka & Ors., 2019 SCC OnLine SC 1542 (Para 11); Case 7: Employees Organisation v Jaipur Metals & Electricals Ltd., (2019) 4 SCC 227 (Para 20); Case 8: Duncans Industries Ltd. v AJ Agrochem, (2019) 9 SCC 725 (Para 7.4)]

4. Resolution Plan is by the Code and the allied regulations 4.1 Section 30(2) of the Code assures only liquidation value to dissenting Financial Creditors such as the Appellants and not any higher amounts. Clause 1.2 of the Financial Proposal of the Resolution Plan provides for the same. (Annexure 3: Relevant provisions of the Resolution Plan]

5. Appellants cannot be allowed to bypass the distribution mechanism under the Code and seek preferential treatment Company Appeal (AT) (Insolvency) No. 538 of 2021 38 of 42 5.1 FD holders have been recognised as financial creditors under the Code. The Appellants have also categorised themselves as financial creditors (@ Para 7.16/Pgs. 35-36 of the Appeal). Naturally, the Appellants ought to be subjected to the rights and treatment available to Financial Creditors under the Code even in insolvency involving a non-banking financial institution. [Annexure 2: Report of the Sub-Committee of the Insolvency Law Committee for Notification of Financial Service Providers under Section 227 of the Code dated October 4 2019] 5.2 Appellants, being financial creditors, cannot claim any preferential or full payment under the Code or any allied rules and regulations. No exception has been carved out for F.D. holders under the Code (that envisages a composite scheme to deal with the financial situation of the Corporate Debtor) or otherwise to claim preference or better rights to payments. Therefore, allowing a refund to one class of Financial Creditors will not be in the overall interest of the composite resolution/ revival of the Corporate Debtor under the scheme of the Code. Case 9: Chitra Sharma v Union of India, (2018) 18 SCC 575 (Paras 48.1-48.2)] 5.3 Further, Appellants cannot claim priority in payment on the ground that they have deposited their hard-earned money with the Corporate Debtor as they had been well-aware of the risks associated with their investment with the Corporate Debtor. Naturally, at the time of making their investments, the Appellants would have been apprised of the fact that their deposits are unsecured and pari-passu with other unsecured liabilities (except the floating charge created under Section 29B of the NHB

Act), and as such, the repayment Company Appeal (AT) (Insolvency) No. 538 of 2021 39 of 42 of deposits cannot be guaranteed by the Reserve Bank of India (RBI) or the National Housing Bank.

6. Classification of F.D. holders' basis their deposits with DHFL is valid and acceptable in law 6.1 The grievance of the Appellants reclassification of F.D. holders' deposits is not against the Resolution Plan, but the distribution mechanism (Distribution Mechanism) as agreed upon by the CoC. The CoC has decided upon a distribution Mechanism without Piramal Capital & Housing Finance Limited's. It is pertinent to note that in the 18th meeting of the CoC, two different resolutions were discussed and considered among the members of the CoC, i.e., one for approval of Piramal's Resolution Plan under Option I and the other for approval of the Distribution Mechanism. These resolutions were approved by a majority of 93.65% and 86.95%, respectively, by the members of the CoC. Therefore, the process for approval of the Resolution Plan by the CoC was independent of that of the approval of the Distribution Mechanism by the CoC. Moreover, as per Clause 1.7 of Part A-Financial Proposal of the Resolution Plan, the manner of distribution of the "Total Resolution Amount" was to be under the exclusive discretion of the CoC.

6.2 Moreover, this is not the first instance wherein a sub-class of creditors has been created based on their admitted claims. [Committee of Creditors of Essar Steel India Limited Satish Kumar Gupta & Ors., (2020) 8 SCC 531 (Para 132)]. Analysis Company Appeal (AT) (Insolvency) No. 538 of 2021 40 of 42

28. We have heard the arguments of the Learned Counsels for the parties and perused the record. Based on the Pleadings following issues arise under the present set of Appeals;

I. Whether the Adjudicating Authority erred in approving the Resolution Plan, which proposes extinguishing claim to the Fixed Deposit Holders without discharging their payments in full, contravenes the statutory provisions of the NHB Act and RBI Act?

II. Whether the NHB Act or RBI Act, as the case may be, mandate the total payment to the Fixed Deposit Holders even though the corporate debtor is undergoing CIRP under the I& B Code,2016? III. Whether Section 238 of the Insolvency and Bankruptcy Code, 2016, overrides the RBI Act and NHB Act? Is the approved Resolution Plan stipulates extinguishment of the claims to the Fixed Deposits without discharging their payments in full, valid and legal in terms of the Code?

IV. Whether the transactions involving repayment to Fixed Deposits Upon maturity of their deposit would fall within the ordinary course of business for Respondent No. 1, as specified under section 28(1)(k) of the Code?

V. Whether Respondent No. 1 is legally authorised for disbursing loans and investments despite its failure to repay Fixed Deposit holders as per the terms of their deposits?

VI. Whether any payment made against the F.D.'s in terms of their deposits during CIRP would be categorised as a preferential transaction?

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29. It is essential to point out that the issues raised in the present Appeal were also raised in the Company Appeals C.A. (AT)(INS) Nos. 506, 507 & 516 of 2021decided on January 27, 2022. These appeals were also filed against the same Resolution Plan by the fixed deposit holders of DHFL, raising the same issues. We have already decided on the Appeals mentioned above with detailed orders on the issues raised here. Therefore, we do not think it proper to decide again the same issues raised in the present Appeal.

30. Therefore, the issues raised above are decided based on our earlier decision in the Company Appeals C.A. (AT)(INS) Nos. 506, 507 & 516 of 2021. Accordingly, the Judgement of this Tribunal in Company Appeals C.A. (AT)(INS) Nos. 506, 507 & 516 of 2021 are made part of the decision in the present Appeal.

31. Based on the above, Impugned Order needs no interference. Therefore, Appeal is disposed of accordingly. No Order as to costs.

[Justice M. Venugopal] Member (Judicial) [Mr. V. P. Singh] Member (Technical) [Dr. Ashok Kumar Mishra] Member (Technical) NEW DELHI 07th February 2022 pks Company Appeal (AT) (Insolvency) No. 538 of 2021 42 of 42