IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI, COURT II

IA 2431 of 2020

In

CP (IB) 4258/MB/C-II/2019

Under Section 60 (5), 227 (2), 239 of the Insolvency and Bankruptcy Code, 2016

Mr. Kapil Wadhawan

……. Applicant

V/s

1. **The Administrator, Dewan Housing Finance Corporation Limited.**

…Respondent No. 1

2. **Committee of Creditors of Dewan Housing Finance Corporation Limited.**

…Respondent No. 2

3. **Reserve Bank of India.**

…Respondent No. 3

In the matter between

Reserve Bank of India

…Financial Sector Regulator

V/s

Dewan Housing Finance Corporation Limited

…. Corporate Debtor

Order Delivered on : 19.05.2021

Coram:

Mr. H.P Chaturvedi : Hon'ble Member Judicial

Mr. Ravikumar Duraisamy : Hon'ble Member Technical

Appearances:

For the Applicant : Ld. Senior Counsel Mr. Sudipto Sarkar a/w Ld. Senior Counsel Mr. J J Bhatt, Ld. Senior Counsel Mr. J.P Sen a/w Advocates Mr. Rashmikant, Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Shweta Jaydev, Ms. Pooja Vasandani and Mr. Bhavin Shah

For the Respondent No 1 : Mr. Ravi Kadam, Ld. Senior Counsel a/w Mr. Rohan Rajadhyaksha, Advocate i/b Ms. Sonu Tondon, Advocate.

For the Respondent No 2 : Mr. Janak Dwarkadas, Ld. Senior Counsel a/w Mr. Animesh Bisht, Ms. Richa Roy, Ms. Saloni Kapadia and Ms. Pragya Dahiya i/b Cyril Amarchand Mangaldas.

For the Respondent No 3 : Mr. Ashish Kamat a/w Mr. Vivek Shetty, Advocates.

ORDER

Per: Ravikumar Duraisamy, Member

1. This is an Application filed under section 60 (5), 227 and 239 (2) of the Insolvency and Bankruptcy code, 2016 (hereinafter referred to as "IB Code") for directions to Respondent No. 3 to place the settlement proposals of this Applicant before Respondent No. 2 through Respondent No. 1 and for seeking appropriate directions of this Adjudicating Authority.

2. The Reserve Bank of India ("**RBI**") exercised its powers under Section 45-IE of Reserve Bank of India Act, 1934 and superseded the Board of Directors of DHFL by appointing Mr. R Subramaniakumar as the Administrator. RBI filed CP (IB) 4258 of 2019 for initiation of insolvency resolution process which was admitted by this Adjudicating Authority vide order dated 03.12.2019 and appointed Mr. R Subramaniakumar as the Administrator.

Submissions Made by Applicant by way of Interlocutory Application:

3. The Applicant is a promoter of the Corporate Debtor, Dewan Housing Finance Limited (DHFL). On 20th November 2019, Respondent No. 3 (RBI), in exercise of its powers under Section 45-IE of the Reserve Bank of India Act, 1934, superseded the Board of Directors of DHFL and appointed Respondent No. 1 as the Administrator of the company. Thereafter, on 28th November 2019, Respondent No. 3 filed Company Petition No. 4258 of 2019 under the IB Code read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules,

2019 ("**FSP Rules**") in respect of the Corporate Debtor. This Petition was admitted by this Tribunal on 3rd December, 2019, with Respondent No. 1 being appointed as an administrator in accordance with the FSP Rules.

4. Despite repeated requests being made by the Applicant to be allowed to participate in the CoC meetings, Respondent No. 1 has refused to provide any of the Promoters, including the Applicant, notice of such meetings. One of the erstwhile promoters, Mr. Dheeraj Wadhawan, had filed a Miscellaneous Application before this Tribunal for a declaration that the erstwhile Board of Directors is entitled to attend the CoC meetings. However, the said application was dismissed on 28th April 2020. An appeal filed against the said order is pending.

5. Meanwhile, the Applicant learnt from the press that bids were to be received by DHFL in furtherance of the CIR Process. In an attempt to ensure that the real value of the properties of DHFL in respect of which the bids would be received, the Applicant addressed a letter dated 17th October, 2020 to the Respondent No. 3, Respondent No. 1 and Respondent No. 2 apprising them of the real value of the assets of DHFL and thereby ensuring full principal repayment. However, as far as the Applicant could ascertain from information available in the public domain, the proposals received from various Resolution Applicants did not even remotely reflect the true value of DHFL and its assets. In an attempt to maximise the value of the Corporate Debtor's assets, the Applicant, inter alia, addressed letters dated 11th November 2020 and 28th November, 2020 indicating what in its view is the true value of the company and the cashflow it was capable of

generating. These letters were instrumental in an enhancement by the bidders of their bids which, however, remained absymally low. From what the Applicant could ascertain, the offers assigned no real value to the wholesale portfolio of DFIFL. The offers would, if accepted, constitute a windfall for the bidders while compelling the creditors of DHFL including the public (who hold about approximately 60% of the secured debt) to take a steep haircut (nearly 60-70%) on their outstanding. The offers, as they stand, would also not require the bidders to bring any funds of their own, but to finance their proposals entirely from the internal accruals of the Corporate Debtor.

6. In these circumstances, by a letter dated 13th December 2020, the Applicant forwarded a Settlement Proposal ("**1st Settlement Proposal**), which would ensure repayment in full of the principal amount due to all creditors of DHFL. No response was received either from Respondent No. 1 or Respondent No. 3 to this proposal. At the hearing of this application on 13th January, 2021, Respondent No. 1 for the first time claimed that the 1st Settlement Proposal had been rejected by the CoC. A copy of the Minutes by which the said proposal was purported to be rejected was made available for the first time only in the Affidavit in Reply filed by Union Bank of India on 12th January, 2021. A perusal of the said minutes would indicate that the said proposal was not rejected on the merits, but on purported legal advice as to the entitlement of the Applicant to submit such a proposal.

7. Unaware that the 1st Settlement Proposal had been rejected for the reasons indicated above, the Applicant by his letter dated 29th December 2020, forwarded a further proposal ("**2nd Settlement**

Proposal") to Respondent Nos. 1 and 3 as well as the CoC. The Applicant has not received any reply to this letter either. It is however common ground that this proposal has not been considered, accepted or rejected by the CoC.

8. It is in the context of the failure on the part of the Respondents to respond in any way to the 2nd Settlement proposal forwarded by the Applicant that the Applicant was constrained to file the present interlocutory Application. By this application, the Applicant seeks a direction from this Tribunal for Respondent No. 3, through the agency of Respondent No. 1, to place before the CoC the 2nd Settlement Proposal for consideration.

9. The Respondent No. 1 administrator as well as Respondent No. 3 (RBI) have contended that the letter dated 29th December 2020 having been forwarded by the Applicant to the CoC, the proposal was already before the CoC and that no further directions were required to be issued against RBI in the application. It was also contended that the proposal in any event is uploaded on the VDR and is available to all. The Respondent No. 2 CoC, on the other hand, has sought to contend that Section 12A of the IBC requires that any Settlement Proposal be placed only by the Applicant who initiated the insolvency process, viz. the RBI in the present case, and that, failing this, they would not be entitled to consider the proposal. All the Respondents have also argued that this Tribunal has no power or jurisdiction to direct any Applicant, and in this case the RBI, to place any Settlement Proposal for the consideration of the CoC. It was also sought to be urged that the Applicant, as one of the Promoters, was purportedly responsible for the

present financial health of the Corporate Debtor and that no proposal ought to be entertained from such a Promoter In support of this submission, the Respondents also relied on the fact that criminal investigations are ongoing into the manner in which the Applicant had conducted the affairs of the Corporate Debtor. Further, it was argued that the present proposal was defective insofar as it did not comply with the requirements of an application under Section 12A of the IBC and Rule 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**IRPCP Regulations**) including, inter alia, the provision of a Bank Guarantee to meet CIRP expenses.

10. It is submitted that the objections urged on behalf of the Respondents to the present application are misconceived. Section 60(5) of the IBC defines the powers of this Tribunal in the broadest possible terms and reads in relevant part:

> **"Section 60: Adjudicating Authority for corporate persons-**
>
> *(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-*
>
> *(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."*

11. Further, this Tribunal has the inherent power to make such order as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal. This would be apparent from Rule 11 of the National Company Law Tribunal Rules, 2016, which is reproduced hereinbelow:

> *"11. Inherent Powers: - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."*

12. In fact, this Tribunal has exercised, on earlier occasions, its inherent power in cases where the Resolution Professional has failed to place a Settlement Proposal made by the Promoter before the CoC for its consideration. Thus, in Sukhbeer Singh vs. Dinesh Chandra Agarwal, the Hon'ble NCLAT was pleased to hold:

> *"2. Now it is stated that the proposal given by the Appellant/ Promoters has not been placed before the 'Committee of Creditors' by the 'Resolution Professional' on technical ground that the Promoters cannot file application under Section 12A of the Insolvency and Bankruptcy Code,2016 (for short 'I&B Code')- We reject such objection, if any, raised by the 'Resolution Professional'. It is the Promoters, who can settle the matter with all the 'Financial Creditors', 'Operational Creditors' including the Allottees and for that they may give their proposal and the 'Resolution Professional' is bound to place it before the 'Committee of Creditors', which is supposed to consider such application in the light of Section l2-A and the order of this Appellate Tribunal dated*

l6th July, 2019 as quoted above. The Allottees (Home Buyers) are also Members of the 'Committee of Creditors', therefore, while calling meeting of the 'Committee of Creditors', they should also be called for voting in accordance with the existing provisions of law. In that view of the matter, we direct the 'Resolution Professional' to place the proposal of Appellant/ Promoters before the 'Committee of Creditors'. If necessary, the date of meeting of the 'Committee of Creditors' be fixed in the manner as prescribed under the Regulations and information be given to the 'Financial Creditors' including the allottees to take part."

13. Similarly, in Shaji Purushothaman Vs. Union Bank of India & Ors., the Hon'ble NCLAT had the occasion to hold:

9. If an application u/s I2A is filed by the Appellant, the 'Committee of Creditors' may decide as to whether the proposal given by the Appellant for settlement in terms of Section I2A is better than the 'Resolution Plan' as approved by it, and may pass appropriate order. However, as such decision is required to be taken by the 'Committee of Creditors', we are not expressing any opinion on the same. "

14. Similar directions were also issued in Vishal Vijay Kalantri v. Dighi Port Ltd. & Anr., where the Hon'ble NCLAT observed:

"….We allow the Appellant 'Vishal Vijay Kalantri'/Promoters to settle the matter within two weeks.

In the meantime, pending such settlement, the 'Committee of Creditors' will consider all the plans pending before it and after taking into consideration the viability and feasibility and other

terms as fixed by the court and amended Section 30 (2) & (4) will approve one or the other plan. While approving so 'Committee of Creditors' will consider as to whether the plan as may be approved is better than the proposal as given by the Promoters/ Appellant, taking into consideration the viability and feasibility and financial matrix of all resolution plans. It is accepted that the matter will be decided within three weeks."

15. It is thus clear that a Resolution Professional or, as in the present case, an administrator is obliged to place a Settlement Proposal forwarded to him before the CoC for consideration. It is also clear that in the event he fails in this duty, this Tribunal would be fully within its rights to issue a direction to the Applicant, the Resolution Professional or administrator, as the case may be, to place the Settlement Proposal for consideration before the CoC. Equally, on such a proposal being placed before the CoC, it would have to be considered on its own merits.

16. In the present case, it is an admitted position that while the CoC was made available to it the 2nd Settlement Proposal, it has not considered the same on its merits or with its commercial wisdom. As far as the Applicant has been able to ascertain the proposals have not been made available to the FD/NCD holders, i.e. the larger section of creditors, for their consideration. In any event, as stated by the Administrator, the documents though uploaded/available on VDR, are not voted upon. All that the present application seeks is a direction that the 2nd Settlement Proposal be so considered in the interest of the company and its creditors. Such a consideration would cause no prejudice to any

of the stakeholders. In the present case, considering the peculiar composition of the creditors of DHFL, it is imperative for the 2nd Settlement Proposal to be placed before the CoC for their consideration on merit. The banks constitute only 35 % of the debt of DHFL. There are tens of thousands of fixed deposit holders and retail NCD holders all of whom are creditors of DHFL and are being kept in the dark in relation to the proposal made by the promoters. ln fact, only two members of the CoC have appeared before this Tribunal in the present Application. The other constituents of the CoC are unrepresented. It is in the interest of all stakeholders including, inter alia, the members of the public who constitute the vast majority of the creditors of the Corporate Debtor that the 2nd Settlement Proposal at least be considered on merits. All that the Settlement Proposal seeks to do is to maximise the value of the company with a view to ensure an optimal return to its creditors and to prevent any bidders from making windfall gains by a gross undervaluation of the assets of DHFL. If the Respondents are indeed desirous of maximising the value of the Corporate Debtor as part of the CIRP, they can hardly object to a consideration of the 2nd Settlement Proposal.

17. The contention that no promoter of a company in CIRP, on account of his alleged culpability for the financial health or lack thereof of the Corporate Debtor, ought to be permitted to submit a Settlement Proposal is entirely misconceived. Indeed, only a promoter or a stakeholder in the company undergoing CIRP would be in a position to submit a Settlement Proposal. Each of the judgements referred to hereinabove concern cases where Resolution Professionals were directed to place for the consideration of the CoC proposals submitted

by erstwhile promoters. The Applicant has already clarified, both in the body of the proposal itself as well as in the course of oral arguments, that the proposal is not premised on the Applicant being in management. The Respondents may choose, to put in charge of the Corporate Debtor, any persons in whom they may have confidence, with the Applicant being happy to act as a consultant if they so desire to ensure that the value of the assets is maximized.

18. The contention that the proposal does not satisfy the requirements of an application under Section l2A of the IBC or Regulation 30A of the IRPCP Regulations is also flawed. It is not the Applicant's case that the present Interlocutory Application is one under Section l2A. The present application is only a precursor to a possible Section 12A application. It is only if and when a Settlement Proposal is accepted by a requisite majority of the CoC that the question of filing an application under Section l2A or complying with the requirements of Regulation 30A would arise.

19. In view of the aforementioned, it is submitted that it is imperative in the interest of justice that the Interlocutory application be allowed and the CoC be directed to consider the 2nd Settlement Proposal submitted by the Applicant, to vote upon the same and to take a decision thereupon. The Applicant has no desire to stall the Resolution Process or to interrupt the e-voting that is presently underway. The Applicant merely seeks a direction to the CoC to consider the 2nd Settlement Proposal along with the Resolution plans submitted by various Resolution Applicants, while taking its decision on the course to be adopted in respect of the Corporate Debtor. It is further submitted that

the CoC ought not to take a decision on the Resolution Plans or to declare any of the Resolution Applicants a successful bidder without taking into consideration the 2nd Settlement Proposal submitted by the Applicant and voting/deciding upon the same.

Submissions Made by Administrator of DHFL i.e. Respondent No. 1 by way of Affidavit in Reply:

20. The present affidavit in reply for the limited purpose of demonstrating that the Application is not maintainable and deserves to be dismissed in limine, for the reasons specifically set out below. The relief sought by the Applicant are untenable in law and devoid of merits. I crave leave to file a detailed affidavit in reply, if required.

21. By way of the present Application, the Applicant seeks the following reliefs from this Tribunal:

    a. directs the Respondent 3, the Reserve Bank of India **("RBI")**, to place a settlement proposal by the Applicant before Respondent 2, the Committee of Creditors of the Corporate Debtor ("CoC");

    b. The Applicant be provided an opportunity to address the CoC; and

    c. Interim relief in terms of staying consideration of any resolution plans received for the Corporate Debtor and an independent valuation of the Corporate Debtor's assets be conducted and the report shared with the CoC and the Applicant.

22. The contents of the Application are denied in entirety, except and to the extent specifically admitted below, and nothing is deemed to be admitted merely for want of specific traverse. It is submitted that the Application is misconceived and deserves to be rejected at the threshold for the reasons set out in below, each of which are in the alternative and without prejudice to one another.

23. The entire basis for the Application and the relief sought is that the Applicant's proposal, as contained in its letter of December 29, 2020 **("Second Proposal"),** is placed before the CoC. Respondent 1 submits that seeking such relief is infructuous since the CoC has already been made aware of the Second Proposal.

24. The Second Proposal was also addressed to the CoC, as is evident from Exhibit G annexed to the Application. Given that the Applicant itself has addressed the Second Proposal to the CoC, it is humbly submitted that considering this Application would lead to precious time of this Tribunal being expended considering an Application devoid of any merit.

25. In any event, without prejudice to the above, Respondent 1 uploaded the Second Proposal to the virtual data room accessed by all members of the CoC. Accordingly, no further actions remain to be taken, and the Second Proposal is available to the CoC for review and consideration.

26. The Applicant's prayer seeking to interpose Respondent 3 and directing that it be made a conduit for the communication of the Second Proposal is unnecessary since CoC members have already been made aware of the Second Proposal, as received from the Applicant.

27. Accordingly, the Application and interim relief sought therein ought to be dismissed on this ground alone.

28. Without prejudice to the above, Respondent 1 also states that the Application is misconceived and has no basis in law, inasmuch as it seeks relief against Respondent 1 in relation to its Second Proposal.

29. Respondent 1 has been conducting the corporate insolvency resolution process **("CIRP")** in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 **("Code"**) and the regulations thereunder.

    a. Expressions of interest ("**EoI**"s) were issued on January 28, 2020. 24 EoIs were received.

    b. The request for resolution plans ("**RFRP**") was originally issued on March 3, 2020. This was subsequently amended from time to time on March 17, 2020, August 15, 2020, and September 16, 2020.

    c. As per the RFRP amendment on September 16, 2020, the last day for submission of resolution plans was October 16, 2020. This date was extended to November 17, 2020, December 14, 2020, and then December 22, 2020.

    d. The CoC convened thereafter on December 24 and 25, 2020, to consider the resolution plans submitted. Voting on the plans has commenced and is scheduled to end on January 15, 2021.

30. It is in the context of these timelines that the Application needs to be considered. The Second Proposal was received on December 29, 2020,

i.e., after the voting had commenced on the resolution plans received. The Second Proposal was not received in accordance with the timelines set out in the Code or the RFRP. In fact, despite advertisements inviting EOIs seeking resolution plans for the Corporate Debtor being widely published in accordance with the CIRP Regulations, the Applicant chose not to submit an EOI and is now attempting to submit a proposal belatedly at an advanced stage in the CIRP. Further, it is not clear if the Applicant is even eligible to submit a resolution plan for the Corporate Debtor under section 29A of the Code.

31. While the Applicant steadfastly refrained from submitting EOIs, it continued to address correspondence to the Administrator. The Applicant addressed letters (other than the ones specifically discussed above) on October 17, 2020, November 11, 2020, November 28, 2020, and December 1, 2020. After having discussed with the CoC, Respondent 1 addressed responses dated October 27, 2020, November 26, 2020, and December 10, 2020. The consistent position has been that the communications addressed by the Applicant could not be considered proposals as they did not meet the requirements set out in law or in the RFRP. Respondent 1 craves leave to refer to documents in this regard when produced.

32. There is no provision under the Code under which the various proposals submitted by the Applicant (including the Second Proposal) can be considered to be valid resolution plans under the Code. Regardless, and as set out above, Respondent No. 1 shared the contents all correspondence from the Applicant with the members of the CoC in the interests of transparency and full disclosure.

33. The Applicant recognises this fact, that the Application is unsustainable in law. The Applicant, at paragraph 27 of the Application, attempts to wave away the provisions of law as if they were an inconvenient fact that could be overlooked, calling it a "hyper technical approach". What the Applicant characterizes as a "hyper technical approach" not backed by "cogent or justifiable" reasons is in fact Respondent 1 following the law and conducting the CIRP in accordance with the Code and the regulations thereunder.

34. The CIRP of the Corporate Debtor is currently at an advanced stage and voting on resolution plans will conclude on January 15, 2021.

35. The Applicant has prayed for interim relief that would involve consideration of the resolution plans being stayed. At the hearing of the application before this Tribunal on January 8, 2021, counsel for the Respondent undertook to not press for interim relief.

36. However, without prejudice to the above, Respondent 1 submits that the Applicant has made out no case for grant of interim relief.

37. At the outset, the Applicant has failed to make out a prima facie case on merits. As set out above, there is no requirement for the grant of any relief, and final relief has become infructuous as the Second Proposal has already in fact been placed before the CoC. There is therefore no legal basis for any interim relief to be granted.

38. The balance of convenience cannot lie in favour of the Applicant (in fact, the Applicant has not even averred the same). Similarly, the balance of convenience cannot also lie in favour of the CIRP of the Corporate Debtor being disrupted by the erstwhile management of the

Corporate Debtor attempting to use the judicial process to further its aims.

39. Additionally, the Applicant has requested that an "independent" valuation be conducted of the Corporate Debtor's assets, and the report shared with the Applicant. Respondent 1 submits that this request has no basis in law. Respondent 1 has already ensured that assessment liquidation value and fair value of the Corporate Debtor has been conducted in accordance with the provisions of the Code and CIRP Regulations and been duly placed before the CoC. As per the provisions of the Code, such valuation reports are confidential in nature. Since the Applicant is not a member of the CoC, as per the decision of this Tribunal in Application 518/2020 in the subject Company Petition, these reports cannot be shared with the Applicant. The Applicant's attempt to use this Tribunal to evade the provisions of law ought not to be entertained.

40. Without prejudice to the generality of the above, Respondent 1 sets out in this section specific responses to certain factually incorrect and unsustainable allegations in the Application.

41. The contents of paragraph 1 are a matter of record and are denied to the extent contrary to the record.

42. The contents of paragraphs 2 to 4 are denied. The reference to interlocutory application 2709138/04498 of 2020 is irrelevant and misconceived. Through the interlocutory application 2709138/04498 of 2020, the Applicant sought to place a proposal formulated by the promoters of the Corporate Debtor in September 2019 ("**September**

2019 Proposal") before the CoC for its consideration. Note that this proposal was also in flagrant violation of Code and the CIRP Regulations. In fact, the CoC in its eighteenth meeting dated December 19, 2020 considered and rejected the September 2019 proposal. Respondent 1 reserves all its rights in regard to the said application. In any event, the application has become infructuous as the proposal formulated in September 2019 has since been replaced and superseded by the Second Proposal. Accordingly, interlocutory application 2709138/04498 of 2020 ought to be dismissed as infructuous. Respondent 1 reserves all its rights in respect of the allegations related to the commercials of the resolution plans received. The Applicant's allegations in this regard represent little more than unsubstantiated conjecture that are in any way irrelevant.

43. With respect to the contents of paragraph 5, Respondent 1 submits that the Applicant is right the Corporate Debtor is a financial services provider, in whose CIRP there is a significant element of public interest. This is precisely the reason bad faith belated attempts like the Application ought not to be allowed to derail or disrupt the CIRP.

44. The contents of paragraphs 6 – 9 are matters of record, and are denied to the extent inconsistent/ contrary to the record. Respondent 1 has conducted the CIRP in accordance with law, and all allegations/ suggestions to the contrary are denied in the strongest terms. The reference to Application 518/2020 is submitted as being counter-productive: this Tribunal has in fact endorsed and not found fault with Respondent 1's actions.

45. The contents of paragraphs 10 to 17 are denied as incorrect and unsubstantiated. In any event, the question of commercials is a question solely between members of the CoC, and does not lie for the Applicant to agitate or this Tribunal to judge.

46. The contents of paragraph 18 are denied. As already set out above, the reference to interlocutory application 2709138/04498 of 2020 is irrelevant and misconceived. The application has become infructuous as the proposal formulated in September 2019 has since been replaced and superseded by the Second Proposal.

47. The contents of paragraph 19 are a matter of record, and all allegations contrary or inconsistent to the record are denied.

48. The contents of paragraph 20 are denied as being unsubstantiated and in any irrelevant. The contents of the letter of December 13, 2020 and December 19, 2020 are denied. In any event, as was made clear to counsel for the Applicant, the CoC, at its meeting on December 24 and 25, 2020, considered the letter of December 19, 2020, and decided not to accept the same. In any event, this has become irrelevant, as the settlement has been superseded by the Second Proposal.

49. The contents of paragraphs 21 to 28 are denied as irrelevant and unsubstantiated. The question of commercials is a question solely between members of the CoC, and does not lie for the Applicant to agitate or this Tribunal to judge. As already set out above, the Applicant's proposal as contained in its letter of December 13, 2020 has been considered by the CoC, which has utilized its commercial judgment to choose not to proceed or accept the Applicant's proposal.

As already submitted above, the public interest involved militates against disruptions of the CIRP through applications such as the present.

50. The contents of paragraph 29 to 30 are noted as the Second Proposal being in the nature of proceedings under Section 12A of the Code, and not in the nature of a resolution plan for resolution of the Corporate Debtor under CIRP. In these circumstances, Respondent 1 has no role to play, and the Application is entirely misconceived. It must be noted that the Applicant has no locus standi to approach the Tribunal under Section 12A of the Code since that is the sole preserve of the RBI, the relevant financial sector regulator which initiated CIRP against the Corporate Debtor. Additionally, the present Application cannot be considered in the nature of proceedings under Section 12A of the Code: such an application may only be filed by the original Applicant, i.e., RBI, once the committee of creditors has consented to the same.

51. The contents of paragraphs 31 to 33 are denied. All correspondence (the first and second proposals) have been made available to the CoC by Respondent 1. In fact, they have also been sent to the CoC by the Applicant itself. The allegation that the CoC has been deprived of an opportunity to consider the Applicant's proposals is false to its knowledge. The CoC has considered, and chosen to not accept, the Applicant's proposal.

52. The contents of paragraph 34 are denied. The CIRP is being conducted in accordance with law and in furtherance of public interest.

53. The contents of paragraphs 35 and 36 are denied as being incorrect and misconceived. The Applicant has failed to make out a case for grant of any relief, interim or final.

54. In these circumstances, it is prayed that the Application is dismissed with exemplary costs.

Submissions Made by Committee of Creditors (CoC) of DHFL i.e. Respondent No. 2 by way of Affidavit in Reply:

55. Union Bank of India ("**UBI**"), holding approximately 4.04% voting share in the Committee of Creditors of the Corporate Debtor ("**CoC**") of Dewan Housing Finance Corporation Limited ("**DHFL**") has filed an Affidavit-in-Reply dated January 11, 2021 ("**UBI Reply**") to the captioned Application No. 2431 of 2020 ("**Application**") on behalf of the UBI Consortium (as set out in the UBI Reply) which holds approximately 35% voting share in the CoC of DHFL. UBI is filing the present written submissions in addition to the UBI Reply. The contents of the UBI Reply are not being reproduced for the sake of brevity, however, the entire contents of the UBI should be deemed to a part of the present submissions.

56. Withdrawal of an application admitted under the Insolvency and Bankruptcy Code, 2016 ("**Code**") must be at the instance of the original applicant who had filed the application on the basis of which the corporate insolvency resolution was initiated ("**Original Applicant**") (in this case RBI) and the provisions and procedure as specifically provided under Section 12A of the Code ("**Section 12A**") and Regulation 30A ("**Regulation 30A**") of the Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") **are mandatory provisions which are required to be adhered to**.

Section 12A of the Code reads as under:

"12A. Withdrawal of application admitted under section 7, 9 or 10-

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, ***on an application made by the applicant*** *with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."*

57. From a bare perusal of Section 12A and Regulation 30A of the CIRP Regulations ("**Regulation 30A**") it is amply clear that for any withdrawal of an admitted application it is the **Original Applicant, that must present such withdrawal application for approval of the CoC**.

58. It is submitted that it is clear from the process described above that under the scheme of the Code, what is required to come for approval before the CoC under Section 12 A read with Regulation 30A (4) is the actual application for withdrawal in Form FA of the Schedule to the CIRP Regulation (Format of Form FA is produced as **Annexure A** to these written submissions for ease of reference). It is this withdrawal application that is required to be considered by the CoC. **In other words, unless any settlement proposal is presented as part of such withdrawal application it cannot be considered by the CoC. Hence, any settlement proposal, which may even be by any promoter or shareholder of the corporate debtor, must necessarily first be**

acceptable to the Original Applicant (in this case RBI) who will be willing to withdraw the CIRP process initiated by it on the basis of such settlement proposal. It is only after this that this withdrawal application by the Original Applicant along with settlement proposal (by the promoter, shareholder etc.) can be placed before the CoC for their approval as well.

59. Hence, in the instant case, where the CIRP against DHFL has been initiated pursuant to the Company Petition filed by the RBI, the CoC can only consider a settlement through a withdrawal application under Section 12A from the Original Applicant i.e. the RBI in this case.

60. The present Applicant, Mr. Kapil Wadhawan ("**Applicant**"), the ex-CMD of DHFL has executed personal guarantees *inter alia* to the UBI Consortium, which personal guarantees were invoked on September 10, 2020 and September 21, 2020 and it is an admitted position that the Applicant i.e. the ex-CMD has defaulted in making any payment under the personal guarantees executed by him.

61. In the present case, hence, the discretion ought not to be exercised in favour of the present Applicant who:-

    i. Was the CMD of DHFL.

    ii. The board of which he was a member was superseded at the instance of RBI for reasons set out in the Press Release and the RBI Reply.

iii. There are serious allegations of siphoning of funds, cheating fraud etc, in respect of which proceedings have been filed by appropriate authorities.

iv. The Applicant admittedly is in judicial custody.

v. The Applicant has admittedly defaulted in honouring the personal guarantees.

vi. Applications under Section 95 of the Code have already been filed against *inter alia* the Applicant and an interim moratorium operates in terms of Section 96 of the Code.

62. This is not an ordinary CIRP and this Tribunal must merit the wisdom of the RBI.

63. The intention of the Applicant to prolong the CIRP and delay the approval of the resolution plans is apparent from the manner in which the Applicant has filed this present Application. The invitation for expression of interest in this matter was issued on January 28, 2020; since then neither has the Applicant filed an application under Section 12A nor has the Applicant filed a resolution plan, rather he chooses to come before this Tribunal at the last minute, after the voting on the duly submitted resolution plans has commenced, with a plea that his proposal which has not been filed under Section 12A be considered. The conduct of the Applicant reeks of *malafides*.

64. It has been contended on behalf of the Applicant that a proposal of withdrawal of the Company Petition can initiated at the instance of a promoter and a proposal by the promoter for settlement of the dues of

all the creditors can and ought to be placed before the CoC for its consideration. The Applicant has placed reliance upon the following decision in support of the above submissions:

i. Decision of the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") dated August 21, 2019 in the case of ***Vishal Vijay Kalantri vs. DBM Geotechnics & Constructions Pvt. Ltd. & Anr.*** *[Company Appeal (AT) (Ins) No. 139 of 2018]* **("Dighi Ports")-**wherein without assigning any reasons for the same the Hon'ble NCLAT *inter alia* observed as under:

"While approving so 'Committee of Creditors' will consider as to whether the plan as may be approved is better than the proposal as given by the Promoters/ Appellant, taking into consideration the viability and feasibility and financial matrix of all resolution plans. It is accepted that the matter will be decided within three weeks."

The Dighi Ports order has no applicability to the present Application *inter alia* on account of the following reasons:

a) It may be noted that in the aforementioned case there is nothing to indicate that the promoters in that case had given personal guarantees and had defaulted in making repayment of the same.

b) Further, the proposal submitted by the promoter in the matter was under Section 12A. In the present case by the Applicant's own admission the

Settlement Proposal is not under Section 12A but rather a precursor to same.

c) The order does not go into or otherwise explain the process under Section 12A.

ii. Decision of the Hon'ble NCLAT dated September 6, 2019 in the case of ***Shaji Purushothaman vs. Union Bank of India & Ors*** [Company Appeal (AT) (Insolvency)No. 921 of 2019] ("**Shaji**") the Hon'ble NCLAT made observations similar to Dighi Ports. The Shaji order has no applicability to the present Application *inter alia* on account of the following reasons:

a) In the Shaji order the Appellant had approached the Original Applicant i.e. Union Bank of India for settlement and settled the matter (para 3 of Shaji). It is an admitted position that in the present case the Applicant has not approached the Original Applicant i.e. RBI with any settlement proposal.

b) The Hon'ble NCLAT by its order dated July 29, 2019 observed that order of admission cannot be set aside unless an application is filed under Section 12A by UBI with approval of 90% of the CoC. It is submitted that the process under Section 12A was duly initiated in the matter.

c) The Hon'ble NCLAT ***refused to issue any specific direction giving liberty to move an Application under 12A*** (para 8 of Shaji).

d) In the Shaji order the Hon'ble NCLAT merely observed that if an application under Section 12A is filed by the Appellant, the CoC may decide on the same.

e) It is humbly submitted that once again the process under Section 12A has not been discussed in the Shaji order and the same is clearly distinguishable on facts and hence, the same has no applicability in the present Application.

iii. Decision of the Hon'ble NCLAT dated August 7, 2019 in the case of ***Sukhbeer Singh vs. Dinesh Chandra Agarwal, (Resolution Professional), Maple Realcon Pvt. Ltd.*** *[Company Appeal (AT) (Insolvency) No. 259 of 2019]* **("Sukhbeer Singh")–** In this order, the Hon'ble NCLAT *inter alia* held as under:

"….It is the Promoters, who can settle the matter with all the 'Financial Creditors', 'Operational Creditors' including the Allottees and for that they may give their proposal and the 'Resolution Professional' is bound to place it before the 'Committee of Creditors', which is supposed to consider such application in the light of Section 12-A and the order of this Appellate Tribunal dated 16th July, 2019 as quoted above…"

(para 2)

The Sukhbeer Singh order has no applicability to the present Application *inter alia* on account of the following reasons:

a) In the Sukhbeer Singh order, the Hon'ble NCLAT merely states that it is the promoters who can settle the matter with the financial creditors including the allottees and for that they may give their proposal and the resolution professional is bound to place before the proposal before the CoC which is to consider the same in light of Section 12A. This judgment also does not discuss the process under Section 12A.

b) Further, the case is clearly distinguishable on facts as in the Sukhbeer Singh order, the case pertained to homebuyers, whose interest the CoC were called upon to take into consideration (para 3).

c) Further, what is most significant is that the Original Applicant was a homebuyer and hence a member of the CoC.

iv. Furthermore, it is submitted that none of the orders cited by the Applicant relate to a CIRP for a financial service provider ("**FSP**") like in the present case. It is submitted that the CIRP for an FSP is not initiated by a creditor as in the case of any other company. It is the sectoral

regulator i.e. RBI that on being satisfied that that CIRP needs to be initiated against an FSP, files an application initiates CIRP under Section 227 read with Section 239(2)(zk) of the Code read with Rule 5 and Rule 6 of the FSP Rules. Since it is the satisfaction of the RBI that is prerequisite for initiation it must follow that even for withdrawal under Section 12A, the RBI must be satisfied with the settlement proposal before the same is placed for voting. As submitted above, it is only RBI that can initiate CIRP against an FSP such as DHFL. It is regulatory decision taken on several grounds which involve public interest and interest of all stakeholders.

v. Hence, the stark and absolutely critical difference in the initiation of the CRIP in case of FSP providers from that of general corporate debtors would render all of the above cases in relation to a withdrawal or settlement of a regular CIRP process completely inapplicable to a withdrawal of a CIRP of an FSP provider such as DHFL. That being the case none of the orders cited by the Applicant have any applicability to the present matter and ought not to be considered by this Tribunal.

65. It is further submitted that the letters received from the Applicant *inter alia* letters dated October 17, 2020, November 11, 2020 and November 28, 2020 have been duly replied to by the Administrator after discussions with the CoC and the alleged concerns and proposals of the Applicant have been duly dealt with. It is noteworthy that in all its

responses, the Administrator has time and again stated that the Applicant's letters and proposals are replete with falsehoods, inaccuracies and misrepresentations and written with the sole intention to prejudice the CIRP of DHFL.

66. Further, the letters of the Applicant as well as the First Proposal have been discussed in CoC Meetings as more particularly stated in paragraphs 23 and 25 of the UBI Reply [extracts of minutes of the CoC annexed as Exhibits- C to H of the UBI Reply]. Some of the key extracts are being reproduced below for ease of reference:

i. As stated in the UBI Reply, in the said meetings, the Administrator has time and again stated that the statements made in the letters were misleading, legally non-tenable with the intention seems to be to create disruption in the CIRP. The said COC meeting considered and recorded that such letters could not be considered.

*"**The CoC concluded the discussion by taking on record that the proposal sent by the ex-CMD cannot be accepted and appropriate response should be made to the letter by both the CoC's Advisors and Administrator's advisors**."*

ii. During the meeting of the COC held on November 23, 2020 [*Extract at Exhibit-F to the UBI Reply*] it was *inter alia* discussed as under:

"*(ii) The legal counsel to the Administrator invited views of the advisors to CoC (who were also advising the lenders at the time*

of ICA resolution) on the statements made in the letter and the application filed. They confirmed that the ICA was not signed by all the members and there was no resolution which was approved in accordance with the RBI's circular issued on 07 June 2019….

(iii) … The representative of NHB confirmed that NHB did not approve the same….The process advisors confirmed that the ICA was not approved by the requisite members.."

iii. During the meeting of the CoC held on December 8, 2020 [*Extract at Exhibit-G to the UBI Reply*], *inter alia* the following was discussed:

"*In the reply filed by the legal counsel, it was highlighted that such letter is replete with falsehoods, inaccuracies and misrepresentations; can cause confusion in the minds of the various stakeholders involved in the CIRP of DHFL and could potentially mislead the numerous fixed deposit holders, retail NCD holders and creditors in general. Majority of the properties offered by the ex-CMD are already mortgaged / legally required to be mortgaged to DHFL and so DHFL, and in turn, its creditors, are entitled to rights in these properties. It highlighted various reasons as to why the letter cannot be treated as resolution plan.*"

67. Hence, it is clear that in the CoC meetings all the letters and the First Proposal of the Applicant were discussed and were found to be filed with unsubstantiated statements, misrepresentations and false statements. The CoC has in essence considered all the letters and has

not accepted the same including on the ground that it was always open to the Applicant to make payment under the personal guarantee given by the Applicant which has been invoked by UBI and no payments have been made thereunder. The minutes of the said meeting were finalised and uploaded in the next few days. However, before any response could be sent by the CoC the Application got served on the CoC on December 31, 2020. Hence, since the matter was *sub judice* the CoC did not correspond with the Applicant any further.

68. Hence, no directions can be passed by this Tribunal for considering same proposal, while the Administrator and the CoC have already found all the contentions of the Applicant in the past unreliable, misrepresentative and false.

69. Catalyst Trusteeship Limited ("**Catalyst**"), the debenture trustee for approx. 85,000 debenture holders of the Corporate Debtor, Dewan Housing Corporate Limited ("**DHFL**"), under 34 Series, holding 52.13 % voting share in the Committee of Creditors of DHFL has filed an Affidavit-in-Reply dated January 11, 2021 ("**Catalyst Reply**"). Catalyst is filing the present submissions in addition to the Catalyst Reply. The contents of the Catalyst Reply are not being reproduced for the sake of brevity however, the entire contents of the Catalyst should be deemed to a part of the present submissions.

Submissions Made by Reserve Bank of India Respondent No. 3 by way of Affidavit in Reply:

70. I say that I have perused the captioned Interlocutory Application filed by Shri Kapil Wadhawan **("Applicant").** I say that I am acquainted

with the facts of the present case based on the information and records provided to me and I am competent and able to depose herein on behalf of RBI. I say that I am filing the present affidavit pursuant to the order dated January 7, 2021 of this Tribunal, directing the Respondents to file their reply in the matter and for the limited purpose of demonstrating that the Applicant has wrongly impleaded RBI in the Application and that no relief ought to be granted against RBI for the reasons as more particularly mentioned hereinbelow. I crave leave to file a further affidavit in reply later, if necessary.

71. At the outset, I deny all statements, allegations and contentions in the Application qua RBI and nothing stated therein should be deemed to be admitted for want of specific traverse unless specifically admitted herein. The contentions raised in the present application are not dealt with in the present affidavit in parawise.

72. On November 20, 2019, RBI exercised powers under Section 45-IE (2) of the Reserve Bank of India Act, 1934 and superseded the Board of Directors of Dewan Housing Finance Corporation Limited **("DHFL")** and appointed Shri R Subramaniakumar as the Administrator of DHFL **("Respondent No. 1").** This was first such case where RBI exercised its power for appointing an Administrator in a Non-Banking Financial Company (Housing Finance Company). This was done as DHFL defaulted in its payment obligations in respect of borrowings and the business was conducted in a manner which was detrimental to the interest of the depositors, DHFL's creditors and which had led to a serious deterioration in DHFL's financial position, also due to serious governance concerns and defaults by DHFL in meetings its payment

obligations. A copy of the press release dated November 20, 2019 is hereto annexed as **Annexure A.**

73. Subsequently on November 22, 2019, in exercise of powers conferred under section 45 IE 5(a) of the Reserve Bank of India Act 1934, RBI constituted a three-member Advisory Committee to assist the Administrator in discharge of his duties. A copy of the press release dated November 22, 2019 appointing the Advisory Committee is hereto annexed as **Annexure B**.

74. Thereafter, under Section 227 read with clause (zk) of sub-section (2) of Section 239 of the Insolvency and Bankruptcy Code (IBC), 2016 read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 **("FSP Insolvency Rules"**), RBI on November 29, 2019, initiated insolvency proceedings against DHFL by filing a Company Petition No. 4258 of 2019 before this Tribunal. This Tribunal by its order dated December 3, 2019 admitted the aforesaid petition and confirmed appointment of Mr. R Subramaniakumar as the Administrator of DHFL and initiated Corporate Insolvency Resolution Process **("CIRP")** against DHFL.

75. Plans submitted in the CIRP process. Pursuant to the admission order dated December 3, 2019, the CIRP of DHFL commenced under the provisions of the Insolvency and Bankruptcy Code, 2016 **("Code"),** which is a complete Code in itself. It is submitted that under the provisions of the Code, the Administrator of DHFL has been convening meeting of the Committee of Creditors from time to time. It is submitted that the CIR Process is enunciated under the provisions of

the Code and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 **("CIRP Regulations"**). It is submitted that the Administrator of DHFL with the consent of the Committee of Creditors (Respondent No. 2) have run the process of CIRP, which is at an advanced stage. It is submitted that from the various disclosures/ Corporate Announcements made from time to time, the Prospective Resolution Applicants have submitted their bids and the CoC is in the process of voting on the Resolution

76. It is, therefore, submitted that as a Financial Sector Regulator/ Appropriate Regulator, RBI has taken appropriate steps and appointed the Administrator, and filed the Company Petition which was admitted by this Tribunal on December 3, 2019. It is submitted that post commencement of CIRP, the Code, or the FSP Insolvency Rules does not envisage any role on the Financial Sector Regulator i.e. RBI during the CIR Process.

77. In fact, Rule 5 (d) of the FSP Rules, which is relevant in this regard is reproduced herein:

> ***"…Rule 5 of Financial Service Provider Rules****:*
>
> ***5. Corporate Insolvency Resolution Process of financial service providers. -*** *The provisions of the Code relating to the Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process of a financial service provider subject to the following modifications, namely: -*
>
> ***(d) Resolution plan. -***

(i) the resolution plan shall include a statement explaining how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider, as per laws for the time being in force;

(ii) upon approval of the resolution plan by the committee of creditors under sub-section (4) of section 30, the Administrator shall seek 'no objection' of the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of the financial service provider after approval of the resolution plan under section 31;

(iii) the appropriate regulator shall without prejudice to the provisions contained in section 29A, issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the financial service provider;

(iv) where an appropriate regulator does not refuse 'no objection' on an application made under clause (ii) within forty-five working days of receipt of such application, it shall be deemed that 'no objection' has been granted…"

78. The aforesaid provision makes it clear that once the CoC (Respondent No. 2) has approved the Resolution Plan, the Administrator of the DHFL, has to obtain no-objection from RBI in accordance with Rule 5 (d) of the FSP Insolvency Rules. Apart from the same, neither the Code nor the FSP Insolvency Rules, casts any other obligation on RBI vis-à-vis the CIRP process, which is left to be run by the resolution professional along with the CoC as per its commercial wisdom. The RBI cannot intervene in the CIRP process, and the reliefs as sought for

by the Applicant qua RBI seeks RBI to intervene in the CIRP process, which is completely contrary and inconsistent with the spirit of the Code and will have the effect of derailing the CIR Process. Without prejudice to the aforesaid, it is pertinent to mention herein that the Applicant is the ex-promoter of DHFL against whom various proceedings, civil and/or criminal, have been filed, alleging cheating, fraud, siphoning of funds and such other serious offences. The Applicant is presently in judicial custody and most regulatory agencies like CBI, EOW, ED etc. are at present investigating against the Applicant. This being so, affording the Applicant even an opportunity of presenting a purported settlement offer may amount to permitting the Applicant to take benefit of its own wrong, which led to complete downfall of DHFL and resultantly, the various stakeholders.

79. Further, it is submitted that the purported settlement proposals dated December 13, 2020 and December 29, 2020 were addressed to both, CoC and the Administrator (Respondent Nos.1 and 2) who are well aware of the same. This being so, the direction as sought against RBI to direct the Administrator to place such purported settlement proposals before the CoC for consideration is rendered academic and infructuous

80. In view of the aforesaid, it is beyond any cavil that RBI has been unnecessarily impleaded as a party Respondent in the present Application and been dragged in such litigation. RBI cannot and ought not to intervene in the CIR Process and direct the Administrator to conduct himself in a manner which is contrary to the Code. Further, considering that the CIRP is at a very advanced stage, passing any ad-

interim reliefs as sought for by the Applicant will completely derail the process and force DHFL into liquidation, which will be completely against the spirit of the Code. This being so, it is necessary in the interest of justice, equity and good conscience that the Application as against RBI be dismissed in limine and costs be imposed upon the Applicant for filing such frivolous and vexatious application against the RBI.

OBERVATIONS OF ADJUDICATING AUTHORITY

81. We have carefully examined the application, reply of the respondent's viz. Administrator, COC, RBI and judgments cited by the Counsels. From the records it is noted that Mr. Kapil Wadhawan one of the main promoters of the Corporate Debtor had addressed various letters to the Administrator, COC and also submitted a Settlement Proposal dated 13 December 2020 (1st Settlement Proposal) but did not receive any reply therefore, submitted the Second Settlement Proposal dated 29 December 2020 (2nd Settlement Proposal). The main prayer of the Applicant Mr Kapil Wadhawan, was CoC be directed to consider the 2nd Settlement Proposal submitted by the Applicant, to vote upon the same and to take a decision thereupon.

82. The submission of R1 that CoC has considered and chosen to not accept the Applicant's proposal is not supported by any record, evidence therefore is not accepted.

83. It was also sought to be urged by the Respondents that the Applicant, as one of the Promoters, was purportedly responsible for the present financial health of the Corporate Debtor and that no proposal ought to

be entertained from such a Promoter, if we accept this contentions of the respondent, settlement proposal, One Time Settlement proposal cannot be offered by the Promoters and cannot be accepted by Banks, Financial institutions, Creditors which is a generally prevailing practice and not an acceptable proposition.

84. From, the Settlement Proposals it is noted that the Applicant has offered approx. Rs 91,158 crores which is more than Rs. 54,512 crores of the next highest bidder who offered Rs. 37,250 Crores. Since this settlement proposal is substantially higher / more than 1 1/2 times of the value of the highest bidder the same needs due consideration/reconsideration by the Administrator/COC. Upon perusal of his letters/ Settlement Proposal it is noted that an amount of approx. Rs. 9,062 crores lying with the Corporate Debtor as on 30 September 2020 as per the balance sheet of the Company will be utilised fully for upfront repayment of the outstanding debts of small investors and the major breakup would be to NCDs held by public an amount of approx. Rs. 1,340 crores, towards ECB approx. Rs. 2,747 crores and public deposits of approx. Rs. 5,287 crores. It appears that with the settlement proposal thousands of the small investors, Fixed Deposit holders would be paid fully thereby thousands of small investors would get hundred percent (100%) of their principal sum outstanding. The proposal is given by none other than the promoter of the Corporate Debtor who had repaid approx. Rs 41,000/- crores of liability between Sep 2018 and June 2019 without any fresh borrowing, infusion of funds by selling equity and personal assets as per his submissions. If the proposal is considered and the terms and conditions are acceptable to the members of COC in their Commercial

Wisdom, ultimately, it would benefit majorly the Financial Creditors (Banks, Financial Institutions) and thousands of small investors. Ultimately the money lent by the Banks to the corporate debtor is also public money therefore the proposal needs due consideration in view of the quantum of money offered in the 2nd Settlement Proposal. Therefore, the Adjudicating Authority is of the considered view that the 2nd proposal deserves to be examined on merits and put for deciding, voting of the members of COC and if the same is commercially found not favourable with the COC members then the proposal can be rejected. He also submitted that this proposal is submitted based on the limited information available currently and he can increase the offer after negotiation. We have not made any comments, expressed our opinion on the feasibility, viability of the settlement proposal of the applicant Mr. Kapil Wadhwan.

85. Though the letters, Settlement Proposals were addressed to the Administrator, COC it is seen from the records that AZB Partners the legal team of the DHFL have written/replied to him and apparently the same is communicated without the knowledge, approval of the Administrator, the members of COC therefore, the same cannot be treated as a reply from the Administrator, COC, appropriate authority.

86. The submissions by the Administrator, COC that his settlement proposal has been placed on the website, Virtual Data Room (VDR) is not akin to placing for consideration, voting of COC rather its just an information and treated casually. The resolution plans submitted by three other entities were discussed, negotiations were held then voted upon.

87. Further the applicant also mentioned that the proposal is not made available to FD, NCD holders who constitute more than 65% of vote share of members of COC, apparently the same is not disputed by the respondents like the Administrator, COC. If the 2nd Settlement Proposal is viable, feasible and acceptable after exercising Commercial Wisdom of COC it would immensely benefit the members of COC and in turn would benefit the Public Depositors, NCD holders etc. COC by exercising their commercial wisdom can decide suitably. This direction is being issued by this Adjudicating Authority because the same would be in the interest of justice, equity, balancing of interest, interest of various stakeholders, in the interest of maximisation of value of assets of the corporate debtor, the special situation and to avoid further litigations by the applicant approaching appellate forums and smooth process of considering the Plan. By this direction 10 days' time is granted to the Administrator to place the 2nd Settlement Proposal of the applicant before the members of COC including the FD, NCD holders for consideration, decision, voting and to submit the outcome of the voting results.

88. We are also conscious of the fact that the plan of the Successful Resolution Applicant has been submitted to NCLT and hearings are just concluded and the same is under consideration of this Adjudicating Authority. We are also aware that number of IAs have been filed by various entities either opposing the plan, claiming their outstanding dues, challenging the distribution method, avoidance applications etc and the same would take some time to finally decide on the IA 449/2021 filed seeking approval of the Resolution Plan. Adjudicating Authority in the mean while directs the Administrator to place the 2nd

Settlement Proposal before the COC for its consideration, decision, voting as a simultaneous process without losing time.

89. The applicant's prayer is only to place his 2nd Settlement Proposal/offer before the COC for its consideration and to be put for voting and hence the same appears to be reasonable and not illegal. Therefore, in accordance with the provisions of section 60 (5)(c) of I&B code and also by exercising the powers under rule 11 of NCLT Rules 2016 we direct the Administrator to place the 2nd Settlement Proposal of the applicant before COC for its consideration, decision, voting and inform the outcome of the same to this Bench within 10 days from the date of order hence the matter to be listed on 31.5.2021 for further hearing.

90. With respect to contentions of respondent, that the applicant is not eligible to submit a resolution plan because he is disqualified under section 29 A read with regulation 30A of CIRP Regulations. Therefore, such contention of the respondents that he has not submitted a resolution plan for the consideration of the COC is not legally tenable because the applicant has submitted an offer/proposal for settlement akin to One Time Settlement (OTS) and there is no express legal bar under the provision of IBC to a promoter (applicant) for making a proposal for settlement. In case if this settlement proposal is accepted by the COC with its requisite majority then a withdrawal application can be filed under section 12A of the Code by the applicant in main IB Petition (herein the RBI through Administrator). Therefore, the present application and settlement proposal is the precursor for the same as contended by the counsels for the applicant. In case the settlement proposal is duly accepted by the CoC then a withdrawal application is

to be moved through the petitioner, Reserve Bank of India and / or as per the provisions of IBC and Regulations.

91. That apart Hon'ble Supreme Court in its decision in the matter of Swiss Ribbon V/s Union of India, has pleased to held that Corporate Debtor may come for settlement in post admission stage before the constitution of CoC and the Adjudicating Authority may exercise its power conferred to the NCLT under rule 11 of the NCLT Rules. After constitution of the CoC an application can be entertained under the procedure of section 12A of the IB Code. Hence the present application appears to be a pre-stage process of an application under section 12A. That can be considered by this AA, if it is filed by the main petitioner in the IB Petition (RBI /Administrator) with having requisite majority of more than 90% voting of the Members of the CoC. Hence there can be no prejudice to either parties if CoC gives due consideration as per norms and in its commercial wisdom to examine feasibility of such proposal of settlement for Approx. Rs. 91,000/- Crores (Rupees Ninety-one Thousand Crores) and above. The CoC may take appropriate decision by taking in to consideration the paramount interest of the Creditors, Fixed Depositors, and Stakeholders of the Corporate Debtor involved in the present matter.

92. By keeping in mind the Facts and Circumstances it would not be out of context to state that Hon'ble Supreme Court in its decision in the matter of Mother Pride Dairy India Ltd V/s Portrait Advertising and Marketing Private, and further in the matter of Lokhandwala Kataria Construction Private Limited V/s Nisus Finance and Investment Managers LLP have pleased to consider the settlement proposal and by

invoking its power conferred under Article 142 of the Constitution of India and put a quietus to the case. The Hon'ble Supreme Court in another matter of CoC of Essar V/s Satish Gupta and Ors has also ruled that the Adjudicating Authority is empowered to remand back the matter to the CoC for reconsideration of some left out issue and procedural aspect, although it is having supervisory role over the CoC and is not a statutory appellate forum.

93. By taking into consideration the above stated factual aspect and Legal position of the present case and by following above stated Judicial precedents, we feel appropriate to observe that CoC ought to have considered such settlement proposal of the applicant as per norms and its commercial wisdom which we did not to have been followed by the CoC in the present matter. From the Submissions of the respondents, they treat this Settlement Proposal as a resolution plan but factually that is not case as discussed supra.

94. Additionally, the Applicant has requested that an "independent" valuation be conducted of the Corporate Debtor's assets, and the report shared with the Applicant for which Respondent 1 submits that this request has no basis in law. We accept the stand of R1 and the prayer is not acceptable since valuation exercise had already been completed in the CIR Process, therefore this prayer is rejected.

95. While observing so, we are conscious about our jurisdiction that this Adjudicating Authority cannot substitute its view of over the Commercial Wisdom that may be exercised by the CoC in respect of the present Applicant, however there appears to be some procedural irregularity by not considering a settlement proposal which is around

150 % higher value of the Resolution Plan approved. Hence it needs due consideration and cannot be kept aside nor contention of the applicant in the present IA can be brush aside that an Ex-promoter cannot move a proposal of settlement in the light of the above referred decision of Hon'ble NCLAT and by following by above referred decision of Hon'ble Supreme Court. Hence following order.

ORDER

Therefore, in accordance with the provisions of section 60 (5)(c) of I&B code and also by exercising the powers under rule 11 of NCLT Rules 2016 this Adjudicating Authority hereby directs the Administrator to place the 2nd Settlement Proposal of the applicant Mr. Kapil Wadhawan before COC for its consideration, decision, voting and inform the outcome of the same within 10 days from today and list the matter on 31.5.2021. Accordingly, the IA 2431 of 2020 in CP (IB) 4258 of 2019 is partly allowed and stands disposed of.

Sd/- **Sd/-**

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

H.P CHATURVEDI
MEMBER (JUDICIAL)

19.05.2021
Sushil/SAM