

# THE GREAT NON-WILFUL ABSENTEES IN THE RBI-APPOINTED CoC FOR DHFL



In continuation with our following previous articles

- [SMELLING THE RAT IN THE DHFL-COC RESOLUTION PROCESS: A LETTER TO THE PRESIDENT OF INDIA VIEW HERE ↗](#)
- [PLEASE COMPOSE AN OBITUARY FOR THE RBI-APPOINTED COMMITTEE OF CREDITORS \(COC\) FOR THE DHFL VIEW HERE ↗](#)

we are continuing our campaign against the very constitution and conducts of the RBI-APPOINTED Coc FOR DHFL. In this article, we are going to deal with the two **great non-wilful absentees** in the CoC: Mr. Kapil and Dheeraj Wadhawan, erstwhile promoters of Dewan Housing Finance Corporation Limited (DHFL).

The problematic question in this context is:

***Can CoC administrator perform the proceedings without the “former” (?) owner(s) of the company?***

[cf. [MOUSETRAPPED: AN OPEN LETTER TO THE WADHAWAN BROTHERS VIEW HERE ↗](#)]

In the case of RTI, we cannot put “why”-question (as in institutionalized, organized, funded sciences; cf. Sir Medawar, Sir Peter. 1986 as cited in [“Creating Procrustean Bed: Writing Scientific Papers”](#)).

[VIEW HERE ↗](#)! This type of prohibition has led us to paraphrase the above problem question with “Can”. Peculiarly enough, in some cultural groups, especially in India, children are discouraged by their indoctrinators to ask wh-questions!

It is also to be mentioned that neither PM CARES Fund nor the Electoral Bonds come under the purview of the RTI Act! They are transparently opaque, just like the whole CoC was maintaining a peculiar secrecy where even the Resolution Plan was not shared with all the creditors.

Though it is known fact that [Bankruptcy will not void personal guarantees: Supreme Court VIEW HERE ↗](#) (As reported on May 22, 2021 ©The Times of India), let us look at the rules and regulations of IBC (1916) for such deliberate avoidance of the Wadhawan brothers (“former” promoters of the DHFL) by the CoC to hand the DHFL over to [Mr. Ajay Piramal, a hostile bidder and an alleged insider trader VIEW HERE ↗](#).

The following screenshot from the official page of IBC tells us clearly that

**“Suspended Director, who was representing the Corporate Debtor and has submitted the Settlement Proposal is entitled to participate in deliberation and negotiation undertaken by the CoC – Sanjeev Mahajan Vs. Indian Bank (Erstwhile Allahabad Bank) & Anr. – NCLAT New Delhi”**



Despite such legal custom, the Wadhawan brothers were debarred from participating in the CoC meetings consecutively held over the course of two years.

In spite of their non-participation, the Wadhawans have multiple times repeated their settlement proposal to the CoC and to various legal forums saying that they are ready to pay all the creditors in full. However, their voices have never been heard.

[Kapil Wadhawan vs Union Of India And Ors on 16 November, 2021 VIEW HERE ↗](#)

[DHFL resolution: Kapil Wadhawan approaches SC with fresh petition VIEW HERE ↗](#) (As reported on 8<sup>th</sup> March, 2022 ©businessline)

Moreover, On 27th March, 2023, the Supreme Court of India dismissed the allegations made by the [Enforcement Directorate](#) (ED) and upheld the default bail granted to DHFL’s ex-promoters Kapil Wadhawan and Dheeraj Wadhawan by the [Bombay High Court](#) in the [Yes Bank](#)-DHFL Money Laundering case. No criminal charges against the Wadhawan brothers have been [proved conclusively](#) yet. This has a direct binding on the future outcome of the DHFL case.

[Yes Bank-DHFL scam: Supreme Court upholds default bail granted to Kapil, Dheeraj Wadhawan VIEW HERE ↗](#) (As reported on 27th March, 2023 ©Economic Times)

***Thus, Wadhawan brothers had got punishment before committing any cognizable offence.***

Furthermore, never before we have heard about banks appealing against a verdict where they themselves stand to gain from the bad loans of the beleaguered company. The NCLAT verdict

provided for 38k cr recovery to the banks and other creditors but the banks went for only 1 rupee. They are ready to slug it out in the SC against such windfall gains. The move presumably stinks of blatant underhand dealings. It is noteworthy that the CoC valued the company's assets at 26k crores based on which the bids were invited from Oaktree Capitals, Adani Group, Piramal etc., and consequently, the sell was made possible at throw away prices by ignoring Oaktree's highest bidding price. The question is, how did CoC audit the AAA-rated ongoing concern's assets at this slim amount?


After viewing rejected NCLT First Order (19/05/2021) and NCLAT Second Order (27/01/2022), we have come to the following conclusions:

**A) Piramal or the CoC did not answer the pertinent questions raised by the NCLT for reconsidering the Settlement Proposal of DHFL's ex-promoters;**

**Dear RBI-CoC for DHFL,  
Why did you:**

**→ Not consider Mr. Wadhawan's full repayment settlement proposal?**

**→ Deprive FD-NCD Holders of their financial rights?**



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

**NCLT (19/05/2021)**

**B) We have observed that there are many irregularities and some points are "contrary to law" in the resolution process;**



Therefore, CoC's commercial or business decisions are not open to judicial review by the Adjudicating Authority or the Appellate Authority. The Hon'ble Supreme Court has further placed reliance on the earlier judgement of the three-judge bench in the case of Essar Steel India Limited (supra) and observed that there is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such committee must reflect the fact that it has taken into account maximising the value of the assets of the Corporate Debtor and the fact that it has adequately balance the interests of all the stakeholders including Operational Creditors.



48. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial wisdom taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the Corporate Debtor needs to keep going as a going concern during the Insolvency Resolution Process; that it needs to maximise the value of its assets; and that the interest of all the stakeholders including operational creditors has been taken care of.

Company Appeal (AT) (Insolvency) No. 677 & 800 of 2021

79 of 80

**The IBC is the ultimate code.  
The CoC's decision in the DHFL matter is final.**

**If so, why is Mr. Piramal going to  
the NCLT, NCLAT & SC at all?**

**If illegalities etc. are found in the CoC  
by the NCLAT,  
what happens to the CoC for DHFL?**

- The Resolution Plan is in contravention of EPF and MP Act 1952.
- The money invested by the pension fund and Provident funds does not belong to the Corporate Debtor and is related to the employees.
- The allocation of the resolution amount is contrary to law.
- There is a material irregularity in the exercise of powers of the resolution professional/administrator.

**NCLAT (27/01/2022)**

(i) The learned AA/ NCLT in the Impugned Order has acknowledged that the distribution under the Resolution Plan is not open to judicial review. However, the NCLT has requested the CoC to reconsider the Distribution Mechanism to give *inter-alia* the 'FD Holders' as much as are assenting Financial Creditors. Accordingly, a meeting of the CoC was held when it was decided *inter-alia* to consider voting by the CoC on a partial modification to the distribution mechanism.

## NCLAT ORDER (27/01/2022)



4.1 The direction of the Ld. Tribunal in approving the Resolution Plan while directing the CoC to reconsider the amount payable to the NCD holders in the Distribution Mechanism 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 (Para 278) that states that the Ld. Tribunal does not have the power to modify the terms of the Resolution Plan on its own but can only direct the CoC to reconsider altering the terms of the Resolution Plan.

PIRAMAL'S  
CONTEMPT  
OF COURT

If the basic premise is irregular, illegal and void  
regarding the **DHFL case**  
(as pointed out by the NCLT & NCLAT),  
why is **Mr. Piramal** still following the lowest quasi-judicial body's  
'forced' second verdict?



**CoC for the DHFL must be condemned!**

e. The repayment of Money to the EPF holders via their respective Provident Fund Trusts is the mandate of law, which the Respondents have not fulfilled, nor even proposed to be fulfilled. Thus, the said Resolution plan and the minutes of the 18th CoC meeting were contrary to law, illegal and are void to the extent indicated above.

**NCLAT Second Verdict  
27/01/2022**

There are more such examples, where the NCLAT pointed out many anomalies that go against the CoC:

b. The Administrator failed to consider and appreciate that the CoC has overlooked the genuine, valid and legally tenable concerns of the Appellant and has passed various shocking resolutions, which are entirely

against the interest of the Appellant who deposited their hard-earned Money in hope for a better life.

c. The Administrator failed to consider and appreciate that the Money invested by the pension fund and PFs does not belong to the Corporate Debtor and is related to the employees. Therefore it should be released first (in total) before any other repayments begin.

d. The allocation of the Resolution Amount is entirely contrary to law. The Resolution plan passed by the CoC to the extent that the PF Holders / Appellants are concerned to be set-aside/modified.

#### **Why did the RBI approve Piramal's Resolution Plan with so much incoherent elements?**

If there are anomalies in the conduct of the CoC, the following observation must be noted:

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 IBC Laws

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**A Resolution Professional will come within the meaning of 'Public Servant' under Section 2(c) of the Prevention of Corruption Act, 1988 and Section 233 of IBC does not protect where he has been apprehended red-handed with the bribe amount – Sanjay Kumar Agarwal Vs. Central Bureau of Investigation, Anti Corruption Bureau, Dhanbad – Jharkhand High Court**

APRIL 10, 2023

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If it is so, one must be sceptic enough about the RBI-appointed CoC for DHFL. In conclusion, one is bound to pronounce such words, viz. prejudiced, biased and pre-determined regarding the manufactured RP by the CoC and Mr. Piramal, allegedly with the aid of the ruling party.

[DHFL bids: Oaktree mulls legal action 'seeing' creditors' 'bias' towards Piramal's offer VIEW HERE](#)

[🔗](#) (As reported on 6th December, 2021 @Business Line)

Dear  
R. Subramaniakumar  
and  
Ms. Charu Sandeep Desai,  
**RETURN YOUR FEES** for  
conducting the RBI-appointed CoC  
for DHFL  
as  
whatever you have done  
is  
**"contrary to law"!**

**WE  
ARE  
QUESTIONING  
YOUR  
WIS(H)DOM  
AND CONDUCT!**

- The Resolution Plan is in contravention of EPF and MP Act 1952.
- The money invested by the pension fund and Provident funds does belong to the Corporate Debtor and is related to the employees.
- The allocation of the resolution amount is **contrary to law**.
- There is a material irregularity in the exercise of powers of the resolution professional/administrator.

**NCLAT ORDER (27/01/22)**

**-- DISTRESSED DHFL FD, NCD AND SHAREHOLDERS**

See also:

[Complaint against the alleged frauds by the RBI-appointed CoC for DHFL: letters to the SFIO VIEW HERE 🔗](#)

[You're all caught up: RBI-appointed CoC for DHFL VIEW HERE 🔗](#)

[Mousetrapped: An Open Letter to the Wadhawan BrothersVIEW HERE 🔗](#)