NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 785 of 2020

AND

Company Appeal (AT) (Insolvency) No. 647 of 2021

INDEX

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Company Appeal (AT) (Insolvency) No. 785 of 2020 & 647 of 2021

[Arising out of Order dated 28 April 2020 in MA No. 518 of 2020 in Company Petition No.4258 of 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench, Mumbai]

1. Company Appeal (AT) (Insolvency) No. 785 of 2020

IN THE MATTER OF:

Dheeraj Wadhawan
Having his address at:
22/23, Sea View Palace
Pali Hill, Bandra, Mumbai – 400050 **Appellant**

Versus

The Administrator **Respondent**
Dewan Housing Finance Corporation Limited
Having a registered office at:
6th Floor, HDIL Towers,
Anant Kanekar Marg
Station Road, Bandra (East)
Mumbai – 400051

Present:

For Appellant : None

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).

Ms Liz Mathew, Ms Sonali Jain, Mr Rohan Rajadhyaksha, Advocates for Administrator. Mr Raunak Dhillon, Mr Animesh Bisht, Ms Saloni Kapadia, Ms Madhavi Khanna, Mr Shubhankar Jain, Mr Aniruddh Gambhir, Advocates for COC.

With

2. Company Appeal (AT) (Insolvency) No. 647 of 2021

IN THE MATTER OF:

Kapil Wadhawan
R/o 13th, 14th, 15th & 16th Floor
D.B. Breeze, 16th Road, Khar (West)
Mumbai – 400 052
Presently in judicial custody, Maharashtra
Email: mail@aglaw.in **Appellant**

Versus

1. **Administrator of Dewan Housing Finance Corporation Limited**
   Having a registered office at:
   6th Floor, HDIL Towers
   Anant Kanekar Marg
   Station Road, Bandra (East)
   Mumbai – 400051
   Email: dhfladministrator@dhfl.com
   lizmathew.law@gmail.com **Respondent No.1**

2. **Piramal Capital & Housing Finance Limited**
   Having its registered office at:
   4th Floor, Piramal Tower
   Peninsula Corporate Park
   Ganpatrao Kadam Marg,
   Lower Parel West, Mumbai – 400013
   Email: bipin.singh@piramal.com **Respondent No.2**

Present:

For Appellant : None

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.

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. **Factual Background**

1.1 The **Company Appeal CA (AT) (Ins) No 785 of 2020** is filed by Appellant Dheeraj Wadhawan, erstwhile Promoter/Director of DHFL, against the Order dated 28 April 2020 in the Miscellaneous Application being numbered as MA 518 of 2020 in Company Petition (IB) No. 4258/2019 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code'), seeking participation in the CoC[1] of DHFL, rejected by the Adjudicating Authority/NCLT holding that the Appellant is not entitled to attend the meetings of the Committee of Creditors as member of the erstwhile Board of Directors.

1.2 The Appellants are the superseded Directors on the Erstwhile Board of Directors of the Corporate Debtor, i.e. Dewan Housing Finance Corporation Limited **("DHFL").** The Appellants are also personal guarantors for various loans the Corporate Debtor avails. The Corporate Director is a Housing Finance Company regulated under the National Housing Bank Act, 1987(for brevity 'NHB Act') and Reserve Bank of India Act, 1934 **('RBI Act')**. On 15 November 2019, the Central Government made Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and

[1] Committee of Creditors

Application to Adjudication Authority) Rules, 2019 **(**for brevity '**FSP Rules')** that provide CIRP for Financial Service Providers such as DHFL.

1.3 On 20 November 2019, RBI exercised its power under Section 45-IE of the Reserve Bank of India Act, 1934 and superseded the Board of Directors of DHFL by appointing Mr R. Subramaniakumar as the Administrator. Subsequently, on 29 November 2019, RBI initiated the Insolvency Resolution Process of the Corporate Debtor by filling the CP (IB) No. 4258 of 2019.

1.4 By an order dated 03 December 2019, the AA/NCLT[2] admitted the Petition and the Administrator appointed by RBI on 20 November 2019 was appointed as the Administrator under the 'FSP Rules'.

1.5 Given the express provisions of the IBC and settled law, the Appellant being directors of the erstwhile Board of DHFL, anticipated that the Administrator shall give due notice of the meetings of the Committee of Creditors ("CoC") to them along with the agenda for the meeting to be held.

1.6 On 10 January 2020, 12 January 2020, 14 & 15 January 2020, the Appellant addressed an email to the Respondent/Administrator requesting him to send notice of every meeting of the CoC along with the agenda of such meetings. The respondent/Administrator, vide email dated 12 January 2020, replied that members of the erstwhile Board of Directors of the Financial Service Provider were not legally entitled to attend CoC meetings. Moreover, since the insolvency commencement date, the superseded Board of Directors

[2] Adjudicating Authority

were no longer directors of the Financial Service Provider. Hence, the 'superseded' Directors could not be treated as 'suspended' Directors within the meaning of Section 24 of the IBC.

1.7 However, on account of the Respondent's refusal to provide the Appellants with due and meaningful notice of the CoC meetings despite repeated correspondence in that regard, constrained the Appellant to file Miscellaneous Application being IA No.518 of 2020 in CP 4258 of 2019, wherein the relief sought against the Resolution Professional to provide the Appellants with a copy of Company Application, i.e. IA 518 of 2020 filed in CP IB 4258 of 2020 along with the copy of the Resolution Plan submitted by IInd Respondent.

1.8 Accordingly, the relief sought by the Appellants in the above IA 518 of 2020 is given below for ready reference.

> *a) A declaration that the Appellant is entitled to attend each and every meeting of the COC as a member of the Erstwhile Board of Directors of the Financial Service Provider, either by himself or through his representative, including by video conferencing.*
>
> *b) A direction to the Respondent/ Administrator to furnish records and notices of meetings of the COC held so far;*
>
> *c) A direction to the Respondent/ Administrator to send advance notice of each meeting of the COC along with the agenda and copies of the documents relevant for such meetings;*

d) A direction to the Respondent/ Administrator not to implement any decision taken at the meetings of the COC held without the presence of the Appellant.

(verbatim copy)

1.9 The AA/NCLT rejected the above-said Intervention Application and passed the Impugned Order dated 28 April 2020, which is challenged in this Appeal.

1.10 **Company Appeal No. CA 647 of 2021** is filed against the impugned Order dated 7 June 2021 in IA No. 701 of 2021 in Interlocutory Application No. 449 of 2021 in company petition CP/IB/4258/MB/C-II/2019. By the impugned Order, the Adjudicating Authority has rejected the prayer of the Appellant to be provided with a copy of the IA No 449 of 2021 along with a copy of the Resolution Plan submitted by 2nd Respondent.

1.11 The Appellant contends that the entire Corporate Insolvency Resolution Process of DHFL, a Financial Service Provider, has been administered in a wholly non-transparent and Opaque manner since its commencement. There has been a material irregularity in the exercise of powers by Respondent No.1 during the CIRP, which has ultimately resulted in denial of a copy of even the Resolution Plan without any justification. As a result, the Appellant was constrained to file IA No. 701 of 2021 before the Adjudicating Authority for a copy of the Resolution Plan. The said application was rejected vide its impugned Order dated 7 June 2021; the Appellant was constrained to file this Appeal.

1.12 Civil Appeal No. 647 of 2021 is filed by Mr Kapil Wadhawan on being aggrieved by Order of the AA/NCLT rejecting his Interlocutory Application being IA 701 of 2021 to provide a copy of Interlocutory Application filed IA 449 of 2021, along with a copy of the Resolution Plan submitted by IInd Respondent. Further, the cause of the rejection of IA 701 of 2021 and IA 518 of 2020 was that the 'Superseded Directors' are not on the same footing as suspended directors. Therefore the Appellants who happens to be superseded Directors, who were not on the Board of DHFL, i.e. on the date of initiation of CIRP, were denied notice and participation in the CoC meetings of the corporate debtors and further restricted the copy of the Resolution Plan submitted by the IInd Respondent. Therefore, the question of law that has cropped up for the determination of these Appeals is the same. Therefore, these Appeals are decided together.

1.13 The Parties are represented by their original status in the Company Petition for the sake of convenience.

2. **Appellant's Submissions**

2.1 The Appellant contends that the CIR Process is vitiated by violation of principles of natural justice as the Appellant (Erstwhile Director) was first denied the opportunity to participate in meetings of the CoC. Then violations compounded by denying a copy of the Resolution Plan which affects the interest of the Appellant.

3. **Right to participate in the COC of DHFL**

3.1 The learned Counsel for the Appellant submits that the provision of the Code provides for the rights of and erstwhile Director to participate in the meetings of the COC and is provided with all the relevant documents and merely because the erstwhile Board of Directors being superseded before the initiation of CIRP, same had no impact whatsoever on the rights under the Code.

3.2 The learned counsel for the RBI[3] and Piramal[4] submitted that only "suspended" directors had rights under the Insolvency and Bankruptcy Code, 2016, as opposed to the Appellant's who were part of the "superseded" Board of Directors under Section 45 (I-E) of the Reserve Bank of India act, 1934. However, given the context and the scheme of the Code, there is no legal difference between a "superseded" director and a "suspended" Director.

3.3 The Code was made applicable to DHFL under the Financial Service Providers Rules ("FSP rules"). Rule 4 deals with the insolvency of a Financial Service Provider. Rule 5 provides that the entire Code applies mutatis mutandis to a Corporate Debtor under the 'FSP Rules' subject only to modifications provided under Rule 5. Admittedly, there has been no such modification whatsoever. Moreover, once the RBI as the Applicant elected to proceed under the Code, the corporate debtor cannot recourse to the RBI Act to deprive the Appellant of an opportunity to participate in CoC meetings and obtain copies of the relevant documents, under the provisions of the Code.

[3] Reserve Bank of India
[4] Piramal Capital Housing Finance Ltd

Once the RBI has elected to invoke the provisions of the Code, the provisions of the Code would apply with full force and in its entirety.

3.4 Consequently, an erstwhile Director's rights under the Code apply to former directors of the Financial Service Provider. The decision to supersede the Board of Directors of DHFL and initiate the corporate insolvency resolution process had no opposition before the NCLT. The law regarding the doctrine of election is well settled. The promoters/shareholders of the DHFL placed reliance on the case-law of the Hon'ble Supreme Court in the case of National Insurance Company versus Mastan, reported in (2006) 2 SCC 641, paragraph 21, 23 to 29 and Kanhaiyalal versus State Bank of India, reported in 2008 SCC online Patna 27.

3.5 Further, Appellant/Promoters contended that without admitting that there is a difference in the plane and the literal meaning of the words "suspended" and "superseded". However, when read with the context and purpose of the Code, there is no legal difference whatsoever between the "suspended" Director and "superseded" Director. It is now illegal aphorism that the results of a plain literal interpretation, if absurd, must give away to understanding formed for the purpose, object, text and context of a particular provision. Reliance is placed on the observations of the Hon'ble Supreme Court in Paragraphs 28-30 in the case of Arcelor Mittal India Private Limited versus Satish Kumar Gupta, reported in (2019) 2 SCC 1.

3.6 Promoter/Appellant further contends that the entire premise of the Adjudicating Authority is erroneously based on the purported literal difference

between the meaning of the words 'suspended' and 'superseded'. The former is purportedly a temporary eclipse, while the latter is purportedly a permanent extinguishment. This completely ignores the change in the position of law brought about by the insertion of Section 29A in the Code. Before the amendment, an erstwhile Board of Directors was also eligible to submit Resolution Plans and came back into the management of the Corporate Debtor. However, after the amendment, the same is no longer permissible. The erstwhile Board of Directors is barred from the reappointment, placing them in the same position as a suspended Board of Directors.

3.7 Therefore, reliance upon a literal difference between "suspension" and "supersession" is wholly misconceived. The Appellant further emphasised that in the RBI Act, there is no provision on "superseded" Directors being made part of a Board of Directors of the reconstituted by the RBI. As such, legally speaking, a "supersession" under the RBI Act is not necessarily a permanent extinguishment of rights but could be a temporary eclipse. This makes the purported difference between the "suspended" and "superseded" even less significant.

3.8 Therefore, in the absence of any modifications under Rule 5, coupled with the same legal effect of "supersession" and "suspension" under the Code; the purpose, object, text and context of the Code must guide the recognition of the rights of the erstwhile Board of Directors, Guarantors and Shareholders.

3.9 Respondent urged that Kapil Wadhawan was estopped from raising the contention of denying participation in the CoC. However, he did not take any steps after addressing correspondence requesting the same. This argument is wholly misconceived as both Kapil Wadhwan and Dheeraj Wadhwan similarly placed being aggrieved by the Administrator's actions in denying participation to them in the COC.

3.10 The Appellant refers to the Judgment of the Hon'ble Supreme Court Vijay Kumar Jain vs Standard Chartered Bank [(2019) SCC Online SC 103] (paragraphs 10 to 21) where the rights of the Erstwhile Directors in attending COC meeting have been elaborated and further in Arcelor Mittal India Pvt. Ltd. vs Satish Kumar Gupta [(2019) 2 SCC 1] (in para 76.2) recognises that there is no difference between suspension and suppression in the legal effect as the erstwhile directors cannot be re-appointed on the Board of Directors in any event.

3.11 The Appellant further contended that in the case of Financial Service Providers such as DHFL, RBI had a choice of Resolution either by proceeding under RBI Act as amended or under FSP Rules and the Code. The Resolution under the Code and the FSP Rules is time-bound and faster. If RBI decides to proceed under I&B Code, the same will apply to the full extent except as provided in Rule 5 of FSP Rules. RBI had to elect and cannot proceed under both as they are mutually exclusive and inconsistent. Suppose RBI supersedes directors to deny them rights under the Code. In that case, it is

mala fide and cannot be permitted as RBI had no power or jurisdiction to bypass provisions of the I&B Code.

3.12 In the line of the above contentions, the Appellant submitted that the word 'supersedes' and 'suspended' have been used in the same context and have the same effects. Therefore, it is absurd and inconceivable to recognise the rights of the erstwhile Directors when the terminology used is "suspended" and to altogether forego their rights when the word "superseded" has been used. The protection and rights available to the suspended Directors of the Corporate Debtor should also be open to the Superseded Directors of a Corporate Debtor, keeping in mind that the stakes involved are the same.

3.13 The Appellant further submitted that the conduct of the Respondent/ Administrator in refusing to give notice of hearings of the meeting of CoC to the Appellant constitutes a breach of the provision of the I&B Code.

4. **Respondent No. 1/Administrator's Submission**

Ist Respondent /Administrator appointed under Section 45-IE (4) of the RBI Act, 1934 submits its reply on every issue raised in the Appeal, stating it devoid of any merits, and based on an incorrect interpretation of the word 'superseded' as used in Section 45-IE (4) of the RBI Act, 1934, for the reasons given as under:

4.1 The Respondent submitted that on a bare reading of Section 45-IE (4) of the RBI Act, 1934, it is clear that upon exercise of the power under Section 45-IE (2), the Directors, including the Appellant, vacated their office and all powers stood vested in the Administrator appointed. The vacating of office by

the Board of Directors was not temporary and has finality attached to it. RBI's action has not been disputed or challenged in any manner whatsoever, including the Appellant.

4.2 The Respondent further submitted that on 03 December 2019, when Company Petition No. 4258 of 2019 was admitted by the Adjudicating Authority for initiation of CIRP, there was no Board of the Corporate Debtor existing, as the Directors of the erstwhile Board of CD (including the Appellant) had already vacated their offices and their powers having stood vested in the Administrator under Section 45-IE of RBI Act on 20 November 2019. Therefore, there is no question permitting the Appellants to participate in the CoC meetings. However, the action of RBI in the supersession of the erstwhile Board of CD had resulted in the vacation of office of Directors of the erstwhile Board, that too much before the initiation of CIRP. Therefore, per contra Suspended Director don't vacate their office on initiation of CIRP.

4.3 The Respondent also submitted that under Section 24(3)(b) of the I&B Code, a notice of each meeting of COC is required to be given to the "suspended" Directors. Notably, the phrase "suspended" in Section 24(3)(b) of the Code is relatable to the words "suspended" in Section 17(1)(b) of the I&B Code. In other words, the clear intent of the Code is that those directors who hold office on the date of commencement of CIRP and whose powers stand "suspended" under Section 17(1)(b) of the Code by the appointment of IRP that are entitled to receive notice of the meetings of COC under Section 24(3)(b) and not Directors who have already been removed, dismissed, deemed

to have vacated office, or suspended by reasons of any other Act and who are not in the office on the CIRP commencement date.

4.4 The Respondent further stated that Appellant's reliance on Vijay Kumar Jain vs Standard Chartered Bank[5] is based on a patent misreading said judgment. In Vijay Kumar Jain (supra), the Hon'ble Supreme Court was concerned with the extent to which Directors who had been suspended on the appointment of the IRP was entitled to participate in the COC meetings. The right of the said Directors to attend CoC meetings was not under dispute (unlike the present case).In Vijay Kumar Jain's case, Hon'ble Supreme Court had not expressed that the superseded Directors of the Erstwhile Board who have already vacated their offices as Directors before the appointment of the IRP are entitled to notice of and participation in CoC meetings. The use of expression "erstwhile" or "former" Directors by the Supreme Court in Vijay Kumar Jain (supra) has been distorted by the Appellant since the same was not intended to alter the clear language of Section 17(1)(b) and Section 24(3)(b) of I&B Code. The above contentions equally apply to the Appellant's mechanical reliance on the phrase "superseded" used by the Hon'ble Supreme Court in *Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta*[6].

4.5 The Respondent also submitted that substantial progress had been made in the CIRP of the DHFL. The timelines of the Code are sacrosanct, and the Administrator and CoC are making every effort to complete the CIRP

[5] (2019)20 SCC455
[6] (2019) 2 SCC 1

within the stipulated timelines. At this stage, any delay in the process on account of the present Appeal will cause severe prejudice and derail the CIRP, thereby affecting the interest of DHFL's Stakeholders. Therefore, the Adjudicating Authority has correctly passed the Order after considering all the relevant factors and applying the precise position of law as emanating from the RBI Act and Code. Therefore, the Appeal ought to be dismissed.

4.6 Heard the arguments of the Learned Counsel for the parties and perused the records. The points that arise for our consideration in these Appeals are as under;

1. Is there a difference between the 'supersession of Directors' under the RBI Act and the 'suspension of Directors' under the Code?

2. Whether a 'Superseded director', who had vacated office on supersession of Board under RBI Act, is entitled to the notice of CoC meeting and has the right to participate in the meeting of the CoC?

5. **Analysis**

5.1 Kapil Wadhwan and Dheeraj Wadhwan (the Appellants in CA (AT) (Ins) No's 647/2021 and 785/2021) are the promoters, major shareholders, erstwhile directors and guarantors of the Dewan Housing Finance Corporation Limited ("DHFL").

5.2 The Appellants have alleged that the CIRP of DHFL had been conducted in blatantly illegal and violated the most elementary principles of natural justice. As a result, both the Appellant's, despite being Promoters/Share

Holders/Directors/Guarantor, is shut out of the meetings of the COC and prevented in any manner from participating in the CIRP. This is entire without precedent in so far as the CIRP of the DHFL is the first occasion in the entire history of the Code that erstwhile Directors have been prevented from participating in the meetings of the COC.

5.3 It is contended that denial of any semblance of natural justice to the Appellant had been carried to the point where the Appellant's despite being major stakeholders and their interest being vitally affected, were denied even a copy of the Resolution Plan even after the COC approved the same. The Appellants were thus denied any opportunity to object to the plan before the Adjudicating Authority/NCLT.

5.4 Added further, despite being denied Information, from what little could be gleaned from the public domain, it was clear that the offer is being made for DHFL at a serious undervalue. With what little Information he had in possession, Kapil Wadhwan made a settlement proposal which was not even placed before the CoC for consideration. This plan offers ₹ 53,000 crores more than the Resolution Plan of Piramal and would have paid all the creditors, including thousands of public depositors, in full. These members of the public have not even had an adequate opportunity to consider the settlement proposal. The CoC and NCLT have approved the Resolution Plan of Piramal, a travesty that constitutes a severe failure of justice.

5.5 Further, they expected that the Administrator should give due notice of the meetings of the COC, with the documents and agenda for the meetings.

However, despite several communications, the Administrator refused the Appellant's request constraining Dheeraj Wadhwan, the Appellants in CA (AT) (Ins) No. 785 of 2020, to file MA No. 518 2020. The same was rejected by the impugned judgement dated 28 April 2020, which proceeds inter alia on the erroneous basis that 'suspension' is temporary by nature and that the erstwhile directors have been superseded (which is more permanent) cannot be permitted to participate in the CIRP.

5.6 For the present Appeal, it is relevant to take note of Section 45-IE of the RBI Act, which is as follows:

> *[**45-IE. Supersession of Board of directors of non-banking financial Company (other than Government Company)**.—(1) Where the Bank is satisfied that in the public interest or to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors, or of the non-banking financial company (other than Government Company), or for securing the proper management of such Company or for financial stability, it is necessary so to do, the Bank may, for reasons to be recorded in writing, by Order, supersede the Board of Directors of such Company for a period not exceeding five years as may be specified in the Order, which may be extended from time to time, so, however, that the total period shall not exceed five years.*
>
> *(2) The Bank may, on supersession of the Board of Directors of the non-banking financial Company under sub-section (1), appoint a suitable person as the Administrator for such period as it may determine.*

(3) The Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the Order of supersession of the Board of Directors of a non-banking financial company,—

(a) the chairman, managing Director and other directors shall from the date of supersession of the Board of Directors vacate their offices;

(b) all the powers, functions and duties, which may, by or under the provisions of this Act or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such non-banking financial Company or by a resolution passed in general meeting of such non-banking financial Company, shall, until the Board of Directors of such Company is reconstituted, be exercised and discharged by the Administrator referred to in sub-section (2).

(5)(a) The Bank may constitute a committee consisting of three or more members who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

(b) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Bank.

(6) The salary and allowances payable to the Administrator and the members of the committee constituted by the Bank shall be such as may be specified by the Bank and be paid by the concerned non-banking financial Company.

(7) On or before the expiration of the period of supersession of the Board of Directors as specified in the Order issued under sub-section (1), the Administrator of the non-banking financial Company shall facilitate reconstitution of the Board of Directors of the non-banking financial Company.

(8) Notwithstanding anything contained in any other law for the time being in force or in any contract, no person shall be entitled to claim any compensation for the loss or termination of his office.

(9) The Administrator referred to in sub-section (2) shall vacate office immediately after the Board of Directors of the non-banking financial Company has been reconstituted.]."

5.7 On a bare reading of Section 45-IE of the Act, it is clear that upon exercise of the said power by the RBI[7] , the Board of Directors vacates their office. In other words, the vacating of office of the said Board of Directors has finality attached to it. The Appellant's contention that Section 45-IE of the RBI Act does not bar the said directors who have vacated their offices from becoming directors of the Company when the Board is reconstituted cannot and does not alter the precise position that the supersession of the directors and their vacation of office is final and that their appointment, if at all, at a subsequent stage (and if fulfilling criteria of being fit and proper) is a fresh/new appointment and not a continuation of the original offices as Directors of the Company.

[7] Reserve Bank of India

5.8 On 28 November 2019, the RBI exercised its power under Section 45-IE (2) of the RBI Act and superseded the Board of Directors of DHFL. This was done as the business of DHFL has been conducted in a manner that was detrimental to the interest of the depositors DHFL's creditors, which led to a severe deterioration in DHFL's financial position. Given the above, the then Board of Directors of DHFL vacated their respective offices on 20 November 2019. In other words, w.e.f. 20 November 2019, there was no Board of Directors in DHFL, and their power stood vested in the Administrator under the RBI Act.

5.9 On 22 November 2019, the RBI, in the exercise of the power conferred under Section 45-IE (5)(a) of the RBI Act, constituted an Advisory Committee to assist the Administrator. After that, on 29 November 2019, the RBI filed the above Company Petition for initiation of CIRP[8] of DHFL under the FSP Rules[9]. Accordingly, the interim moratorium period as defined under Section 14 of the IBC, 2016 commences from the date of filing of the Company Petition before the Adjudicating Authority/NCLT under Rule 5(b)(i) of FSP Rules.

5.10 On 02 December 2019, Respondent was appointed as Administrator under FSP Rules. It is pertinent to note that as of this date, the Board of Directors of DHFL had already vacated their respective offices, and Respondent/Administrator of DHFL was discharging duties under Section 45-IA(4)(b) of the RBI Act.

[8] Corporate Insolvency Resolution Process
[9] Financial Service Provider and Application to Adjudication Rules, 2019

5.11 Since the erstwhile members of the Board of Directors of DHFL had already vacated their offices, the powers of the Board of Directors had stood vested in the Administrator on 03 December 2019 under Section 45-IE of the RBI Act. In such a scenario, there is no question of any powers of the Board being suspended as per Section 17(i)(b) of the Code upon the admission of the above Company Petition. Consequently, there is no question of considering the Appellant as being a 'suspended' Director for the Code.

5.12 It is important to mention that Section 24(3)(b) of the Code provides that the Resolution Professional should give notice/details of the meeting of the Committee of Creditors to 'suspended' Directors of the Corporate Debtor. The said provision reads as follows:

> "***24. Meeting of committee of creditors***.—*(1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.*
>
> *(2) All meetings of the committee of creditors shall be conducted by the Resolution professional.*
>
> *(3) The Resolution professional shall give notice of each meeting of the committee of creditors to—*
>
> > *(a) members of [committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6-A) of Section 21 and sub-section (5)];*
> >
> > ***(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;***

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt."

5.13 On a bare reading of Section 24(3)(b) of the Code, it is clear that the notice of each meeting of the Committee of Creditors is required to be given to the 'suspended' Board of Directors. The word 'suspended' used in Section 24(3)(b) of the Code is clearly and directly relatable to the words 'suspended' in Section 17(1)(b) of the Code. In other words, it is those directors whose powers stand 'suspended' under Section 17(1)(b) of the Code by appointment of the Interim Resolution Professional that is entitled to receive notice of the meetings of the Committee of Creditors under Section 24(3)(b) of the Code. In the present case, it is an admitted position that with effect from 20 November 2019, upon the RBI exercising powers under Section 45-IE of the RBI Act, the Board of Directors of DHFL stood superseded and had vacated office. Accordingly, at the time of appointment of the Administrator under the FSP Rules by the NCLT on 03 December 2019, there was no question of the powers of the Board of Directors of DHFL. Since they had already vacated their offices on 20 November 2019, there is no question of the said Directors of DHFL permitting them to participate in the CoC meetings in this scenario. They had already vacated their offices on supersession of the erstwhile Board. Therefore, they have not qualified as 'suspended' Directors for Section 24(3)(b) of the Code.

5.14 The Appellant has attempted to equate supersession of the Board of Directors under Section 45-IE of the RBI Act with the suspension of the Board

of Directors under Section 17(1)(b) of the Code on the basis that both have the same 'legal effects' and that there is 'no legal prohibition' for the same Directors to be appointed on the reconstituted Board of Directors under Section 45-IE(7) of the Code. This is a misconceived proposition since 'suspension', and 'supersession' are distinct concepts in law. Moreover, when a Company Petition is admitted under Sections 7, 9 or 10 of the Code, the resultant 'suspension' of Directors under Section 17(1)(b) of the Code does not necessarily mean that it is on account of severe governance issues, unlike in a case where the RBI exercises powers under Section 45-IE of the RBI Act.

5.15 On a bare reading of Section 45-IE of the RBI Act, the supersession of the Board of Directors under the said provision has finality attached to it. Accordingly, if the RBI exercised the said powers and the Directors have vacated office, as in the present case. There is no question of the powers of the Board of Directors who have already vacated office and consider them 'suspended' under Section 17(1)(b) of the Code. The Appellant's contention that the suspension of powers of the Board of Directors (under Section 17(1)(b) of the Code) may also have the 'legal effect' of the said Directors vacating office is irrelevant and a mere red herring. As to the Appellant's contention that there is 'no legal prohibition' for the same Directors to be appointed on the reconstituted Board of Directors under Section 45-IE(7) of the Code, the said contention is misconceived, irrelevant and overlooks the fact that the vacation of office under Section 45-IE has finality, attached to it. Accordingly, any appointment of such a person as a Director on the 'reconstituted' Board of Directors under Section 45-IE(7) of the RBI Act the period of supersession is

over, is a new appointment (which will undoubtedly be required to satisfy all legal requirements, including of being a 'fit and proper person' at that stage) and is not a continuation of the original appointment as Director, but a fresh/new appointment.

5.16 However, such a further appointment may be possible when the Board of Directors is reconstituted. Therefore, it cannot take away from the supersession under Section 45-IE(2) of the RBI Act, when ordered by the RBI, has attained finality. Therefore, those directors who were already removed and dismissed are deemed to have vacated office under the RBI Act w.e.f the date of supersession of the Board.

5.17 The Appellant has relied on the decision of the Hon'ble Supreme Court in Vijay Kumar Jain vs Standard Chartered Bank (2019 SCC Online SC 13) to contend that the word 'erstwhile' or 'former' directors used in the said judgment would mean that Directors who have vacated office under Section 45-IE of the RBI Act are also included in the ambit of Section 24(3)(b) of the Code. However, this contention is misconceived and based on a patent misreading of the judgment in Vijay Kumar Jain (supra).

5.18 At the outset, it is pertinent to note that in Vijay Kumar Jain (supra), the Hon'ble Supreme Court was concerned with the extent to which Directors who had been suspended on the appointment of the Interim Resolution Professional, in that case, were entitled to participate in the meetings of the CoC. In other words, the said Directors' right to attend the CoC meetings was

not under dispute but merely the width of their rights and whether the same included copies of the documents discussed at the CoC meetings.

5.19 In Vijay Kumar Jain (supra), the Hon'ble Supreme Court did not express any view on whether persons who have already vacated their offices as Directors before the appointment of the Interim Resolution Professional are entitled to notice and participation in CoC meetings. Thus, the Appellant's reliance on Vijay Kumar Jain (supra) is misplaced. The use of expression 'erstwhile' or 'former' Directors by the Hon'ble Supreme Court in Vijay Kumar Jain (supra) was not intended to (and does not) alter the clear language of Section 17(1)(b) and Section 24(3)(b) of the Code. The Appellant's contention is based on a misreading of the observations of the Hon'ble Supreme Court and is contrary to settled legal principles laid down by the Hon'ble Supreme Court.

5.20 The obligations of Directors as guarantors for DHFL cannot (and does not) mean that such persons are necessarily entitled to attend or participate in CoC meetings. The Appellant's contention overlooks that Resolution Plan binds every person a guarantor for DHFL under Section 31 of the Code is not ipso facto entitled to attend and participate in CoC meetings. The Appellant's contention overlooks that the Appellant had vacated office under Section 45-IE of the RBI Act on 20 November 2019. There was no question of their powers as Directors being suspended under Section 17(1)(b) of the Code on 03 December 2019, when the above Company Petition was admitted. Therefore,

there is no question of the said persons being entitled to notice of CoC meetings under Section 24(3)(b) of the Code.

5.21 We are not convinced with the above argument advanced by the Learned Senior Counsel about the applicability of the doctrine of election in this case. Appellant contends that RBI as the Applicant elected to proceed under the Code, the Administrator cannot take recourse to the RBI Act to deprive the Appellant of an opportunity to participate in CoC meetings and obtain copies of relevant documents.

5.22 Relevant CIRP Rules is given for ready reference:

> ***"Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.***
>
> ***4. General modifications.— For the purposes of these rules, in all the provisions relating to insolvency and liquidation proceedings under the Code,—***
>
> *(i) for the expression "corporate debtor" wherever they occur, shall mean "financial service provider"; and*
>
> *(ii)* ***for the expressions "insolvency professional", "interim resolution professional", "resolution professional" or "liquidator", wherever they occur, shall mean "administrator".***
>
> ***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***

<u>provider</u> subject to the following modifications, namely:—

(a) Initiation of Corporate Insolvency Resolution Process.—

(i) no corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6;

(ii) the application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7, subject to clause (iii); and

(iii) on the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under sub-clause (i) of clause (a) of rule 5, as the Administrator."

5.23 Rule 4 of FSP Rules provides for general modifications of the Code concerning insolvency of a Financial Service Provider. Rule 5 provides that the entire Code applies mutatis mutandis to a Corporate Debtor subject to modifications provided under Rule 5. Admittedly, no such modifications are provided under the Code to exclude superseded Directors prohibiting them from participating in the CoC meetings. However, we can take note of the Hon'ble Supreme Court finding in the case of Vijay Kumar Jain (supra).

5.24 In the case mentioned above, Hon'ble Supreme Court has held that; the proviso to Section 21(2) of the I&B Code clarifies that a Director who is also a

Financial Creditor who is a related party of the Corporate Debtor shall not have any right of representation, participation or voting in a meeting of a Committee of Creditors. Further, Directors simpliciter are not the subject matter of the proviso to Section 21(2) of the Code. But only Directors who are related parties of the Corporate Debtor. Therefore, only such persons do not have any right of representation, participation, or voting in the Committee of Creditors meeting.

5.25 Superseded Directors are those Directors who have been removed or deemed to have demitted office and who are not holding the position of Director on the CIRP commencement date, cannot be considered a Director Simpliciter to benefit from participating in the meeting of CoC. Section 45-IE (4)(a) of the RBI Act provides that upon making an order of supersession of the Board of Directors of a non-banking financial company, Director shall from the supersession of the Board of Directors **vacate** their offices. Section 45-IE of the RBI Act empowers the RBI for the supersession of the Board of Directors of a non-banking financial company. After vacation or removal from the office of the Director, the said person cannot claim their entitlement to participate in the CoC of the Corporate Debtor. A removed Director from the Board of Directors cannot interfere in the Company's affairs per contra a suspended Director always remains on the Board. Given the law laid down by Hon'ble Supreme Court Vijay Kumar Jain' case, it is clear that Director Simpliciter can participate in the CoC of the Corporate Debtor. However, the

person who is not in the office and deemed to have vacated the office under the RBI Act cannot claim parity with the suspended Director under the Code.

5.26 In IA 701 of 2021, prayer was made to provide the Applicant /Appellant copies of the captioned Interlocutory Application No.449 of 2021 along with its enclosures, including the said Resolution Plan. This application was rejected. Feeling aggrieved by this Order, CA No. 647 of 2021 is filed.

5.27 Adjudicating authority has rejected the application with the observation that "*the successful resolution applicant and COC had vehemently objected to his prayer and may impact the plan, its business strategy etc. In the absence of appropriate legal submissions, pleadings, grounds, they are not inclined to grant the player. Accordingly, this IA is dismissed, and no order as to costs."*

5.28 The Appellant had contended that they were also aggrieved by the Order refusing to supply the copy of the approved Resolution Plan. In reply, Respondent vouched that confidentiality is critical for a successful restructuring of the Corporate Debtor. Accordingly, several provisions have been incorporated in the Code and the Allied regulations to safeguard the confidentiality concerns relating to insolvency resolution, liquidation, or bankruptcy. For instance, Section 29 (2) of the Code requires a confidentiality undertaking from the Resolution Applicant's before they are provided access to relevant Information about the Corporate Debtor. Similarly, Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 also requires insolvency professional to ensure the

confidentiality of Information relating to the Insolvency Resolution, Liquidation, or Bankruptcy Process is maintained.

5.29 Further, the Resolution Plans to obtain critical Information relating to the CIRP, the resolution applicant and the Corporate Debtor, which are commercially sensitive and may be subject to obligations owed to 3rd parties such as trade secrets, research and development Information and customer information. It is also a known fact that Resolution Plans involve extensive grounds of preparation, review and deliberations by the Resolution Applicant and later by the insolvency professionals and COC; and giving it to the appellants on demand for a copy of the same will be akin to trivialising these efforts and disturbing the sanctity of the entire CIRP.

5.30 The Resolution Plan deliberately deals with confidentiality provisions requiring all parties involved in the resolution process to keep the Information provided therein confidential. Further, the Appellant submitting that the Resolution Plan may become public after its approval by the learned tribunal does not justify overriding the confidentiality provisions. Allowing such parties to receive a copy of the Resolution Plan would not only jeopardise the revival and Resolution in the form of successful implementation of the Resolution Plan for the corporate debtor but also set a dangerous precedent where any party would seek a copy of the Resolution Plan that the COC has already approved.

5.31 It is important to mention that CIRP Regulation 36(4) imposes a duty on the RP to share the Information Memorandum with the members of CoC

after an undertaking of confidentiality of Information. However, the Appellants are not a member of CoC, and they have been removed from the erstwhile Board of DHFL and have vacated the office before initiation of CIRP of the Corporate Debtor. Therefore, they are not entitled to participate in the CoC meetings or share the documents.

5.32 Regulation 36 is quoted below for ready reference;

> ***"Regulation 36***
>
> ***36. Information memorandum****.— [(1) Subject to sub-regulation (4), the Resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.]*
>
> *(2) The information memorandum shall contain the following details of the corporate debtor—*
>
> *[(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.*
>
> *Explanation—"Description" includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.]*
>
> *(b) the latest annual financial statements;*
>
> *(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made*

up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

(i) the number of workers and employees and liabilities of the corporate debtor towards them;

(j) [* *]*

(k) [* *]*

(l) other Information, which the Resolution professional deems relevant to the committee.

(3) A member of the committee may request the Resolution professional for further Information of the nature described in this Regulation and the Resolution professional shall provide

such Information to all members within reasonable time if such Information has a bearing on the resolution plan.

[(4) The Resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee [* * *] to the effect that such member or resolution applicant shall maintain confidentiality of the Information and shall not use such Information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29.]"

5.33 The Appellants adverted to the observations of the Hon'ble Supreme Court in Paragraphs 14, 16, 17, 19.5, 20-23 & 25 in the case of *Vijay Kumar Jain v. Standard Chartered Bank*, (2019) 20 SCC 455 quoted below for ready reference;

"**14.** *The relevant provisions of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read as under:*

*"**7. Certificate of registration**.—*

*(1) ****

(2) The registration shall be subject to the conditions that the insolvency professional shall—

***

(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and

***"

*"**FIRST SCHEDULE***

[Under Regulation 7(2)(h)]

CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS

***

***21. Confidentiality**.—An insolvency professional must ensure that confidentiality of the Information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law."*

(emphasis supplied)

***16.** This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the Committee of Creditors, yet, they have a right to participate in each and every meeting held by the Committee of Creditors, and also have a right to discuss along with members of the Committee of Creditors all resolution plans that are presented at such meetings under Section 25(2)(i). It cannot be gainsaid that operational creditors, who may participate in such meetings but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans beforehand if they are to participate effectively in the meeting of the Committee of Creditors. This is for the reason that under Section 30(2)(b), repayment of their debts is an important part of the resolution plan qua them on which they must comment. So the first important thing to notice is that even though persons such as operational creditors have no right to vote but are only participants in meetings of the Committee of Creditors, yet, they would certainly have a right to be given a copy of the resolution plans before such meetings are held so that they may effectively comment on the same to safeguard their interest.*

***17.** However, it was argued before us that the Notes on Clauses to Section 24 make it clear that the erstwhile members of the Board of Directors are participants in these meetings only so that the Committee of Creditors and the Resolution professional may seek Information from them. The Notes on Clauses, heavily relied upon by the learned counsel for the respondents, read as follows:*

"Clause 24 prescribes the modalities for the meeting of the Committee of Creditors. The meetings are conducted by the Resolution professional and may be attended by the members of the Board of Directors or partners of the corporate debtor. This gives an opportunity for the Committee of Creditors and the Resolution professional to seek Information that they may require to assess the financial position of the corporate debtor and prepare a resolution plan."

(emphasis supplied)

19.5. *Further, under Regulation 37(1)(f), a resolution plan may provide for reduction in the amount payable to the creditors, which again vitally impacts the rights of a guarantor. Last but not the least, a resolution plan which has been approved or rejected by an order of the adjudicating authority, has to be sent to "participants" which would include members of the erstwhile Board of Directors — vide Regulation 39(5) of the CIRP Regulations. Obviously, such copy can only be sent to participants because they are vitally interested in the outcome of such resolution plan, and may, as persons aggrieved, file an appeal from the adjudicating authority's Order to the Appellate Tribunal under Section 61 of the Code. Quite apart from this, Section 60(5)(c) is also very wide, and a member of the erstwhile Board of Directors also has an independent right to approach the adjudicating authority, which must then hear such person before it is satisfied that such resolution plan can pass muster under Section 31 of the Code.*

20. It is also important to note that every participant is entitled to a notice of every meeting of the Committee of Creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are "participants" who will discuss these

issues. The expression "documents" is a wide expression which would certainly include resolution plans*.*

21. *Under Regulation 24(2)(e), the Resolution professional has to take a roll call of every participant attending through videoconferencing or other audio and visual means, and must state for the record that such person has received the agenda and all relevant material for the meeting which would include the resolution plan to be discussed at such meeting. Regulation 35 makes it clear that the Resolution professional shall provide fair value and liquidation value to every member of the committee only after receipt of resolution plans in accordance with the Code [see Regulation 35(2)]. Also, under Regulation 38(1-A), a resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, and under sub-regulation (3)(a), a resolution plan shall demonstrate that it addresses the cause of default****. This Regulation also, therefore, recognises the vital interest of the erstwhile Board of Directors in a resolution plan together with the cause of default. It is here that the erstwhile Directors can represent to the Committee of Creditors that the cause of default is not due to the erstwhile management, but due to other factors which may be beyond their control, which have led to non-payment of the debt. Therefore, a combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the Committee of Creditors, must be given a copy of such plans as part of "documents" that have to be furnished along with the notice of such meetings.***

22. *As a result of the aforesaid discussion, the arguments of the respondents that "committee" and "participant" are used differently, which would lead to the result that resolution plans need not be furnished to the erstwhile members of the Board of Directors, must be rejected. Equally, the Regulations, far from going beyond the Code, flesh out the true intention of the Code that is achieved by reading the plain language of the sections*

that have already been adverted to. ***So far as confidential Information is concerned, it is clear that the Resolution professional can take an undertaking from members of the erstwhile Board of Directors, as has been taken in the facts of the present case, to maintain confidentiality. The source of this power is Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with Para 21 of the First Schedule thereto***. ***This can be in the form of a non-disclosure agreement in which the Resolution professional can be indemnified in case information is not kept strictly confidential.***

23. *The argument on behalf of the Committee of Creditors based on the proviso to Section 21(2) is also misconceived. The proviso to Section 21(2) clarifies that a Director who is also a financial creditor who is a related party of the corporate debtor, shall No. have any right of representation, participation, or voting in a meeting of the Committee of Creditors*. ***Directors, simpliciter, are not the subject-matter of the proviso to Section 21(2), but only Directors who are related parties of the corporate debtor***. *It is only such persons who do not have any right of representation, participation, or voting in a meeting of the Committee of Creditors. Therefore, the contention that a Director simpliciter would have the right to get documents as against a Director who is a financial creditor is not an argument that is based on the proviso to Section 21(2), correctly read, as it refers only to a financial creditor who is a related party of the corporate debtor. For this reason, this argument also must be rejected.*

25. *We may indicate that the time that has been utilised in these proceedings must be excluded from the period of the resolution process of the corporate debtor as has been held in Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta [Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] (decided on 4-10-2018) (at para 83). In each of these cases, the*

appellants will be given copies of all resolution plans submitted to the CoC within a period of two weeks from the date of this judgment. The resolution applicant in each of these cases will then convene a meeting of the CoC within two weeks thereafter, which will include the appellants as participants. The CoC will then deliberate on the resolution plans afresh and either reject them or approve of them with the requisite majority, after which, the further procedure detailed in the Code and the Regulations will be followed. For all these reasons, we are of the view that the petition and Appeal must be allowed and the NCLAT judgment [Vijay Kumar Jain v. Standard Chartered Bank Ltd., 2018 SCC OnLine NCLAT 855] set aside."

(emphasis supplied)

5.34 The above-mentioned case law is not applicable in the present case as Superseded Directors are those Directors who have been removed or deemed to have demitted office and who were not holding the position of Director on the CIRP commencement date, cannot be considered a Director Simpliciter to benefit from participating in the meeting of CoC. Section 45-IE (4)(a) of the RBI Act provides that upon making an order of supersession of the Board of Directors of a non-banking financial company, Director shall from the supersession of the Board of Directors **vacate** their offices. After vacation or removal from the office of the Director, the said person cannot claim their entitlement to participate in the CoC of the Corporate Debtor. A removed Director from the Board of Directors cannot interfere in the Company's affairs per contra a suspended Director always remains on the erstwhile Board of the Company and assist the IRP/RP as per requirement.

5.35 Therefore, the Appellant, erstwhile Directors, who have vacated the offices are also not entitled to share any document. However, the copy of the

Resolution Plan after approval from the Adjudicating Authority can not be treated as a confidential document. Therefore, after final approval of the Resolution Plan, its certified copy may be issued as per Rules.

5.36 We have concluded unanimously that the impugned Order needs no interference in the circumstances stated above. Accordingly, both the Appeals are disposed off—no order as to costs.

[Justice M. Venugopal]
Member (Judicial)

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

[Dr. Ashok Kumar Mishra]
Member (Technical)

NEW DELHI
27th January 2022

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