IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II

IA No. 518/2020
in
CP (IB) No. 4258/2019

Dheeraj Wadhawan … Applicant

Versus

The Administrator,
Dewan Housing Finance Corporation Limited
… Respondent

In the matter of
Reserve Bank of India … Petitioner/
Appropriate Regulator

Versus

Dewan Housing Finance Corporation Limited
… Respondent/
Financial Service Provider

Order pronounced on: 28.04.2020

Coram:

Mr Rajasekhar VK : Hon'ble Member (Judicial)

Mr Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Applicant : Mr JJ Bhatt, Senior Advocate
Mr Naushad Engineer
Mr Shrinivas Bobde

Mr Rohan Dakshini
Mr Vishesh Malviya
Mr Aakanksha Saxena
Mr Sanaea Laskari, i/b
M/s Rashmikant & Partners, Advocates

For the Respondent/ Administrator : Mr Ravi Kadam, Senior Advocate
Mr Rohan Rajadhyaksha
i/b Ms Sonu Tandon, a/w
Mr R Subramaniakumar, Administrator, in person

ORDER

Per: Rajasekhar VK, Member (Judicial) and Ravikumar Duraisamy, Member (Technical)

1. This is an Interlocutory Application (IA) filed by Mr. Dheeraj Wadhawan, one of the superseded Directors of Dewan Housing Finance Corporation Limited **(DHFL),** a Financial Service Provider, under section 60(5) of the Insolvency & Bankruptcy Code **(IBC)**, *inter alia* seeking a declaration that the Applicant is entitled to attend each and every meeting of the Committee of Creditors (CoC) as a member of the erstwhile Board of Directors under the provisions of the IBC read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 and the financial service

provider rules, including through his representatives and through video conferencing.

2. Before addressing the contentions raised in the application it is necessary to give a brief background of the circumstances in which the present application has been preferred.

3. On 20.11.2019, the Reserve Bank of India (RBI), in exercise of the powers vested in it in terms of section 45-IE of the Reserve Bank of India Act, 1934, superseded the Board of Directors of DHFL and appointed Mr. R Subramaniakumar as the Administrator. Further, in exercise of the powers conferred on it under section 45-IE(5)(a) of the RBI Act, RBI also constituted a three-member Advisory Committee to assist the Administrator in the discharge of his functions *vide* its order dated 22.11.2019.

4. On 29.11.2019, the RBI filed a petition under section 227 read with section 239(2)(zk) of the IBC and rules 5 & 6 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, for initiating Corporate Insolvency Resolution Process (CIRP) against the Respondent/ Financial Service Provider. The petition was admitted *vide* order dated 03.12.2019, and the Respondent was appointed as the Administrator in accordance with the Rules *ibid.*

5. On 10.01.2020, 12.01.2020, 14.01.2020 and 15.01.2020, the Applicant addressed emails 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 12.01.2020, replied that members of the erstwhile Board of Directors of the Financial Service Provider were not legally entitled to attend CoC meetings, since, as on the insolvency commencement date, the superseded Board of Directors were no longer directors of the Financial Service Provider. Hence, the 'superseded Board of Directors' could not be treated as 'suspended Board of Directors' within the meaning of section 24 of the IBC.[1] This decision was

[1] ***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 (6A) 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.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director or partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

again reiterated *vide* email dated 15.01.2020 addressed to the Applicant.

6. The Applicant, therefore, claims that the conduct of the Respondent/ Administrator in refusing to give notice of hearings of the meetings of the CoC to the Applicant constitutes a breach of the provisions of the IBC. He, therefore, has *inter alia* sought the following prayers: —

(a) A declaration that the Applicant 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 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 Applicant.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

7. Notice of the present IA was given to the Respondent/ Administrator, who has filed a reply thereto on 17.02.2020.

8. In the reply, the Respondent/Administrator has broadly submitted the following points: -

   (a) Section 45-IE of the RBI Act, 1934, empowers the RBI **("Appropriate Regulator")** to supersede the Board of Directors of a non-banking financial company in the public interest or to prevent the affairs of such company being conducted in a manner detrimental to the interest of the depositors or creditors or of such company itself, or for securing the proper management of such company or for financial stability, for a period not exceeding five years;

   (b) Upon such supersession, the Chairman, Managing Director and other Directors of such company vacate their office, and all the powers, functions and duties of the Board of Directors shall vest in the Administrator.

   (c) The Board of Directors of the Financial Service Provider was "superseded" by an order of the RBI dated 20.11.2019.

   (d) Thereafter, the RBI moved this Tribunal for initiation of CIRP against the Financial Service Provider

   (e) The term used in the RBI Act, 1934, is "superseded" and not "suspended." Therefore, the Applicant's contention that he is entitled to attend the meetings of the CoC is misplaced and untenable.

(f) As on 03.12.2019 when the underlying Company Petition was admitted, the Board of Directors of the Financial Service Provider was also superseded and was not in existence. The act of "supersession" cannot be equated with "suspension" of the Board.

(g) Substantial progress has been made in the CIRP of the Financial Service Provider so far, and notice inviting Expressions of Interest (EoIs) for resolution plans has also been published on 28.01.2020.

For the above reasons, the Respondent/ Administrator has prayed that the present IA be dismissed with costs.

9. We have perused the Application and the Reply, and the materials placed on record. We have also heard Mr JJ Bhatt, learned Senior Counsel for the Applicant and Mr Ravi Kadam, learned Senior Counsel for the Respondent/ Administrator, who made persuasive arguments at length on 19.02.2020, with the able assistance of their respective Counsel on record.

Opening Arguments by Mr JJ Bhatt, learned Senior Counsel for the Applicant

10. Mr JJ Bhatt, learned Senior Counsel for the Applicant, opening the arguments on behalf of the Applicant, led us through the provisions of section 45-IE[2] of the RBI Act. He submitted that

[2] **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 super session 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 nonbanking financial company.

(7) On or before the expiration of the period of super session 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.

there is no difference envisaged either under the IBC or under the RBI Act regarding "suspension" and "supersession." Both Acts talk of "erstwhile directors."

11. Mr JJ Bhatt further submitted that under the IBC, the Board of Directors of the Corporate Debtor is suspended and the Interim Resolution Professional (IRP) takes over. Under the RBI Act, the word used is "supersession" and the Board is reconstituted at the end of the Administrator's term. There is no bar *per se* that the erstwhile board cannot be re-inducted. Further, during the CIRP, while the Board is suspended, some directors may complete their term. Once the eclipse envisaged by the CIRP has come to an end, the same members may take over.

12. Mr JJ Bhatt also placed extensive reliance on the judgment of the Hon'ble Supreme Court in ***ArcelorMittal India Private Limited v Satish Kumar Gupta & others,***[3] wherein both words, "superseded" and "suspended" have been used. The relevant paras are extracted below: -

"76.1. Under sections 13 to 15, a moratorium is declared; a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims is made; and an Interim Resolution Professional is to be appointed under section 16 of the Code. This action is to be completed by the adjudicating authority within a period of 14 days from the insolvency

[3] (2019) 2 SCC 1 dated 04.10.2018

commencement date, i.e., *the date of admission of the application under section 7 by the adjudicating authority.*

"76.2. Under section 17, the corporate debtor's affairs are to be managed by the Interim Resolution Professional so appointed, and the Board of Directors of the corporate debtor shall stand ***superseded****. The officers and managers of the corporate debtor are now to report to the Interim Resolution Professional who has the authority to act on behalf of the corporate debtor."*

[emphasis added]

13. Mr JJ Bhatt, learned Senior Counsel, also referred to the judgment of the Hon'ble Supreme Court in ***Vijay Kumar Jain v Standard Chartered Bank & others.***[4] He quoted the following sentences from this judgment: -

(a) *"Section 24(3)(b) is important to that, the resolution professional has to give notice of each and every meeting of the committee of creditors, inter alia, to members of the suspended Board of Directors. Like operational creditors who may attend and participate in such meetings, provided the aggregate dues owing to them are not less than ten percent of the total debt. Both such operational creditors and* ***erstwhile*** *members of the Board of Directors have no vote." (para 8)*

(b) *"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)." (para 9)*

[4] Civil Appeal No.8430/2018 along with Writ Petition (Civil) No.1266/2018, decided on 31.01.2019

(c) *"However, it was argued before us that the Notes on Clauses to section 24 makes 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." (para 10)*

(d) *There is no doubt whatsoever that Notes on Clauses are an important aid to the construction of sections of the Code as they show what the Drafting Committee had in mind when such provisions were drafted. … the resolution professional only seeks information from the **erstwhile** Board of Directors under section 29 before preparing an information memorandum, which then includes the financial position of the corporate debtor and information relating to disputes by or against the corporate debtor. … Even assuming that the Notes on Clause 24 may be read as being a one-way street by which erstwhile members of the Board of Directors are only to provide information, we find that section 31(1) of the Code would make it clear that such members of the **erstwhile** Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such resolution plan then binds them. … 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." (para 12)*

(e) *"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." (para 13)*

(f) *"… 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 Regulation 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." (para 14)*

*(g) "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. … 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" (para 15)*

[emphasis added throughout]

14. Lastly, Mr JJ Bhatt, learned Senior Counsel, referred to para 7.1 of the order dated 03.12.2019 of this Adjudicating Authority under the heading, **"7. Findings."** He submitted that this Authority had noted that the Board of Directors of DHFL was "suspended" by RBI.

15. In these circumstances, Mr JJ Bhatt, learned Senior Counsel, submitted that the Application be allowed as prayed for.

Arguments by Mr Ravi Kadam, learned Senior Counsel for the Respondent/Administrator

16. *Per contra,* Mr Ravi Kadam, learned Senior Counsel appearing for the Respondent/ Administrator, submitted that the RBI's order

dated 20.11.2019 superseding the Board of DHFL has not been challenged by the Applicant or the other directors of DHFL. Therefore, the order dated 20.11.2019 has attained finality.

17. Mr Ravi Kadam, learned Senior Counsel, drew our attention to para 2 of the said order dated 20.11.2019, in which it has been noted that statutory inspection of DHFL revealed serious deterioration in its financial position. Para 3 of the order also notes that there were serious concerns about the conduct of affairs of the company. The major supervisory concerns were noted in the **Annexure** to the said order. He drew attention particularly to Para 'C' thereof, which reads as follows in the context of the financial position of DHFL as at 31.03.2018:

"c. The last onsite inspection (financial position as on March 31, 2018) conducted by NHB brings out following major discrepancies:

- *Assessed CRAR of 10.24% as against reported CRAR of 15.29% and regulatory requirement of 12%.*
- *There was huge divergence in the reported and assessed Tier 1 capital; reported Tier 1 capital at ₹8022 crore and assessed at ₹4549 crore.*
- *As per assessed NOF (Net Owned Funds), borrowing of the company exceeded the regulatory ceiling prescribed by NHB.*
- *The company did not disclose loan of ₹28 crore to Wadhawan Holdings Pvt Ltd under related party disclosure. Further, the*

company has issued guarantee in favour of Marino Shelter Pvt Ltd of ₹100 crore, which was not disclosed.

18. Mr Ravi Kadam, learned Senior Counsel, submitted that terms like "supersede," "terminated," "vacated" and "reconstituted" used in section 45-IE of the RBI Act indicated that there is a finality to the supersession of the Board of Directors of such companies. In effect, the Board members vacate their offices. Therefore, he submitted, the question is whether a person who has been removed as director as on date of the filing of the petition be held to be eligible to be included within the meaning of the term, "erstwhile directors."

19. Mr Ravi Kadam further submitted that when the Board is reconstituted, there will be a fresh appointment and not a continuation of the earlier appointment. There is no way for the earlier directors to come back to hold their offices, unless the RBI's order is challenged in proper proceedings and is set aside by a court. In any case, he submitted, the very fact that clause (a) of sub-section (4) of section 45-IE clearly lays down that upon an order of supersession, the chairman, managing director and other directors shall from the date of supersession of the Board of Directors vacate their offices, and sub-section (8) thereof further stipulates that "no person shall be entitled to claim any compensation for the loss or termination of his office" clearly establishes that there is cessation of office and that the Board of

Directors is not "suspended." The RBI had determined that members of the Board of Directors were not "fit and proper" persons and hence the Board was superseded. Even in the case of "reconstitution" of the Board, the appointments are fresh appointments and not a continuation of the earlier appointment.

20. Continuing with his arguments, Mr Ravi Kadam submitted that section 17 of the IBC only envisages that the IRP shall exercise the powers of a "suspended" board. In the present case, on the date of commencement of the CIRP, there was in fact no "board" at all. He submitted that section 17(1)(b)[5] of the IBC postulates that there should be a Board existing at the time of commencement of the CIRP. Therefore, the notice that the Resolution Professional was required to give regarding meetings of the CoC was only to be given to the "suspended" Board of Directors and not a "superseded" one.

[5] **17. Management of affairs of corporate debtor by interim resolution professional.**—

(1) From the date of appointment of the interim resolution professional, -

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

21. Mr Ravi Kadam concluded his arguments by submitting that the present application deserves to be dismissed since it was misconceived, and further the Applicant has not challenged the supersession in any court till date, and the RBI's order dated 20.11.2019 has attained finality.

22. In so far as the two judgments quoted by Mr JJ Bhatt, learned Senior Counsel for the Applicant are concerned, Mr Ravi Kadam, learned Senior Counsel for the Respondent/ Administrator submitted that the sentence, *"… and the Board of Directors of the corporate debtor shall stand* ***superseded****"* appearing in para 76.2 of ***ArcelorMittal*** should really be taken to read as **'suspension'** only. It should not be taken out of the context in which the judgment came to be delivered. In support of this contention, he relied on the judgment of the Hon'ble Supreme Court in ***Roger Shashoua & others v Mukesh Sharma & others,***[6] wherein the Supreme Court had expounded as follows: -

> *"57. In this context, a passage from CIT v Sun Engg. Works (P) Ltd would be absolutely apt: (SCC pp.385-86, para 39)*
>
> > *'39. … It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes*

[6] (2017) 14 SCC 722, decided on 04.07.2017

its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings …'

"58. * * *

"59. … If any principle has been laid down, it has to be considered keeping in view the questions that arose for consideration in the case. One is not expected to pick up a word or a sentence from a judgment de hors *from the context and understand the ratio decidendi which has the precedential value. That apart, the court before whom an authority is cited is required to consider what has been decided therein but not what can be deduced by following a syllogistic process."*

23. In so far as the judgment in ***Vijay Kumar Jain*** was concerned, Mr Ravi Kadam, learned Senior Counsel, submitted that the issue in question in that case was the right to participate, and not the right to receive notice. He relied on para 14 at page 37 of the judgment, which lays down that, – *"… 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."* Mr Ravi Kadam emphasised that the real issue in that judgment was that the right to attend must be a meaningful right, and denial of

documents amounts to denial of the right conferred by law upon the participant.

Arguments in rejoinder of Mr JJ Bhatt, learned Senior Counsel for the Applicant

24. In his rejoinder arguments, Mr JJ Bhatt, learned Senior Counsel submitted that in so far as ***Vijay Kumar Jain*** is concerned, the entire judgment proceeds on two fronts – both of participation and of meaningful participation. This judgment discusses the rationale of an erstwhile director to participate.

25. On Mr Ravi Kadam's submission regarding supersession of the Board of Directors, Mr JJ Bhatt, learned Senior Counsel submitted the rationale is that the Board immediately preceding the initiation of CIRP should be given the right to participate in the meetings of the CoC. Mr JJ Bhatt further submitted that if, on the date of filing of the petition, the Board of the Financial Service Provider exists, then the rights envisaged under section 24 of the IBC cannot be defeated. Hence, the word "supersession" cannot be read differently in the case, with different fact situations evoking different responses on the right conferred on the erstwhile directors.

26. Mr JJ Bhatt further submitted it is the purpose of the Code to see that the Board immediately preceding the initiation of the CIRP should be given a right to participate in the meetings of the CoC. The rationale for such entitlement on the right of directors to

participate is to see if such director could be of some assistance in the CIRP. Even if there is dismissal of the director concerned, such director should be given an opportunity to participate to see if he could be of some assistance. Dismissal, suspension or termination cannot make a difference, Mr Bhatt submitted. There is no proposition to be found that such directors should not be given a right to participate.

The issue requiring determination

27. The short question before us is whether the expression *'supersession'* of the Board of Directors of a non-banking financial company occurring in section 45-IE of the RBI Act, 1934, would have the same effect of a *'suspension'* of the Board of Directors under the IBC. In other words, whether the *'superseded'* Board of a Financial Service Provider should be placed on the same pedestal as a *'suspended'* Board of a Corporate Debtor under the IBC.

Analysis of the statutory provisions and judicial pronouncements

28. Webster's Third New International Dictionary defines the word "supersession" to mean 'the state of being superseded,' 'removal' and 'replacement.' P. Ramanathan Aiyar's ***Advanced Law Lexicon*** defines 'superseded' as 'set aside' and 'replaced by'.

29. In circumstances largely similar involving the supersession of the Committee of Management by the Registrar of Cooperative Societies under section 32 of the Kerala Cooperative Societies

Act, 1969, the Supreme Court held in ***Joint Registrar of Cooperative Societies, Kerala v TA Kuttappan & others,***[7] the Hon'ble Supreme Court held that –

"What is of significance is that when the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the by-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

30. In ***Union of India v Glaxo India Limited & another,***[8] the Supreme Court held as follows: -

"40. It is a cardinal principle of interpretation that a statute must be read as a whole. Lord Herschell in the case of ***Colquhoun v. Brooks (1889) 14 AC 493,*** aptly pointed out: *"It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act."*

7 (2000) 6 SCC 127 decided by the Hon'ble Supreme Court on 09.05.2000

8 (2011) 6 SCC 668) decided by the Hon'ble Supreme Court on 30.03.2011

41. This Court in the case of ***Phillips India Ltd v Labour Court, (1985) 3 SCC 103*** *has observed: "15. No canon of statutory construction is more firmly established that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction* ex visceribus actus……*The only recognised exception to the well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: "it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers" (Quoted with approval in* ***Punjab Beverages Pvt. Ltd. v. Suresh Chand (1978) 2 SCC 144****)"*

31. In both these cases, the primary question was one of notice to the holders of the respective offices which were to be superseded. However, some conclusions can be drawn from the observations of the Hon'ble Supreme Court in the matter which would aid the resolution of the issue at hand in the present case.

32. The Finance (No.2) Act, 2019 (23 of 2019) amended the National Housing Bank Act, 1987, conferring certain powers for regulation of Housing Finance Companies (HFCs) with RBI. HFCs will henceforth be treated as one of the categories of Non-Banking Financial Companies (NBFCs) for regulatory purposes. RBI was entrusted to carry out a review of the extant regulatory framework applicable to the HFCs and come out with revised regulations in due course.

33. The Finance (No.2) Act, 2019 (23 of 2019) inserted two new sections into the RBI Act, 1934 – (i) section 45-ID[9] empowering the RBI to remove directors from office, and (ii) section 45-IE providing for supersession of Board of Directors of NBFCs (other

[9] **45-ID. Power of Bank to remove directors from office**. —

(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 financial stability or for securing the proper management of such company, it is necessary so to do, the Bank may, by order and for reasons to be recorded in writing, remove from office, a director (by whatever name called) of such company, other than Government owned non-banking financial company with effect from such date as may be specified in the said order.

(2) No order under sub-section (1) shall be made unless the director concerned has been given a reasonable opportunity of making a representation to the Bank against the proposed order:

Provided that if, in the opinion of the Bank, any delay will be detrimental to the interest of the said company or its depositors, the Bank may, at the time of giving the aforesaid opportunity or at any time thereafter, by order direct that, pending the consideration of the representation, if any, the director, shall not, with effect from the date of such order

(a) act as such director of that company;

(b) in any way, whether directly or indirectly, be concerned with or take part in the management of that company.

(3) Where any order is made in respect of a director of a company under sub-section (1), he shall cease to be a director of that non-banking financial company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of any non-banking financial company for such period not exceeding five years at a time as may be specified in the order.

(4) Where an order under sub-section (1) has been made, the Bank may, by order in writing, appoint a suitable person in place of the director, who has been so removed from his office, with effect from such date as may be specified in such order.

(5) Any person appointed under sub-section (4) shall, --

(a) hold office during the pleasure of the Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time;

(b) not incur any obligation or liability by reason only of his being a director for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(6) Notwithstanding anything contained in any other law for the time being in force or in any contract, memorandum or articles of association, on the removal of a director from office under this section, such director shall not be entitled to claim any compensation for the loss or termination from office.

than Govt companies). Both these sections came into effect *vide* Notification bearing S.O. 2899(E) dated 09.08.2019.

34. Rule 4 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, clarifies that for the purposes of those rules, -

(a) The expression "corporate debtor" wherever they occur, shall mean "financial service provider;" and

(b) The expressions "insolvency professional," "interim resolution professional," "resolution professional" or "liquidator," wherever they occur, shall mean "administrator."

35. Reading the statutory provisions together, it is clear that the intent of the legislature in making provisions for removal of directors from office in terms of section 45-ID and for supersession of the board of directors of a non-banking financial company (Financial Service Provider) in terms of section 45-IE was to move quickly to replace the Board of Directors when there is some default or negligence in the performance of its duties which may become prejudicial to the interest of the society. In such a milieu, the RBI could supersede the Board of Directors and appoint an Administrator in its place who shall have all the powers, functions and duties which may be exercised or discharged by or on behalf of the Board of Directors of such non-

banking financial company, until such time the Board of Directors of such company is reconstituted.

36. If this is indeed the *raison d'être* for the change brought about in the legislation with effect from 09.08.2019 in terms of the Finance (No.2) Act, 2019, then it is clear therefrom that once the Board of Directors of the company is superseded, it indicates a severance with the existing leadership of the company. The language of sub-section (4) of section 45-IE of the RBI Act, 1934, also makes it clear that upon making an order of supersession of the Board of Directors, the chairman, managing director and other directors shall from the date of such supersession, vacate their office, and they shall also not be entitled to claim any compensation for the loss of termination of their office.

37. A suspension is an eclipse, so to speak, of the Board. The Board continues to exist, albeit under suspended animation. Once the eclipse of suspension is over, the Board regains its full vigour. Supersession, on the other hand, constitutes an extinguishment of all rights and duties as on that date. In that sense, it signals the death of the Board as it existed. Upon expiry of the period of supersession, the original Board is not automatically restored, but is required to be reconstituted in terms of section 45-IE(7) of the RBI Act.

38. Taking a cue from the judgments of the Hon'ble Supreme Court in ***Phillips India Limited*** *(supra)* and ***Glaxo India Limited*** *(supra)****,***

and reading the statute as a whole, it is clear to us that the intention of the legislature is that the existing directors of the Board of Directors of a company which has been superseded, lose their offices. Upon expiry of the period of supersession, the Board of Directors of such companies shall be reconstituted. The 'superseded' Board of Directors cannot, therefore, be equated with a 'suspended' Board of Directors within the meaning of section 24 of the IBC.

39. In the past the Securities Market Regulator namely Securities and Exchange Board of India (SEBI) had superseded Boards of many Stock Exchanges, *viz.,* Ahmedabad Stock Exchange, Bhubaneswar Stock Exchange, Calcutta Stock Exchange Association Ltd, Uttar Pradesh Stock Exchange Association Limited, Pune Stock Exchange Limited, Coimbatore Stock Exchange Limited etc. Even in those cases when the Board of Directors or Committee of Directors were superseded the entire Administration was vested only with the Administrator appointed by the regulator SEBI to exercise and perform all the powers and duties of the Board and committee was formed to assist him wherever felt necessary. Further the administrator can take assistance from any official. Applying the same logic even in the instant case, Supersession means vacating the office of Director and does not mean suspension of the office of Director. It may also be added that a Superseded Board of Directors is not automatically be reinstated after the period of supersession.

Further, any person appointed as Director should meet the criteria of "Fit and Proper Person".

40. As submitted by the Learned Senior Counsel for the applicant even in this case if the Administrator really wants any information or clarification from the superseded Director, he is at liberty to call for the same from any of the superseded Directors.

41. Notably, section 45 ID of the RBI Act uses the language such as:

"remove from office, a director (by whatever name called) of such company with effect from such date as may be specified in the said order. act as such director of that company;

"in any way, whether directly or indirectly, be concerned with or take part in the management of that company, he shall cease to be a director of that non-banking financial company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management, so removed from his office, on the removal of a director from office etc."

42. The issue can be simply distinguished between a suspended employee and an employee who is terminated or dismissed from service. As generally known a suspended employee is entitled for certain privileges such as salary, certain communication from the company etc, whereas the terminated or dismissed employee is not entitled for any privileges since his connection with the company is severed. Suspended employee will be reinstated after

completion of the period of suspension. Likewise, in this case Suspended Board of Directors is equal to suspended employee and Superseded Board of Directors is equal to Terminated or Dismissed employee.

43. Further in the factual situation, the Directors of the company are facing probes by various Investigating Agencies and were also behind the bars for some time. That being the case, the prayers in the IA, including that a direction to the Respondent/ Administrator not to implement any decision taken at the meetings of the CoC held without the presence of the Applicant, is totally unacceptable considering the public interest at large.

44. We fully agree with the submissions of the Learned Senior Counsel for the Respondent Mr. Ravi Kadam, in applying the judgment of the Hon'ble Supreme Court in the matter of ***Roger Shashoua & others v Mukesh Sharma & others, referred in Para 22 above,*** in so far as the case at hand is concerned.

45. In this view of the matter, it is clear that we cannot read "supersession" as "suspension" as the learned Senior Counsel for the Applicant calls upon us to do as that would amount to doing violence to the language of the statute.

46. Lastly, in so far as this Adjudicating Authority's order dated 03.12.2019 is concerned, in para 7.1, the term *'suspended'* appears to be a mere clerical error, inasmuch as the Order dated

20.11.2019 issued by RBI clearly reveals in the title, - ***"Supersession of the Board of Directors of Dewan Housing Finance Corporation Limited, Mumbai, Maharashtra, under section 45-IE of the Reserve Bank of India Act, 1934."*** In para 4 of the same Order, the RBI has stated that in exercise of the powers conferred by section 45-IE of the RBI Act, 1934, the RBI **'supersedes'** the Board of Directors of DHFL. There is, therefore, no scope to read ***'supersession'*** as ***'suspension'*** whichever way one looks at it.

Findings

47. For the above reasons, we hold that the Applicant is not entitled to attend the meetings of the CoC as a member of the erstwhile Board of Directors.

48. The present IA No.518/2010 in CP (IB) No.4258/2019, therefore, fails and is accordingly dismissed. No order as to costs.

Sd/- Sd/-

Ravikumar Duraisamy **Rajasekhar VK**
Member (Technical) Member (Judicial)

28.04.2020