



KINGS & ALLIANCE LLP
LAW FIRM



www.knallp.com



info@knallp.com



+91 981 981 5818

Can the Jurisprudential Developments from the Supreme Court's DHFL Ruling Reshape India's Insolvency Law?



The Supreme Court of India, in a recent judgment in *Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd & Ors.*, delivered a significant verdict that clarifies critical aspects of the Insolvency and Bankruptcy Code, 2016 (IBC), particularly concerning avoidance transactions and the scope of judicial review of decisions made by the Committee of Creditors (CoC). This case, adjudicated by a Division Bench comprising Hon'ble Justices Bela Trivedi and SC Sharma, has far-reaching implications for the insolvency resolution process in India..

The DHFL Saga and the Key Legal Questions

Dewan Housing Finance Corporation Ltd (DHFL), a prominent housing finance company and non-banking financial company (NBFC), became embroiled in one of India's most significant financial scandals, involving allegations of loan fraud, money laundering, and the creation of a web of shell companies. In response to these grave concerns and in exercise of its powers under Section 45-IE (1) of the Reserve Bank of India (RBI) Act, the RBI superseded DHFL's Board of Directors, citing conduct detrimental to the interests of depositors and creditors, and appointed an administrator.

Subsequently, the RBI filed a Company Petition before the National Company Law Tribunal





(NCLT), initiating the Corporate Insolvency Resolution Process (CIRP). The NCLT directed the commencement of CIRP and appointed a resolution professional/administrator. During this process, claims amounting to Rs. 82,247 Crores were received following a public announcement by the Administrator. Grant Thornton (GT) was appointed as transaction auditors for unearthing the transactions under Sections 43 to 51 and 66 of the IBC. Based on the GT report, the Administrator filed eight applications before the NCLT regarding preferential, undervalued, and extortionate transactions, as well as fraudulent and wrongful trading.

The resolution plan submitted by Piramal Capital and Housing Limited became central to the CIRP. However, disputes arose, leading to a series of appeals before the National Company Law Appellate Tribunal (NCLAT) and ultimately the Supreme Court. A key point of contention was the NCLAT's modification of the resolution plan concerning the appropriation of recoveries from avoidance applications, particularly those under Section 66 of the IBC.

Distinguishing Avoidance Applications

A crucial aspect of the Supreme Court's analysis lies in its clear distinction between different types of avoidance applications under the IBC. The court differentiated between applications filed under Chapter III of the IBC – specifically Sections 43 (preferential transactions), 45 (undervalued transactions), and 50 (extortionate credit transactions) – and applications filed under Chapter VI, concerning fraudulent or wrongful trading under Section 66.

The court highlighted that Section 25(2)(j) of the IBC mandates the Resolution Professional to file applications for avoidance of transactions “in accordance with Chapter III.” This explicit linkage suggests that these applications are inherently tied to the liquidation process framework within the IBC, even though their filing occurs during the CIRP.

Conversely, the court noted that applications related to fraudulent or wrongful trading under Section 66 fall under a distinct chapter and are not encompassed within the ambit of Section 25(2). The powers vested in the Adjudicating Authority also differ significantly. While applications under Chapter III aim to “avoid” or “set aside” specific transactions, potentially leading to the recovery of assets for the benefit of creditors, Section 66 empowers the Adjudicating Authority to hold individuals knowingly involved in such trading liable to contribute to the CD's assets.

This distinction is pivotal. The Supreme Court clarified that the term “Avoidance Applications” should primarily be associated with those filed under Sections 43, 45, and 50. Applications under Section 66, while also seeking remedies for detrimental actions, operate on a different premise of establishing liability for fraudulent conduct. However, it also validated the



resolution plan's provision allowing Piramal Capital to appropriate recoveries from Section 66 applications. This recognizes the distinct nature of Section 66 actions, which often require the resolution applicant to expend resources in pursuing potentially complex litigation to establish fraudulent conduct and recover assets.

Based on this distinction, the Supreme Court upheld the NCLT's directive that the recoveries or benefits arising from Avoidance Applications under Sections 43, 45, and 50 should be appropriated in favour of the CoC. This aligns with the general principle that recoveries from transactions that unfairly prejudiced the CD's financial position should benefit the creditors who suffered the consequences.

Whether the NCLAT should have entertained the appeals filed by 63 Moons under Section 61 of the IBC?

The Supreme Court also devolved on the above issue and held that the NCLAT committed a serious jurisdictional error by entertaining the appeals filed by 63 Moons Technologies and other NCD holders challenging the treatment of recoveries under Section 66 of the IBC in the approved Resolution Plan. The Court observed that the Resolution Plan submitted by Piramal Capital, which ascribed a notional value of ₹1 to recoveries under Section 66, was approved by 93.65% of the CoC, including overwhelming support from the class of debenture holders represented by the authorised representative, Catalyst Trusteeship Limited. Ultimately, the Court restored the Resolution Plan as approved by the CoC and NCLT, reiterating that the NCLAT had transgressed its jurisdiction under Section 61 by interfering with a clause that was the product of commercial negotiation and collective decision-making

Upholding the Commercial Wisdom of the CoC

The judgment strongly reinforces the principle of respecting the "commercial wisdom" of the CoC. The Court, referring to its recent decision in *M.K. Rajagopalan v. Dr. Periasamy Palani Gounder and Another*, reiterated that commercial wisdom refers to a collective business decision taken by the CoC, with due regard to commercial interests, revival prospects of the corporate debtor, and value maximisation. This wisdom is not rhetorical but represents a deliberated decision arrived at through expert assessment and extensive discussion by financial creditors who are most invested in the process. The Supreme Court underlined that the CoC, comprising experienced financial institutions and lenders, is best positioned to evaluate the feasibility and viability of a resolution plan, including the proposed treatment of potential recoveries from various legal avenues. The legislature has deliberately excluded any challenge to the fairness or equity of the CoC's commercial decision.

The court noted that the RP approved by the CoC was an outcome of "several rounds of



negotiations and deliberations,” signifying a thorough and considered decision-making process. Furthermore, the overwhelming vote in favour of the RP by the respective classes of creditors, including those who later raised objections before the NCLAT, further solidified the legitimacy of the CoC’s decision. The court explicitly stated that those who voted in favour through their authorised representatives are estopped from subsequently challenging the approved plan. This underscores the binding nature of collective decisions made by the CoC.

Limited Scope of Judicial Review

The judgment clarified the limited scope of judicial review by the NCLT and NCLAT in resolution plan approvals. The court emphasised that the NCLT’s role is primarily to ensure that the resolution plan complies with the mandatory requirements of Section 30(2) of the IBC and Regulation 38 of the IBBI (Liquidation Process) Regulations, 2016. Similarly, the NCLAT’s appellate jurisdiction is confined to the grounds specified in Section 61(3) of the IBC. The NCLAT’s appellate jurisdiction under Section 61 is similarly circumscribed. The Court cautioned against appellate authorities “tinkering” with approved resolution plans or second-guessing the commercial wisdom of the CoC, emphasizing judicial restraint in such matters.

Rejection of Arguments Based on RBI and NHB Acts

The court also addressed and rejected the arguments raised by certain appellants who claimed that the RP violated provisions of the Reserve Bank of India (RBI) Act and the National Housing Bank (NHB) Act by not mandating full payment of deposits. The court clarified that neither of the cited provisions confers an absolute right upon depositors to receive full payment and that there was no evidence of any specific orders from the relevant authorities mandating such full payment in this case.

Key Takeaways from the Judgment

- Commercial wisdom of the CoC is paramount and the judicial review of a resolution plan is limited and does not extend to commercial or distributional choices made by the CoC, unless they violate Section 30(2) or show manifest injustice.
- Financial creditors represented through an authorised representative are bound by the majority decision of their class and cannot later challenge the outcome.
- The treatment of recoveries under avoidance applications, particularly under Section 66, may be negotiated and included as a commercial term in the plan,



- subject to CoC approval. Directors whose Board is superseded under RBI Act cease to have any rights under the IBC framework, unlike suspended directors.

Conclusion

The Supreme Court's judgment in the Piramal Capital is a significant victory for the principles underpinning the IBC, particularly the emphasis on the commercial wisdom of the CoC and the finality of approved resolution plans. By reaffirming the primacy of the CoC's commercial wisdom, clarifying the treatment of avoidance transactions, and emphasizing the limits of judicial review, the Court has provided valuable guidance for stakeholders involved in the insolvency resolution process. This ruling will likely deter unwarranted interference by appellate authorities in the resolution process, fostering greater certainty and efficiency in the resolution of distressed assets and ultimately contributing to a more robust insolvency framework in India. The judgment underscores the importance of allowing the collective financial expertise of the creditors to guide the resolution process, within the boundaries of the law, to achieve the best possible outcome for all stakeholders.

1. CIVIL APPEAL NOS. 1632-1634 OF 2022
 2. Section 227 read with Section 239 (2) (zk) of the IBC
 3. 2024 (1) SCC 42
-

