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SUPREME COURT PROVIDES CLARITY ON CERTAIN UNSETTLED ISSUES PERTAINING TO “PUFE” TRANSACTIONS

Vide Judgment rendered on April 1, 2025 in the matter of *Piramal Capital and Housing Finance Limited (Formerly known as Deewan Housing Finance Corporation Limited) versus 63 Moons Technologies Limited & Others*, the Hon’ble Supreme Court has upheld the Resolution Plan submitted by the Successful Resolution Applicant, namely Piramal Capital and Housing Finance Limited (“**Piramal**”) in the Corporate Insolvency Resolution Process of Dewan Housing Finance Corporation Limited.

Piramal had challenged the Impugned Judgment dated January 27, 2022 passed by the Hon’ble National Company Law Appellate Tribunal, New Delhi

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(“**Hon’ble NCLAT**”), only to the extent that Hon’ble NCLAT had modified the Resolution Plan approved by the Hon’ble National Company Law Tribunal, Mumbai (“**Hon’ble NCLT**”) vide order dated June 7, 2021, by holding that the Resolution Plan that permitted Piramal to appropriate recoveries, if any, from applications filed under Section 66 (Fraudulent Trading or Wrongful Trading) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) ought to be set aside and the Resolution Plan be sent back to the Committee of Creditors for its reconsideration on the aforementioned aspect.

Vide the above-mentioned judgment, the Hon’ble Supreme Court has, *inter alia*, provided clarity on certain unsettled issues pertaining to PUF (Preferential, Undervalued, Fraudulent, Extortionate)

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transactions as envisaged under the provisions of the IBC.

The keys takeaways in the context of PUFÉ transactions are set out herein:

- Considering that majority of the creditors in their commercial wisdom and after negotiations with the Prospective Resolution Applicants as to how and in what manner the Corporate Resolution Process should be undertaken, had explored the feasibility and viability of the Resolution Plan and had thereafter approved the same and further considering that the Resolution Plan was subsequently approved by the Hon'ble NCLT; in such a scenario, the Hon'ble NCLAT ought to have restrained from tinkering with a Clause in the Resolution Plan with regard to the treatment of Recoveries from the Applications under Section 66 of the IBC.

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- Both, the Avoidance Applications envisaged under Chapter III of the IBC (Preferential, Undervalued and Extortionate Credit transactions being collectively referred to as “**Avoidance Transactions**”) and the Applications in respect of Fraudulent Trading or Wrongful Trading under Chapter VI of the IBC operate in different situations. The powers of the Adjudicating Authority in respect of the Avoidance Applications filed under Chapter III of the IBC and the powers the Adjudicating Authority in respect of the Applications pertaining to the Fraudulent and Wrongful trading filed under Chapter VI of the IBC, have also been separately circumscribed.
- In the case of Avoidance Transactions, the properties involved and the persons with whom such transactions were made, could be such transactions

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were made, could be ascertained by the Adjudicating Authority. Therefore, the Adjudicating Authority is empowered to pass orders **to avoid or set aside the Avoidance Transactions**. However, in case of Fraudulent Trading or Wrongful Trading envisaged under Section 66 of the IBC, the properties and the persons involved may or may not be ascertainable. Therefore, the Adjudicating Authority **is not empowered to pass orders to avoid or set aside such transactions**. However, it can pass orders to the effect that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the Corporate Debtor or direct that the Director of the Corporate Debtor shall be liable to make such contribution to the assets of the Corporate Debtor. Hence, the Applications filed in respect of



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Fraudulent Trading or Wrongful Trading carried on by the Corporate Debtor could not be termed as **Avoidance Applications.**

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VA View:

It is noteworthy that the legal position and understanding on the aspect of PUF transactions has significantly developed over a period of time since the enactment of the IBC.

By way of amendment dated June 14, 2022, Regulation 38(2)(d) was inserted in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”), which provides that a resolution plan shall provide for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings

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shall be distributed. Notably, the aforesaid regulations does not explicitly provide and is silent on the aspect of beneficiary of the proceeds, if any, arising out of the adjudication and favourable order passed in the PUFEE transaction applications.

Thereafter, by way of amendment dated September 16, 2022, Regulation 35A (3A) was inserted in the CIRP Regulations, which provides that the resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated. Clearly, the objective behind inserting the aforesaid regulation was to enable a prospective resolution applicant to examine records of the Corporate Debtor and the

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PUFE transaction application, in order to consider the same while submitting the resolution plan and in particular to assess the consideration.

Therefore, the above-mentioned judgment is therefore a significant judicial pronouncement in the context of PUFE transactions, which makes it clear beyond any plausible doubt that the treatment of recoveries under PUFE transaction applications, is a subject matter of commercial negotiation between the Committee of Creditors and the Prospective Resolution Applicants and there is no embargo to contemplate in the Resolution Plan that such recoveries will accrue to the Successful Resolution Applicant, as in the present case, whereby the recovery of proceedings, if any, from the Application in respect of Fraudulent Trading or Wrongful Trading

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in favour of Piramal was upheld at a notional value of INR 1 as envisaged in the Resolution Plan. Hence, the Hon'ble Supreme Court upheld the commercial bargain between the Committee of Creditors and Piramal and reversed the impugned order passed by the Hon'ble NCLAT.

Another significant observation of the Hon'ble Supreme Court is in relation to the scope of powers of Adjudicating Authority under IBC while passing orders in respect of Avoidance Transactions and Fraudulent Trading or Wrongful Trading. While in the former scenario, Adjudicating Authority is empowered to avoid / set-aside or reverse the Avoidance Transactions, however, in the latter scenario, it can only pass orders directing the concerned parties to contribute to the assets of the Corporate Debtor.