

MHCC020058722020



IN THE COURT OF SESSIONS, DESIGNATED AS SPECIAL COURT  
UNDER THE PML ACT, 2002, GR. BOMBAY  
ORDER BELOW EXH.67  
IN  
PMLA SPL. CASE NO. 452 OF 2020

Dewan Housing Finance Corporation )  
Limited (DHFL) )...Accused No.11

In the matter of:

Directorate of Enforcement (ED) )  
Through the Assistant Director, Rajiv Kumar, ) Complainant/  
Mumbai Zone-I Office, Mumbai )...Respondent

Vs

Mr. Rana Kapoor & Ors )...Accused

Appearance:

Ld. Sr. Advocate Karan Kadam a/w Ld. Advocate Chitra Rentala a/w Ld.  
Advocate Parikshith Kezhkekara a/w Ld. Advocate Priyanka Vishnoi i/b  
Trilegal for Applicant/Accused No.11.  
Ld. Spl.P.P Mr. Sunil Gonsalves for ED, Mumbai.

CORAM : R.B.ROTE  
ADDITIONAL SESSIONS JUDGE,  
DESIGNATED AS SPECIAL COURT  
UNDER THE PML ACT, 2002.  
(C.R.No.16)

DATE : 02<sup>nd</sup> FEBRUARY, 2026

**ORDER BELOW EXH.67**

01. The applicant/accused No.11 Dewan Housing Finance Corporation Limited (DHFL) has filed this application for suspension of proceedings/discharge under section 32A of the Insolvency and Bankruptcy Code, 2016 (IBC).

02. Read the application, documents produced on record and reply filed by the ED and Ld. Spl.PP. at Exh.67-A.

03. Heard Ld. Sr. Advocate for the applicant/accused No.11 and Ld. Spl.PP. Mr. Sunil Gonsalves at length.

04. On behalf of the applicant/ accused No.11 it is submitted that DHFL is a company incorporated under the provisions of the Companies Act, 1956. Pursuant to the default by accused No. 11 in meeting various payment obligations, on 29/11/2019, a Petition bearing No.CP(IB)-4258/MB/2019 was filed before the Hon'ble National Company Law Tribunal, Mumbai (NCLT) on behalf of the Reserve Bank of India (RBI) as prescribed under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules 2019 (FSP Rules), *inter alia*, to initiate Corporate Insolvency Resolution Process (CIRP) against Accused No. 11 under the IBC.

05. It is submitted that under the relevant provisions of the FSP Rules, the moratorium period (as set out u/s.14 of the Code) in respect

of accused No. 11 is concerned, commenced from the date of the filing of the Petition by RBI i.e. on 29/11/2019. Accordingly for the purpose of conducting the CIRP, Mr. R. Subramaniakumar was appointed as an 'Administrator' to exercise the powers and functions of an Insolvency Professional/Interim Resolution Professional/Resolution Professional/Liquidator for accused No.11. Prior to the filing of the Petition, on 20/11/2019, in exercise of the powers conferred under Section 45-IE (I) of the Reserve Bank of India Act, 1934, superseded the Board of Directors of Accused No.11 owing to governance concerns and defaults in meeting various payment obligations. Therefore, the erstwhile Directors including Accused Nos.9 and 10 are not on the Board of Accused No.11 w.e.f. 20/11/2019, and therefore, could not represent Accused No. 11. Therefore, Accused No. 11 was represented through the Administrator appointed by the RBI and confirmed by the Hon'ble NCLT.

06. It is submitted that on 22/11/2019, the RBI in exercise of its powers conferred under Section 45-IE, 5(a) of the RB Act, 1934, constituted a three-member Advisory Committee to assist the Administrator of accused No.11 in discharge of his duties and also to advise the Administrator in the operations of Accused No. 11 during the CIRP. Subsequently, vide its order dated 03/12/ 2019, the Hon'ble NCLT admitted the Petition and confirmed the appointment of the Administrator and ordered the commencement of the moratorium from the date of filing of the Petition by RBI i.e. 29/11/2019. On 05/03/2021, the said Administrator submitted a Resolution Plan for accused No.11 before the Hon'ble NCLT. Subsequently on 07/06/2021, the Hon'ble NCLT has passed an order approving the Resolution Plan

submitted by the Administrator. As per Section 32A of the IBC, the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease and the corporate debtor shall not be prosecuted for such an offence from the date the Resolution Plan has been approved by the Adjudicating Authority if the Resolution Plan results in the change in management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor or a related party of such a person and no action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under Section 31 of IBC.

07. It is submitted that the offences under the present case are alleged to have been committed by accused No.9 and 10, the Promoters and erstwhile Directors of accused No.11 who were at the helm of the operations of accused No.11 at the relevant time. All of the alleged offences, which form the subject matter of the present criminal prosecution are alleged to have been committed prior to the commencement of the CIRP against accused No.11. Since the Resolution Plan for accused No.11 has been accepted and approved by the Adjudicating Authority, in view of Section 32-A of the IBC, the liability of accused No.11 in respect of offences alleged to have been committed in the present case shall cease. Therefore, accused No.11 cannot be prosecuted for such offence from 07/06/2021. In accordance with the terms of the Resolution Plan, the Monitoring Committee was constituted on 24/06/2021 and is now responsible for management of the affairs of DHFL, during the interim period before which the

successful resolution applicant takes charge. The case of accused No.11 squarely falls within the scheme envisaged u/s 32A of the IBC. Therefore, the accused No.11 is required to be discharged from the criminal case. Therefore, the accused No.11 prayed for discharge from PMLA Special Case No.452/2020.

08. The ED and Ld. SPP resisted the application by filing reply at Exh.67-A. It is submitted that the PMLA, 2002 is a special Act, which creates a separate and independent offence of money-laundering. In the course of investigation, it was revealed that Rana Kapoor while working as MD cum CEO of M/s Yes Bank had connived with Kapil Wadhawan, Promoter Director of M/s DHFL and others with intention to extend undue financial benefit to M/s DHFL by Yes Bank Limited and to get in return undue benefit from Kapil Wadhawan for himself and his family members through the companies held by them. Yes Bank had bought debentures worth Rs.3700 Crores between April 2018 to June 2018 from DHFL while DHFL paid Rs.600 Crores in the guise of loan to M/s DOIT Urban Ventures Pvt. Ltd.(DUVPL) which is beneficially owned by Rana Kapoor and his family. M/s DHFL has granted the so-called loan of Rs.600 Crores to DUVPL against mortgage of property worth only Rs.39.66 Crores by showing its inflated value as Rs.735 Crores. Just before sanction of this loan, M/s Yes Bank had invested Rs.3700 Crores in the debentures of DHFL. It is apparent that behind the facade of DUVPL, Rana Kapoor was the person on ground interacting with Kapil Wadhawan for sanction of loan. Ms. Lata Dave, Secy of Rana Kapoor in Yes Bank at the material time used to interact with DHFL in connection with the aforesaid loan. Further, officials of DHFL used to get instructions from Kapil Wadhawan in this regard. Thus, there is a

criminal conspiracy between Rana Kapoor and the promoters of DHFL to get the amount of Rs.600 Crores in the garb of loan by pledging highly overvalued assets as mortgage. Further, Rs.750 Crores had also been sanctioned as loan by Yes Bank to one of the group companies controlled by Dheeraj Wadhawan (M/s Belief Realtors Pvt. Ltd.) which was ultimately transferred to DHFL after layering and was never used for the declared purpose. Rana Kapoor was very much aware that this loan of Rs.750 Crores was not going to be used for the declared purpose. The Proceeds of Crime ascertained in the case is to the tune of Rs.5050 Crores, so far. The proceeds of crime, so generated in the garb of loan of Rs.600 Crores was moved from one group entity to another between 100 group entities of Rana Kapoor and utilized for investment in various properties, paintings, Mutual funds, laying in accounts etc. Thus, Rana Kapoor along with his family members and controlled entities was benefited from the proceeds of crime generated from the fraud/criminal conspiracy so perpetrated.

09. It is submitted that Rana Kapoor has been found to be involved into money-laundering and his family members and others, got benefits worth of Rs.5050 Crores through companies controlled by them and also got kickbacks for sanctioning huge loans through Yes Bank. Kapil Wadhawan and Dheeraj Wadhwan in the capacity of the promoter Director and CMD of M/s DHFL had entered into a criminal conspiracy with Rana Kapoor for extending undue pecuniary benefit to him in the matter of investment of Rs.3700 Crores in the short-term debentures of M/s DHFL by M/s Yes Bank. Simultaneously, Kapil Wadhawan paid a kickback of Rs.600 Crores to Rana Kapoor and his family members in the garb of loan of Rs.600 Crores given by M/s DHFL to M/s DOIT

Urban Ventures (India) Pvt. Ltd. The said loan of Rs.600 Crores was sanctioned by M/s DHFL to M/s DOIT Urban Ventures (India) Pvt. Ltd. on the basis of mortgage of sub-standard properties having a meager value of Rs. 39.66 Crore. In addition, a loan of Rs.750 Crore was got sanctioned by Yes Bank to M/s Belief Realtors Pvt. Ltd. for their Bandra Reclamation Project, Mumbai. Dheeraj Wadhawan is in-charge of real estate business of the Wadhawan Group companies. Wadhawans have been carrying out their real estate business under the brand name of Dheeraj Realty which is registered under their flagship company namely M/s RKW Developers Pvt. Ltd. and M/s Belief Realtors Pvt. Ltd. is one of the Dheeraj Realty Group company/ RKW Group company. This whole amount of Rs. 750 crore was siphoned off by them since the entire amount was transferred by M/s Belief Realtors Pvt. Ltd. through other Wadhawan Group companies to M/s DHFL without making investment in Bandra Reclamation Project for which the loan had been sanctioned. The shareholding of Kapil Wadhawan and Dheeraj Wadhawan was approximately 40%. DHFL was used by its promoter directors in connivance with Rana Kapoor of Yes Bank for parking & siphoning of the illegally obtained money. Thus, DHFL has actively participated in layering and parking and was actually involved in the laundering of the said proceeds of crime.

10. It is submitted that DHFL falls within the definition of 'person' as per section 2(1)(s) of the PMLA and can be prosecuted as per Explanation 2 to section 70 of the PMLA. The proceeds of crime quantified in this case is about Rs.5050 Crores, out of which Rs.4450 Crores has gone to DHFL. The DHFL is a person guilty of offence of money-laundering. DHFL being a juridical person and therefore, as per

section 70 of the PMLA its directors/key persons who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company shall also deemed to be guilty of the offence of money laundering and shall be liable to be prosecuted. Therefore, ED and Ld. SPP prayed to reject the application.

11. Considering the nature of application and rival contentions of the parties, the following points arise for my determination and I have recorded my findings thereon, for the reasons thereto are as under:-

POINTS	FINDINGS
1. Whether the applicant/accused No.11, corporate debtor is entitled for discharge in view of the immunity under section 32A of the IBC?	Yes.
2. What Order?	Application is allowed

#### REASONS

##### **AS TO POINT NO.1-**

12. Ld. Advocate for applicant/accused No.11 has vehemently submitted that the applicant Piramal Capital and Housing Finance Limited (now known as Piramal Finance Limited), has undergone Corporate Insolvency Resolution Process pursuant to an order dated 03/12/2019 passed by the Hon'ble NCLT under Section 7 of the IBC, 2016. The resolution plan submitted by the erstwhile Piramal Capital and Housing Finance Limited for the corporate debtor was approved by

the Hon'ble NCLT *vide* order dated 07/06/2021. As part of the approved Resolution Plan, the Successful Resolution Applicant(SRA) i.e. erstwhile Piramal Capital and Housing Finance Limited was reverse merged into the corporate debtor i.e. Dewan Housing Finance Corporation Limited, such that the corporate debtor remained as the surviving legal entity. The name of the newly merged entity was changed from Dewan Housing Finance Corporation Limited to Piramal Capital and Housing Finance Limited as on 03/11/2021. It is submitted that the approval of the Resolution Plan has resulted in satisfaction of the following twin requirements as specified in Section 32A of the IBC-

[i] the management or control of the corporate debtor has passed to a person who was not a promoter or in the management or control of the corporate debtor or a related party of such a person; and

[ii] the management or control has not passed to a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

13. It is submitted that since the Resolution Plan has been approved and has resulted in satisfaction of the above twin conditions provided in Section 32A of the IBC, the applicant can no longer be held liable for offences committed prior to initiation of CIRP. Therefore, the accused No.11 is entitled to be discharged/ dropped from the present criminal proceedings. It is further submitted that as per the prosecution, the alleged offences were committed during the period April 2018 to June 2018. The DHFL was admitted into CIRP by an order of the Hon'ble NCLT dated 03/12/2019 in Company Petition, bearing CP (IB)

No. 4258 of 2019 filed by the Reserve Bank of India. The CBI registered an FIR bearing No.RC 219 2020 E0004 against DHFL, its erstwhile Directors on 07/03/2020. The ED filed the prosecution complaint on 06/05/2020. On 25/06/2020, CBI filed a charge-sheet and summons came to be issued to the accused No.11 on 23/07/2020. The Resolution plan submitted by the erstwhile Piramal Capital and Housing Finance Limited for DHFL was approved by the Hon'ble NCLT on 07/06/2021. Thereafter, DHFL filed an application under Section 32A of the IBC for discharge from CBI Case No.830/2021 on 02/07/2021. The said application was partly allowed by the Special Court for CBI, however, the prayer of DHFL for discharge was rejected by order dated 20/08/2021. Thereafter, the applicant preferred Writ Petition No.3221 of 2021 and 3157 of 2021 before the Hon'ble High Court. The Hon'ble High Court by order dated 16/11/2021 allowed the Writ Petitions and discharged DHFL (Accused No.11) from the predicate offence.

14. It is submitted that the Resolution Plan has been duly implemented. The DHFL addressed a letter to National Stock Exchange and Bombay Stock Exchange apprising that DHFL would take steps consequent to reverse merger as contemplated under the Resolution Plan and also addressed another letter intimating the change in management of DHFL on 01/10/2021. The name of the newly merged entity i.e. the resolved corporate debtor was changed from 'Dewan Housing Finance Corporation Limited' to 'Piramal Capital and Housing Finance Limited' as on 03/11/2021. It is submitted that the Hon'ble Apex Court in Civil Appeal Nos.1632-1634 of 2022 along with connected matters, by order dated 01/04/2025, affirmed and upheld the Resolution Plan Approval Order. It is further submitted that

pursuant to the approval of resolution plan, there has been a complete change in management as per the provisions of section 32-A of the IBC and all statutory requirements thereunder have been duly fulfilled. The Hon'ble High Court having taken note of the compliance with the twin conditions under section 32-A has already discharged DHFL from the predicate offence and the said order has not been challenged. Therefore, Ld. Sr. Advocate for the applicant prayed for discharge of accused No.11 in view of the immunity under section 32A of the IBC.

15. In support of his submissions Ld. Sr. Advocate of applicant/accused has placed reliance on the following decisions-

[1] **Manish Kumar Vs. Union of India, 2021 SCC Online SC 30**, wherein the Hon'ble Apex Court in para-Nos.276, 279 and 280 has observed thus-

“276. The first proviso in sub-section (1) declares that if there is approval of a Resolution Plan under Section 31 and a prosecution has been instituted during the CIRP against the corporate debtor, the corporate debtor will stand discharged. This is, however, subject to the condition that the requirements in sub-Section (1) which have been elaborated by us, have been fulfilled. In other words, if under the approved Resolution plan, there is a change in the management and control of the corporate debtor, to a person, who is not a promoter, or in the management and control of the corporate debtor, or a related party of the corporate debtor, or the person who acquires control or management of the corporate debtor, has neither abetted nor conspired in the commission of the offence, then, the prosecution, if it is instituted after the commencement of the CIRP and during its pendency, will stand discharged against the corporate debtor. Under the second proviso to sub-Section (1), however, the designated partner in respect of the liability partnership or the Officer in default, as defined under Section 2(60) of the Companies Act, 2013, or every person, who was, in any manner, in-charge or responsible to the corporate debtor for

the conduct of its business, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. This is despite the extinguishment of the criminal liability of the corporate debtor under sub-Section (1). Still further, every person, who was associated with the corporate debtor in any manner, and who was directly or indirectly involved in the commission of such offence, in terms of the Report submitted and report filed by the Investigating Authority, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. Thus, the combined reading of the various limbs of sub-Section (1) would show that while, on the one hand, the corporate debtor is freed from the liability for any offence committed before the commencement of the CIRP, the statutory immunity from the consequences of the commission of the offence by the corporate debtor is not available and the criminal liability will continue to haunt the persons, who were in in-charge of the assets of the corporate debtor, or who were responsible for the conduct of its business or those who were associated with the corporate debtor in any manner, and who were directly or indirectly involved in the commission of the offence, and they will continue to be liable....

279. The contentions of the petitioners appear to be that this provision is constitutionally anathema as it confers an undeserved immunity for the property which would be acquired with the proceeds of a crime. The provisions of the Prevention of Money-Laundering Act, 2002 (for short, the PMLA) are pressed before us. It is contended that the prohibition against proceeding against the property, affects the interest of stakeholders like the petitioners who may be allottees or other creditors. In short, it appears to be their contention that the provisions cannot stand the scrutiny of the Court when tested on the anvil of Article 14 of the Constitution of India. The provision is projected as being manifestly arbitrary. To screen valuable properties from being proceeded against, result in the gravest prejudice to the home buyers and other creditors. The stand of the Union of India is clear. The provision is born out of experience. The Code was enacted in the year 2016. In the course of its working, the experience it has produced, is that, resolution applicants are reticent in putting up a Resolution

Plan, and even if it is forthcoming, it is not fair to the interest of the corporate debtor and the other stake holders.

280. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision. "

[2] Shiv Charan and Others Vs. Adjudicating Authority under the PMLA, 2024 SCC OnLine Bom 701, wherein the Hon'ble Bombay High Court in para-Nos.16 and 17 has observed thus-

"16. A plain reading of the forgoing would show that Section 32A is a non-obstante provision. Its jurisdiction is attracted only when a resolution plan gets approved under Section 31. Besides, the immunity conferred by Section 32A is available if

and only if the approved resolution plan results in a complete change in the character of ownership and control of the corporate debtor. Explicitly, Section 32A(1) stipulates that the liability of the corporate debtor for an offense committed prior to commencement of the CIRP shall cease. The corporate debtor is explicitly protected from being prosecuted any further for such an offense, with effect from the approval of the resolution plan. Section 32A disentitles the corporate debtor from such immunity if the promoters or those in the management or control of the corporate debtor prior to the CIRP, or any related party of such persons, continues in management or control of the corporate debtor under the approved resolution plan. Likewise, the corporate debtor would be disentitled from immunity even if third parties, who were not promoters or persons in management or control of the corporate debtor come into management or control of the corporate debtor under the resolution plan but are persons who the Investigating Authority has reason to believe (based on material) had abetted or conspired for the commission of the offense in question.

17. Should the ingredients of Section 32A(1) be met, it enables an automatic discharge from prosecution, for the corporate debtor alone. The provision takes care to ensure that the immunity is available only to the corporate debtor and not to any other person who was in management or control or was in any manner, in charge of, or responsible to, the corporate debtor for conduct of its business, or was associated with the corporate debtor in any manner, and directly or indirectly involved in the commission of the offense being prosecuted. Such others who are charged for the offense would continue to remain liable to prosecution. Effectively, all other accused remain on the hook and it is the corporate debtor who alone gets the statutorily-stipulated immunity, and that too only when a resolution plan is approved under Section 31, and such resolution plan entails a clean break from those who conducted the affairs in the past at the time when the offense was committed. A complete dissociation of the individuals involved in the management and control at the time of commission of the alleged offense is a fundamental requisite for the immunity to become available.”

[3] Nareh Goyal Vs. The Directorate of Enforcement, Criminal Writ Petition No.4037/2022 dated 23/02/2023, in which the Hon'ble Bombay High Court in para-Nos.9 and 13 has observed thus-

“9. It is well settled by a catena of judgments including the latest judgment of the Apex Court in Vijay Madanlal Choudhary and Others v/s Union of India and Others 2 , that only if there is a predicate offence, that an ECIR will be maintainable. Thus, if the FIR stands closed, by a judicial process, the ECIR will not survive. Thus, the natural corollary would be that the respondent No.1 – ED would not be able to continue with the investigation, there being no predicate offence....

13. As noted above, admittedly there is no scheduled offence as against the petitioner in both the petitions, in view of the closure report filed by the police, which was accepted by the Courts as stated aforesaid. There being no predicate offence i.e. scheduled offence, the impugned ECIR registered by the respondent No.1 – ED will not survive and as such the said ECIR will have to be quashed and set aside”

[4] Krishna Shantaram Chamankar & Ors. Vs. Union of India & Ors., Writ Petition No.3400/2025 dated 16/09/2025, wherein the Hon'ble Bombay High Court in para-Nos. 5.4 and 5.5 has observed thus-

“ 5.4 As noted earlier, it is an admitted fact on record that, the Petitioners have been discharged by the trial Court from the predicate offence registered by the ACB, Mumbai Division, by its Order dated 31st July 2021 and the said Order has attained finality.

5.5 In view thereof, according to us, the conclusion enumerated by the Hon'ble Supreme Court in para-No.382.8 in the case of Vijay Madanlal Choudhary (supra), squarely applies to the Petitioners and therefore the ECIR and the charge-sheet filed thereof, registered by Respondent No.2 qua the Petitioners, deserves to be quashed and set aside.”

[5] Bhushan Power and Steel Limited Vs. Union of India and Another, 2025 SCC OnLine Del 651, wherein the Hon'ble Delhi High Court in para-Nos.6.1 to 7.1 has observed thus-

“6.1 A plain reading of the above provision would reveal that there is no dispute over the legal position that once a resolution plan has been approved by the adjudicating authority under Section 31 of IBC and the conditions specified in Section 32A of the IBC are fulfilled, the Corporate Debtor shall not be prosecuted for an offence committed prior to the commencement of the CIRP.

6.2 However, Section 32A of IBC also clarifies that any erstwhile officer of the Corporate Debtor who was in any manner in charge of, or responsible to the Corporate Debtor for the conduct of its business or associated with the Corporate Debtor in any manner or who was directly or indirectly involved in the commission of such offence prior to the commencement of CIRP as per the complaint filed by the investigating authority, shall continue to be prosecuted and punished for such an offence committed by the Corporate Debtor, notwithstanding that the Corporate Debtor's liability has ceased.

6.3 Considering the submissions made by the counsel appearing for the ED, which has not been objected to by the Senior Counsels for the Petitioner Company, it is clarified that the role of the Corporate Debtor, as elaborately stated in the prosecution complaint filed before the Special Court for PMLA cases under the PMLA, will necessarily have to be examined in the trial of the erstwhile promoters/directors of the Petitioner Company as it relates to the commission of the offence by the Petitioner Company in its earlier avatar as it was under the erstwhile management, when the offence was committed, more so when there are allegations under Section 70 of the PMLA.

7. In the overall conspectus, the writ petition is being partly allowed with the above clarification and the impugned order dated 17.01.2020 passed by the Special Judge, CBI, Rouse

Avenue District Court taking cognizance and issuing process and the consequential criminal proceedings in CC No.1/2020 only to the extent of the Petitioner Company are being hereby set aside.

7.1 Further, in view of the mandate under sub-section (1) of Section 32A of the IBC, the Petitioner Company, having undergone a successful resolution process under Section 31 of the IBC, shall not be prosecuted for the offences committed prior to the commencement of the CIRP”

[6] Rajiv Chakraborty, Resolution Professional of CIEL Vs/ Directorate of Enforcement, 2022 SCC OnLine Del 3703, wherein the Hon'ble Delhi High Court in para No.108 has observed thus-

“108. On a consideration of the aforesaid, the Court comes to the conclusion that Section 32A would constitute the pivot by virtue of being the later act and thus govern the extent to which the non obstante clause enshrined in the IBC would operate and exclude the operation of the PMLA. As has been observed hereinabove, while both IBC and the PMLA are special statutes in the generic sense, they both seek to sub-serve independent and separate legislative objectives. The subject matter and focus of the two legislations is clearly distinct. When faced with a situation where both the special legislations incorporate non obstante clauses, it becomes the duty of the Court to discern the true intent and scope of the two legislations. Even though the IBC and Section 238 thereof constitute the later enactment when viewed against the PMLA which came to be enforced in 2005, the Court is of the considered opinion that the extent to which the latter was intended to capitulate to the IBC is an issue which must be answered on the basis of Section 32A. The introduction of that provision in 2020 represents the last expression of intent of the Legislature and thus the embodiment of the extent to which the provisions of the PMLA are to give way to proceedings initiated under the IBC.”

16. Per contra, Ld. SPP has vehemently submitted that the accused No.11 DHFL cannot be discharged because of the approval of the resolution plan by the Hon'ble NCLT or because of discharge in the predicate offence. In the predicate offence, there was no particular provision for prosecuting the company. However, in the PMLA, there is specific provision under section 70 of the PMLA, providing that every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention under PMLA. It is submitted that the decision in **Shiv Charan and Others (Cited Supra)** has been challenged before the Hon'ble Apex Court and the decision of the Hon'ble Apex Court is pending on the said aspect. It is submitted that section 238 of the IBC cannot override the PMLA in respect of proceedings involving proceeds of crime.

17. In support of his contentions, Ld. SPP has placed reliance on the decision in **Mr. Anil Kohil Resolution Professional for Dunar Foods Ltd. Vs. Directorate of Enforcement and Anr., National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Ins.) No.389 of 2018 dated 03/07/2025**, wherein the provisional attachment order was issued on 26/12/2017 by the ED, the attachment order was confirmed on 11/06/2018 by the PMLA Adjudicating Authority and the resolution plan was approved in 2019. Therefore, it was held that the issuance of the PAO dated 26/12/2017 by ED under the PMLA does not violate the moratorium under section 14 of the IBC. The resolution plan was approved only in 2019. This makes Section 32A

inapplicable in the present case, as the property was already under valid legal attachment before the statutory conditions under Section 32A were met. It has been further observed that the IBC cannot be said to override the PMLA merely because the ED's attachment interferes with the CIRP. The ED does not act as a creditor, but as a public enforcement agency. The attached assets are not to satisfy creditors, but to uphold penal objectives and international obligations under FATF and UN Conventions. It has been observed that, [i] the PMLA and IBC operate in distinct spheres; [ii] there no irreconcilable inconsistency exists between the two; (iii) Section 238 of the IBC cannot override the PMLA in respect of proceedings involving proceeds of crime; and (iv) That attachment under the PMLA, if validly made and confirmed, cannot be undone merely because CIRP is ongoing.

18. In the light of rival submissions of both the parties, I have gone through the record of the case and ratio laid down in the above cited authorities.

19. From the record, it reveals that on 20/11/ 2019, RBI superseded the Board of Directors of DHFL owing to governance concerns and defaults in meeting various payment obligations; whereupon Shri. R. Subramaniakumar was appointed as, Administrator to manage the affairs, of the DHFL. On 29/11/2019, RBI filed Company Petition under the Insolvency and Bankruptcy (Insolvency and Liquidation proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 to initiate CIRP against DHFL under IBC. On 03/12/2019, NCLT admitted the said Company Petition and directed commencement of moratorium period in terms of Section

14 of IBC, from the date of filing of the Company Petition and confirmed the appointment of Administrator. On 07/03/2020, CBI registered the FIR in the predicate offence against the DHFL, its erstwhile Directors, Kapil Wadhwan, Dhiraj Wadhwan, Rana Kapoor and others. After investigation, CBI filed a charge-sheet on 25/06/2020. The Resolution Plan submitted by Piramal Capital and Housing Finance Limited came to be approved by majority of 93.65% of votes in the Committee of Creditors (CoC). On 24/02/2021, the Administrator filed an application under Section 31 of IBC, before the NCLT (Adjudicating Authority), seeking approval to Resolution Plan of Piramal Capital. On 07/06/2021, NCLT approved Piramal Capitals' Resolution Plan for DHFL with effect from 07/06/2021. It has been submitted that Piramal Capital and Housing Finance Limited, has merged into DHFL with effect from 30/09/2021, pursuant to the reverse merger as contemplated under the scheme of arrangement provide under the Resolution Plan. On 01/10/2021, intimation to that effect was provided to the National Stock Exchange of India Limited and Bombay Stock Exchange Limited by DHFL and Piramal Enterprises Limited. It appears from the record that the name of the company has been changed from DHFL to Piramal Capital and Housing Finance Limited from 03/11/2021. It is submitted that upon approval of the resolution plan, the management and control of DHFL vested in the Monitoring Committee constituted on 24/06/2021. Additional Affidavit has been submitted vide Exh. 67-B to bring on record the subsequent events.

20. Perusal of the order passed by the Hon'ble Apex Court in **Civil Appeal Nos.1632-1634 of 2022, Piramal Capital and Housing Finance Limited (formerly known as Dewan Housing Finance**

**Corporation Limited Vs. 63 Moons Technologies Limited and Others along with other Civil Appeals, dated 01/04/2025**, it shows that the Hon'ble Apex Court has set aside the judgment and order dated 27/1/2022 passed by the Hon'ble NCLAT in Company Appeal Nos.454-455 and 750 /2021 and the judgment and order dated 07/06/2021 passed by the Adjudicating Authority granting its approval to the Plan Approval Application thereby approving the resolution plan. Thus, the resolution plan approved by the Hon'ble NCLT came to be finally confirmed by the Hon'ble Apex Court by the judgment and order dated 01/04/2025 and the challenges made by Dheeraj Wadhawan and Kapil Wadhawan and others to the approval order came to be dismissed.

21. Perusal of the order passed by the Special Court dated 20/08/2021 in CBI Special Case No.830/2021, it shows that DHFL had filed discharge application in the predicate offence under section 32A of the IBC. The said application has been partly allowed and the CBI Court refused to discharge the DHFL- accused No.1 Company. Perusal of the order passed in Writ Petition No.3157/2021 and Writ Petition No.3221/2021 dated 16/11/2021, it shows that the DHFL and Piramal Capital and Housing Finance Limited had preferred Writ Petitions against the same order. The Hon'ble High Court set aside the order passed by the Special Court and granted the application of DHFL moved under section 32-A of the IBC. In the order, the Hon'ble High Court in paragraph Nos.19 and 20 observed thus:-

**"19. Herein, subsequent events indisputably caused change in management and control of Corporate Debtor. The immunities sought by the Corporate Debtor though conditional; yet all these conditions have been fulfilled and satisfied; viz**

(i) Resolution Plan in regard to Corporate Debtor has been approved by the Adjudicating Authority under Section 31 IBC.

(ii) Resolution Plan approved caused and resulted in change in management of Corporate Debtor.

(iii) change in management is in favour of persons who were not related to party of Corporate Debtor.

Thus, in my view, immunities under 32A of IBC, cannot be denied to Corporate Debtor.

20. For these reasons, I hold that, the petitioner-DHFL, stands discharged from the CBI Special Case No.830 of 2021 pending before the CBI Cases Sessions Court, Mumbai. ”

22. There is nothing on record to shows that anybody has challenged the order of the Hon'ble High Court. The record clearly shows that the corporate debtor, accused No.11 has been already discharged from the predicate offence by the Hon'ble High Court in view of the immunity under section 32-A of the IBC.

Section 32-A of IBC, 2016 provides as under-

“32A. Liability for prior offences, etc.--(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission

of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not--

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

*Explanation.*--For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfills the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

23. A plain reading of the provisions of section 32-A of IBC reveals that once the resolution plan has been approved by the adjudicating authority under section 32-A of IBC, the corporate debtor shall not be liable for an offence committed prior to the commencement of the CIRP. However, section 32-A of IBC clarifies that erstwhile officer of the corporate debtor or a related party or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business and who was directly or indirectly involved in the commission of such offence shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased.

24. The Hon'ble Apex Court while upholding the Constitutional Validity of section 32-A of IBC in of **Manish Kumar v. Union of India and Another (Cited supra)** has held that if under the approved Resolution plan, there is a change in the management and control of the corporate debtor, to a person, who is not a promoter, or in the management and control of the corporate debtor, or a related party of the corporate debtor, or the person who acquires control or management of the corporate debtor, has neither abetted nor conspired in the commission of the offence, then, the prosecution, if it is instituted after the commencement of the CIRP and during its pendency, will stand discharged against the corporate debtor. Under the second proviso to sub- Section (1), however, the designated partner in respect of the liability partnership or the Officer in default, as defined under section 2(60) of the Companies Act, 2013, or every person, who was, in any manner, in- charge or responsible to the corporate debtor for the conduct of its business, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. This is despite the extinguishment of the criminal liability of the corporate debtor under sub-Section (1). Still further, every person, who was associated with the corporate debtor in any manner, and, who was directly or indirectly involved in the commission of such offence, in terms of the Report submitted and Report filed by the Investigating Authority, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor.

25. The Hon'ble Apex Court has observed that the criminal liability of the corporate debtor is apparently important to the new

management to make a clean break with the past and start on a clean slate and the impugned provision is part of an economic measure. The corporate debtor and its property in the context of the scheme of the code constitute a distinct subject matter justifying the special treatment accorded to them. Section 32A was inserted to give a clean break to successful resolution applicants from the erstwhile management by shielding them and immunizing them from prosecution and liabilities for offences that may have been committed prior to the commencement of the CIRP. Further, ample safeguards have been incorporated in the said provision to prevent any exploitation.

26. Section 70 of the PMLA provides as under-

**(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:**

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

**(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded**

against and punished accordingly.

*Explanation [1].--For the purposes of this section,--*

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

*Explanation [2].--For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.*

27. Section 70 of the PMLA provides that where a person committing a contravention of any of the provisions of the PMLA or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention. The PMLA enacted in the year 2002, has an overriding effect. As per the provisions of section 238 of IBC, the provisions of IBC have overriding effect. Section 32A has been introduced in 2020 in the IBC represents the "later" enactment for the purposes of evaluating the non obstante clause.

28. The Hon'ble Delhi High Court in **Rajiv Chakraborty, Resolution Professional of EIEL Vs. Directorate of Enforcement** (cited *supra*) has observed that the statutory injunct against the invocation or utilisation of the powers available under the PMLA was thus ordained to come into effect only once the trigger events envisaged under Section 32A came into effect. The Legislature thus in its wisdom chose to place an embargo upon the continuance of criminal proceedings including

action of attachment under the PMLA only once a Resolution Plan were approved or a measure in aid of liquidation had been adopted.

29. In **AM Mining India P. Ltd. Vs. Union of India 2023 SCC OnLine Guj 5048**; the Hon'ble Gujarat High Court has also observed that Section 32A of the IBC Act would govern to the extent to which the non-obstante clause enshrined in the IBC would operate and exclude the operation of the PMLA. The protection granted under Section 33(5) and Section 33A(2) of the IBC Act would override the power of the respondent No.1 to attach the properties under the PMLA Act. Further Section 238 of the IBC provides that the provisions of IBC would override anything inconsistent in any other law. Though the PMLA has similar provision under Section 71, the same is subservient to the provisions of IBC Act, since IBC Act was enacted after the provisions of the PMLA. When there are two enactments of non-obstante clauses, the enactment which is subsequent in time overrides the other in line with the ratio laid down in **Bank of India Vs. Ketan Parekh**. The Hon'ble Supreme Court in **Bank of India Vs. Ketan Parekh, AIR (2008) Supreme Court 2361** has held that where both the two Acts start with the non-obstante clause, the Act which came subsequently, will prevail. Therefore, it is the subsequent legislation which will have the overriding effect over the other Act.

30. The Hon'ble Delhi High Court in **Bhushan Power and Steel Limited Vs. Union of India and Anr., (cited supra)** has observed that the role of the Corporate Debtor, as elaborately stated in the prosecution complaint filed before the Special Court for PMLA cases under the PMLA, will necessarily have to be examined in the trial of the erstwhile

promoters/directors of the Petitioner Company as it relates to the commission of the offence by the Petitioner Company in its earlier avatar as it was under the erstwhile management, when the offence was committed, more so when there are allegations under Section 70 of the PMLA. The Hon'ble Delhi High Court set aside the order taking cognizance and issuing process, against petitioner company, in view of the immunity granted under section 32-A of IBC.

31. The Accused No.11 DHFL is a juristic person. Though section 70 of the PMLA provides that a company shall be deemed to be guilty of the contravention, in view of the immunity granted under section 32-A of IBC, which is later enactment and has an overriding effect, the corporate debtor cannot be prosecuted if the conditions under section 32-A of the IBC are fulfilled. The immunity is granted only to the corporate debtor and not to the persons who were in charge and responsible for the affairs of the company. Any person who was in the management or control of the corporate debtor or was in any manner in charge of or responsible to the corporate debtor for the conduct of its business, and who was directly or indirectly involved in the commission of money laundering, shall continue to be liable to be prosecuted and punished for such offence committed by the corporate debtor, notwithstanding that the corporate debtor's liability has ceased.

32. From the record, it shows that the FIR in the predicate offence was lodged on 07/03/2020 in respect of the offence committed during April 2018 to June 2018. The accused No.11 has been added in the complaint of ED on 23/07/2020. The Resolution Plan has been approved by the Hon'ble NCLT on 07/06/2021. The accused No.11

DHFL has been already discharged by the Hon'ble High Court in the predicate offence by order dated 16/11/2021 in view of the immunity of section 32A of IBC. Therefore, in view of section 32-A of IBC on the date of approval of the Resolution Plan, the liability of corporate debtor accused No.11 DHFL has ceased and it cannot be prosecuted. From the ratio laid down in the above cited authorities of the Hon'ble Apex Court and Hon'ble High Court, it is clear that once resolution plan has been approved by the Hon'ble NCLT, the immunity under section 32-A of IBC cannot be denied to corporate debtor. The corporate debtor has fulfilled and satisfied the following conditions-

(i) Resolution Plan in regard to Corporate Debtor has been approved by the Adjudicating Authority under Section 31 IBC by the order dated 7/6/2021 which has been confirmed by the Hon'ble Apex Court.

(ii) Resolution Plan approved caused and resulted in change in management of the Corporate Debtor.

(iii) The change in management is in favour of persons who were not related to party of Corporate Debtor.

Therefore, immunities under 32A of IBC, cannot be denied to Corporate Debtor.

33. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. Though the corporate debtor is entitled for discharge in view of immunity under section 32-A of IBC, it is clarified that the erstwhile officers/directors of the corporate debtor who were in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner or who were directly or indirectly involved in the commission of such offence prior to the commencement of CIRP, shall continue to be

prosecuted and punished for such an offence committed by the corporate debtor, notwithstanding that the corporate debtor's liability has ceased in view of section 32-A of IBC. Therefore, considering the peculiar facts and circumstances of the case and the provisions of section 32-A of IBC, I am of the view that the accused No.11 DHFL deserves to be discharged in view of immunity under section 32-A of IBC. Hence, Point No.1 is answered in the Affirmative.

34. In the result, I proceed to pass the following order-

### ORDER

1. Application (Exh.67) in PMLA Special Case No.452/2020 is allowed.
2. Accused No.11 Dewan Housing Finance Corporation Limited (DHFL), the Corporate Debtor is hereby discharged under section 227/239 of Cr.P.C. r/w section 32-A of the IBC in PMLA Special Case No.452/2020 and ECIR bearing No. ECIR/MBZO-I/03/2020 for the offence under section 3 punishable under section 4 r/w 70 of the PMLA.
3. Application (Exh.67) in PMLA Special Case No.452/2020 is disposed of accordingly.

(Dictated and pronounced in the open Court.)

RAJU JUDGES  
BANDU JUDGES  
ROTE JUDGES

Digitally signed  
by RAJU  
BANDU ROTE  
Date:  
2026.02.04  
14:51:45 +0530

( R.B.Rote)  
Additional Sessions Judge  
Designated as Special Court under  
the PML Act, 2002  
City Civil & Sessions Court, Mumbai

Dt.: 02.02.2026

Dictated on : 31.01.2026  
Transcribed on : 31.01.2026 & 02.02.2026  
Signed on : 03.02.2026

<b>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER”</b>	
04.02.2026 UPLOAD DATE AND TIME	(MRUNAL S. PENDKHALKAR) NAME OF STENOGRAPHER
Name of the Judge	H.H. THE ADDITIONAL SESSIONS JUDGE R.B.ROTE (COURT ROOM NO.16)
Date of pronouncement of order	02.02.2026
Order signed by P.O. on	03.02.2026
Order uploaded on	04.02.2026