

## SECURITIES AND EXCHANGE BOARD OF INDIA

## CONFIRMATORY ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES) REGULATIONS, 2003 AND THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

## IN THE MATTER OF DEWAN HOUSING FINANCE CORPORATION LIMITED

|     | NOTICEES                                                                          | PAN        |
|-----|-----------------------------------------------------------------------------------|------------|
|     | PROMOTERS                                                                         |            |
| 1.  | KAPIL WADHAWAN                                                                    | AAOPW6145L |
| 2.  | DHEERAJ WADHAWAN                                                                  | AAOPW4517G |
| 3.  | RAKESH KUMAR WADHAWAN                                                             | AAEPW7656G |
| 4.  | SARANG WADHAWAN                                                                   | AAAPW2530R |
| 5.  | ARUNA WADHAWAN                                                                    | AAHPW9334L |
| 6.  | MALTI WADHAWAN                                                                    | AAGPW8042G |
| 7.  | ANU S WADHAWAN                                                                    | AAQPW2792P |
| 8.  | POOJA D WADHAWAN                                                                  | AAJPB9268Q |
| 9.  | WADHAWAN HOLDING PVT LTD                                                          | AAACW5001G |
| 10. | WADHAWAN CONSOLIDATED HOLDING PVT LTD                                             | AACCD2944F |
| 11. | WADHAWAN RETAIL VENTURE PVT LTD                                                   | AAACW6632R |
| 12. | WADHAWAN GLOBAL CAPITAL LTD ( <i>formerly known as Wadhawan Housing Pvt Ltd</i> ) | AAACW9811G |

## BACKGROUND-

- Vide an Ad Interim Ex-Parte Order dated September 22, 2020 (“Interim Order”), Securities and Exchange Board of India (“SEBI”) in exercise of the powers under Sections 11(1), 11(4) and 11B of the SEBI Act read with Regulation 11 of PFUTP Regulations, issued the following directions:

“a. The promoters of DHFL during the period from April 01, 2006 to March 31, 2019 namely (i) Mr. Kapil Wadhawan, (ii) Mr. Dheeraj Wadhawan, (iii) Mr. Rakesh Kumar Wadhawan, (iv) Mr. Sarang Wadhawan, (v) Ms Aruna Wadhawan, (vi) Ms Malti Wadhawan, (vii) Ms Anu S

*Wadhawan, (viii) Ms Pooja D Wadhawan, (ix) Wadhawan Holding Pvt Ltd, (x) Wadhawan Consolidated Holding Pvt Ltd, (xi) Wadhawan Retail Venture Pvt Ltd and (xii) Wadhawan Global Capital Ltd (formerly known as Wadhawan Housing Pvt Ltd) are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly.*

*b. The aforementioned persons are also restrained from associating themselves with any listed public company and any public company as directors/ promoters which intends to raise money from the public or any intermediary registered with SEBI.”*

2. The directions in the interim order were passed qua the promoters of DHFL on a prima facie finding that they have violated the following provisions of the securities law:
  - (a) Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992
  - (b) Regulation 3(b), (c), (d), (d), Regulation 4(1) and Regulation 4(2)(f), (k) and (r) of the SEBI PFUTP Regulations, 2003
  - (c) Additionally, Rakesh Kumar Wadhawan and Kapil Wadhawan have prima-facie violated Regulation 4(1) and other related provisions of the SEBI LODR Regulations, 2015.
3. The Interim Order also provided that the Noticees may file their objections/reply to the order, if any, within 21 days from the date of receipt of order. The Interim Order further provided that in the event the Noticees fail to file a reply within 21 days from the date of the order, the preliminary findings recorded in the ex parte order and directions, as mentioned in para 1 above, were to be deemed to be confirmed automatically, without any further orders.
4. The Interim Order was served on the Noticees at the address provided by the secretarial department of DHFL. Additionally, the order was also served on Noticees Nos. 1, 2, and 9 to 12, whose emails ids were also provided by the company, vide email dated September

22, 2020. Pursuant to service of the interim order, replies were received on behalf of 8 of the Noticees, the details of which are given in the table below,-

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Noticees Nos. 3, 4, 6 and 7 | MZM Legal LLP replied on behalf of the Noticees vide letter dated October 13, 2020, stating that their clients were not served a copy of the order. In view of the same, the interim order was again served on the said Noticees, vide letter dated October 22, 2020, at the address provided by MZM.                                                                                                                                                                      |
| Noticee No. 8               | An email dated October 17, 2020, was received from Joby Mathew & Associates, Advocates on behalf of Pooja Wadhawan (Noticee No. 8) stating that the Order places reliance on an Initial Report prepared by Grant Thornton LLP (GT) and therefore, requested for an inspection/copies of all documents/records which are relevant to the proceedings and also any other material on the record that would be exculpatory in nature, to enable them to respond to the Order. |
| Noticee Nos. 9, 10 and 11   | An email dated October 19, 2020, was received from Aagam J Doshi, Advocate, on behalf of the said Noticees, seeking documents relied upon by GT for preparing the report.                                                                                                                                                                                                                                                                                                  |

5. The details regarding the service of the interim order on the Noticees who have not furnished any reply is captured in the table below:

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Noticee Nos. 1 and 2 | The letters sent by post returned undelivered in the case of Noticee No. 1 but was delivered in the case of Noticee No. 2. A copy of the order was also served on the email id of the Noticees provided by DHFL. Further, on receipt of a letter dated October 23, 2020, from Mr. Karthik Wadhawan (son of Kapil Wadhawan) stating that the said Noticees were currently lodged in the Taloja Jail, the interim order was attempted to be served at jail address vide letters dated November 03, 2020. However, the said letters returned undelivered with the remark 'Unaccepted'. Thereafter, the interim order was affixed at the address of Noticee No. 1 available with SEBI and hand-delivered to the address of Noticee No. 2 |
| Noticee No. 5        | The letters sent by post were returned undelivered. Thereafter, the interim order was affixed at the address of Noticee No. 5 available with SEBI                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Noticee No. 12       | The letters sent by post were returned undelivered. A copy of the order was served on the email id of the Noticee provided by DHFL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

6. I note from the record that a CD containing copies of the Final Report of the Transaction Auditor along with the entire set of annexures and exhibits received by SEBI from the

Administrator, DHFL was provided to Noticee nos. 3 to 4 and Noticee nos. 6 to 11 vide letter dated February 17, 2021. Thereafter, all the Noticees were provided an opportunity of personal hearing on March 12, 2021.

7. MZM Legal vide email dated March 02, 2021, informed that Rakesh Wadhawan and Sarang Wadhawan were incarcerated at the Arthur Road Jail, and they have not been able to take instructions from their clients. In view of the same, they requested additional time to obtain instructions and furnish a proper reply. Further, vide email dated March 12, 2021, MZM Legal submitted that due to the rise in the number of Covid-19 cases, all meetings between incarcerated persons and their lawyers/relatives have been suspended by the jail authorities. Therefore, they were unable to take any instructions from the Noticees for the purposes of the hearing. In view of the same, it was requested to adjourn the hearing till the operation of the aforesaid restrictions by the jail authorities.
8. On the date of the hearing (March 12, 2021), Mr. Joby Mathew, Advocate, representing Noticee No. 8 and Mr. Aagam Doshi, Advocate, representing Noticees Nos. 9 to 11, entered appearance. Both Mr. Mathew and Mr. Doshi sought additional documents during the course of the hearing and the matter was not argued on merits. During the course of the hearing, the advocates appearing for the parties were informed that from the list of documents sought by the Noticees, SEBI would try to get as many as documents possible from the administrator and all such documents that were obtained would be provided to the Noticees. The Noticees were advised to make their submissions within two weeks from the date of receipt of the documents from SEBI and accordingly the next date of hearing was scheduled for April 12, 2021. The hearing scheduled for April 12, 2021, was postponed to May 24, 2021, as some more documents were to be received from the Administrator, DHFL. Subsequently, vide letter dated April 27, 2021, the Noticees were provided with a CD containing the entire set of documents received from the Administrator.

9. Thereafter, hearing in the matter was held on May 24, 2021, wherein also only Mr. Mathew and Mr. Doshi entered appearance. During the said hearings, the authorised representatives expressed reservations on arguing the matter on merits as they were again contending that SEBI had not furnished the complete set of documents sought by them. Pursuant to the said hearing, certain further documents were provided and the request for the remaining documents was rejected on the ground that they are either vague or not relevant to the Interim Order. Thereafter, vide email dated July 02, 2021, the Noticees were granted another opportunity of hearing on July 09, 2021. On July 08, 2021, SEBI received emails from Mr. Mathew (representing Noticee no 8) and Mr Doshi (representing Noticees nos. 9, 10, 11) stating that they have both filed a Miscellaneous Application before the Hon'ble Securities Appellate Tribunal on July 08, 2021, challenging the communications dated 15th June 2021 and 2nd July 2021 fixing hearings in the matter and sought postponement of the hearing on this ground. The matter was heard by the Hon'ble Securities Appellate Tribunal on July 13, 2021, and Tribunal advised SEBI to conduct the hearing after July 27, 2021.
10. In view of the direction of the Hon'ble Tribunal, the hearing in the matter was initially postponed to August 30, 2021, which was later postponed to September 06, 2021, at the request of the Noticees. Even on the said date, the authorised representatives appearing on behalf of Noticee nos. 8 and Noticees 9 to 11 failed to make any arguments on merits. During the course of the hearing, the said Noticees were granted a final opportunity to make written submissions on merits and were granted time till September 16, 2021, for submitting the same.
11. Meanwhile, the Hon'ble Securities Appellate Tribunal vide order dated September 13, 2021, dismissed the appeals (Appeal No. 487 and 488 of 2021) preferred by the Noticees observing as under:

*“19. The contention that the underlying documents that formed the basis of the findings given in the GT report are required to be supplied is patently erroneous. At best those findings could be cross questioned/ cross examined at the appropriate stage but issuance of those documents are outside the purview of supply of documents.*

*20. We are further of the opinion that the documents rejected by the impugned order are also vague and are not specific and, therefore were rightly rejected by the respondent. Further, the documents that were sought for in para 5.33 cannot be granted for the aforesaid reasons. In view of the aforesaid, the appeal fails and is dismissed without any order as to costs.”*

12. Thereafter, written submissions on behalf of Noticee No. 8 were received vide email dated September 28, 2021. The summary of the submissions made on behalf of Noticee No. 8 is given below,

- a. The Noticee is a housewife and was only a promoter of DHFL from April 2006 and March 2014.
- b. The Noticee was not involved in the day-to-day affairs of DHFL and was never part of the management of DHFL nor had any position or designation.
- c. SEBI has mechanically impleaded the Noticee merely because she was a promoter of DHFL.
- d. The Noticee was not impleaded as a party in the application filed by the Administrator of DHFL before the NCLT under section 60(5) and section 66 of the IBC. Further, the GT Report has also not made any allegations against the Noticee.
- e. The Noticee was not provided copies of all the underlying documents referred to in the GT Report.

- f. GT report is merely an opinion that has not been confirmed or tested before the courts of law. The many disclaimers indicated in the report make it apparent that the GT Report cannot be relied upon for any purpose whatsoever.
  - g. Section 129(7) of the Companies Act, 2013, specifically provides that only those persons who were charged with the duty of complying with the said section shall be held liable in the event of any contravention to the provisions of the said Act in relation to the financial statements.
  - h. The Noticee is not an officer in default and was not responsible for causing any purported prejudice to the purported interest of investors who bought equity shares of the Company during the period of FY 2007 to FY 2019 relying upon the financial statements of DHFL.
  - i. Section 27 of the SEBI Act explicitly states that only those persons who at the time of the offence were in charge of and responsible to the company shall be guilty of the act committed by the company.
13. In view of the above, I note that sufficient opportunities, in compliance with the principles of natural justice, have been provided to all the Noticees to furnish their replies. Despite the same, submission on merit was received only on behalf of Noticee No. 8: MZM Legal representing Noticees nos. 3 to 7 have not made any submissions on merits other than seeking an extension of the hearing date on the ground that their clients are incarcerated; Replies on merit were also not received on behalf of Noticee nos. 9 to 11. Further, Noticees nos. 1, 2, 5 and 12 have failed to furnish any reply or avail the opportunity of hearings granted to them. In view of the same, I now proceed to examine the reply furnished by Noticee no. 8 and to consider whether there are sufficient grounds for interfering with the directions passed against her vide the interim order.



## CONSIDERATION

14. It is noted that Noticee No. 8 has primarily contended that SEBI has impleaded her as a party only because she was one of the promoters of DHFL overlooking the fact that she was never a director of the Company or served on any of its committees. In this regard, I note that the Interim Order was passed pursuant to a corporate announcement made by the Company on September 02, 2020, whereby it had informed the stock exchanges that the Administrator had received an initial report from the transaction auditor indicating that certain transactions entered into by Company during the period FY 2006-07 to FY 2018-19 are fraudulent in nature, as per Section 66 of the IBC. The financial impact of the “fraudulent transactions” covered in the Application as disclosed by the Company in the aforementioned corporate announcement is as under:

*“(b) Estimated impact on the listed entity: As per the transaction auditor report shared with the Administrator, the monetary impact of the above transactions covered under the Application amount to:*

*(i) Rs. 14,046 Crores, being the amount outstanding in the books of the Company as on June 30, 2019;*  
*(ii) Rs. 3,348 Crores being amount considered as due and outstanding towards notional loss to the Company on account of fraudulently charging lower rate of interest to certain entities referred to in the Application as the Bandra Book Entities.”*

15. I note that pursuant to the passing of the interim order, the final report has also been submitted by the transaction auditor and a copy of the same has been furnished to the Noticee. I note that the findings of the initial report, which were relied upon by SEBI, have been confirmed in the final report. The final report also states DHFL was maintaining a parallel set of books of accounts related to fictitious loan accounts given by the company, which has been collectively referred to in the report as ‘Bandra Books’. It is also noted that the report finds that loans were advanced to entities with weak financial strength without

taking sufficient collateral and many of such entities in turn invested a portion of the loan amount in companies linked to the promoters of DHFL.

16. It is therefore noted that the final report raised serious apprehensions about the authenticity and reliability of the Company's financial statements for the period FY 2007 to FY 2019, warranting a detailed investigation into the affairs of the Company.
17. I also note that it has been contended by the Noticee that she was only a promoter of the company and has never been a director of the company, and the Companies Act, 2013 and SEBI Regulations do not cast any obligations or attach any liabilities to the promoters for the misstatement of financial statements or for lapses in corporate governance norms. In this regard, it is noted that typically under securities laws, the onus of compliance and consequently the action in cases of default by companies is latched on to the directors of the Company. However, having said that, I also note that such a straightjacket approach may not be applicable in all cases – especially in cases where there are allegations regarding siphoning of funds to entities related to promoters. In such cases, the completion of the investigation initiated by SEBI, becomes critical for understanding the nature and scale of the malpractices identified and also the role played by the individual promoters and the illegal gains accrued to them. While I take note that regulation 98(c) of the SEBI(Listing Obligations and Disclosure Requirements) Regulations which provides for the 'Liability for contravention of the Act, rules or the Regulations', contemplates action against not just the directors but also the promoters of the Company, I feel that only a detailed investigation would unravel the role played by the Noticees in the matter of siphoning off of the company's funds.
18. Further, in respect of the arguments raised regarding the deficiency in providing relevant documents by SEBI, I note that the same issue was agitated by the Noticee before the

Hon'ble Securities Appellate Tribunal and the appeal was dismissed. In view of the same, I do not find any merit in the said argument.

19. In view of the above, I do not find that there are sufficient grounds at this stage to interfere with the directions qua the Noticee in the interim order, pending the completion of the SEBI's investigation in the matter.

## **ORDER**

20. Considering the material on record, the reply of Noticee No. 8 and findings thereupon mentioned in the preceding paragraphs, pending investigation, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI(Prohibition of Fraudulent and Unfair Trade Practises)Regulations, 2003, in the facts and circumstances of the case, hereby confirm the directions contained in the interim order dated September 22, 2020, against all the Noticees covered by the Interim Order, pending the completion of the investigation initiated by SEBI in the matter.

21. This order shall come into force with immediate effect.

**Place: Mumbai**

**Date: October 22, 2021**

**G. MAHALINGAM**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**