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YES BANK–DHFL FRAUD CASE- A LEGAL ANALYSIS

AUTHORED BY - MAITREYI SINGH

BALLB(Hons.), 4th Year

Introduction

Yes Bank-DHFL is one of the most notable banking and financial crisis in the late 2010s in India. It is often referred to as the “Yes Bank fraud case”, but in reality it is a series of related banking, corporate, securities, insolvency, criminal and money laundering cases. He was joined at the helm by Rana Kapoor, the co-founder and former Managing Director and CEO of Yes Bank. Yes Bank's growth in corporate lending and investments was remarkable during his tenure. Thereafter significant questions emerged on the quality of its loan book, recognition of stressed loans, governance issues, exposure to financially stressed borrowers and the nexus between its lending operations and benefits allegedly availed by Kapoor and his associates. The biggest purported deal that has been cited is with Dewan Housing Finance Corporation Ltd. (DHFL). Yes Bank had invested ₹3,700 crore in the short-term non-convertible debentures (NCDs) and ₹283 crore in Masala Bonds of DHFL, the Directorate of Enforcement (ED) said. The ED alleges that at the same time, the company, DHFL, had given a loan of ₹600 crore to a firm called DOIT Urban Ventures (India) Pvt. Ltd., which is held by a promoter, Kapil Wadhawan, along with his family members who are also shareholders of the firm. Contemporaneously with this investment, the company, DHFL, had lent a sum of ₹600 crore to a firm called DOIT Urban Ventures (India) Pvt. Ltd., which was held by a promoter, Kapil Wadhawan and his family members, who are also investors of the firm, the ED alleges. The ED says that this transaction is a kickback/undue benefit that was allegedly given by DHFL in connection with the financial assistance provided by Yes Bank to it. The case then went on various parallel paths of litigation:

1. RBI investigated and monitored the banking position of the Yes Bank and finally rebuilt the bank;
2. Yes Bank is under reconstruction scheme of Central Government and RBI;
3. CBI analysed allegations of criminal conspiracy, cheating and related offences;
4. The alleged proceeds of crime was investigated by ED under the PMLA; and
5. SEBI explored the sale of Yes Bank's AT1 bonds and other breach of securities market regulations; and

6. A special financial-service-provider framework was in place for NCLT/IBBI for dealing with DHFL's insolvency.

An important legal difference must therefore be made at the outset:

Yes Bank did not get resolved under the Insolvency and Bankruptcy Code, 2016. DHFL was. Similarly:

RBI was not a financial creditor of either of the banks i.e. Yes Bank and DHFL for any of these proceedings. RBI in the DHFL case, was required by the special FSP framework to play the role of “appropriate regulator”.

Background: Rana Kapoor and the Growth of Yes Bank

Yes Bank was incorporated in 2003 by Rana Kapoor and Ashok Kapur and started functioning as a bank with the RBI's banking licence. Rana Kapoor was then the leading bank manager and MD & CEO of the bank for many years. The bank embarked on a growth strategy, especially through expanding its corporate and infrastructure lending. With the expansion of the loan book, exposure to large corporate groups also has been rising. Eventually, the primary issue was one of asset quality and governance. Just because a bank provides a loan and the borrower later defaults on that loan does not mean that the transaction was fraudulent. It is recognised by banking law that there is a credit risk inherent to any legitimate lending. In the Yes Bank case, it was a more serious legal question:

Had loans and investments been made on insufficient credit or other risk due to inappropriate relationships with the borrower, or masking of stress or benefits to the bankers?

That's the transition that lies between a run-of-the-mill banking failure and alleged fraud.

The Rana Kapoor–DHFL Transaction

A. The ₹3,700 crore investment

The principal transaction that is identified in ED is the purchase of DHFL securities by Yes Bank.

According to ED:

1. Yes Bank has put in ₹3,700 crore in the NCDs issued by DHFL in short term;
2. Yes Bank had also invested ₹283 crore in the DHFL Masala Bonds;
3. The total investment discovered during the ED investigation became hence ₹3,983 crore.

The timing of the deals began to focus the prosecution's theory. At the same time, ED says that

DHFL had also issued a loan of ₹600 crore for DOIT Urban Ventures (India) Pvt. Ltd., which ED states it was a "beneficial owner" of Rana Kapoor. The agency claims that the transaction was "style"ed as a loan but was actually a kickback for the financial assistance allegedly provided to DHFL.

Why is the ₹600 Crore Transaction worth? What's the significance of the ₹600 Crore Transaction?

The three possible characterisations of the transaction need to be differentiated.

1. This first option is for a legitimate commercial loan. This first option is for a true commercial loan. In the absence of any criminality, the transaction would not have been a criminal offence if DHFL loaned ₹600 crore to DOIT Urban Ventures on a regular commercial basis on proper security and with repayment terms and a proper business purpose.
2. Second alternative: the wrong related party transaction
Banking and corporate-governance regulations may apply if the loan was set up to provide advantage to a person in a conflict-of-interest situation who's part of the bank's senior management.
3. Third possibility: quid pro quo/kickback
The entire deal of providing ₹600 crore in return for Yes Bank's investment decision, if proved to be the case, may fall under the ambit of criminal conspiracy, money laundering, cheating and corruption, depending on the proof of statutory ingredients. The third characterisation is used in the ED's case.

Prosecutors' claims in the Bombay High Court's 2021 bail order alleging that Yes Bank invested ₹3,700 crore in DHFL debentures during April-June 2018 and sanctioned ₹600 crore to DOIT Urban Ventures at about the same time. The court also noted Kapoor's defence that there was no kickback and that it was a genuine loan. That separation is very significant for school achievement: The ED's characterization of this ₹600 crore as kickback is an allegation which is part of the prosecution case and not a final criminal finding.

The Alleged Corporate Siphoning.

The investigation didn't end at ₹600 crore. According to ED, immediately after Yes Bank transferred approximately ₹3,983 crore to DHFL through the securities investments, DHFL sanctioned approximately ₹2,317 crore in loans to entities associated with Sanjay Chhabria's

Radius Group for the development of the Avenue 54 project at Santacruz, Mumbai. ED claims that these monies were then used for a different project purpose. It also claims that Sanjay Chhabria siphoned off money to "entities" owned by Avinash Bhosale. As part of the investigation, ED had also claimed that Bhosale received around ₹71.82 crore from DHFL, allegedly as part of certain services/transactions.

ED's Asset Attachment

The money-laundering investigation led to tangible measures for asset recovery. On 2 August 2022, ED issued two Provisional Attachment Orders (PAO) under the PMLA. They had attached to them the following assets:

Person	Assets attached
Sanjay Chhabria	₹251 crore
Avinash Bhosale	₹164 crore
Total	₹415 crore

The assets comprised land, equity, a flat, hotel related receivables and luxury vehicles for Chhabria, and residential and land assets for Bhosale. This is important because it shows that the ED's investigation went past tracing the initial bank transaction. Its aim under the PMLA was to find and seize property it was believed was connected with proceeds of crime.

The Yes Bank Crisis Impacted the Stakeholders in the Following Ways:

1. Depositors-Depositors were the first to be hit by losses.

Yes Bank was declared under moratorium by RBI on 5 March 2020. The RBI's reconstruction material explicitly indicated that the financial condition of the bank was "worsening" in terms of liquidity, capital and other important indicators and that action was required "in the public interest" especially in the interests of depositors. The moratorium originally banned withdrawals, causing a lot of uncertainty for depositors.

2. Shareholders-The loss of confidence in the market and its reconstruction had an impact on shareholders. The reconstruction marked a fundamental change in the ownership and governance of Yes Bank. State Bank of India (SBI) was allotted the reconstruction scheme by the official for investment in Yes Bank and acquisition of 49% stake in it after the infusion of funds. SBI was nominated as an "Investor Bank."

Another significant correction:

It was not RBI but SBI that had invested in the reconstruction of Yes Bank. The reconstruction process was undertaken under the aegis of RBI and was its statutory architect.

3. Major Group Affected (AT1 Bondholders):

The securities-law issue of the Additional Tier 1 (AT1) bonds was the other major controversy which arose in the Yes Bank crisis.

Yes Bank had issued:

₹3,000 crore of AT1 bonds in December 2016; and

₹5,415 crore of AT1 bonds in October 2017.

These AT1 instruments have been fully written down and extinguished in March 2020 pursuant to the banking regulation framework and contractual terms on which Yes Bank relied after invoking Section 45 of the Banking Regulation Act. SEBI also conducted its own enquiry into the process of selling AT1 bonds to investors.

As per SEBI's adjudication order:

Around ₹679 crore had been invested by 1,346 individual investors;

There were 1,311 existing customers of Yes Bank with an investment of around ₹663 crore;

and Around ₹80 crore of fixed deposit money was withdrawn prematurely by 277 customers

and invested in AT1 bonds; and The AT1 investments were then made a write-off. The

investigation by SEBI included the sale material, including the bank's "Verbal Sales Pitch."

According to the SEBI record, the material included mention of the prevailing fixed deposit

rates and referred to the AT1 bonds as being "superior quality bonds" with AA ratings. In the

AT1 case, SEBI finally slapped Rana Kapoor a penalty of ₹2 crore under Section 15HA of the

SEBI Act.

RBI's involvement in Yes Bank: The Appropriate Legal Mechanism

One of the most significant components of the case is this. Yes Bank was NOT placed under the IBC. On the contrary, the rescue was performed under the Banking Regulation Act, 1949. The main provision was Section 45.

Section 45 is titled:

Power of Reserve Bank to apply to Central Government for suspension of business by banking company to prepare scheme of reconstitution or amalgamation.

Central Government had placed a moratorium on Yes Bank on 5th March 2020 after receiving an application from RBI under Section 45(1).

The RBI then designed the reconstruction plan under Section 45(4).

The sequence was:

RBI will apply under Section 45(1)

↓

Under Section 45(2) of the Central Government can impose a moratorium.

↓

The RBI has prepared a reconstruction scheme as per Section 45(4).

↓

Central Government approves the scheme/notifies the scheme

↓

SBI and other investors recapitalise/reconstruct Yes Bank.

The sequence is confirmed in the reconstruction document of RBI itself which leaves no room for doubt.

Section 36ACA simplifies and streamlines the process for the removal of the existing board. The RBI also invoked its power under Section 36ACA of the Banking Regulation Act, 1949 to supersede the Board of Yes Bank in pursuant to Section 45.

The bank's next statutory disclosures show that:

on 5 March 2020, RBI appointed a new Administrator as a replacement for the then Board of Directors under its powers under Section 36ACA.

It shows that the RBI action was essentially a regulatory resolution, and not an insolvency dispute.

The Reconstruction Scheme

Yes Bank Limited Reconstruction Scheme, 2020 was notified on 13/03/2020.

The scheme:

4. reconstructed Yes Bank;
5. Adjusted its share capital;
6. Eliminated specific governance requirements; and
7. provided for SBI's investment;
8. Provided for a new board structure;
9. Treated the AT1 capital instruments of the bank.

The scheme envisioned SBI will invest in Yes Bank to acquire 49%. SBI was not allowed to dilute its stake below 26% for three years since the infusion. The scheme was then a statutory corporate rescue mechanism which was not part of the IBC.

Why IBC Did Not Apply to Yes Bank?

The IBC usually offers a procedure for insolvency that is driven by creditors.

Under:

Section 7- CIRP can be started by a financial creditor on default.

Section 9- An operational creditor can file for CIRP once it meets with the conditions prescribed under the CIRP.

Section 10- CIRP can be filed by a corporate applicant.

But banks are a unique regulatory category. The Government's 2019 FSP framework clearly demonstrates the reasons why financial institutions are not just like any other corporate debtor.

The DHFL and the IBC: two wholly separate legal systems.

The situation of DHFL is just the opposite. DHFL was a housing finance company which came under the special category of financial service providers under the Central Government's notification.

Section 227 IBC- The Central Government can notify financial service providers or classes of financial service providers of a special insolvency or liquidation proceeding under Section 227.

According to this clause, the Central Government sent a notification to the:

Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. The Rules have been issued by the IBC under Section 227 in conjunction with Section 239(2)(zk) of the IBC.

Why RBI might initiate the Insolvency of DHFL?

This is the part that is frequently misinterpreted. The RBI has the power to initiate CIRP only under the IBC provisions, it does not have the power to initiate it just because it is the regulator.

The 2019 FSP Rules specifically state in Rule 5(a)(i) that no CIRP can be commenced against an FSP that has defaulted unless an application is made by the “appropriate regulator”. The Rules also provide that such application is treated in essentially the same way as an application by a financial creditor under Section 7, except for the changes made in the Rules. The Government's notification of 18 November 2019 designated:

NBFCs with asset size of ₹500 crore or more [excluding housing finance companies] as a category was covered under the framework and gave RBI as the Appropriate Regulator.

Thus the legitimate argument is:

RBI has not been the financial creditor who initiated the proceedings of insolvency for DHFL.

It started proceedings in its statutory role as the “Appropriate Regulator” under the special framework of FSP established in accordance with Section 227 IBC.

This is the DHFL Insolvency Chronology.

1. 20 November 2019- The Board of DHFL was replaced by the RBI under Section 45-IE of the RBI Act, 1934 and an Administrator was appointed.
2. 29 November 2019- RBI had filed the insolvency application against DHFL before the Mumbai NCLT. The NCLT's order clearly specifies: The petitioner/appropriate regulator is Reserve Bank of India. It has been submitted under: Section 227 IBC; Section 239(2)(zk) IBC; and Rules 5 and 6 of the 2019 FSP Rules.
3. 3 December 2019- The NCLT accepted RBI's application and initiated CIRP proceedings against DHFL.

This clearly demonstrates that:

RBI ≠ financial creditor

and:

RBI = suitable regulatory authority under the special framework of FSP.

Applicable Laws

Law	Provision	Relevance
Banking Regulation Act, 1949	§20	Restrictions concerning loans/advances to directors and connected interests
	§21	RBI control over advances
	§35	RBI inspection powers
	§35A	RBI power to issue directions
	§36ACA	Supersession of Yes Bank Board
	§45	Moratorium, reconstruction/amalgamation of banking companies
RBI Act, 1934	§45-IE	Supersession of DHFL Board
IBC, 2016	§227	Special framework for FSP insolvency
	§239(2)(zk)	Rule-making authority
	§31	Approval of resolution plan
	§43	Preferential transactions
	§45	Undervalued transactions
	§49	Transactions defrauding creditors

	§66	Fraudulent/wrongful trading
FSP Rules, 2019	Rules 3–6	Appropriate regulator and special CIRP mechanism
SEBI Act, 1992	§11	Investor protection and securities-market regulation
	§11C	Investigation
	§12A	Prohibition of manipulative/deceptive securities conduct
	§15HA	Penalty for fraudulent/unfair trade practices
	§15I	Adjudication
	§15J	Factors relevant to penalty
PFUTP Regulations, 2003	Regs. 3(a), 3(c), 3(d), 4(1), 4(2)	Fraudulent/manipulative securities-market conduct
LODR Regulations, 2015	Reg. 4(2)(f)(i)(1), (2)	Fairness/transparency-related obligations
PMLA, 2002	§3	Money laundering
	§4	Punishment
	§5	Provisional attachment
	§17	Search and seizure
	§19	Arrest
	§24	Burden of proof
	§43–44	Special Courts
IPC, 1860	§120B	Criminal conspiracy
	§420	Cheating
Prevention of Corruption Act, 1988	§7	Offence relating to bribery
	§12	Abetment
	§13(1)(d), 13(2)	Criminal misconduct under the applicable version of the statute

This table only includes possible application of laws in the present case. The actual application depends on the official documents.

RBI Regulatory Framework

The regulatory framework does not give any clues as to the banking failure.

Under the RBI regulatory regime, there were various conditions on banks, such as:

1. Asset classification- Banks have to classify the loans properly based on their performance. The bank can avoid recognising the provisioning requirement for an NPA, if it is treated as a performing asset.
2. Provisioning- A bank is required to recognise expected losses from impaired loans when it provisions.
3. Capital adequacy- Banks need to have sufficient regulatory capital based on their risk exposure.
4. Exposure concentration- The Large Exposures Framework by RBI aimed at avoiding excessive exposure of a bank towards specific counterparties or groups of counterparties.
5. Fraud reporting- RBI's Master Directions on Frauds—Classification and Reporting by Commercial Banks and Select FIs, 2016 set out procedures for identification, classification and reporting of fraudulent transactions.

The reasons why these regulations are significant is because the Yes Bank crisis was not only about individual transactions. It showed the relationship between credit governance, risk management and regulatory supervision in a wider context.

SEBI's Role

The jurisdiction of SEBI should be distinct from that of RBI.

RBI- Banking regulator

Focus:

1. banking operations;
2. prudential regulation;
3. capital;
4. liquidity;
5. governance;
6. banking-company reconstruction.

SEBI- Securities-market regulator

Focus:

1. listed-company disclosures;

2. securities issuance;
3. investor protection;
4. fraudulent/unfair securities-market practices;
5. AT1 bond distribution.

This distinction is especially significant because there is the possibility of "parallel jurisdiction" arising out of the same underlying crisis.

SEBI Has Issued The Findings Against Rana Kapoor.

The adjudication order issued by SEBI is of great importance as an official evidence source. Evidence on how Yes Bank distributed AT1 bonds was considered by SEBI. The regulator reviewed internal communications and sales practices and the perceived similarity or superiority of the bonds to fixed deposits. The effects of SEBI's order are captured in the order: Around ₹679 crore has been invested by 1,346 individual investors.

Of these:

Existing Yes Bank customers: 1311.

Further, SEBI discovered that 277 customers prematurely closed their fixed deposits and invested around ₹80 crore in AT1 bonds, which were subsequently written off. SEBI decided that the penalty is warranted for the violations and imposed:

The penalty imposed on Rana Kapoor by SEBI under Section 15HA of the SEBI Act is ₹2 crore.

This is much better evidence for a research paper than a description in the newspaper, since it is from the adjudication order of the regulator.

Criminal Investigation: CBI

The central bureau of investigation got involved in the alleged criminal aspects. The CBI FIR filed in the ED case stated that the accused had 'hooded' Nairn and rid him of his life-threatening situation. Rana Kapoor got into a criminal conspiracy with Kapil Wadhawan and others to provide financial support to DHFL via Yes Bank with a promise to give significant undue benefit to Kapoor and his family members.

According to ED's official release, the provisions outlined are:

1. Section 120B IPC;
2. Section 420 IPC;
3. Section 7 PC Act;

4. Section 12 PC Act; and
5. Under Section 13(2) in conjunction with Section 13(1)(d) of the PC Act, as set out in the investigative material. But how the criminal liability of each accused is to be determined must be left to the judicial process.

The Enrichment And Development Of Investigations As Well As PMLA.

The powers of the ED were based on the alleged proceeds of crime involved in offences listed in the schedule. The conceptual chain for PMLA is:

Scheduled/predicate offence

↓

Money obtained by unlawful means/money obtained as a result of the commission of a crime.

↓

Possession/use/concealment/projecting proceeds

↓

Money-laundering offence under Section 3

↓

Attachment/prosecution under PMLA

The ED thus looked not only to determine if a banking transaction was improper, but whether property obtained through the commission of a crime was then used in a way that was within the scope of Section 3. Section 5 allows for provisional attachment of property when the property is part of money laundering activities, as required by statutory provisions. The ₹415 crore attachment at the hands of Chhabria and Bhosale is an illustration of that.

Evidence Available From Official Sources

The following evidence is especially useful in writing a legal research paper.

A. RBI rebuilding documents- These establish:

1. the fall of the Indian banks, particularly Yes Bank; and
2. liquidity concerns;
3. capital concerns;
4. RBI's statutory intervention;
5. The Section 45 basis for reconstruction;
6. SBI's role as the investor bank.

B. NCLT DHFL order- Perhaps, the most useful source in determining the position of the IBC

is an NCLT order. It expressly identifies:

1. RBI — Petitioner/Appropriate Regulator
2. States that the application was made pursuant to Section 227 and the FSP Rules.

C. Notification under Section 227 of the Government of Canada

The notification makes it clear that:

The special framework applies to NBFCs with assets of ₹500 crore or more, such as housing finance companies; and RBI was appointed as the competent regulator.

D. ED's investigation

The ED release outlines the prosecution's fact theory on:

1. ₹3,700 crore DHFL NCDs;
2. Lending through DHFL Masala Bonds (Raised: ₹283 crore); and
3. ₹600 crore DOIT transaction;
4. The financing from ₹2,317 crore by Radius Group;
5. alleged misuse of funds;
6. ₹415 crore asset attachment.

E. SEBI's adjudication

SEBI gives direct regulatory proof regarding:

1. investor numbers;
2. amounts invested;
3. sales practices;
4. the oral presentation;
5. AT1 bond distribution; and
6. Rana Kapoor is slapped with a ₹2 crore fine.

Arrest & Judicial Proceedings against Rana Kapoor

The ECIR was registered by the ED in March 2020 and Rana Kapoor was arrested in the PMLA proceedings on 8 March 2020. This chronology and the prosecution case relating to the DHFL transaction is noted in the Bombay High Court's order of 2021.

The case of the judge illustrates the importance of distinguishing:

Allegation-

The ₹600 crore was a kickback, ED alleges.

Investigation finding-

“ED says that in its investigation, it discovered a specific transaction structure.”

Regulatory adjudication-

“It's a violation and SEBI penalized.”

Criminal conviction

“Court finds accused guilty beyond the criminal standard.”

These are four different legal stages. So it would not be right to say just that:

Rana Kapoor's fraud was worth ₹600 crore.”

In the legal sense, the following is a safer formulation:

According to the ED, the loan of ₹600 crore given by the DHFL to the DOIT Urban Ventures was a kickback given in return for the financial help that Yes Bank provided to DHFL.

Rana Kapoor's Current Legal Position and Bail.

The long-term detention of Rana Kapoor drew a lot of attention from the court. He was released on bail by the Special CBI Court in the final bail application filed by his defence in the last pending case while he was imprisoned at that time in April 2024. The court noted that the proceeding was a very serious one, and that continuing the detention beyond the four-plus years spent in custody might be considered to be a pre-trial conviction. This does not necessarily indicate an acquittal in Kapoor's case.

The legal situation must be expressed as:

There have been numerous criminal and PMLA cases filed against Rana Kapoor in connection with the Yes Bank investigations, however, the bail does not mean that Rana has been acquitted or the alleged offences have been established to be false. Furthermore, the larger investigation relating to DHFL has been ongoing. In the ongoing money-laundering investigation connected to alleged money-laundering charges against the promoters of DHFL, the Court has frozen around US\$5.41 million/₹51.75 crore of money in a foreign account that is allegedly proceeds of crime, according to the official ED website. The investigative environment around DHFL doesn't stop with the reconstruction of Yes Bank in 2020.

Yes Bank is the company that is currently introducing them.

The relationship can be expressed in the following form:

Stage 1 — DHFL needs funds

DHFL was in a financial problem as well.

↓

Stage 2 — Yes Bank is investing ₹3,983 crore

₹3,700 crore — short-term NCDs

₹283 crore — Masala Bonds

↓

Stage 3 — Alleged ₹600 crore benefit

According to the complaint, DHFL allegedly gave ₹600 crore to DOIT Urban Ventures, which is owned by Kapoor.

↓

Stage 4 — Further financing by DHFL

DHFL is alleged to provide around ₹2,317 crore to the entities related to the Radius Group.

↓

Stage 5 — Alleged diversion

ED claims huge money was misappropriated from their intended uses.

↓

Stage 6 — DHFL insolvency

The special FSP insolvency framework is invoked by RBI as Appropriate Regulator.

↓

Stage 7 — Yes Bank crisis

Yes Bank's financial health suffers.

↓

Stage 8 — RBI intervention

Chapter 45 of the Banking Regulation Act.

↓

Stage 9 — Reconstruction

SBI is the main investor.

↓

Stage 10 — Parallel investigations (CBI + ED + SEBI)

The most critical legal differences

These differences would be stressed for your paper since they eliminate the most frequent mistakes.

1. This entails that RBI was not a creditor.

Wrong: RBI was a financial creditor of Yes Bank/DHFL.

Correct: The banking regulator in the case of RBI was the Resolving Authority in the case of DHFL and under the FSP Rules a statutory Appropriate Regulator.

2. Yes Bank has not been put under the IBC resolution regime

Wrong: Yes Bank got resolved under IBC.

Correct: Yes Bank was rebuilt under Banking Regulation Act 1949 (BRA) Section 45.

3. DHFL has been subjected to IBC proceedings

Correct: DHFL's CIRP was initiated under the special CIRP under Section 227/FSP Rules, under the supervision of RBI, as Appropriate Regulator.

4. SBI was the investor bank

Correct: SBI had invested in Yes Bank which was reconstructed and would have a stake of 49%.

5. The ₹600 crore was said to be a kickback. It should not be declared as an indisputable fact (apart from final judicial determination).

6. There is a connection between losses of Yes Bank and alleged criminal fraud, but it is not the same.

The following are causes of loss to a bank:

1. legitimate credit risk;
2. negligent lending;
3. regulatory violations;
4. mismanagement; or
5. deliberate fraudulent transactions.

Therefore, necessary statutory elements must be present for an allegation to be a criminal charge.

Overall Legal Analysis

The Yes Bank-DHFL affair is an example of the interaction of five legal regimes.

First: Banking Regulation- Under the Banking Regulation Act, RBI now had the power to monitor and even rebuild Yes Bank.

Second: Insolvency Law- For financial-service providers like DHFL, the IBC created a special mechanism that was different from that of regular companies.

Third: Securities Regulation- The securities-market dimensions, especially the sale of AT1 bonds, were regulated by SEBI.

Fourth: Criminal Law- The IPC and Prevention of Corruption Act were used for making allegations of conspiracy, cheating and corruption.

The Fifth Law: Money Laundering Law- The PMLA granted ED an opportunity to proceed with the alleged proceeds of the predicate offence.

Conclusion

The Yes Bank mess is not a case of fraud alone, but a multi-layered regulatory and criminal issue. The main issue in the controversy was the alleged linkages between the lending/investment decisions at Yes Bank during the tenure of Rana Kapoor and the financial gains allegedly received by entities in Kapoor's name. The biggest one was the alleged investment of ₹3,700 crore by the DHFL in its NCDs and a loan of ₹600 crore to DOIT Urban Ventures, which ED calls a kickback. The crisis then highlighted a series of concerns about corporate lending, risk management, asset quality, investor protection and banking governance. The legal reaction should be broken and down into different parts, however:

YES BANK:

The Banking Regulation Act, 1949 → RBI intervention → Section 45 moratorium and reconstruction → SBI investment.

DHFL:

IBC Section 227 → FSP Rules, 2019 → RBI as Appropriate Regulator → NCLT → CIRP.

ALLEGED CRIMINAL CONDUCT:

Prosecutors from the IPC + Prevention of Corruption Act launched an investigation.

PROCEEDS OF CRIME:

PMLA → ED investigation, attachment and prosecution.

SECURITIES/AT1 BONDS:

(SEBI Act, PFUTP Regulations & LODR Regulations) lead to SEBI investigation/adjudication.

The key that comes from this analysis is that:

RBI has not taken up action as a financial creditor against DHFL. It did so because the Parliament in Section 227 of the IBC and the Central Government in the FSP Rules of 2019 had set up a special regime for the commencement of an insolvency resolution process against certain financial service providers by a notified "Appropriate Regulator". The Appropriate Regulator for DHFL was RBI. In contrast, there was nothing to do with IBC in the rescue of Yes Bank. It's done under the special banking-resolution mechanism laid out in the Banking Regulation Act, 1949, Section 45. This distinction is clearly made in the official document of the RBI reconstruction. Last but not least, the case illustrates the legal differences between banking failure and corporate insolvency or criminal fraud, even if they stem from the same underlying transaction. The specific statutory authority of each authority, the legal status of each proceeding and the evidentiary stage on which each allegation lies must, therefore, be identified to seek attachment of property.

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