



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, COURT-V**  
**DIVISION BENCH**

**Company Petition (IB) No. 1079(PB)/2020**

*(Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.)*

**IN THE MATTER OF:**

**DALMIA FAMILY OFFICE TRUST**

(Earlier known as Mridu Hari Dalmia Parivar Trust)

Having Its Registered Office at:

04, Scindia House Connaught Place,

New Delhi, Delhi – 110001

**...APPLICANT/FINANCIAL CREDITOR**

**VERSUS**

**ALMOND INFRABUILD PRIVATE LIMITED**

Having Its Registered Office at:

711/92, Deepali, Nehru Place,

New Delhi – 110 019

**...RESPONDENT/CORPORATE DEBTOR**

**Order Pronounced On: 08.08.2025**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL**  
**HON'BLE MEMBER (JUDICIAL)**

**SMT. ANU JAGMOHAN SINGH**  
**HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant** : Mr. Ajay Bhargava, Adv Wamika Trehan,  
Ms Raddhika Khanna, Adv Varun  
Chopra, Advs.

**For the Respondent** : Mr. Krish Kalra, Adv.



## ORDER

1. This Application has been filed by the **Dalmia Family Office Trust**, the Financial Creditor (FC)/Applicant on 20.11.2020, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor (CD)/Respondent, **Almond Infrabuild Private Limited**, on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 26,41,82,510/- (Rupees Twenty Six Crore Forty One Lakh Eighty Two Thousand Five Hundred and Ten Only) along with Interest amount as on 31.10.2020.
  
2. **Submissions of Learned Counsel appearing for the Applicant are as under:**
  - 2.1 The Corporate Debtor is engaged in the business of construction and development of residential group housing projects, including a project titled "Tourmaline", situated, Gurugram, Haryana (the “Project”). To finance the construction and meet working capital requirements for the said Project, the Corporate Debtor, through its Promoter/Director, Mr. Getamber Anand, approached the Applicant seeking a secured loan of INR 15,00,00,000/-. Under Clause 5.2 of the Loan Agreement, the Corporate Debtor assured the Applicant/Financial Creditor that the said loan would be repaid within 42 months from the date of disbursement, with interest at 20% per annum, payable on a quarterly basis, as recorded in Clause 5.1(i). Failure to pay on the due date was expressly agreed as being an “Event of Default” under Clause 7.1 of the Loan Agreement.
  
  - 2.2 Based on these representations, the Financial Creditor agreed to



disburse the sum of INR 15,00,00,000/- as a secured loan and executed a Loan Agreement dated 15.06.2015. Upon expiry of the 42-months period, the Corporate Debtor failed to discharge its repayment obligations. Subsequently, through its Promoter/Director, Mr. Getamber Anand, it requested an extension for repayment. Accordingly, a Supplemental Agreement dated 18.12.2018 was executed, extending the due date for repayment, which ultimately fell on 30.06.2019.

**2.3** Despite the extension, the Corporate Debtor defaulted on repayment in violation of both the original Loan Agreement and the Supplemental Agreement. Despite repeated requests and discussions by the Financial Creditor, the Corporate Debtor failed to provide any concrete proposal or make any meaningful repayment or security arrangement. Consequently, the Financial Creditor issued a Demand Notice dated 04.11.2020, calling upon the Corporate Debtor to repay the outstanding amount within 3 days. However, no payment was made.

**2.4** As of 30.06.2019, the unpaid principal financial debt of INR 19,22,84,255/- (Rupees Nineteen Crores Twenty-Two Lakhs Eighty-Four Thousand Two Hundred and Fifty-Five only) remains due, along with interest at 2% per month for the period of default. The total amount outstanding as on 31.10.2020, including accrued interest, stood at INR 26,41,82,510/- (Rupees Twenty-Six Crores Forty-One Lakhs Eighty-Two Thousand Five Hundred and Ten only). The Corporate Debtor last defaulted on 08.11.2020.

**2.5** Thus, in good faith and with the expectation of recovering its legitimate dues from the ATS Group including the Corporate Debtor, the Dalmia Group agreed to enter into dialogue with a view to reach an amicable resolution. However, these discussions failed, as no concrete or satisfactory offer either by payment or security was made by the ATS Group. Despite continued dialogue until November 2020, no consensus was reached, and no agreement was



concluded to defer repayment.

- 2.6** The Financial Creditor asserts that no settlement agreement exists, and the Corporate Debtor has failed to produce any document in support of its contention. Clauses 16 and 17 of the Loan Agreement mandates any amendment/change to be in writing and signed by authorized representatives. Therefore, in absence of duly executed agreement, the terms of the loan agreement cannot be considered novated as contended by the Corporate Debtor.
- 2.7** The Arbitral Tribunal, in its award dated 15 December 2024 (in ATS Infrastructure Pvt. Ltd. v. M/s Rasbehari Traders), held that no conclusive settlement was entered into between the ATS Group and the Dalmia Group.
- 2.8** The Corporate Debtor defaulted in repaying the loan along with accrued interest, within the stipulated period. Further, it is admitted position that no payments have been made in nearly five years since the alleged settlement, even though the alleged settlement required repayment by 31.08.2021, which was already extended in lieu of force majeure. This constitutes a clear default under Section 2(12) of the IBC.
- 2.9** The default occurred on 30.06.2019, which is much prior to Covid-19. No Force Majeure clause exists in the agreements, and no such plea of force majeure was raised by the Corporate Debtor in any communication, including in its emails dated 27.10.2020 and 07.11.2020.
- 2.10** The arbitration proceedings cited by the Corporate Debtor were initiated only after the filing of the present petition by Financial Creditor and the plea taken therein is contrary to the record and liable to be rejected. The Corporate Debtor's Section 8 application under the Arbitration and Conciliation Act, 1996, was dismissed by this Hon'ble Tribunal on 29.08.2023, rendering its arbitration



plea without merits.

**3. Submissions made on behalf of the Corporate Debtor in reply to the present Petition are as under:**

- 3.1** In reply to the present Section 7 Petition filed by the Financial Creditor, the Corporate Debtor has filed an affidavit dated 25.03.2021 wherein it is submitted by the Respondent that the present application is devoid of merits and is not maintainable as it is not a *Financial Creditor* also neither a *Financial Debt* nor a *Default* within the meaning of the Insolvency and Bankruptcy Code, 2016,
- 3.2** It is not disputed that the Applicant and Respondent entered into a Loan Agreement dated 15.06.2015 pursuant to which the Financial Creditor invested certain sums in the Applicant Company. This Agreement was renewed vide the Supplemental Agreement dated 18.12.2018. Several other agreements were also entered into between the various companies of ATS Group and Dalmia Group. The present agreements were entered into as part of commercial transaction between the Dalmia Group and ATS Group.
- 3.3** Disputes arose between the parties under the Loan Agreement and the same was referred to the Arbitration to a Sole Arbitrator, Hon'ble Justice (Retd.) Swatanter Kumar by the Hon'ble High Court's order dated 08.01.2021 passed in various common petitions. It is pertinent that the aforesaid order was passed after both parties jointly consented to refer all their disputes to the arbitration. As per the order dated 08.01.2021, parties recognised that there are disputes between the parties under the loan agreement dated 15.06.2015 and the sums which the Applicant is claiming to be due are admittedly disputed and need crystallization, determination and adjudication by the arbitral tribunal.
- 3.4** The alleged dues are neither ascertained nor is there a definite time



period for a payment, further, the payments were also subject to various other terms and obligations and also conditional upon happening of various events. Also, ATS Group and Dalmia Group entered into a holistic settlement on 17.08.2020 and the said settlement mended and novated the other agreements and it is clear that there are no sums payable to the Applicant at present. Also, the present proceedings are fully and wholly covered by the order of Hon'ble Delhi High Court dated 08.01.2021. Thus, the present application is misconceived. Also, the amount so claimed to be due by the Applicant is admittedly disputed and the said dispute has specifically been jointly referred to arbitration by both parties including the said issues inter alia as to whether the Applicant is a financial creditor, whether there is a financial debt, what is the time period of the said alleged debt and whether there is any alleged default etc.

- 3.5** Applicant is not a 'Financial Creditor' but a mere 'investor' who had invested certain sums into the Respondent Company. Further, no amount has been disbursed by the Applicant as any financial debt. Therefore, the present petition is not maintainable as Applicant nowhere satisfy the requirement of code to file the present petition.
- 3.6** The timelines for making payment automatically stood extended w.e.f. 19.02.2020 or atleast 12.03.2020 in view of the ongoing Covid-19 or force majeure events owing to which the performance of contract become impossible. Since, force majeure events are continuing as of date, time for making payment has not expired yet, thus, it cannot be said that there is any default by the Respondent. In terms of the trade usages and the implied terms of the Loan Agreement, the said force majeure clauses have been incorporated under the Loan Agreement. Also, in terms of Section 56 of the Indian Contract Act, 1872, the time stands extended or obligations stand frustrated owing to the impossibility to perform the agreement.
- 3.7** Certain difference arose between the parties in regard to the payments



to be made in relation to aforesaid transaction. Owing to the same, parties entered into holistic settlement in August 2020. It was covenanted between the parties that the ATS Group would allot certain units as security to the Dalmia Group allotted as per RERA complied formats at agreed prices.

- 3.8** It was also agreed that these units/apartments will be allotted by the ATS Group through companies in which the Applicant had made its investments as part of the umbrella transaction between the Groups. The Dalmia Group stated in this regard that "incase, these units are not from our investee companies, Dalmia will pay for the units and an equivalent amount will be returned to Dalmia against our overdue interest". Accordingly, Allotment agreements for units/apartments worth Rs. 75 crores came to be executed in favor of the Dalmia Group in the month of August 2020. ATS Group also issued post-dated cheques amounting to Rs. 150 Cr. out of which Rs. 75 Cr. were PDCs provided as security. As per agreed terms, there was no liability upon the ATS Group till 31.08.2021 at that stage and subject to further extensions on account of continuation of force majeure events, however, it was extended till 31.08.2022.
- 3.9** Pursuant to revised discussions, a revised security of approx. 75 Cr. of value in the form of apartments in various projects of ATS Group was agreed upon and agreement to sell of the said apartments were executed between ATS & Dalmia Group and handed over by ATS Group to Dalmia Group on 17.08.2020 and 20.08.2020. In furtherance of this holistic settlement, ATS Group and its various entities issued post-dated cheques dated 31.08.2021 to the Dalmia Group for an aggregate amount of Rs. 150 crores on the same date. All purported obligations of ATS Group including Respondent under the previous agreement stood novated by this settlement of 17.08.2020.
- 3.10** Respondent also contended that the Applicant does not have any right to approach this Adjudicating Authority as the Applicant is not a financial Creditor in terms of Section 5(7). The Applicant claim the status of financial creditor because it is a speculative investor. In a similar case, *CP (IB) No.*



1078 of 2020, the Ld. Adjudicating Authority dismissed the petition, holding that the alleged financial creditor was merely a speculative investor, having investments in the Respondent Company and, therefore, could not be treated as a financial creditor. Accordingly, in view of aforesaid judgment of coordinate bench of Ld. Adjudicating Authority, the present petition is liable to be dismissed on this ground alone.

**3.11** Further, Respondent cannot be said to be in default/ breach of any of terms as the time line for making any payments under the Loan Agreement even assuming it survives, has not expired till date and the timeline in any event continues to be extended owing to the Covid-19 pandemic/force majeure events.

**3.12** The Applicant had sought huge amounts in lieu of interest vide one-sided and unilateral and coerced Supplemental Agreements which is clearly oppressive and exorbitant and cannot be countenanced. In this regard any such agreements seeking to impose this unfair, unjust, onerous terms and interest on the Respondent cannot be relied upon and the amounts as contained therein cannot be stated to be the due amount from the Respondent.

**3.13** The present Application is liable to be rejected as the alleged default said to have committed only after 30.03.2020 i.e., during the moratorium period for which no application can ever be filed as per the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020.

### **Analysis and Findings**

4. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, the reply affidavit filed by the Corporate Debtor and the written submissions presented before us. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.



5. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
6. In the present petition, the Financial Creditor has alleged that the Corporate Debtor availed a loan of INR 15,00,00,000/- pursuant to a Loan Agreement dated 15.06.2015. As per Clause 2.1 of the said agreement, the loan facility was secured through the allotment of 24 flats in the Corporate Debtor’s project, supported by an Allotment Letter, Flat Buyer Agreements, undated cheques for the principal amount, and post-dated cheques for the interest. Additional security was provided by way of Guarantee Agreements executed by Mr. Getamber Anand in favour of the Financial Creditor on 20.05.2015 and 20.12.2018. The arrangement was later supplemented by an agreement dated 18.12.2018. As per the terms, the loan was to be repaid within 42 months from the disbursement date, later extended to 30.06.2019 under the supplemental agreement. To determine whether the Applicant is entitled to initiate proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016, it is essential to examine whether the claim detailed in Part IV qualifies as a 'financial debt' under Section 5(8) of the Code.
7. The term ‘Financial Debt’ is defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, which is as under:

*(8) financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes--*

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;*



*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

*3[Explanation---For the purposes of this sub-clause,--*

*(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*

*(ii) the expressions, allottee and real estate project shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*

*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

8. Further, it is an undisputed fact that there is an Agreement exists between the parties, pursuant to which the Financial Creditor disbursed certain amounts to the Corporate Debtor. It has also been brought to our attention that both entities belong to the Dalmia Group and the ATS Group, respectively, and that the transaction in question forms part of a broader series of inter-group transactions.
9. Upon perusal of documents placed on record, it is evident that arbitration proceedings took place between the two groups concerning nine distinct transactions, including the alleged Loan Agreement. In its order dated 08.01.2021 in ARB.P. 645/2020, the Hon'ble Delhi High Court noted that apparently there is some commonality among transactions. The parties have submitted various documents related to the proceedings before the Ld. Arbitral Tribunal and the Hon'ble Delhi High Court, while going through documents, we observed that series of investment transactions including Investment Agreements, Loan Agreements and Flat-Buyer Agreements were executed between the Dalmia Group and ATS Group. These agreements are interconnected and were structured primarily to facilitate investments by the Dalmia



Group in the ATS Group. Specifically, the alleged Financial Creditor entered into an agreement dated 15.06.2015 under which certain sums were invested in the Respondent Company. The records reveal a total of 10 such transactions between the groups, involving an aggregate investment of approximately ₹120 crore in the ATS Group of companies.

10. It can be observed from the above discussion that the agreement in question forms part of a composite set of investment transactions between the two groups. The amounts disbursed, therefore, do not bear the character of a financial debt in terms of Section 5(8) but rather constitute investment transactions presented in the form of loan agreement. The true nature or *pith and substance* of the transactions is that of investment, structured as loan arrangement.
11. The Ld. Coordinate Bench of NCLT, Delhi Bench-III, in **CP(IB) No. 1078 of 2020**, vide order dated 09.06.2023, critically examined the Loan Agreement entered into between Dalmia Family Office Trust and M/s ATS Housing Infrastructure Private Limited. This agreement was found to be part of a series of interconnected transactions between the Dalmia Group and the ATS Group, including the transaction presently under consideration before us. Ld. Coordinate Bench held that:

*“.....Without prejudice, after perusing the relevant clauses of the Loan Agreement, the Financial Creditor is a speculative investor and cannot claim the status and benefits as a Financial Creditor under Explanation (i) of Section 5(8)(f) of the Code, and it is not an interested party in the financial well-being, growth, and vitality of the Corporate Debtor, but is just interested in his investment. Guidance in this regard is also available in the judgment of Hon’ble NCLAT in Sudha Sharma vs Mansi Brar and Anr. [Company Appeal (AT) (INS) No. 83 of 2020] emphasized: “that money deposited/invested for speculative purpose does not entitle a person to take advantage of clause (f) of section 5(8)(f) of the Code. While determining Issue (a), We are of the view that the status of “Financial Creditor” cannot be accorded to a person who, in the garb of a lender comes in the project as a speculative investor and for mere recovery of monies files exorbitant claims. Therefore, the benefit of section 5(8)(f) of the Code will not enure in his favour and the amount claimed in Part IV of the application doesn’t amount to become Financial Debt as per code. 5(8) and be considered a financial creditor by virtue of being an allottee of a housing unit/flat.”*



12. The judgment of Ld. Coordinate Bench is challenged before the Hon'ble NCLAT, however, no stay has been granted against the Order dated 09.06.2023. Furthermore, vide order dated 26.11.2024, the Hon'ble NCLAT categorically stated that *"There is no stay in the proceedings pending before the Ld. NCLT."* While the Ld. Counsel for the Applicant has argued that the Coordinate Bench erred in dismissing the petition filed under Section 7 of the Code, it is well settled that this Adjudicating Authority does not sit in appeal over the decisions of a Coordinate Bench.
13. In this regard, we may refer to the observations made by the 9 Judge Bench of the Hon'ble Supreme Court in the matter ***'Property Owners Association and Ors. vs State Of Maharashtra and Ors., Civil Appeal No. 1012 of 2002, Reported in 2024 INSC 835***, in the majority judgment, in para 96, it is stated that "The law laid down by this Court is binding on subsequent benches of lesser or coequal strength." Therefore, it is incumbent upon us to consider the judgment of the coordinate bench in respect of the same agreement.
14. Thus, in view of above, the alleged Financial Creditor cannot be accorded a status of Financial Creditor in terms of Section 5(7), who under the guise of lender, acted in the capacity of an investor, intending to get benefit from the sales in the project of Corporate Debtor. Accordingly, the amount claimed in Part IV of the application does not qualify as a 'financial debt' under the provisions of the Insolvency and Bankruptcy Code, 2016.
15. In the light of the above observations, the amount claimed by the alleged Financial Creditor is found to be a mere investment and fall within the definition of 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. Accordingly, the instant Company Petition (IB) No. 1079/PB/2020, filed by **Dalmia Family Office Trust** under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against **Almond Infrabuild Private Limited**, the Corporate Debtor, is hereby dismissed, with no order as to costs.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-  
**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-  
**MAHENDRA KHANDELWAL**  
**MEMBER (JUDICIAL)**