NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-639(ND)/2021
IA -2283 OF 2022

IN THE MATTER OF:

M/s. Dalmia Family Office Trust
(Erstwhile Mridu Hari Dalmia Private Trust)
(Sole Proprietor of Dalmia Group Holdings
Through Authorized Representative
Of the Proprietor, Mr. Inder Preet Singh
Registered Office at :
4, Scindia House,
New Delhi - 110001

...Applicant/Financial Creditor

VERSUS

M/s. Ansal Properties and Infrastructure Limited
Registered Office at:
115, Ansal Bhawan
16, Kasturba Gandhi Marg,
New Dellii-110001

...Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 06.06.2022

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Sr. Adv. Darpan Wadhwa, Adv. Hancy Maini, Adv. Varun Khanna, Adv. Neelakshi Bahaduria

For the Respondent : Adv. Ankit Sharma, Adv. Sujoy Datta

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Application is filed under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Dalmia Group Holdings through Authorized Representative of the Proprietor, Mr. Inder Preet Singh (for brevity **'Applicant/Financial Creditor'**), with a prayer to initiate the Corporate Insolvency process against M/s. Ansal Properties and Infrastructure Limited (for brevity '**Corporate Debtor**').

2. The Corporate Debtor namely, M/s. Ansal Properties and Infrastructure Limited is a Company incorporated on 30.06.1967, under the provisions of the erstwhile Companies Act, 1956 with CIN L45101DL1967PLC004759, having its registered office at 115, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Dellii-110001, which is within the jurisdiction of this Tribunal.

3. The Authorized Share Capital of the Corporate Debtor Company is Rs.1,50,00,00,000/- and Paid-up Share Capital of the Company is Rs.78,70,24,380/- as per the master data annexed with the Application.

4. That the detailed particulars of the Financial Debt including the total amount of debt in default and the date of default as mentioned in the Part IV of the application are reproduced below for the convenience :

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	INR 1,40,00,000/- (Rupees One Crore Forty Lac only) Date of Disbursement: 29.09.2015 (vide cheque no. 449631 drawn on Punjab National Bank, Janpath, New Delhi-110001) End Date: 28.10.2015
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE	Principal Amount Due: INR 1,40,00,000/- (Rupees One Crore Forty Lacs Only) Interest (calculated at: INR 3,35,44,809/- (INR Three Crores

	DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	the contractual rate of 21% per annum with monthly rests as per clause 3 the Loan Agreement dated 28.09.2015)	Thirty Five Lakhs Forty Four Thousand Eight Hundred and Nine Only)
		Additional Interest (calculated at the contractual rate of 2% per annum as per clause 5 the Loan Agreement dated 28.09.2015)	INR 12,75,809/- (INR Twelve Lakhs Seventy Five Thousand Eight Hundred and Nine Only)
		Total Due (as on 30.09.2021)	**INR 4,88,20,618/-** (INR Four Crores Eighty Eight Lakhs Twenty Thousand Six Hundred and Eighteen Only)
		<u>Date(s) on which default occurred</u>: 1. On 28.10.2015, when on maturity of the Loan Agreement, as per Clause 3 of the Loan Agreement	

		dated 28.09.2015, the due amounts, including the Loan Amount and the interest thereon, were not refunded to the Financial Creditor 2. On last date of every succeeding month starting 28.10.2015, when the due interest was not remitted. 3. On 29.04.2021, when amounts due as per demand letter dated 22.04.2021, in which seven days were provided, were not remitted to the Financial Creditor A copy of the computation table reflecting the default amount is attached herewith and annexed as **Annexure- 8.** **Details of the financial transaction and events giving rise to the financial debt:** The Financial Creditor is a proprietorship concern of Dalmia Family Office Trust, established on 28 May 1999. The Corporate Debtor is a public company incorporated under the erstwhile Companies Act, 1956 and having its registered office at the address mentioned in the cause title above, with Corporate Identity Number as L45101DL1967PLC004759. The Corporate Debtor is listed with BSE Limited and NSE Limited. The Corporate

5. That from perusal of the Part IV of the Application, it is observed that the Applicant has claimed the dues of Rs. 04,88,20,618/- as on 30.09.2021, out of which Rs 01,40,00,000/- has been claimed as the Principal Amount. The Applicant has mentioned the 28.10.2015 as the date of default in its application. That in order to cross the hurdle of limitation, the Applicant has filed Annual Reports of the Corporate Debtor for the Financial Years 2017-18 to 2019-20 along with its application.

6. That vide order dated 24.05.2022, this Bench has observed that the present Application has been preferred in the name of the Proprietorship firm, accordingly, the defect being curable, the Applicant was directed to rectify the memo of parties within seven days. That in compliance of the direction, the Applicant filed the amended memo of parties on 26.05.2022 rectifying the cause title of the case. The same is taken on record.

7. That during the course of hearing on 24.04.2022, the arguments were heard on merits and the order was reserved. Subsequent to reserving of the order, one IA No.2283/2022 was filed by the Corporate Debtor stating that an amount of Rs. 04,90,00,000/- has been transferred in the account of the Financial Creditor on 16.05.2022.

8. That vide order dated 18.05.2022, this Adjudicating Authority had directed the Financial Creditor to confirm whether any amount has been received by it. Accordingly, the matter was posted for 26.05.2022.

9. The Financial Creditor, in response to the same, has filed its reply in IA-2283 of 2022 and has confirmed that it has received an amount of Rs. 04,90,00,000/- in its accounts. However, it has stated that it is not the full amount, which was required to be paid by the Corporate Debtor.

10. That the scanned copy of the relevant averments made by the Financial Creditor are reproduced below :

3. Without prejudice to the objections to the captioned application which are detailed herein below, it is submitted that during the pendency of the captioned petition, the Corporate Debtor appears to

have allegedly and unilaterally transferred a sum of money of INR 4,90,00,000/- (INR Four Crores Ninety Lakhs Only) ,which, in any event, does not correspond to the actual amount that is due and payable as on date, that too without intimating the Financial Creditor. Therefore, there is no settlement as alleged, and the Corporate Debtor is merely seeking to mislead this Hon'ble Tribunal. Furthermore, notably, as on 24.05.2022, along with the Principal amount of INR 1,40,00,000/- (Rupees One Crore Forty Lakhs Only) the contractual interest component is also continuing and as on 24.05.2022, the same amounts to 4,15,83,033 (INR Four Crores Fifteen Lakhs Eighty-Three Thousand and Thirty-Three Only)/-. The total amount of default as on 24.05.2022, for the purposes of the Code amounts to INR 5,55,83,033/- (Rupees Five Crore Fifty-Five Lakh Eighty-Three Thousand Thirty-Three Only). Apart from contractual interest, Corporate Debtor is also liable to pay, additional interest @ 2% per month, by way of Liquidated Damages i.e., INR 5,22,00,000/- (INR Five Crores Twenty-Two Lakhs only) (as per clause 4 of the Loan Agreement dated 28.09.2015). The Financial Creditor has received a lump sum payment of only INR 4,90,00,000/- (INR Four Crores Ninety Lakhs Only), from the Corporate Debtor, in its bank account on 16.05.2022. Out of the same:

(a) An amount of INR 4,15,83,033 (INR Four Crores Fifteen Lakhs Eighty-Three Thousand and Thirty-Three Only)/- is being appropriated towards outstanding Interest; and

(b) Remaining amount of INR 74,16,967/- (INR Seventy-Four Lakhs Sixteen Thousand Nine Hundred and Sixty-Seven Only) is being appropriated against principal Loan amount of INR 1,40,00,000/, leaving INR 65,83,033/- (INR Sixty-Five Lakhs Eighty-Three

Thousand and Thirty-Three Only) principal Loan amount still outstanding.

A true copy of the computation table showing the financial debt that is due towards the Financial Creditor as on 24.05.2022 is annexed herewith as **Annexure- A**.

11. That the Financial Creditor has also annexed the Calculation sheet stating that still there is a balance amount of Rs. 65,83,033/- outstanding towards the principal dues. The scanned copy of the Calculation Sheet filed by the Financial Creditor is reproduced below :

ANNEXURE- A

Due Amount Calculation (As of 24 May 2022)		
Disbursal Date	29-Sep-15	
Loan Amount - A	**1,40,00,000**	INR
Normal Interest Rate as per clause 3 of Loan Agreement	21.0%	p.a. compounded monthly
Additional Interest as per clause 5 of Loan Agreement	2.0%	p.a.
	Date	Amount
Principal Investment	29-Sep-15	(1,40,00,000)
Interest Payment	12-Oct-15	14,499
TDS	30-Sep-15	1,611
TDS	22-Jan-16	74,104
TDS	31-Mar-16	73,098
TDS	23-Jun-16	73,098
TDS	30-Sep-16	74,104
TDS	31-Dec-16	74,104
TDS	20-Mar-17	72,693
Claim Date	24-May-22	5,43,80,000
Annual IRR		23.13%
Target Annual IRR (21% p.a. compounded monthly)	23.14%	
Dues Payable as per Clause 3 of the Loan Agreement (INR) - B	**4,03,80,000**	INR
	Date	Amount
Principal Investment	29-Sep-15	(1,40,00,000)
Interest	12-Oct-15	14,499
TDS	30-Sep-15	1,611
TDS	22-Jan-16	74,104
TDS	31-Mar-16	73,098
TDS	23-Jun-16	73,098
TDS	30-Sep-16	74,104
TDS	31-Dec-16	74,104
TDS	20-Mar-17	72,693
Claim Date	24-May-22	1,54,28,567
Annual IRR		2.0%
Target Annual IRR (2% p.a.)	2.0%	

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Dues Payable as per Clause 5 of the Loan Agreement (INR) - C	**14,28,567**	INR
Dues as on 24 May 2022		
Principal - A	1,40,00,000	INR
Interest - B + C	4,18,08,567	INR
Interest @ 21% per month on Part Payment of INR 4.90 Crores received on 16 May 2022	(2,25,534)	INR
Total Dues as of 24 May 2022 (INR) (A+B+C)	5,55,83,033	INR
Lump Sum Amount received by DGH	4,90,00,000	INR
Adjusted Towards Interest due as per Loan Agreement	4,15,83,033	INR
Adjusted Towards Principal	74,16,967	INR
Interest claimed in NCLT Petition (as of 30 Sep 2021)	3,48,20,618	INR
Interest accrued after filing NCLT Petition	69,87,949	INR
Balance Principal Outstanding - As of 24 May 2022	**65,83,033**	INR

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12. That during the course of hearing on 26.05.2022 in IA-2283 of 2022, Ld. Sr. Counsel appearing for the Financial Creditor further submitted that there is still the principal amount due and payable by the Corporate Debtor and hence, it insisted on initiation of the CIRP.

13. It was further stated by the Ld. Sr. Counsel appearing for the Financial Creditor that there was no settlement between the parties and the aforesaid amount has been deposited by the Corporate Debtor, without any prior consent of the Financial Creditor.

14. Per Contra, Ld. Counsel for the Corporate Debtor stated that the entire amount claimed in the Part IV of the Application has been discharged including the principal amount. He further argued that the said amount has not been returned by the Applicant at any stage. He further placed reliance on the Judgement of this Bench passed in the matter of **Saraf Chits Private Limited Vs. KAD Housing Private Limited in (IB)-255(ND)/2021, dated 23.05.2022** stating that in the light of discharge of the entire Principal amount claimed in part IV of the Application, the CIR process cannot be initiated against the corporate debtor.

15. That after hearing submissions of both the parties, this Bench observes that the Corporate Debtor had transferred an amount of Rs.04,90,00,000/- in the Financial Creditor's Account and the said fact is duly admitted by the Financial Creditor. Although it is contended by the Financial Creditor that the Corporate Debtor had deposited the money without its prior permission. However, since the amount has not been returned by the Financial Creditor, we shall consider this issue while adjudicating the debt and default.

16. That from the pleadings, it is observed that pursuant to the deposit of Rs. 04,90,00,000/- by the Corporate Debtor in the accounts of Financial Creditor, both the parties are adjusting the said amount in their own manner. That the Financial Creditor has adjusted the amount of Rs.04,90,00,000/- in the interest portion calculated till 24.05.2022 and has reached to a conclusion that Rs.65,83,033/- has been outstanding

as the Principal Amount. Per Contra, the Corporate Debtor has stated that the payment of Rs 04,90,00,000/- has resulted in complete discharge of the full Principal amount of Rs.01,40,00,000/- as well as the interest as claimed by the applicant in the Part IV of its Application.

17. Here, for the sake of convenience, we again refer to the relevant extracts of Part IV of the Application depicting the amount claimed, the scanned copy of which is reproduced below :

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE	Principal Amount Due	INR 1,40,00,000/- (Rupees One Crore Forty Lacs Only)
		Interest (calculated at the contractual rate of 21% per annum with monthly rests as per clause 3 the Loan Agreement dated 28.09.2015)	INR 3,35,44,809/- (INR Three Crores Thirty Five Lakhs Forty Four Thousand Eight Hundred and Nine Only)
	DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Additional Interest (calculated at the contractual rate of 2% per annum as per clause 5 the Loan Agreement dated 28.09.2015)	INR 12,75,809/- (INR Twelve Lakhs Seventy Five Thousand Eight Hundred and Nine Only)
		Total Due (as on 30.09.2021)	**INR 4,88,20,618/-** (INR Four Crores Eighty Eight Lakhs Twenty Thousand Six Hundred and Eighteen Only)

From the perusal of the aforesaid relevant extracts of Part IV of the Application, it is observed that the Financial Creditor had claimed the total dues Rs.04,88,20,618/- as on 30.09.2021, out of which Rs.01,40,00,000/- is the principal amount and the rest is interest portion calculated as on 30.09.2021.

18. From the above, it can be inferred that the Corporate Debt has computed its debt as on 30.09.2021, which became due and payable on 28.10.2015, as per the date of default mentioned in Part IV of the Application.

19. That the aforesaid facts depict that the Applicant has also claimed interest portion falling within the Section 10A period, i.e the suspended period of IBC commencing from 25.03.2020 to 24.03.2021, for which no CIRP can ever be initiated.

20. That before deposit of Rs.04,90,00,000/- by the Corporate Debtor, the said fact was not relevant, since the Principal Outstanding claimed in the Part IV of the Application was above Rs 1 Crore, which was due and payable much prior to the Suspension period of IBC as stipulated under Section 10A of IBC, 2016.

21. It is observed that the Applicant had claimed the unpaid financial debt of Rs.04,88,20,618/- as the total outstanding amount in Part IV of the Application. Even if we ignore, for a moment, that the Financial Creditor had claimed interest for the 10A period, then also it is amply clear that the Financial Creditor had received an amount of Rs.04,90,00,000/-, which is more than the total amount (Principal + Interest) of Rs.04,88,20,618/- claimed in Part IV of the Application. Therefore, in our considered view, the Applicant cannot claim any amount beyond what is stated/claimed in the Part IV of its Application,

since it is a trite law that the IBC proceedings are not recovery proceedings.

22. Further, it is observed that the Financial Creditor has erroneously calculated the unpaid Principal outstanding amount of Rs.65,83,033/- after adjusting the amount payable during the 10A period and the interest for the period beyond filing of the present Application under Section 7 of IBC, 2016. In our considered view, such a calculation cannot be accepted for arriving at the unpaid debt for triggering the CIR process of the Corporate Debtor.

23. **In view of the above discussion, the Application is Dismissed and the IA-2283 of 2022 is disposed of.**

24. However, we take note of the conduct of the Corporate Debtor that not only it had made all possible efforts to delay the matter, but also it had deposited the amount behind the back of the Financial Creditor and without its consent and that too, when the order was reserved. Therefore, we are inclined to impose a cost of Rs.1,00,000/- (One Lakh) only on the Corporate Debtor, which shall be deposited in the Prime Minister's Relief Fund within 15 days, receipt of which shall be filed before this Bench before 20.06.2022.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)