



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

RCP (IB) 01 (PB)/2023
OLD C.P. (IB) NO. 1077/PB/2020

(A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.)

IN THE MATTER OF:

DALMIA FAMILY OFFICE TRUST

Registered Office:
Office No. 04, Scindia House,
Connaught Place, New Delhi – 110001

...APPLICANT/FINANCIAL CREDITOR

VERSUS

ANAND DIVINE DEVELOPERS PRIVATE LIMITED

(CIN: U70101DL2011PTC218192)
Registered Office:
711/92, Deepali, Nehru Place,
New Delhi 110019

...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 : Adv. Radhika Tandon, Adv Wamika Trehan,
Adv Varun Chopra
For the Respondent : Adv. Krish Kalra



ORDER

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by DALMIA FAMILY OFFICE TRUST (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Inder Preet Singh, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against ANAND DIVINE DEVELOPERS PRIVATE LIMITED (“Corporate Debtor”). The Financial Creditor was incorporated on 28.05.1999, having Identification No. AAATM5438Q.
2. The Corporate Debtor was incorporated on 27.05.2011, having CIN: U70101DL2011PTC218192 under the Companies Act, 1956. Its registered office is 711/92, Deepali, Nehru Place, New Delhi 110019. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is INR 1,00,000 (Rupee One Lakh Only). The Paid-Up Capital of the Corporate Debtor is INR 1,00,000 (Rupee One Lakh Only).
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of INR 26,46,07,936/- (Rupees Twenty Six Crores Forty Six Lakhs Seven Thousand Nine Hundred and Thirty Six Only) on 31.10.2020 (date of default).
4. **Submissions of Learned Counsel appearing for the Applicant are as under:**
 - 4.1. The Corporate Debtor is inter alia engaged in the business of construction and development of residential group housing projects, inter alia, by the name of “Triumph” over a plot of land admeasuring 14.093 Acres situated in Village Dhanwapur, falling in Sector 104, Gurugram, Haryana (“said Project”).
 - 4.2. The Corporate Debtor requested the Applicant for a secured loan to the tune of INR 15,00,00,000/- (Indian Rupees Fifteen Crores Only) (“Loan



Amount”). The Corporate Debtor assured the Applicant/ Financial Creditor that the Loan Amount will be refunded within a period of forty two (42) months from the date of disbursement, along with interest @ 20% per annum on the Loan Amount payable on a 3 quarterly basis. In view of the aforesaid, the Applicant agreed to disburse a sum amounting to INR 15,00,00,000/- (Indian Rupees Fifteen Crores Only) as a secured loan in the nature of a Financial Debt as defined under the Insolvency and Bankruptcy Code, 2016 (“Code”) to the Corporate Debtor in terms of the Loan Agreement dated 11 June 2015 (“Loan Agreement”).

- 4.3. On the completion of the period of 42 months, the Corporate Debtor admittedly failed to remit the amounts due and, through its Promoter/Director, Mr Getamber Anand, approached the Financial Creditor to extend the date of repayment of the Loan Amount. Accordingly, by entering into a Supplemental Agreement dated 18 December 2018 to the aforesaid Loan Agreement, the date of repayment of the Loan Amount by the Corporate Debtor to the Financial Creditor was extended as per the requests of the Corporate Debtor, and the loan finally became due and payable as on 30 June 2019. The Corporate Debtor, despite having been granted an extension by way of the aforesaid Supplemental Agreement, failed to maintain the financial discipline and defaulted in repayment of the Financial Debt in the terms of the Loan Agreement dated 11 June 2015 as well as the Supplemental Agreement thereto, dated 18 December 2018.
- 4.4. Financial Creditor despite several dialogues with the Corporate Debtor; however, the Corporate Debtor failed to propose a concrete and satisfactory offer either by making the outstanding payment to the Financial Creditor or by suitably securing such payment to the Financial Creditor. Therefore, no settlement could be arrived at. Accordingly, the Financial Creditor was constrained to issue the Demand Notice dated 04 November 2020, directing the Corporate Debtor to make the requisite



repayment along with applicable interest within 3 days from the receipt of the said Demand Notice. Pertinently, the Corporate Debtor failed to remit any amounts thereto.

- 4.5. The unpaid financial debt of INR 19,25,93,899 (Indian Rupees Nineteen Crores Twenty Five Lakhs Ninety Three Thousand Eight Hundred and Ninety Nine Only) remains due and payable since 30 June 2019 along with interest calculated at 2.0% per month for the period of default. Thus, the total amount of debt as on 31 October 2020, amounts to INR 26,46,07,936/- (Indian Rupees Twenty Six Crores Forty Six Lakhs Seven Thousand Nine Hundred and Thirty Six Only) (inclusive of interest), the repayment of which, the Corporate Debtor most recently defaulted on 08 November 2020.
- 4.6. The Financial creditor asserts that no settlement agreement exists, and the Corporate Debtor has failed to bring on record any material to show that any settlement agreement had been entered into between the Financial Creditor and the Corporate Debtor. Clauses 16 and 17 of the Loan Agreement expressly provided that no change or amendment of the Loan Agreement would be effective or binding unless set forth in writing and signed by authorized representatives of both parties. Therefore, in the absence of a duly executed agreement, the terms of the Loan Agreement cannot be considered novated as contended by the Corporate Debtor.
- 4.7. The Arbitral Tribunal in its award dated 15.12.2024, passed in an arbitration contested between ATS Infrastructure Private Limited and M/s Rasbehari Traders, held that no definite and concluded settlement between the ATS Group and the Dalmia Group.
- 4.8. The Corporate Debtor did not discharge its obligations and has failed to repay the Loan Amount, along with interest accrued thereon, within the



stipulated period. Therefore, there is a clear instance of default on the part of the Corporate Debtor as defined in Section 2(12) of the Code.

4.9. The default occurred on 30 June 2019, much prior to the COVID-19 pandemic; Secondly, none of the Agreements between the parties even contain a Force Majeure Clause; Thirdly, the Corporate Debtor never raised this plea of Force Majeure/ Frustration due to COVID-19 in any communications, as even in its emails dated 27 October 2020 and 07 November 2020.

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

5.1. In reply to the present Section 7 Petition filed by the Financial Creditor, the Corporate Debtor has filed an affidavit dated 24.08.2024 wherein it is submitted by the Respondent that the present application is devoid of any merit and is not maintainable as it is not a Financial Creditor within the meaning of the Insolvency and Bankruptcy Code 2016.

5.2. The Respondent submitted that both Parties admit that there exist disputes between the Parties inter alia under the Loan Agreement. Further, the Hon'ble High Court referred all disputes between the Parties, including the disputes under the Loan Agreement dated 11.06.2015, under which the Applicant is claiming the sums to be due by the Respondent. The Hon'ble High Court vide order dated 08.01.2021 recognised that there are disputes between the Parties under the Loan Agreement dated 11.06.2015 which need resolution by arbitration.

5.3. The Respondent submitted that the debts are unascertained, conditional, and subject to various terms under the agreements. Furthermore, a global settlement was reached between the Dalmia and ATS groups on 17.08.2020, which novated earlier agreements and obligations, thereby extinguishing any dues claimed under the previous loan agreements.



5.4. The Applicant is not and cannot be said to be a Financial Creditor. Section 5(7) of the Code defines a 'financial creditor' as "*any person to whom a financial debt is owed (...)*". Section 5(8) of the Code. The Respondent has not committed any default, as the Loan Agreement in any event ceased to exist after the parties entered into a settlement in August 2020, which novated all previous agreements and understandings between the Parties.

5.5. The ATS Group and the Dalmia Group in regard to the payments to be made in relation to the aforesaid transaction. Owing to the foregoing, the two Groups entered into settlement negotiations in April 2020. It was agreed between the two Groups that ATS Group would allot certain units/apartments as security to the Dalmia Group. In this regard, vide an email dated 18.03.2020, the Dalmia Group stated that these units/apartments will be allotted as per RERA complied formats at agreed prices. 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 "*in case 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*".

5.6. The ATS Group also issued post-dated cheques ('PDC') amounting to Rs. 150 crores (out of which Rs. 75 crores 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) and the manner of making the said payment was that the ATS group would these allotted units worth Rs. 75 crores and gradually payoff Rs. 75 crores from these allotted units and Dalmia group was to return back the PDCs provided for security by the ATS Group. By this way, all units amounting to 75 crores



were to be sold off, and the entire sale proceeds were paid back to Dalmia Group. In this manner, the entire Rs. 150 Crores was to be paid off, and the same would have accordingly settled all the dues of the Dalmia Group, which were not payable by the ATS Group till 31.08.2021 (at that stage and subject to further extensions on account of continuation of force majeure events).

- 5.7. Pursuant to the revised discussions and agreement between ATS Group and the Dalmia Group, a revised security of approx. 75 crores of value in the form of apartments in various projects of A TS Group was agreed upon, and an agreement to sell of the said apartments was executed between ATS and Dalmia Group and handed over by ATS Group to Dalmia Group on 17.08.2020 and 20.08.2020. It is for the same reason that no other alleged security had been sought for by the Dalmia Group entities as pursuant to the revised understanding the only security that was to remain with the Dalmia Group in respect of all underlying agreements with the Group (and all the entities as also stated above) was apartments in various ATS Projects equivalent to value of Rs. 75 Crores approx., which was admittedly furnished on 17.08.2020 and 20.08.2020.
- 5.8. The aforesaid post-dated cheques were issued to Dalmia Group as part of the global settlement between the two groups, as per which the Dalmia Group agreed to accept post-dated cheques dated 31.08.2021 and security by way of allocation of several units/apartments in different ATS projects for the amounts that were alleged to be due from ATS Group. It is towards this holistic settlement that the ATS Group issued the aforesaid PDCs of Rs. 150 crores. It is noteworthy that no demand and/ or demur was raised by the Dalmia Group in regard to any other agreements, and no protest was raised in regard to the said revised date of 31.08.2021.



- 5.9. As such, all purported obligations of the ATS Group companies, including the Respondent under the previous agreements stood novated by this settlement of 17.08.2020. Additionally, the earlier securities provided under the original/principal agreements also stood discharged and replaced with the aforesaid units/apartments allotted to the Dalmia Group in the month of August 2020.
- 5.10. The foregoing was expressly informed to the Applicant on 13.10.2020. The Respondent also stated on 13.10.2020 that there was no liability on the ATS Group to pay any amount at least till 31.08.2021 (which now stands extended and is subject to further extensions owing to continuation of force majeure events/ frustration etc.). It also invoked arbitration against the Respondent.
- 5.11. The Applicant had sought huge amounts in lieu of interest vide one-side and unilateral and coerced Supplemental Agreements. It is submitted that this rate of interest has sought to be captured in the Loan Agreement and the amendment! supplemental agreement thereafter is clearly oppressive and exorbitant and cannot be countenanced. In this regard, any such agreements seeking to impose these 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.
- 5.12. The present Application is misconceived and ought not to be allowed to be used as a pressure tactic to extort money from the Respondent. Accordingly, the present Application ought to be rejected.

Analysis and Findings

6. 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.

7. 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.
8. In the present petition, the Financial Creditor has alleged that the Corporate Debtor availed a loan of ₹15,00,00,000/- pursuant to a Loan Agreement dated 11.06.2015. As per Clause 2.1 of the said agreement, the loan facility was secured through the allotment of 19 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 11.06.2015 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.
9. 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;

10. 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.
11. 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 11.06.2015 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.

12. 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.
13. 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 While determining Issue (a), We are of the view that the status 2 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."

14. 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.
15. 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.



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 the 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.

17. 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. 1077/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 **Anand Divine Developers 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)