2026 LiveLaw (SC) 192

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KUMAR; J., K. VINOD CHANDRAN; J.
CIVIL APPEAL NO. 7424 OF 2025; February 24, 2026
CATALYST TRUSTEESHIP LTD. *versus* ECSTASY REALTY PVT. LTD.

Insolvency and Bankruptcy Code, 2016 — Section 7 — Initiation of Corporate Insolvency Resolution Process (CIRP) — Admissibility of Application — Existence of Debt and Default — The Supreme Court set aside the concurrent findings of the NCLT and NCLAT which had refused to initiate CIRP against the Corporate Debtor - held that for admission of an application under Section 7, the adjudicating authority is only required to examine and satisfy itself that a financial debt exists and there is a default in relation thereto - The concept of a "pre-existing dispute," relevant for operational creditors under Section 9, has no bearing on applications filed by financial creditors under Section 7. *[Para 12]*

Insolvency and Bankruptcy Code, 2016 — Debenture Trust Deed (DTD) — Modification of Terms — Procedure for Restructuring — Supreme Court observed that the Corporate Debtor's claim of an existing moratorium was based on unilateral e-mail exchanges with only one debenture holder (ECLF) – Held that such negotiations could not bind other debenture holders or the Debenture Trustee in the absence of express authorization - Any modification, amendment, or waiver of the DTD terms must strictly adhere to the procedure prescribed within the deed itself—specifically requiring a "Special Resolution" passed by a three-fourths majority of debenture holders and a written document signed by all parties. *[Paras 13-15, 18]*

Civil Procedure — Concurrent Findings — Scope of Interference by Supreme Court — While the Supreme Court ordinarily does not reappreciate facts where the NCLT and NCLAT have recorded concurrent findings, an exception exists when the perversity of such findings is clearly established – Noted that the NCLT and NCLAT erred by ignoring binding contractual terms of the DTD based on "surmises, conjectures and assumptions"- Appeal allowed. *[Relied on Innoventive Industries Limited vs. ICICI Bank and another (2018) 1 SCC 407; Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund and others (2021) 6 SCC 436; Para 18-22]*

For Appellant(s): Mr. Aryama Sundaram, Sr. Adv. Ms. Akanksha Mehra, AOR Mr. Himanshu Tyagi, Adv. Mr. Lakshay Saini, Adv. Ms. Rohini Musa, Adv.

For Respondent(s): Mr. Ashwani Kumar, Sr. Adv. Mr. Amit Sharma, AOR Mr. Virag Gupta, Adv. Mr. Dipesh Sinha, Adv. Ms. Pallavi Barua, Adv. Ms. Aparna Singh, Adv.

J U D G M E N T

SANJAY KUMAR, J

1. Refusal to initiate corporate insolvency resolution process under Section 7 of the Insolvency and Bankruptcy Code, 2016[1], against Ecstasy Realty Pvt. Ltd., the respondent, is in issue. CP (IB) 922/MB/C-I/2022 filed in that regard by Catalyst Trusteeship Ltd. (hereinafter, referred to as 'the debenture trustee') was dismissed by the National Company Law Tribunal, Mumbai Bench-I ('NCLT'), *vide* order dated 03.02.2023. The same stood confirmed in appeal by the National Company Law Appellate Tribunal,

[1]For short, 'the Code'

Principal Bench, New Delhi ('NCLAT'), *vide* judgment dated 16.04.2025 passed in the debenture trustee's Company Appeal (AT) (Insolvency) No. 467 of 2023. Aggrieved thereby, the debenture trustee is in appeal before this Court under Section 62 of the Code.

2. The respondent company proposed to erect a residential-cum-retail project in Mumbai and to meet its requirement of funds in that regard, it proposed to issue 850 redeemable non-convertible debentures of the value of ₹850 crore in two series, viz., Series A and Series B. The resolution in this regard was passed by the Board of Directors of the respondent company on 20.03.2018. On the same day, the debenture trustee was appointed on behalf of the debenture holders. A Debenture Trust Deed (DTD) was executed between the debenture trustee, the respondent company and Shobhit J. Rajan, the mortgage provider, on 27.03.2018. Series A debentures to the tune of ₹600 crore were fully subscribed by the debenture holders and the entire amount was disbursed to the respondent company on 28/29.03.2018. ECL Finance Limited (ECLF), Edelweiss Finvest Pvt. Ltd., Barbelo Estates LLP, an entity of the Edelweiss group, and other directors/associates held these debentures. Series B debentures, amounting to ₹250 crore, never came to be issued.

3. While so, on 16.03.2022, the respondent company addressed an e-mail to ECLF proposing the restructuring of the loan repayment under the debentures, requesting for principal and interest moratorium of 18 months in respect of the balance debentures apart from other relaxations, including release of the Bandra property, mortgaged by its sister concern, Variegate Real Estate Pvt. Ltd., and release of ₹25 crore, so as to continue with the documentation process for the Sapphire (Blackrock) transaction. On 23.03.2022, ECLF informed the respondent company that, subject to completion of the Sapphire transaction by 25.03.2022, it was agreeable to providing restructuring along with principal and interest moratorium of 18 months for the balance debentures and for release of the Bandra property from the security package. On 29.03.2022, by way of an e-mail, the respondent company assured ECLF about completion of the Sapphire transaction and sought confirmation of the restructuring proposal. It also stated that it was awaiting a NOC from the debenture trustee and that the same was required urgently. On 30.03.2022, ECLF replied by e-mail, informing the respondent company that it was agreeable to provide extension but would need to run the entire process internally based on the overall resolution plan and the final restructuring approval would be provided around the month of June, 2022. Reference was also made to issuance of a NOC by the debenture trustee and the respondent company was informed that if it had any issues with the date of the said certificate, it could reach out to the debenture trustee, which would do the needful.

4. In this regard, we may note that the respondent company addressed letter dated 23.03.2022 to the debenture trustee seeking its NOC to avail funding from India Credit Investment Fund to the tune of ₹152 crore, through non-convertible debentures, against a charge on 18 unsold flats in Phase I of the project along with the receivables of sold flats, aggregating to ₹4.42 crore, and requested for issuance of a NOC and for release of the charge on the 18 unsold flats and receivables of ₹4.42 crore at the earliest. Notably, there was no mention of the restructuring proposal under discussion between the respondent company and ECLF in this letter. In turn, the debenture trustee addressed letter dated 28.03.2022 to the respondent company, wherein it stated that it had no objection to the issuance of non-convertible debentures of ₹152 crore by the respondent company and creation of a charge over the 18 unsold flats and the receivables of ₹4.42 crore. It was further stated that upon receipt of ₹152 crore from the respondent company in the escrow account, the debenture trustee would immediately release the charge over

the said property. Significantly, there was no mention in this letter also of the restructuring proposal or of the debenture trustee even being aware of it. On the other hand, on 28.04.2022, the debenture trustee addressed a demand letter to the respondent company, stating that ₹65,49,72,125/- was overdue on the debentures as on 15.04.2022 and asking for payment.

5. It appears that it was only thereafter that the debenture trustee was brought into the picture apropos the restructuring proposal. Pertinently, none of the earlier e-mails exchanged between ECLF and the respondent company were marked to or shared with the debenture trustee. By its letter dated 29.04.2022 addressed to the respondent company, the debenture trustee stated that, with reference to the respondent company's e-mail dated 29.03.2022 sent to one of the majority debenture holders in relation to restructuring of the debentures and their response e-mail dated 30.03.2022, the said e-mails had been forwarded to it for its record and necessary action and, acting as the trustee for the benefit of the debenture holders, the debenture trustee requested the respondent company to provide the information/data and documents enumerated therein so that the same could be placed before the debenture holders for their internal processing and approval. The debenture trustee further stated that, till the restructuring was formally approved by the debenture holders, any payment shortfall would be an event of default. The debenture trustee followed up with letter dated 17.05.2022, referring to its earlier letter dated 28.04.2022 and calling upon the respondent company to pay the overdue amount of ₹65,49,72,125/- at the earliest.

6. By its reply dated 19.05.2022, the respondent company stated that it had provided all data to 'Edelweiss' and advised the debenture trustee to collect the data from it. Having stated so, it offered to send the documents, without prejudice. It referred to its correspondence with 'Edelweiss' and claimed that no payment was due from it till September, 2023. The debenture trustee thereupon informed the debenture holders on 06/08.06.2022 about the respondent company's restructuring proposal and sought their approval. Thereafter, on 10.06.2022, the debenture trustee informed the respondent company that the restructuring proposal had been rejected by 94.84% of the debenture holders.

7. On 21.07.2022, the debenture trustee issued a loan recall notice, requiring the respondent company to pay the entire dues with interest thereon, amounting to ₹1203,55,50,671.11. The respondent company, in turn, issued a reply though its lawyers on 29.06.2022, stating that it was filing a commercial suit along with an interim application. The debenture trustee filed an application under Section 7 of the Code on 25.08.2022 seeking initiation of insolvency process against the respondent company. The said application came to be dismissed by the NCLT on 03.02.2023. The same stood confirmed by the NCLAT on 16.04.2025, leading to the filing of the present appeal.

8. Perusal of the order passed by the NCLT reflects that the NCLT proceeded on the premise that a moratorium was already in place pursuant to the negotiations between the respondent company and one of the debenture holders. Observing that insolvency proceedings were not in the nature of recovery proceedings, the NCLT dismissed the company petition. In appeal before the NCLAT, it was specifically contended on behalf of the debenture trustee that, in terms of clause 4.4 of the DTD, the respondent company was required to maintain an interest payment reserve account in escrow with the bank and was liable to pay interest to the debenture holders, compounded quarterly. As the respondent company had failed to do so, the debenture trustee issued recall notice dated 21.07.2022 to the respondent company, demanding repayment of the principal amount

along with interest, amounting to ₹1,203.55 crore. It was pointed out that the understanding of the NCLT that a moratorium was in place was erroneous as the argument in that regard was based on the discussions held by the respondent company with only one of the debenture holders and there was no modification of the DTD in accordance with the procedure prescribed therein. It was pointed out that the said debenture holder, ECLF, could not have acted on behalf of the other debenture holders.

9. However, the NCLAT paced reliance on the letter dated 28.03.2022 addressed by the debenture trustee to the respondent company and held against it, by inferring therefrom that it was aware of the restructuring proposal. However, we do not find it to be so, as already indicated hereinabove. The debenture trustee had only stated therein that it had no objection to the respondent company availing further funding by issuing non-convertible debentures and assured that, upon receipt of ₹152 crore from the respondent company in the escrow account, it would immediately release the charge over 18 unsold flats and the receivables of ₹4.42 crore. This letter was with regard to the release of that property to enable the respondent company to avail further funding and had nothing to do with its restructuring proposal. Absence of any mention in this letter of the restructuring proposal put forth by the respondent company to ECLF speaks for itself. The letter was in aid of the respondent company keeping itself safe from being branded a non-performing asset, as it was already in default, and nothing more.

10. As regards the release of a sum of ₹9.33 crore to the respondent company by the debenture trustee, which was another factor that had weighed with the NCLT, the specific contention of the debenture trustee was that this amount had been released towards project expenses upon instructions from the debenture holders, following the request received from the respondent company. The debenture trustee, therefore, asserted that this was not a fresh disbursal and could not be looked upon as integral to the so-called restructuring proposal. We may note that it was the specific case of the debenture trustee that ₹5 crore was disbursed from the Sapphire transaction escrow account while ₹4.33 crore was released from the DTD escrow, perhaps towards the receivables for the sold flats. Both these transactions were clearly independent and had no nexus with the restructuring proposal, which contemplated the release of ₹25 crore and not a lesser sum.

11. In effect, the findings of the NCLAT were that the debenture trustee was aware of the restructuring of the loan by the respondent company and ECLF; the debenture trustee and the debenture holders, by their conduct, agreed to implement such restructuring, whereby an 18 months moratorium became operative and subsisted till September, 2023, thereby negating the default claim of the debenture trustee; and lastly, the debenture trustee and the debenture holders deliberately engineered a default so as to coerce the respondent company.

12. In this regard, we may note the settled legal position that for admission of an application under Section 7 of the Code, the adjudicating authority is only required to examine and satisfy itself that a financial debt exists and there is default in relation thereto. In this context, the observations of this Court in ***Innoventive Industries Limited vs. ICICI Bank and another***[2] are of relevance and are extracted hereunder:

'30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless

[2](2018) 1 SCC 407

interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.'

Thus, the concept of a pre-existing dispute, which may be a stumbling block for admission of an application filed under Section 9 of the Code by an operational creditor, has no bearing on an application filed by a financial creditor under Section 7 of the Code.

13. Significantly, the record reflects that correspondence by the respondent company with regard to restructuring of the loan facility under the debentures was with one Saahil Dugar, who was associated with Edelweiss Alternative Asset Advisors Limited, an Edelweiss group company. The case of the respondent company, as is evident from its counter affidavit filed before us, was that he was acting on behalf of the Edelweiss group/ECLF. No authorization in that regard was produced. Thus, the restructuring proposal was addressed by the respondent company to only one debenture holder, viz., ECLF. In the absence of express authorization of Saahil Dugar to act on behalf of the other debenture holders, which include a company, an LLP and individuals, his actions could not bind them. Though the respondent company claims that ECLF acted for the Edelweiss group, the fact remains that the other group company and the LLP, legal entities in their own right, held debentures separately. Therefore, the mere assertion that ECLF acted on behalf of the others has no merit in the absence of express authorization being given by them to do so. The bald statement by the respondent company that the subsidiaries had no independent volition of their own, therefore, cannot be accepted. Thus, they can neither be alleged to have committed a *volte face* nor can they be said to have approbated and reprobated by their conduct. Further, the other debenture holders and the debenture trustee were never taken into confidence at that stage.

14. In this regard, the terms of the DTD assume significance. Clause 33 of the DTD is titled 'Modifications to these presents'. As per clause 33.1, the terms of the DTD could not be amended without the prior written consent of the debenture trustee and the debenture holders, through 'approved instructions'. The phrase 'approved instructions' is defined in clause 1.1 of the DTD to mean the instructions of the debenture holders to the debenture trustee, which have been approved pursuant to the provisions set out in Schedule 2, titled 'Provisions for the Meetings of the Debenture Holders'. Clause 22 in Schedule 2 provides that a meeting of the debenture holders shall, *inter alia*, have the power, amongst others, to sanction any compromise or arrangement proposed to be made between the respondent company and the debenture holders. Clause 23 therein specifically provides that the power set out in clause 22 shall be exercisable by a resolution passed at a meeting of the debenture holders duly convened and held in accordance with the provisions therein contained and carried by a majority of not less than three-fourths of the persons voting thereat upon a show of hands or if a poll is demanded by a majority, representing not less than three-fourths in value of the votes cast, on such poll and such a resolution is called a 'Special Resolution'.

15. Clause 33.2 of the DTD states that the debenture trustee shall, before taking any action on behalf of the debenture holders or providing any consent on their behalf under any debenture document, obtain the consent of the debenture holders as per the terms of the DTD. Clause 33.3 provides that upon obtaining such approval, the debenture trustee and the respondent company shall give effect to the same by executing all necessary deed(s). Clause 33.4 is of crucial importance and states that no amendment, modification or termination of any provision of the DTD or debenture documents shall be effective unless the same is in writing and signed by or on behalf of each of the parties. Clause 37

of the DTD is titled 'Waiver'. Clause 37.1 posits that there can be no implied waiver or impairment while clause 37.2, titled 'Express Waiver', states that a waiver or consent granted by the debenture trustee under the DTD would be effective only if given in writing.

16. Notably, the respondent company filed Commercial Suit No. 200 of 2022, as stated in its lawyer's reply, before the Bombay High Court seeking a declaration that the DTD stood amended by virtue of the e-mails dated 16.03.2022 and 23.03.2022 and for consequential reliefs. The defendants in the said suit were the debenture trustee, ECLF, and other members of the Edelweiss group. However, by order dated 13.09.2022, a learned Judge of the Bombay High Court refused to grant an interim injunction restraining the defendants from initiating any action under the DTD and from demanding any payments thereunder. The learned Judge held that, in the absence of modification of the terms of the DTD in accordance with the method prescribed therein, the respondent company could not be said to have made out a *prima facie* case for restraining the defendants in the suit from exercising the rights which flowed from the DTD. The learned Judge took note of the fact that there was no compliance with clause 33 of the DTD, which required prior written consent of the debenture holders. Unfortunately, this order by the competent civil Court, which is stated to have attained finality, was casually brushed aside by the NCLT and the NCLAT.

17. We may also note that clause 28 of the DTD deals with 'release of secured assets' and clause 28.3 therein provides that, at all times until the final settlement date, the respondent company shall be entitled to release of the security interest created over the 'additional property', mortgaged by Variegate Real Estate Pvt. Ltd., upon payment of ₹50 crore by the respondent company towards redemption of the debentures. The 'additional property' referred to in this clause is defined in clause 1.1 as the parcel of land of 15,138 square feet situated on Turner Road, Bandra (W), Mumbai, to be mortgaged by Variegate Real Estate Pvt. Ltd. The final settlement date, as defined, means the day on which the debentures are redeemed to the satisfaction of the debenture trustee. The release of this property assumes importance as the same was construed by the NCLT and the NCLAT to be a factor weighing in favour of the respondent company's claim that its restructuring proposal had been accepted and acted upon. However, the letter dated 29.03.2022 addressed by the debenture trustee to Variegate Real Estate Pvt. Ltd., the respondent company and Shobhit J. Rajan in relation to release of the Bandra property from the mortgage stands on a different footing as it was relatable to clause 28.3 of the DTD and not the respondent company's restructuring proposal. The release of this property seems to have taken place upon the respondent company transferring monies towards redemption of the debentures after receiving the additional funding of ₹152 crore.

18. In terms of the law laid down by this Court in ***Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund and others***[3], a corporate debtor is entitled to establish that the financial debt is not due and no default had occurred in that regard to defeat a financial creditor's application for corporate insolvency resolution process under Section 7 of the Code. However, such an exercise cannot assume an indirect way of raising a pre-existing dispute, which would be available only to ward off an operational creditor's claim under Section 9 of the Code. There is no escaping the fact that the entire case of the respondent company is built on the so-called restructuring of the loan facility under the DTD, but it is an admitted fact that the procedure prescribed under the DTD for such modification and variation of the terms thereunder was not adhered to. We may also note that Section 62 of the Contract Act, 1872, speaks of novation of a contract when the

[3](2021) 6 SCC 436

parties to that contract agree to substitute a new contract for it, i.e., all the parties to such contract must be in consensus as to such substitution. Presently, the admitted position is that the debenture trustee and the other debenture holders were not even privy to the discussion as to the modification of the DTD at the relevant time, let alone being consenting parties thereto. The question of 'estoppel' being pressed into service by the respondent company against ECLF and the other debenture holders also does not arise as any waiver of the terms stipulated in the DTD had to be in accordance with the procedure prescribed therein, under clause 33, i.e., by way of a written document. Admittedly, there is no written document to support such a plea.

19. Further, the NCLAT's inference that the respondent company was entitled to claim a legitimate expectation that the moratorium and release of properties would be acted upon by the debenture trustee and the other debenture holders is equally without merit. The DTD prescribed a detailed method for modification of the terms thereof and would not stand altered by any such expectation based on the unilateral exchange between the respondent company and ECLF, which did not fructify to a crystalised commitment even on the part of ECLF. ECLF's e-mail dated 30.03.2022 put the respondent company on notice that, though it was agreeable to the restructuring proposal and the grant of a moratorium, it would need to run the entire process internally based on the overall resolution process in compliance with the terms of the DTD. Therefore, the respondent company could not have assumed that ECLF had already agreed to the restructuring proposal without further ado and that the same was binding upon all concerned. In this regard, the observations made by the NCLAT against ECLF are without basis as the aforestated communication from ECLF to the respondent company demonstrates that no promise was held out by it as to the restructuring and all that was stated was that the proposal would be considered as per due procedure.

20. The conclusion drawn by the NCLAT as to the debenture trustee colluding with the debenture holders does not hold water as the debenture trustee was enjoined by the DTD to protect the interest of the debenture holders. Even on facts, the question of collusion between them was not made out. The NCLAT's notion that the debenture trustee was required to act with fairness and protect the interest of the respondent company is contrary to the duty and obligation cast upon the debenture trustee under the DTD, which is to protect the interests of the debenture holders. The finding that the debenture trustee acted in unison with the debenture holders in catalysing their dubious designs to drag the respondent company towards insolvency is, therefore, incorrect. The adverse remarks made against the debenture trustee are, accordingly, set aside.

21. Though, the NCLAT was persuaded to record that the respondent company, having received ₹600 crore of the ₹850 crore under the DTD, had already repaid ₹508.48 crore, it lost sight of the passage of time, whereby the principal coupled with the interest due were much higher, resulting in gross disparity between what was claimed by the respondent company and the reality of the amount actually due and payable by it.

22. Ordinarily, this Court would not choose to reappreciate a matter on facts when the jurisdictional National Company Law Tribunal and, in appeal, the National Company Law Appellate Tribunal have recorded concurrent findings. The exception to this self-imposed rule would be when the perversity of such concurrent findings is clearly established. We find the present case to be one such case, where the perversity of the findings recorded by the NCLT and by the NCLAT is glaring and manifest, beseeching interference by this Court at the second appellate stage.

23. We, accordingly, hold that the NCLT and the NCLAT erred in ignoring the binding terms of the Debenture Trust Deed dated 27.03.2018 and in reframing the terms thereof on the strength of surmises, conjectures and assumptions, which were not borne out on facts and were completely unsustainable in law. Company Petition (IB) 922/MB/C-I/2022 filed by Catalyst Trusteeship Limited, the debenture trustee, deserved to be admitted under Section 7 of the Code.

24. In consequence, the order dated 03.02.2023 passed by the National Company Law Tribunal, Mumbai Bench-I, and the judgment dated 16.04.2025 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, are set aside. Company Petition (IB) 922/MB/C-I/2022 is restored to the file of the National Company Law Tribunal, Mumbai Bench-I, and the same shall be admitted by way of a separate order. Necessary further steps shall be initiated thereafter as per due procedure.

The appeal is allowed in the aforestated terms.