NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1188 of 2026

IN THE MATTER OF:

Jyoti Structures Limited
Having its registered address at:
Valecha Chambers, 6th Floor, New Link Road,
Andheri (West) Mumbai- 400053 **...Appellant**

Versus

DBS Bank Limited
A company incorporated in Singapore
Having its address at:
12 Marina Boulevard, DBS Asia Central,
Marina Bay Financial Centre Tower 3,
Singapore 018982
And
Having branch office and Principal Place of Business in
India at 19th Floor, Express Towers,
Nariman Point, Mumbai-4000021 Email: NA **...Respondent**

Present:

For Appellant	:	**Mr. Arun Kathpalia, Sr. Advocate with Mr. Anuj Tiwari, Ms. Diksha Gupta, Mr. Shivendra nath Mishra, Mr. Vaibhav Vats and Mr. Sameer Mishra, Advocates.**
For Respondent	:	**Mr. Rohit Gupta, Mr. Ranjit Shetty and Mr. Utkarsh Bandhu, Advocates.**

O R D E R
(Hybrid Mode)

Per: Justice N. Seshasayee, Member (Judicial)

08.07.2026: This appeal is preferred by the appellant challenging the Order of the Adjudicating Authority dated 11.06.2026 dismissing the application filed by the appellant under Section 65 of the Insolvency & Bankruptcy Code, 2016 (for short the **"IBC"**).

2. The context in which the petition is filed is that the appellant has been taken over by a new management, pursuant to successful resolution of an insolvency process. The other relevant facts are:

a) the Adjudicating Authority had lent its approval to the resolution plan sometime in March, 2019. That came to be challenged before this Tribunal and eventually that appeal came to be dismissed. In the meantime, due to few issues, all brought to the notice of the tribunal, the implementation could not commence immediately. Effectively, the plan became implementable on 09.11.2021, the date, on which, the new management took over the management of the corporate debtor.

b) The respondent herein is a dissenting Financial Creditor. According to the appellant, the respondent is entitled to be paid as per the approved resolution plan and has been paid in four instalments, to be precise on 10.11.2021, 15.07.2023, 11.09.2024 and 17.06.2025 as per the plan, through Pay Orders or Demand Drafts.

c) Be that as it may this Tribunal vide its Order dated 02.08.2023 in Comp. App. (AT) (Ins.) No. 855 of 2023 has directed exclusion of certain period from the payment period as provided in the resolution plan.

d) While so, after the receipt of the amounts paid in the mode indicated above the respondent has preferred I.A. No.93 of 2025 on 03.11.2025, for initiating liquidation of the corporate debtor on certain allegation which are extracted in paragraph 3.1 of the Impugned Order. It reads:

> *"3.1. The Ld. Counsel for the Respondent submits that pursuant to the approval of the Successful Resolution Plan, the Applicant has perpetuated material breaches thereof, including inter alia: (i) unilateral substitution of the defined 'Proposed Investors' under the final and binding resolution plan, on the strength of which the creditors had exercised their voting rights; (ii) failure to pay CIRP costs within the stipulated period of 30 days; (iii) inordinate delay in infusion of equity amounting to INR 170 crores by the identified 'Proposed Investors'; (iv) delays exceeding two and a half years in effecting "Year 0" and "Year 1" payments to dissenting financial creditors, including the Respondent; and (v) entering into selective One-Time Settlement ("OTS") arrangements with certain lenders dehors the terms of the Approved Resolution Plan, thereby unlawfully prioritising certain lenders over others."*

e) It is in these circumstances, the appellant herein, the successor in management of the corporate debtor has preferred I.A. No.390 of 2026 in I.A. No. 93 of 2025 under Section 65 of the IBC, contending that I.A.93 of 2025 has been maliciously and fraudulently instituted.

f) Vide its order dated 11.06.2026, the Adjudicating Authority dismissed I.A.390 of 2026. Its line of reasoning is captured in paragraphs 4.3, 4.4 & 4.8, and are extracted and reproduced below:

> *"4.3. Section 65(1) of the Code reads as under:*

> *"If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."*

4.4. A plain reading of Section 65(1) makes it clear that for its invocation, the following twin conditions must be satisfied: (i) the application must have been filed fraudulently or with malicious intent; and (ii) the application must have been filed for a purpose other than insolvency resolution or liquidation of the corporate debtor.

4.8. As regards the second ground, the Applicant has contended that the Respondent has received its complete entitlement under the Approved Resolution Plan and therefore neither has locus nor any subsisting grievance to maintain the Liquidation Application. However, we are of the view that such a submission requires adjudication on the merits of the Liquidation Application and cannot be adjudicated at this stage. The Respondent has disputed the validity of the said payments, asserting that the same were made in breach of the stipulated repayment timelines. It has been

> *further contended by the Respondent that the Demand Drafts tendered in this regard have ceased to have any operative effect, having remained unencashed beyond a period of three months from the date of their issuance. Therefore, it would be premature to conclude, at this stage, that the Respondent stands fully satisfied of its dues and that its grievance is therefore non-existent or tainted by malicious intent."*

This Order is now under challenge.

3. The learned senior counsel appearing for the appellant submits that the appellant is a listed public company with a workforce of about 1,000 employees and that since the time it took over the corporate debtor it has invested crores of rupees for the revival of the Corporate Debtor, that the respondent while is entitled to receive what has been approved by the resolution plan, having received the same in four tranches suddenly appear before the Tribunal to inform that it has not encashed any of the payments, which is not the fault of the appellant. The ground which the respondent has raised is delay in implementation vis-à-vis payment in terms of the plan, but this has been condoned in Comp. App. (AT) (Ins.) No. 855 of 2023. This apart the Adjudicating authority itself in its common order passed in I.A. No. 4959 of 2023 and in I.A. No. 5023 of 2023 dated 20.08.2024 has observed in paragraphs 7.7 & 7.9 as below:

> *"7.7. At this juncture, it is pertinent to take note of submission of Respondent that consideration*

of Company for release of NFB facility is necessitated on account of delay caused in implementation of the plan. We find that there is no allegation of violation in payment of money to various stakeholders proposed so far, though this Tribunal had granted additional time to the Applicants to make payments, which had fallen due, and which stands paid after raising further money via rights issue by the Company from its Investors. The Resolution Plan, in question. is a long tenure plan contemplating payment to various stakeholders out of cash flow of the Company in each succeeding year after approval of the Plan, and such stipulation of payment to stakeholders out of cash flow was considered feasible by the Respondents while exercising their vote on the plan. Accordingly, we have no hesitation to hold that CoC was conscious of proposals in the Resolution Plan in relation to NFB limits and they voted on the Plan realising fully well that the said NFB limits are to be released, subject to project appraisal. As regards consideration of Company is concerned, we are of considered view that after having found the Resolution Plan feasible and viable in the form it was placed before CoC and that Plan contemplated for revival of the Corporate Debtor, the Respondents cannot seek re-appraisal of the Company at the first instance as condition precedent for release of NFB facilities subject to project appraisal. The RBI Master Circular dated

July 2, 2012 was in existence at the time of consideration of the Resolution Plan and CoC, while considering the need for continuance of NFB facilities, did not find the Plan in contravention of any law at that time. Accordingly, the argument in relation RBI directions has no merit.

7.9. We note that the implementation of the Plan got delayed for the reasons stated to be beyond the control of the SRA and this led to exclusion of the time by consent before Hon'ble NCLAT. It is the case of Respondent that the delay in implementation of plan has necessitated the consideration of company as well for release of the NFB facilities and the consideration of company is expressly stipulated in the NFB agreement signed by the Corporate Debtor. However, we are of the considered view that the NFB limits ought to have been released at the first instance by the lenders as contemplated the plan. The respondents shall have the right to constantly monitor the business performance of the company and shall be competent to raise flags at appropriate time in case of deviations and take corrective action at that time. The Corporate Debtor shall furnish the information/documents required by lenders for review of financial performance of the company after its first release."

4. This Order was later approved by this Tribunal on 09.12.2024 in Comp. App. (AT) (Ins.) No.1962-1963 of 2024, wherein this Tribunal has extracted paragraph 7.7 of the order of the Adjudicating Authority as extracted above and has affirmed it.

5. Given the background in which the amounts have been paid to the respondent, to raise the issue of delay in implementation to initiate any proceedings for liquidation itself is obnoxious, and would not only constitute a fraudulent action but also a malicious action. However, the Tribunal in its Order has read both the expressions "fraudulently" and "maliciously" synonymously, whereas they have distinct meaning and sphere of application. In this setting the Adjudicating Authority ought to have heard I.A. No.390 of 2026, which the appellant herein has filed to ascertain whether there is any justification for the respondent to file its application in I.A. 93 of 2025.

6. Per contra, Mr. Rohit Gupta, learned Counsel for the respondent (appeared online) submitted that the tribunal below has not foreclosed any of the rights of the appellant to hear its plea on fraudulent and/or malicious initiation of the liquidation proceeding in I.A. No.93 of 2025 but has merely stated that it could still be decided in I.A. No. 390 of 2025. Indeed if I.A. No.390 of 2026 is taken first, there will be no steps for the respondent to canvass the grounds he has raised and reproduced by the Tribunal in paragraph 3.1 of the Impugned Order.

7. Rival submissions are carefully considered. While it may appear that right of the appellant to hear his plea of malicious and/or fraudulent intent in filing I.A.390 of 2025 is preserved, it has to be underscored that the criteria for deciding both are entirely different. It may be that the respondent may defend I.A.93 of 2026 with its allegations in I.A.390 of 2025, still the approach to consider both these application does not share a common denominator, for, and as stated earlier, the criteria prescribed for deciding both are different. Indeed, if closely seen, I.A.93 of 2026 challenges the very maintainability of I.A.390 of 2025 and necessarily that should be heard first.

8. In the result this appeal is allowed, and the impugned Order is set aside, and I.A.93 of 2026 is remanded back to the Adjudicating Authority who is now required to hear I.A.93 of 2026 before hearing I.A.390 of 2026. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Barun Mitra]
Member (Technical)

himanshu/md