



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH I

IA (I.B.C.) No. 390/2026

In

IA (IBC)(LIQ.) No. 93/2025

In

C.P (IB) No. 1137/2017

*Under Section 65(1) read with
Section 60(5) of the Insolvency
and Bankruptcy Code, 2016;*

In the matter of

Jyoti Structures Limited

..... Applicant

Versus

DBS Bank Limited

..... Respondent

In the matter of

DBS Bank Limited

..... Applicant

Versus

Sharad Sanghi & Anr.

..... Respondents

In the matter of

State Bank of India

..... Financial Creditor

Versus



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MUMBAI BENCH-I

I.A. No. 390/ 2026 in I.A. No. (Liq.) 93/ 2025 in CP (IB)/1137 (MB)/2017

Jyoti Structures Limited

.... *Corporate Debtor*

Order Pronounced on 11.06.2026

Coram :

Prabhat Kumar

Sushil Mahadeorao Kochey

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances :

For the Applicant:

Mr. Gaurav Joshi, Sr. Adv. a/w Mr. Anuj
Tiwari, Mr. Agam H. Maloo, Advocates

For the Respondent:

Mr. Prateek Sekasaria, Sr. Adv. a/w Mr.
Rohit Gupta, Mr. Utkarsh Bandhu, Mr.
Rahul Dev, Mr. Avina Karnad, Mr.
Aradhana Vaishnav, Advocates

ORDER

Per: Coram

1. Brief Facts

1.1. The corporate insolvency resolution process ("CIRP") of the Jyoti Structures Limited ("Applicant" / "Corporate Debtor") was initiated by this Tribunal *vide* Order dated 04.07.2017. ("Admission Order"). Thereafter, the resolution plan submitted by Mr. Sharad Sanghi was approved by the Committee of Creditors ("CoC") with a voting share of 81.31%. DBS Bank Limited ("Respondent") elected to dissent from the resolution plan and was accordingly treated as a Dissenting Financial

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Creditor ("DFC"). This Tribunal thereafter approved the resolution plan ("Approved Resolution Plan") vide order dated 27.03.2019.

1.2. The Respondent challenged the Approved Resolution Plan. However, the said challenge was rejected by the Hon'ble NCLAT *vide* its order dated 19.03.2019, before which the Respondent had also sought liquidation of the Corporate Debtor. The challenge was further rejected by the Hon'ble Supreme Court *vide* its order dated 15.04.2019.

1.3. The Approved Resolution Plan was successfully implemented on 09.11.2021, on which date the investors infused equity into the Company and the present management assumed control of its operations. In terms of the Approved Resolution Plan, upon infusion of INR 170 Crores by the investors, the payment timelines to the creditors of the Company commenced accordingly.

1.4. The Respondent has filed a Liquidation Application being Interlocutory Application (Liq.) No. 93 (MB) of 2025 alleging serious, material, and persistent breaches of the Approved Resolution Plan. In response, the Applicant, has filed the present Application seeking dismissal of the said Liquidation Application, with the following prayers:

“a. Allow the present Application and order that the Liquidation Application filed by Respondent, DBS herein, is a malicious and fraudulent initiation of proceedings constituting an abuse of the process of this Hon'ble Tribunal, within the meaning of Section 65(1) of the Code;

b. Dismiss the Respondent/ DBS' Liquidation Application i.e. Interlocutory Application (Liq.) No.93 (MB) Of 2025 with exemplary costs;

c. Impose an appropriate penalty on the Respondent/DBS under Section 65(1) of the Code”

2. **Submissions of Applicant**

2.1. The Ld. Counsel for the Applicant submits that the Company has been fully compliant with its payment obligations to all creditors under the Approved Resolution Plan, and there has been no contravention thereof. Respondent, in its capacity as a DFC in the CIRP of the Company, has already received its complete entitlement under the Approved Resolution Plan in June 2025. Having received its full entitlement without raising any objection or challenge to the same, the Respondent has filed the captioned Liquidation Application after remaining silent for over four years since the implementation of the Approved Resolution Plan, with the malicious intent of driving the Company into liquidation and derailing the successful conclusion of the CIRP.

2.2. The Ld. Counsel for the Applicant submits that the present Liquidation Application is filed with fraudulent and malicious intent, squarely attracting Section 65(1) of the Code. The Respondent is, in substance, seeking the very same reliefs i.e., liquidation of the Company, which it had sought and failed to obtain before this Tribunal in 2018, before the Hon'ble NCLAT, and before the Hon'ble Supreme Court vide order dated 15.04.2019, all of which were decided against the Respondent. The present application merely seeks to reagitate the same under the guise of new grounds of alleged delay in implementation and lack of information regarding implementation status. Such conduct is a circuitous attempt to re-litigate settled issues and ought to be rejected.

2.3. The Ld. Counsel for the Applicant submits that the Respondent's claim of not being kept informed of the progress of implementation is entirely baseless, as DBS was a participant in various Joint Lender Meetings ("JLMs") conducted between April 2019 and November 2021, i.e., from the approval of the Approved Resolution Plan by this Tribunal until its successful implementation. The Respondent was therefore fully aware of

the developments and progress of implementation, yet chose not to raise any objection or challenge before this Tribunal at any stage.

2.4. The Ld. Counsel for the Applicant further submits that the Respondent's conduct itself evinces its malicious intent. The Company tendered its complete plan entitlement to DBS on 17.06.2025, fully discharging DBS' entitlement in priority and even ahead of the outer instalment window prescribed under the Approved Resolution Plan. Despite this, the Respondent, by letter dated 17.10.2025, claimed non-encashment of the payment and demanded liquidation, while also challenging unrelated settlements having no bearing on DFC payments. This conduct confirms that the Liquidation Application is a pure afterthought.

2.5. The Ld. Counsel for the Applicant submits that the Respondent has also failed to establish the ingredients of Section 33(3) of the Code so as to seek initiation of liquidation. For any party to invoke Section 33(3), it must demonstrate that its interests have been prejudicially affected. Having received its full entitlement as a DFC under the Approved Resolution Plan, the Respondent has no locus to seek liquidation of a Company which is on a strong path of revival.

2.6. It is submitted that as regards any grievance of DBS concerning prepayment made to other creditors, it is submitted that DBS was paid as a DFC strictly in accordance with the Code and in priority to assenting financial creditors. Any settlement with the assenting financial creditors was undertaken by the Company (i) after DBS had been paid under the Approved Resolution Plan; (ii) pursuant to the terms of the Approved Resolution Plan and after taking all necessary corporate authorisations; and (iii) in a transparent manner without breaching the Approved Resolution Plan, permits the Company to prepay restructured debt. There is therefore no prejudice whatsoever caused to the Respondent.

2.7. It is further submitted that the present application is also concluded by the order dated 09.01.2026 passed by the Hon'ble NCLAT in the applications filed by Central Bank of India and Bank of Maharashtra, who were also DFCs in the CIRP of the Company and had similarly challenged the provisions of the Approved Resolution Plan. Their applications were dismissed by this Tribunal, and their appeals were dismissed by the Hon'ble NCLAT vide the said common order, wherein the Hon'ble NCLAT inter alia held that the plan had been implemented as of November 2021, the business of the Company had been taken over by new management, and that disrupting the payouts would militate against the very logic of the due process envisaged under the Code. The Hon'ble NCLAT further held that there was an unjustifiable delay on the part of the appellants in challenging the provisions of the resolution plan and that any such challenge at a belated stage, after the plan has already attained finality, is impermissible. The said ratio applies with full force to the present Liquidation Application as well.

3. **Submissions of Respondents**

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

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terms of the Approved Resolution Plan, thereby unlawfully prioritising certain lenders over others.

- 3.2. The Ld. Counsel for the Respondent submits that Section 65 of the Code empowers the Adjudicating Authority to reject an application only where it is established that such application has been filed fraudulently or with malicious intent and for a purpose other than insolvency resolution or liquidation of the corporate debtor. The Respondent has filed the Liquidation Application solely for the purpose of initiation of liquidation proceedings and not for any extraneous purpose. Accordingly, Section 65 of the Code has no application to the present case whatsoever. It is well-settled that allegations of "fraud" and "malice" must be: (i) specifically pleaded with requisite particulars; and (ii) strictly proved by clear, cogent and credible evidence. Fraud cannot be presumed, and vague, bald or unsubstantiated assertions are wholly insufficient to sustain such a charge.
- 3.3. It is submitted that "malicious intent" necessarily postulates: (i) the commission of a wrongful act without just cause or excuse; coupled with (ii) a deliberate intention to cause specific injury. The Applicant has entirely failed to demonstrate that the crucial test or pre-condition for classifying the present proceedings as "malicious" has been satisfied. The allegation of malicious intent is therefore liable to be rejected in *limine*. Furthermore, the present application cannot be characterised as malicious in any manner, particularly when State Bank of India and ICICI Bank have themselves contemplated liquidation of the Applicant on account of the inordinate delays caused in the implementation of the Successful Resolution Plan.
- 3.4. It is further submitted that a successful resolution applicant is not entitled to unilaterally modify or alter the binding covenants of an approved resolution plan, much less abandon the fundamental basis upon which the creditors exercised their right to vote. In the present case, the resolution

plan was submitted on the basis of a consortium comprising Mr. Sanghi and other named investors, collectively defined as the "Proposed Investors", who had made collective representations to the creditors. This fundamental basis was completely abandoned when the said investors backed out and were substituted with entirely new investors, without any consent or approval of the creditors. Such unilateral substitution constitutes a grave breach of the Successful Resolution Plan. Moreover, the Successful Resolution Plan is yet to be fully implemented and is marred by severe delays, prolonged inaction and grave contraventions on the part of the Applicant.

3.5. The Ld. Counsel for the Respondent submits that the Respondent has not received the payments due to it as a dissenting financial creditor. The Respondent has refused to encash the Demand Drafts tendered by the Applicant, as the same were tendered in breach of the repayment timelines stipulated under the Approved Resolution Plan. Further, the said Demand Drafts, having remained unencashed for a period exceeding three months from the date of their issuance, have ceased to operate and are no longer valid instruments of payment. Significantly, the fact that these Demand Drafts have not been encashed has been expressly admitted by the Applicant in the present application, and therefore the Applicant cannot now contend that the Respondent's dues stand discharged.

4. **Findings**

4.1. The present application has been filed by Applicant/Corporate Debtor) seeking dismissal of the Liquidation Application filed by DBS Bank Limited ("Respondent") under Section 33(3) of the Code, primarily on the ground that the said Liquidation Application has been filed fraudulently and with malicious intent, thereby attracting Section 65(1) of the Code.

4.2. The primary question before this Tribunal at this stage is whether the Liquidation Application filed by the Respondent under Section 33(3) of the Code is liable to be dismissed at the threshold under Section 65(1) of the Code on the ground of fraudulent or malicious intent. The question of whether material breaches of the Approved Resolution Plan, as alleged by the Respondent, have in fact been committed by the Applicant, is a matter that goes to the merits of the Liquidation Application and shall be dealt with in the Liquidation Application.

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.

4.5. The Ld. Counsel for the Respondent submitted that fraud and malicious intent are grave charges which must be pleaded with requisite particulars and proved by evidence. It is a well-settled principle of law that fraud is never presumed and must be affirmatively established. Vague, bald or unsubstantiated assertions to that effect are wholly insufficient to sustain a finding of fraud or malice.

4.6. With respect to present case, the Applicant's case under Section 65 essentially rests on two broad grounds: (i) that the Respondent is seeking liquidation repeatedly, having failed before this Tribunal, the Hon'ble

NCLAT, and the Hon'ble Supreme Court in 2018-2019; and (ii) that the Respondent has filed the Liquidation Application only after receiving its complete entitlement, which demonstrates its malicious intent.

4.7. As regards the first ground, it is observed that although the Respondent had previously sought liquidation of the Applicant and had failed in those attempts, the present Liquidation Application has been filed under Section 33(3) of the Code on the basis of alleged breaches of the Approved Resolution Plan that have occurred during/after the period of implementation thereof. The cause of action underlying the captioned Liquidation Application is therefore distinct from the cause of action that existed at the time of approval of the Approved Resolution Plan in 2018-2019. The fact that a party has previously sought a particular relief and failed to obtain the same does not render a subsequent application for the same relief, based on new and distinct grounds arising from supervening facts and circumstances, fraudulent or malicious.

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.



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4.9. We further note that the allegation of malicious intent requires demonstration that the Respondent acted without just cause or excuse and with a deliberate intention to cause injury to the Applicant. The Respondent's grievances, including the alleged substitution of 'Proposed Investors', delays in equity infusion and payments, and selective OTS arrangements, are allegations of breach of the Approved Resolution Plan which require adjudication on the merits of the petition.

4.10. The Applicant has placed reliance on the order of the Hon'ble NCLAT dated 09.01.2026, whereby the appeals of Central Bank of India and Bank of Maharashtra were dismissed. We note that the said order dealt with challenges by those DFCs to the provisions of the Approved Resolution Plan at a belated stage, after the plan had already attained finality and been implemented. The present Liquidation Application, however, is not a challenge to the terms or provisions of the Approved Resolution Plan but is an application seeking liquidation on the ground of breach and non-implementation of the Approved Resolution Plan.

4.11. In view of the above, we are of the view that the Liquidation Application filed by the Respondent DBS Bank Limited cannot be prima-facie held to be one filed fraudulently or with malicious intent within the meaning of Section 65(1) of the Code. The present application is dismissed accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)

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