NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1966 of 2026

[Arising out of the Impugned Order dated 29.09.2026 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi, Court-II) in CP (IB) No. 207/ND/2026 and IA-3665/ND/2026, IA-3396/ND/2026, IA-3397/ND/2026 and IA-3403/ND/2026]

IN THE MATTER OF:

Balbir Singh
Suspended Director of ESPO
Developers Private Limited
Having office at:
Flat No. 224A, 2nd Floor, Devika Tower, 6,
Nehru Place, New Delhi – 110019 **...Appellant**

Versus

1. **Omkara Assets Reconstruction Private Limited**
   Registered Office at:
   No. 9, M.P. Nagar First Street,
   Kongu Nagar Extension, Tirupur,
   Tamil Nadu – 641607

   Corporate Office at:
   Kohinoor Square, 47th Floor,
   N.C. Kelkar Marg, R.G. Gadkari Chowk,
   Dadar (W), Mumbai – 400028
   Through its Authorised Signatory,
   Mr. Sunny Gujral **... Respondent No.1**

2. **ESPO Developers Private Limited**
   Through its Interim Resolution Professional,
   Mr. Ashok Mittal
   IBBI Regn. No.: IBBI/IPA-001/IP-P-02549/2021-2022/13889

   Address of the IRP:
   S-138, B-Wing, Express Zone Mall,
   Western Express Highway, Goregaon East,
   Mumbai Suburban, Maharashtra – 400063 **... Respondent No.2**

Present:

For Appellant : Mr. Virender Ganda, Sr. Advocate with Mr. Vishal Ganda, Ms. Riya Palnitkar, Mr. Pulkit Goyal and Mr. Pratham Sharma, Advocates.

For Respondents : Mr. Gopal Jain and Mr. Gaurav Mitra, Sr. Advocates with Ms. Meghna Mishra, Ms. Yashodhara Gupta, Mr. Kevin Chadha and Mr. Yash Singh, Advocates.

With
Company Appeal (AT) (Insolvency) No. 2017 of 2026

IN THE MATTER OF:

Balbir Singh
Suspended Director of ESPO
Developers Private Limited
Having office at:
Flat No. 224A, 2nd Floor, Devika Tower, 6,
Nehru Place, New Delhi – 110019 **...Appellant**

Versus

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   Through its Authorised Signatory,
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   Through its Interim Resolution Professional,
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   S-138, B-Wing, Express Zone Mall,
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   Mumbai Suburban, Maharashtra – 400063 **... Respondent No.2**

Present:

For Appellant : Mr. Virender Ganda, Sr. Advocate with Mr. Vishal Ganda, Ms. Riya Palnitkar, Mr. Pulkit Goyal and Mr. Pratham Sharma, Advocates.

For Respondents : Mr. Gopal Jain and Mr. Gaurav Mitra, Sr. Advocates with Ms. Meghna Mishra, Ms. Yashodhara Gupta, Mr. Kevin Chadha and Mr. Yash Singh, Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present appeals ("Appeals") have been preferred by Mr. Balbir Singh, the suspended Director of ESPO Developers Private Limited ("Appellant"), under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 ("Code") before this Appellate Tribunal assailing the order dated 29.09.2026 ("Impugned Order") passed by the Ld. National Company Law Tribunal, New Delhi, Court-II ("Ld. Adjudicating Authority") in CP (IB) No. 207/ND/2026. The application under Section 7 of the Code was filed by Omkara Assets Reconstruction Private Limited ("Respondent No. 1") for initiation of the corporate insolvency resolution process ("CIRP") against ESPO Developers Private Limited ("Corporate Debtor") ("Insolvency Petition"), which has been admitted by the impugned order.

2. We observe that CA (AT) (Ins) Nos. 1966 and 2017 of 2026 arise from the order dated 29.09.2026 passed by the National Company Law Tribunal, whereby the application filed by Respondent No. 1 under Section 7 of the Code against ESPO Developers Private Limited, the Corporate Debtor, was admitted. By the Impugned Order, I.A. No. 3396/ND/2026 filed by the Corporate Debtor under Section 65 of the Code was rejected, which is under

challenge in CA (AT) (Ins) No. 2017 of 2026. The Appellant seeks, amongst other reliefs, an interim order staying further proceedings arising from the admission of the Section 7 application. At this stage, we are concerned only with the prayer for interim protection.

3. We have heard both sides and also perused the material placed on record by both sides. The observations herein are prima facie and shall not affect the final decision of the appeals.

4. We observe that the dispute has its origin in the Loan Agreement dated 18.01.2019, under which, according to Respondent No. 1, a sum of ₹ 135.15 Crores was disbursed to the Corporate Debtor.

5. On 01.09.2021, an OTS letter was issued. The Appellant relies upon the OTS letter as having confined the Corporate Debtor's outstanding liability to ₹ 67,31,92,314/- together with interest at 11.62% per annum, payable monthly. Respondent No. 1, on the other hand, contends that the OTS was breached and that the loan was recalled on 10.11.2022.

6. The material on record refers to a balance confirmation dated 08.11.2022 for ₹ 39,18,14,859/- plus interest. It also refers to a recall notice dated 10.11.2022. The Appellant asserts that the amount payable under the OTS was thereafter paid by February/March 2023. Respondent No. 1 disputes the effect of that payment and submits that the payment of ₹ 39.56 Crores was made only on 24.03.2023, after the stipulated date, and was only a part-payment.

7. On 29.03.2023, the parties executed a Settlement Agreement. The rival submissions proceed on the basis that this agreement dealt with two sets of obligations: (i) financial obligations relating to the loan liability; and (ii) obligations relating to the agreement-to-sell (ATS) inventory and transactions. The Appellant describes these as interdependent obligations forming one composite arrangement. Respondent No. 1 also accepts that the Settlement Agreement contained both sets of obligations, but submits that a breach of either set attracted the consequences provided in Clauses 5 and 11, including revival and enforcement of the original loan agreements.

8. The Settlement Agreement was followed by an Amended and Restated Agreement to Sell dated 16.05.2023. A Second Addendum dated 22.02.2024 is also relied upon. According to the Appellant, the Second Addendum records that the purchaser's rights and obligations under the ATS had been assigned to the SSL Parties. Respondent No. 1 likewise states that the ATS rights and obligations concerning the ATS Properties were assigned to the SSL Parties. The parties, however, differ on the legal effect of these assignments and on the authority to terminate the Settlement Agreement.

9. On 11.07.2024, a termination notice was issued. Respondent No. 1 contends that the Settlement Agreement was validly terminated for breach and that the original Loan Agreement consequently stood revived, making the entire outstanding amount due and payable. The Appellant contends that the termination notice rested solely on alleged breaches of the ATS obligations,

which had already been assigned to the SSL Parties, and that the authority and validity of the termination are disputed.

10. The Corporate Debtor/Vatika Group thereafter invoked arbitration. The chronology placed by the Appellant records a Section 9 application dated 18.10.2024, invocation of arbitration by notice dated 05.11.2024, appointment of the arbitrator by consent on 02.12.2024, and commencement of arbitral proceedings on 28.12.2024. The Appellant filed its Statement of Claim on 06.08.2025. Respondent No. 1 and the other concerned parties participated in the arbitral proceedings. Respondent No. 1 filed its Statement of Defence and Statement of Counter-Claim. The SSL Parties also filed their pleadings and sought interim protection in relation to the ATS Properties. A status quo order concerning the ATS Properties was passed by the Arbitral Tribunal on 09.07.2026.

11. The Section 7 application is stated to have been filed on 16.04.2026 and the NCLT admitted the application by order dated 29.09.2026.

12. The Appellant submits that the essential requirements for admission under Section 7 of the Code are the existence of a financial debt and a default in respect of that debt. According to the Appellant, these requirements were not clearly established as on the date on which the Section 7 application was filed.

13. It is submitted that the Settlement Agreement dated 29.03.2023 was not a simple restructuring of a loan. It was a composite arrangement

containing interdependent financial obligations and ATS obligations. The alleged liability under the original loan could arise only upon a valid termination of the Settlement Agreement. The termination itself is disputed and is the subject matter of the pending arbitration.

14. The Appellant further submits that the ATS rights and obligations had been assigned to the SSL Parties. Respondent No. 1, therefore, had no subsisting right in respect of those ATS obligations when it invoked Section 7. The Appellant also relies upon the participation of Respondent No. 1 in the arbitration, including the filing of its defence and counter-claim. Its counter-claim remains pending before the Arbitral Tribunal.

15. It is argued that the NCLT could not finally determine disputed questions concerning the construction of the Settlement Agreement, assignment of the ATS obligations, authority to terminate, and revival of the original loan. Reliance is placed on **Dhanlaxmi Bank Ltd. v. Mohammed Javed Sultan, 2026 INSC 460; Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund, 2021 SCC OnLine SC 268;** and **Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491**.

16. On interim relief, the Appellant submits that he has a prima facie case because the existence of debt and default is seriously in dispute. The balance of convenience is stated to favour the Appellant because Respondent No. 1's counter-claim is pending in arbitration. It is also submitted that irreparable harm would be caused if the proposed Interim Resolution Professional takes

over the Corporate Debtor while the foundational contractual dispute remains unresolved.

17. Respondent No. 1 submits that the financial debt and default stand established. It relies upon the Loan Agreement dated 18.01.2019, the OTS letter dated 01.09.2021, the recall notice dated 10.11.2022 and the Settlement Agreement dated 29.03.2023. According to it, the Corporate Debtor failed to comply with the OTS and thereafter failed to perform its obligations under the Settlement Agreement.

18. Respondent No. 1 submits that the Settlement Agreement expressly included the Corporate Debtor as a borrower and included its loan in Schedule I. It contends that the financial and ATS obligations were interdependent, and that Clauses 5 and 11 preserved the original loan agreements and permitted their enforcement upon breach of the Settlement Agreement. It accordingly maintains that the termination dated 11.07.2024 validly revived the original loan liability.

19. Respondent No. 1 further submits that the assignment of the financial obligations and ATS obligations did not deprive the concerned parties of authority to terminate or enforce the settlement. It relies upon the Sub-Servicer Agreement dated 11.05.2023 and the subsequent chain of assignments. It also contends that the Section 7 application was within limitation.

20. As regards arbitration, Respondent No. 1 submits that arbitration and insolvency proceedings operate in different fields. The pendency of arbitration does not bar a Section 7 application where financial debt and default are established. It relies upon **Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund, (2021) 6 SCC 436,** and **Century Aluminium Company Limited v. Religare Finvest Limited, Company Appeal (AT) (Ins.) No. 1719 of 2024**. It submits that the termination notice has not been stayed by the Arbitral Tribunal and that the NCLT rightly admitted the Section 7 application.

21. We have considered the rival submissions. At the outset, it is necessary to keep in view that an application under Section 7 of the Code can be admitted only when the existence of a financial debt and the occurrence of default are established. The insolvency jurisdiction is not intended to be used as a substitute for adjudication of disputed contractual claims or as a means of recovery.

22. The present matter, at least at this interim stage, cannot be viewed as a case involving only a straightforward loan transaction. The Settlement Agreement dated 29.03.2023 appears, from the material placed before us, to have brought together two sets of obligations. One set related to the financial liability. The other related to the ATS transactions and obligations concerning the identified inventory. Both sides rely upon the interdependent nature of these obligations, though they differ on the consequences of their alleged breach.

23. The case of Respondent No. 1 is that the Settlement Agreement was validly terminated on 11.07.2024 and that such termination revived the original loan liability. The Appellant disputes the termination and contends that the notice was founded on alleged breaches of the ATS obligations. It further points out that the ATS rights and obligations had been assigned to the SSL Parties. The effect of the assignment, the authority to issue the termination notice, and the consequences of termination are all matters that arise from the construction of the Settlement Agreement and its addenda.

24. The records show that the rights and obligations relating to the ATS were assigned to the SSL Parties. The precise legal effect of that assignment, including its bearing on the right to terminate the composite Settlement Agreement and the right to claim revival of the loan, requires examination. At this stage, we are not expressing a final view on the validity of the assignment or the termination notice. We only note that these are substantial contractual issues and are not merely incidental disputes.

25. It is also relevant that arbitration was invoked in November 2024 and the arbitral proceedings commenced thereafter. Respondent No. 1 has voluntarily participated in those proceedings. It has filed its Statement of Defence and Statement of Counter-Claim. Its counter-claim is pending adjudication. The arbitration concerns, amongst other matters, the rights and obligations arising from the Settlement Agreement and the ATS transactions. The Arbitral Tribunal has also passed an order dated 09.07.2026 concerning status quo in respect of the ATS Properties.

26. The pendency of arbitration, by itself, does not automatically bar proceedings under Section 7 of the Code. The question, however, is whether the financial debt and default relied upon for admission are sufficiently clear and established independently of the unresolved contractual issues. On the material presently placed before us, the alleged revival of the original loan liability depends substantially upon the validity and effect of the termination of the Settlement Agreement. That termination is itself disputed and forms part of the controversy pending before the Arbitral Tribunal.

27. In these circumstances, we are of the prima facie view that the existence of the debt and the occurrence of default, as on the date of filing of the Section 7 application, are not free from substantial doubt. The matter requires closer examination. The NCLT's findings on the construction of the Settlement Agreement, the effect of assignment and the validity of termination will have to be considered at the final hearing of these appeals. We do not propose to finally decide any of those questions while considering interim protection.

28. The principles relied upon by the parties also need to be noticed. The Appellant relies upon the following propositions, as set out in his written submissions:

- In **Dhanlaxmi Bank Ltd. v. Mohammed Javed Sultan, 2026 INSC 460**, the Appellant submits that the Code is a collective insolvency resolution mechanism, "not … a forum for the adjudication of individual contractual claims", nor "a tool for coercion and debt recovery". It further relies upon the proposition

that a loan "intrinsically linked" to performance of other contractual obligations "cannot be viewed in isolation as a simple financial lending arrangement", and that a "predominantly contractual" dispute pending before the appropriate forum cannot be converted into "a coercive mechanism for recovery".

- In **Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund, 2021 SCC OnLine SC 268**, the Appellant relies upon the proposition that default is "premature" where the amount payable turns on an unresolved contractual dispute.

- In **Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491**, the Appellant relies upon the principle that a court cannot make out a case that was never pleaded.

29. Respondent No. 1, on the other hand, relies upon **Torrent Power Ltd. v. Ashish Arjunkumar Rathi, 2026 SCC OnLine SC 325; Elegna Co-Op. Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Limited, 2026 SCC OnLine SC 82; Power Trust v. Hiranmaye Energy Ltd., (2026) 5 SCC 38; E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd., (2022) 3 SCC 161; Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407; Gaurav Jaiswal v. Indian Renewable Energy Development Agency Ltd., 2026 SCC OnLine NCLAT 888; Bahadur Ram Mallah v. ARC (India) Limited & Anr., 2025 SCC OnLine NCLAT 1924; Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund, (2021) 6 SCC 436;**

and **Century Aluminium Company Limited v. Religare Finvest Limited, Company Appeal (AT) (Ins.) No. 1719 of 2024**.

30. On the question of balance of convenience, Respondent No. 1 is not left without a remedy. It has already filed its counter-claim in the pending arbitration. Its claims arising from the Settlement Agreement and the related transactions can be pursued before the Arbitral Tribunal, subject to the orders passed by that Tribunal. On the other hand, if the Section 7 proceedings are allowed to continue and the insolvency process proceeds further, the Corporate Debtor may suffer consequences that may not be capable of being adequately undone if the Appellant ultimately succeeds in the appeals.

31. We are, therefore, satisfied that the Appellant has made out a prima facie case for interim protection. The balance of convenience also favours maintaining the present position until the appeals are heard. The possibility of irreparable prejudice to the Corporate Debtor cannot be ruled out if the insolvency proceedings are permitted to continue in the meantime.

32. In view of the above, and without expressing any final opinion on the merits of the appeals, we order that further proceedings pursuant to the order dated 29.09.2026 admitting the application filed by Respondent No. 1 under Section 7 of the Insolvency and Bankruptcy Code, 2016, including further steps in the corporate insolvency resolution process of ESPO Developers Private Limited, shall remain stayed until the next order of this Tribunal. The interim protection granted by this order shall not prevent the Arbitral Tribunal

from proceeding with the arbitration, including adjudication of the claims and counter-claims pending before it, in accordance with law. Respondent No. 1 shall remain at liberty to pursue its counter-claim and all other remedies available to it before the Arbitral Tribunal, subject to law. In the meantime, the parties shall complete their pleadings in the appeals.

33. It is clarified that the observations in this order are confined to the consideration of interim relief. They shall not be treated as findings on the final rights and liabilities of the parties, nor shall they influence the Arbitral Tribunal while deciding the disputes before it.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
November 25, 2026.
pawan/ritesh