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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 7<sup>th</sup> May, 2025*

+ **W.P.(C) 5755/2025**

DMI ALTERNATIVES PRIVATE LIMITED .....Petitioner  
Through: Mr. Ajay Vohra, Sr. Advocate with  
Mr. Vishal Kumar, Advocates.

versus

ADDITIONAL COMMISSIONER  
(ADJUDICATION) & ORS. ....Respondents  
Through: Mr. Shashank Sharma, SSC for R-1 to  
R-3.  
Mr. Sumit K. Batra, Advocate for  
GNCTD.

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**  
**JUSTICE RAJNEESH KUMAR GUPTA**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**CM APPL. 26281/2025 (for exemption)**

2. Allowed, subject to all just exceptions. Application is disposed of.

**W.P.(C) 5755/2025 & CM APPLs. 26280/2025 (for stay)**

3. The present petition has been filed by the Petitioner – DMI Alternatives Private Limited under Articles 226 and 227 of the Constitution of India, *inter alia*, assailing the Show Cause Notice dated 27<sup>th</sup> July, 2024 and consequential order bearing no. 125/ADC/D.N./Bhavan Meena/2024-25 dated 30<sup>th</sup> January, 2025 (hereinafter, ‘*impugned order*’) passed by Office of Principal Commissioner of Central Goods and Service Tax, Delhi North



Commissionerate.

4. According to the Petitioner, the impugned order wrongly seeks to tax the entire amount earmarked for fund expenses, which are liable to be reimbursed to the Petitioner at actuals as and when incurred, by deeming the same as consideration towards supply of services by the Petitioner to the fund.

5. The short issue that has been pressed into service by Mr. Ajay Vohra, Id. Senior Counsel appearing for the Petitioner is that the impugned order lacks jurisdiction as there has been a misinterpretation of the Investment Management Agreement dated 19<sup>th</sup> September, 2017 and similar other agreements. It is the submission of the Id. Senior Counsel that under the said agreement, there is a clear difference between investment management fee, which is charged by the Petitioner as set out under Clause 3 of the Agreement, as against the operational expenses and other expenses, which the Petitioner incurs, which would be charged to the fund which is being managed by the Petitioner under Clause 4.

6. By way of illustration, Id. Senior Counsel for the Petitioner has taken the Court to the tabular example of fee charges and distribution mechanism, which is Annexure K of the present petition *i.e.*, the private placement memorandum dated 8<sup>th</sup> September, 2017. In the said table, the submission of Id. Senior Counsel is that the establishment expenses and the operating expenses being incurred on behalf of the fund, would not be considered as part of the fee being earned by the Petitioner. Hence, there is a jurisdictional issue in the present case.

7. On the other hand, Id. Counsel for the Respondent has taken the Court through the impugned order, wherein he has submitted that the Petitioner has in fact taken contradictory stands in three different communications dated 20<sup>th</sup>



January, 2020, 22<sup>nd</sup> July, 2022, and 1<sup>st</sup> August, 2022.

8. Heard the Id. Counsels for the parties. The present petition is a writ petition, wherein extraordinary jurisdiction of the court has been invoked for setting aside of the impugned order dated 30<sup>th</sup> January, 2025. The scope in such writ petition is to deal with legal issues that may arise or if the order was either lacking jurisdiction or there was a violation of the principles of the natural justice.

9. The question that is being raised in respect of whether the said expenses would constitute part of the management fee or not, would have to be analysed and decided on the basis of the Clauses in the Investment Management Agreement, some of which are set out below for the sake of clarity:

***“3. INVESTMENT MANAGEMENT FEE***

*3.1. The Scheme II will pay to the Investment Manager an annual investment management fee (the "Management Fee") for the Services rendered by the Investment Manager as specified in this Clause 3:*

*3.2. The Fund will pay the Investment Manager, every quarter in advance, Management Fees which shall be the aggregate of following:*

*3.2.1. During the Commitment Period, an amount which is the aggregate of up to 1.8% p.a. of the Capital Commitment made in respect of each Class A Unit and thereafter an amount which is the aggregate of up to 1.8% p.a. of the Capital Contribution received in respect of each Class A Unit less the amount of the Capital Contribution returned against such Class A Unit ("Class A Management Fees").*

*3.2.2. During the Commitment Period, means an amount which is the aggregate of up to 2% p.a. of the*



*Capital Commitment made in respect of each Class B Unit and thereafter an amount which is the aggregate of up to 2% p.a. of the Capital Contribution received in respect of each Class B Unit less the amount of the Capital Contribution returned against such Class B Unit ("Class B Management Fees").*

*3.3 Class A Management Fees shall be charged exclusively against the Class A Units and Class B Management Fees shall be charged exclusively against the Class B Units. No Management Fee shall be charged against Class C Units & Class D Units. Subject to the caps provided in Clause 3.2 above, the Investment Manager may agree to charge differential Management Fees in respect Class A Units or Class B Units subscribed to by any Contributor.*

*3.4 The Management Fee payable to the Investment Manager shall be exclusive of all applicable taxes and levies such as any goods and services tax or value added tax (together with surcharge or cess as may be applicable) leviable on such Management Fee, the same to be borne by Scheme II. The income-tax liability on the Management Fees or any other income earned by the Investment Manager shall be borne by the Investment Manager and not by the Scheme II. The Investment Manager may agree to charge differential Management Fees in respect Class A Units or Class B Units subscribed to by any Contributor.*

*3.5 The payment of the Management Fees will commence from the date on which the Fund receives a written confirmation for the capital commitment aggregating to at least INR 200,000,000 (Rupees Two Hundred Million) (or such other amount as may be decided by the Trustee with the consent of the Investment Manager) in accordance with the PPM and the Investment Management Agreement until the date*



*when Scheme II is wound up.*

*3.6 The management fees will be payable from the Corpus of the Scheme II except that if the Corpus is not sufficient, the Contributors will be required to fund such payment through a Drawdown of their unpaid Capital Commitments, provided that Contributors subscribing to Class A Units shall be required to make payment only towards Class A Management Fees payable in respect of the Class A Units held by them and Contributors subscribing to Class B Units shall be required to make payment only towards Class B Management Fees payable in respect of Class B Units held by them. If such aggregate undrawn Commitments are insufficient to fund the Management Fee, the unpaid Management Fees shall be payable from the amounts available for Distribution on Units (including through recall of any Distributions already made).*

*3.7 In addition, the Investment Manager shall be entitled to recover from the Scheme II any tax or duty (other than tax deducted at source) including any goods and service tax or value added tax (together with surcharge or cess as may be applicable) which is, or may become, leviable under Applicable Law on the fees payable to the Investment Manager. The income-tax liability on the investment management fees or any other income earned by the Investment manager shall be borne by the Investment Manager itself and not by the Fund.*

*3.8 Except as provided in this Agreement, the Private Placement Memorandum or the Contribution Agreement, the Investment Manager shall not, without the prior written permission of the Trustee Company receive any fees or commissions payable in connection with Investments in Investee Companies provided that this Clause 3.8 shall not be construed to limit the ability*



*of any officer, director or employee of the Investment Manager from being paid nominal fees or commissions as a director of any Investee Company (or other similar governing body), but only to the extent that such nominal fees or commissions are generally paid to the directors of such Investee Company (or other similar governing body). Provided further, this Clause 3.8 shall not affect any fees or commissions payable to the Investment Manager for any agreement entered into prior to the making of any Portfolio Investment, if the same has been disclosed to the Trustee Company prior to making such Portfolio Investment. In the event any officer, director or employee of the Investment Manager is appointed as a director in any Investee Company (by reason of being an officer, director or employee of the Investment Manager), any commission(s) or like amounts received by such officer, director or employee from any Investee Company (other than sitting fees and reimbursement expenses) shall be promptly refunded to the Scheme II.”*

#### **4. EXPENSES**

*4.1. The operational expenses, whether incurred directly by the fund or indirectly by the Investment Manager for and on behalf of the fund, shall be charged to the fund on actual basis. The transaction expenses incurred for engaging services of third parties in evaluating, finalizing and concluding investments may either be capitalized for investments made or be expensed out as considered appropriate by the Investment Manager*

*4.2. The Investment Manager shall bear and be charged with all costs and expenses of operating and carrying on its day to day business including, without limitation the costs and expense of office space, facilities, supplies and necessary administrative and*



clerical functions, including compensation of the Investment Manager's personnel (collectively the "**Investment Manager Expenses**"). The expenses directly incurred by the Investment Manager in connection with the making of Investments on behalf of Scheme II shall not form part of the Investment Manager Expenses.

4.3. *The Investment Manager shall be responsible for travel expenses incurred in connection with the operation of the Scheme II including monitoring the Portfolio Investments. However, the Investment **Manager** shall not be responsible for travel expenses in connection to valuation of the Portfolio Investment and dispute resolution (including litigation and arbitration) arising in relation to the Portfolio Investments made.*

4.4. *All costs and expenses of the Fund on behalf of Scheme II including all out-of-pocket costs and expenses, if any, towards investing in, monitoring, reporting and disposing of Portfolio Investments, including without limitation any financing, legal, accounting, advisory and consulting expenses in connection therewith except the travel expenses as specified under Clause 4.3 (subject to any reimbursement of such costs and expenses by Investee Companies) in completing the Portfolio Investments arising out of performance of its obligations if incurred by the Investment Manager shall be reimbursed by Scheme II to the Investment Manager.*

4.5. *Notwithstanding anything to the contrary contained in this Clause 4 hereof, expenses incurred in relation to uncompleted investments of Scheme II even where a definitive agreement in respect of the transaction has not been executed will be borne by Scheme II."*



Sr. No.	Particulars	Class A	Class B	Class C	Class D	Total
<b>A</b>	<b>Capital Raised</b>					
1	Total capital commitment	500.00	493.50	0.92	5.58	1,000.00
<b>B</b>	<b>Fees and charges for year 1</b>					
1	One time fees / charges					
(i)	Establishment expenses capped @ 3.5% of capital commitments	17.50	17.27	0.03	0.20	35.00
2	<b>Annual fees / charges</b>					
(i)	Operating Expenses on actual basis	15.00	14.81	0.03	0.17	30.00
(ii)	Management fees @ 1.8% / 2% of capital commitments	9.00	9.87	-	-	18.87
<b>C</b>	<b>Fees and charges year 2 to 7</b>					
1	Annual fees / charges					
(i)	Operating Expenses on actual basis	90.00	88.83	0.16	1.00	180.00
(ii)	Management fees @ 1.8% / 2% of capital contributions	54.00	59.22	-	-	113.22
<b>D</b>	<b>Total Fees and Charges</b>					
1	<b>One time fees / charges</b>					
(i)	Establishment expenses capped @ 3.5% of capital commitments	17.50	17.27	0.03	0.20	35.00
2	<b>Annual fees / charges</b>					
(i)	Operating Expenses on actual basis	105.00	103.64	0.19	1.17	210.00
(ii)	Management fees (B + C)	63.00	69.09	-	-	132.09
3	<b>Total</b>	<b>185.50</b>	<b>190.00</b>	<b>0.22</b>	<b>1.37</b>	<b>377.09</b>
<b>E</b>	Investment made in portfolio entity (A - D)	314.50	303.50	0.69	4.21	622.91

10. A perusal of the above would show that according to the Petitioner, the manner in which the Agreement would be construed in terms of establishment expenses and operating expenses, would be the basis for imposition of the demand. The Court is concerned with the fact that while management fee etc., is clearly written under separate heads in Annexure K, establishment expenses capped @ 3.5% of the capital commitments is a lumpsum amount, which is being paid to the Petitioner for and on behalf of the fund whereas operating expenses is on actual basis.

11. Questions such as what are the kind of establishment expenses, which



have been incurred and whether they are being incurred by the Petitioner for payment of its own employees or there are any separate service providers being engaged on behalf of the firm, would require a factual determination which is outside the scope of this writ petition.

12. In the impugned order, the stand which has been taken by the Petitioner in the three different communications is also set out below :

**“5.2.3 I observe that the assessee initially submitted letter dated 20.01.2020 wherein they informed as under:-**

*As per discussion between Investment Manager and Scheme II, it has been mutually agreed that the establishment expenses are to be borne by M/s DMI Alternative Fund-Special Opportunities Fund (Scheme-II) shall be charged at the time of closure of Scheme II.*

**5.2.4 Also, the assessee further submitted letter dated 22.07.2022**

**wherein they again reiterated as under:-**

*One time Set up fee to be charged at the close of the scheme on 06.05.2025 unless further extended. Hence, time of supply for one time establishment charges would be on i.e. 31.12.2020 or after 06.05.2025. Since the one time fee has not accrued till now, the same cannot be account for in the books of accounts....*

**5.2.5 Further, the assessee also submitted letter dated 01.08.2022**

**wherein they again contended as under:-**

*One Time Set up Fees will be charged to Scheme II at the time of closure of the scheme i.e. 06th May, 2025.”*



13. The above mentioned correspondence itself would show that from time to time, the Petitioner has taken different stands as to how the establishment charge would either be a one-time establishment charge or would it be one-time set up fee, etc. There is no consistent stand on behalf of the Petitioner. The question whether any of the expenses incurred either on actuals or as a lumpsum in percentage terms, would have to be construed as Fee or not and whether it has to be taxed or not would require a scrutiny of the records of the Petitioners. The accounts of the Petitioner would need to be gone into to see as to whether the demand is valid or not. The impugned order is clearly an appealable order under Section 107 of the Central Goods and Services Tax Act, 2017.

14. In the opinion of this Court, the interpretation of such agreements which involves a factual analysis are beyond the scope of writ jurisdiction. There is no inherent lack of jurisdiction. Neither is there any violation of principles of natural justice. Under such circumstances there is no ground for interference with the impugned order in writ jurisdiction.

15. The Petitioner is, however, permitted to avail of its appellate remedy in accordance with law.

16. The Petitioner is permitted to file an appeal within a period of 45 days along with pre-deposit, in which case, the appeal shall not be dismissed on account of being barred by limitation but shall be decided on merits.

17. The petition is disposed of in these terms. Pending application also stands disposed of.



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18. No observation made in this order shall have any bearing on the final adjudication by the Appellate Authority.

**PRATHIBA M. SINGH,  
JUDGE**

**RAJNEESH KUMAR GUPTA  
JUDGE**

**MAY 7, 2025/nd/ik**  
*(corrected & released on 13<sup>th</sup> May, 2025)*