



**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT VI**

Item No. P1.

C.P. (IB)/736(MB)2025

CORAM:

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **11.03.2026**

NAME OF THE PARTIES: **Edelweiss Asset Reconstruction Company Ltd**

**Vs**

**ITMC Developers Private Limited**

**Under Section 7 of the IBC.**

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**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

**Sd/-**

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

//SJ//

**Sd/-**

**NILESH SHARMA**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**C.P. (IB)/736/MB/2025**

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**EDELWEISS ASSET RECONSTRUCTION COMPANY LTD**

[Acting in its capacity as trustee of EARC Trust SC-394]

[CIN:U67100MH2007PLC174759]

Edelweiss House , off CST Road,

Kalina, Mumbai-400098

**...Financial Creditor**

V/s

**ITMC DEVELOPERS PRIVATE LIMITED**

[CIN No.: U70109MH2017PTC290015]

1, Ramkrupa Building, Devji Bhimji Lane,

Mathuradas Road, Kandiwali (w),

Mumbai - 400067

**...Corporate Debtor**

**Pronounced: 11.03.2026**

**CORAM:**

**HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

For Applicant: Adv Mr. Nausher Kohli, Adv . Mr. Bhalchandra Palav, Adv Aniket Dighe,

Adv Mrs Pinky Pawar i/b Bhal & co.



For Respondent: Adv Mr. Rohan Agarwal, Adv. Mr Devansh Shah, Adv Mr. Shrey Shah  
i/b Hudda & Associates.

**ORDER**

***[PER: CORAM]***

**1. BACKGROUND**

- 1.1. This C.P. (IB) No.736/MB/2025 (Application) was filed on 25.02.2025 by Edelweiss Asset Reconstruction Company Ltd, the Financial Creditor (Financial Creditor), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of ITMC Developers Private Limited, the Corporate Debtor (Corporate Debtor) having CIN No.: U70109MH2017PTC290015
- 1.2. This Application has been affirmed by one Mr Aherar Patel , authorised signatory of the Applicant through board resolution dated 31.12.2024
- 1.3. As per Part IV of the Application, the default as claimed by the Applicant is Rs 4,46,27,15,167/- (Rupees Four Hundred and Forty-Six Crore Twenty-Seven Lakhs Fifteen Thousand One Hundred and Sixty-Seven only).
- 1.4. The date of default as mentioned in part IV is 29.11.2019.
- 1.5. The Applicant has proposed Stress Credit Resolution Private Limited., having Registration No. IBBI/IPE-0094/IPA-3/2023-24/50059, to act as the Interim Resolution Professional (IRP).

**2. CONTENTIONS OF APPLICANT**

2.1 The Applicant states that the original lender i.e ECL Finance Limited granted a Term Loan of Rs. 90 crores vide Loan Agreement dated 02.01.2018 and a Debenture Loan of Rs. 75 crores with issuance of 1500 Redeemable Non-Convertible Debenture vide Debenture Trust Deed dated 27.02.2017 . A copy of each of Term Loan Agreement and Debenture Trust Deed is provided as **Annexure - J2 and I-1** of the Application respectively.

2.2 The disbursement details of the Term Loan are provided hereunder:

**b. Term Loan Facility of Rs 90,00,00,000/- [Rupees Ninety Crores Only] disbursement**

<b>Date</b>	<b>Principal Disbursement</b>
25-01-2018	24,50,00,000
20-02-2018	20,00,00,000
22-06-2018	1,79,00,000
26-07-2018	4,06,00,000
16-08-2018	2,83,00,000
01-10-2018	23,40,00,000
18-03-2019	9,20,00,000
21-11-2019	4,22,00,000
<b>Total</b>	<b>90,00,00,000</b>

2.3 The Term Loan and the Debenture Loan were secured by various security documents including Indenture of Mortgage , Corporate Guarantee issued by SSD Escatics Private Limited and SSDC Escatics Private Limited and Personal Guarantees issued by Mr. Jayesh Tanna, Mr.Deep Tanna , Mr.Vivek Tanna and Mr. Sandeep Tanna as mentioned in Part - V of the Application.

The particulars of security held are described in Part V of the Application which are produced hereunder;-

a. **Mortgaged Properties being Sapphire Project 1 and 2, together with whole of the movable properties over these projects and all right, title, interest benefit claims and demand of Project Sapphire except the Project land.**

b. **Mortgaged Properties being Project-3 named as Dwarka Society Redevelopment Project [belonging to SSSC Escatics Private Limited (“SSSC Escatics”)] and Project-4 named as Kapilvastu Society Redevelopment Project(belonging to [SSD Escatics Private Limited (“SSD Escatics”)]], together with whole of the movable properties over these Projects and all the right, title, interest, benefits claims and demands of mortgagors in the Project Lands.**

c. **Mortgaged Properties belonging to Mr. Vivek Jayesh Tanna and Mr. Heena Jayesh Tanna, being Duplex Flat Nos.2 and 3 situated at Village Poisar, Kandivali West, Mumbai.**

d. **Pledged Shares belonging to the Corporate Debtor and SSD Escatics.**

e. **Escrow Accounts belonging to the Corporate Debtor and SSSC Escatics.**

f. **Personal Guarantor:**

- 1) Mr Jayesh Vinodkumar Tanna.
- 2) Mr Deep Vinodkumar Tanna.
- 3) Mr Vivek Jayesh Tanna.
- 4) Mr Sandeep Vinodbhai Tanna.

g. **Corporate Guarantor**

- 1) SSD Escatics Private Limited.
- 2) SSSC Escatics Private Limited.

2.4 Vide Assignment Agreement dated 27.03.2020, the loan account of the Corporate Debtor was assigned to the Applicant by the original lender.

The Assignment Agreement is placed at **Annexure - H** of the Application

2.5 The Applicant submits that the date of default for both the Debenture Loan facility and Term Loan facility is 29.11.2019 as mentioned in the NeSL report which is provided as **Annexure - G2** in the present Application.



2.6 Applicant issued a recall cum invocation of guarantee notice dated 08.10.2021 for Term Loan facility to Corporate Debtor and Guarantors calling upon to repay the due amount under Term Loan. The copy of recall notice is attached as **Annexure N-1** in the Application.

2.7 The Applicant thereafter issued Section 13(2) demand notice under SARFAESI Act, 2002 on 21.02.2022 but the Corporate Debtor and Guarantors failed to repay the claimed amount. The copy of demand notice is attached to the Application as **Annexure- N3**.

2.8 Debenture Trustee on instructions from Debenture Holder issued notice dated 07.03.2022 to Corporate Debtor calling upon to repay the due amount under Debenture Loan.

2.9 The Applicant submits that he had previously filed the Company Petition (IB) No. 584 of 2024 against the Corporate Debtor. The Applicant sought liberty to file a fresh application if settlement was not worked out. This Hon'ble Tribunal vide order dated 14.01.2025 dismissed the petition as withdrawn and granted liberty to file a fresh petition. The order of this Tribunal is placed as **Annexure D** in the current petition.

2.10 The Applicant submits that the Corporate Debtor has acknowledged the financial debt vide its audited financial statement for the Financial Year 2020-21 dated 21.11.2021. The copy of the same has been placed at **Annexure N** of the application.

2.11 The Applicant states considering that the period for limitation stood excluded from 15.03.2020 to 28.02.2022, the 3-year limitation period shall begin from 28.03.2022 and shall lapse on 28.02.2025 and thus the petition is well within limitation.



2.12 The Applicant states that these facts demonstrate that the assignment of aforesaid financial debt of the Corporate Debtor, which was assigned by the assignor to the Financial Creditor is admitted, acknowledged, existing and legally enforceable as on the date of re-filing of the present Petition. Hence the present Petition is within the extended time granted under the law of limitation.

2.13 The Applicant has attached the following documents along with the Application and /or along with the Rejoinder.

- a. Copy of master data of the Corporate Debtor
- b. Copy of IBBI Intimation Acknowledgement
- c. Copy of Form 2 of proposed IRP dated 14.05.2024
- d. Copy of Authorisation for Assignment of IRP
- e. Copy of Order dated 14.01.2025 passed by Hon'ble NCLT Bench 1
- f. Copy of Modification of Charge for Term Loan
- g. Copy of Certificate of Registration of Charge for Debenture Loan
- h. Description of other securities
- i. Copy of Personal Guarantee Agreement dated 02.01.2018 jointly executed by Jayesh Tanna , Deep Tanna , Sandeep Tanna & Vivek Tanna
- j. Computation of amount and days of default
- k. Copy of Debenture Trust Deed dated 27.02.2017
- l. Copy of Escrow Agreement dated 27.02.2017
- m. Copy of 1<sup>st</sup> Amendment & 2<sup>nd</sup> Amendment to the Escrow Agreement dated 02.01.2018
- n. Copy of Amended Share Pledge Agreement dated 18.01.2018
- o. Copy of share pledge agreement in respect of pledged shares of Corporate Debtor dated 01.03.2017



- p. Copy of share pledge agreement in respect of pledged shares of SSD dated 01.03.2017
- q. Copy of Undertaking cum Indemnity Bond of Corporate Debtor dated 01.03.2017
- r. Copy of Undertaking of SSD dated 01.03.2017
- s. Copy of undertaking of CD dated 02.01.2018
- t. Copy of Recall Notice Cum Invocation of Guarantee for Term Loan Facility dated 08.10.2021
- u. Copy of balance sheet of CD for year ended 31.03.2021
- v. Copy of Sanction Letter dated 20.12.2017
- w. Form 2 of proposed IRP dated 14.05.2024
- x. Copy of Term Loan Agreement dated 02.01.2018
- y. Copy of corporate guarantee agreement executed by SSSC dated 02.01.2018
- z. Copy of corporate guarantee agreement executed by SSD dated 02.01.2018
- aa. Copy of Undertaking of SSSC dated 02.01.2018
- bb. Copy of Undertaking & Indemnity Bond of SSD dated 02.01.2018
- cc. Copy of Certificate under Information Technology Act , 2000
- dd. Copy of Assignment Agreement dated 27.03.2020
- ee. Copy of balance sheet of the Corporate Debtor for year ended 31.03.2021
- ff. Copy of record of default with NeSL.
- gg. Copy of demand notice under 13(2) dated 21.02.2022
- hh. Copy of notice issued by debenture trustee dated 07.03.2022
- ii. Copy of Statement of Accounts along with Particulars of the Claim upto 31.03.2023



jj. Updated Statement of Accounts as on 31.08.2025

**3. REPLY BY THE CORPORATE DEBTOR**

- 3.1 The affidavit in reply was filed on 15.09.2025 by the Respondent through Mr. Jayesh Vinod Tanna , who is stated to be an authorized signatory .
- 3.2 The Corporate Debtor submits that the Applicant is re-litigating the same cause of action as before and should be barred by the principle of constructive res judicata. The Applicant should not be permitted to withdraw and refile petitions at its own convenience.
- 3.3 The Corporate Debtor states that during the hearing of withdrawal of earlier petition i.e CP (IB) 584 of 2024 the Corporate Debtor was not present and the order was passed unilaterally. No mutual settlement had been proposed by the Corporate Debtor.
- 3.4 The Corporate Debtor submits that the amount claimed in the default is exaggerated and highly inflated.
- 3.5 The Financial Creditor has not appropriated the payment made by the Corporate Debtor in discharge of the debt. Further the monies received after realization of assets sold under SARFAESI , with a reserve price of Rs 24.53 crore , has neither been disclosed to the Corporate Debtor nor appropriated in the account. The petition does not disclose any details of the sale consideration price, sale date and name of the purchaser.
- 3.6 The Corporate Debtor further submits that the Applicant has not factored in the monies received as a joint developer appointed in the project as per the order dated 15.03.2024 passed under section 13(2) of the Maharashtra Slum Areas (Improvement , clearance And Redevelopment ) Act 1971 and under the Amnesty Scheme which enables the financial institution to appoint a developer of their own choice (from approved list)



and thereafter enjoy the profit from sale of the flats from the free sale component of the slum rehabilitation projects.

3.7 The Corporate Debtor states that had the monies been accounted / factored in, the principal amount along with the interest would have been substantially reduced even below the threshold as stipulated under Section 4 of the code.

3.8 The Corporate Debtor further submits that entitlement to claim any further amount as in default is not crystallised, since the Applicant stands statutorily empowered to recover project revenues, and the Respondent remains entitled to reimbursement of expenses from such revenues, both of which are to be determined by the process stipulated under the Slum Rehabilitation Authority (SRA) order dated 15.03.2024.

3.9 It is stated that invocation of summary insolvency jurisdiction in this scenario, without first exhausting or even accounting for remedies and entitlements under special statutes and administrative schemes, amounts to a gross abuse of process and collides with the object and spirit of the IBC.

3.10 Further the Corporate Debtor states that the Applicant has already commenced recovery of monies from multiple sources in relation to the redevelopment project and has a reasonable cause to believe that the Applicant has already recovered more than Rs 200 crores under the Slum Rehabilitation Authority (SRA) order dated 15.03.2024. Hence the petition is filed to extract excess money.

3.11 The Corporate Debtor argues that Applicant must make a full and fair disclosure of all amounts recovered from enforcement proceedings. The quantum of the debt alleged is thus neither transparent nor crystallized and calls for strict documentary proof by the Applicant before the



maintainability of this Petition can be determined. Until full disclosure is not provided the petition should not be maintainable.

3.12 The Corporate Debtor states that the petition is filed with malicious intent and not for the purpose of resolution of insolvency. Section 65 of the Insolvency and Bankruptcy code 2016 expressly bars the initiation of proceedings with such intent and the petition deserves to be dismissed with exemplary cost.

3.13 The objective of the IBC is to resolve insolvency by keeping the business operational, maximizing its asset and balancing the interest of all stakeholders, rather than being individual action for a creditor to collect its dues. Thus, allowing the petition without reconciliation and accounting would amount to permitting unjust double recovery which is impermissible in law and equity.

3.14 Hence the petition filed under section 7 must be rejected.

#### **4. REJOINDER TO REPLY BY APPLICANT**

4.1. The rejoinder is filed by one Ms. Pranika Bhatia stated to be authorised representative of the Applicant vide board resolution dated 26.08.2025

4.2. The Applicant submits that the petition is not filed with malicious intent and is genuinely concerned with resolution of the Corporate Debtor which is being controlled by failed and dishonest management.

4.3. The Applicant submits that the present company petition was filed for a claim of Rs 446,27,15,167 however the latest claim of default as on 31.08.2025 is Rs 747,65,75,103 after adjusting Rs 24,65,23,059 i.e the sale consideration of secured assets under SARFAESI. Thus, the Corporate Debtor is in default and hence on these grounds the company petition should be admitted. Further the Applicant has further provided the respective updated statement of accounts of the debenture loan and term loan in **Exhibit 1 of the Rejoinder**.



- 4.4. It is stated that even after giving effect to the amounts realised from the auction and adjusting them against the Corporate Debtors outstanding liabilities in accordance with law, substantial amounts towards principal, interest and other contractual charges remain unpaid and are legally recoverable.
- 4.5. The Applicant submits that the Corporate Debtor has acknowledged and admitted the default and debt in the reply.
- 4.6. The Applicant states that the doctrine of constructive res-judicata is not applicable to the proceedings of the IBC. The proceedings under IBC are not in the nature of adversarial lis alone but proceedings in rem (once admitted), meant for resolution and protection of stakeholders at large. Hence, withdrawal and refiling, if occasioned by continuing default, cannot be treated as re-litigation.
- 4.7. The Applicant submits that the Corporate Debtor is protracting the CIRP by alleging the measures taken under SRA under Maharashtra slum act 1971. The Corporate Debtor has no locus to raise the issues as it was his failure to provide homes for the slum dwellers. Hence the Applicant submitted an application under the amnesty scheme to complete the project by a new developer.
- 4.8. Further, recommendation of the SRA under the Amnesty Scheme is in accordance with the framework of the Amnesty Scheme and provides that the interests of the slum developers in a Slum Rehabilitation Scheme are paramount and that any other stakeholders are all subservient. Thus, it would not be incorrect to state that presently the redevelopment of the SRA project is of paramount importance and no recovery of any amounts have been made by the Applicant under the present Amnesty Scheme, as alleged or otherwise.
- 4.9. The Applicant denies the fact of recovery of more than 200 crore and states that the claim is based on legally enforceable debt which remains due despite recoveries made under SARFAESI.



4.10. The Applicant submits that it has asserted only its rights over the secured property which is his paramount right.

**5. Written submissions of Applicant**

5.1. The Applicant submits that earlier Section 7 Company Petition filed by the Applicant was withdrawn by the Applicant vide Order dated 14.01.2025 and pursuant to the liberty granted therein by the tribunal, the Applicant has filed the present Company Petition. It is well settled law that Res judicata requires a decision on the merits, which was absent in the Order dated 14.01.2025.

5.2. The Applicant submits that no recovery of any amount has been done by the Applicant under the amnesty scheme of SRA project.

5.3. The Applicant's enforcement of its right to substitute the developer under the statutory Amnesty Scheme under the SRA Act does not act as a bar to initiate the CIRP of the Corporate Debtor.

5.4. The Applicant submits that regardless of any dispute between Corporate Debtor and Creditor/Financial Creditor once debt and default are established as in the present case, then 'admission' under Section 7 IBC must follow irrespective of enforcement actions under the other laws.

**6. Written submissions of Corporate Debtor.**

6.1. The Corporate Debtor submits that the Applicant in the original company petition has claimed an amount of Rs 446,27,15,167/- however in the rejoinder the claim amount to be in default was of Rs 747,65,75,103. There is an ex facie inconsistency and the Applicant cannot improve its case in the rejoinder.

6.2. The Corporate Debtor submits that the Applicant has not disclosed the monies received under realization of secured asset sold under SARFAESI and about the application made by it under amnesty scheme in which the Applicant can choose the developer of their choice and deal with the free sale component of



the slum scheme. Hence the petition should be dismissed on suppression of these two vital facts.

6.3. Further the debt due even after adjustment is neither admitted nor crystallised and would require reconciliation.

## **7. ANALYSIS AND FINDINGS**

7.1. We have perused the documents as placed before us and heard the Ld. Counsels for the Applicant and the Corporate Debtor. Our findings in the matter are as under :

7.2. The present application is filed under section 7 of Insolvency and Bankruptcy code 2016 for a default of Rs 233,78,45,278 with respect to term loan and Rs 212,48,69,889 with respect to Non-convertible debenture totalling the default amount to Rs 446,27,15,167 and the date of default for both the facilities is 29.11.2019. The evidentiary record placed before us includes the NeSL report in Form D, Term loan agreements dated 02.01.2018 , Debenture trust deed dated 27.02.2017 .

7.3. The Disbursement with regard to Term Loan has been proved through the statement of accounts and debenture issuance can be relied upon via the debenture trust agreement dated 27.02.2017 and other documents attached along with the Application.

7.4. As per the loan agreement dated 02.01.2018, the “due date(s)” as defined under clause 1.1.15 is reproduced hereunder:

**1.1.15 “Due Date(s)” shall mean;**

- (i) for payment of interest – the dates set out in the Schedule- 1 hereto on which the interest shall be payable by the Borrower at the Applicable Interest Rate (each such date is hereinafter referred to as the Interest Payment Date);
- (ii) for payment of further interest and default interest – Interest Payment Date(s);
- (iii) for repayment of principal- the date(s) specified in Schedule-1 hereto for repayment of principal amount of the Loan (hereinafter referred to as the Maturity Date(s));
- (iv) any other amounts - the date on which such amount falls due in terms of this Agreement.

7.5. Further, the event of default is defined in clause 1.1.18 of the Loan Agreement dated 02.01.2018 which is defined as “the occurrence of any of the events or circumstances specified in Article 7 and Schedule – 2 of the agreement.” Clause 7.1.1. states as under.

**7.1.1 Failure to pay**

The Borrower fails to pay any amount due under this Agreement on the Due Date and the same remained unpaid for 3 (three) Business Days thereafter and/or in the event the Lender is of the opinion that there is a likelihood of the monies due under the Finance Documents not being repaid. Each failure of the Borrower to pay any amount due shall constitute a separate Event of Default.

7.6. As mentioned in schedule 2 of the Loan Agreement the maturity date/repayment and interest payment dates are provided as under.

Interest Payment Date(s)	Payable quarterly on the 30 <sup>th</sup> or last day of each month, whichever is earlier. If it's a non Business Day then the immediate preceding Business Day shall be the Interest Payment Date. The interest will be calculated on daily basis and year being of 365 days.														
9. Maturity Date (s)/Repayment	The Borrower shall repay the Loan in 5 equal quarterly installments starting from the last day of 11 <sup>th</sup> Quarter from the first drawdown date as per schedule mentioned below:- <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 70%;">Repayment Dates</th> <th style="width: 30%;">% of Loan Amount</th> </tr> </thead> <tbody> <tr> <td>End of 33<sup>rd</sup> month from first Drawdown Date</td> <td>20%</td> </tr> <tr> <td>End of 36<sup>th</sup> month from first Drawdown Date</td> <td>20%</td> </tr> <tr> <td>End of 39<sup>th</sup> month from first Drawdown Date</td> <td>20%</td> </tr> <tr> <td>End of 42<sup>nd</sup> month from first Drawdown Date</td> <td>20%</td> </tr> <tr> <td>End of 45<sup>th</sup> month from first Drawdown Date</td> <td>20%</td> </tr> <tr> <td><b>Total</b></td> <td><b>100%</b></td> </tr> </tbody> </table> <p style="font-size: small; margin-top: 5px;">For the sake of clarity, "End of 33<sup>rd</sup> month" shall mean the last Business Day of the 33<sup>rd</sup> month.</p>	Repayment Dates	% of Loan Amount	End of 33 <sup>rd</sup> month from first Drawdown Date	20%	End of 36 <sup>th</sup> month from first Drawdown Date	20%	End of 39 <sup>th</sup> month from first Drawdown Date	20%	End of 42 <sup>nd</sup> month from first Drawdown Date	20%	End of 45 <sup>th</sup> month from first Drawdown Date	20%	<b>Total</b>	<b>100%</b>
Repayment Dates	% of Loan Amount														
End of 33 <sup>rd</sup> month from first Drawdown Date	20%														
End of 36 <sup>th</sup> month from first Drawdown Date	20%														
End of 39 <sup>th</sup> month from first Drawdown Date	20%														
End of 42 <sup>nd</sup> month from first Drawdown Date	20%														
End of 45 <sup>th</sup> month from first Drawdown Date	20%														
<b>Total</b>	<b>100%</b>														

7.7. Based on an examination of the above terms of the Loan Agreement , we find that the Corporate Debtor was required to pay the outstanding amount as per the above terms and in failure to do so, an event of default would occur. Further, from the Statement of Accounts submitted before this Tribunal , it is evident that the last interest payment was remitted on 23.12.2019. Since that date, no

further payments toward the principal or interest have been paid by the Corporate Debtor. Consequently, the Applicant has successfully demonstrated a persistent breach of the repayment schedule. In view of the aforementioned contractual provisions and the evidentiary record, we find that a default has occurred.

7.8. Further the Applicant has provided a balance sheet of the Corporate Debtor for the year ending 31.03.2021, which was signed on 21.11.2021, wherein the acknowledgement of the debt has been proved. The relevant portion of the said Balance Sheet is reproduced as hereunder;-

<b>ITMC DEVELOPERS PRIVATE LIMITED</b>		
Previous Year: Period ended March 31, 2021 Assessment Year: 2021-22		
<b>Notes to Financial Statements</b>		<b>(Currency: Indian Rupees)</b>
<b>Note: 3 Resrves and Surplus</b>		
Particulars	As at March 31, 2021	As at March 31, 2020
Surplus in Statement of Profit and Loss As per last Balance Sheet	(47,966,311)	(46,796,656)
Add / (Less): Net Profit (Less) after tax transferred from Statement of Profit and Loss	(1,337,756)	(1,169,655)
	(49,304,067)	(47,966,311)
<b>Total In</b>	<b>(49,304,067)</b>	<b>(47,966,311)</b>
a) The Board of Directors of the company has proposed a NIL dividend per equity share for the year 2020-21		
<b>Note: 4 Long-term borrowings</b>		
Particulars	As at March 31, 2021	As at March 31, 2020
a) ECL Finance Ltd (18% Non-convertible Debentures issued for 5 years )	750,000,000	750,000,000
b) ECL Finance Ltd - Term Loan	900,000,006	900,000,006
<b>Total In</b>	<b>1,650,000,006</b>	<b>1,650,000,006</b>

7.9. The 1<sup>st</sup> default occurred on 29.11.2019 , which is also the date of default as provided in the NeSL form D . Thereafter acknowledgement of debt is proved vide balance sheet dated 29.11.2021 , which was within the limitation from the date of default. Further due to the moratorium imposed by the Hon'ble Supreme



Court till 28.02.2022 the limitation period begins from 28.02.2022 and ends on 28.02.2025.

7.10. This tribunal has relied on the judgement of Hon'ble NCLAT in **Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr.** Wherein it has been held that OTS and disclosure in the Financial statements constitute an acknowledgment of debt and extends limitation period.

*“26. In view of the law laid down by the Hon'ble Supreme Court in ITC Limited (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in Shibcharan Das (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in ITC Limited. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this matter and can be a continuous cause of action as well. 1 (2021) 10 SCC 330 2 2022 SCC OnLine NCLAT 4237 4*

*27. In the light of the above discussion and the fact that the Corporate Debtor in its financial statements for the F.Y. 2014-2015 and F.Y. 2015-2016 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial Creditor; and also, in its letter dated 23.02.2017 submitted a proposal for one-time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.*

*28. Therefore, we hold that the petition filed by the Financial Creditor is within limitation*



7.11. This Tribunal has further relied on the judgment of Hon'ble Supreme Court in the matter of **Dena Bank v. C. Shivkumar Reddy, (2021) 10 SCC 330**, wherein it was held that

*“139 Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act....Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years.*

7.12. Considering the facts of this matter and applying the decision of the Hon'ble Supreme Court in Dena Bank(Supra) and Hon'ble NCLAT in Dinesh G Jaiswal (Supra), we are of the view that the present application filed on 25.02.2025 is well within limitation period, since the corporate debtor has acknowledged its liability with respect to the Term Loan and Debenture Loan in its audited balance sheet dated 21.11.2021 for Financial Year 2020-21 and also that the moratorium period imposed by the Hon'ble Supreme Court excludes the period from 15.03.2020 till 28.02.2022 for the purpose of limitation and as a result the limitation period begins from 01.03.2022 and expires on 28.02.2025 and that the present application is filed by the Applicant on 25.02.2025.

7.13. Further the Corporate Debtor contends that the petition is barred by principle of Constructive Res Judicata. The concept of res judicata is applicable when the earlier suit is already heard and finally decided by the Court. The principle of Constructive Res Judicata is an extension of the principle of Res Judicata. Principle of Constructive res judicata states that when any matter



which might or ought to have been made ground of defence or attack in a former suit, the same shall be deemed to have been a matter directly and substantially in issue in such suit.

7.14. At this juncture , it is pertinent to reproduce the Section 11 of the CPC, 1908.

**Section 11. Res judicata.**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

*Explanation I.*—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

*Explanation II.*—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

*Explanation III.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation IV.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation V.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

*Explanation VI.*—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

*Explanation VII.*—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit



*shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.*

*Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.*

7.15. In the instant case the matter is never finally decided. The Applicant approached this Tribunal and withdrew the petition stating that the parties are trying for settlement and sought liberty to file the application afresh if settlement did not work out. As a result, this Tribunal granted liberty to the Applicant to file the matter afresh. It is pertinent to note that the Corporate Debtor never filed an appeal on the liberty granted to the Applicant by the order of the Tribunal dated 14.01.2025. The order of the this Tribunal is reproduced here under:-





appropriated is Rs.11,20,55,935 and with respect to the term loan the amount appropriated is Rs.13,44,67,123. After adjusting all these amounts the total outstanding amount as on 31.08.2025 is Rs. 747,65,75,103, however in the Company Petition the outstanding claimed as on 31.03.2023 amounted to Rs 446,27,15,167/-

7.20. Perusal of the NeSL record of default reveals that the same is in a “deemed to be authenticated” status. The default amount for term loan and Non-convertible debenture is Rs 212,48,69,889 and Rs 233,78,45,278 respectively. Further the date of default is 29.11.2019 which clearly shows that Corporate Debtor is in default for an amount of more than Rupees One Crore.

7.21. We have taken note of the Corporate Debtor’s contention that a litigant cannot be permitted to improve their case through a rejoinder. However, even if the updated claim amount is excluded from consideration, the underlying record clearly establishes that the outstanding default remains well in excess of the threshold as stipulated under section 4 of the IBC , which is Rs 1 Crore.

7.22. Further any dispute regarding the specific quantum of debt is immaterial the during the stage of admission. If the default crosses more than Rs 1 crore (as per Section 4 of the Insolvency and Bankruptcy Code) then application is liable to be admitted.

7.23. This Tribunal has relied on the Judgement of Hon’ble Supreme Court in the case of **Innovative Industries Limited v. ICICI Bank Limited**, (Civil Appeal Nos. 8337-8338 of 2017) (2017) 8SCR 33 in which the Hon’ble Supreme Court has discussed extensively the scope of the power of the Adjudicating Authority under section 7 of the IBC and has held that the same is limited to assessing the records provided by the Financial Creditor to satisfy itself that the default



exceeding the threshold of Rs One Crore has occurred. The relevant portion of the said Judgment is reproduced below:

*“28. When it comes to a Financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any Financial Creditor of the Corporate Debtor – it need not be a debt owed to the Applicant Financial Creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a Financial Creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the Applicant in Part I, particulars of the Corporate Debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the Applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the Financial Creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the Corporate Debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the Applicant to rectify the defect within 7 days of receipt of*



*a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the Financial Creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be.*

.....

*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 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".*

7.24. The contention of the Corporate Debtor with regard to suppression of facts is not maintainable. The debt in the present case is way above the threshold as stipulated under the section 4 of the IBC , which is proved by the statement of accounts as provided by the Applicant.

7.25. Further the Applicant has rightly pointed out the judgement of Hon'ble Bombay High Court in **Anudan Properties Pvt Ltd Vs Mumbai Metropolitan Region 2025 SCC OnLine Bom 692** wherein the Hon'ble court has held that the Slum Rehabilitation Authority is empowered to remove the said developer and appoint another to complete the project . This is an administrative measure and not a recovery proceeding. Hence the SRA order passed under section 13(2) of the Maharashtra Slum Areas (Improvement , clearance And Redevelopment ) Act 1971 does not hamper the proceedings of IBC. Moreover



the CD has failed to establish that there was any recovery by the Applicant on account of the CD under SRA order dated 15.03.2024

7.26. In view of the above discussion, the Applicant has successfully demonstrated the existence of a financial debt as the transaction involves amount raised pursuant to issuance of debentures under section 5(8)(c) of the IBC and money borrowed against the payment of interest i.e. term loan under section 5(8)(a) of IBC 2016 , the occurrence of default, and the continuing nature of such default and all supported by clear documentary evidence.

7.27. Financial Creditor has also proposed the name of an Insolvency Professional Entity (IPE) i.e Stress Credit Resolution Private Limited as the proposed IPE, and as per the Form 2 attached along with the Application, no disciplinary proceedings are going on against the said IPE. The AFA of the IPE is valid upto 30.12.2026 as reflected on the IBBI portal . Further, this Application is complete as all the required documents have been attached along with the Application. Accordingly, the present Application is fit for admission under Section 7 of the IBC, 2016.

7.28. We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

### **ORDER**

In view of the aforesaid findings, this Application bearing C.P. (IB) 736/MB/2025 filed under Section 7 of IBC, 2016, by Edelweiss Asset Reconstruction Company Ltd , the Applicant (Financial Creditor) for initiating CIRP in respect of **ITMC Developers Private Limited** having CIN No. U70109MH2017PTC290015 the Corporate Debtor, is **Admitted**.



We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
  - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;
  - b) transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover, or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.



- V. That this Bench hereby appoints **Stress Credit Resolution Private Limited.**, having Registration No. **IBBI/IPE-0094/IPA-3/2023-24/50059**, email [ayunish@yahoo.com](mailto:ayunish@yahoo.com) ,having valid Authorisation for Assignment up to 30.12.2026 as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal monthly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.



- XI. The IRP is directed to issue notice of Admission upon all the statutory authorities of Corporate Debtor without Fail
- XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XIII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**

**SAMEER KAKAR  
MEMBER (TECHNICAL)**

*//SJ//*

**Sd/-**

**NILESH SHARMA  
MEMBER (JUDICIAL)**