IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV

<u>I.A. No. 5068 of 2024</u>

IN

C.P. (IB) No. 747/MB/2022

Filed u/s. ***12A*** *of the Insolvency and Bankruptcy Code, 2016.*

Mr. Jayesh Sanghrajka

Interim Resolution Professional of M/s. Kakade Estate Developers Pvt. Ltd.

…Applicant

v/s.

Edward Mauritius Limited & Anr.

…*Respondent(s)*

<u>In the matter of</u>

<u>C.P. (IB) No. 747/MB/2022</u>

Vistra ITCL (India) Limited & Anr.

…Petitioner

v/s.

Kakade Estate Developers Pvt. Ltd.

…Corporate Debtor

<u>Order Pronounced on</u>: 26.02.2025

Coram:

Ms. Anu Jagmohan Singh	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

For the Applicant	**:**	Mr. Gaurav Joshi (Ld. Sr. Adv.) *a/w.* Ms. Karol Punjabi *i/b.* Ms. Pranali Gada, Ld. Counsel for the Applicant Resolution Professional.
For the Respondents	**:**	Mr. Aditya Shiralkar *a/w.* Ms. Nanki Grewal, Ms. Mansi Joglekar and Mr. Krishn Thakar *i/b.* Wadia Ghandy & Co., Ld. Counsel for the Respondent Nos. 1 and 2. Mr. Jatin Pore *a/w.* Ms. Ashwini Hariharan and Mr. Vishal Mandal *i/b.* DSK Legal, Ld. Counsel for Respondent Nos. 3 and 4.

ORDER

1. The captioned interlocutory application has been filed on 16.10.2024, by **Mr. Jayesh Sanghrika** *viz.* (Interim) Resolution Professional of M/s. Kakade Estate Developers Private Limited ("**Corporate Debtor**") against Edward Mauritius Limited ("**Respondent No. 1**"), HDFC Bank Limited ("**Respondent No. 2**"), IIRF Holdings XIV Limited ("**Respondent No. 3**"), and Vistra ITCL (India) Limited ("**Respondent No. 4**"; collectively referred to as "**Respondents**")), *u/s.* 12A of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") *r/w.* Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of this Tribunal to the Settlement Agreement *dated* 31.08.2024 *r/w.* Addendum to the Settlement Agreement *dated* 09.01.2025, thereby permitting withdrawal of the ongoing insolvency proceedings instituted as against the Corporate Debtor hereto.

2. In the interest of integrality, we deem it opportune to extract the relief(s) sought by the Applicant herein as hereunder:

"

(a) The Hon'ble Tribunal be pleased to approve the Settlement Agreement dated 31st August 2024 and the CoC's decision in the 17th CoC Meeting dated 2nd September 2024 to approve the said Proposal under Section 12A of the IBC;

(b) Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to grant the following reliefs:

(i) To approve the Settlement Agreement dated 31st August 2024 and the CoC's decision in the 17th CoC Meeting dated 2nd September 2024 to approve the said proposal under Section 12A of the IBC;

(ii) authorize and permit the Resolution Professional / Applicant herein to execute and register the Land Transaction Documents (defined above) and other related documents, as per the Settlement Agreement dated 31 August 2024;

(iii) authorize and permit the Resolution Professional/Applicant herein being Mr. Jayesh Sanghrajka to sign and execute all documents and take all necessary steps as may be required to give effect to the settlement as envisaged by the Settlement Agreement and any other documents executed pursuant thereto;

(c) To pass necessary directions for payment of entire Corporate Insolvency Resolution Process (CIRP) expenses by Sanajy Kakade in priority including the fees of the Resolution Professional and any other expenses incurred in the management of the Corporate Debtor during the CIRP;

(d) The Hon'ble Court be pleased to allow the withdrawal of the present Company Petition (IB) No. 747 of 2022 under section 12A of the Insolvency and Bankruptcy Code, 2016, read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) read with Rule 11 of National Company Law Tribunal Rules, 2016 subject to compliance of all the terms and conditions of the Settlement Agreement dated 31st

August 2024 and all the amounts payable to the Respondents under the Settlement Agreement dated 31 August 2024 have been paid;

(e) *In the alternative to prayer clauses (a), (b) and (d) and only in the event the Hon'ble Court allows the withdrawal of the present Company Petition (IB) No. 747 of 2022 under section 12A of the Insolvency and Bankruptcy Code, 2016, read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016), prior to the terms and conditions of the Settlement Agreement dated 31st August 2024 having been fulfilled and complied with and all the amounts payable to the Respondents under the Settlement Agreement dated 31st August 2024 being paid, then the Hon'ble Court be pleased to grant liberty to the Respondents Nos. 1 and 2 to re-approach the Adjudicating Authority for restoration and revival of the Company Petition on account of a breach /non-compliance / non-completion of the Settlement Agreement;*

(f) *Ad-interim reliefs in terms of clause (b);*

(g) *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case;*

(h) *Costs of the present Application;*

"

We now deem it opportune to delve into the submissions advanced by the parties herein.

<u>Submissions by the Applicant</u>

3. The Applicant submits that Respondent Nos. 1 and 2 *viz*. Original Financial Creditors, filed the captioned company petition as against the Corporate Debtor *u/s.* 7 of the IBC, 2016. This Tribunal was pleased to admit the same *vide* its Order *dated* <u>29.03.2023</u> which resulted in the commencement of CIRP as against the Corporate Debtor.

4. The Applicant submits that subsequent to publication of Form-A by the Applicant on 01.04.2023 and the submission of claims by the creditors thereto; The list of creditors *dated* 12.04.2023 (*as subsequently modified on 19.04.2023 and 14.05.2024*) reveals that the Respondents herein are the only financial creditors of the Corporate Debtor and the only members of the Committee of Creditors ("**COC**") of the Corporate Debtor, and that there are no other admitted creditors of the Corporate Debtor.

5. The Applicant submits that the promoter of the Corporate Debtor *viz*. Mr. Sanjay Kakade gave an offer to the CoC members in the wake of February, 2024. Pursuant to negotiations among the parties, the CoC has accepted the offer made by the promoter of the Corporate Debtor. Accordingly, the parties have entered into a Settlement Agreement *dated* 31.08.2024 ("**Settlement Agreement**") read with Addendum to the Settlement Agreement *dated* 09.01.2025 ("**Addendum**").

6. The Applicant submits that as per the terms of the Settlement Agreement, the appeal filed by the promoter of the Corporate Debtor being *Civil Appeal No. 246 of 2024* ("**Appeal**") before the Hon'ble Supreme Court was withdrawn on 24.09.2024. By and under an Order *dated* 24.09.2024 passed by the Hon'ble Supreme Court, it was *inter-alia* recorded that the said Appeal was being withdrawn in view of the Settlement Agreement and that if there was any default or non-compliance with the terms of the settlement, it would be open to the aggrieved party to avail appropriate legal remedy in accordance with law.

7. The Applicant submits that the COC, in the 18th COC meeting, held on 11.10.2024, read with the voting results *dated* 15.10.2024, unanimously (i.e. with 100% voting-share) approved the withdrawal of the captioned company petition filed by Respondent Nos. 1 and 2 against the Corporate Debtor under

Section 12A of IBC, 2016, on the basis of the afore-mentioned Settlement Agreement. Subsequently, on 16.01.2025, the 20th COC meeting was convened whereunder, *inter-alia*, (i) the Addendum *dated* 09.01.2025 to the Settlement Agreement was approved by the COC by 100% voting-share and, (ii) the withdrawal of the captioned Company Petition was re-affirmed and re-approved under Section 12A of the IBC, 2016, on account the revised terms recorded in the Addendum.

<u>Findings of this Tribunal</u>

8. Heard the Learned Counsel(s) for the Applicant and the Respondents herein.

9. The extant position of law, in so far as **Section 12A** of the IBC, 2016, is concerned, is that this Tribunal *may* allow the withdrawal of an application *admitted* under section 7 or section 9 or section 10 of the IBC, 2016, on an application made by the Applicant with the approval of the requisite ninety per cent voting-share of the Committee of Creditors. Further, the afore-stated section is to be read in conjunction with **Regulation 30A** of the *IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019*, which reads as hereunder:

"

30A. Withdrawal of application

*(**1**) An application for withdrawal under section 12A may be made to the Adjudicating Authority –*

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

*(**2**) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-*

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of subregulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

*(**3**) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.*

*(**4**) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.*

*(**5**) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*

*(**6**) The Adjudicating Authority may, by order, approve the application submitted under subregulation (3) or (5).*

*(**7**) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.*

”

10. On a combined reading of the afore-stated section/ regulation and its juxtaposition with the factual matrix in the matter-at-hand; The records reflect that the captioned application has been duly filed **post**-constitution of the CoC of the Corporate Debtor, and that the same is duly accompanied by the Form-

FA which was approved by the CoC in its 18th Meeting *dated* 11.10.2024 with 100% voting-share. The list of creditors (as on 14.05.2024) has been extracted hereunder for ready reference:

Annexure - 4

Name of the Corporate Debtor: Kakade Estate Developers Private Limited; Date of commencement of CIRP: 29/03/2023; List of creditors as on: 14/05/2024

List of unsecured financial creditors (other than financial creditors belonging to any class of creditors)

Sr. No.	Name of creditor	Details of Claim Received		Details of Claim Admitted					Amount of Contingent Claim	Amount of any mutual dues, that may be set-off	Amount of Claim not Admitted	Amount of Claim under Verification	Remarks, if any
		Date of Receipt	Amount Claimed	Amount of Claim Admitted	Nature of Claim	Amount covered by Guarantee	Whether Related Party?	% voting share in CoC					
1	Edward Maurities Limited	12.04.2023	1,38,06,74,525.00	1,38,06,74,525	Claim as a financial creditor in terms of Share Subscription Cum Shareholders Agreement, Consent terms and consent award under the arbitral proceedings.	1,38,06,74,525	No	42.86	-	-	-	-	
2	Kakade Developers Pvt Ltd (through liquidator Mr. Jitendra Palande)	11.04.2023	1,29,44,736	-	Inter Corporate Deposits	-	Yes	-	-	-	-	1,29,44,736	
3	IIRF Holdings XIV Limited	12.04.2023	1,50,62,16,945	1,50,62,16,945	Claim as a financial creditor in terms of Share Subscription Cum Shareholders Agreement, Consent terms and consent award under the arbitral proceedings.	1,50,62,16,945	No	46.76	-	-	-	-	
4	HDFC Bank Limited	12.04.2023	10,63,39,174	10,63,39,174	Claim as a financial creditor in terms of Share Subscription Cum Shareholders Agreement, Consent terms and consent award under the arbitral proceedings.	10,63,39,174	No	3.30	-	-	-	-	
5	Vistra ITCL (India) Limited (acting as Trustee and on behalf of Infrastructure Leasing & Financial Services Realty Fund)	13.04.2023	22,80,57,027	22,80,57,027	Claim as a financial creditor in terms of Share Subscription Cum Shareholders Agreement, Consent terms and consent award under the arbitral proceedings.	22,80,57,027	No	7.08	-	-	-	-	
		TOTAL	**3,23,42,32,407**	**3,22,12,87,671**	-	**3,22,12,87,671**	-	**100**	-	-	-	**1,29,44,736**	-

General Notes:-

1. We have verified claims submitted by the claimants on the basis of documents and information provided by the claimants only.
2. Claims from certain financial creditors have presently not been admitted due to lack of adequate information and / or supporting documentation.
As per communication with each of the respective financial creditors, these amounts may be admitted at a later date subject to additional information being provided by the respective financial creditors.
3. Claims that are admitted may be subjected to further substantiation / modification depending on further developments and the basis of additional evidence, information or clarifications.
4. Claims under verification have not been taken into consideration to ascertain the voting percentage of the financial creditors.

11. At this juncture, we further seek to place due reliance on the decision of the Hon'ble Apex Court in ***Valal Rck v. Siva Industries And Holdings Ltd.*** *[Civil Appeal Nos. 1811-1812 of 2022]*, as extracted hereunder:

"

> ***24.*** *When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority* ***cannot*** *sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.*

"

We opine that all the pre-requisites mandated by the tenets of Section 12A of IBC, 2016, *r/w.* Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019, are duly met in the matter-at-hand. We therefore deem it fit to exercise our powers *u/R.* 30A(6) of the *IBBI (Insolvency Resolution Process for Corporate Persons) (Second amendment) Regulations, 2019*, to allow the withdrawal of the captioned company petition.

12. We make it patently clear that the said withdrawal is solely in consonance with Section 12A of the IBC, 2016 *r/w.* Regulation 30A of the *IBBI (Insolvency Resolution Process for Corporate Persons) (Second amendment) Regulations, 2019,* in terms of prayer-clause (d) *[as extracted on Page No. {3} of this Order hereto]* and **<u>not</u>** subject to compliance of any or all of the terms and conditions of the Settlement Agreement *dated* 31.08.2024, as sought thereto. The said withdrawal shall further **<u>not</u>** tantamount to this Tribunal expressing any merits/ granting any approval/ effectuating or validating (*whether wholly or in part*)/ authorizing and/ or permitting anything in relation to the Settlement Agreement *dated* 31.08.2024, as more particularly prayed for by the Applicant *via* prayer-clauses (a), (b), (c), (e) and (f).

13. Accordingly, the captioned application bearing I.A. No. 5068 of 2024, is **Partly-allowed**, in terms of prayer-clause (d), to the limited extent as afore-mentioned in Para {**12**} of this Order. Consequently, the captioned company petition bearing C.P. (IB) No. 747/MB/2022 is **Dismissed-as-withdrawn** and the Corporate Debtor herein is effectively released form the rigours of CIRP. All other connected Interlocutory Application(s) are Disposed-of as Infructuous. <u>Ordered accordingly</u>.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

26.02.2025
Aditya Kalia