



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**IA No. 2201 OF 2023**

**IN**

**CP (I.B.) No. 4362/IBC/MB/2018**

**An Interlocutory Application under Section 30 (6) a/w Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

**Mr. Kinjalkumar Madhubhai Chaudhary**

Resolution Profession of

M/s. Shamik Enterprises Private Limited

Having its registered office at:- 9B, Vardan Tower, Lakhudi Circle, Navrangpura, Ahmedabad – 380014

**..... Applicant/Resolution Professional**

*In the matter of*

**Hindustan Candle Manufacturing Co. Pvt. Ltd.**

**..... Petitioner/Financial Creditor**

**Versus**

**Shamik Enterprises Private Limited**

**.....Respondent/Corporate Debtor**

**Order Delivered on :- 23.09.2024**



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*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances:*

For the Applicant/RP : Adv. Nausher Kohli a/w Adv. Amey  
Hadwale a/w Adv. Geeta Lundwani

**ORDER**

*Per: -Mr. Anil Raj Chellan, Member (Technical)*

1. This Interlocutory Application is filed by Mr Kinjalkumar Madhubhai Chaudhary, the Applicant-Resolution Professional of Shamik Enterprises Private Limited ( the 'Corporate Debtor') seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (the 'Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulation 2016 ('CIRP Regulations') submitted by Vivaa Tradecom Private Limited ('Successful Resolution Applicant') and duly approved by 77.21% votes of the Committee of Creditors ('CoC') of the Corporate Debtor in its meeting held on 31.01.2023.

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2. The Applicant states that this Tribunal vide its order dated 03.02.2022 admitted the application for initiation of Corporate Insolvency Resolution Process ('CIRP') filed by Hindustan Candle Manufacturing Company Private Limited in respect of the Corporate Debtor in accordance with Section 7 of the Code. Pursuant to the admission order, the Applicant herein was appointed as the Interim Resolution Professional ('IRP') for conducting and supervising the CIRP.
3. The Applicant issued a public announcement in two newspapers (in English and Marathi) on 06.02.2022 for inviting claims from the creditors as contemplated under Section 15 of the Code. Based on the claims received, the CoC was constituted on 24.02.2022 and the Applicant filed the report certifying the Constitution of the CoC on 24.02.2022. In the first meeting of CoC held on 03.03.2022, a resolution was passed to confirm the Applicant as Resolution Professional (RP) of Corporate Debtor.
4. The Applicant further states that after the constitution of the CoC on 24.02.2022, based on the claims received, the CoC was reconstituted on 02.03.2022 and 21.03.2022. Thereafter, the Applicant received further



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claims from homebuyers as well as other unsecured creditors. Accordingly, the CoC was again reconstituted on 11.07.2022 which includes seven homebuyers.

5. The CoC at its 4<sup>th</sup> meeting held on 21.07.2022 resolved to publish Form G-Invitation of Expression of Interest ('EoI'). According to the aforesaid resolution, the Applicant published Form G in the newspapers namely, Free Press Journal -All Mumbai Edition dated 24.03.2022 (English) and Navshakti- all Mumbai Edition (Marathi) on 27.07.2022 wherein, the last date of submission of Expression of Interest ('EoI') was 18.09.2022. Pursuant to the publication of Form G, the Applicant received only one Expression of Interest (EoI) from the perspective Resolution Applicant (PRA) -Vivaa Tradecom Private Limited who meets the eligibility criteria and has also paid an EMD deposit of Rs.5 lakh. At the request of the PRA, the CoC extended time for submission of the Resolution Plan to 04.10.2022 and the PRA submitted the Resolution Plan on 04.10.2022. In the 7<sup>th</sup>CoC meeting held on 21.10.2022, the feasibility and viability of the Resolution Plan submitted by the PRA was discussed.



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6. The resolution plan was further discussed in the 8<sup>th</sup> CoC held on 09.12.2022 and the 9<sup>th</sup> CoC held on 30.12.2022 and the PRA was requested to revise the Resolution Plan to increase the financial bid amount. Accordingly, the PRA submitted the Revised Resolution Plan dated 27.01.2023 which was considered by the CoC at its meeting 10<sup>th</sup> meeting held on 30.01.2023 and on 31.01.2023, the Plan was put to vote (voting period from 31.01.2023 at 7 PM till 07.02.2023 at 7 PM which was further extended till 14.02.2023). The Members of the CoC approved the Resolution Plan submitted by the PRA-Vivaa Tradecom Private Limited under Section 30(4) of the Code with 77.21% votes.
7. The Applicant states that he had filed two applications- one for an extension of 90 days beyond 180 days of CIRP (IA No. 2073 of 2022) and another for an extension/exclusion of 60 days beyond 270 days (IA No. 3375 of 2022) which were allowed by this Tribunal and extended the CIRP period till 07.04.2023. After approval of the Resolution Plan by the CoC, this application has been filed by the Applicant seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant ( Vivaa Tradecom Private Limited).



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*Brief Background of the Corporate Debtors:-*

8. The Corporate Debtor was established in 1998 as a firm and incorporated in 2001 as a private limited company. The main objects of the Corporate Debtor are to carry on the business of builders, property developers, building contractors, and real estate developers. The Corporate Debtor is also in the business of developing properties (houses, apartments, flats, shops, godowns, offices, etc.) Thus, the Corporate Debtor is involved in the planning, designing, constructing and handing over of completed real estate projects- both residential and commercial and also redevelopment of projects where the lands are owned by third parties or residential society. The Corporate Debtor has business interests mainly in and around Mumbai City, Thane, and Greater Mumbai City. There are many real estate projects undertaken by the Corporate Debtor which are under construction.

*Brief Background of the Resolution Applicant:*

9. Vivaa Tradecom Private Limited was initially incorporated with the name of Anantnath Infracon Private Limited with the object of doing the business of development and construction. Later on, the name of the



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company was changed to Vivaa Tradecom Private Limited. The SRA has more than 12 years of experience in spinning, weaving, and finishing of the textile industry. The registered office of the SRA is situated in the State of Gujarat.

10. The SRA has stated in the Resolution Plan that it specializes in custom home building, remodels, and additions, and has a reputation for quality, craftsmanship, and attention to detail. The residential apartment construction activity refers to the process of building and constructing apartment buildings for residential use. SRA states that Mr. Rajesh Thakur, a B. Tech from IIT Kharagpur and a Civil Engineer, having an experience of more than 15 years with a real estate company is associated with SRA and hence, SRA does not see any challenge for the completion of the pending projects and the SRA is stated to be technically sound and capable enough to execute the projects in time.

11. **Salient Features of the Approved Resolution Plan**

<b>Application of Funds</b>	<b>Amount ₹</b>
<b>Liabilities to be resolved/settled</b>	



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a. Insolvency Resolution Process Cost	44,73,830/-
b. Financial Creditors (Secured)	
c. Financial Creditors (Unsecured)	2,00,00,000/-
d. Workmen/Employees	1,22,980/-
e. Statutory dues	9,876/-
f. Operational Creditors	3,93,314/-
g. Other Creditors (Related Parties)	NIL
h. Equity Share Capital	NIL
i. Contingent Liabilities*	NIL
<b>Total Fund based</b>	<b>2,50,00,000/-</b>

Non-Fund Based:

<b>Funds</b>	<b>Application of Amount ₹</b>
Financial Creditor in class to whom allotment is to be made	10,51,57,112/-*
<b>Total Non-Fund based</b>	<b>10,51,57,112/-*</b>

**Note:** The amount of Rs. 10,51,57,112/- provided in the Plan for Financial Creditor in Class will be in the form of possession of Flats not in the form of cash.

<b>Application of Funds</b>	<b>Amount ₹</b>
Fund Based	2,50,00,000/-



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Non-Fund Based	10,51,57,112/-
<b>Total Cost of Resolution Plan</b>	<b>13,01,57,112/-</b>

**Payment Under Plan:**

**a. Insolvency Resolution Process Cost (CIRP Cost):-**

The CIRP Cost is estimated at Rs. 44,73,830/- (Rupees Forty-Four Lakh Seventy-Three Thousand Eight Hundred Thirty Only). SRA proposes to pay the entire CIRP Cost within 90 days from the Effective Date (the date of handover subsequent to the approval of the Resolution Plan by the Tribunal). In case the CIRP Cost exceeds the estimated costs, the same shall be paid out of payments to Financial Creditors. However, if the CIRP costs are less than the estimated costs, the SRA shall pay only such lesser amount. The CIRP Costs shall be funded out of existing business and net worth of the SRA.

**b. Payments to Employees/Workmen**

- i. The claims made by the workmen and employees amount to Rs. 1,31,98,950/- (Rupees One Crore Thirty-One Lakh Ninety-Eight Thousand Nine Hundred Fifty Only) and the admitted claim is Rs. 1,22,98,116/- (Rupees One Crore Twenty-Two Lakh Ninety-Eight Thousand One Hundred Sixteen Only). The SRA proposes to pay one



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percent amount towards the employees and workmen i.e. Rs. 1,22,980/- (Rupees One Lakh Twenty-Two Thousand Nine Hundred Eighty Only) within 90 days from the Effective Date. The Resolution Plan states that the remaining portion of the claim shall be written off in full and shall be deemed to be permanently extinguished. All the cases/suits, if any, filed by the employees/workmen against the Corporate Debtor on account of their dues shall stand settled without any further action and such employees shall not have any other remedy except for payments as envisaged under the Resolution Plan.

- ii. All the dues of workmen and employees including any dues towards Provident Fund, Gratuity, Employees State Insurance Scheme, Professional Tax or any other Taxes in nature of employment or all the liabilities by whatever name called in relation to any period prior to the Insolvency Commencement Date will be written off in full and shall be deemed to be permanently extinguished.
- iii. The existing employees of the Corporate Debtor will continue to be employed by the Corporate Debtor subject to establishing the efficiency test to the satisfaction of the SRA.



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c. Payments to Operational Creditors including Government dues but excluding workmen and employees:-

The admitted claims of Operational Creditors are as under:-

Particulars	Amount Claim	Claim Admitted in
Government dues	39,50,252	39,50,252
Operational Creditors	22,74,10,344	15,73,25,535
<b>Total</b>	<b>23,13,60,596</b>	<b>16,12,75,787</b>

- i. The SRA proposes to pay 0.25% of the admitted claim to Operational Creditors which comes to Rs. 4,03,190/- (Rupees Four Lakh Three Thousand One Hundred Ninety Only). The payment to the Operational Creditors shall be made in proportion to the admitted claim values within 90 days from the Effective Date.
- ii. As per the due diligence conducted by the SRA, the outstanding liability of the Corporate Debtor exceeds the value of tangible assets/inventory. Therefore, the liquidation value payable to the Operational Creditors including Government dues or other Creditors shall be nil. SRA, is, therefore, justified in payment of 0.25% to the Operational Creditors, including the Government. In case the amount proposed to the Operational Creditors is found to be less than the liquidation value due to them, as per Section 53(1) of the Code, SRA undertakes to pay such



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difference amount to the Operational Creditors within 90 days from the Effective Date.

**d. Payments to the Financial Creditors (Secured and Unsecured)**

- (i) As per the Information Memorandum, the total claims filed by the Financial Creditors (other than Creditors in Class) amount to Rs. 90,48,37,197/- (Rupees Ninety Crore Forty-Eight Lakh Thirty-Seven Thousand One Hundred Ninety-Seven Only) out of which the claims aggregating to Rs. 88,43,73,190/- (Rupees Eighty-Eight Crore Forty-Three Lakh Seventy-Three Thousand One Hundred Ninety Only) have been admitted by the Applicant. The SRA proposes to pay a consolidated sum of Rs. 2,00,00,000/- (Rupees Two Crore Only) towards a full and final settlement of their claims. The payment shall be made by the SRA within 120 days from the Effective Date. The amount shall be distributed among the Financial Creditors in the ratio and manner to be decided by the Financial Creditors, being CoC Members.
- (ii) Disbursement of Payment to secured financial creditors shall be made by the Monitoring Agency against NOC to be issued by secured financial creditors.



**e. Payments to Financial Creditors (Creditors in Class -Home Buyers)**

As per the Information Memorandum, there are six projects under implementation and the treatment of home buyers for those projects is as under:-

**(i) *Project Ashta Vinayak at Safale***

- a. The SRA proposes to demerge the said project into another company namely, Shankheshwar Wind Power Developers Private Limited (the Resulting Company), the demerger shall be through this Resolution Plan.
- b. The Resulting Company shall complete the project and deliver the homes against their claims. Each home buyer shall pay Rs. 500/- (Only Five Hundred Rupees) per square foot towards cost escalation charges over and above the total amount due from the allottees. This amount is to be paid within a period of 90 days from the approval of the Resolution Plan.
- c. Claims received from home buyers of any Tower other than Tower B & C shall be considered as Unsecured Financial Creditors and shall be included in the list of Unsecured Financial Creditors. Such Creditors would be paid in the ratio to be decided by the CoC.
- d. If any units are occupied by the allottees without receipt of an occupancy certificate from the concerned authority, in such case, any



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penalty, fees, charges, interest, or any other demand shall be recovered from the allottees of respective units in full.

- e. The Resulting Company shall give possession of all the units within 36 months from the date of handover of the Project.

**(ii) *Project Om Prabhu Ashish, Vile Parle (E), Mumbai***

- (a) No claim has been received from any allottee of this project. However, the SRA proposes to demerge the project under the Resolution Plan to a new entity namely -Shishir Energy Private Limited (Resulting Company). Demerger shall be through approval of the Resolution Plan by the Tribunal.
- (b) The Resulting Company shall construct the project and develop the land as per the approved plan or modified plan.
- (c) If any units are occupied by the allottees without receipt of an occupancy certificate from the concerned authority, in such case, any penalty, fees, charges, interest, or any other demand shall be recovered from the allottees of respective units in full.
- (d) The Resulting Company shall give possession of all the units within 36 months from the date of handover of the Project to the Resulting Company.

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**(iii) *Project Virmati Villa, Borivali***

- a. RP has received claims from seven allottees against the purchase of units under this project to the extent of Rs. 11,26,57,217/- (Rupees Eleven Crore Twenty-Six Lakh Fifty-Seven Thousand Two Hundred Seventeen Only) wherein, the admitted claim is Rs. 9,86,73,039/- (Rupees Nine Crore Eighty-Six Lakh Seventy-Three Thousand Thirty-nine Only).
- b. It is stated that the project is almost complete but the occupation certificate is yet to be received. In case the OC is to be obtained by the Corporate Debtor, the expenses of getting such OC shall be recovered from the allottees/society in proportion to the square feet of each unit in advance.
- c. If any amount is pending to be received from any home buyer with respect to the Corporate Debtor, the same shall be payable by such home buyer to the Corporate Debtor within a period of 30 days from the Effective Date.

**(iv) *Project Chachanagar Chs Ltd. Andheri (W)***

- a. The RP has received five claims from allottees of this project aggregating to Rs. 2,54,42,213/- (Rupees Two Crore Fifty-Four Lakh Forty-Two Thousand Two Hundred Thirteen Only) wherein an amount of Rs. 2,01,37,862/- (Rupees Two Crore One Lakh Thirty-Seven Thousand Eight Hundred Sixty-Two Only) has been admitted.



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- b. As the project was not started, the RP has categorized these claims as Unsecured Financial Creditors. SRA shall pay an amount to such creditors as part of Unsecured Financial Creditors. SRA may not execute the project and shall not be liable for any act done by the suspended management of the Corporate Debtor towards this project.

**(v) *Project The Deepa CHSL***

- a. RP has received a claim from one allottee for Rs. 1,85,76,674/- (Rupees One Crore Eighty-Five Lakh Seventy-Six Thousand Six Hundred Seventy-Four Only) out of which Rs. 1,12,72,549/- (Rupees One Crore Twelve Lakh Seventy-Two Thousand Five Hundred Forty-Nine Only) has been admitted.
- b. As the project was not started, the RP has categorized this claim as Unsecured Financial Creditor. SRA shall pay the amount to such creditor as part of the Unsecured Financial Creditor. SRA may not execute the project and shall not be liable for any act done by the suspended management of the Corporate Debtor towards this project.

**(vi) *Project Kusum Bharti CHSL***

- a. RP has received claims from two allottees for Rs. 1,02,90,000/- (Rupees One Crore Two Lakh Ninety Thousand Only) out of which Rs. 1,02,90,000/- (Rupees One Crore Two Lakh Ninety Thousand Only) has been admitted.





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b. As the project was not started, the RP has categorized these claims as Unsecured Financial Creditors. SRA shall pay the amount to such creditors as part of the Unsecured Financial Creditors. SRA may not execute the project and shall not be liable for any act done by the suspended management of the Corporate Debtor towards this project.

**(vii) Other Projects**

There may be other projects/redevelopment projects which have been undertaken by the Corporate Debtor, but no work might have been started. SRA shall not be liable for any kind of liability towards such projects.

**(viii) Cost Escalation Clause**

SRA reserves the right to demand extra charges on account of the escalation of construction related material and labour cost. Further, the SRA will not raise any demand if the price escalation is up to 10% of the projected cost. However, if the increase in cost is more than 10% the same shall be levied onto the allottees.

**viii) Summary of Payment Terms under the Proposed Plan**

S. N	Category of Creditor	Amount of Claim (Rs.)	Claim Admitted (Rs.)	Amount provided in the Plan
1	Insolvency Resolution Process Cost	NA	NA	44,73,830
	Operational Creditor and Government Dues			
	A. Operational Creditors	22,74,10,344	15,73,25,535	4,03,190
	B. Government Dues	39,50,252	39,50,252	
	C. Dues against Purchase of Land	Not Received	NIL	NIL

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2	D. Dues against Collaboration Agreements	Not Received	NIL	NIL
	E. Dues against Joint Development Agreements	Not Received	NIL	NIL
	F. Dues against any Decree/Arbitration Awards	Not Received	NIL	NIL
	<b>Sub Total</b>	<b>23,13,60,596</b>	<b>13,61,67,973</b>	<b>4,03,190</b>
3	Workmen and Employees	1,31,98,950	1,22,98,116	1,22,980
4.	Financial Creditors			
	A. Secured Financial Creditors (Other than Creditors in Class)	8,89,49,651	8,89,49,651	
	B. Unsecured Financial Creditor (Other than Creditors in class)	81,58,87,546	79,54,23,539	2,00,00,000
	D. Financial Creditor in Class to whom allotment is to be made	14,76,03,613	13,04,68,787	10,51,57,112 (Principal Amount)#
6	<b>Share Holders</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>
	<b>Grand Total</b>	<b>129,70,00,356</b>	<b>118,84,15,880</b>	<b>13,01,57,112</b>
8	Working Capital requirement for various projects			1,00,00,000
	<b>Total</b>	<b>129,70,00,356</b>	<b>118,84,15,880</b>	<b>14,01,57,112</b>

**#Note:** The amount of Rs. 10,51,57,112 provided in the Plan for Financial Creditor in Class will be in the form of possession of Flats, not in the form of Cash.

**Sources of Funds for implementation of the resolution plan:**

Sources of Funds of Resolution Applicants	Amount Rs. In Cr.
From Liquidity of the Resolution Applicant and Corporate Debtor	3.50 Cr.
<b>Total</b>	<b>3.50 Cr.</b>

**Schedule of amount of working introduction:**

Discription	Amount in Cr.
As and when requirement arises	1.00 Cr.
<b>Total Amount</b>	<b>1.00 Cr.*</b>

\*In case a requirement arises over and above Rs. 1.00 Cr. it shall be met out from own sources of Resolution Applicant.



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**12. Management of the Corporate Debtor**

- (a) Upon the approval of the Resolution Plan by the Adjudicating Authority, the management and the operations of the Corporate Debtor will be taken over by the newly constituted Board of Directors, as nominated by the Successful Resolution Applicant.
- (b) Post handover of the operations of the Corporate Debtor to the newly constituted Board, the Monitoring Agency shall supervise the implementation of the resolution plan. The Monitoring Agency shall comprise the RP as Chairman, One representative from the Financial Creditor, One representative on behalf of the Corporate Debtor to be nominated by SRA, and One Technical Expert appointed by the RP.

**13. Eligibility of SRA under Section 29A of the Code**

The Successful Resolution Applicant has provided to the Resolution Professional an affidavit dated 04.10.2022 confirming eligibility u/s. 29A of the Code.



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**14. Performance Guarantee**

The SRA has received Rs.5 lakh along with EoI on 10.08.2022 and EMD of Rs.12.50 lakh on 10.10.2022 along with Resolution Plan. The said amount of Rs.17.50 lakh is deposited into the bank account of the Corporate Debtor. Further, the SRA has furnished performance security amounting to Rs. 12.50 lakh through the bank account of the Corporate Debtor which is reflected in the bank statement of the Corporate Debtor.

**15. Recoveries from Preferential/Fraudulent/Undervalued Transactions.**

Any amount recovered out of preferential/ fraudulent/ avoidance transactions u/s. 43, 45, 50, and 66 of the Code, if any, filed by the IRP/RP shall be pursued by the SRA at the cost of the Corporate Debtor and all the benefits of such applications shall be available to the financial creditors. The recovery, if any, shall be distributed to the unsecured financial creditors in the ratio of their admitted claims.



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**16. Reliefs and Concessions**

The Successful Resolution Applicant has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble Supreme Court in various judgements, which are necessary to keep the Corporate Debtor as going concern, release from any and all liabilities/proceedings, disputes and noncompliance prior to the NCLT Approval Date and extended period for renewal or revival of licenses for running the business of the Corporate Debtor.

**17. Appointment of Authorized Representative**

The Applicant submits that the Applicant had filed an application bearing IA No. 2275 of 2022 seeking the appointment of an Authorized Representative for the class of creditors i.e., home buyers which is still pending. However, all such creditors have been invited to participate in the meeting of the CoC and vote on the resolutions.

**18.** The Applicant further submits that the Resolution Plan submitted is in compliance with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations. The RP has also provided a compliance



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certificate in “FORM H” as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.

**Observations of the Adjudicating Authority:-**

19. We have heard the Counsel for the Applicant and perused the Resolution Plan and related documents submitted along with the Application.
20. As referred to in the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened. The Plan value is above the liquidation value assessed by the valuers.
21. Section 30(4) of the Code reads as follows:

*“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board.’*



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22. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan, as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan, as approved by the CoC, meets the above requirements.
23. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;
  - b. Payment of debts of the Operational Creditors as specified under Section 30(2) (b) of the Code;
  - c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
  - d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2) (d) of the Code.
24. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held



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that if the CoC had approved the Resolution Plan by the requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to the scrutiny of the Resolution Plan 'as approved' by the requisite percentage of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is with reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements. The legislature, consciously, has not provided any ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

25. In CoC of *Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* the Hon'ble Apex Court clearly held that the Adjudicating





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Authority would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

*'Thus, it is clear that the limited judicial review available which can in no circumstances trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).'*

26. The Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)*** held that on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.



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27. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We, therefore, allow the Application in the following terms:

**ORDER**

28. The Application **IA. No. 2201 of 2023 in C.P.(IB) 4362 of 2018** is **allowed** and the Resolution Plan submitted by 'Vivaa Tradecom Private Limited' is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, and creditors including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.



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29. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan which is not a part of the Resolution Plan.
30. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate authorities in accordance with law. Any waiver sought in the Resolution Plan relating to the period after the date of this order, more particularly licenses and approvals for keeping the Corporate Debtor as a going concern, shall be subject to approval by the Authorities concerned and this Tribunal will not deter such Authorities from dealing with any of the issues arising after effecting the Resolution Plan. This Tribunal, however, recommends due consideration of the revival of the Corporate Debtor. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the Appropriate Authority within a period of one year from the date of approval of the Resolution Plan.



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31. If any application(s) relating to preferential/fraudulent transactions under Sections 43 and 66 of the Code is pending before the Tribunal, the same shall be pursued by the Corporate Debtor at its costs and expenses. However, the recovery, if any, shall be distributed to the unsecured financial creditors in the ratio of their admitted claims.
32. In accordance with Section 32A of the Code, the liability of the Corporate Debtor for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence committed prior to the commencement of Corporate Insolvency Resolution Process from the date of this order.
33. As per the Resolution Plan, the Corporate Debtor is to complete the pending works of the Projects and hand over the possession to apartment allottees within 36 months from the date of this order with a grace period of six months till the Closing Date.
34. The capital structure and contribution of the Corporate Debtor shall be transferred and restructured to the Resolution Applicant without any further procedure required.



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35. The Monitoring Committee as proposed in the Resolution Plan shall be constituted to supervise and implement the Resolution Plan. The Resolution Professional, who is part of the Monitoring Committee, shall submit quarterly progress reports to this Tribunal as regards the implementation of the Resolution Plan and construction of the Projects & delivery to the home buyers.
36. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.
37. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
38. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this order for information.



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39. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-

**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**  
*Salam*

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**