



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 297/KB/2024

And

I.A. (IB) No. 1332/KB/2024

And

I.A. (IB) No. 1007/KB/2024

And

I.A. (IB) No. 18/KB/2024

And

I.A. (IB) No. 1892/KB/2023

In

Company Petition (IB) No. 372/KB/2019

IN THE MATTER OF:
SESA INTERNATIONAL LIMITED

... Financial Creditor.

Versus

AVANI TOWERS PRIVATE LIMITED

... Corporate Debtor.

And

I.A. (IB) No. 297/KB/2024

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:
Victory Iron Works Limited

... Applicant.

Versus

**Jitendra Lohia, the Resolution Professional (RP) of Avani Towers
Private Limited**

... Respondent No. 1/ RP.

And

The Committee of Creditors of Avani Towers Private Limited

... Respondent No. 2/ CoC.



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I.A. (IB) No. 297/KB/2024; I.A. (IB) No. 1332/KB/2024;
I.A. (IB) No. 1007/KB/2024; I.A. (IB) No. 18/KB/2024 and
I.A. (IB) No. 1892/KB/2023

In
Company Petition (IB) No. 372/KB/2019

And

**Cheminare Tradecomm Private Limited, the Successful
Resolution Applicant**

... Respondent No. 3/ SRA.

And

Energy Properties Private Limited

... Respondent No. 4/ EPPL.

And

I.A. (IB) No. 1892/KB/2023

*An Application under Section 30(6) read with Section 31 of
the Insolvency and Bankruptcy Code, 2016, and under
Regulation 39(4) of the Insolvency and Bankruptcy Board of
India (Insolvency Resolution process for Corporate Persons)
Regulations, 2016, for the approval of the Resolution Plan.*

IN THE MATTER OF:

Jitendra Lohia,

Insolvency Professional having registration no. IBBI/IPA-001/IP-
P00170/2017-18/10339.

... Applicant/ Resolution Professional.

And

I.A. (IB) No. 1332/KB/2024

*An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Tribunal, 2016.*

IN THE MATTER OF:

Chintan Jhunjunwala

... Applicant.

Versus

Jitendra Lohia, RP & Ors.



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In
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... Respondents.

And

I.A. (IB) No. 1007/KB/2023

*An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Victory Iron Works Limited

... Applicant.

Versus

**Jitendra Lohia, the Resolution Professional (RP) of Avani Towers
Private Limited & Ors.**

... Respondents.

And

I.A. (IB) No. 18/KB/2024

*An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Victory Iron Works Limited

... Applicant.

Versus

**Jitendra Lohia, the Resolution Professional (RP) of Avani Towers
Private Limited & Ors.**

... Respondents.

Date of Pronouncement: January 03, 2025.



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CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant in I.A. (IB) No. 1007/KB/2023, I.A. (IB) No. 18/KB/2024 and I.A. (IB) No. 297/KB/2024:

1. Mr. Joy Saha, Sr. Adv.
2. Mr. S. K. Bajoria, Adv.
3. Mr. Snehashish Chakraborty, Adv.

For the Resolution Professional:

1. Mr. Jishnu Chowdhury, Sr. Adv.
2. Mr. Shaunak Mitra, Adv.
3. Ms. Swati Dalmia, Adv.
4. Ms. Neha Sinha, Adv.
5. Ms. Sabarni Mukherjee, Adv.
6. Mr. Jitendra Lohia, RP in Person.

SBOP of Energy Properties Pvt. Ltd.:

1. Mr. Kumarjit Banerjee, Adv.
2. Mr. A Naushad. Adv.

For Respondent No. 3 SRA in I.A. (IB) No. 297/KB/2024

1. Ms. Urmila Chakraborty, Adv.
2. Ms. Suparna Sarkar, Adv.

For the Applicant in I.A. (IB) No. 1332/KB/2024:

1. Mr. Ratnanko Banerji, Sr. Adv.
2. Mr. Kumarjit Banerjee, Adv.
3. Ms. Sanchari Chakraborty, Adv.
4. Mr. Aadil Naushad, Adv.

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COMMON ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.

I.A. (IB) No. 297/KB/2024

2. Heard the Learned Senior Counsel and the Learned Counsels for the parties.

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3. This application has been preferred by Victory Iron Works Limited, hereinafter referred to as the “Applicant”/ “Victory Iron” against the Resolution Professional (RP) of the Corporate Debtor and others seeking the following reliefs:

a. The Offending portion of the resolution plan which is any manner whatsoever touches or concerns or affects the occupation, possession and enjoyment of the applicant in respect of the said area of 10000 sq. ft. in the said land be set aside and/or quashed and/or cancelled.

b. The said resolution plan of Cheminare Tradecomm Private Limited be rejected and/or cancelled.

c. Declaration that the resolution process of the corporate debtor does not in any manner whatsoever touches upon or control or affect or harm or obstruct in any manner whatsoever the applicant or the area under its occupation, possession and enjoyment in the said property.

d. Permanent Injunction restraining the respondents and each of them and/or their men, servants and agent from in any manner whatsoever obstructing the Applicant in carrying on the business from the said land or in any manner whatsoever seeking to evict and/or stop the business of the Applicant.

e. Pass an order rejecting the IA No. 1892 KB 2023 filed by the Resolution Professional, the Respondent No. 1 for approval of the Resolution Plan submitted by the Respondent No. 3.

f. Declare the decision of the COC in approving the said resolution plan to be void and unlawful.

g. Ad-interim orders.

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h. *Pass any other order/ orders as may be deemed fit and proper.*

A. Facts in Brief:

4. That, the Corporate Debtor having the business of real estate construction and development, entered into a Memorandum of Understanding (MoU) on 24.01.2008, with Energy Properties Private Limited (Respondent No. 4) whereby the corporate debtor agreed to provide financial assistance in order to acquire land situated at Station Road, Ramrajatalla, Howrah, hereinafter referred to as “said Property”. Further, the Corporate Debtor and Respondent No. 4 entered into a Development Agreement on 16.06.2008, whereby the corporate debtor agreed to commence construction within six months and finish the same within five years along with a grace period of six months.

5. On 19.08.2011, the Corporate Debtor and the Respondent No. 4 along with the Applicant, entered into a Leave and License Agreement to carry business of manufacturing and exporting cast iron and ductile iron from the said Property and accordingly, from 19.08.2011, the Applicant has been in continuous possession of the entire part of the said Property.

6. That, on 15.10.2019, Corporate Insolvency Resolution Process, for brevity “CIR Process” was initiated on 15.10.2019. On 09.01.2020, this Adjudicating Authority directed all the parties to maintain the status quo as far as materials lying in the said

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Property. Further, on 12.02.2020, this Adjudicating Authority directed the Applicant not to obstruct RP's possession and his activities relating to the CIR Process of the Corporate Debtor and also inferred that the Order dated 09.01.2020, shall not affect the activity of the Applicant Victory Iron in a piece of land in their possession based on leave and license agreement until the original owner of the property decides further course of action as far as the leave and license agreement is concerned.

7. The Applicant Victory Iron preferred an appeal before the Hon'ble NCLAT against our decisions and vide an order dated 08.04.2021, the Hon'ble Appellate Tribunal dismissed the appeal.

8. Further, the order of the NCLAT was challenged before the Hon'ble Apex Court. The Division Bench of the Hon'ble Apex Court on 14.03.2023, dismissed the appeal and held that:

*“49. The fact that there were security guards posted in the property is borne out by records. This is why NCLT as well as NCLAT have done a **delicate act of balancing, by protecting the interests of Victory to the extent of the land permitted to be occupied.** In fact, **Victory does not even have the status of a lessee, but is only a licensee.** A license does not create any interest in the immovable property.*

50. Therefore, NCLT as well as NCLAT were right in holding that the possession of the Corporate Debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.

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*51. In the light of the above, we are of the considered view that the impugned orders do not call for any interference. Hence, the appeals are **dismissed**. No costs.”*

(Emphasis Added)

9. The Applicant Victory iron has preferred an application being I.A. 18 of 2024, seeking the relevant extract of the resolution plan, which prayer was allowed by this Adjudicating Authority on 16.01.2024. The RP through its email on 17.01.2024, provided redacted excerpts of the proposed resolution plan concerning Victory Iron which is alleged to affect the rights and interests of the applicant Victory Iron and therefore, the applicant has preferred this application.

B. Applicant's contentions:

10. The Senior Learned Counsel Mr. Joy Saha appearing on behalf of the Applicant Victory Iron would vociferously argue that the resolution plan approved by the CoC is liable to be rejected as the same will affect the rights and interests of the applicant.

11. He would submit that the applicant in a good faith on 22.03.2023, wrote an email to the RP to assist the applicant in demarcation of the 10000sq ft of the said property, which was in the possession of the applicant under the leave and license, as recognized by the Hon'ble Apex Court, along with the right to ingress and egress in consonance with the nature of activity being carried

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on by the applicant. In reply, the RP threatened the applicant to put a padlock on the main entrance, due to which only containers of the applicant would be permitted to come in and leave the premises through the main entrance, without any access for entry of other goods vehicles through the same entrance.

12. The applicant then preferred an application being I.A. (IB) No. 1007/KB/2023 and on 04.07.2023, this Adjudicating Authority directed that no interference with the right to ingress and egress over the piece of land, or any modification thereof was called for. The Hon'ble NCLAT set aside the order dated 04.07.2023 of this Adjudicating Authority on 10.10.2023 and remitted the matter back for further consideration.

13. It is urged that, the resolution plan submitted by Cheminare Tradecomm was approved by the CoC on 31.10.2023, and it came to the applicant's knowledge on 16.11.2023. The applicant on 13.12.2023, through its Advocate, sought for a copy of the resolution plan and preferred an application being I.A. (IB) No. 18/KB/2024 seeking to make over to the Resolution Plan or the relevant extract of the Resolution Plan to the applicant. The RP on 17.01.2024, through an email, provided the redacted excerpts of the resolution plan to the extent as concerned to the applicant.

14. Mr. Saha, Learned Senior Counsel for the Applicant alleges that the resolution plan most unlawfully and to the prejudice of the Applicant Victory Iron provides for the eviction of the applicant from the said property without due process of law.

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15. Mr. Saha further contends that the leave and license agreement on 19.08.2011, is an admitted document under which the applicant is in possession of at least 10,000 sq. ft. area and the said possession, occupation and enjoyment of the applicant has been safeguarded, protected and preserved by this Adjudicating Authority vide its Order dated 12.12.2020, by the Hon'ble NCLAT vide the Order dated 08.04.2021, as well as The Hon'ble Apex Court vide the Order dated 14.03.2023.

16. It is further contended that this Adjudicating Authority has no jurisdiction to decide the scope, extent, validity, enforceability, and correctness of the said agreement of leave and license dated 19.08.2011, as well as to direct the eviction of the applicant from the said land in question as the same can only be considered and decided by a Civil Court. The Learned Senior Counsel for the Applicant in support of the proposition, has relied upon certain case laws, which are as under:

- a) ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta & Ors.***
reported in (2021) 7 SCC 209.
- b) ***Tata Consultancy Services Ltd. v. SK Wheels Pv. Ltd.***
reported in (2022) 2 SCC 583.
- c) ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.*** reported in 2019 SCC OnLine Sc 1542.
- d) ***K.L. Jute Products Pvt. Ltd. Tirupati Jute Industries Ltd.***
reported in 2020 SCC OnLine NCLAT 426.

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- e) ***Raj Builders v. Raj Oil Mills Limited & Anr.*** rendered by the Hon'ble NCLAT, New Delhi, Company Appeal (Insolvency) No. 304 of 2018.
- f) ***Assets Reconstruction Company (India) Limited v. Precision Fasteners Limited,*** rendered by the Learned NCLT Mumbai Bench in C.P. (IB) No. 1339/MB/2017, reported in 2020 SCC OnLine NCLT 1446.

17. Further, on the proposition of law that 'consent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy; tenant by holding over', the Learned Senior Counsel would refer to certain precedents, as under:

- a) ***Bhawanji Lakhamshi & Ors. v. Himtala Jamnadas Dani & Ors.*** reported in (1972) 1 SCC 388.
- b) ***R.V. Bhupal Prasad v. State of A.P. & Ors.*** reported in (1995) 5 SCC 698.
- c) ***Kewal Chand Mimani v. S.K. Sen & Ors.*** reported in (2001) 6 SCC 512.

18. On the proposition on 'differences between license and tenancy', the case laws referred to are, as under:

- a) ***Associated Hotels of India v. R.N. Kapoor*** reported in AIR 1959 SC 1262: MANU/SC/0168/1959.
- b) ***Chandu Lal v. Municipal Corporation of Delhi*** reported in AIR 1978 Delhi 174.

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c) ***M.N. Clubwala & Ors. v. Fida Hussain Sahed & Ors.***
reported in AIR 1965 SC 610.

19. Further, on the proposition 'nomenclature in the document shall not govern the decision as to whether a document is lease or license', Learned Senior Counsel would refer to the following decisions:

a) ***Madhu Behal & Ors. v. Rishi Kumar & Ors.*** reported in
(2009) 3 PLR 628: MANU/PH/0036/2009.

20. On the strength of the decisions cited supra, it is claimed that the Adjudicating Authority cannot approve a conditional Resolution Plan and approval of a resolution plan subjects to certain terms and conditions is untenable in the eye of law, as such a conditional resolution plan ought not to have approved by the CoC. To substantiate his contentions, the Learned Senior Counsel would refer to certain case laws as under:

a) ***Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Ltd.*** reported in (2022) 2 SCC 401.

b) ***Raj Kumar Sahani v. Mr. Ashish Singh*** decided by the Learned NCLT, New Delhi Bench in C.P. (IB) No. 983/ND/2020 decided on 24.01.2024.

c) ***Small Industries Development Bank of India Vs. Tirupati Jute Industries Limited*** decided on 13.02.2019 in C.P. (IB) No. 508/KB/2018, decided by this Adjudicating Authority.

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21. Learned Senior Counsel would assert that in the present case, the resolution plan contemplates the eviction of the applicant from the land in question and thus, CoC has erred in approving the said resolution plan and as such the same deserves to be rejected.

C. Submissions made by the Resolution Professional:

22. *Per contra*, the Learned Counsel Mr. Shaunak Mitra, appearing on behalf of the Resolution Professional would submit that the instant application has been preferred by Victory Iron without any proper authorization in terms of the NCLT Rules, 2016, having mala fide and vexatious intent to impede and delay the successful resolution of the Corporate Debtor and thus, the application is not maintainable on facts and in law.

23. It is submitted that the Corporate Debtor and Energy Properties Private Limited (Respondent No. 4/ Proforma Respondent) had entered into a Development Agreement on 16.06.2008 whereby the Corporate Debtor was appointed as the developer of the land admeasuring 10.19 acres at Ramrajatala, P.S. Jagacha, Howrah. As the Development Agreement, the Respondent No. 4 had the obligations *inter alia* to obtain clearances from government and regulatory bodies and make out a marketable title, free from all encumbrances, charges, attachments, which the Respondent No. 4 failed to do so and consequently, the Corporate Debtor could not initiate any development activity on the said land.

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24. Since the land was lying vacant, it was decided to license a portion admeasuring 10,000 sq. ft. of the said Land to the Applicant for a limited period of 11 months commencing from 19.08.2011, for a license fee of Rs. 5,000/- per month and accordingly a Leave and License agreement was made between the Corporate Debtor (Licensor), the Applicant Victory Iron (Licensee) and the Respondent No. 4 (Confirming Party), annexed at pages 16-33 to the Reply Affidavit.

25. The Learned Counsel would submit that the Leave and License Agreement expired on 18.07.2012 and was not renewed further. However, the Applicant continued to occupy the Licensed Area without paying the license fee.

26. That, on 15.10.2019, CIRP was initiated and by an Order dated 12.02.2020, this Adjudicating Authority directed the Respondent No. 4 not to obstruct RP's possessions of the said land and his activities relating to CIRP and the earlier order on 09.01.2020 directed all the parties to maintain the status quo to not affect the Applicant Victory Iron's activity in the piece of land in their possession on the basis of leave and licence agreement until the original owner decides further course of action. This Order was assailed higher up before the Hon'ble NCLAT and further before the Hon'ble Apex Court and in both the case, this Adjudicating Authority's Order was upheld. It is contended that the Hon'ble Apex Court in this appeal had defined the nature of the bundle of rights and interests which has been created in favour of the Corporate Debtor in relation to the said Land to partake the character and

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shade of ownership rights. Further, the Hon'ble Apex Court has unequivocally held that by virtue of being merely a licensee, the Applicant has no interest in the Licensed Area, and hence, the Applicant cannot claim any right over the Licensed Area.

27. It is claimed that the Applicant Victory Iron and the Respondent No. 4 are under the common control of the Jhunjhunwala family. The RP has supplied the current shareholding pattern of the two companies, annexed at pages 34-35 to the Reply Affidavit. It is alleged that the Applicant Victory Iron and the Respondent No. 4 are acting in collusion to trample the CIRP of the Corporate Debtor for their personal gains. Though the Corporate Debtor is holding interest around 50% of the paid-up share capital of the Respondent No. 4, the Jhunjhunwala family through their agents are not permitting the Corporate Debtor to participate in the management and affairs of the Respondent No. 4. The Corporate Debtor being aggrieved has preferred a petition being C.P. 293/KB/2023 (*Avani Towers Private Limited v. Energy Properties Private Limited*) under Section 241 and 242 of the Companies Act, 2013, before this Adjudicating Authority and vide an Order dated 02.11.2023, this Adjudicating Authority has directed that till the next date of hearing, if any board meeting is held, the decisions taken therein, if any, shall remain subject to the outcome of the petition.

28. It is further claimed that the Applicant has the sufficient access to the Licensed Area along with unhindered ingress and egress of its vehicles and the Corporate Debtor has the right in



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accordance with law to vacate the Applicant from the land in question as the Applicant's license has expired and the Applicant has no more right, interest or any claim existing over the land in question and the same has been unequivocally determined by the Hon'ble NCLAT and further by Hon'ble Apex Court.

29. It is asserted that any adverse order providing any right related to the Licensed Area beyond the terms of the Leave and License Agreement would adversely affect and prejudice the Corporate Debtor.

30. The Learned Counsel for the RP would vehemently deny the allegation that the instant Resolution Plan would effectively be an order for eviction of the Applicant or that the same is outside the jurisdiction, scope or purview of this Adjudicating Authority, or that it shall be in the teeth of the orders passed by this Adjudicating Authority, the Hon'ble NCLAT, and the Hon'ble Apex Court.

31. We have considered the rival contentions of the parties and perused the documents available with us.

32. On 22.05.2024, this application was on board, when Learned Counsel Ms. Urmila Chakraborty appearing for the Resolution Applicant submitted that the Resolution Applicant has no objection if the offending portion of the plan annexed at pages 233 and 234 to this application is deleted and accordingly, an affidavit to that effect has been filed.

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33. We have noted that the Successful Resolution Applicant ('SRA' in short) by way of an affidavit on 13.06.2024, has agreed to consider and confirm to the deletion of the paragraphs contained in Clause 5(a) in the Resolution Plan, claimed to be an offending portion which is as under:

"5 (a)...

Clause 9.2 of the Development Agreement further envisages that the owner shall make over khas and full possession of the entirety of the said land to the developer, for the purpose of carrying out the obligations of the Developer under this Agreement within 60(sixty) days from execution hereof. The Developer shall have the right to remain in possession for doing the various acts necessary for fulfilment of this Agreement.

In consequence to the above the Resolution Applicant shall be given full possession of the land by the owner. Victory Iron Works Ltd (VIWL) being owned & controlled by the Jhunjhunwala Group, which as per the information made available is still in occupation of the said portion of 10,000sqft of the land. As such EPPL & Jhunjhunwala group is under obligation to get the same vacated & handover over the peaceful possession of the said area immediately on approval of the resolution plan by the Hon'ble NCLT. Any non-action or action taken by the Jhunjhunwala Group or EPPL would be in violation of the terms of Joint Development Agreement. MOU and Memorandum of possession, entered into with the Corporate Debtor.

Further as per the said order by Hon'ble SC, Victory Iron Works Ltd doesn't have any right including any possessory right on the said area and as such upon approval of Resolution Plan, the expired leave and license agreement shall have no validity

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whatsoever and the said area shall be deemed to be vacated and Victory Iron Works Ltd shall be treated as trespassers if they continue to occupy the said area. In addition to the duty of the owners to get the land vacated, additionally all legal recourse and actions shall be available with the Resolution Applicant in order to safeguard the beneficial interest of all the stakeholders.”

D. Analysis and Findings:

34. The Relevant portion of the Order passed by this Adjudicating Authority on 12.02.2020, in C.A. (IB) No. 1807/KB/2019 and C.A. (IB) 146/KB/2020 is as under:

“8. From materials on record, it can safely be concluded that till admission of the corporate debtor in CIRP, MoU dated 24.01.2008 was not cancelled /revoked by the respondents. Hence, the corporate debtor remained in possession of the properties for the purpose of their development. Upon corporate debtor's admission in CIRP, RP came in possession therein by virtue of statutory provisions under the Insolvency & Bankruptcy Code, 2016. Hence, respondents cannot disturb / obstruct RP's possession in those properties.

9. We make it clear that the judgment in Supreme Court in Embassy Property Development Pvt. Ltd. -vs- State of Karnataka cannot be made applicable herein. We further make it clear that if at all the same is made applicable to the instant that this authority does not have jurisdiction to decide civil rights of the parties, still the same goes against the respondents also. Unless the respondents cancel/ revoke MoU dated 24.01.2008, they cannot claim

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possession of those properties. Now their above right to do so stands foreclosed by virtue of moratorium under section 14 of IBC, 2016.

10. Corporate Debtor is having development rights of the properties. It is intangible assets of the corporate debtor. RP holds same development rights relating to those properties. He has to proceed with the CIRP of the corporate debtor and invite resolution plan on the basis of those rights. The respondents cannot obstruct his possession and activities in any manner. Hence, we allow this application, i.e. CA(IB) No. 1807/KB/2019.

11. CA(IB) 146/KB/2020 is filed by one M/s. Victory Iron Works Ltd. (CIN No. U51420WB1949PLC018367) for modification of our order dated 09.01.2020. By that order, we directed all parties to maintain status quo as far as materials lying in above properties, as we were to decide as to who is in rightful possession of those properties. While disposing off CA(IB) 1807/KB/2019, we held that RP is in legal and rightful possession of the properties. The applicant is affected by order dated 09.01.2020 because admittedly the corporate debtor and Energy Properties Pvt. Ltd. (respondent in CA(IB) 1807/KB/2019) put the applicant in possession of 10,000 sq.ft. land to carry on its activities/ business.

12. In fact, our order dated 09.01.2020 shall not affect the applicant's possession and activities in that piece of land. It is brought to our notice that term of leave and licence agreement dated 11.08.2011 of the applicant is already expired, as it was only for 11 months. Be that as it may, the original owner of the properties, i.e. respondent in CA No. 1807/KB/2019 have to take call on that aspect. Corporate Debtor's development activities

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*were not extended in relation to that piece of land. Hence, corporate debtor and RP do not have any say thereto. **In view of this, we make it clear that our order dated 09.01.2020 shall not affect the applicant's right to carry its business in that piece of land. In view of above, we pass the following order:***

ORDER

The respondents (or any other person acting through them in CA(IB) No. 1807/KB/2019) shall not obstruct RP's possession and his activities relating to CIRP of the corporate debtor, until further orders, failing which the local police are directed to give every assistance to the RP for completion of CIRP of the corporate debtor effectively.

*ii) **Our order dated 09.01.2020 shall not affect the activities of Victory Iron Works Ltd. in piece of land in their possession on the basis of leave and licence agreement dated 11.08.2021 until the original owner of the property decides further course of action as far as leave and license agreement is concerned.** Hence this application, i.e. CA(IB) 146/KB/2020 stands disposed off.*

iii) hence, CA(IB) Nos. 1807/KB/2019 and CA(IB) 146/KB/2020 stand disposed off.”

(Emphasis Added)

35. The order when assailed before the Hon'ble NCLAT, vide an Order dated 08.04.2021, the Hon'ble NCLAT in ***Victory Iron Works Ltd. vs. Jitendra Lohia RP of Avani Towers Pvt. Ltd.*** in **Company Appeal (AT) (Insolvency) No. 508 of 2020 with Company Appeal**

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(AT) (Ins) No. 377 of 2020, upheld the Order dated 12.02.2020 and observed that:

“14. What we observed from the aforesaid judgments that in case of Embassy Properties (as stated supra) that the Adjudicating Authority did not have jurisdiction to entertain an application against the Govt. of Karnataka for a direction to execute Lease Deeds for extension of mining lease. However, the Adjudicating Authority would have jurisdiction to enquire into question of fraud to adjudicate upon disputes. While in case of ‘Rajendra K Bhutta’ (as stated supra), it has been made clear that Section 14(1)(d) of the ‘Code’ does not deal with any of the assets or legal right in such assets of Corporate Debtor but deal with recovery of ‘Property’.

15. There are certain facts which are very clear from the deliberation of submissions including the pleadings by the parties that M/s. Energy Properties Pvt ltd is the owner of the property and the Corporate Debtor (in CIRP) is a Developer of the Property in terms of the Development Agreement dated 16.06.2008 and they will be governed by inter – se agreements. Here the Adjudicating Authority has not gone into the issue of ownership of the property, he has restricted its role as provided in Section 14 of the ‘Code’ vide Section 14(1)(d) including its explanations. It is also undisputed fact that the Corporate Debtor (In CIRP) is holding the development right and the Development Agreement dated 16.06.2008 has not been terminated before the commencement of CIRP. In all such situations Section 14 of the ‘Code’ is applicable till it reaches the stage of approval of Resolution Plan or Liquidation. However, the RP is to appropriately disclose the status of the ‘Property’ in the Information Memorandum and other



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documents as required in the IBBI (Insolvency Resolution for Corporate Debtors) Regulations, 2016.

16. As far as M/s. Victory Iron works limited is concerned, they have been provided space of 10,000 sq ft approximately on the said land by virtue of leave and license agreement dated 11.08.2011 and it is their privilege to use the land in terms of same leave and license agreement and this is also not disputed by Corporate Debtor in Resolution through RP.

*17. All these suggest that **there is no infirmity in the impugned order dt. 12.02.2020 and the appeal deserves to be dismissed and is dismissed with above observations.***

18. Pending Interlocutory Application(s), if any, stands disposed of.”

(Emphasis Added)

36. The said Order dated 08.04.2021, passed by the Hon'ble NCLAT affirming the Order dated 12.02.2020, was assailed higher up before the Hon'ble Apex Court. The Hon'ble Apex Court on 14.03.2023 in Civil Appeal Nos.1743 of 2021 and 1782 of 2021, has analysed the position as under:

“Discussion and Analysis

16. From the rival contentions, it appears that two issues arise for our consideration. They are, (i) what is the nature of the right or interest that the Corporate Debtor has over the property in question, for the purpose of deciding the inclusion of the same in the Information Memorandum prepared by the Resolution

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***Professional under Regulation 36 of the Regulations?;
and (ii) whether NCLT and NCLAT have exercised a
jurisdiction not vested in them in law by seeking to
recover/protect the possession of the Corporate
Debtor?***

Issue No. 1

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35. From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. **Therefore, the development rights created in favour of the Corporate Debtor constitute “property” within the meaning of the expression under Section 3(27) of IBC.** At the cost of repetition, it must be recapitulated that the definition of the expression “**property**” under Section 3(27) includes “**every description of interest, including present or future or vested or contingent interest arising out of or incidental to property**”. Since the expression “**asset**” in common parlance denotes “**property of any kind**”, **the bundle of rights that the Corporate Debtor has over the property in question would constitute “asset” within the meaning of Section 18(f) and Section 25(2)(a) of IBC.**

36. In Sushil Kumar Agarwal (*supra*), this Court brought out the distinction between different types of Development Agreements, with particular reference to Section 14(3)(c) of the Specific Relief Act, 1963. After summarizing the different



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types of Development Agreements in paragraph 17 of the decision, this Court held in paragraph 19 as follows:-

“19. ...An essential incident of ownership of land is the right to exploit the development potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property...”

37. *Therefore, it is not very difficult to conclude, that a bundle of rights and interests were created in favour of the Corporate Debtor, by a series of documents such as (i) the MoU dated 24.01.2008; (ii) the shareholders agreement dated 24.01.2008; (iii) the flow of the consideration from the Corporate Debtor to the UCO Bank and to Energy Properties; (iv) the Development Agreement dated 16.06.2008; (v) the Memorandum Recording Possession dated 02.03.2010 executed by the original shareholders of Energy Properties; (vi) the Memorandum Recording Possession dated 24.06.2010 executed by Energy Properties in favour of the Corporate Debtor; and (vii) **the Leave and License Agreement primarily executed by the Corporate Debtor in favour of Victory**, which was merely confirmed by Energy Properties as a confirming party. Some of these bundle of rights and interests, partake the character and shade of ownership rights. Therefore, these rights and interests in the immovable property are definitely liable to be included by the Resolution Professional in the Information Memorandum and the Resolution Professional is duty bound under Section 25(2)(a) to take custody and control of the same.*

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Issue No. 2

38. The main ground of attack of the appellants to the impugned orders of the NCLT and NCLAT is that by virtue of the Explanation under Section 18 of the Code and also by virtue of the judicial pronouncements, the disputes between the Corporate Debtor and the third-party lessee/licensee are not amenable to the jurisdiction of the authorities under the Code.

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47. Having seen the legal position, let us now come back to the facts of the case to see whether NCLT and NCLAT addressed the issue correctly or not.

*48. As we have seen earlier, two applications were filed before NCLT. One was by the Resolution Professional and the other was by Victory. A careful look at the application filed by Victory in **C.A. (IB) No.146 of 2020** would show that there was no whisper about Victory occupying any land in excess of what they were permitted to occupy under the **Leave and License Agreement**. **Under the Leave and License Agreement, Victory was allowed to occupy only 10000 sq. ft. of land, upon payment of a monthly license fee of Rs.5,000/-**. **If at all, a vague averment was made in paragraph VII (c) of their application to the effect that inasmuch as the Corporate Debtor was unable to commence any development activity in the subject land, the owner and the developer, with their full consent, had decided to allow the applicant to run its business in the usual course from the subject land, because the subject land could not have been left vacant for any substantial period of time.***

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49. *The fact that there were security guards posted in the property is borne out by records. **This is why NCLT as well as NCLAT have done a delicate act of balancing, by protecting the interests of Victory to the extent of the land permitted to be occupied. In fact, Victory does not even have the status of a lessee, but is only a licensee. A license does not create any interest in the immovable property.***

50. *Therefore, **NCLT as well as NCLAT were right in holding that the possession of the Corporate Debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.***

Conclusion

51. *In the light of the above, we are of the considered view that the impugned orders do not call for any interference. Hence, the appeals are dismissed. No costs.*

Pending application(s), if any, stands disposed of accordingly.”

(Emphasis Added)

37. We find that the Applicant Victory Iron further preferred an application being I.A. (IB) No. 1007/KB/2023 and on 04.07.2023, this Adjudicating Authority having considered the orders passed earlier by this Adjudicating Authority, which is affirmed by the Hon'ble NCLAT and by the Hon'ble Apex Court, passed the following orders to maintain the rights of Victory Iron as already given in its favour:

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“2. IA(IBC) 1007/KB/2023- *This is an application seeking inter alia several reliefs out of which the following two have been pressed today by Ld. Sr. Counsel Mr. Joy Saha appearing for the applicant Victory Iron Works Pvt. Ltd.,*

“b. Direct Respondent No.1 to not interfere in the peaceful physical possession of area consisting of 10000 sq.ft. of land situated at Khatian No. 1523/1524inMouza Ramrajatala, Thana Jogacha, District-Howrah, West Bengal along with right of ingress and egress of containers of exportable goods and movement of all vehicles from the main entry gate. c. Direct the Respondent No.1 to not put a padlock on the entry gate to the said property”.

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11. We have considered the rival contentions of the parties and perused the orders passed by this Bench and in the higher fora.

12. We discern that a police complaint has been lodged against the Avani Towers Pvt. Ltd. on 30/04/2023 as would appear from page 118 of the application, alleging violation of court orders by Mr. Jitendra Lohia (RP) amounting to contempt of court alleging that Mr. Jitendra Lohia through his agents have again illegally put a padlock on the main entrance gate of the Ramrajatala land where its processing unit is situated and stopped the movements of vehicles and staff and that they have restricted their operations to 10000 sq.ft. It only seeks compliance of the Hon’ble Apex Courts’ order and it has no intention to obstruct the RP from discharging his rightful duties or carriage of the CIRP process to its logical conclusion.



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13. *The said action complained of is post 14.03.2023 order passed by the Hon'ble Apex Court wherein no modification to his rights to enjoy occupation of the land as a licensee is made.*

14. *In view of the orders passed recognising the applicants' right to possess and continue business operation in the 10000 sq.ft. of demarcated property, it is our considered opinion that it would only be fair to allow the applicant access to the said property as he was enjoying pursuant to the earlier orders passed by this Tribunal on 12/02/2020 and by Hon'ble NCLAT on 04/03/2020. No inference with his right to ingress and egress over the piece of land, or any modification thereof is called for.*

15. *List the matter on 07/08/2023."*

38. The said Order was challenged before the Hon'ble Appellate Tribunal and vide order dated 10.10.2023 in Company Appeal (AT) (Ins.) No. 1155 of 2023, the Hon'ble NCLAT having felt that **the easement issue has been raised for the very first time in the I.A (I.B.C)/1007 (KB) 2023. There is no mention of Indian Easement Act, 1882 in any fora in the past, which needs proper examination** and that *apparently the appellant was not given any opportunity to file reply and in the very first hearing interim orders were issued on 04.07.2023, set aside the order. The order is extracted verbatim hereinbelow to the extent its relevant:*

“Observations and findings



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20. Basis the appeal and also the written and oral submissions of Appellant and Respondents, it emerges that:

20.1. Hon'ble Supreme Court vide its Judgment dated 14.03.2023 recognizes Respondent No 1 (M/s Victory Iron Works Ltd.) as **a licensee only with respect to the demarcated area of 10,000 Sq. feet out of total land of about 10.19 acres. Respondent No. 1 is just a licensee and licensee doesn't create any interest in the immovable property. On the other hand Appellant has a bundle of rights and interests. Some of them partake the character and shade of ownership rights.**

20.2. Respondent No 1 has been a signatory of Leave and License Agreement dated 19.08.2011 but the words in the impugned orders of 04.07.2023

“...recognizing the applicants' right to possess and continue business operation in the 10000 sq. ft. of demarcated property...”

gives an erroneous impression of possession instead of just being a licensee.

20.3. There are two gates – one main gate and the back gate which is close to the area admeasuring 10,000 sq. ft. Respondent No.1 has been provided the access from the back gate, which is closer to this portion of the land. If main gate is used for ingress and egress, the vehicles of Respondent No 1 will keep moving the whole day even in the remaining land, making the use of the remaining land unavailable for any future development. As a result of the impugned order, the remaining portion of the land will not be available freely and prospective buyers will not be attracted for investment for its

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development and therefore appellant will not be able to move forward as a resolution professional. Such an order becomes detrimental to the interests of the stakeholder of the Appellant.

20.4. Moreover, the easement issue has been raised for the very first time in the I.A (I.B.C)/1007 (KB) 2023. There is no mention of Indian Easement Act, 1882 in any fora in the past, which needs proper examination.

20.5. Apparently the appellant was not given any opportunity to file reply and in the very first hearing interim orders were issued on 04.07.2023.

21. In view of the facts and circumstances of the present case, we pass the following order:

21.1. Appeal is allowed.

21.2. The impugned judgment and order dated 04.07.2023 passed by the Adjudicating Authority in IA (IBC) 1007/KB/2023 in CP(IBC) 372/KB/2019 is quashed and set aside. The matter is remitted back to the Adjudicating Authority to look into all the aspects before passing any order in accordance with law.”

39. We find that the dispute in this triangular fight, as observed by the Hon’ble Apex Court in judgment dated 14.03.2023, at para 11, is between (i) *the ostensible owner of the land, namely, Energy Properties, who purchased the property from the Authorized Officer of UCO Bank under the SARFAESI Act, 2002 under a Sale Certificate dated 29.01.2008, on the one hand;* (ii) *the Corporate Debtor represented by the Resolution Professional, who actually financed the*

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purchase of the said property by Energy Properties, under a Memorandum of Understanding dated 24.01.2008 and who also entered into an agreement on 16.06.2008 with Energy Properties for the joint development of the said property; and (iii) Victory, to whom a portion of the land measuring an extent of 10000 sq.ft. (out of the total extent of land of 10.19 acres), was given under a Leave and License Agreement dated 19.08.2011, but which Licensee now claims to be in possession of the entire land of the extent of 10.19 acres.

40. We have noted the contention of the RP that the said Leave and License vide Agreement dated 19.08.2011, has expired by the efflux of time on 18.07.2012 and the same was not renewed further. Thus, the Applicant cannot have any interest, right or any claim existing over the said land and the same has unequivocally determined by the Hon'ble Apex Court and the Hon'ble NCLAT.

41. However, it is quite discernible that even long after the alleged expiry of the said leave and license terms, while recognizing Victory's right to occupy the piece of land, the Hon'ble Apex Court on 14.03.2023 has held at para 49 of its judgment that NCLT as well as NCLAT have done a delicate act of balancing, "by protecting the interests of Victory to the extent of the land permitted to be occupied." Thus, the rights and interests of the Applicant Victory Iron as a licensee as per the Leave and License Agreement dated 19.08.2011, executed by the Corporate Debtor and confirmed by Energy Properties, is protected by the Hon'ble Supreme Court.

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42. At this juncture, it would be appropriate to go through the statutory provisions envisaged in the Indian Easements Act, 1882, which are as under:

Section 11: Lessee –

No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Section 40: Extinction on expiration of limited period or happening of dissolving condition —

An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Section 62: License when deemed revoked —

A license is deemed to be revoked—

xxx xxx xxx
(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;

xxx xxx xxx

43. Further, we find that the Clause 8 of the Leave and License Agreement dated 19.08.2011 is following:



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8. DISPUTE RESOLUTION

8.1. *In the event of any dispute or discrepancies between the parties hereto during the continuance of this Agreement or after the expiry thereof or upon termination, the same shall be referred to SOLE ARBITRATION of Mr. R.L. Gaggar, Advocate of 6, Old Post Office Street, Kolkata - 700 001 and the same shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act 1996 or any other statutory modification or enactment for the time being thereto in force.*

8.2. *The Arbitrators will have summary powers and jurisdiction of Court at Calcutta alone shall **have jurisdiction to entertain try** and determine all actions suits and proceedings arising out of these presents between the parties hereto.*

44. It appears that any dispute between the parties to the leave and license is an arbitrable dispute and continues to be such even after expiry of the license period.

45. It is a trite, axiomatic and settled law that this Adjudicating Authority is not a civil court to resolve a civil dispute, thus, extinguishment of the right on leave and license cannot be gone into by this forum. We would refer to the judgment in this context rendered by the Hon'ble NCLAT Chennai in **Mr. G. Balasubramaniam Vs. CA Mahalingam Suresh Kumar RP**, reported in **(2023) ibclaw.in 664 NCLAT**, wherein it was observed that:

“102. It is well settled by now that the ‘National Company Law Tribunal’ / ‘National Company



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*Law Appellate Tribunal' **is not empowered, to
have the jurisdiction of a Civil Court,***

(Emphasis Added)

46. At this juncture, we have already noted the submission advanced by the Learned Counsel Ms. Urmila Chakrabarty on 22.05.2024 that the Resolution Applicant has no objection to the deletion of the offending portion of the plan annexed and the Successful Resolution Applicant by way of an affidavit on 13.06.2024, has agreed to the deletion of the paragraphs contained in Clause 5(a) in the Resolution Plan, thus, at this stage, nothing is left for adjudication and determination the rights and interest of the Applicant Victory Iron. Borrowing the analogy indicated in the judgment supra, it is clear that this Adjudicating Authority does not have any jurisdictional power to consider the issue concerning the determination of the terms and validity of the Leave and License Agreement. However, the Section 25 of the I&B Code casts a duty upon the RP to represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings, which includes its right to get the leave and license legally terminated by a due process of law so that a clear title passes on to the Successful Resolution Applicant. But under no circumstances the Resolution Professional can short circuit the procedure and seek approval of a resolution plan that leads to cancellation of the leave and license, on the ground that it has been approved by the CoC.

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47. Hence, we direct the RP to delete the offending portion at Clause 5(a) in the Resolution Plan, as confirmed by the Learned Counsel Ms. Urmila Chakrabarty appearing on behalf of the Successful Resolution Applicant and as per the Affidavit filed by the Successful Resolution Applicant on 13.06.2024 in the instant matter.

48. In view of the above, the application being **I.A. (IB) No. 297/KB/2024** is **disposed of** accordingly.

I.A. (IB) No. 1332/KB/2024

49. We have heard the Ld. Senior Counsels/ Ld. Counsel for both the parties.

50. This application has been preferred by Mr. Chintan Jhunjhunwala, hereinafter referred to as “Applicant” under Section 60(5) of the I&B, 2016, against Jitendra Lohia, RP of Avani Towers Pvt. Ltd. (Corporate Debtor) hereinafter referred to as “Respondent No. 1”, the CoC of the corporate debtor, hereinafter referred to as “Respondent No. 2” and the Successful Resolution Applicant (SRA), hereinafter referred to as “Respondent No. 3”, praying the following reliefs:

- a. Direction to be passed for dismissal of the I.A. (IB) No. 1892/KB/2023, filed by the RP before this Adjudicating*

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Authority for approval of the resolution plan submitted by the SRA.

- b. Direction to be passed for rejection of the resolution plan of the SRA which was approved on October 31, 2023, at 29th meeting of the CoC by the CoC, since, the CIRP of the corporate debtor culminating into the approval of the resolution plan is vitiated with fraud and non-joinder of the EPPL being the necessary party.*
- c. Direction to be passed declaring the approval of the resolution plan of the SRA by the CoC as bad in law.*
- d. Such further/ other orders as may be deemed fit and proper.*
- e. Interim/ Ad-interim Orders in terms of prayer (a) and (b).*
- f. Receiver.*
- g. Costs.*

A. Facts in a nutshell:

51. The applicant is a member of suspended board of directors of Energy Properties Private Limited (EPPL). EPPL/ Energy Properties had entered into a Development Agreement on 16.06.2008, with Avani Towers, the corporate debtor in respect of the land admeasuring 10.19 acres situated at Ramrajatala, District – Howrah, West Bengal, hereinafter referred to as “said Property” and subsequently, two Memoranda of Possession was executed between Energy Properties and the corporate debtor Avani Towers on 02.03.2010 and 24.06.2010. Under the said Memoranda the possession of the said Property was handed over by the Energy Properties, the landowner to the corporate debtor Avani Towers, the

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developer for construction and development purpose of as enshrined under clause 9.2 of the Development Agreement. Under the Development Agreement, the corporate debtor agreed to commence construction with six months and finish the same with five years, which it has failed to do so.

52. Fact remains that the corporate debtor Avani Towers was admitted into CIR Process on 15.10.2019 and subsequently, the Energy Properties was also admitted into CIR Process on 20.03.2024.

53. Through this application, the applicant raises objections to the resolution plan submitted by Cheminare Tradecom Private Limited in respect of the corporate debtor, Avani Towers, which has been approved by a 100% voting shares by the CoC of Avani Towers.

B. Objections raised by the Applicant:

54. Mr. Ratnanko Banerji, Ld. Sr. Counsel appearing on behalf of the applicant Chintan Jhunjhunwala would vociferously argue that the resolution plan submitted by Cheminare is contingent upon a condition which are uncertain, illegal, and contrary to the scheme of the I&B Code.

55. It is contended that the resolution plan proposes that an amount of Rs. 5,24,67,647/- towards the balance of Principal and Interest portion to the Financial Creditors (Unrelated Party) shall be paid by SRA within 6 months of the approval of the plan or after 7

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days of the takeover or effective date whichever is later. It is argued that the takeover/ effective date has been defined under resolution plan under clause 6, annexed at page 672 to the application, as “the date on which the Conditions Precedent/ Obligations of Owner as per the Fourth Schedule of the Development Agreement dated 16.06.2008 are fulfilled by the Owner being EPPL”, thus, the above payment proposal is completely conditional and uncertain.

56. Mr. Ratnanko Banerji, Ld. Sr. Counsel for the applicant would further argue that under the plan, an amount of Rs. 12,69,60,000/- has been allocated as payment towards the Related Party Financial Creditor on which an amount of Rs. 2,69,60,000/- shall be paid after obtaining the certificate of conversion of land as per Development Agreement or within 6 months of the full payment of the principal portion of the admitted claim of the unrelated financial creditor whichever is later, and the balance payment shall be made within 12 months from the takeover/ effective date by way of allocation of 40,000 sq. ft. of the proposed project area from the developer’s allocated area, which is again conditional in nature and cannot be legally accepted.

57. In support, Mr. Banerji, Ld. Sr. Counsel for the applicant would refer the judgments rendered by the Hon’ble Apex Court in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.*** reported in 2019 SCC OnLine Sc 1542, and ***K.L. Jute Products Pvt. Ltd. Tirupati Jute Industries Ltd.*** reported in 2020 SCC OnLine NCLAT 426 and submit that a conditional resolution

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plan depending on contingencies is contrary to the scheme of the I&B Code and/or its Regulations. Further, he would refer the decision of NCLT Bengaluru Bench in ***Union Bank of India v. Avvas Infotech Private Limited*** in I.A. (IB) No. 41 of 2022 in C.P. (IB) No. 168/BB/2020 at paras 12-14 and submit that if repayment to creditors are contingent and/or conditional in nature, dependent on uncertain events, such plan would be illegal in nature and also contrary to Regulations 38(1A), 38(2)(a), and 38(3)(d) of the CIRP Regulations.

58. Ld. Sr. Counsel for the applicant would further argue that the SRA fails to meet the eligibility criteria as stipulated in the invitation for submission of EoI as published by the RP of the corporate debtor, for the SRA is an NBFC and as per the Invitation for Expression of Interest published by the RP, the NBFC PRAs would require minimum Assets under Management (AUM), or funds deployed of Rs. 5 Crore in the immediately preceding completed financial year; or Committed funds available for investment/ deployment in Indian Companies or India Assets of Rs. 5 Crore in the immediately preceding completed financial year, whereas perusal of the financial statement of the SRA for the financial year ended 31st March 2023, that demonstrates the funds deployed towards the NBFC business of the company is a meagre amount of Rs. 25,38,800/- only. Accordingly, he would contend that the SRA does not have available cash and cash equivalent on its books available for deployment or investment in the Indian Companies or Indian Assets and also the

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SRA does not have the Committed funds available for investment or deployment in the Indian Companies or Indian Assets of Rs. 5 Crore.

59. Mr. Banerji, Ld. Sr. Counsel for the applicant would further argue that the disclosure under the head of “Additional Regulatory Requirements” in the financial statement of the SRA for the financial year ending on 31st march, 2023, it has been categorically disclosed that the SRA has not undertaken any investment and/or loan business towards its NBFC business in the financial year. He draws our attention to the copies of the Invitation of EoI and the financial statement of the SRA for the FY ending on 31st March 2023 are annexed at pages 14-39 and pages 40-61 to the Rejoinder Affidavit filed by the applicant.

60. Ld. Sr. Counsel for the applicant would further assert that the plan submitted by the SRA contains certain clauses which seek to override the Development Agreement dated 16.06.2008 entered between Energy Properties and Avani Towers and also dilute the rights of the landowner, which are as under:

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Sl. No.	Clause of the Resolution Plan	Remarks
1.	5(c) Page No. 234 of I.A.(IB) No. 1892 of 2023 See @ pp. 664-665, Application, Vol.5	The stipulation pertaining to the payment timelines of additional advance is contrary to the provisions of the Development Agreement. Such repayment should be as per the part II(d) of the third schedule. (See @ p. 93, Application, Vol.1)
2.	5(h) Page No. 237 of I.A.(IB) No. 1892 of 2023 See @ pp. 667, Application, Vol.5	It is completely contrary to the provision 20.8 of the Development Agreement (See @ p. 86, Application, Vol.1) and seeks to encumber the land without consent and/or involvement of the landowner as such is illegal and impermissible.
3.	5(i) Page No. 237 of I.A.(IB) No. 1892 of 2023 See @ pp. 667-668, Application, Vol.5	The clause is impermissible in law. The said stipulation is ex facie contrary to the object of the Code. Furthermore, such clause renders the right of receipt of payment of the land owner from the proceeds of the project subject to terms of the Resolution Plan as opposed to the Development Agreement, which is completely contrary to the corresponding terms of the Development Agreement, being clause 12.3(See @ p. 79, Application, Vol.1)
4.	5(j)	

	Page No. 238 of I.A.(IB) No. 1892 of 2023 See @ pp. 669, Application, Vol.5	The RP is seeking appointment as a director of the landowner, the RP being a third party, which is ex facie absurd and renders such proposal contrary to all the provisions of the code and cannot in any way be countenanced. Furthermore, inflicts RP as a interested party is thus conflicted. The clause also seeks to modify the escrow arrangement under the shareholder agreement and the Development Agreement in as such is impermissible.
5.	5(l) Page No. 239 of I.A.(IB) No. 1892 of 2023 See @ pp. 669. Application, Vol.5	It is completely contrary to the Development Agreement regarding non assignment of the development rights and seeks to modify the expressed conditions under the terms of the Development Agreement

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61. Further, it is alleged that the plan was approved in a clandestine manner in absence of Energy Properties, who is the landowner and a necessary party to the CIR Process of the corporate debtor. The entire process was laced with serious illegalities and procedural infirmities. It is argued that as per the judgment dated 14.03.2023 rendered by the Hon'ble Apex Court, the CIR Process of the corporate debtor was to proceed based on the development rights of the corporate debtor under the Development Agreement as it is the only asset of the corporate debtor. However, Energy Properties being the landowner was not given intimation or notice with regard to the participation in the CIR Process of the corporate debtor, despite repeated request to that effect.

62. It is submitted that Energy Properties preferred two applications being I.A. (IB) No. 1093/KB/2023 and I.A. (IB) No. 1383/KB/2023, praying for participation in the CIR Process of corporate debtor and during the pendency of those applications, SRA's plan was approved by the CoC in its 29th meeting keeping the landowner Energy Properties out of the fray.

63. To support his contention, Ld. Sr. Counsel for the applicant, would refer to one judgment of the Hon'ble NCLAT in ***Greater Noida Industrial Development Authority v. Roma Unicon Designex Consortium***, in Company Appeal (AT) (Insolvency) No. 180 of 2022, particularly paras 40 and 76, thereof to contend that in absence of a necessary party, the approval of a resolution plan is illegal and perverse in nature.

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64. It is further alleged that the total admitted dues of three creditors being Top Flow Abassan Private Limited, Sanjog Realty Private Limited and S. K. Finserve were assigned to one M/s. A. S. Confin Private Limited on 18.10.2023, 19.10.2023 and 27.10.2023, without giving any intimation to this Adjudicating Authority in terms of Regulation 28 of CIRP Regulations. the said financial debt aggregating to 30.96% voting were assigned post opening of the resolution plan and post negotiation of PRAs with the existing members of the CoC.

65. Mr. Banerji, Ld. Sr. Counsel for the applicant would further submit that vide Order dated 20.03.2024, by this Adjudicating Authority, the Energy Properties was admitted into CIR Process and Mr. Mahesh Chand Gupta was appointed as RP of the Energy Properties. RP of Energy Properties illegally constituted CoC of the Energy Properties with Avani Towers who holds 40% shares in the Energy Properties, with 99.97% voting share in the CoC. The decision of the RP Mahesh Chand Gupta was challenged by the applicant Chintan Jhunjhunwala by preferring an application being I.A. (IB) No. 1299/KB/2024. On 27.09.2024, a split verdict has arisen in I.A. (IB) No. 1299/KB/2024, wherein the Bench had a difference of opinion on the issue of inclusion of Avani Towers in the CoC of Energy Properties. Therefore, the matter was referred to third Member's Bench and on 21.11.2024, the Hon'ble third Member has supported the view that Avani Towers as a related party holding 40%

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shares in Energy Properties even though an operational creditor cannot be included in CoC with voting right.

66. It is alleged that Energy properties has preferred on application being I.A. (IB) No. 200/KB/2024 on 16.01.2024, objecting to the resolution plan of SRA herein. As, on 20.03.2024, the Energy Properties was admitted into CIRP and the applicant Chintan Jhunjhunwala was suspended from the board, the RP of Energy Properties acting in concert with the RP of Avani Towers on 25.06.2024 sought for dismissal of I.A. (IB) No. 200/KB/2024, as per the instructions obtained by RP from illegally constituted CoC of Energy properties. In terms of the instruction on RP of Energy Properties concerning not to press the application, I.A. (IB) No. 200/KB/2024 was dismissed as withdrawn on 25.06.2024. In view of above submissions, Ld. Sr. Counsel would contend that the conduct of both the RPs and the corporate debtor herein in collusion to perpetuate an illegal design to act against the interest of the landowner company Energy properties.

67. Further Ld. Sr. Counsel for the applicant would refer to Sections 31 and 30(2)(e) of the Code and submit that in view of the statutory provisions under I&B Code, the Adjudicating Authority can take note of any illegalities or contraventions of law in the plan in course of its approval, as indicated by the applicant herein.

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C. Per contra, submissions advanced by the Resolution Professional would be as under:

68. Mr. Jishnu Chowdhury, Ld. Sr. Counsel along with Mr. Shaunak Mitra, Ld. Counsel appearing on behalf of the Resolution Professional of the corporate debtor would vehemently oppose the objections raised by the applicant and submit that the present application has been preferred by the applicant who was a suspended director and shareholder of the Energy Properties and vide Order dated 20.03.2024 passed in C.P. (IB) No. 1711/KB/2019, Energy Properties has been admitted into CIRP. In view of such, the applicant, a suspended director of the Energy Properties has no locus to challenge or object to the plan which has been approved by the CoC within the purview of its 'commercial wisdom' by 100% voting shares.

69. To fortify the argument, Mr. Chowdhury, Ld. Sr. Counsel for the Respondent RP would refer to the judgment passed by the Hon'ble NCLAT in ***Dr. Ravi Shankar Vedam v. Tiffins Barytes Asbestos and Paints Ltd. and Ors.*** in TA (AT) No. 134/2021 in Company Appeal (AT) (Ins) No. 653/2019 and the decisions of this Adjudicating Authority in ***Manav Investment & Trading Company Limited v. Pratim Bayal, Resolution Professional of Birla Tyres Limited & Ors.*** in I.A. (IB) No. 1599/KB/2023 in C.P. (IB) No. 250/KB/2021.

70. To counter the allegation of resolution plan being contingent upon conditions as raised by the applicant, Mr. Chowdhury, Ld. Sr.

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Counsel for the Respondent RP would argue that a conditional plan is one where there exists an option for the SRA to exit from the CIRP proceedings and/or implementation of the resolution plan, withdraw the resolution plan and/or renegotiate with the CoC. Reliance is placed on the judgment rendered by the Hon'ble Apex Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited*** reported in (2022) 2 SCC 401. It is argued that the resolution plan approved by the CoC does not envisage any option or condition whereby the SRA can opt out from implementation of the resolution plan, withdraw the resolution plan, or re-negotiate with the CoC after approval of the plan. Hence, the resolution plan is not a conditional one.

71. It is further submitted that under any real estate project, payment timelines are always linked with the milestone of progress. Under the resolution plan, the SRA proposes to pay an amount exceeding Rs. 4 Crore immediately upon the approval of the plan by This Adjudicating Authority, and further payments as contained in the plan. The completion of the project under Joint Development Agreement can be done on conversion of land, clearance from the authorities and other requirement for starting the constructions. If the payment linked to milestone is considered as the conditionality to implementation of the plan, there could be no possibility to have resolution of any corporate debtor dealing with real estate projects. Thus, the SRA in its plan has indicated a timeline of six months for completion of the condition precedent, as has been contained in the Joint Development Agreement. It is submitted that the Joint

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Development Agreement, the owner was required to comply with the condition present which has now been indicated in the resolution plan.

72. Further, Mr. Chowdhury, Ld. Sr. Counsel for the Respondent RP would submit that the plan effectively records the rebooting of timelines as contained in the Development Agreement. It is argued that unless the timeline is rebooted, the development agreement would be rendered infructuous and meaningless. Rebooting of timeline of the Development Agreement does not make the implementation of the resolution plan contingent and/or conditional. The SRA has sought to comply with the terms of Joint Development Agreement without any modification and that Joint Development Agreement has been said to be valuable assets of the corporate debtor, included in the IM and as such can be carried forward and/or implemented by the SRA upon approval of the resolution plan.

73. Further, it is argued that the plan has made provision for resurrection of the Development Agreement. No provision of the plan contradicts the terms of the Development Agreement.

74. In context of eligibility of SRA, Mr. Chowdhury, Ld. Sr. Counsel for the Respondent RP would submit that as per the financial statement of SRA for the FY 2022-23, the net worth of SRA is Rs. 4,74,56,200/- which is above minimum net worth requirement for a “corporate applicant”. Further, the fund deployed for the FY 2022-23 is Rs. 11,47,92,300/- which is above the

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minimum funds deployed requirement for NBFC. In view of such, it is submitted that the allegation pertaining to the eligibility of the SRA made by the applicant is baseless and devoid merit, and the application deserves to be dismissed.

75. We have noted the rival contentions advanced by both parties.

D. Analysis and Findings:

On maintainability:

76. Admittedly, the Applicant holds 8000 equity shares of Energy Properties comprising of 16% of the equity shareholding in Energy Properties and Avani Towers holds 40% shareholding in the Energy Properties. Vide Order dated 20.03.2024, passed in C.P. (IB) No. 1711/KB/2019, Energy Properties has been admitted into CIRP and the board of Energy Properties including the applicant Chintan Jhunjhunwala was suspended. We find that the applicant is neither a member of CoC of Avani Towers nor a stakeholder having interest in the resolution of Avani Towers. The applicant is a suspended director of the board of Energy Properties and Energy Properties is also not a member of CoC of Avani Towers. The only relation between the Energy Properties and Avani Towers is that the Avani Towers is the developer of the said Property located at Ramrajatala, Howrah of Energy Properties. In view of such, the applicant has no locus standi

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to object the resolution plan with regard to its timeline of payment to the creditors, conditionality or any other clause, with has been approved by the CoC with majority.

77. To fortify our view, we would refer to the judgment rendered by the Hon'ble NCLAT in ***Singh Raj Singh v. SRS Meditech Ltd. and Ors.*** in Company Appeal (AT) (Insolvency) No. 522 of 2020 reported in **(2020) ibclaw.in 289 NCLAT**, wherein it has been held that:

“9. [...] Admittedly, the Appellant is an Ex-Director of the Corporate Debtor and the law does not enjoin upon him any right or power to challenge the commercial wisdom of Committee of Creditors in regard to approval of Resolution Plan, which has already got the approval of Adjudicating Authority and is undergoing implementation. The Appellant cannot be permitted to scuttle the process at this stage and that too without substantial grounds. No material irregularity in resolution process vitiating it, has been canvassed or brought to our notice, which would render the whole exercise unsustainable.

10. For the foregoing reasons, we are of the considered opinion that the impugned order does not suffer from any legal infirmity or factual frailty. The Appeal lacks merit and is accordingly dismissed. No order as to costs.”

(Emphasis Added)

78. Further, we would refer to the judgment of the Hon'ble NCLAT, in ***Dr. Ravi Shankar Vedam v. Tiffins Barytes Asbestos and***



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Paints Ltd. and Ors. in TA (AT) No. 134/2021 in Company Appeal (AT) (Ins) No. 653/2019, where the Hon'ble NCLAT has held that:

*“36. [...] As the Board was suspended during that time, the Shares would not have been transferred and therefore, **this Applicant is not a shareholder and has no locus to file this Application.** At this juncture, this Tribunal is of the earnest view that the impleadment Applications filed by Mr. Vishnu Vedam are devoid of merits and are hence being dismissed as we are of the considered view that the issues raised in these Appeals can be adjudicated without the intervention / impleadment of the Applicant herein.*

*37. The Adjudicating Authority, had rightly observed in MA/120/2019 that the gist of the objections raised by the very same Applicant in MA/179/2019 are similar and have been considered exhaustively and dismissed. It is clear that in MA/179/2019, the Adjudicating Authority has held that **'legislature did not mandate for seeking approval of shareholder in relation to the Resolution Plan. Therefore, any objection raised by the Shareholder cannot be considered by this Authority while approving or rejecting the Resolution Plan'.**”*

(Emphasis Added)

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On Conditional Plan:

79. The applicant has raised that the plan envisages conditionality with regard to timeline of payment and also modifies the scope of development rights under the Development Agreement.

80. As relied upon by the Ld. Sr. Counsel Mr. Chowdhury, the Hon'ble Apex Court in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited*** reported in **MANU/SC/0628/2021**, has held that:

“153. Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority Under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy



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in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30(2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC Under Section 31(1) of the IBC.”

(Emphasis Added)

81. We find the no clause in plan as submitted by the SRA envisages any condition which gives an exit route to the SRA or a right to avoid implementation of the plan after its approval by this Adjudicating Authority. We find that the plan complies with all the statutory mandates and the CoC has approved the plan with majority upon considering its feasibility and viability. So far as the ‘commercial wisdom’ of CoC is concerned, the Hon’ble Apex Court in a catena of judgments has propounded that the ‘commercial wisdom’ of the CoC cannot be meddled with unless there is a ‘material irregularity’ as defined under Section 30(2) of the Code is evident. We would refer to the judgments rendered by the Hon’ble Apex Court in this context which are, as under:



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- a. *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.* reported in (2021) 10 SCC 401: MANU/SC/0174/2021, it has been held that:

“155. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided Under Sections 30 and 31 of the I&B Code.”

(Emphasis Added)

- b. Further, the Hon'ble Apex Court in *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.* reported in (2022) 1 SCC 401: MANU/SC/0206/2021 at Para 216, has laid down that:

“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors.”

(Emphasis Added)

- c. Further, in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* reported at (2020) 8 SCC



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531: MANU/SC/1577/2019, the Hon'ble Apex Court has propounded that:

*“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the **commercial wisdom of the Committee of Creditors** which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”*

(Emphasis Added)

On Eligibility of SRA:

82. The applicant alleges that the SRA fails to meet the eligibility criteria as stipulated in the invitation of submission of EoI as published RP in respect of minimum assets under management or funds deployed of Rs. 5 Crore in the last financial year. As submitted by Ld. Sr. Counsel Mr. Chowdhury that as per the financial statement of SRA, the fund deployed for the FY 2022-23 is Rs. 11,47,92,300/- which is way above the minimum funds deployed requirement for NBFC. In view of such, we find no merit to consider the allegation raised by the applicant.

Concluding Remarks:

83. In view of enumerations above, we find that the applicant neither has locus nor has succeeded to make out a case meriting interference with the plan submitted the SRA herein. The Resolution Plan is approved by the CoC with 100% voting shares in its 29th meeting, no clause of the plan provides any option for the SRA to



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exit from the CIRP or avoid implementing the resolution plan after its approval by the Adjudicating Authority.

84. In view of above, we find no merit in the application, and accordingly this application is **dismissed**.

I.A. (IB) No. 1007/KB/2023

85. This Application has been preferred by Victory Iron Works Limited under Section 60(5) of the I&B Code against the RP of the Corporate Debtor Avani Towers and Energy Properties, seeking the directions upon the RP not to interfere in the peaceful physical possession of area consisting of 10000 sq. ft. of land situated at Khaitian No. 1523/1524 in Mouza Ramrajatala Thana, Jogacha, District Howrah, West Bengal along with right of ingress and egress of containers of exportable goods and movement of all vehicles from the main gate and not to put a padlock on the entry gate to the said property.

86. The issue raised in this application has already been covered and dealt with thoroughly in I.A. (IB) 297/KB/2024 in favour of Victory Iron, as per the observation of the Hon'ble Apex Court and therefore, in view of the decision in I.A. (IB) 297/KB/2024, this application being **I.A. (IB) No. 1007/KB/2023** is **disposed of**.

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I.A. (IB) No. 18/KB/2024

87. This Application has been preferred by Victory Iron Works Limited under Section 60(5) of the I&B Code against the RP of the Corporate Debtor Avani Towers, CoC, SRA and Energy Properties, seeking the directions upon the RP make over the relevant extract of the plan to Victory Iron and an injunction restraining the respondent for obstructing the applicant in carrying on business in the said property situated at Khaitian No. 1523/1524 in Mouza Ramrajatala Thana, Jogacha, District Howrah, West Bengal.

88. Similarly, the issue raised in this application has already been covered and dealt with thoroughly in I.A. (IB) 297/KB/2024 in favour of Victory Iron and therefore, in view of the decision in I.A. (IB) 297/KB/2024, this application being I.A. (IB) No. 18/KB/2024 is also **disposed of**.

I.A. (IB) No. 1892/KB/2023 (Resolution Plan Application)

89. Now, we would proceed to consider the Resolution Plan approved by the Committee of Creditors (CoC) at its 29th Meeting convened on 31.10.2023.

90. The Resolution Professional Mr. Jitendra Lohia (Applicant herein) has preferred this application under Section 30(6) read with 31 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India

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(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for brevity “CIRP Regulations” seeking for the approval of the Resolution Plan dated 20.10.2023 with its Addendum submitted by **Cheminare Tradecomm Private Limited**, annexed at pages 212-274, as Annexure P, to the Vol II of the Application.

A. Prologue

91. The Learned Counsel appearing on behalf of the Resolution Professional (RP) would submit that the CoC has approved the Resolution Plan dated 20.10.2023 with its Addendum submitted by **Cheminare Tradecomm Private Limited** at its 29th meeting convened on 31.10.2023, by 100% voting shares and subsequently, **Cheminare Tradecomm Private Limited** has been declared as **Successful Resolution Applicant (SRA)**. The copy of the Minutes of the 29th Meeting of the CoC dated 31.10.2023 is annexed at pages 140-191 to the Application.

92. Further, it is submitted that the Letter of Intent (LoI) was issued on 01.11.2023, annexed at pages 192-195 to the Application and the SRA has unconditionally accepted the same and furnished a Performance Guarantee of an amount of Rs. 50 Lakh Only in terms of Clause I of the Request for Resolution Plan (RFRP). A copy of the bank statement depicting the performance security amount is annexed at pages 196-197 to this Application.

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93. The Learned Counsel would contend that the copy of the Compliance Certificate in Form H, submitted by the RP, is annexed at pages 198-205 to the Application.

B. Particulars of the Corporate Debtor

94. The Corporate Debtor 'Avani Towers Private Limited' is a private limited company having CIN: U70101WB1994PTC063557, registered address is Avani Heights 59A, Chowringhee Road, Kolkata, West Bengal, Pin Code: 700 020.

C. Initiation of Corporate Insolvency Resolution Process (CIR Process) of the Corporate Debtor

95. Upon preferring a petition under Section 7 of the I&B Code, by Sesa International Limited (Financial Creditor), the CIR Process was initiated against the Corporate Debtor on 15.10.2019, and Mr. Jitendra Lohia, the Applicant herein was appointed as IRP.

D. Public Announcement

96. That, the IRP upon receipt of the Order dated 15.10.2019, made public announcement as per Section 13 of the I&B Code, read with Regulation 6(1) of the CIRP Regulations, 2016, for inviting the claims from the creditors in specific forms prescribed by the Insolvency and Bankruptcy Board (IBBI). In terms of Section 15(1)(c) of the I&B Code read with Regulation 12(1) of the CIRP Regulations, the last date of submissions of claims was 29.10.2019. Further, as



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per Regulation 13(1) of the CIRP Regulations, verification of the claims was completed by IRP on 05.11.2019.

E. Constitution of the CoC

97. The Learned Counsel for the RP would submit that based on the claimed received within the due date and verified accordingly, the RP constituted the Committee of Creditors (CoC) and accordingly filed report for certifying the constitution CoC in terms of Regulation 17(1) of the CIRP Regulations on 07.11.2019. It is submitted that the CoC was constituted on 07.11.2019, with eight members being Financial Creditor namely, Sesa International Limited, S. K. Finserve Pvt. Ltd., Sanjog Reality Private Limited, Topflow Absan Private Limited, Kothari Development Services Private Limited. Blaise Tradecom Private Limited, Arwin Impex Private Limited and Parth Technocomm LLP.

98. The Learned Counsel for the RP would contend that the debt of S. K. Finserve Pvt. Ltd., Sanjog Reality Private Limited and Topflow Absan Private Limited were assigned to A.S. Cofin Pvt. Ltd. the updated report on constitution and list of Creditors was filed before this Adjudicating Authority on 28.10.2023, annexed at pages 139, as Annexure K to the Application. The details of the voting share of the Creditors after reconstitution were as follows:

SN	Name of the Creditors	Voting Shares
1.	Sesa International Limited	36.47%
2.	A.S. Cofin Pvt. Ltd.	30.96%



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3.	Kothari Development Services Private Limited	15.39%
4.	Blaise Tradecom Private Limited	4.34%
5.	Arwin Impex Private Limited	3.98%
6.	Parth Technocomm LLP	8.86%
Total		100%

99. It is submitted that in terms of Section 22(1) of the I&B Code read with Regulation 17(2) of the CIRP Regulations, first meeting of the CoC was held on 14.11.2019. the total number of meetings of the CoC convened is 29.

F. Collation of Claims

100. The Learned Counsel for the RP would submit the list of creditors along with the amount claimed and admitted/ verified accordingly, reproduced hereunder:

SN	Category of Stakeholders	Claims Submitted	Claimed Admitted
1.	Claim of the Financial Creditors (unrelated party)	Rs. 12,22,79,808/-	Rs. 7,34,36,808/-
2.	Claim of the Financial Creditors (related party)	Rs. 22,31,93,256/-	Rs. 22,30,85,169/-



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3.	Claims of the Operational Creditor, being statutory liabilities	Rs. 54,81,627/-	Rs. 54,81,627/-
	Total	Rs. 35,09,54,691/-	Rs. 30,20,03,604/-

G. Appointed of Registered Valuers

101. The Learned Counsel would contend that in terms of Regulation 27 of the CIRP Regulations, two Registered Valuers were appointed on 30.11.2019. The Registered Valuers accordingly submitted their report with regard to the Fair Value and the Liquidation Value of the Corporate Debtor. It is submitted that the average of the Fair Value and the Liquidation Value of the Corporate Debtor is as under:

(a) Fair Value = Rs. 9,24,75,592/-

(b) Liquidation Value = Rs. 1,94,65,887/-

H. CIRP and its Compliances

102. The Learned Counsel for the RP would submit that as per Regulation 36(1) of the CIRP Regulations, the Information Memorandum of the Corporate Debtor to the CoC was submitted by the RP on 07.12.2019.



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103. It is contended that in accordance with the Regulations 36A of the CIRP Regulations, the RP issued the invitation of Expression of Interest (EoI) in Form G on 28.12.2019, which was revised on five occasions, i.e., 13.03.2020, 17.07.2020, 12.12.2020, 19.04.2021 and 22.06.2023. The provisional List of Resolution Applicants were issued on 18.01.2019 and 08.07.2023 and the Final List of Resolution Applicants were issued on 29.01.2019 and 15.07.2023.

I. PUFÉ Transactions

104. It is contended that the RP had appointed Transaction Auditor namely S. Poddar & Co. Chartered Accountants on 12.03.2020, to conduct transaction audit. The Transaction Auditor has reported no transactions which fall under the ambit of PUFÉ Transactions. It is further submitted that the RP has also independently checked the transactions of the Corporate Debtor and no such transaction was found which fall within the ambit of PUFÉ Transaction.

J. Evaluation and Voting

105. The Learned Counsel for the Applicant would submit that upon the issuance of Form G, the Applicant has received five valid EoIs from the Prospective Resolution Applicants. Thereafter Six CoC meetings have been held wherein all the procedure with respect to the resolution plans have been concluded. It is contended that the Resolution plans were found compliant by the applicant with the applicable provisions of I&B Code, 2016 and any other law for the



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time being in force, RFRP in all aspects, except as observation raised in two of the resolution plans.

106. It is further contended that the Resolution Plans were also found compliant with the provisions of Section 29A of the I&B Code, 2016 and affidavit as required under regulation 39(1)(a) for eligibility under Section 29A was submitted by all the Resolution Applicant in the format prescribed as per RFRP. All the Resolution applicant has also submitted undertaking as required under regulation 39(1)(c) towards the effect that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the code.

107. It is asserted that based on the decision of the CoC members regarding the feasibility and viability of the plans which is duly recorded in the 29th CoC meeting held on 31st October 2023, all the resolution plans were placed for physical voting before the COC members, and after the conclusion of 29th COC meeting, in terms of regulation 39(2) before CoC members as per regulation 26(1) of the CIRP Regulations, 2016, for their approval/rejection of the resolution plan.

108. That, the CoC members authorized the RP to issue of LOI to the successful Resolution Applicant in terms of RFRP and submit the resolution plan approved by the committee to the adjudicating



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authority along with a compliance certificate in 'Form H' and evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B and as provided under RFRP.

109. Pursuant to the 29th CoC meeting held on 31.10.2023 wherein all the Resolution Plans were placed for physical voting, the Resolution Plan of Cheminare Tradecom Private Limited has been approved by **100%** votes in favour of the plan. As such **Cheminare Tradecom Private Limited** is the **Successful Resolution Applicant**.

110. The list of the financial creditors of the Corporate Debtor being the members of the CoC and the distribution of voting share among them is as under:

SL. No.	Name of the Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1.	SESA International Limited	36.47%	Voted For
2.	A.S. Confin Pvt. Ltd	30.96%	Voted For
3.	Kothari Development Services Private Limited	15.39%	Voted For
4.	Blaise Tradecon Private Limited	4.34%	Voted For



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5.	Arwin Impex Private Limited	3.98%	Voted For
6.	Parth Technocomm LLP	8.86%	Voted For
	Total	100.00%	Voted For

111. That, the Evaluation was carried out by the CoC through discussion on the revised resolution plans on the 28th and 29th COC meeting conducted on 27.10.2023 and 31.10.2023 respectively and accordingly based on the decision by them the marks were allocated to the resolution applicants based on the approved criteria. The following marks were allotted to each resolution applicant, based on approved evaluation matrix criteria as under:

- (a)** Cheminare Tradecomm Private Limited: **54.71,**
- (b)** JFC Finance (India) Limited: 44.09,
- (c)** Panchdeep Constructions Limited: 28.09,
- (d)** Mentor Capital Limited: 13.36.

112. It is further submitted that upon approval of the resolution plan, Letter of Intent has been issued to the Successful Resolution Applicant Cheminare Tradecomm Private Limited on 01.11.2023 which was duly signed and unconditionally accepted by the successful resolution applicant.

113. The Successful Resolution Applicant (Cheminare Tradecom Private Limited) in terms of Regulation 36B(4A) and RFRP has duly submitted Performance Security for Rs. 50 Lakh which has been

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deposited directly into Bank at the time of submitting EMD which now has been converted into Performance Security and declaration given to this effect, plus Rs.3 lacs submitted as process participation fees.

K. Compliances of the Resolution Plan submitted by the SRA with various provisions under the I&B Code and CIRP Regulations

114. The RP has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP has filed a Compliance Certificate in prescribed form i.e., Form “H”.

115. It is submitted that the Successful Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

116. Further, it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA.

117. Learned Counsel for the Resolution Professional would submit the details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to. Further, it is submitted that the Resolution Applicant



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has submitted its eligibility in terms of Section 30(1) of the I&B Code, 2016.

118. It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16, 2019) the Resolution Plan, submitted by SRA provides the details of various compliances as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	As per the terms in the EOI.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Undertaking has been submitted and marked as "Annexure O" of the Application.	Yes
Section 30(1)	Whether the Resolution	Undertaking has	Yes



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	Applicant has submitted an affidavit stating that it is eligible?	been submitted and marked as “Annexure O” of the Application.	
Section 30(2)	Whether the Resolution Plan-	(a) Resolution Plan provides for the payment of CIRP Costs in priority. Clause 1.1 of the Resolution Plan.	Yes
	(a) provides for the payment of insolvency resolution process costs?	(b) Resolution Plan provides for the payment of CIRP Costs in priority. Clause 1.3 of the Resolution Plan.	Yes
	(b) provides for the payment to the operational creditors?	(c) The same has been provided in clause 1.5 of the	Yes



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	in favour of the resolution plan?	Resolution Plan.	
	(d) provides for the management of the affairs of the corporate debtor?	(d) The same has been provided in clause 3 of the Resolution Plan	Yes
	(e) provides for the implementation and supervision of the resolution plan?	(e) The same has been provided in clause 2.1 & 4 of the Resolution Plan.	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	(f) The same has been provided in clause 9 of the Resolution Plan.	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	The Resolution Plan has been found feasible and viable and the same has been recorded in the 29 th COC meeting. Further, the	Yes



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		Resolution Plan, has been approved with 100% voting. Minutes of the 29 th COC Meeting Attached herewith and marked as 'Annexure L of Application'	
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 2.1 & 4 of the Resolution Plan	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Clause 1.3 of the Resolution Plan	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 1 of the Resolution Plan	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its	-	No



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	related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code		
	ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	-	NA
Regulation 38 (2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	(a) Clause 2.1 & 4 of the Resolution Plan	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	(b) Clause 3 of the Resolution Plan	Yes
	(c) adequate means for supervising its implementation?	(c) Clause 4 of the Resolution Plan	Yes



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Regulation 38 (3)	Whether the resolution plan demonstrates that – (A) it addresses the cause of default?	(A) Clause 4 & 5 of the Resolution Plan	Yes
	(B) it is feasible and viable?	(B) Clause 7 of the Resolution Plan	Yes
	(C) it has provisions for its effective implementation?	(C) Clause 2.1 & 4 of the Resolution Plan	Yes
	(D) it has provisions for approvals required and the timeline for the same?	(D) Clause 10 of the Resolution Plan	Yes
	(E) the resolution applicant has the capability to implement the resolution plan?	(E) Clause 10 of the Resolution Plan	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	No



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Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Performance Security for Rs. 50 Lakhs (Rupees Fifty Lacs) deposited directly into Bank, plus Rs. 3 Lacs submitted as process participation fees.	Yes
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L. Details of the Resolution Plan and/or Payment Schedule

119. The Learned Counsel for the RP would submit that the plan provides an amount of **Rs. 25,11,70,194/-**. The statement as to how the resolution plan deals with the interest of all the stakeholders, including the Financial Creditor and Operational Creditor of the Corporate Debtor is as under:

Component	Amount	Timeline for payment
CIRP Cost	2,02,73,386 or Actuals whichever is higher	To be paid within 60 days of the approval of the resolution plan. CIRP cost is to be paid in priority before any other payments are done.



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Part Principal portion of Financial Creditors (Un-related)	2,09,69,161	Part Principal portion of the admitted claim to be paid in full within 60 days of the approval of the resolution plan
Balance of Principal and Interest portion to Financial Creditors (Un Related party)	5,24,67,647	Balance of the principal amount and the interest portion of the admitted claim shall be paid within 6 months of the approval of the resolution plan on or after (seven) 7 days of the Takeover/effective date whichever is later.
Financial Creditor (Related Party)	12,69,60,000	<p>Rs 2,69,60,000/- shall be paid after obtaining certificate of conversion of land as per Development agreement or within 6 months of the full payment of principal portion of the admitted claim of unrelated Financial Creditor whichever is later.</p> <p>Balance Rs. 10,00,00,000/- within 12 months from the takeover/effective date by way of allocation of 40,000 sq. ft. of</p>



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		the proposed project area from the developer's allocated area.
Operational Creditors excluding any due towards statutory liabilities (whether current or contingent or other creditors)	-	No claims have been filed by the operational creditors excluding any due towards statutory liabilities.
Operational Creditors being statutory liabilities (whether current or contingent or other creditors).	5,00,000	The amount of the operational creditor is under dispute. Appeal for the same has been filed. It is expected that the order of the Appellate Authority would be in favour of the corporate debtor no amount shall be eventually payable. However, to settle the dispute RA proposed to pay within 60 days of the approval of the plan, towards full and final claim against all statutory dues including that of Income Tax Claims.
Payments to other stakeholders being Equity, preference,	NIL	Liquidation value due to all such stakeholder is expected to be Nil, as such no payments are

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related parties and other stakeholder		envisaged in the resolution plan towards all such stakeholders.
Working Capital for improving operations	3,00,00,000	Rs 2 crores in the first year and 1 Crore in the 2 nd year
Total	25,11,70,194	
Rupees Twenty-Five Crores, Eleven Lakhs Seventy Thousand One Hundred Ninety-Four Only.		

120. Further, the amount provided for the stakeholders under the Resolution Plan in terms of Form H is as under:

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Admitted
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:	-	-	-	-



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		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	-	-	-	-
		Total[(a) + (b)]	-	-	-	-
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	22,31,93,256.00	22,30,85,169.00	12,69,60,000.00 Further, the Amount proposed to be paid to the creditor not having voting right (Clause 2(a)) for Rs. 10 Crore, by allotment of 40,000 sq. ft. for the constructed area in	56.91%



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					the project.	
		(b) Other than (a) above:	-	-	-	-
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan	12,22,79,808.00	7,34,36,808.00	7,34,36,808.00	100%
		Total[(a) + (b)]	34,54,73,064.00	29,65,21,977.00	20,03,96,808.00	67.58%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	54,81,627.00	54,81,627.00	5,00,000.00	9.12%
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-



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		Total[(a) + (b)]	54,81,627. 00	54,81,627 .00	5,00,000 .00	9.12%
4	Other debts and dues		-	-	-	-
Grand Total			35,09,54, 691.00	30,20,03, 604.00	20,08,9 6,808.0 0	66.52%

121. That, the Successful Resolution applicant by way of an addendum to the Resolution plan dated 20.10.2023 have clarified or undertaken. that upon approval of the Resolution Plan all the legal cases pending before this Adjudicating Authority and or any other forum by the corporate debtor and/or against the corporate debtor shall be persuaded by the Successful resolution applicant. Further, all the legal cost post approval by this adjudicating authority shall also be borne by them.

M. Our Inference

On the Conduct of CoC

122. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that **the Resolution Plan dated 20.10.2023 with its Addendum submitted by Cheminare Tradecomm Private Limited (Successful**

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Resolution Applicant), annexed at pages 212-274, as Annexure P, to the Vol II of the Application has been approved by the CoC of the Corporate Debtor by **100%** voting share on 18.04.2024 and **Cheminare Tradecomm Private Limited**, is declared as the **“Successful Resolution Applicant”**. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

123. We have noted that the Fair value of the Corporate Debtor is arrived at Rs. 9,24,75,592.50/- and the Liquidation value of the Corporate Debtor at Rs. 1,94,65,887.00/-, while the total Plan value including CIRP Cost, contingent liabilities and working capital is **Rs. 25,11,70,194/-**.

124. In the course of the hearing, the Learned Counsel for the Resolution Professional would submit that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

125. Upon perusal of the documents on record and/or documents, we are satisfied that the **Resolution Plan dated 20.10.2023 with its Addendum submitted by Cheminare Tradecomm Private Limited (Successful Resolution Applicant)**, is in accordance with

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sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**On the Statutory Obligations or Seeking Approvals from the
Authorities:**

126. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

On the Reliefs, Waivers and Concessions:

127. We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central



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Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

128. It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

129. In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, wherein, the Hon'ble Apex Court has laid down that:

“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets"



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under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, **exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.**

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial



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proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

(Emphasis Added)

130. The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

On the Extinguishment of Claims:

131. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that “once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members,



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creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of 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 part of the resolution plan.” (Emphasis Added)

132. Further, the relevant part of the **Ghanshyam Mishra judgment (supra)** in this regard is given below:

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.”

“62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar

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Steel India Limited through Authorised Signatory
(supra).’

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis Added)

133. In this regard, we would also rely upon the judgement of the Hon’ble High Court of Rajasthan in the matter of **EMC v. State of**



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Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in **(2023) ibclaw.in 42 HC**, wherein it has been inter-alia held that:

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

(Emphasis Added)

134. Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that 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 part of the resolution plan. The Hon’ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period before the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code could be continued.

On Guarantors:

135. Concerning the waivers sought in relation to guarantors, the Hon’ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that *the sanction of a resolution plan and finality*



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imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. (Emphasis Added)

136. Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:

“The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon’ble Supreme Court in the matter of “Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”

(Emphasis Added)

137. Hence, we would infer that if there are any personal guarantors of the corporate debtor, the personal guarantees shall be invoked and an appropriate action against them, as per law, be taken.

On Inquiries, Litigations, Investigations, and Proceedings:

138. For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.



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139. In this context, we would infer that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this juncture, we would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*** reported in **MANU/SC/0244/2023: (2023) 10 SCC 545** that:

“67. Thus, Section 32A broadly leads to:

*a. **Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.***

b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.



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c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences.”

(Emphasis Added)

140. Further, the **Hon’ble High Court of Madras in *Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)*** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC**, (hereinafter referred to as ‘***Vasan Healthcare Pvt. Ltd. P***) has held that:

“9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management.

*10. Useful reference can also be made to the judgement of **the Calcutta High Court in [Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd] in CRP No. 172 of 2022.** The relevant portions in the order are extracted hereunder :-*

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4. For the **application of Section 32A of IBC, 2016** and in light of the present matter, it is pertinent to determine the following two issues, i.e.,

i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?

ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the **impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the**



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actions of petitioner when it was in control of erstwhile Directors.

11. The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. **Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate.**

(Emphasis Added)

141. Very recently, the Hon'ble Madras High Court in ***M/s. Vasan Healthcare Pvt Ltd v. M/s. India Infoline Finance Ltd***, CrI O.P. No. 1772 of 2024, reported in (2024) ibclaw.in 700 HC, (hereinafter referred to as '***Vasan Healthcare Pvt. Ltd. II***') has observed that:

“13. As a result of the above discussion and the law laid in Ajay Kumar Radheshyam Goenka case, it is clear that the corporate debtor cannot be prosecuted for the prior liability after the approval of the Resolution Plan. At the same time, it is to be bear in mind the protection under Section 32-A of Insolvency & Bankruptcy Code, 2016 is restricted only to the Corporate debtor and not to its Directors who were in-charge of the affairs of the Company when the offence committed or the signatory of the cheque.”

(Emphasis Added)



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142. For the sake of convenience, the reliefs, concessions and approvals sought by the Applicant, in Clause 8 at pages 255-262 to the Resolution Plan from us are catered to as below and the orders thereon are indicated against each as under:

SN	Clause	<i>Reliefs, Concessions, and Approvals sought for</i>	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
<i>Reliefs and Concessions for the implementation of the Resolution Plan.</i>				
1.	8. a)	From Financial Creditor: <i>Financial Creditors, related as well as unrelated, would also be required to give No Dues Certificate after payment proposed under this Resolution Plan is completed within 90 days of the payment of the last installment.</i>	The law laid down in Ghanashyam Mishra (Supra) , that once a resolution plan is duly approved by the Adjudicating Authority under Section 31(1), <u>the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and all its</u>	Allowed in accordance with law.



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			<p><u>stakeholders.</u> On the date of approval of the resolution plan by the adjudicating authority, all such claims, which <u>are not a part</u> of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings concerning a claim, which is not part of the resolution plan.</p>	
2.	8. b)	<i>Upon approval of this Resolution Plan by the NCLT, all liabilities (including without</i>	Whatever immunity can be granted strictly under Section 32A of the	Allowed, in accordance with law and



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		<p><i>limitation, for any penalty, interest, fines, or fees) or obligations of the Corporate Debtor including for the provisions as contained in Section 32A, in relation to:</i></p> <p><i>A. any investigation, inquiry, or show-cause, whether civil or criminal;</i></p> <p><i>B. any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions;</i></p> <p><i>C. change of control, transfer charges,</i></p>	<p>I&B Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra), Vasan Healthcare Pvt. Ltd. I (Supra) and in Vasan Healthcare Pvt. Ltd. II (Supra) shall be allowed; nothing more and nothing less.</p> <p>Further, the waivers concerning the policies, licenses, approval, leasehold rights, contracts,</p>	<p>Section 32A read with the judgment cited herein.</p>



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		<p><i>unearned increase, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent, privilege or permission to which the Corporate Debtor-or its subsidiaries joint ventures or associates are entitled;</i></p> <p><i>D. any leasehold rights or freehold rights to movable or immovable properties in the possession of the Corporate Debtor;</i></p> <p><i>E. any contracts, agreements or commitments made by</i></p>	<p>agreements as mentioned in Sub-Clauses B, C, D, E of Clause 8 b) are for the relevant and/or appropriate authorities to consider, not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.</p> <p>However, as per Section 37(1) of the CIRP Regulations, <u>a resolution plan may provide for the measures required for implementing the same by</u></p>	



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		<i>Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed. present or future, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the closing Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor</i>	<u>obtaining necessary approval from the Central and State Governments and other authorities.</u> Thus, in terms of the CIRP Regulations, we hereby <u>grant the liberty to move any application</u> before the concerned/ appropriate authorities, if required, in connection with the successful implementation of this Resolution Plan.	



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SN	Clause	Reliefs, Concessions, and Approvals sought for	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		<i>pursuant to this Resolution Plan, shall be written off in full and shall stand permanently extinguished and the Corporate Debtor shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</i>		
3.	8. c)	Disputes pending relating to Income Tax: <i>The amount of the operational creditor is under dispute. Appeal for the same has been filed. It is expected that the order of the Appellate Authority would be in favour of the corporate debtor</i>	Whatever immunity can be granted strictly under Section 32A of the I&B Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions	Allowed, in accordance with law and Section 32A read with the judgment cited herein.



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		<i>and no amount shall be eventually payable. However, to end further disputes the Resolution applicant proposes to make payment of Rs, 5,00,000 within 60 days of the approval of the resolution plan against the total claim amount of Operational Creditor being statutory dues of Income Tax. Upon approval of this Resolution Plan by the NCLT, all dues under the provisions of all the taxes, including but not limited to, the Income Tax, Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the</i>	Limited (Supra), Vasan Healthcare Pvt. Ltd. I (Supra) and in Vasan Healthcare Pvt. Ltd. II (Supra) shall be allowed; nothing more and nothing less.	



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		<i>Customs Act, 1962, the Central Sales Tax Act, 1956, the Goods and Services Tax Act, 2017, property tax laws and any other indirect tax laws, including taxes, duty, penalties, interest, fines, cesses, charges, unpaid TDS/ TCS (to the extent applicable), whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or unasserted, crystallised or</i>		



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		<i>uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Closing Date, shall stand extinguished and the Corporate Debtor will not be liable to pay any amount against such demand. Upon approval of this Resolution Plan by the NCLT, all outstanding litigations/demands, assessments/appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, pending in</i>		



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		<i>case of the Corporate Debtor relating to the period prior to the Closing Date, shall stand terminated and all consequential liabilities, if any, will stand abated and shall be considered to be not payable the Corporate Debtor. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of NCLT order and pending on that date, shall be considered deleted and shall not be proceeded against. Post the order of the NCLT,</i>		



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		<i>no re- assessment / revision or any other proceedings under the provisions of any of the indirect tax laws should be initiated on the Corporate Debtor in relation to the period prior to acquisition of control by the Resolution Applicant and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of NCLT.</i>		



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4.	8. d)	<i>Companies Act 2013: Resolution applicant, as provided under code read with regulation thereof, is further eligible for dispensation from the application provisions of the Companies Act 2013 or rules made thereunder, relating to the capital restructuring, financial restructuring, cancellation of existing shares or any other portion of this resolution plan for its implementation including re-casting of the financial statements of the Corporate Debtor. Requisite filings may be</i>	<p>We allow the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT) only.</p> <p>For the rest, we direct to approach the appropriate authority/ authorities to be dealt with upon the necessary compliances.</p>	Allowed , in accordance with law.



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		<i>done within the period of 1 (one) year from the date of receipt of certified copy of the order approving the resolution plan by the Hon'ble NCLT and that no further order be required from any regulator or authority and that approval of the resolution plan be deemed to be approval of all such action. Since any dues that may arise due to non-filing of the relevant forms has already accrued as on the CIRP commencement which has been settled with the approval of the</i>		



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		<i>resolution plan. It is envisaged that all such filing would be done at the normal fees and no additional fees, charges or penalty would be payable by the Resolution Applicant or the Corporate Debtor.</i>		
5.	8. e)	<i>In spirit and intent of the Insolvency and Bankruptcy code 2016, post the approval of the Resolution Plan, set-off and carry forward of all losses pertaining to the period prior the takeover of the corporate debtor by the resolution applicant would continue during the balance remaining</i>	<i>The Proviso under Section 79 of the Income Tax Act, 1961 says that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan</i>	Not Allowed.



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		<i>period as provided under Section 79 of the Income Tax Act, 1961 i.e. without any restriction relating to the change in shareholding of the existing management below 51% pursuant to implementation of this Resolution Plan. It is further envisaged that any tax benefit or holiday, which the corporate debtor is eligible whether under section 80IB, 115JB or any other applicable section of the Income Tax Act, 1961, is seamlessly allowed to the corporate debtor</i>	<i>approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.</i> Further Section 80-IB of the IT Act, 1961 enshrines the provisions of the deduction in respect of profits and gains from certain industrial undertakings other than infrastructure	



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		<i>pursuant to the change of management. Resolution applicant further envisages that no additional tax liability should arise pursuant to the re-casting and re-structuring of the financial statement including for the write-off and/or write-back of infructuous or excess creditors liabilities, which would be done after the approval of resolution plan by the Adjudicating Authority.</i>	<p>development undertakings.</p> <p>Further, Section 115JB of the Act, 1961 provides a Special provision for payment of tax by certain companies.</p> <p>Thus, in terms of the above, we are of the view that this relief is for the concerned Income Tax Department to consider upon detailed deliberation of the provisions of the IT Act, and such is not this Adjudicating</p>	



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SN	Clause	<i>Reliefs, Concessions, and Approvals sought for</i>	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			Authority to consider. Hence, we direct to approach the concerned authorities upon necessary compliances.	
6.	8. f)	Contingent Liabilities: <i>Any and all claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, penalty and other costs or charges already accrued/ accruing or in</i>	Whatever immunity can be granted strictly under Sections 31(1) and 32A of the I&B Code as well as the law laid down in Ghanashyam Mishra (Supra), Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra),	Allowed , in accordance with law.



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**In
Company Petition (IB) No. 372/KB/2019**

SN	Clause	Reliefs, Concessions, and Approvals sought for	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		<i>connection with any third party claims) any actual or potential Operational Creditors of the Corporate Debtor or in connection with any operational debt of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the NCLT Approval Date or arising on account of the acquisition of control by the Resolution</i>	Vasan Healthcare Pvt. Ltd. I (Supra) and in Vasan Healthcare Pvt. Ltd. II (Supra) , shall be allowed; nothing more and nothing less.	



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		<i>Applicant over the Corporate Debtor pursuant to this Resolution Plan, will be written off in full and shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant.</i>		
7.	8. g)	Anti-corruption provisions and immunity: <i>Upon approval of the Resolution Plan by the NCLT, immunity shall be deemed to have been granted to the Corporate Debtor and its new management, from any actions and penalties (of any</i>	Whatever immunity can be granted strictly under Section 32A of the I&B Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra),	Allowed , in accordance with law.



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SN	Clause	Reliefs, Concessions, and Approvals sought for	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		<i>nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, which was existing as on the IC Date.</i>	Vasan Healthcare Pvt. Ltd. I (Supra) and in Vasan Healthcare Pvt. Ltd. II (Supra) shall be allowed; nothing more and nothing less.	
8.	8. h)	<i>Inquiries, investigations etc.</i> <i>Upon approval of this Resolution Plan by the NCLT, all inquiries, investigations and proceedings (including before the BIFR), whether civil or criminal, notices, causes of action, suits, claims, disputes litigation, arbitration or</i>	Whatever immunity can be granted strictly under Section 32A of the I&B Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra), Vasan Healthcare	Allowed , in accordance with law.



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		<i>other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present Or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Economic Offence Wing (EOW), Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency),</i>	<i>Pvt. Ltd. I (Supra)</i> and in <i>Vasan Healthcare Pvt. Ltd. II (Supra)</i> shall be allowed; nothing more and nothing less.	



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		<i>in relation to any period prior to the IC Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, including in relation to any Stock Exchange and Securities and Exchange Board of India, shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss</i>		



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		<i>account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the been Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that maybe passed in respect of the same by any authority prior to or after the Closing Date. Upon approval of this Resolution Plan by the NCLT, all new inquiries,</i>		



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		<i>investigations, whether civil or criminal notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor</i>		



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		<i>pursuant to this Resolution Plan.</i>		
9.	8. i)	<i>Dispensation is also sought from all the cases whether listed or not in the Information Memorandum and not proposed to be settled as per the Resolution Plan.</i> <i>Dispensation is further sought from fresh initiation of any case or proceedings against the corporate debtor or the resolution applicant relating to any period prior to the Insolvency Commencement date,</i>	Regulation 36(2) of the CIRP Regulations, 2016, envisages that the information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the	Partly Allowed , in accordance with law.



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SN	Clause	<i>Reliefs, Concessions, and Approvals sought for</i>	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		<i>no amount would be paid to any creditor or authority under any circumstance relating to period prior to the insolvency commencement date except as specifically provided under this resolution plan and that any such would consequently qualify as "operational debt" (as defined under the IBC) and therefore the full amount of such Liabilities shall be deemed to be owed and due as of the Insolvency Commencement Date and therefore no</i>	prospective resolution applicant and shall contain the following details of the corporate debtor as mentioned in Clauses (a) to (l). Therefore, the dispensation only from the cases listed in the Information Memorandum, be allowed as per the mandates of I&B Code and its relevant Regulations. For others, the SRA will approach the concerned authorities upon	



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SN	Clause	<i>Reliefs, Concessions, and Approvals sought for</i>	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		<i>amount is payable in relation thereto. RA does not agree to provide any additional funds towards any liabilities either on or safter the approval of the plan and that the payments envisaged in the Resolution Plan considers the settlement of all the liabilities relating to the period prior to CIRP commencement date.</i>	necessary compliances.	

Conclusion:

143. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

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144. In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

145. In so far as the approval of the **Resolution Plan dated 20.10.2023 with its Addendum** submitted by **Cheminare Tradecomm Private Limited (Successful Resolution Applicant)**, is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in **K. Sashidhar vs. Indian Overseas Bank and Ors.** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019**, wherein it is held that:

*“35. [...] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: **(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board.** [...]. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being*

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speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan Under Section 30(4) of the I & B Code.”

(Emphasis Added)

146. Further, the Hon'ble Apex Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.** reported in (2022) 1 SCC 401: MANU/SC/0206/2021 at Para 216, has laid down that:

“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors.”

(Emphasis Added)

147. Further, in **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta** reported at (2020) 8 SCC 531: MANU/SC/1577/2019, the Hon'ble Apex Court has propounded that:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is



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*finally accepted after negotiation of its terms by such
Committee with prospective resolution applicants.”*

(Emphasis Added)

148. In the case at hand, we would note that **the Resolution Plan dated 20.10.2023 with its Addendum submitted by Cheminare Tradecomm Private Limited (Successful Resolution Applicant)**, has been approved by the Committee of Creditors of the Corporate Debtor by **100%** voting share.

149. We have further noted that the Letter of Intent was issued on 01.11.2023, which has been unconditionally accepted by the SRA. Accordingly, the **Resolution Plan dated 20.10.2023 with its Addendum submitted by Cheminare Tradecomm Private Limited**, has unanimously declared as a **“Successful Resolution Applicant”**. Hence, given the aforesaid decisions of the Hon’ble Apex Court as well as in light of the overall facts and circumstances of the present case, this Adjudicating Authority has not interfered with the viability of the Commercial Wisdom as exercised by the Committee of Creditors of the Corporate Debtor.

150. In the light of the enumerations and observations made in this Order supra, we hereby **APPROVE** and **FINALLY SANCTION** the **Resolution Plan dated 20.10.2023 with its Addendum submitted by Cheminare Tradecomm Private Limited (Successful Resolution Applicant)**, subject to direction given in the order passed in I.A. (IB) No. 297/KB/2024, to delete the offending

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portion at Clause 5(a) in the Resolution Plan as confirmed by the
Learned Counsel Ms. Urmila Chakrabarty for SRA.

151. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and all other stakeholders involved in terms of Section 31 of the I&B Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect without any delay.

152. The Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

153. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters.

154. Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

155. A copy of this Order is to be submitted to the Registrar of Companies (RoC) to whom the company is registered, by the Resolution Professional.

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156. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

157. The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/ premises/ factories/ documents through the Resolution Professional to finalise the further line of action required for starting the operation.

158. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

159. In terms of the view above, the interlocutory application being I.A. (IB) No. 1892/KB/2023 along with the main company petition being Company Petition (IB) No. 372/KB/2019 shall stand **disposed of** accordingly.

TO SUMMARIZE

160. I.A. (IB) No. 297/KB/2024: We direct the RP to delete the offending portion at Clause 5(a) in the Resolution Plan, as confirmed by the Learned Counsel Ms. Urmila Chakrabarty appearing on

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behalf of the Successful Resolution Applicant and as per the Affidavit filed by the Successful Resolution Applicant on 13.06.2024 in the instant matter. The application is **disposed of** accordingly.

161. I.A. (IB) No. 1332/KB/2024: We find that the applicant neither has locus nor has succeeded to make out a case meriting interference with the plan submitted the SRA herein. The Resolution Plan is approved by the CoC with 100% voting shares in its 29th meeting, no clause of the plan provides any option for the SRA to exit from the CIRP or avoid implementing the resolution plan after its approval by the Adjudicating Authority. We find no merit in the application, and accordingly, this application is **dismissed**.

162. I.A. (IB) No. 1007/KB/2023 and I.A. (IB) No. 18/KB/2024: The issues raised in these applications have already been covered and dealt with thoroughly in I.A. (IB) 297/KB/2024 in favour of Victory Iron and therefore, in view of the decision passed in I.A. (IB) 297/KB/2024, both the applications being are **disposed of**.

163. I.A. (IB) No. 1892/KB/2023: The Resolution Plan dated 20.10.2023 with its Addendum submitted by **Cheminare Tradecomm Private Limited** (Successful Resolution Applicant), is **approved** and **finally sanctioned** subject to the order passed in **I.A. (IB) No. 297/KB/2024**, to delete the offending portion at Clause 5(a) in the Resolution Plan. The Application is **allowed** and **disposed of** accordingly.



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164. Company Petition (IB) No. 372/KB/2019 shall stand disposed of.

165. Certified copy of the orders, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Common Order is signed on 03rd Day of January 2025.

Bose, R. K. [LRA]