



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

Item No. P2.

**RST.A (IBC)/ 21(MB)2025 IN C.P. (IB)/ 1210(MB)2021**

CORAM:

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

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

ORDER SHEET OF HEARING (HYBRID) DATED **04.08.2025**

NAME OF THE PARTIES IN IA: **Edelweiss Asset Reconstruction  
Company Limited**  
**Vs.**  
**Bhumiraj Builders Pvt. Ltd.**

**Under Rule 11 of the NCLT Rules, 2016.**

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**ORDER**

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

Sd/-  
**SAMEER KAKAR**  
MEMBER (TECHNICAL)  
(frk)

Sd/-  
**NILESH SHARMA**  
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH – VI  
RESTORATION APPLICATION NO. 21 OF 2025  
in  
COMPANY PETITION NO. 1210 OF 2021**

*(An application under Rule 11 of National Company Law  
Tribunal Rules, 2016.)*

*In the matter of **Edelweiss Asset Reconstruction Company Limited***

**Edelweiss Asset Reconstruction Company  
Limited**

Having its registered office at Edelweiss House,  
Off. C.S.T. Road, Kalina, Mumbai MH 400 098

**... Applicant/ Financial Creditor**

-Vs-

**Bhumiraj Builders Private Limited**

1601, Plot No. ½ Sector-18 Sanpada Navi  
Mumbai Maharashtra.

**... Respondent/Corporate Debtor**

**Order pronounced on 04.08.2025**

**CORAM:**

**SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)**

**SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE (IN V-C MODE)**

**For Financial Creditor** : Adv. Adv. Mr. Shyam Kapadia a/w Adv. Mr. Varun Nathani  
a/w Adv. Ms. Suchitra Valjee, Adv. Mr. Rashid Boatwala,  
Adv. Mr. Pazalak Damani and Adv. Mr. Neelakshi Pal i/b  
Manilal Kher Ambala & Co.

**For Corporate Debtor** : Adv. Senior Adv. Mr. Vikram Nankani a/w. Adv. Mr. Ayush  
Kothari a/w Adv. Ms. Akshita Rathudi i/b Anup Khaitan



**ORDER**

**PER: CORAM.**

1. This is an Application filed under Rule 11 of NCLT Rules, 2016 by **Edelweiss Asset Reconstruction Company Limited** (hereinafter referred to as “**the Applicant**”) against **Bhumiraj Builders Private Limited** (hereinafter referred to as “**the Respondent**”) seeking Restoration of the main company petition bearing no. **C.P.(IB)/1210/2021**.
2. The Applicant is seeking the following reliefs by way of the said application: -
  - i. The Hon'ble Tribunal be pleased to restore / revive the Company Petition No. C.P. (1B)/1210(MB)2021 filed by the Applicant / Financial Creditor herein against the Respondent abovenamed to the records of this Hon'ble Tribunal and fix a date for hearing on admission;
  - ii. Take on record the AFA of proposed Resolution Professional-Stress Credit Resolution Private Limited.
  - iii. For such other and further orders as may deem fit to this Hon'ble Tribunal;
  - iv. For the costs of this Application;

**Contentions of the Applicant**

3. Briefly stated, the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows:
  - i. The present Application is being filed for revival / restoration of Company Petition No. C.P. (IB)/1210(MB)2021 (“the Company Petition”) under Rule 11 of NCLT Rules, 2016 (“the Rules”). The present Application for revival / restoration of the said Company Petition is necessitated in light of the breach committed by the Corporate Debtor under the



Restructuring Agreement dated 4<sup>th</sup> November, 2023 entered between the Applicant/Financial Creditor and Corporate Debtor [“Restructuring Agreement”]. This Hon’ble Bench, vide order dated 10<sup>th</sup> November 2023 (“NCLT Order”), inter alia took on record the Restructuring Agreement and allowed the Company Petition to be withdrawn, with liberty granted to the Applicant/Financial Creditor to revive the Company Petition by filing an Affidavit in the event of failure of any of the conditions of the Restructuring Agreement, without filing fresh Company Petition. It has been specifically recorded in the order that in the event of default, the above Company Petition shall be regarded as continued on Board as if the withdrawal had not taken place. Applicant has annexed as **Exhibit “A”** the copy of the Order dated 10<sup>th</sup> November, 2023 passed by this Tribunal.

- ii. The above Company Petition was filed by the Applicant/Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor on 28<sup>th</sup> August 2021 for an outstanding debt of Rs.3,81,07,23,103/- (Rupees Three Hundred and Eighty-One Crores Seven Lakh Twenty-Three Thousand One Hundred and Three Rupees Only) as on 3<sup>rd</sup> August, 2021, details whereof are set out more particularly in the Company Petition.
- iii. During the pendency of the Company Petition, the Corporate Debtor being desirous of discharging its liability towards the outstanding debt approached the Applicant/Financial Creditor on multiple occasions to reach out to an amicable settlement and the Applicant/Financial creditor had given several opportunities to the Corporate Debtor for the same.



Subsequent to several rounds of discussions between the Corporate Debtor, its directors/partners, one M/s. Bhumiraj Constructions and the Applicant/Financial Creditor, the Corporate Debtor proposed to fulfil its obligation under the Financial facilities as recorded therein and agreed to such proposal, subject to terms and conditions as recorded in the Restructuring Agreement. A copy of the Restructuring Agreement dated 4<sup>th</sup> November, 2023 is attached as Exhibit 'B' to the application.

- iv. The Applicant/Financial Creditor filed an Interlocutory Application being IA No. 5136 of 2023 on 6<sup>th</sup> November 2023 /"Withdrawal Application" | inter alia seeking withdrawal of the Company Petition based on the terms of the Restructuring Agreement. On 10<sup>th</sup> November 2023, this Bench was apprised by the Advocates for the Applicant/Financial Creditor and Corporate Debtor that a Restructuring Agreement has been entered into between the parties. The Restructuring Agreement was taken on record by this Bench and the Order dated 10 November 2023 came to be passed. The relevant paragraph of the order is reproduced hereinbelow for ease of reference:

*"The said restructuring agreement is taken on record. The CP is allowed to be withdrawn with liberty of the FC to revive the CP, by filing an Affidavit in the event of failure of any of the conditions in the restructuring agreement, without filing a fresh CP. In that event, it shall be regarded that the CP is continued on the Board as if the withdrawal had not taken place"*



*“The matter will then be proceeded with as per law subject to new number, if any, assigned by the Registry. Disposed of in terms of the above.” (emphasis supplied)*

It is pertinent to note that as on the date of the present Application, the Corporate Debtor is in breach of the Restructuring Agreement as filed before this Bench.

- v. As per the terms of the Restructuring Agreement, the total Existing and the Restructured obligation of the Corporate Debtor and one M/s Bhumiraj Constructions stood restructured to Rs. 411,00,00,000/- along with interest/Default Interest as applicable and detailed therein [“Restructured Obligation”]. On the date of the withdrawal of the Company Petition as per the terms of the Restructuring Agreement, the Corporate Debtor made payment of Upfront Amount of Rs. 89,00,00,000/- as per the terms of Restructuring. Furthermore, the Corporate Debtor had agreed to pay Rs. 311,00,00,000/- (Rupees Three Hundred and Eleven Crores Only) within a period of 49 (forty-Nine) months from the Cut Off date i.e. from October 2023 in the manner as set out in the Restructuring Agreement. The relevant table containing repayment schedule in the Restructuring Agreement is reproduced hereinbelow for ease of reference:

Timeline (from Date)	Cut-off	Due Dates	Amount (in Crores)
Within 10 months		31-08-2024	25.00
By end of 13 <sup>th</sup> month		30-11-2024	25.00
By end of 19 <sup>th</sup> month		31-05-2025	50.00



**RESTORATION APPLICATION NO. 21 OF 2025**  
**in**  
**COMPANY PETITION NO. 1210 OF 2021**

By end of 25 <sup>th</sup> month	30-11-2025	50.00
By end of 31 <sup>st</sup> month	31-05-2026	75.00
By end of 37 <sup>th</sup> month	30-11-2026	75.00
By end of 43 <sup>rd</sup> month	30-05-2027	75.00
By end of 49 <sup>th</sup> month	30-11-2027	Balance dues payable under the BBPL-TL <sup>^</sup>

<sup>^</sup> As defined in the Restructuring Agreement

- vi. Furthermore, Clause 4 of the Restructuring Agreement expressly records that nonreceipt of payment towards the Restructured Obligations provided under the Restructuring Agreement is construed as an Event of Default and therefore, the Applicant/Financial Creditor inter alia shall have the right to initiate proceedings against the Corporate Debtor under Insolvency and Bankruptcy Code, 2016.
- vii. The Corporate Debtor has failed to make any payment under the Restructuring Agreement post August 31, 2024, and has neither intimated nor informed as to whether any money is forthcoming despite notice issued by EARC in December 2024, calling upon the Corporate Debtor for curing the default of non-payment as per the terms of Restructuring Agreement. Thus, on account of continuous breach committed by the Corporate Debtor under the Restructuring Agreement, EARC vide notice dated January 01, 2025, revoked the Restructuring Agreement and now the Applicant is constrained to file the present Restoration Application to seek revival/ restoration of the Company Petition viz. CP(IB)/1210(MB)2021 filed by the Applicant/Financial



Creditor. Annexed to the application is a copy of the notice dated January 01, 2025 as "Exhibit C".

- viii. As per the schedule of repayment under the Restructuring Agreement, the Corporate Debtor has defaulted in making payment of the instalment of Rs. 50,00,00,000/- along with default interest of Rs. 2,05,27,397/- which fell due on March 31, 2025 in terms of Clause 4 of the Restructuring Agreement.
- ix. Accordingly, the Applicant/Financial Creditor states that the Outstanding dues of the Corporate Debtor after revocation of the Restructuring Agreement & restoration of BBPL, Existing Obligation as per the agreed terms of Restructuring Agreement is Rs. 6,14,18,76,698/- as on April 15, 2025 after adjusting amounts received under the Restructuring Agreement along with interest and other charges which may be applicable till actual realisation, as per the Statement of Claim. A copy of the Statement of Claim is attached to the application as Exhibit 'D'.
- x. The Applicant/Financial Creditor submits that on account of Corporate Debtors' breach of the Restructuring Agreement, the reconveyance and discharge agreed to be made by the Applicant/Financial Creditor on all charge, mortgage, pledge under the Continuing Security Documents under Clause 4 of the Restructuring Agreement, stands withdrawn.
- xi. The Applicant submits that the Corporate Debtor under the Restructuring Agreement has explicitly admitted that the Corporate Debtor is in default of a debt due under the Loan Agreement forming subject-matter of the Company Petition. Recital F, G, H of the Restructuring Agreement are reproduced hereinbelow for ease of reference:



*“F. The Borrower - BBPL and Borrower - BC failed to fulfil its obligations as per the terms of the Term Loan Agreement - BBPL and Term Loan Agreement- BC, pursuant to which an ‘event of default’ occurred under the Term Loan Agreement - BBPL and Term Loan Agreement - BC.”*

*“G, As on 31<sup>st</sup> October 2023 (Cut-off date), a sum (including principal, interest and other charges) of INR 5,42,51,11,294/- (Indian Rupees Five Hundred Forty Two Crore Fifty One Lakh Eleven Thousand Two Hundred and Ninety Four Only) from and out of the Facility- BBPL is outstanding and is repayable by the Borrower - BBPL to EARC -394 together with further interest, default interest and other charges after the said date (“BBPL Existing Obligation”).*

*“H. As on 31<sup>st</sup> October 2023, a sum (including principal, interest and other charges of INR 19,63,58,775 (Indian Rupees Nineteen Crores Sixty-Three Lakh Fifty Eight Thousand Seven Hundred and Seventy Five Only) from and out of the Facility - BC is outstanding and is repayable by the Borrower - BC to EARC-462 together with further interest, default interest and other charges (“BC Existing Obligation”)”*

- xii. The default under the Restructuring Agreement took place on 31<sup>st</sup> August 2024, and the cure period for the same being 60 days’ under Restructuring Agreement expires on 31<sup>st</sup> October 2024. Thus, the Applicant/Financial Creditor herein, states that the present Restoration Application is being filed within time and is not barred by limitation. A



copy of the consent form dated 24<sup>th</sup> April 2025 is annexed and marked as “Exhibit E” and a copy of the Authorization for Assignment (‘AFA’) is annexed and marked as “Exhibit F” to the application.

### **Contentions of the Respondent**

4. The Respondent has filed reply through affidavit dated **25.06.2025** to the averments of the Applicant and same is affirmed by Mr. Bhupendra Murji Shah.

The submissions made by the Respondent are stated in brief as follows:

- i. The Respondent has submitted that Company Petition No. C.P. (IB)/1210(MB)2021 [hereinafter referred as “Company Petition”] was disposed off as withdrawn on 10<sup>th</sup> November 2023 in view of Restructuring Agreement dated 4<sup>th</sup> November 2023 [hereinafter referred as “Restructuring Agreement”] between the Applicant and Respondent. I say and submit that the present Interlocutory Application is filed by the Applicant for revival/restoration of the Company Petition under Rule 11 of NCLT Rules, 2016 [hereinafter referred as “NCLT Rules”] for alleged breach committed by the Respondent under the terms of the Restructuring Agreement. I say and submit that Respondent has paid total amount of Rs. 100 Crores towards the repayment of outstanding debt.
- ii. The Respondent has submitted that there is no provision for revival and restoration of Company Petition under the Insolvency and Bankruptcy Code, 2016 [Code]. Therefore, the Applicant has opted to file the present Application for revival/restoration under Rule 11 of the NCLT Rules to invoke inherent powers of this Hon’ble Tribunal. It is further submitted



that the Applicant has failed to make out a case for this Tribunal to invoke the inherent power in the captioned matter.

- iii. The Respondent has submitted that on technical basis, the Application is not maintainable because (a) no provision exists for revival/restoration of Company Petitions filed under Section 7 of the Code and (b) Since the parties entered into restructuring, the amount due and the date of default along with other supplementary details shall vary that from the basis on which the Company Petition was filed, therefore the Company Petition may not survive on an entirely new cause of action and alleged claim. The mere fact that liberty was granted cannot be the basis when there is no jurisdiction to restore and or revive a disposed of petition. So also, the parties cannot by consent or contract confer jurisdiction to restore or revive the petition when there exists no jurisdiction in law.
- iv. The Respondent has submitted that Applicant is not approaching this Hon'ble Tribunal with clean hands. I say and submit that the "Bhumiraj Hills" [Project] which has been allegedly funded by the Applicant for an amount of Rs.250 Crore, out of which utilizable Rs.138 Crore was disbursed by the Applicant. This amount is further inflated to Rs. 614,18,76,698.00. There is absolutely no basis to explain almost six-fold increase in the total outstanding claimed by the Applicant.
- v. The Respondent has submitted that the post execution of the restructuring agreement, it has almost paid 25% of the restructured amount of Rs. 411,00,00,000.00 (Rupees Four Hundred and Eleven Crores) i.e., Rs.100 Crores as upfront amount. In addition to this, the



Respondent has infused substantial sums of money towards completion of the project.

- vi. The Respondent has submitted that the restructuring is an act in which a lender, for economic and legal reasons relating to borrowers financial difficulty, modifies the terms of the advances / securities, which would generally include, among others, alteration of payment period / payable amount / the amount of instalment / rate of interest, rolling over of the credit facilities, sanction of additional credit facilities to aid the curing of default / enhancement of existing facilities.
- vii. The Respondent has submitted that the restructuring agreement stipulates that the existing obligations shall stand restructured to Rs. 411,00,00,000.00 along with further interest and default interest.
- viii. The Respondent has submitted that a bare perusal of the restructuring agreement confirms that the security documents were novated with Restructuring Agreement. It is settled principle of law that Section 62 of Indian Contract Act, 1872 gives statutory form to the common law principle of novation. The basic principle behind the concept of novation is the substitution of a contract by a new one only through the consent of both the parties to the same. Such consent may be expressed as in written agreements or implied through their actions or conduct.
- ix. The Respondent has submitted that the restructuring agreement also stipulates that the Respondent shall allot flats in the project after obtaining NOC from the Petitioner. The agreement further mandates that the Applicant shall promptly grant NOC and not unreasonably withhold the NOC. By withholding NOC the Applicant is itself in breach of the



contract, and it is settled law that no person cannot take advantage of its own wrong and a party in breach cannot seek specific performance to the extent the contract provides for restoration of either the debt or the petition.

- x. The Respondent has submitted that the Applicant engineered a situation which led to the purported non-compliance of the restructuring agreement. The Respondent addressed various emails to the Applicant requesting it to grant NOC for sale of units in the Project by which the Respondent could have adhered to the timelines for payment in tranches as per the terms and conditions of the Restructuring Agreement. The Applicant repeatedly denied issuing NOC for absolutely frivolous and non-pragmatic reasons.
- xi. The Respondent has submitted that the restructuring agreement provides for events of defaults and its consequence. One of the consequences is initiation of proceedings against the Respondent under IBC, 2016. This clearly shows that intention of the parties that in case of default, the Applicant may initiate fresh proceedings under IBC, 2016. The agreement does not stipulate for restoration of the captioned Company Petition.
- xii. The Respondent has submitted that the Respondent has acquired buyers for commercial units in the project worth Rs.25 Cr, 15 new bookings worth Rs.16 Cr and 24 units had been booked prior worth Rs.40 Cr. Respondent sought NOC from Financial Creditor to proceed with sale of the aforementioned units. Respondent offered a cheque of Rs.10 Crores. Respondent has annexed being and marked Exhibit-A



being a printout of the email dated 01<sup>st</sup> April 2025 addressed by the Respondent to the Applicant.

- xiii. The Respondent has submitted that on 07<sup>th</sup> May 2025, Respondent informed Applicant that they were able to bring Tribeca Developers LLP on board to initiate development of the land forming part of the Project and that Tribeca is willing to make payment of Rs.25,00,00,000.00 (Rupees Twenty-Five Crores) upon the Applicant issuing NOC. Respondent has annexed and marked Exhibit-B being a printout of the email dated 7<sup>th</sup> May 2025 addressed by the Respondent to the Applicant.
- xiv. The Respondent has submitted that the Respondent has infused significant sums of money to obtain Commencement Certificate from the competent authority and continued construction to complete project in the stipulated period to meet the requirements of those who have already booked the units. I say and submit that the Applicant has not only failed to meet their obligation in financial assistance but also blocking progress of the Project by not providing NOC. The total costs incurred by the Respondent is approximately Rs. 181 Crores.
- xv. The Respondent has submitted that the Applicant restrained the Respondent from complying with the terms and conditions of the Restructuring Agreement and outrightly rejected each and every alternative that has been offered by the Respondent. I say and submit that value of the said Project as per the valuation conducted on 26 July 2022 is Rs.2525,00,00,000.00/- (Rupees Two Thousand Five Hundred and Twenty-Five Crore) as opposed to the alleged debt of Rs.411 Crore. In view of the figures at hand, the haste with which the Applicant is



proceeding to take steps to drag the Respondent to insolvency is unjustified and unfair. Hereto annexed and marked Exhibit-C is a copy of the Valuation Report. It is obvious that the IA is only a recovery mechanism which is contrary to the object and purpose of IBC, and hence the IA is not maintainable. The IA is nothing but an arm twisting tactic with a view to pressurize the Respondent to agree to unreasonable terms of settlement. Besides, with the Project being complete there is nothing to be resolved in terms of corporate insolvency except to sell the completed, the commercial and residential units, which the Respondent is ready and willing to do, and pay the receivables directly to the Applicant but it is the Applicant who is obstructing the sales.

- xvi. The Respondent has submitted that the preamble of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) is carefully worded to describe the spirit and objective of the Code to be reorganization and insolvency resolution, specifically omitting the word recovery. The Parliament has made a conscious effort to ensure that there is a significant difference between resolution and recovery. The Hon'ble Supreme Court has time and again observed that the fundamental intent of IBC is maximizing the value of assets in the process of resolution. There are numerous juridical precedents which mandates that if IBC, 2016 is purely used for the purpose of debt recovery, particularly when the company is a solvent entity and is a going concern, the question of reorganizing or resolution of the company does not arise.
- xvii. The Respondent has submitted that the Respondent Company is absolutely solvent and has completed close to 85% construction,



wherein most of the structure is ready to be handed over upon receipt of occupation certificate. I say and submit that the Respondent is capable of meeting the terms of the Restructuring Agreement and may not be put to the restraints of the matter for a default that accrued due to non-cooperation on the part of the Applicant. Respondent submit that 5 towers are near to completion out of which RCC of 3 towers is complete as per the Commencement Certificate and about to be ready for sale and possession. It is further submitted that value of the said 5 towers to the extent of residential units is approximately Rs.220 Crores and to the extent of the commercial units is Rs.207 Crores. Hereto annexed and marked Exhibit-D-Colly is photographs of the site from the year 2017 till 2025.

xviii. Respondent has given herewith reply to the Interlocutory Application as under:

a. With respect to paragraph no.1 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the content of the paragraph regarding filing of the Interlocutory Application, Restructuring Agreement and Order of withdrawal merit no response. So far as continuation of the Company Petition after the events occurred may not be plausible as the Respondent has made payment of a substantial amount since the Company Petition is withdrawn. Further I say and submit that Applicant shall be obligated to account for the



payment made and shall be restricted to amend the Company Petition which under no terms may be entertained.

- b. With respect to paragraph no.2 of the present Interlocutory Application, repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the contentions therein merit no response.
- c. With respect to paragraph no.3 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the contentions therein merit no response.
- d. With respect to paragraph no.4 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the contentions therein merit no response.
- e. With respect to paragraph no.5 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that / the contentions therein merit no response.
- f. With respect to paragraph no.6 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent



therewith. I say and submit that the contentions therein merit no response.

- g. With respect to paragraph nos.7 and 8 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the contentions therein merit no response. I say and submit that the Applicant has blatantly made false statement that the Respondent has not responded to the queries raised by the Applicant in terms of monies forthcoming. I say and submit that Respondent has had a regular correspondence with the Applicant proposing various ways to make payment and informing the Applicant the requisite of NOC to sell the units so that the Respondent make payment in the tranches agreed upon in the Restructuring Agreement. However, the Applicant refused all the avenues to allow Respondent to comply with the terms and conditions of the Restructuring Agreement.
- h. With respect to paragraph nos.9 to 11 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the alleged default occurred on account of lapses from the Applicant's end. It would be great travesty of justice if the Respondent suffers through loss because of the conduct of the Applicant.
- i. With respect to paragraph no.12 of the present Interlocutory Application, I repeat reiterate and confirm whatever is stated



hereinabove and deny everything that is contrary and inconsistent therewith. I say and submit that the Applicant is attempting to have it both ways by dating back to the pre- restructuring period for computation of claim and relying upon default as per the terms and conditions of the Restructuring Agreement to meet the limitation criteria. I say and submit that Applicant's contradictory stand may not be entertained at their convenience.

5. **The Applicant has filed a rejoinder note dated 24.07.2025, which states as below:**

- (i) The Company Petition was filed by Edelweiss Asset Reconstruction Company Limited ("**Applicant/Financial Creditor**") under Section 7 against Bhumiraj Builders Private Limited ("**Corporate Debtor/CD**") for a debt and default under a Term Loan Agreement dated 26<sup>th</sup> May 2017 for a sum of Rs. 381,07,23,103/- as on 3<sup>rd</sup> August 2021.
- (ii) During the course of proceedings, the Parties arrived at settlement before this Hon'ble Tribunal – terms whereof were encapsulated in the document styled as Restructuring Agreement dated 4<sup>th</sup> November 2023, this Hon'ble Tribunal was pleased to permit withdrawal of the Company Petition **with express leave to revive the same** in the event of failure by the CD to comply with the terms and conditions of the settlement.
- (iii) In fact, under Clause 4 (b)(i) of the Settlement Agreement, the Parties expressly agreed that on the occurrence of an Event of Default, the Applicant could revive/reinitiate all actions/ legal



proceedings which were withdrawn, with a specific reference to Company Petition 1210 of 2021.

- (iv) Under the Settlement Agreement, the CD acknowledged its liability, debt and default and undertook to pay a sum of Rs. 400 Crores in the manner set out therein. Out of Rs. 400 Crores, a sum of Rs. 89 Crores was payable upfront, whereas the balance Rs. 311 Crores was payable in various tranches set out therein.
- (v) The 1<sup>st</sup> tranche of such payment was a sum of Rs. 25 Crores due on 31<sup>st</sup> August 2024. On the eve of the due date, by an email dated 29<sup>th</sup> August 2024, the CD sought to renege from its obligation and offered to pay Rs. 5 Crores instead of Rs. 25 Crores-which was obviously not accepted by the Applicant.
- (vi) The CD accordingly defaulted on 31<sup>st</sup> August 2024. In Compliance of the terms of the Settlement Agreement, on 9<sup>th</sup> September 2024, the Applicant issued a Cure Period of 60 days to the CD to pay the sum of Rs. 25 Crores along with interest. The CD once again defaulted in curing its payment default.
- (vii) The next payment obligation under the Settlement Agreement was to pay another sum of Rs. 25 Crores on 30<sup>th</sup> November 2024. By an email dated 24<sup>th</sup> October 2024, Mr. Bhupendra Shah – Director of the CD sought an extension citing his son's upcoming nuptials. The CD informed that it would pay the August 2024 and November 2024 tranches in January-February 2025. Obviously, the same was not acceptable to the Applicant.



- (viii) By a letter dated 11<sup>th</sup> December 2024, the Applicant noted the defaults committed by the CD and granted an opportunity to the CD to pay all amounts with interest on or before 18<sup>th</sup> December 2024 failing which the restructuring would stand automatically revoked. By another notice dated 1<sup>st</sup> January 2025, the Applicant called upon the CD to pay all amounts by 4<sup>th</sup> January 2025 failing which the restructuring shall stand revoked. Given the defaults, the restructuring under the Settlement Agreement stood revoked as was also recorded in the Applicant's email dated 3<sup>rd</sup> April 2025.
- (ix) On 1<sup>st</sup> April 2025, the CD sought to provide an update on the project and sought NOC from the Applicant for alleged transactions it proposed to enter. By this time, the restructuring was already revoked on account of payment defaults and there was no question of the Applicant granting any NOC thereby jeopardizing its security.
- (x) The present Application was served to the CD on 25<sup>th</sup> April 2025. **Immediately thereafter,** the CD started addressing emails seeking alleged NOCs from the Applicant and claiming that the non-issuance of NOCs resulted in payment defaults. This was clearly an afterthought in as much as the payment defaults occurred much prior to the request for any NOC. In any case, the NOC and the restructuring under the Settlement Agreement stood revoked. By an email dated 21<sup>st</sup> May 2025, the Applicant refuted all allegations of the CD.
- (xi) The Settlement agreement provides for an express right to the Applicant to revive the present Company Petition in the event of



default by the CD. The present Application deserves to be allowed on account of such right, coupled with the liberty granted by this Hon'ble Tribunal in its order dated 10<sup>th</sup> November 2023.

**(xii)** The Contention of the CD that this Hon'ble Tribunal has no jurisdiction to restore/revive the Company Petition is misplaced. It is trite law that once a settlement has been entered into before this Hon'ble Tribunal and terms thereof are breached, this Hon'ble Tribunal has jurisdiction to restore/revive the Company Petition. The Applicant has, during submissions, tendered the following judgments in support of its submissions.

a. *IDBI Trusteeship Services Ltd. v. Nirmal Lifestyle Ltd.*  
(Company Appeal (AT) (Ins) No. 117 of 2023).

b. *Vinay Gupta v. Ashika Credit Capital Ltd.* (Company Appeal (AT) (Ins) No. 92 of 2023)

c. *Pooja Finlease Ltd. v. Auto Needs (India) Pvt. Ltd.* (Company Appeal (AT) (Ins) No. 103 of 2022).

**(xiii)** The Contention of the CD that the Original agreement between the Parties stood novated granting a fresh cause of action and that the restoration is not maintainable is also misplaced. The Restoration Application does not seek/claim amounts under the settlement Agreement. The Application is filed to revive the Company Petition on account of failure of the Settlement Agreement and revocation of the restructuring therein.



(xiv) In such facts and circumstances, the Applicant humbly prays that this Hon'ble Tribunal be pleased to allow the present application and restore/revive the captioned Company Petition.

6. Both the parties filed the written arguments along with citations:

**The Applicant has relied upon following Judgments: -**

- a. *IDBI Trusteeship Services Ltd. v. Nirmal Lifestyle Ltd. (Company Appeal (AT) (Ins) No. 117 of 2023).*
- b. *Vinay Gupta v. Ashika Credit Capital Ltd. (Company Appeal (AT) (Ins) No. 92 of 2023).*
- c. *Pooja Finlease Ltd. v. Auto Needs (India) Pvt. Ltd. (Company Appeal (AT) (Ins) No. 103 of 2022).*
- d. *Rajeev R. Jain, Director (Suspended) v. (1) AASAN Corporate Solutions Pvt. Ltd. (2) Nirmal Lifestyle Realty Pvt. Ltd. [Company Appeal (AT)(Insolvency) No. 1085/ND/2021].*
- e. *Krishan Kumar Mittal v. GRJ Distributors & Developers Pvt. Ltd. [Restoration Application No. 02/ND/2022 in Company Appeal (AT)(Insolvency) No. 579 of 2019.*
- f. *State of U.P. & Ors. v. Ajay Kumar Sharma & Anr. (Supreme Court- Civil Appeal No. 13727 of 2015).*

**The Respondent has relied upon following Judgments: -**

- a. *Kiran Singh & Ors. v. Chaman Paswan & Ors. [AIR 1954 SC 350]*
- b. *Rajeev Hitendra Pathak & Ors. v. Achyut Kashinath Karekar & Anr. [(2011) 9 SCC 541]*
- c. *Tulasee Seeds Pvt. Ltd. v. Union of India & Ors. [2022 SCC Online AP 2451]*



**ANALYSIS AND FINDINGS: -**

7. The short point for consideration in the present IA is whether to restore/revive the **Company Petition No. 1210 of 2021** filed by the Applicant/Financial Creditor against the Respondent. The Respondent has also taken the plea that this Tribunal cannot exercise the inherent powers under Rule 11 of the NCLT Rules, 2016 for restoration of the disposed off company petition.

8. Rule 11 of the NCLT Rules, 2016 is reproduced below: -

*“Inherent Powers: - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

9. The admitted position qua the present Application is summarized as below: -

- (i) The Applicant in the IA had filed C.P. (IB)/1210(MB)2021 earlier.
- (ii) Subsequent to the filing of the said Application an in IA being IA/5136/2003 was filed by the applicant in the C.P. (IB)/1210(MB)2021 placing on record a restructuring agreement entered between the parties. IA-5136/2023 was ordered on 10.11.2023 and the following order was passed.

*“The said restructuring agreement is taken on record. The CP is allowed to be withdrawn with liberty of the FC to revive the CP, by filing an Affidavit in the event of failure of any of the conditions in the restructuring agreement, without filing a fresh CP. In that event, it shall be regarded that the CP is continued on the Board as if the withdrawal had not taken place”*



*“The matter will then be proceeded with as per law subject to new number, if any, assigned by the Registry. Disposed of in terms of the above.” (emphasis supplied)*

- (iii) The said order dated 10.11.2023 has since assumed finality as no challenge to the said order was made by the any of the parties.
- (iv) Both the parties agree that the said restructuring agreement has been breached by the Respondent in the IA.
- (v) The Respondent could not fulfill the terms of the restructuring agreement as have been outlined in the said restructuring agreement.

10. The Applicant has relied upon certain judgments of Hon'ble NCLAT which have been outlined in Para-6 of this order.

11. Para 18 to 20 of the Judgment of Hon'ble NCLAT in **IDBI Trusteeship Services Ltd [Company Appeal (AT) (Insolvency) No. 117 of 2023]** (supra) are reproduced below:-

*“18. What has been observed in paragraph 6 itself makes a clear distinction between withdrawal simplicitor making statement that parties have settled and bringing on record settlement. This Tribunal itself has recognized two separate categories. Present case falls in the category where settlement has been brought on record. Thus, Judgement of this Tribunal in **SRLK Enterprises LLP** does not help the Respondent.*

*19. We thus in the facts of the present case are of the view that Adjudicating Authority committed error in rejecting the revival application 3196 of 2022 when the consent term itself contemplates a clause for revival in event of default and default having been committed by the Corporate Debtor, rejection of revival is to deny the Financial Creditor*



*rightful remedy. Non-mention of specific liberty in the Order is inconsequential in view of the clear terms in the settlement which was the basis of withdrawal of Company Petition.*

*20. We thus are of the view that the Adjudicating Authority committed error in rejecting I.A. No. 3196 of 2022. Sufficient cause has been made out for allowing this Appeal and setting aside the Order dated 21.12.2022. Consequently, I.A. No. 3196 of 2022 is allowed and the C.P. (IB) No. 4412(MB)/2019 is revived before the Adjudicating Authority to proceed in accordance with law.”*

12. Para 7 to 9 of the Judgment of Hon'ble NCLAT in **Vinay Gupta [Company Appeal (AT) (Insolvency) No. 92 of 2023]** (supra) are reproduced below: -

*“7. Present is a case where application under Section 7 was filed by the Financial Creditor claiming its financial debt. On said application, Corporate Debtor entered into settlement due to which the application was withdrawn with liberty to revive if any default is committed. The revival of the application under Section 7 was consequent to the liberty granted by the Court. When application was revived, the application which was filed initially by the Financial Creditor was restored and treated to be the original Section 7 application. It cannot be said that what is to be considered was only the default under the settlement agreement. Default in settlement agreement is only a by-product which has permitted revival of Section 7 application but in no manner affect the claim in the original application which is financial debt under Section 7 application.*



8. *The judgment which has been relied by learned counsel for the Appellant was a case where there was settlement between the parties and on account of default in the settlement, application under Section 7 was filed and the Court held that default in settlement agreement is not financial debt. The said case is clearly distinguishable from the present case. In the present case Application under Section 7 was filed claiming financial debt and it was not initiated on the basis of any settlement agreement. Settlement agreement which was entered during the pendency of the insolvency proceedings was breached, hence, what is revived is original application.*

9. *The Adjudicating Authority has considered in detail the facts and circumstances before coming to conclusion that there is debt and default on part of the Corporate Debtor. We, thus, are of the view that there is no ground to interfere with the impugned order. We, thus, dismiss the Appeal.”*

13. Para 7 to 9 of the Judgment of Hon’ble NCLAT in **Pooja Finlease Ltd. [Company Appeal (AT) (Insolvency) No. 103 of 2022]** (supra) are reproduced below:-

*“7. The Consent Terms in Clause 8 as has been extracted above clearly entitle the Financial Creditor to revive the Section 7 petition in event any default of the terms of the Consent Terms. Further, the order dated 05.02.2020 cannot be read as an order by which Consent Terms has not been taken on record when by the said order application filed alongwith the consent terms under Rule 11 of NCLT rules, 2016 was taken on record and was allowed. When the application was allowed in terms of the consent terms, Clause 8 itself shall be treated to be part of the order*



*which shall entitle the Financial Creditor to revive the petition in the event of any default.*

*8. Judgment of this Tribunal which has been relied by the Respondent in 'Krishna Garg and Anr. vs. Pioneer Fabricators Pvt. Ltd.' was a case where neither settlement terms were filed nor the same were brought on the record. The facts in the present case are distinguishable from the above case as Consent Terms were filed and also were taken on record by the Adjudicating Authority. When the Adjudicating Authority allowed the application filed, the Consent Terms were also taken record and the Financial Creditor was fully entitled to seek revival of the Section 7 petition in event of default of consent terms.*

*9. We, thus, allow this Appeal and set aside the impugned order dated 10.11.2021 and revive the Section 7 petition i.e. C.P. (IB) No. 2340 of 2019 which may be heard by the Adjudicating Authority in accordance with law."*

14. Para 21 of the Judgment of Hon'ble NCLAT in **Rajeev R. Jain [Company Appeal (AT) (insolvency) No. 1085 of 2021]** (supra) are reproduced below:-

*"21. We are of the view that the above view taken by the Tribunal in "Beacon Trusteeship Limited" is not inconsonance with Section 7 read with Section 238 of the 'I&B Code'. The Financial Creditor has full right to initiate action under Section 7 for non-payment of dues. We, thus, are of the view that the judgment of the co-ordinate Bench in "Beacon Trusteeship Limited" was not a binding precedent to be followed by any other coordinate Bench. We, thus, are also of the view that no error has been committed by the Adjudicating Authority in admitting Section 7*



*Application filed by the Financial Creditor. There is no merit in this Appeal. The Appeal is dismissed.”*

15. Para 16 to 22 of the Judgment of Hon'ble NCLAT in **Krishan Kumar Mittal** [**Restoration Application No. 2 of 2022 in Company Appeal (AT) (insolvency) No. 579 of 2019**] (supra) are reproduced below: -

*“16. The issue involved in this case is as to whether an application for restoration or revival of appeal is maintainable in terms of Rule 11 of the Rules if the case set up by the Financial Creditor/Operational Creditor before this Tribunal or Adjudicating Authority is terminated on account of a settlement or a memorandum of understanding by the Corporate Debtor and who ultimately commits a breach?*

*17. Needless to mention that once the application, either filed under Section 7, 9 or 10 is admitted, the CIRP is initiated and moratorium is imposed, the Corporate Debtor would definitely try to wriggle out of the proceedings of CIRP in one way or other. One of the ways which has been chosen by the Corporate Debtor, even after, the admission of the application filed by the Operational Creditor is by entering into a memorandum of understanding. The Operational Creditor who is only interested in his dues, therefore, agrees to the terms and conditions with a legitimate expectation that the Corporate Debtor would definitely honour his words not only recorded in writing and signed but also made part of the court record. What would happen if such a Corporate Debtor makes a default deliberately or may be innocently and then contest such an application filed by the Financial Creditor/Operational Creditor for revival of the CIRP proceedings?*



18. *In order to deal with such an exigency, Rule 11 in the NCLT Rules has been provided which is akin to Section 151 of the CPC. Rule 11 is reproduced as under:-*

*“11. Inherent powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal”*

19. *It is pertinent to mention that the inherent powers are provided in the Rules to use when there is no provision either in the Code or Regulations and Rule 11 specifically says that the Tribunal has the power to make such orders which are necessary to meet the ends of justice and to prevent the abuse of the process of the Tribunal. We ask ourselves, the kind of behaviour of the Corporate Debtor in not honouring its memorandum of understanding is not an abuse of the process of the Tribunal because on the showing of the Corporate Debtor that they would honour their commitment and make the payment etc the proceedings initiated by the Financial Creditor/Operational Creditor are terminated.*

20. *In our considered opinion, this provision is made only for this purpose to avoid a cake walk victory to the unscrupulous Corporate Debtors who would not honour their commitments which is entered into writing and to cheat the innocent and gullible Financial Creditors/Operational Creditors.*



21. In our considered opinion the decision rendered by this Tribunal in the case of **Sree Bhadra Parks and Resorts Ltd.** (Supra) squarely covers this issue because the Tribunal has taken into consideration Rule 11 for the purpose of taking such steps for the purpose of saving the interest of the Financial Creditors/Operational Creditors. Whereas the decision in the case of **SRLK Enterprises LLP** (Supra) in which there is no reference to Rule 11 of the Rules and nothing has been observed about such a situation which has arisen because of the breach of commitment by the Respondent is in our opinion a judgment per incuriam.

22. In view of the aforesaid facts and circumstances, the restoration application is thus allowed and the proceedings in CA (AT) (Ins) No. 579 of 2019 are hereby revived.”

16. Ld. Counsel for the Applicant has relied upon the Judgment of Hon'ble Supreme Court in **State of U.P. v. Ajay Kumar Sharma [Civil Appeal No. 13727 of 2015]** (supra) more particularly para 10 and 11 which are reproduced below:-

10. Time and again this Court has emphatically restated the essentials and principles of 'Precedent' and of Stare Decisis which are a cardinal feature of the hierarchical character of all Common Law judicial systems. The doctrine of Precedent mandates that an exposition of law must be followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. That is to say that a smaller and a later Bench has no freedom other than to apply the law laid down by the earlier and larger Bench; that is the law which is said to hold the field. Apart from Article 141, it is a policy of the courts to



*stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon'ble Chief Justice to constitute a larger Bench.*

*11. If binding precedents even of co-ordinate strength are not followed, the roots of continuity and certainty of law which should be nurtured, strengthened perpetuated and proliferated will instead be deracinated. Although spoken in a totally different context, we are reminded of the opening stanza of the poem 'The Second Coming' authored by William Butler Yeats. The lines obviously do not advert to the principle of precedent but they are apposite in bringing out the wisdom of this ancient and venerable principle.*

*“Turning and turning in the widening gyre the falcon cannot hear  
the falconer;*

*Things fall apart; the center cannot hold; Mere anarchy is loosed  
upon the world.”*

17. Ld. Counsel for the Respondent has relied upon the Judgment of Hon'ble Andhra Pradesh High Court in the matter of **Tulasi Seeds Private Limited v. Union of India and others** (supra) and more particularly on para 19 of the said Judgment, which is reproduced below: -



*“In view of the above observations of the Supreme Court, in para 82 of the said judgment, the NCLT has the inherent power, to direct withdrawal of the creditors petition, before the Committee of Creditors is constituted. The recognition of such a power, by the Supreme Court, in a situation, which is not covered or contemplated under the statute or the Rules made thereunder, clearly shows that the inherent powers of the NCLT cannot be interpreted restrictively and a wider and larger approach need to be taken while interpreting Rule 11 of the NCLT Rules. Such an expansive interpretation of Rule 11 would clearly mean that the Tribunal, which has the inherent power to permit withdrawal of a petition, would also have the inherent power to restore such a petition.”*

However, we find that the above case law cited by the Ld. Counsel for the Respondent actually supports the case of the Applicant.

18. Ld. Counsel for the Respondent vehemently argued that the Company Petition (IB) NO. 21 of 2021 cannot be revived using the powers vested with this Tribunal under Rule 11 of NCLT Rules, 2016. In this regard, the Ld. Counsel for the Respondent has relied upon the judgment of Hon'ble Supreme Court of India in **Rajeev Hitendra Pathak v. Achyut Kashinath Karekar** (supra), to contend that the Tribunal are the creatures of the statute and derive their power from express provisions of statute. However, we find the reliance upon the aforesaid judgment by the Ld. Counsel for the Respondent is misplaced as the aforesaid judgment is in the context of the Consumer Protection Act, 1986 wherein the Hon'ble Apex Court has held that the District Forums and the State Commissions under the above-mentioned Act have not been given any power to set aside or recall their own ex-parte orders and such a power is only vested in the National Commission.



Thus, the afore-cited case law has no relevance or application to the proceedings before the Adjudicating Authority under the IB Code especially when the Hon'ble NCLAT and the Hon'ble Andhra Pradesh High Court have held that the Adjudicating Authority can exercise its inherent power under Rule 11 of the NCLT Rules, 2016 to restore or revive a disposed of company petition. And for the aforesaid reasons, the other pleas against the jurisdiction of this Tribunal in restoring the company petition are not maintainable.

19. It was contended by the Respondent's Counsel that even with consensus of the parties, jurisdiction cannot be conferred on this Tribunal. In this regard, the Ld. Counsel for the Respondent has relied upon the judgment of Hon'ble Apex Court in **Kiran Singh v. Chaman Paswan** (supra). However, such an argument cannot be appreciated, as the power to restore a company petition stems from the inherent power vested upon this Tribunal by virtue of Rule 11 of the NCLT Rules, 2016 and such a jurisdiction is not conferred by the consent of the parties. Even otherwise, the aforesaid judgment was given in the context of Suits Valuation Act, 1887 and the same has no application to the insolvency proceedings before the Adjudicating Authority under the IB Code.
20. After hearing the parties and going through the documents, this Tribunal is of the view that when **express permission** was given by the Tribunal as per the Order dated 10.11.2023 to the Applicant to revive the CP and as the said order had assumed finality, and taking into consideration a catena of judgments as placed by the Applicant's Counsel, this Tribunal has all the authority under Rule 11 of the NCLT Rules, 2016 to revive the C.P. (IB)/1210(MB)2021 since defaults have been committed in the restructuring agreement.



21. While going through the reply of the Respondent it appears to us that the Respondent is raising several defenses on the merits of the main CP, we are of the view that merits of the main CP can only be heard post the revival of the CP and hence, at this stage we are not inclined to consider the reply of the Respondent to the present IA qua the merits of the main CP.
22. The other main prayer of the Applicant herein is to take the AFA of the proposed RP on record which at this stage is **allowed**.
23. Accordingly, we hereby allow prayers (i) and (ii) in the present Application.
24. In view of the same the **Restoration Application No.21 of 2025** is hereby allowed and is disposed off.
25. Registry is direct to renumber the C.P. (IB)/1210(MB)2021 as per the extant guidelines. The reinstated CP to be listed for hearing on **22.08.2025**.

Sd/-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)  
MF

Sd/-

**NILESH SHARMA**  
MEMBER (JUDICIAL)