IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
IB-876/ND/2020
IA-362/ND/2022, IA-593/ND/2022, IA-1371/ND/2023,
IA-2462/ND/2021, IA-5637/ND/2021, IA-46/ND/2024

IN THE MATTER OF:

Dhankalash Distributors Pvt. Ltd.
Having Registered Office at:
Unit No. 710, 7th Floor, Todi Mansion,
1 Lu Shun Sarani, Kolkata, West Bengal – 700073

Also, at:
5 Community Center 2nd Floor, Basant Lok,
Vasant Vihar, New Delhi - 110057 **... Financial Creditor**

Versus

Piyush IT Solutions Pvt. Ltd.
Having Registered Office at:
Flat No. 14, Ground Floor,
Pul Pehlad Pur DDA Mig Suraj Apartment, New Delhi - 110044.

Also at:
Lotus Business Park, Ground Floor,
Tower B, Plot No.8, Sector 127,
Noida - 201301 Uttar Pradesh **... Corporate Debtor**

AND IN THE MATTER OF IA NO. 362/ND/2022:

Ayyagari Viswanadha Sarma
(Resolution Professional for the Corporate Debtor)
Resident of Building 03, Flat 301,
My Home Vihanga, Gopanpally Village,
Serlingampally Mandal,
Telangana- 500 107
Email: ayya.vish@gmail.com **...Applicant**

Versus

Purvanchal Projects Pvt. Ltd.
Successful Resolution Applicant
Having its registered office at-
LSC A-7, 2nd Floor, Purvanchal Plaza,
Mayur Vihar, Phase-II, New Delhi-110091 **... Respondent**

<u>AND IN THE MATTER OF IA NO. 593/ND/2022:</u>
Assets Care and Reconstruction Enterprise Limited
2nd Floor, Mohan Dev Building 13,
Tolstoy Marg, New Delhii -110 001
Email: acre.arc@acreindia.in **...Applicant**

Versus

Mr. Viswanadha Sarma
Resolution Professional for Piyush IT Solutions Private Limited
Deloitte India Insolvency Professionals LLP,
7th Floor, Building 10, Tower B,
DLF Cyber City, Phase II, Gurgaon,
Haryana -122 002
Email: inasplip@deloitte.com **...Respondent No. 1/ Resolution Professional**

Purvanchal Projects Private Limited
Through its Authorised Signatory
Dr. Jagat Singh Thakur
LSC A-7, 2nd Floor, Purvanchal Plaza,
Mayur Vihar, Phase-II, New Delhi - 110 091
Email: contact@purvanchalprojects.com **...Respondent No. 2/ Successful Resolution Applicant**

Dhankalash Distributors Pvt. Ltd.
Unit No. 710, 7th Floor, Todi Mansion,
1 Lu Shun Sarani, Kolkata,
West Bengal – 700073
Email: dhankalashdistributorspltd@gmail.com **...Pro forma Respondent No. 1/ Member of Committee of Creditors of the Corporate Debtor**

Mr. Pawan Kumar Goyal
Address: Flat No. 14, Ground Floor,
Pul Pehlad Pur, DDA MIG,
Suraj Apartments, New Delhi - 110 044
Email: ca.pawangoyal@gmail.com **...Pro forma Respondent No. 2/Member of Committee of Creditors of the Corporate Debtor/Authorised Representative of homebuyers (creditors in class)**

AND IN THE MATTER OF IA NO. 46/ND/2024:

Ayyagari Viswanadha Sarma
(Resolution Professional for the Corporate Debtor)
Resident of Building 03, Flat 301,
My Home Vihanga, Gopanpally Village,
Serlingampally Mandal,
Telangana- 500 107
Email: ayya.vish@gmail.com **...Applicant**

Versus

Purvanchal Projects Pvt. Ltd.
Successful Resolution Applicant
Having its registered office at-
LSC A-7, 2nd Floor, Purvanchal Plaza,
Mayur Vihar, Phase-II, New Delhi-110091 **...Proforma Respondent**

AND IN THE MATTER OF IA NO. 1371/ND/2023:

New Okhla Industrial Development Authority
Main Administrative Complex, Sector-VI,
NOIDA, District- Gautam Budh Nagar,
Uttar Pradesh- 201301 **...Applicant**

Versus

Mr. Ayyagari Viswanadha Sarma
(Resolution Professional for the Corporate Debtor)
Resident of Building 03, Flat 301,
My Home Vihanga, Gopanpally Village,
Serlingampally Mandal,
Telangana- 500 107
Correspondence Address-
Deloitte Touche Tohmatsu India LLP,
7th Floor, Building 10, Tower B,
DLF Cyber City, Phase II, Gurgaon, Haryana- 122002
Email: ayya.vish@gmail.com & inpisplip@deloitte.com **...Respondent**

Under Section: 7 of (IBC) CIRP, 2016

Order delivered on 22.07.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. BANWARI LAL MEENA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Adv.Tulika Murkherjee, Adv. Zain A. Khan, Adv. Mohd. Abran Khan in IA-1371/ND/2023
For the Respondent	:	Adv. Abhay Kaushik, Adv. Himani Babbar, Adv. Sachin Jain and Adv. Jasmine Detwani for the Respondent no. 11 in IA/2462/ND/2021
For ACRE	:	Adv. Abhishek Anand, Adv. Udit Mendiratta, Adv. Shivkrit Rai, Adv. Prithvi Sinha
For the RP	:	Adv. Bishwajeet Dubey, Adv.Aditya V Singh and Adv. Manav Sharma
For the IT. Dept.	:	Mr. Sunil Agarwal (SSC), Ms. Monica Benjamin (JSC), Mr. Gibran Naushad (JSC), Adv. Adeeb Ahmad

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-362/ND/2022, IA-593/ND/2022: Mr. Bishwajeet Dubey, Ld. Counsel for RP and Mr. Garg, Ld. Counsel for SRA mentioned the matter out of turn. As recently as on 30.06.2026 Hon'ble NCLAT could pass an order in **Company Appeal (AT) (Insolvency) 949/2023,** taking the view that the offer of payment made in favor of land owning agency i.e. NOIDA was irrationally meagre. The view taken by Hon'ble NCLAT in the order is that the NOIDA cannot be treated as an ordinary operational creditor and the approval to the plan given by CoC cannot dispense with the requirement of examining legal right that arise independently under contractual agreement governing the project land. Paras 175 to 192 of the Order/Judgement delivered by Hon'ble NCLAT reads thus:-

"175. The land on which the project of the Corporate Debtor is being implemented is owned by NOIDA and it has been sub-lease to the Corporate Debtor for a period of 90 years against payment of lease premium. NOIDA filed its claim in the CIRP for

an amount of Rs. 84.19 Crores out of which the RP admitted Rs.68.90 Crores. The Resolution Plan proposes a payment of only about Rs.8 Crores to NOIDA. The main contention of the NOIDA Authority is, that it's the lawful owner of the project land and that the Corporate Debtor derived its rights over the land only through the registered Sub-Lease Deed dated 19.10.2012 executed between the parties. Under the said deed, the Corporate Debtor was obliged to pay lease premium, annual ground rent, extension charges and other dues payable to NOIDA. According to the Appellant, the Resolution Plan failed to properly consider these rights and wrongly treated NOIDA at par with an ordinary Operational Creditor despite the unique nature of its relationship with the Corporate Debtor.

176. NOIDA has relied upon the registered sub-lease deed claiming that it creates a charge upon land and clearly creates a security interest under Section 3(31) of the Code. It made a twofold contention; Firstly, such charge/right has been created by the transaction namely the lease deed and secondly, it obliges the corporate debtor to make payment of its dues.

177. The Respondents on the other hand, have contended that NOIDA was correctly treated as an Operational Creditor. They have placed reliance upon the Explanation inserted in Section 3(31) of the Insolvency and Bankruptcy Code, 2016 by Section 2 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which has been brought into force through Gazette Notification S.O. 2625(E) dated 22.05.2026 with effect from 26.05.2026. According to the Respondents, the amendment clarifies that a security interest created merely by operation of law would not constitute a security interest under the IBC and therefore NOIDA cannot claim any special status on the basis of the statutory charge asserted by it.

178. At the outset, we find that the present dispute cannot be viewed as a routine claim for recovery of dues. The Appellant is not a creditor whose claim arises from supply of goods or services to the Corporate Debtor. The project itself stands on land owned by NOIDA. The Corporate Debtor acquired and continued to enjoy rights over the project land only by virtue of the registered Sub-Lease Deed dated 19.10.2012. The foundation of NOIDA's claim lies in the registered Sub-Lease Deed dated 19.10.2012, which governs the relationship between the parties and regulates the Corporate Debtor's rights and obligations in respect of the project land. The statutory *provisions relied upon by NOIDA merely supplement and protect rights that already arise from the said lease arrangement. Therefore, the rights asserted by NOIDA are intrinsically connected with the very source from which the Corporate Debtor derived its entitlement to occupy and develop the project land.*

179. In this case NOIDA Authority has relied on a Clause in Sub-lease Deed made on 19.10.2012 between the "New Okhla Industrial Development Authority- the Lessor" AND "M/s Sequel Buildcon Pvt. Ltd.- a Relevant Member of M/s Xanadu Estates Pvt. Ltd. (Consortium) Company which is the "Lessee" AND "M/s Arena Superstructures Pvt. Ltd.,(100% owned subsidiary of M/s Sequel Buildcon Pvt. Ltd.) called as - the "Sub-lessee". Citation portion of the Deed reads as follows:

> *"And whereas the Lessor approved the sub division of Sports City Plot No. SC-01/A Sector-79 measuring 1,00,000 Sqm. Into 2 parts numbering as SC-01/A1 Sector-79 measuring 50,000 Sqm. And SC-01/A2 Sector-79 measuring 50,000 Sqm. To be developed by (1) M/s Sequel Buildcon Pvt. Ltd. and (2) M/s Arena Superstructures Pvt. Ltd. (100% owned subsidiary company of M/s Sequel Buildcon Pvt. Ltd.), respectively and allowed the Lessee to sub lease as per the terms and conditions of the Brochure for the development of Sports City for recreational, commercial and residential including group housing of the scheme vide letter No. Noida/Commercial/2012/1187 dated 3rd October, 2012"*

180. Further, Part II of the said Sub lease document deals with payment by Sub-Lessee to Lessor. In sub-clause (f) the following declaration is given about the charge:

> *"II. AND THE SUB-LESSE DOTH HEREBY DECLARE AND COVENANT WITH THE LESSOR IN THE MANNER FOLLOWING:*
>
> *(a)….*
>
> *(f)….*
>
> *Lessor shall have the first charge on the plot towards payment of all dues of Lessor."*

181. We note the following from the aforesaid portions of Lease Deed:

a. It's a tripartite Sub-Lease Deed between NOIDA-the Lessor; Sequel Buildcon the Lessee; and Arena Superstructures the CD herein as Sub-Lessee.

b. The Sub-Lessee Arena Superstructures (CD) is a 100% subsidiary of the Lessee.

c. The Sports City Plot No. SC-01/A Sector 79 having an area of 100,000Sqm was further divided by NOIDA in 2 plots having equal area of 50,000Sqm each, and the second plot no. SC-01/A2 Sector 79 having an area of 50,000Sqm was further sub-Leased to Arena Superstructures (CD).

182. We note from the registered sub-lease document that the Lessee and Sub-Lesse are parent and 100% subsidiaries. The leasehold rights and liabilities of the 2nd sub-Leased plot have been transferred to CD. We further note that the Sub-Lease Deed creates a first charge on the property in favour of Lessor NOIDA. Further the Deed secures payment to NOIDA for alludes from Corporate Debtor. This document is a contract to which both NOIDA and Corporate Debtor are parties, the third party being the Parent company of the CD.

183. We now examine the aforesaid document with respect to 3(31) of the Code which define 'security interest' is extracted below: -

> *"3(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person: PROVIDED that security interest shall not include a performance guarantee;"*

184. We note from the above that the aforesaid sub-lease deed creates the first charge in favour of NOIDA to secure payment of its dues from the corporate debtor. The charge is created by an agreement and not by operation of a statute. We also note that the rights asserted by NOIDA are based on this agreement and the its *reliance on the statutory charge under Sections 13 and 13-A of the Uttar Pradesh Industrial Area Development Act, 1976 is only to further strengthen its case.*

185. We also note that the Parliament has inserted an Explanation to Section 3(31) of the IBC through Section 2 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, and the same has been brought into force through Gazette Notification S.O. 2625(E) dated 22.05.2026. The Explanation clarifies that a security interest created merely by operation of law would not qualify as a security interest under the Code. However, in our considered view, in this case the reliance is upon a registered lease deed and not upon creation of statutory charge by operation of law.

186. It is to be noted that the RP in its submission has stated that two elements are essential to constitute a security interest under Section 3(31) of the Code: (i) the right, title, interest or claim must be created by a transaction; and (ii) such transaction must secure payment or performance of an obligation. Further the word 'transaction' is itself defines under Section 3(33) of the Code as:

> *"3(33) Transaction" includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor."*

We are of the view that the registered sub-lease deed meets all the requirements as laid down in Section 3(31) and 3(33) of the Code and accordingly NOIDA should have been treated as the Secured Creditor in the Resolution Plan.

187. The material placed before us shows that NOIDA had specifically objected to the treatment accorded to it under the Resolution Plan and had raised concerns regarding the impact of the Resolution Plan upon its rights arising from the lease arrangement governing the project land. These objections required a detailed examination by the Adjudicating Authority.

188. However, on a careful reading of the Impugned Order, we find that there is no meaningful discussion regarding the nature of the rights arising from the registered Sub-Lease Deed dated 19.10.2012 or the effect of the Resolution Plan upon those rights. The Impugned Order primarily proceeds on the basis that the Resolution Plan had received the approval of the Committee of Creditors. While the commercial wisdom of the Committee of Creditors deserves due deference, approval by the CoC *cannot dispense with the requirement of examining legal rights that arise independently under contractual arrangements governing the project land.*

189. We are therefore of the view that the Adjudicating Authority failed to adequately examine the distinctive position occupied by NOIDA as the owner of the project land and as a party to the registered Sub-Lease Deed dated 19.10.2012, from which the Corporate Debtor derived its rights. The objections raised by NOIDA on this aspect deserved independent consideration before approval of the Resolution Plan.

190. In these circumstances, we are satisfied that the issues raised by the Appellant were not considered in their proper perspective. The Impugned Order does not reflect any detailed examination of the consequences of the Resolution Plan on the rights of NOIDA arising from the registered Sub Lease Deed dated 19.10.2012 and the statutory framework governing the project land. Such consideration was necessary before the Resolution Plan could be approved.

191. Accordingly, we are of the view that the claim of NOIDA requires reconsideration, as their claim is held to be that of a Secured Creditor, arising from the registered Sub-Lease Deed dated 19.10.2012. The Resolution Plan incorrectly classifies the claim of NOIDA to be that of an Operational Creditor.

192. In view of our findings above and in in earlier paragraphs, we dispose of the appeals in the following manner:

(i) CA (AT) (Ins) No. 949 of 2023 and 1117 of 2023 are dismissed.

(ii)CA(AT) (Ins) No. 1231 of 2023 is disposed of in the following

> *a) Impugned Order is set aside to the limited extent of distribution proposed in the Resolution Plan. There would be no change to the remaining part of the Resolution Plan.*
>
> *b) RP is directed to propose an addendum to the Resolution Plan, treating NOIDA as a Secured Creditor and revising the distribution proposed in the Resolution Plan. CoC to consider the revised distribution and after approval of the CoC, the same may be placed before Ld. Adjudicating Authority for final approval."*

It is the fair stand taken by Mr. Bishwajeet Dubey, Ld. Counsel for the RP and Mr. Garg, Ld. Counsel for SRA that as in the present case the issue involved is identical to one involved in the aforementioned appeal and when the claim of the NOIDA was Rs. 68.73 crores, and the admitted claim was Rs. 55.25 crores, the plan provides for payment of an amount of Rs. 22.10 crores to NOIDA.

In their submission, in due deference to the aforementioned judgement of Hon'ble NCLAT, the Resolution Plan is required to be remitted back to the CoC for proper consideration.

Mr. Abhishek Anand, Ld. Counsel for the Applicant in IA-593/ND/2022, interjected and submitted that there is a glaring irregularity in the valuation of the assets of the Corporate Debtor and if the issue is ignored at this stage, the same would again crop up and would come in the way of approval of revised Resolution Plan.

Having referred to Annexure A17 to IA-362/ND/2022, he submitted that when originally the liquidation value of the assets of the Corporate Debtor arrived at by Mr. Anil Kumar Saxena, valuator could be Rs. 204,30,39,964, on being asked again by the new RP, namely, Mr. A. Vishwanadha Sarma, he gave the revised report, giving the liquidation value as Rs. 76,28,91,992 as on November 2021 and not as on the date of commencement of CIRP i.e. 28.10.2020. The excerpt from both the reports given by Mr. Anil Kumar Saxena reads thus:-

VALUATION SUMMARY (as per Market approach)– as on 28/10/2020

S. No.	Particulars	Total Value (in Rs.)
a)	Total value of 424 Sold flats	363,35,43,915
b)	Amount already received for 424 Sold flats	182,87,82,818
c)	Average value of 164 Numbers of unsold Flats (after completion)- (Refer page No. 26)	162,81,10,000
d)	Total amount for sold & unsold flats (a+c)	526,16,53,915
e)	Total Expenditure to be incurred on construction for remaining work for built-up & not built-up area (Refer: Page No. 25, Sl. No. (2) point b, c & d)	234,30,25,394
f)	**Value of Project surplus / fair value of land & existing structure (d-e)**	**291,86,28,521**
g)	**Liquidation Value**	**204,30,39,964**

XXX XXX XXX XXX

S. No.	Particulars	Total Value (in Rs.)
II	**Expenditure on construction still to be made**	
a)	Expenditure to be incurred on construction for remaining work in built-up area of 82113.340 Sq Mtr (883868 Sq Ft) @Rs 1150 including basement/ stilt/ service area/ service floor	101,64,48,200
b)	Expenditure to be incurred on construction for not built-up area so far along with boundary wall, gate, internal road, park, external development work, sport facilities (golf course, multi-purpose field, tennis centre, swimming centre, cricket academy, indoor multipurpose sports hall)	132,65,77,194
	Total Expenditure (a+b)	234,30,25,394
	Net Market Value of the Project at Present (I - II)	108,98,45,703
	Liquidation Value @70% (our assumption)	76,28,91,992

It is the plea raised by Mr. Abhishek Anand, Ld. Counsel for the Applicant in IA-593/ND/2022 that the other valuator, namely, Mr. Dheeraj Jaiswal who was also asked to submit fresh valuation report did not change his report.

At this stage, Mr. Bishwajeet Dubey, Ld. Counsel for RP, submitted that it is not so that he did not change his report, but he did not submit any revised report and did not give any response to the communication by the new RP. The valuation report originally given by Mr. Dheeraj Jaiswal is at page 309 of the paper book and the Liquidation value arrived at by him is Rs. 198,59,19,343. Relevant excerpt from the report of Mr. Dheeraj Jaiswal reads thus:-

VIII.	**Valuation**	
1.	*Name of Corporate Debtor Company*	**M/s Piyush IT Solutions Pvt Ltd .**
2.	*Scope of valuation*	**Vide Annexure-II (Scope of work).**
3.	*Details of Valuation and its Approach for the Asset.*	**Vide Annexure I (Detailed valuation calculations & Approach)**
4.	***Fair value of the Asset***	**= INR 272,04,37,456/-**
5.	***Liquidation value of the Asset***	**=INR 198,59,19,343/-**
6.	***Asset-Liability= Y+Z-F (Balance Sale amount Receivable from Sold Units) + (Amount Receivable from UNSOLD Units) – (Remaining Construction Cost to be incurred for completion of Project)***	**=INR 89,16,54,638/-**

According to Mr. Abhishek Anand, in the wake of the aforementioned contradictory reports, where the difference in value was more than 25 per cent, the new RP appointed third valuator, namely, Mr. Ashish Kumar, and the liquidation value given by Mr. Ashish Kumar is Rs. 91.77 crores approximately. According to Mr. Anand who is appearing for the Applicant in

IA-593/ND/2022 i.e. the only secured creditor qua the Corporate Debtor, there is a suspicion regarding the entire process of valuation.

We are conscious that it is not for this Tribunal to go into the issue of valuation in normal circumstances. But in a situation where the new RP call for fresh valuation reports and the same valuator while giving the fresh report reduced the liquidation value of assets of the CD substantially and arrived at the valuation not in terms of the provisions contained in IBBI (CIRP) Regulations, 2016, but on a different date, we cannot turn our blind eyes to the issue. When, despite expiry of a period of almost six years, there is no resolution of insolvency of CIRP, ideally in view of the amended provisions of law viz. Section 33(1) of IBC, 2016, we ought to have ordered liquidation of the Corporate Debtor.

Nevertheless, since the Resolution Plan involves the interest and stakes of large number of homebuyers, we are inclined to exercise our discretion to give another opportunity to RP/CoC/Stakeholders to ensure that a viable plan is approved by CoC. We extend the period of CIRP by 100 days to enable the CoC to complete the exercise. It is made clear that if the process is not completed within 100 days, we will be constrained to order liquidation of the Corporate Debtor.

In the totality of the facts and circumstances, we dispose of IA-362/ND/2022 and IA-593/ND/2022 with the following directions:-

1. The CEO NOIDA in consultation with members of CoC would appoint two valuators from the panel of IBBI to examine all the four valuation reports given by the three valuators on different points of time and would also do the fresh valuation of the assets of the Corporate Debtor. The entire exercise will be completed within 15 days from the date of

supply of the copy of this order to them. And would be paid Rs. 75000 each by the Applicant in IA-593/ND/2022.

2. On the valuation report being provided by the valuators to RP, he would place the same before CoC within 3 days.
3. It would be for the CoC to take a decision regarding further process of CIRP whether it will like to invite fresh resolution plan in the changed circumstances or would like to consider the revised plan by the present SRA. The exercise would be undertaken after availability of the valuation reports by the aforementioned two valuators to CoC. While taking a decision, the CoC would keep in view the aforementioned judgement of Hon'ble NCLAT passed in **Company Appeal (AT) (Insolvency) 949/2023**.

IA-362/ND/2022 and IA-593/ND/2022 stands disposed of.

<u>IA-46/ND/2024</u>: In the wake of the order passed in IA-362/ND/2022 and IA-593/ND/2022, the application has become infructuous and stands disposed of accordingly.

<u>IA-1371/ND/2023</u>: In view of the order passed in IA-362/ND/2022 and IA-593/ND/2022, the application has become infructuous and stands disposed of accordingly.

<u>IA-2462/ND/2021, IA-5637/ND/2021</u>: List the IAs on **20.08.2026.**

Sd/-
(BANWARI LAL MEENA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Abhijat/Esha