NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 55 of 2021

IN THE MATTER OF:

Greater Noida Industrial Development Authority
Plot No. 01, Knowledge Park – 04
Greater Noida, Gautam Budh Nagar
Uttar Pradesh – 201308.

...Appellant

Versus

Shri Pramod Agrawal
S/o Late Shri K. L. Agrawal,
R/o 1102, Orange County,
Indrapuram, Ghaziabad,
Uttar Pradesh.

Ex Director of Corporate Debtor
...Respondent No. 1

Mr. Anil Matta
Resolution Professional
Primrose Infratech Pvt. Ltd.
R/o B-98, Chetak Society,
Sector – 09, Rohini,
New Delhi – 110085.

Respondent No. 2

For Appellant: **Mr. U. N. Singh, Advocate.**

For Respondents: **Mr. Mrinal Harshvardhan, Advocate for R-1.**

Mr. CA Navneet Arora, Mr. Tushar Bhardwaj and Mr. Abhinav Goyal, Advocates with Mr. Anil Matta, RP for R-2.

Mr. Anand Verma, Advocate for Intervenor.

O R D E R
(Virtual Mode)

21.06.2021: This appeal has been filed by Greater Noida Industrial Development Authority being aggrieved by impugned order dated 28th February, 2020 filed by one of the Suspended Directors (Respondent No. 1) of the Corporate Debtor – 'M/s

Primrose Infratech Pvt. Ltd.'. While passing the impugned order, the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench held that the Greater Noida Industrial Development Authority cannot be treated as having a financial claim and being aggrieved of such impugned order, the present appeal has been filed. It is claimed in the appeal and it is argued that the Appellant had leased the land by Registered Lease Deed dated 29.09.2011 in favour of the Corporate Debtor. The Lease Deed is at page 141 of the Appeal. The CIRP started against the Corporate Debtor at the behest of one Operational Creditor – 'VMS Equipment Pvt. Ltd.'. The Appellant claims that the Appellant had submitted the claim in Form 'C' before the IRP/RP, as can be seen at page 211 of the Appeal and the Appellant was treated as Financial Creditor as can be seen from Minutes of 4th Meeting of CoC (page 66 at 73). The Learned Counsel for the Appellant submitted that the Respondent No. 1 former Director of Corporate Debtor had filed CA-1511/2019 to exclude the Appellant as Member of the CoC claiming it was not a Financial Creditor. The Learned Counsel submitted that this application (Annexure A-2) has been decided by the Adjudicating Authority without hearing the Appellant. It is argued that if the Appellant was Member of the CoC, the CoC did not take any decision by voting to exclude the Appellant from CoC. Reference is made to Order dated 25th November, 2019 which was passed by the Adjudicating Authority. Copy of the same has been filed with the Written Submissions by Respondent No. 2 (Dy. No. 26001 at page 274). The specific order with regard to CA-1511/2019 is at page 275. The order reads as under:-

> *"CA 1511/2019 has been filed by Ex-Directors impugning the inclusion of the claim filed by the Greater Noida Authority and the same be considered as a Financial debt. The decision to this effect would be taken by the RP who shall put it forth to the COC. Despite notice to the Greater Noida Authority, no one has appeared on their behalf. Let affidavit of service be filed."*

2. The grievance of Learned Counsel for the Appellant is that as per this order the Resolution Professional was directed to place the matter before the CoC. The Learned Counsel then referred to the 6th CoC Meeting (page 295 of the Appeal) Agenda Item 7 where the order dated 25.11.2019 was noticed and Resolution Professional conveyed that Appellant's claim could not be treated as Financial Creditor considering the Indian Accounting Standards and judicial orders referred.

3. The grievance of the Learned Counsel for the Appellant is that the Appellant had been excluded from CoC on that day and was not allowed to participate. The Learned Counsel for the Appellant submits that serious prejudice has been caused to the Appellant because the Resolution Professional do not let the Appellant to participate in the said CoC meeting as Appellant was Member of the CoC. Learned Counsel for Respondent No. 1, the Suspended Director who had filed petition (at Annexure A-2), supported Learned Counsel for the Appellant with regard to the statement that the impugned order has been passed without hearing the parties and the Learned Counsel adds that Adjudicating Authority did not pass any

direction to delete UCO Bank as Financial Creditor which is also one of the prayers in CA-1511/2019 which was filed by Respondent No.1.

4. Learned counsel for the Appellant submits that when the Appellant was excluded from the CoC, the Appellant filed CA-812/2020 (at page 188) and made a prayer that appropriate orders should be passed with regard to decision by the RP for declaring the Appellant as Operational Creditor and not Financial Creditor in the 6th Meeting of the CoC held on 17.12.2019. The Appellant claimed that that it moved the application to quash and set aside the proceedings and decision taken in the said meeting dated 17.12.2019. It is argued that this application has not been heard by the Adjudicating Authority and same is pending for orders.

5. Against this, the Learned Counsel for Respondent No. 2 is submitting that the Learned Counsel for the Appellant as well as Respondent No. 1 both are not making correct statement that the Adjudicating Authority had not heard the parties while passing orders in CA-1511/2021 and passing the impugned order. It is stated that there were arguments raised by both the parties and their appearances have been marked in the impugned order and after fully hearing the parties the impugned order has been passed.

6. We have heard learned counsel for the Appellant even with regard to the Lease Deed which is at page 141 of the Appeal. Learned Counsel for the Appellant has submitted that the recitals for the Lease Deed show that the land has been leased for 99 years with recitals showing that rights incidental to ownership have

been given to the Corporate Debtor and it is argued that as per the 'Indian Accounting Standard' the Lease Deed is required to be categorized as financial lease. It is argued that the lease transferred all the risks and rewards incidental to ownership of the underlying asset.

7. We have seen the copy of Indian Accounting Standards filed at page 87 of the Appeal and classification of Leases at page 98 as well as we have seen copy of Lease Deed at page 141.

8. The Adjudicating Authority in the impugned order has after considering the matter before it observed in para 7 (there are two paragraphs marked as 7), which reads as under:

> *"7. Keeping In view the citations referred to, this Bench is of the opinion that the claim of the Greater Noida Authority can unequivocally be categorised as being an "operational debt". We therefore do not find any infirmity in the decision of the Resolution Professional who has deemed it justified to amend and correct the claim of the Greater Noida Authority from one of "financial claim" to an "operational debt". Accordingly, the CoC which has been reconstituted upon amending the aforesaid claim, consisting of home buyers as financial creditors along with other Financial Creditors, if any, would be vested with the voting rights to the exclusion of Greater Noida Authority.*

> *7. It is submitted that the Resolution Plan has already been approved by the CoC and has been submitted before this Bench for due approval. As the pending objections have been dismissed, arguments on the Resolution Plan be addressed on the next date. To come up on 11th March, 2020."*

9. The Counsel for Respondent No. 2 submits that Resolution Plan approved is indeed already before the Adjudicating Authority.

10. Having heard Learned Counsel for both the sides and having gone through the matter, we record that we have already examined a similar Lease Deed in the matter of *"New Okhla Industrial Development Authority vs. Mr. Anand Sonbhadra (RP)"*, Company Appeal (AT) (Ins.) No. 1183/2019 dated 16.04.2021 and such Lease Deed was threadbare discussed by us in that matter. We have already in that matter held that such Lease Deed (as in the present one) does not constitute the Financial Lease. For similar reasons we do not find that Appellant is able to show Financial Lease in its favour. Rewards incidental to ownership of the underlying asset-land were not transferred, in the Lease Deed if contents are considered reading the same with Indian Accounting Standards.

11. In the present matter, the Appellant was earlier treated as Financial Creditor for the dues claimed by Appellant but later on the Appellant has been treated as Operational Creditor. (In this Appeal we are not dealing with issue if such lease constitutes, even operational debt). Order dated 25.11.2019 of the Adjudicating

Authority directed the Resolution Professional to consider if debt of Appellant is a Financial Debt and place it before CoC. He did this in 6th CoC Meeting. On the face of it the Lease Deed does not appear to be Financial Lease. As the Resolution Plan is stated to be already approved, when it appears that the Appellant is not a Financial Creditor, we do not wish to go into the technicalities of the manner in which it was excluded from the CoC. The Learned Counsel for Respondent No. 1 is claiming that CA-1511/2019 was not heard. The grievance appears to be because orders with regard to excluding UCO Bank was not passed. The Respondent No. 1 does not appear to have filed any appeal against the impugned order in that regard and thus we would not give much indulgence to Respondent No. 1.

12. We do not find that there is any substance in this appeal. The appeal is dismissed. No orders as to cost.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Archana/gc.