

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 506 of 2024

[Arising out of order dated 11.01.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II), in I.A. No.
1592/ND/2019 in C.P. No. (IB) – 470(ND)/2017]

IN THE MATTER OF:

**Lords Social Welfare Association
(Home Buyers Association)
Successful Resolution Applicant of
Kindle Developers Pvt. Ltd.**

Represented Through:
Mr. Surendra Kumar
S/o Shri Bal Mukund
R/o J-908, Prateek Laurel, Sector-120,
Noida, Uttar Pradesh – 201301.

...Appellant

Versus

**1. New Okhla Industrial Development
Authority**

Having office at:
Main Administrative Building
Sector-6, Noida U.P.

...Respondent No. 1

2. Mr. Kashi Viswanathan Sivaraman

Resolution Professional of
Kindle Developers Private Limited
E-10A, Kailash Colony,
Greater Kailash,
New Delhi – 110048
Email: kindle.developers@aaainsolvency.com

...Respondent No. 2

**3. Committee of Creditors of
Kindle Developers Private Limited**

E-10A, Kailash Colony,
Greater Kailash,
New Delhi – 110048
Email: kindle.developers@aaainsolvency.com

...Respondent No. 3

Present:

For Appellant : Mr. Aditya Nayyar, Advocate.

**For Respondents : Ms. Aishwarya Prasad and Mr. Niraj Chamyal,
Advocates for R-2.**

Mr. Rachit Mittal, Advocate for R-1.

WITH

Company Appeal (AT) (Insolvency) No. 554 of 2024

&

I.A. No. 1966 of 2024

[Arising out of order dated 11.01.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II), in I.A. No.
1592/ND/2019 in C.P. No. (IB) – 470(ND)/2017]

IN THE MATTER OF:

**Committee of Creditors of
Kindle Developers Private Limited
Through Mr. Anurag**

D-1/401, BPCL Housing Complex,
Sector 56, Noida, UP

...Appellant

Versus

**1. New Okhla Industrial Development
Authority**

Having office at:
Main Administrative Building
Sector-6, Noida U.P.

...Respondent No. 1

2. Mr. Kashi Viswanathan Sivaraman

Resolution Professional of
Kindle Developers Private Limited
E-10A, Kailash Colony,
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Mr. Surendra Kumar
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R/o J-908, Prateek Laurel, Sector-120,
Noida, Uttar Pradesh – 201301.

...Respondent No. 3

Present:

**For Appellant : Mr. Aishvary Vikram and Mr. Lucky Sharma,
Advocates.**

**For Respondents : Ms. Aishwarya Prasad and Mr. Niraj Chamyal,
Advocates for R-2.**

Mr. Rachit Mittal, Advocate for R-1.

**J U D G M E N T
(18th September, 2024)**

Ashok Bhushan, J.

These two Appeals have been filed against the same order dated 11.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court II in IA No. 1592 of 2019 filed by the New Okhla Industrial Development Authority (hereinafter referred to as “NOIDA”)- Respondent No.1 herein. By the application, the Adjudicating Authority vide impugned order has allowed IA No. 1592 of 2019 and excluded the Plot No. SC-01/ D1, Sector 79 Noida from Resolution Plan submitted in the CIRP of the Corporate Debtor.

2. Brief facts of the case necessary to be noticed for deciding these Appeals are:-

2.1. NOIDA executed a Lease Deed dated 24.10.2011 in favour of Kindle Developers Pvt. Ltd., the Corporate Debtor herein allotting Plot No. SC-01/ D1, Sector 79 Noida. A Correction Deed dated 19.10.2012 was issued correcting the lease area. Allotment was made on premium of Rs.120.75 Cr. out of which 10% was paid and balance 90% was to be paid by lessee in the manner provided in the Lease Deed along with the interest @ 11% per annum. By Correction Deed, the area of plot SC-01/ D1 was to be read as 40,000 sq. mtr. The Corporate Debtor committed default in payment of lease rent and interest as per the terms and conditions of the Lease Deed. NOIDA by order dated 13.08.2015 cancelled the Lease Deed on account of non-payment of due amount towards instalments in respect of the commercial/ sports city Plot No. SC-01/ D1, Sector 79 Noida. Prior to the cancellation of the Lease Deed, notice was also issued on 27.01.2015 requesting the Corporate Debtor to deposit the due amount. After cancellation of the Lease, the Corporate Debtor vide letter dated 14.06.2016 prayed for restoration of the plot. The CIRP against the Corporate Debtor commenced vide order dated 09.03.2018. In the CIRP of the Corporate Debtor, the Adjudicating Authority vide order dated 08.11.2019 while issuing notice to the NOIDA, directed the NOIDA to conduct an inspection of site and submit a report. On 02.12.2019, I.A No. 1592 of 2019 was filed by the NOIDA praying for exclusion of Plot No. SC-01/ D1, Sector 79 Noida from the Resolution Plan. A Resolution Plan in the CIRP of the Corporate Debtor was submitted which included the plot in question which came to be approved by the CoC on 04.12.2019. The Adjudicating

Authority vide order dated 20.02.2020 noticed the application IA No. 1592 of 2019 filed by the NOIDA apprising the Bench that the lease has already been cancelled and substratum of the Corporate Debtor's project is no more available and the plan has been approved by the CoC on the basis of the land belongs to the Corporate Debtor. The Adjudicating Authority observed that despite knowing the lease has been cancelled, Director/ Shareholders continued to accumulate money by thereby duping several investors. The Adjudicating Authority declined to consider the Resolution Plan and directed the Directors of the Corporate Debtor to file an Affidavit on their personal assets including all their moveable and immovable assets. The Resolution Professional filed Company Appeal (AT) (Insolvency) No. 605 of 2020 challenging the order dated 20.02.2020. This Tribunal held that the Appeal not maintainable, however, the Appeal was disposed of with direction to the Adjudicating Authority that it shall accord consideration to the matter in the light of the application filed before it which is pending consideration and after taking interests of all stakeholders. Subsequent to the order passed by this Tribunal, the Adjudicating Authority passed an order on 12.10.2020 under which the NOIDA proceeded to pass an order on the application filed by the Corporate Debtor for restoration of the plot. The application for restoration was rejected by the NOIDA vide letter dated 10.11.2020. In the order dated 27.07.2020, this Appellate Tribunal while deciding Company Appeal (AT) (Insolvency) No. 605 of 2020 has observed that the Adjudicating Authority will record a clear finding in regard to cancellation/ subsistence of the lease after

providing opportunity of hearing to all concerned parties. The Adjudicating Authority heard the parties and by order impugned dated 11.01.2024 allowed the IA No. 1592 of 2019 filed by the NOIDA holding that the plot in question is not the asset of the Corporate Debtor, the lease of the plot having already been cancelled on 13.08.2015. Against the order dated 11.01.2024, the Resolution Professional of the Corporate Debtor had filed an Appeal being Company Appeal (AT) (Ins.) No.574 of 2024 challenging the findings and observations made in the order against the Resolution Professional which Appeal came to be dismissed by this Tribunal on 01.05.2024.

2.2. In these two Appeals, both the parties were heard by this Tribunal on 29.08.2024 and they have also filed their short notes of submissions in support of their respective submissions.

3. We have heard Shri Aishvary Vikram, Learned Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) No.554 of 2024, Shri Aditya Nayyar, Learned Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) No.506 of 2024, Shri Rachit Mittal, Learned Counsel for the NOIDA and Shri Aishwarya Prasad, Learned Counsel for the Resolution Professional- R2.

4. Shri Aishwarya Vikram, Learned Counsel appearing for the CoC of the Corporate Debtor in support of the Appeal contends that the Corporate Debtor being continuing in possession even after alleged cancellation of the lease on 13.08.2015. The Corporate Debtor shall be treated to be continuing as lessee

holding over the asset by virtue of Section 116 of the Transfer of Property Act, 1882. It is submitted that even though no rent has been accepted by the NOIDA subsequent to alleged cancellation of lease but the fact that the Corporate Debtor continued in possession for more than five years and no action was taken by the NOIDA to take possession indicate that there is assent of the NOIDA in favour of the Corporate Debtor. It is submitted that the conduct of the NOIDA lends support to the presumption that there is otherwise assent of the NOIDA to the Corporate Debtor. Counsel for the Appellant submits that the assent by NOIDA need not be in writing but such assent can be determined from the conduct that constitutes assent. It is submitted that much after the cancellation, a letter was issued to different entities in the NOIDA including the Corporate Debtor asking as to why lease be not cancelled which letter dated 17.03.2023 was also marked to the Corporate Debtor which indicate that NOIDA was not treating the lease to be cancelled even in the year 2023. Counsel submits that the principle of holding over as contained in Section 116 of the Transfer of Property Act, 1882 is fully applicable in the facts of the present case and assets could not belong to the Corporate Debtor. It is submitted that the IRP was entitled to take control of the assets in question by virtue of Section 18 (f) (vi). It is further submitted that the letter cancelling the lease was issued not by Chief Executive Officer but was issued by Assistant General Manager (Commercial) who has no authority to issue such cancellation letter.

5. Counsel for the NOIDA refuting the submissions of the Counsel for the Appellant submits that the Corporate Debtor had failed to pay the premium instalments, the lease was cancelled by letter dated 13.08.2015. The Corporate Debtor did not have any subsisting right in the land so as to the part of the Resolution Process. It is submitted that the cancellation of lease was done much before commencement of the CIRP. It is submitted that the NOIDA having never accepted the rent from the Corporate Debtor nor having given its assent expressly or impliedly for continuance of the Corporate Debtor, submission of the Appellant on the basis of Section 116 of the Transfer of Property Act are not applicable. During the CIRP, NOIDA has filed an application specifically pleaded that the Corporate Debtor has no right in the land, lease having already been cancelled on 13.08.2015. By order dated 10.11.2020 application which was filed by the Corporate Debtor for restoration of plot was also rejected by detailed order. It is further submitted that for cancellation of lease of the Corporate Debtor due approval was taken from Chief Executive Officer who is empowered to direct the cancellation and the order issued by the Assistant General Manager (Commercial) was only order communicating the cancellation. The submission of the Appellant that order has not been issued by the CEO is incorrect. Counsel reiterated that the order was issued with the approval of the CEO cancelling the lease. Counsel for the Respondent has also relied on judgment of this Tribunal dated 01.05.2024 in Company Appeal (AT) (Insolvency) No. 574 of 2024 which Appeal was filed by the Resolution Professional of the Corporate Debtor

challenging the same order dated 11.01.2024 and the findings recorded in the said order. This Tribunal has affirmed the findings of the order dated 11.01.2024 by its judgment and order dated 01.05.2024. It is submitted that this Tribunal having already returned finding in the judgment that the Corporate Debtor has no right on the plot in question and the Resolution Professional misconducted himself in including the asset as the asset of the Corporate Debtor, the present Appeal also deserves to be dismissed following the judgment of this Tribunal dated 01.05.2024.

6. Counsel for the Appellant in support of his submissions in Company Appeal (AT) (Insolvency) No. 506 of 2024 submitted that the homebuyers consent was never obtained nor informed about the cancellation of the plot in question. It is submitted that the Appellant is the homebuyers Association of the Corporate Debtor. Corporate Debtor had started taking booking for its flats in the year 2012 for the project and as per the homebuyer's agreement, the flats were to be delivered within 3 years from 31.07.2013. There are about 651 homebuyers in the project. The plan submitted by the Appellant was approved by the CoC on 04.12.2019 thereafter Resolution Professional has filed IA No. 1664 of 2019 for approval of the plan. It is submitted that the homebuyers have also filed Writ Petition being Writ-C No. 26400/2023 before the High Court of Allahabad challenging the cancellation of the lease where Hon'ble High Court was passed an interim order on 09.08.2023 giving stay on creation of any third party rights. It is submitted that the NOIDA was duty

bound for implementation of the project and RTI application dated 13.07.2017 was filed to the Public Information Officer, NOIDA seeking various information with respect to the project of the Corporate Debtor. The RTI application was replied providing information about the dues from the CoC and cancellation of lease was not informed. The project was registered with UP RERA. NOIDA never took any action to get the registration of project cancelled. Homebuyers were never intimated about the cancellation of the lease. Construction was continued of the project. Cancellation letter has not been signed by the competent authority in terms of U.P. Industrial Area Development Act 1976.

7. We have heard Counsel for the parties and perused the record. For deciding both the Appeals, it shall be sufficient to refer to the pleadings in Company Appeal (AT) (Insolvency) No. 554 of 2024.

8. There is no dispute that the land was allotted to the Corporate Debtor on 24.10.2011 which lease was corrected on 19.10.2012. The order cancelling the lease was issued by the NOIDA on 13.08.2015. The copy of the Cancellation order has been filed by the Appellant as Annexure A-10. Order cancelling the lease provides as follows:-

***“NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY
MAIN ADMINISTRATIVE BUILDING, SECTOR-VI, NOIDA-
201301***

*No. NOIDA/Commercial/SC-01/D1-79/2015/1317
Dated: 13/8/2015*

**Company Appeal (AT) (Insolvency) No. 554 of 2024
With
Company Appeal (AT) (Insolvency) No. 506 of 2024**

*M/s Kindle Developers Pvt. Ltd.
(Relevant member of M/s Xanadu
Estate Pvt. Ltd.)
C-23, Greater Kailash Enclave Part-I,
New Delhi - 48*

Sub: Cancellation regarding non payment of due amount towards instalments in respect of Commercial/ Sports City Plot no. SC-01/D1, Sector-79, NOIDA.

Dear Sir,

Please refer to this office notice No. NOIDA/Commercial/2015/101 dated 27th January, 2015 vide which you were requested to deposit the due amount towards Commercial/ Sports City Plot no. SC-01/D1, Sector-79, NOIDA within 30 days from the date of issue of the letter.

In this connection it is to inform that clause II-b of the lease deed executed on 19th October, 2012 provides that the Sub-Lessee will pay to the Lessor the balance of the premium in the installments and if the Lessee fails to pay any installment by due date of payment thereof, he shall thereafter pay the same with interest in installments in arrears from the due date till the date of payment provided that failure to pay three consecutive installments the Lessor may determine the lease with penalties and consequences thereof.

In case of failure to deposit the due money within given time or such extended period as is allowed by NOIDA or commit any breach of the terms and conditions as laid down in the brochure, allotment/lease shall be liable to be cancelled/ determined and 30% of the total premium together with lease rent, interest, extension charges or money deposited, whichever is less shall be forfeited in favour of NOIDA. Balance amount, if any, after forfeiting the amount as indicated above, will be refunded without interest. Possession of the plot, along with the structures, if any, thereon, shall be resumed in favour of NOIDA and the lessee shall not be entitled to claim any compensation for the same.

Since, you have not complied with the terms and conditions of the allotment/ lease deed, regarding payment of due amount, therefore, in accordance with the provisions of the brochure of the scheme and lease deed, Authority cancels the allotment and

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forfeiture of deposited amount. Therefore, you are requested to kindly hand over the possession to the concern Project Engineer of NOIDA within 30 days from the date of issue of this letter.

Thanking you,

Yours faithfully,

Assistant General Manager (Commercial)

Copy to:-

- 1. Chief Architect Planner, NOIDA.*
- 2. Project Engineer (Work Circle-10), NOIDA.*
- 3. Accounts Officer (Commercial) for necessary action.*

Assistant General Manager (Commercial)”

9. It is further to be noted that after cancellation of the lease after about 305 days, the Corporate Debtor made an application dated 14.06.2016 praying for restoration of plot which application was given in reference to the letter dated 13.08.2015 cancelling the commercial Plot No. SC-01/ D1, Sector 79 NOIDA. The NOIDA after hearing the parties has also rejected the application praying for restoration by order dated 10.11.2020 which order was passed after direction of the Adjudicating Authority dated 12.10.2020. The CIRP of the Corporate Debtor commenced on 09.03.2018. The plot in question on which Corporate Debtor took deposit from homebuyers for constructing a housing project stood cancelled due to non-payment of instalments by the Corporate Debtor much prior to initiation of the CIRP. There can be no dispute that the rights including the right of development of the plot are rights in land which can be taken possession by the Resolution

Professional in the CIRP. The order impugned is an order by which Adjudicating Authority has held that plot in question is not the asset of the Corporate Debtor. Plot stood cancelled on 13.08.2015 which cannot be part of the Resolution Plan of the Corporate Debtor and the direction was issued to exclude the claim for Resolution Plan. In paragraph 29 of the judgment, following has been held by the Adjudicating Authority.

*“29. In a nutshell, as the Lease deed of the "project land" was cancelled by the Applicant/Noida Authority vide letter dated 13.08.2015 and after the indulgence of this Tribunal, the Representation of the CD dated 14.06.2016 was also considered at the level of CEO Noida and rejected vide their letter dated 10.11.2020, the lease deed of the said plot cannot be deemed to have continued. Moreover, despite ample opportunities in the interest of justice granted by this Adjudicating Authority to the Respondent/RP, CoC (mainly comprising of Home Buyers), and SRA, they failed to arrive at any settlement qua the Noida Authority regarding the restoration of the Lease deed of the said "project land" in the name of the CD. **Hence, in compliance with the directions of the Hon'ble NCLAT passed in Company Appeal (AT) (Insolvency) No. 605 of 2020 vide order dated 27.07.2020, we have no other option but to conclude that there is nothing placed or produced on record by the Respondent/RP, COC, SRA, or anyone else, which could depict that the***

lease of project plot is in existence post-13.08.2015. Even otherwise, though the RP is claiming to have possession over the cancelled plot of the project, he has failed to bring any evidence on record in support of payment of any land dues or lease rentals of the Project Plot to the NOIDA Authority. In other words, the lease deed or allotment of the "Project Plot No. GH-SC-01/D-1, Sector 79 Noida" stood cancelled with effect from 13.08.2015. In view of the above, the property situated at Plot No. SC-01/D1, Sector 79, Noida cannot be made part of the Resolution Plan of the Corporate Debtor and accordingly, the Respondent/RP is directed to exclude the same from the Resolution Plan. Ordered accordingly."

10. Submission which has been pressed by the Counsel for the CoC is that the Corporate Debtor having continued in possession even after cancellation of the Lease Deed, the Corporate Debtor is a tenant holding over by virtue of Section 116 of the Transfer of Property Act. It is submitted that the Corporate Debtor being a tenant holding over the said is entitled to be included in the asset of the Corporate Debtor and the Adjudicating Authority committed error in directing for exclusion of the asset. It is further submitted that the cancellation of the lease is covered by determination of lease as contemplated under Section 111 of the Transfer of Property Act, 1882. It is submitted that the determination of lease whether by efflux of the time limited or by

termination is a determination within the meaning of Section 111. There cannot be any quarrel that the lease can be determined in accordance with Section 111 of the Transfer of Property Act. Present is a case where determination of the lease has been made by NOIDA in accordance with the terms of the Lease Deed. Lessor has ample jurisdiction to cancel the lease as per the terms of Lease Deed itself in event the Corporate Debtor failed to deposit the instalment of the plot allotted to the Corporate Debtor. Reliance has been placed by the Appellant on Section 116 of the Transfer of Property Act which deals with 'effect of holding over'. Section 116 provides as follows:-

“116. Effect of holding over.—

If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.”

11. Section 116 which deals with effect of holding over is hedged with following conditions:-

- (i) after the determination of the lease, lessor or his legal representative accepts rent from the lessee;
- (ii) or otherwise assents to his continuing in possession.

12. There is no dispute between the parties that no rent was paid or accepted by lessor from the lessee after determination of the lease deed dated 13.08.2015. The submission of the Counsel for the Appellant is on the second conditions as enumerated in Section 116 i.e. **“or otherwise assents to his continuing in possession”**. Both the clauses, as noted above, have to be read to give meaning and purpose of the statutory provisions. The first clause which provide that after determination of the lease when rent is accepted, the tenant will be tenant in holding over and consequence are provided thereunder. Second clause that **‘or otherwise assents to his continuing in possession’** clearly means that lessor assent to continuation in possession of lease. The expression “assent” has been defined in Advanced Law Lexicon, P. Ramanatha Aiyar’s, 6th Edition as agreement, approval or permission which reads as follows:-

*“The ordinary grammatical meaning of the word 'assent' is expression of approval or agreement. [Concise Oxford English Dictionary **as cited in** R.S. Iron Industries Pvt Lid v Calcutta Pinkjrapole Society, AIR 2013 Cal 94, para 11].*

"A passive act of concurrence; the act of the mind in admit- ting or agreeing to anything; the act of agreeing or consenting to accept proposition, and by context, "acceptance." Agreement or approval; compliance, approval of something done, or a declaration of willingness to do something in compliance with a

request; concurrence in, or with; consent; silent acquiescence, "Assent" implies knowledge of some kind in the party assenting to that to which he assents; also permission of the part of the loyalty assenting; but ordinarily it does not imply contribution or express concurrence. As used in some statutes, however, the term has been held to acquire affirmative, positive action on the part of the party assenting. It has been said that the term indicates the meeting of the minds of the contracting parties, and the word is applicable only to conduct before or at the time of the doing of an act and does not include an approval after the commission of an act. "Assent" has been distinguished from: "consent", "estoppel", "mere neglect to ascertain facts" and "ratification". [Corpus Juris Secundum as cited in R.S. Iron Industries Pvt Ltd v Calcutta Pinkjira- pole Society, AIR 2013 Cal 94, para 12].....”

13. Counsel for the Appellant is right in his submission that assent can either be in writing or there can be implied assent also. The present is a case where there is no claim of any written permission by the NOIDA for continuance of possession of the lease. The present is a case where NOIDA, after coming to know about the CIRP, has filed the IA No.1592 of 2019 in the CIRP of the Corporate Debtor and has brought on record the order cancelling the lease. In the CIRP of the Corporate Debtor, by order dated 08.11.2019 the Adjudicating Authority had issued notices to the NOIDA and immediately after

issuance of notice, NOIDA has filed the application dated 02.12.2019 in which application following prayers have been made:-

*“(a) Allow the present application;
 (b) Direct to the Respondent/ Resolution Professional for exclusion of Plot No. SC-01/D1, Sector 79, Noida from the resolution plan in view of the cancellation dated 13.08.2015;
 (c) pass such other order/ directions as this Hon’ble Bench may deem fit and proper in the facts and circumstances of the case.”*

14. It is also relevant to notice that in the order dated 09.03.2018 by which CIRP commenced against the Corporate Debtor the fact that allotment of plot has been cancelled was clearly noticed which is pleaded in the IA filed by the NOIDA. Counsel for the NOIDA has submitted that as per the policy of the NOIDA, the application for restoration can be made within 90 days from the date of cancellation and the application having been made after more than 10 months, it was not entertained but after the order of the Adjudicating Authority a detailed order was passed rejecting the prayer for restoration of the plot. There is no such act on the part of the NOIDA on the basis of which it can be concluded that the NOIDA has been given its assent impliedly for continuance of Corporate Debtor in possession.

15. Counsel for the Appellant has relied on the judgment of the Calcutta High Court in **“Ram Hari Singh vs. Tirtha Pada Misra- AIR 1957 Cal 173”**

in which judgment the Hon'ble Calcutta High Court has occasion to consider Section 116 of the Transfer of Property Act. In paragraphs 8, 9 and 10, following has been laid down:-

“8. Section 116 of the Transfer of Property Act runs thus:

"If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106".

9. From the express terms of the section, it is obvious that mere continuance of possession after the expiry or determination of his lease would not entitle the tenant to claim a tenancy by holding over. Mere continuance of possession without more would not be sufficient for the purpose. There must also be the landlord's assent to such possession by acceptance of rent or otherwise. Acceptance of rent, unless explained on any other hypothesis, would be evidence of such assent, but it is not the only relevant evidence on the point and such evidence may be furnished otherwise also, that is, by other circumstances. What has to be proved is assent of the landlord. In the absence of an agreement to the contrary, the tenant's continuance of possession after the termination of the lease, coupled with

the landlord's assent, would constitute a tenancy by holding over and the lease would be renewed from year to year or from month to month, according to the purpose of the tenancy under section 106 of the Transfer of Property Act. The landlord's assent again may be express or implied and even when there is no direct evidence, it may be inferred from circumstances. The length of the tenant's possession may have this importance that, when it is pretty long, slight evidence circumstantial or otherwise, may be sufficient to tilt the balance in favour of the landlord's assent. Mere absence of dissent would not be enough to constitute assent, but if it continues for a sufficiently long period, it may, with the aid of other circumstances, and in the absence of any contrary indication, reasonably give rise to an inference of assent. The cumulative effect would be to give rise to an inference of assent as a presumption of fact which is certainly rebuttable, but which will prevail unless rebutted. The length of the period may only reduce the requirement of other circumstances to a minimum, so that when it is sufficiently long, only a slight aid will be necessary from the other circumstances and to that extent, it may facilitate the drawing of the presumption.

10. On the determination of his lease, the tenant continuing in possession without more, possibly becomes, what is technically known in English Law, a "tenant on sufferance", or, as he is also called sometimes, a "tenant at sufferance", or a "tenant by sufferance", who is in possession not by right but by the laches of the owner or landlord, and whose possession is, therefore, not of right but of wrong, although

*it may not be that of a trespasser whose possession originates in wrong and continues in wrong and is thus wrongful both in its inception and in its continuance, the quondam tenant's possession having had, on the other hand, a lawful origin, though continuing in wrong after the termination of the lease and thus being "rightful in its origin or Inception, though wrongful in its continuance", but the landlord's assent would convert this wrongful possession into a rightful one and as I have already said, when this possession is suffered long without protest, very slight evidence may be sufficient to raise the necessary inference of assent on the landlord's part. [See in this connection "Woodfall on Landlord and Tenant," 25th Edition, (1951) 312; see also *Kantheppa v. Sheshappa*, (5) (1.L.R. 22 Bom. 893, at page 898]."*

16. Learned Counsel for the Committee of Creditors ('CoC') to support his submission that Corporate Debtor was a tenant holding over has relied on an Application given under the Right to Information Act ('RTI') by one of the homebuyers and the Reply given by NOIDA dated 02.08.2017. It is submitted that in the Application under the RTI several questions were asked with regard to Group Housing Plot SC-01/D-1, Sector 79, NOIDA. In Reply to which although outstanding amount against the Plot was mentioned as Rs.50,52,06,651/- till 05.07.2017, but no information was provided that allotment of Plot has already been cancelled by the NOIDA Authority on 13.08.2015, which indicate that Plot was not cancelled by that time.

17. Learned Counsel for the Appellant has further relied on Notice dated 17.03.2023 issued by NOIDA to M/s. Three Seas Garden Developers Private Ltd., which Notice was also endorsed to Corporate Debtor, asking to show cause as to why Order of cancellation be not issued. Learned Counsel again submit that these indicates that there was no information regarding cancellation of Plot available in public domain.

18. The submission which has been pressed by the Counsel for the Appellant is right of holding over under Section 116 of the Transfer of Property Act, 1882. Insofar as cancellation of the Plot is concerned, after the cancellation dated 13.08.2015, the Corporate Debtor has submitted an Application on 14.06.2016 to the NOIDA Authority praying for restoration of the Plot. The copy of the letter dated 14.06.2016 has been brought by the Appellant as Annexure A-11, which provides as follows:

*“The Assistant General Manager (Commercial)
New Okhla Industrial Development Authority
Main Administrative Building, Sector-6.
Noida – 201 301
Distt. Gautam Budh Nagar.*

**Sub: Restoration in respect of Plot No. SC-01/D-1
Sector 79, Noida**

Dear Sir,

*This is with reference to your letter
No.Noida/Commercial/SC-01/D1-79/2015/1317 dated*

13th August 2015 regarding cancellation of our Commercial Plot No.GH-SC-01/D1, Sector 79, Noida.

We shall be grateful if you could kindly restore the plot mentioned above. We are ready to follow the instructions of the Noida Authority in this regard. Kindly let us know the restoration procedure or any other dues which have to be paid by the Company to enable us to restore the above-mentioned plot.

Thanking you,

Yours truly,

For Kindle Developers Pvt. Ltd.”

19. When the Corporate Debtor itself has prayed for restoration of the Plot, submission of the Counsel for the CoC that Plot was not cancelled and information was not given cannot be accepted. The cancellation letter was sent to the Corporate Debtor who after receiving the letter has applied for restoration on 14.06.2016. The letter of the Corporate Debtor itself dispels all doubts regarding cancellation of the Plots, sought to be raised by the Appellant. Now coming to the Application given under the RTI and the Reply given by the NOIDA, it is true that NOIDA in the Reply has given about the balance dues upto 05.07.2017, but has not informed about the cancellation of the Plot. There being letter of the Corporate Debtor 14.06.2016 praying for restoration, there can't be any doubt regarding cancellation of the Plot.

20. It is further relevant to Notice that Adjudicating Authority in its Order dated 12.10.2020, which was passed in the proceeding in question while

considering I.A. No. 1592/2019 directed the NOIDA to take decision on the representation dated 14.06.2016 submitted by the Corporate Debtor for restoration of the Plot. The Order dated 12.10.2020 has been brought on the record in Comp. App. (AT) (Ins.) No. 506/2024. The Order dated 12.10.2020 in I.A. No. 1592/2019 is as follows:

“IA/1592/2019: *Counsels for the Applicant/Noida Authority, Resolution Professional, Resolution Applicant and the CoC are present.*

As seen from the last Order dated 09.09.2020, a specific direction was given to the Noida Authority to place on record the decision of the Noida Authority on the representation of the Corporate Debtor dated 14.06.2016.

However, it has been brought to our notice by the Counsel for the Noida Authority that the Noida Authority has not taken any decision on the said representation.

It is worthwhile to mention that under consideration is a Resolution Plan that has been moved by an Association of allottees/Home Buyers of the Corporate Debtor Company, M/s. Kindle Developers Pvt. Ltd. But the land allotted by the Noida Authority was cancelled on 13.08.2015 due to non-payment of dues.

In this circumstances, it is deemed fit to direct the Noida Authority to take a decision on the said Representation dated 14.06.2016 by giving due opportunity of hearing to the Resolution Professional for M/s. Kindle Developers Pvt. Ltd., who is managing the CIR Process of the CD and the Resolution Applicant, who has proposed a Resolution Plan for revival of the Company and place the decision so taken before this Authority within 4 weeks of this Order.

List the matter on 20th November, 2020.”

21. It is undisputed that subsequent to the Order dated 12.10.2020, NOIDA has passed an Order taking the decision rejecting the Application for restoration by the NOIDA on 13.08.2015, which decision was taken on 12.11.2020 itself, which decision is still intact.

22. It is the further case of both the Appellants in these Appeals that the **Writ Petition No. 26400/2023** has been filed by homebuyer challenging the Order passed by NOIDA cancelling the allotment as well as Order of the NOIDA upholding the cancellation in which an Interim Order was passed on 09.08.2023 by Hon'ble Allahabad High Court, which Order is as follows:

*“Heard Sri Karitekya Saran, learned counsel for the petitioners and Sri Kaushalendra Nath Singh, learned counsel for the respondents development authority.
List this case in the week commencing 11.9.2023.
In the meanwhile, respondents to file counter affidavits.
Till the next date of listing, no third party interest would be created.”*

23. Appellants are relying on the proceeding pending in the High Court, which was filed by one of the homebuyers who was member of the Homebuyers Association. We thus are of the view that doubts raised by the Appellant regarding the cancellation of Plot in question is baseless and cancellation of the Plot by NOIDA is an accomplished fact.

24. Now coming back to the submission of the Appellant regarding right of the Corporate Debtor who claims to be holding over the Plot under Section 116 of the Transfer of Property Act, 1882. From the facts which have been noticed above, it is clear that at no point of time, neither the Corporate Debtor has paid any rent/instalments after the cancellation of the Plot nor any such amount was accepted by the NOIDA. The other Clause under which case is sought to be covered i.e., “or otherwise assent to this continuing in possession. There is nothing on the record to prove that NOIDA at any point of time assented to the continuing of the Corporate Debtor in possession”. The right of the Corporate Debtor having come to an end after cancellation of the Plot, it cannot claim any rights nor it can claim itself to be a tenant holding over.

25. We may refer to the Judgment of the Hon’ble Supreme Court in the matter of ***‘Nand Ram (Dead) through Legal Representatives’ Vs. ‘Jagdish Prasad through Legal Representative’*** reported in ***(2020) 9 SCC 393***, in which case Hon’ble Supreme Court came to consider the submissions made on the strength of Section 116 of the Transfer of Property Act, 1882. The Hon’ble Supreme Court in the said Judgment has held that after expiry of the lease status of Lessee will be that of tenant of sufferance and not of tenant holding over. In the Judgment of the Hon’ble Supreme Court, it was reiterated that it is only ascent of the landlord to the continuance of possession after

determination of the tenancy will create new tenancy. In Paragraph 29 & Paragraph 30 of the Judgment following was laid down:

“29. *The defendant was inducted as a lessee for a period of 20 years. The lease period expired on 23-9-1974. Even if the lessee had not paid rent, the status of the lessee would not change during the continuation of the period of lease. The lessor had a right to seek possession in terms of Clause 9 of the lease deed. The mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the property leased. After the expiry of lease period, and in the absence of payment of rent by the lessee, the status of the lessee will be that of tenant at sufferance and not a tenant holding over. Section 116 of the TP Act confers the status of a tenant holding over on a yearly or monthly basis keeping in view the purpose of the lease, only if the lessor accepts the payment of lease money. If the lessor does not accept the lease money, the status of the lessee would be that of tenant at sufferance.*

30. *This Court in the judgments in Bhawanji Lakhamshi v. Himatlal Jamnadas Dani [Bhawanji Lakhamshi v. Himatlal Jamnadas Dani, (1972) 1 SCC 388] , Badrilal v. Municipal Corpn., Indore [Badrilal v. Municipal Corpn., Indore, (1973) 2 SCC 388] and R.V. Bhupal Prasad v. State of A.P. [R.V. Bhupal Prasad v. State of A.P., (1995) 5 SCC 698] and also a judgment in Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd. [Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd., (2020) 11 SCC 782] examined the scope of Section 116 of the TP Act and held that the lease would be renewed as a tenant holding over only if the lessor accepts the payment of rent after the expiry of lease period. This Court in Bhawanji Lakhamshi [Bhawanji Lakhamshi v. Himatlal Jamnadas Dani, (1972) 1 SCC 388] held as under : (SCC p. 391, para 9)*

“9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule

is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, 1882, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.”

26. As observed above, there is nothing on record to indicate that NOIDA at any point of time, expressly or impliedly assented to the continuance of Corporate Debtor in possession. The above submission which was raised by the Adjudicating Authority was noticed and repelled by Adjudicating Authority in Paragraph 23 of the Order, which Para 23 is as follows:

“23. As regards the contention of the Respondent/RP that Noida Authority did not take back possession of the plot in question from the Corporate Debtor after 30 days of the cancellation, Ld. Counsel for the Applicant/Noida Authority, during the hearing, referred to the last paragraph of the cancellation letter dated 13.08.2015 by which the Corporate Debtor viz., M/s Kindle Developers Pvt. Ltd. was asked to hand over the possession of the land to the concerned Project Engineer of Noida and not the vice versa. Moreover, even if we consider the issue in the context of the Limitation Act 1963, the Limitation for obtaining possession of immovable property is 12 years, and the

limitation for the Government is 30 years by virtue of Article 112 of the Limitation Act, 1963. Hence, in our considered view, the Noida Authority is still eligible to take over the possession of the plot in question that was cancelled by them on 13.08.2015.”

27. We thus are satisfied that no right can be claimed by the Appellant on the principal as contained in Section 116 of the Transfer of Property Act, 1882. In this reference, we may notice a recent Judgment of this Tribunal dated 02.08.2024 in the matter of **‘Ram Ratan Modi, Resolution Professional of Duncans Industries Ltd.’ Vs. ‘Sammelan Tea and Beverages Pvt. Ltd. & Ors.’** in **Comp. App. (AT) (Ins.) No. 593/2022**, with other connected Appeals, where the issue was as to whether after expiry of the tenure of lease granted by the state of West Bengal in event, the Corporate Debtor had applied for renewal of the lease, whether that shall be asset of the Corporate Debtor or not. Question No. 2 framed in Paragraph 36 of the Judgment is as follows:

“36. Thus, in these appeals we are concerned about the above tea gardens. With regard to expiry of leases of six tea gardens, there is no dispute between the parties that leases have expired. The Appellants’ case is that renewal applications were filed for those six tea gardens on which no decision has been taken and with regard to three tea gardens i.e. Kilcott, Bagracote and Garganda issue of renewal of lease has been raised. Both the parties have advances rival submissions with regard to renewal. From the submission of learned counsel for the parties and materials on record following are issues which arise of consideration:

1. Whether the Corporate Debtor has lease hold right in the Tea Gardens, which are assets of the Corporate Debtor which need to be taken control by the Resolution Professional under Section 18(f) and Section 25 of the I&B Code?

2. Whether with regard to those Tea Gardens where period of lease has come to an end before commencement of the CIRP and application for renewal has been filed by the Corporate Debtor, the lease shall be deemed to be renewed since no decision has yet been taken by the State of West Bengal either accepting or rejecting the application?”

28. This Tribunal after answering the aforesaid question held that on the ground that Application for renewal of lease have been filed by the Corporate Debtor Leases of Tea Green shall not be treated as deemed to be renewed and Leases of aforesaid Tea Garden shall be treated to have expired before commencement of the Corporate Insolvency Resolution Process (‘CIRP’). Answering Question No. 2, following was held in Paragraph 66:

“66. In view of the aforesaid discussions, we are of the view that on the ground that Application for renewal has been filed by the Corporate Debtor, the leases of the aforesaid Tea Garden shall not be treated as deemed to be renewed and leases of the aforesaid Tea Gardens shall be treated to have expired before commencement of the CIRP.

In view of the above, we answered Question No. 2 in following manner:

“The leases of Tea Gardens whose period of Lease have come to an end before commencement of the CIRP, there shall be no automatic or deemed renewal of the leases even though Applications have been filed for renewal of the leases and no decision was communicated by the State.”

29. Thus, in the present case, the mere fact that after cancellation of the lease, Corporate Debtor has made a request for restoration of lease, shall has

no effect on the termination of the lease which had already been accomplished by letter dated 13.08.2015. We, thus are satisfied that the Corporate Debtor cannot claim any right within meaning of Section 116 of Transfer of Property Act, 1882 as a tenant holding over.

30. It is also relevant to notice that Resolution Professional ('RP') of the Corporate Debtor has filed **Comp. App. (AT) (Ins.) No. 574/2020** in the matter of '**Kashi Viswanathan Sivaraman, Resolution Professional Kindel Developers Private Limited' Vs. 'New Okhla Industrial Development Authority'**, questioning the same Impugned Order dated 11.01.2024, which have been sought to be challenged in the present Appeals. The RP has questioned the findings returned by Adjudicating Authority in Paragraph 26 to Paragraph 30. The RP has prayed for expunction of the aforesaid findings of the Adjudicating Authority in Paragraph 26 to Paragraph 30. The said Appeal was heard and dismissed by this Tribunal, vide its Judgment dated 01.05.2024. We need to notice the findings returned by the Adjudicating Authority in Paragraphs 26 to 30 of the Impugned Order which was sought to be challenged by the RP, which are as follows:

*"26. We have already noted that in the instant case, the Lease Deed of the Plot No. SC-01/D-1, Sector 79, Noida was cancelled on 13.08.2015 i.e., much before the commencement of the CIRP on 09.03.2018. Thus, the CD lost the possessory rights more than two and half years before the initiation of the CIRP. Therefore, the ratio laid down by the Hon'ble NCLAT in "**Neesa Leisure Limited**" (Supra) is squarely applicable to the facts of the present case. **Accordingly, we hold that***

the benefit of Section 14(1)(d) cannot be granted to the Respondent/RP herein, for a property/project land, which ceased to be an asset of the Corporate Debtor on 13.08.2015 i.e., more than two and half years before the commencement of the CIRP.

27. The next plea raised by the Respondent/RP is that the project was registered with the UP RERA on 15.08.2017 with Registration Number UPRERAPRJ 10636. The Applicant/Noida in this regard has submitted that –

“Registration (was) done by the Promoters without information to the applicant and wrong affidavit was given to U.P. RERA for getting the project registered, which reads as under:

“I. Kindle Developers Pvt. Ltd. have/has legal title to the land on which the development of the proposed project is to be carried out.”

Further, the RP has himself mentioned in that the Registration with U.P. RERA was done without the intimation to the applicant i.e., Noida Authority”.

Thus, what emerges is that the CD/its promoters got the RERA registration of the project done on 15.08.2017 by falsely claiming the legal title over the land whereas the same was cancelled by Noida as back as on 13.08.2015. Even otherwise, the fact of **RERA registration of the project ipso facto does not establish that the lease of Plot No. SC-01/D-1, Sector 79 Noida, which was cancelled by Noida Authority vide letter dated 13.08.2015, was subsisting or stood revived. Hence, this plea made by the Respondent/RP does not hold water, rather it is an attempt by the RP to justify the wrong/fraudulent action of the ex-management of the Corporate Debtor.**

28. As regards the submission of RP relating to the subsistence of the lease in terms of Section 116 of the Transfer of Property Act (TOPA) 1882 even after the termination of the lease deed, the Applicant/ Noida Authority submitted that it is a disputed fact, which can only be gone into by the Court of Competent

Jurisdiction. Further, the Applicant/Noida Authority argued that the lease deed of the project land was terminated before the initiation of CIRP, and the land got vested with the Noida Authority. Ld. Counsel for the Noida Authority further argued that the cancellation of the lease deed was in no way related or connected to the insolvency of the CD. In this context, the applicant relied upon the following judgments:

- *Embassy Property Developments (P) Ltd Vs. State of Karnataka & Ors. reported in (2020) 13 SCC 308 [Relevant Para 41]*
- *Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors. reported in (2021) 7 SCC 209 [Relevant Para 69]*
- *Tata Consultancy Services Limited Vs. SK Wheels Private Limited reported in (2022) 2 SCC 583 [Relevant Para 28].*

Per Contra, the RP has relied upon Section 116 of the Transfer of Property Act, 1882 to demonstrate that the Lease was still subsisting. From a perusal of Section 116 of TOPA 1882, it is observed that the same is attracted in the case if rent received from the lessee or under-lessee is accepted by the Lessor or the latter otherwise assents to the lessee's continuing in possession. There is nothing on record, which could demonstrate that the post-cancellation of the Lease deed of Plot No. No. SC-01/D-1, Sector 79 Noida, the Noida Authority was paid any lease rent or there is any written permission/assent of the Noida Authority for restoration/continuation of the said lease. Even otherwise, as we have already noted, the Lease Deed of the Plot No. SC01/D-1, Sector 79, Noida was cancelled on 13.08.2015 more than two and half years before the initiation of the CIRP. The CD/ Ex Management also applied for restoration of the said plot vide their letter dated 14.06.2016, which too, was much before the commencement of the CIRP. Hence, the question of deemed subsistence of the lease deed of the plot in question has not arisen or has no relation with the commencement of CIRP Proceedings of the Corporate Debtor.

Since (a) neither there is any evidence of payment of lease rent by the CD post-cancellation of the Lease deed of Plot No. No. SC-01/D-1, Sector 79 Noida, to the Noida Authority; (b) nor there is any written permission by the Noida Authority for restoration or continuation of the lease deed of the said plot; and (c) nor the issue about the deemed continuation of the Lease deed had arisen out of the Insolvency Proceedings, hence Section 116 of TOPA 1882 does not help the case of the Respondent/RP.

29. In a nutshell, as the Lease deed of the “project land” was cancelled by the Applicant/Noida Authority vide letter dated 13.08.2015 and after the indulgence of this Tribunal, the Representation of the CD dated 14.06.2016 was also considered at the level of CEO Noida and rejected vide their letter dated 10.11.2020, the lease deed of the said plot cannot be deemed to have continued. Moreover, despite ample opportunities in the interest of justice granted by this Adjudicating Authority to the Respondent/RP, CoC (mainly comprising of Home Buyers), and SRA, they failed to arrive at any settlement qua the Noida Authority regarding the restoration of the Lease deed of the said “project land” in the name of the CD. **Hence, in compliance with the directions of the Hon’ble NCLAT passed in Company Appeal (AT) (Insolvency) No. 605 of 2020 vide order dated 27.07.2020, we have no other option but to conclude that there is nothing placed or produced on record by the Respondent/RP, COC, SRA, or anyone else, which could depict that the lease of project plot is in existence post-13.08.2015. Even otherwise, though the RP is claiming to have possession over the cancelled plot of the project, he has failed to bring any evidence on record in support of payment of any land dues or lease rentals of the Project Plot to the NOIDA Authority. In other words, the lease deed or allotment of the “Project Plot No. GH-SC-01/D-1, Sector 79 Noida” stood cancelled with effect from 13.08.2015. In view of the above, the property situated at Plot No. SC-01/D1, Sector 79, Noida cannot be made part of the Resolution Plan**

of the Corporate Debtor and accordingly, the Respondent/RP is directed to exclude the same from the Resolution Plan. Ordered accordingly.

30. However, before parting with the order, we observe that this is a classic case where, not only the ex-Directors/promoters, despite being fully aware of the cancellation of the “project land” by the Noida Authority as back as on 13.08.2015 (much before the commencement of the CIRP) due to nonpayments of land dues by them, continued to accumulate money thereby duping the homebuyers, who nurtured the hope of getting a roof over their head and invested their hard earned life savings but also the IRP/RP too, (despite being fully conscious of the fact of cancellation of the “project land” as evident from the CIRP order dated 09.03.2018, RP’s own averments in C.A. No. 479 of 2019 filed by him against G.S. Buildwell Pvt. Ltd. & Ors., and also, in IA-3202 of 2020), continued to take all actions including preparation of Information Memorandum (IM), projecting the cancelled “project plot” as the asset of the Corporate Debtor, inviting EOIs and getting approval of a Resolution Plan from the COC as if the said plot existed with the Corporate Debtor.”

31. The RP in the Appeal has made the prayers which have been quoted by this Tribunal in its Judgment dated 01.05.2024 in Paragraph 7. The Judgment of this Tribunal in Paragraph 7 is as follows:

“7. At the outset we may take notice of the reliefs prayed for by the Appellant which are as follows:

- “a) Allow the present Appeal;*
- b) Set aside the observations my by the Ld. Adjudicating Authority as against the Appellant in Paras 28 & 30 in Impugned Order dated 11.01.2024 passed by the Hon’ble National Company Law Tribunal, New Delhi Bench-II in I.A. No. 1592 of 2019;*

c) Pass any other Order which this Hon'ble Tribunal deems fit."

32. This Tribunal noticed the submission of the RP where the RP has defended his action to include the Plot in question in the CIRP of the Corporate Debtor. The submission advanced by the RP was rejected and this Tribunal in its Judgment dated 01.05.2024 in Paragraphs 12 to 15 returned following finding:

"12. Coming to our analysis and findings, we are of the view that material on record clearly show that the lease of the subject plot was cancelled by Noida authority on 13.08.2015. Nothing has been placed on record to show that the lease deed of the said plot was restored to the Corporate Debtor except that an application had been filed by the suspended management after a gap of 305 days before the Noida authority seeking restoration. It is also an undisputed fact that Noida authority had not taken any decision on the said representation and that a decision was taken thereon by the Noida authority on the directions of the Adjudicating Authority which was passed on 12.10.2020. The Noida authority on 10.11.2020 had sent a detailed reply stating that the restoration application is rejected in view of violation of the terms of the lease deed dated 24.10.2011. In the present case, the Adjudicating Authority has correctly held that since the lease deed had been cancelled much before the commencement of the CIRP, the Corporate Debtor had lost the right to possess the subject plot before the initiation of CIRP. Since the subject plot ceased to be an asset of the Corporate Debtor with effect from 13.08.2015, the provision of moratorium in terms of Section 14 of the IBC will not get attracted in the present case.

13. There is nothing on record to show that post cancellation of the lease deed, the Noida authority was paid any lease rent or there is any written permission or assent of the Noida authority for restoration or

continuation of the said lease. Simply by having filed an application for restoration of the said plot of land, the deemed subsistence or continuation of the lease deed cannot be presumed. The lease having been cancelled on 31.08.2015 for want of deposit of necessary lease rent/ charges in terms of the allotment, the lease land could not have been made a part of the resolution plan of the Corporate Debtor. Even the UP RERA registration had been obtained by falsely claiming the legal title over the lease land. It is also the case of the Noida authority that it could not object to the UP RERA registration since the project was registered by the erstwhile Corporate Debtor without prior information to the Noida authority and that the registration was obtained by making a false statement before the UP RERA that the Corporate Debtor had legal title to the subject lease land. Basis this wrongful obtaining of RERA registration, it cannot be rightfully claimed by the RP that the lease was subsisting or stood revived. We also notice that the Noida authority in their reply to I.A. 3202/2020 had mentioned that that UP RERA authorities were informed on 27.01.2021 during the CIRP period to cancel the RERA registration.

14. The CIRP admission order of the Corporate Debtor also clearly noted that the Noida authority had cancelled the lease of the subject plot. Hence this fact was clearly in the knowledge of the RP right from the time of commencement of CIRP proceedings. Furthermore, the RP in their counter affidavit in CA No 479 of 2019 in the matter of G.S. Buildwell Pvt. Ltd. & Ors. had admitted that it was aware of the cancellation of the lease and this has been reflected in the impugned order as below:

“22. It is submitted that the NOIDA Authority cancelled the allotment of the Land vide its notification dated 13.08.2015 for nonpayment of the amount due and in accordance with the provisions of the Lease Deed between NOIDA and the Corporate Debtor, the allotment was cancelled and the deposit amount was forfeited. It is submitted that as the land allotment has been cancelled, the Corporate Debtor lost its title as

‘lessee’ and the ensuing rights thereof and therefore the Respondent Company and/or the Respondents have no good title over the land on which the constructions/development work has taken place. A copy of the cancellation notification dated 13.08.2015 is annexed as Annexure 7.”

15. Despite knowing that the lease had been cancelled by the Noida authority, merely on the pretext that the cancellation of the lease was not followed up with other measures by the Noida authority, the RP should not have treated the subject plot to be in the possession of the suspended management. Given this set of facts, RP should have been more circumspect and should not have agreed to make the housing project of suspended management on the subject plot a part of the resolution plan. Instead, the RP continued to take all actions including preparation of the IM projecting the cancelled plot as the asset of the Corporate Debtor and getting approval of the resolution plan from the COC as if the said plot existed with the corporate debtor. Such a resolution plan which is premised on the basis that the land belonged to the Corporate Debtor could not have been considered by the COC. In the adjudication of I.A. No. 1592 of 2019, the Adjudicating Authority on 20.02.2020 had noted that the Noida authority had apprised the Bench that the lease of the subject land which constituted the substratum of the housing project of the Corporate Debtor was cancelled and not subsisting. The Adjudicating Authority had therefore correctly raised the question of how it could consider a resolution plan when the lease of the allotted land had already been cancelled by the Noida authority in 2015. The Adjudicating Authority in its order dated 20.02.2020 had directed the RP to file a complaint with the EOW cell of Delhi police and this again shows that RP had not taken this action on his own volition but was goaded into action by the RP.”

33. The findings of the Adjudicating Authority were affirmed by this Tribunal in Order dated 01.05.2024 and the Appeal came to be dismissed in Para 17 & 18 of the Judgment following was held:

Company Appeal (AT) (Insolvency) No. 554 of 2024
With
Company Appeal (AT) (Insolvency) No. 506 of 2024

“17. The above directions of this Tribunal have been complied with and after giving an opportunity to the RP, CoC and SRA to arrive at a settlement qua the Noida authority, the Adjudicating Authority has come to well-reasoned out conclusion that the subject plot cannot be made part of the resolution plan of the Corporate Debtor and the RP has been directed to exclude the same from the resolution plan. In the same breath, the Adjudicating Authority has passed certain observations on the conduct of the RP. There is no quarrel that during the CIRP process, RP is expected to play a pivotal role, so as to effectively assume control of the corporate debtor's management and become responsible for overseeing all aspects of CIRP. RP's underlying mandate is to ensure efficiency, transparency, and accountability within the insolvency resolution process marked by a nuanced equilibrium among creditor rights, stakeholder concerns, and procedural equity. In the present case, the Adjudicating Authority has rightly noted that the role of the RP has leaned towards justifying the wrongful action of the suspended management. We find no error in the findings arrived at by the Adjudicating Authority and affirm the observations made in respect of the unbecoming and unfair conduct of the RP.

18. In the result, given the sequence of events and the facts and circumstances of the case, for the reasons discussed above, we find no reasons to interfere with the impugned order in particular with regard to the observations made on the role of the RP. We find no merit in the appeal. The appeal is accordingly dismissed. No order as to costs.”

34. Learned Counsel for the Appellant tried to distinguish the Judgment on the ground that Appellants being not party in the Appeal which was filed by the RP, the said Judgment does not operate as *res judicata*. It is relevant to notice that Judgment dated 01.05.2024 passed by this Tribunal was delivered in an Appeal which was filed by the RP challenging the findings by the

Adjudicating Authority in the Impugned Order dated 11.01.2024. The said findings by this Tribunal in its Judgment dated 01.05.2024 has been rendered in the same CIRP process and with reference to same Impugned Order, which is now sought to be challenged by the Appellant in this Appeal. The findings rendered by this Tribunal in Judgment dated 01.05.2024 are relevant and can very well be relied by this Tribunal in support of the submissions, which have been advanced by the Learned Counsel for the NOIDA. This Tribunal in its Judgment dated 06.05.2024 have taken a view that Corporate Debtor has no right to the Plot in question which was cancelled on 13.08.2015. RP acted wrongfully in proceeding with the CIRP and Projecting the cancelled Plot as the asset of the Corporate Debtor and getting approval of the resolution plan from the CoC.

35. We, thus conclude that Plot in question i.e., SC-01/D – 1, Sector 79, NOIDA is not part of the assets of the Corporate Debtor and Adjudicating Authority did not commit any error in allowing the Application, I.A. No. 1592/ND/2019 filed by the NOIDA for excluding the Plot in question from the CIRP of the Corporate Debtor.

36. We, thus uphold the Order of the Adjudicating Authority, excluding the Plot in question from the CIRP of the Corporate Debtor.

37. We having held that Plot in question has rightly been excluded from asset of the Corporate Debtor. We need to further dwell upon another aspect

of the matter, i.e., with regard to the role of NOIDA with respect to the Project in question and also need to consider the submissions advanced by highlighting the lapses on the part of the NOIDA in carrying out its duties and obligations.

38. NOIDA is a Statutory Authority constituted by the State of Uttar Pradesh under the UP Industrial Area Development Act 1976. UP Act 6/1976 was enacted to provide for the constitution of the Authority for the development of certain areas in the State into Industrial and Urban Township and for matters connected there with. The functions of NOIDA Authorities are enumerated in Section 6, which are as follows:

“6. Function of the Authority.—(1) *The object of the Authority shall be to secure the planned development of the industrial development areas.*

(2) *Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions :--*

(a) *to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purpose of this Act;*

(b) *to prepare a plan for the development of the industrial development area;*

(c) *to demarcate and develop sites for industrial, commercial and residential purposes according to the plan;*

(d) *to provide infrastructure for industrial, commercial and residential purposes;*

(e) *to provide amenities;*

(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

(g) to regulate the erection of buildings and setting up of industries; and

(h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.”

39. As per Section 6(1) the object of the authority is to secure the Plan development of the Industrial Development Area. NOIDA has acquired the land for the above purpose and leased out to various entities for planned development.

40. Coming to the facts of the present case, the Lease Deed dated 24.10.2011 was entered between NOIDA on the one part and M/s. Kindle Developers Private Limited (Lessee) as other part. Lease was taken for development of sports city for recreational, commercial and residential including group housing. In the Lease Deed dated 24.10.2011, following has been stated:

“...AND WHEREAS the Lessor has agreed to demise and the Lessee has agreed to take on lease the said plot for development of Sports City for recreational, commercial and residential including group housing, subject to the condition that the activities considered to be a public nuisance/hazardous shall not be carried out. Any activity, which creates noise pollution or air pollution or water/chemical pollution, shall not be allowed. All the allowed activities shall be only within the permissible Floor Area Ratio (F.A.R.). It shall entirely be the responsibility of the lessee to obtain all statutory clearances from the concerned Authorities for

his functioning. Lessor shall not be responsible for any consequences arising out of failure of the lessee to receive any such statutory clearance.

The lessee shall carry out development as per norms specified in the Building Regulations and Directions of the NOIDA...”

41. The Lease Deed dated 24.10.2011 read with Correction Deed dated 19.10.2012 Plot No. SC-01/D-1, Sector 79, NOIDA area 40,000 sq. mt was allotted to be developed by the Corporate Debtor. Clause 35 of the Lease Deed provided as follows:

“35. The NOIDA will monitor the implementation of the project. Applicants who do not have a firm commitment to implement the project within the time limits prescribed are advised not to avail the allotment.”

42. In the present case, the layout and plans were approved by the NOIDA in the Year 2013 on 26.06.2013. The homebuyers claimed that they were not made aware of the cancellation of the Plot either by Promoter or by NOIDA. They claimed to have submitted representation to the NOIDA on 10.05.2016 and 29.08.2017, highlighting the problems faced by homebuyers. It is also claimed that Meeting was held on 13.05.2016 with ACEO NOIDA and Director of the Corporate Debtor. It was stated that although possession was to be given by 01.08.2016, and till date only 20-25% of the construction have been completed. Homebuyers also Pleaded that developers have collected huge amount from the homebuyers. Appellants have also brought the Balance Sheets of the Corporate Debtor as on 31.03.2017. It is submitted that in the

Balance Sheets it has been shown that Rs. 170.21 Crores/- have been received from the homebuyers. RTI Application which was filed by one of the homebuyers has already been noticed where several details were asked. In Question No. 4 & Question No. 5, following have been asked by the homebuyers:

“4. Following details for Progress of Work at Site.

A. Has Noida Authority done the Inspection of Site to access the progress of work at site Since January 2015 till date i.e. 05.07.2017, If yes, then please provide the date and details inspection, a certified true copy of site inspection report and findings.

B. Has Noida Authority received any complaint form Buyer(s) for slow progress of work at Site, if yes please provide a certified true copy of action taken by Noida Authority for such complaints.

5. Has Noida Authority has given any legal notice to the builder for cancellation of plot since January 2012 till date i.e. 05.07.2017? If yes, Certified copy of such Notice and copy of all actions taken up by Noida authority after issuance of legal notice.”

43. Answer given by NOIDA on 02.08.2017, with respect to Question No. 4 A and B, is that in file there is no such information available and with regard to Question No. 5, it was stated that the information shall be with Group Housing and Law Department.

44. Homebuyers by their representation has brought into the notice of the NOIDA, the lapse on the part of Lessee.

45. It was after Notice was issued by the Adjudicating Authority on 08.11.2019 to the NOIDA. NOIDA filed the I.A. being I.A. No. 1592/2019, seeking exclusion of the Plot from CIRP of the Corporate Debtor.

46. Hon'ble Supreme Court had occasion to consider the role of Development Authorities, including NOIDA in respect to the Real Estate Projects with regard to protection of interest of the homebuyers. In '**Bikram Chatterjee & Ors.' Vs. 'Union of India & Ors.'** in **(2019) 19 SCC 161**, Hon'ble Supreme Court has made several important observations and guidelines with respect to Real Estate Project and duties of the public authorities. In the above case, also the lease land was granted by NOIDA and Greater NOIDA Authorities to the Amarapali Group. Hon'ble Supreme Court in this reference also noticed Section 14 of the UP Industrial Area Development Act 1976. In Para 96 & 97 following has been observed:

“96. The leases had been granted by Noida and Greater Noida Authorities subject to the provisions contained in the U.P. Industrial Area Development Act, 1976. Section 13 of the U.P. Industrial Area Development Act, 1976 deals with imposition of penalty and mode of recovery of arrears, which states that where any transferee makes any default in the payment of any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building by the Authority or any rent due to the Authority in respect of any lease or where any transferee or occupier makes any default in payment of any amount of fee or tax levied under the Act, in addition to the amount of arrears, a further sum not exceeding that amount shall be recovered from the transferee or occupier by way of penalty. Under Section 13-A, any amount payable to the Authority

under Section 13 shall constitute a charge over the property and may be recovered as arrears of land revenue or by attachment and sale of property in the manner provided under the provisions of the Uttar Pradesh Municipal Corporations Act, 1959 (Act 2 of 1959).

97. *Section 14 provides for the resumption of any site or building and forfeiture of whole or any part of the money if any paid in respect thereof:*

“14. Forfeiture for breach of conditions of transfer.—*(1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority of any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money, if any paid in respect thereof.*

(2) Where the Chief Executive Officer orders resumption of any site or building under sub-section (1) the Collector may, on his requisition, cause possession thereof to be delivered to him and may for that purpose use or cause to be used, such force as may be necessary.”

47. In the above case, Hon’ble Supreme Court observed that Authorities have failed to perform the Statutory Duties cast upon them to take prompt action. In Paragraphs 98, 99 & 100 following has been observed:

“98. *The Authorities have failed to take action under the aforesaid provisions. The Authorities have also failed to perform the statutory duty cast upon them to take prompt action. Merely filing of the case against Unitech Builders by way of petition in this Court did not furnish any grounds to the Authorities to remain silent spectator on the perpetration of fraud committed on the homebuyers by Amrapali Group of Companies. Public trust doctrine requires an affirmative action, which was envisaged not only statutorily but under the*

Scheme also. They were required to ensure that projects were completed within the stipulated period, otherwise, the very purpose of the grant would stand frustrated and colossal loss of public money. Amrapali Group did not pay even the amount due to be paid to the landowners on the part of land acquisition, it did not pay premium annual lease amount interest to the Authorities. They have violated every condition, but still, Authorities were bent upon to condone everything. This reflects absolute dereliction of duty cast upon the Authorities.

99. *The Noida and Greater Noida Authorities and the bankers have permitted diversion of funds of homebuyers and the possession of other assets by Amrapali Group. The buyers' money had been diverted, which was meant for construction on payment of dues of the Authorities in case they were paid timely by the Amrapali Group to the Authorities and to the banks substantively liability would have been cleared. But by their inaction and rather conniving, the buyers were cheated by the Amrapali Group. Authorities did not object when mortgages were effected in favour of banks in violation of conditions. Bankers could not have violated conditions. Now, whatever complete/incomplete structures are there, the Authorities are claiming that buyers have no right and they have the first charge on the structure as they have to recover the amount, only thereafter if anything is left out, can be paid to the buyers. In case the submission is accepted, it would amount to playing further fraud upon the fraud. It was incumbent upon the Authorities as well as the banks to prevent the fraud. Now, if banks, as well as the Authorities, are permitted to recover the amount from the homebuyers' investment, in that case, it would be equally unjust and would be against the conscience of the law and nothing would be left for buyers not even a brick and the structures have come up by investing their money. Law never permits unjust gain based upon fraud. The principle "fraud vitiates" is clearly attracted and such a transaction would become unenforceable and would be against the public trust doctrine. Real estate business can never prosper in case of breach of trust, bankers, Authorities in connivance and the builders*

are permitted to take away the innocent homebuyers' money without being accountable to their action/inaction. From tomorrow huge money will be collected from homebuyers by the builder, banks would act in connivance and the Authorities sleep in slumber, permitting diversion of money of buyers/bankers, etc., and the homebuyers will be paying the dues of all concerned without investment of a penny by builder and rather they are diverting the money of the homebuyers in connivance with the Authorities and bankers and they are left without dream homes. If that is a factual scenario, no court can permit such fraud to be perpetrated. Since "fraud vitiates", the bounden duty of the court is to act as parens patriae not only to save the homebuyers but also to ensure that they are not cheated.

100. *Authorities and bankers have not acted in furtherance of public interest and failed to perform duties enjoined upon them. The kind of fraud that has taken place not only in Amrapali Group of Companies but at large as more than 70% of the various projects have not come up, is alarming to the courts to take affirmative steps with the direction to prevent such frauds, restore the money of homebuyers and to punish incumbents responsible for such act. At the same time, to ensure that buildings are completed. It cannot be denied that lifetime savings of homebuyers have been invested for purchase of a house with the faith and trust they have given the money. The scheme of the Government is to promote the real estate for which land had been acquired, even poor farmers have not been paid the compensation. The land allotted at throwaway prices of 10%, the allotment premium has not been paid and in an illegal manner plots have been allotted on huge amount by builders is another fraud in collusion with the Authorities."*

48. When the NOIDA is obliged to monitor the implementation of the Project, it has to take proactive steps with regard to implementation of the Project. Even after cancellation of the Plot on 13.08.2015, no steps have been

taken by the NOIDA. The CIRP against the Corporate Debtor commenced only on 09.03.2018, NOIDA had approved the layout and map, it is obliged by the statutory provisions to keep a vigil on the construction done by the Lessee, which had to be in accordance with the Plan and directions issued by NOIDA Authority from time to time. Homebuyers are unsecured Financial Creditor of the Corporate Debtor who do not have any charge on the land. It is only the NOIDA Authority who has charge over assets under Section 13-A of the UP Industrial Area Development Act 1976. Under Section 14, which has been noticed by the Hon'ble Supreme Court in the '**Bikram Chatterjee & Ors.**' (**Supra**) NOIDA Authority can cancel the Lease on breach committed by Lessee and resume the site on building and further forfeit the whole on any part of the money which paid in respect thereof.

49. It is relevant to notice that Adjudicating Authority in its Order passed on 20.02.2020 has observed that despite knowing that the lease has been cancelled the Directors/Shareholders continued to accumulate money by several investors. Observation made in the Order dated 20.02.2020 is as follows:

“CA. 1592/2019 has been filed by the Noida Authority. Ld. Counsel has apprised this Bench that the lease of the land, being the substratum of the Corporate Debtor's project has been cancelled vide this letter dated 31.03.2015 for want of deposit of necessary lease rent/charges in terms of the allotment. It is also pointed out that the resolution plan has been approved by the CoC on the basis that the land belongs to the Corporate Debtor.

We fail to understand how a resolution plan can be considered by this bench when the lease of the allotted land has already been cancelled by Noida Authority way back in 2015 itself. Notwithstanding fact that a resolution plan cannot be considered for want of having a stratum, Ld. Counsel for the shareholders has submitted that the entire adjudication has to be considered de novo in the light of Pioneer Judgment.

We are constrained to observe that despite knowing that the lease had been cancelled by Noida Authority, the Directors/Shareholder continued to accumulate money thereafter by duping several investors who nurtured the fond hope of getting a roof over their head and invested their lifetime's money. The Corporate Debtor knew that no project could be implemented or flats constructed and delivered when there was no land. This is considered cheating the unsuspecting allottees. The R.P is directed to look into this matter and file a proper complaint with the EOW Cell of the Delhi Police.

In the meantime the Directors of the corporate debtor are directed to file an affidavit of their personal assets including all their movable and immovable assets.

We may also hasten to observe that given the facts of the case, the CD's prayer for considering the admission of the CIR Process de novo is a blatant instance of wanting to perpetuate their criminal intent of cheating people. We may be persuaded to consider whether the observations of the Hon'ble Apex Court would be applicable to their case for hearing the petition De novo provided the CD is able to show that a lease of a plot for completion of the project subsists in their favour.

Ld. Counsel for the allottees, Resolution Professional and Resolution Applicant pray for an adjournment to take appropriate steps.

To come up for further consideration on 21.04.2020."

50. Order dated 20.02.2020 was challenged by the RP in Comp. App. (AT) (Ins.) No. 605/2020, which Appeal was dismissed holding the Appeal as not maintainable. Adjudicating Authority was directed to decide the Application (I.A. No. 1592/2019, after taking interest of all stakeholders into

consideration). Adjudicating Authority was also directed to record a clear finding in regard to subsistence of the lease deed after providing opportunity and hearing all concern. NOIDA after the said Order has already upheld the cancellation of the lease deed as noted above. The constructions which were carried by the Promoters, Ex-Directors were substantially on the basis of the money received from homebuyers in the Balance Sheet of the Corporate Debtor, as is on record clearly refers to amount of Rs. 170.2 Crores/- received from homebuyers as liability. The Counsel for the homebuyers association submits that amount paid is about Rs. 200 Crores/-. The Balance Sheet also notices the inventory of the Corporate Debtor.

51. It having been held that the Plot in question and the Project is not the part of the CIRP of the Corporate Debtor, the said lease land and the Project has now to be dealt by the NOIDA Authority, keeping in view the Order of the Hon'ble Allahabad High Court passed on 09.08.2023 in ***Writ Petition (Civil) No. 26400/2023***, as extracted above. The Plot in question having been held to be excluded from assets of the Corporate Debtor. Now there is no impediment in the NOIDA taking possession of the assets along with the structure, standing thereof and take further steps in accordance with law. For taking steps, it is also necessary for the NOIDA Authority to take steps for early disposal of ***Writ Petition (Civil) No. 26400/2023***, in which there is restraint Order that NOIDA till the next listing shall not create third-party interest.

52. Be that as it may, it is open for the NOIDA Authority to bring all subsequent events including the CIRP of the Corporate Debtor and Orders passed by the Adjudicating Authority excluding in the Assets from the CIRP of the Corporate Debtor before the High Court and pray for appropriate direction.

53. We have noticed above that the Resolution Plan of the Corporate Debtor was approved by the CoC on 04.12.2019 and I.A. was also filed by the RP under Section 30(6) for approval of the Plan being I.A. No. 1664/2019. In view of the Impugned Order passed by the Adjudicating Authority on 11.01.2024, the very substratum of the Resolution Plan being knocked out, the Application I.A. 1664/2019 has become infructuous and cannot be proceeded any further. We, thus are of the view that I.A. 1664/2019 also needs to be dismissed in consequence of the Order dated 11.01.2024.

54. The CIRP against the Corporate Debtor has commenced on 08.03.2018 and more than 6 Years have elapsed the period of 330 days which is permissible period for CIRP having already come to an end the present is the case to exercise the jurisdiction under Section 33(1) directing for Liquidation of the Corporate Debtor. As observed above, NOIDA Authority which is obliged to monitor the implementation of the Project has to take steps to protect the interest of the homebuyers also. Subject to Orders passed by the High Court in pending Writ Petition, as noted above NOIDA Authority can take

steps for completion of the Project by another entity/Lessee by taking appropriate measures in the Lease Deed regarding completion of the Project in question to protect the interest of the homebuyers. The homebuyers who are victim of circumstances and the lapses and deceit committed by Ex-Promoters and Directors have to be given protection by incorporating suitable Clauses in the steps which need to be taken to further completion of Project.

55. In addition to the upholding the Impugned Order dated 11.01.2024 we need to pass further consequential Order to protect the interest of all stakeholders, especially the homebuyers who were suffering due to non-completion of the Project.

56. In result, both the Appeals are disposed of in following manner:

- i. Order dated 11.01.2024 passed by the Adjudicating Authority, allowing I.A. No. 1592/ND/2019 for excluding the Plot SC-01/D-1, Sector 79, NOIDA is upheld.
- ii. In consequence of the Order dated 11.01.2024, the I.A.1664/2019 filed by the RP under Section 30(6) for approval of the Resolution Plan is rejected.
- iii. CIRP period having long expired, Order under Section 33(1) is passed requiring the Corporate Debtor to be liquidated. From the list of Insolvency Professional maintained by the IBBI, Mr. Vikram Bajaj (Registration No.: IBBI/IPA-002/IP-N00003/2016-2017/10003, Email:

bajaj.vikram@gmail.com) is appointed as Liquidator to carry forward the process of Liquidation of the Corporate Debtor.

- iv. NOIDA may take steps for early disposal of Writ Petition pending in the Hon'ble Allahabad High Court being **Writ Petition (Civil) No. 26400/2023**, by bringing subsequent developments and proceedings on record of the Writ Petition.
- v. Subject to Orders passed in the above Writ Petition, NOIDA Authority may proceed to take steps for taking possession of the assets which belong to the NOIDA.
- vi. Subject to the Orders passed by the Hon'ble High Court, NOIDA Authority may take steps for getting the Project completed either by letting out the land to new entity or take such other measures as may be required in the interest of NOIDA as well as the homebuyers.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali/Himanshu