

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

CA-1114/2018

In

IB-02(PB)/2017

Order under Section 66 r/w Section 25(2)(j) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF IB-02(PB)/2017:

Mr. Nikhil Mehta Financial Creditor

Vs.

M/s. AMR Infrastructures Limited Corporate Debtor

AND IN THE MATTER OF CA-1114/2018:

Mr. Vikram Bajaj Applicant

Vs.

M/s. R.C. Info Systems Limited and 19 Ors. Respondents

Order Pronounced On: 11.02.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant/RP : Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Krishna Sharma, Advs. Along with Mr. Vikram Bajaj, RP

For Respondent : Mr. Zorawar Singh, Ms. Peehu Singh, Adv. Mr. Shubham, Adv.

Ms. Amrita Sarkar, Advs.

For the AMRIL : Mr. Barinder Bhatia, Adv.

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For the GNIDA : Mr. U N Singh, Adv.

For the SRA : Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakriti Gupta, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by the Interim Resolution Professional/Resolution Professional under Section 66 read with Section 25(2)(j) of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:

- (a) Allow the present application.*
- (b) Pass an order declaring the entire rights arising under the lease deed dated 21.07.2006 between RCISL and GNOIDA shall belong to and be exercised by the Corporate Debtor and that the project developed area pertaining to plot No. Tz-09, Pocket Nil, Sector-Tech Zone (I.T. Park), situated in Greater Noida Industrial Development Authority (GNOIDA), District Gautam Budh Nagar, admeasuring 1,00,857 square meter shall belong the Corporate Debtor, as the same has been entirely funded by the funds raised from the financial creditors, thus nullifying the right to 15% Project Build Area in the terms of the said MOU dated 31.07.2006.*
- (c) Pass an order for consequential direction to Respondent No.1 and GNOIDA to transfer the said lease deed in favour of the Corporate Debtor and that RCISL, promoters of the Corporate Debtor and RCISL and present and past directors of the Corporate Debtor and RCISL shall be personally liable to bear all incidental charges for legal documentation, stamp duty, transfer fee, etc. in relation to such transfer and also direct Respondent No.1 to roll back Rs. 12.31 crore owed to the Corporate Debtor arising out of the transaction and the claim of RCISL be rejected.*

- (d)** *Direct the RCISL, promoters of the Corporate Debtor and RCISL and present and past directors of the Corporate Debtor and RCISL to deposit such sum with this Adjudicating Authority as deemed necessary in facts and circumstances of the case, which may be utilised by the applicant Resolution Professional for affecting all costs and charges including legal documentation, stamp duty, registration fee, transfer fee, etc. in relation to transfer of rights under the said lease deed to the Corporate Debtor.*
- (e)** *Direct GNOIDA to consider waiver of the conditions of clause (cc) of the lease deed dated 21.07.2006 in respect of the bookings already received by the Corporate Debtor which mandate that booking for the residential area can only be done for IT Personnel, as a large number of bookings have already been made without verification of the said aspect;*
- (f)** *Direct that RCISL, promoters of the Corporate Debtor and RCISL and present and past directors of the Corporate Debtor and RCISL, shall be personally liable for all the liabilities resulting on account of delay in execution of the project as per lease deed dated 21-7-2006 and for breach of any other covenants of the said lease deed dated 21-7-2006 and consequentially, direct that GNOIDA may recover the said dues from the RCISL, promoters of the Corporate Debtor and RCISL and present and past directors of the Corporate Debtor and RCISL by attachment of their personal assets in view of the personal liability established by the orders.*
- (g)** *Direct GNOIDA to consider grant of additional period of 3 years for the completion of the project without any additional charges, which shall be reasonably required by any potential Resolution Applicant to complete the project.*
- (h)** *pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

A. Brief Background of the Case:

2. This Adjudicating Authority vide order dated 10.05.2018 had admitted the C.P. No. (IB)-02(PB)/2017, filed by the Financial Creditor, Mr. Nikhil Mehta under Section 7 of IBC, 2016 and initiated the Corporate Insolvency Resolution Process (CIRP) against M/s. AMR Infrastructures Limited, the Corporate Debtor. Consequently, the moratorium was declared and Mr. Vikram Bajaj was appointed as the Interim Resolution Professional.
3. This Adjudicating Authority in the said order has specifically directed the Interim Resolution Professional to perform all his functions, contemplated *inter-alia* under Section by Sections 15,17,18,19, 20 & 21 of the Code. The Interim Resolution Professional made a public announcement in Form-A dated 11.05.2018 on 15.05.2018 in Business Standard (English) and Business Standard (Hindi) in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The last date for submission of proof of claim was specified as 24.05.2018.
4. The Interim Resolution Professional filed C.A. No. 725(PB)/2018 seeking the appointment of two authorized representatives in terms of Section 21(6) of the Code and in terms of amendment w.e.f. 06.06.2018 read with regulation w.e.f. 03.07.2018 and Circular issued by IBBI dated 13.07.2018. The said application was allowed by this Adjudicating Authority vide order dated 14.08.2018 and Mr. Alok Kaushik, was appointed to represent the class of creditors for Real Estate Commercial units and Ms. Maya Gupta was appointed to represent the class of creditors for Real Estate Residential Units.
5. The Applicant requested the promoters/directors to provide and give access to various information but the promoters/directors failed to provide and give access to information to the Applicant. Thus, the Applicant filed an application under Section 19(2) of the Code on 23.08.2018, seeking directions to the members of the suspended

board of directors of the Corporate Debtor to cooperate and give access to all documents relating to the Corporate Debtor.

6. Thereafter, the Applicant Resolution Professional took steps in accordance with the provisions of Section 25 of the Code to preserve and protect the assets of the Corporate Debtor and to run the business of the Corporate Debtor as a going concern. The Applicant also filed applications for avoidance transactions in accordance with Chapter III of the Code, under Sections 43, 45, 49, 50 and 66 of the Code which deal with preferential transactions, undervalued transactions, transactions defrauding creditors, extortionate credit transactions and fraudulent and wrongful trading.
7. It is the case of the Applicant that while examining the financials of the Corporate Debtor it came to his knowledge that certain business transactions of the Corporate Debtor have been carried for fraudulent purposes and with an intent to defraud the creditors of the Corporate Debtor.

B. Submissions of the Applicant:

8. The brief facts relating to the transactions under Section 66 of the Code are as under:
 - (a) The Corporate Debtor i.e. M/s. AMR Infrastructures Limited was incorporated on 15.06.2006. The main object as per the Memorandum and Articles of Associations is as under:

“To carry on in India elsewhere either alone or jointly with one or more person, government, local or other bodies, the business to construct, build, alter, acquire, convert, improve, design, erect, establish equip, develop, dismantle, pulldown, turn account, furnish, level, decorate, fabricate, install, finish, repair, maintain, search, survey, examine, taste, inspect, locate, modify, own, operate, protect, promote, provide, participate, reconstruct, grout, dig, excavate, pour, renovate, remodel, rebuild, undertake, contribute, assist and to act as civil engineer, architectural

engineer, interior decorator, consultant, advisor, agent, broker, supervisor, administrator, contractor, subcontractor, turnkey contractor and manager of all types of constructions & development work in all its branches such as roads, ways, culverts, dams, bridges, railways, tramways, water tanks, reservoirs, canals, wharves, warehouses, factories, buildings, structures, drains, sewage works, water distribution and filtration system, docks, harbours, piers, irrigation works, foundation works, flyovers, airports, runways, rock drilling, aquaducts, stadium, hydrolic, sanitary works, power supply works, power stations, hotels, hospitals, dharamshalas, multistories, colonies, complexes, housing projects and other similar work and for the purpose to acquire, hand over, purchase, sell, own, cut to size, develop, distribute, or otherwise to deal in all sort of lands and building and to carry on or any of the foregoing activities for building material, goods, plants, machineries, equipment's, accessories, parts, tools, fitting, articles, material and facilities of whatsoever nature and to do all incidental acts and things necessary for the attainment of foregoing objects."

9. The promoters/shareholders of the Corporate Debtor are as under:

S. No.	Name	Address	No. of Shares	Face Value	Value of Shares
1.	Arun Kumar Soni	59/20, Second Floor, Prabhat Road, WEA, Karol Bagh, New Delhi-110005	15000	10	1,50,000
2.	Ram Chander Soni	59/20, First Floor, Prabhat Road, WEA, Karol Bagh, New Delhi-110005	15000	10	1,50,000
3.	Prashant Soni	59/20, Third Floor, Prabhat Road, WEA, Karol	15000	10	1,50,000

		Bagh, New Delhi-110005			
4.	Naveen Soni	59/20, Basement Floor, Prabhat Road, WEA, Karol Bagh, New Delhi-110005	15000	10	1,50,000
5.	Ashish Gupta	292, Tagore Park (Extension), Model Town I, New Delhi-110009	15000	10	1,50,000
6.	Usha Gupta	292, Tagore Park (Extension), Model Town I, New Delhi-110009	15000	10	1,50,000
7.	Ankit Gupta	H-472, New Rajinder Nagar, Delhi -110060			
8.	Krishan Kumar	53/39, Ramjas Road, Karol Bagh, New Delhi -110005	15000	10	1,50,000
		TOTAL	1,20,000	10	12,00,000

10. The present and past directors of the Corporate Debtor are as under:

DIN/PAN	Name	Begin date	End date
00138579	KRISHAN KUMAR	04/10/2006	31/03/2016
00143264	ANKIT GUPTA	05/08/2014	28/03/2016
02135182	DEEPAK KUMAR	18/11/2011	--
06952797	MADHUR VERMA	05/10/2016	01/11/2017
07131830	RAJ KUMAR SONI	23/03/2015	--

11. It is the case of the Applicant-Resolution Professional that the promoters/shareholders of the Corporate Debtor i.e. M/s. AMR Infrastructures Limited also promoted another Company namely M/s. RC Info Systems Ltd. (RCISL) i.e. Respondent No. 1 herein on 07.03.2005.

The main business objectives as per the Memorandum and Articles of Associations are as under:-

- “1. To establish and carry on in India or elsewhere the business of telecommunication software embedded technologies, software product and network security product.
2. To carry on the business of web sites and portal development, set up software park, techno park, electronic trading of goods and services, information technology enabled remote service comprising of web based customer interaction, email response service, back office operations, transaction processing, web based remote education, transmission of data including text, sound and video, online delivery of digital content, electronic fund transfer electronic share trading, electronic bills including commercial auction collaborative design and engineering online sourcing, direct internet marketing, and after sale service, secure electronic payment service in areas B2C, B2B, legacy integration, web enterprise application, frameworks, development tools and products support, enterprise resources planning (ERP), customer relationship management (CRM) and medical transcription.
3. To carry on the business in India or elsewhere the business of data integration, format conversion and integration digital data publishing, GIS training and consultation, database development, map designing, surveying/land planning, cadastral/land records, database development, internet GIS solution, data collection, (manual digitising, scanning, field surveys) data conversion and integration and remote sensing.
4. To provide solution/consultancy to all type of industries in the field of information technology.”

12. The promoters/shareholders of RCISL i.e. Respondent No.1 Company are detailed as under:-

S. No.	Name	Address	No. of Shres	Face Value	Value of Shares
1.	Arun Kumar Soni	59/20, Third Floor, Prabhat Road, WEA, Karol Bagh, New Delhi-110005	16666	10	1,66,660
2.	Ram Chander Soni	59/20, First Floor, Prabhat Road, WEA, Karol Bagh, New	16668	10	1,66,680

		Delhi - 110005			
3.	Manoj Kumar Soni	59/20, Ground Floor, Prabhat Road, WEA, Karol Bagh, New Delhi-110005	16666	10	1,66,660
4.	Raj Rani	59/20, Ground Floor, Prabhat Road, WEA, Karol Bagh, New Delhi-110005	12500	10	1,25,000
5.	Usha Devi	53/39, Ramjas Road, Karol Bagh, New Delhi - 110005	12500	10	1,25,000
6.	Usha Gupta	292, Tagore Park (Extension), Model Town I, New Delhi 110009	5000	10	50,000
7.	Rashmi Gupta	292, Tagore Park (Extension), Model Town I, New Delhi 110009	5000	10	50,000
8.	Abha Gupta	292, Tagore Park (Extension), Model Town I, New Delhi 110009	5000	10	50,000
9.	Radha Gupta	292, Tagore Park (Extension), Model Town I, New Delhi 110009	5000	10	50,000
10.	Laxmi Rani	292, Tagore Park (Extension), Model Town I, New Delhi 110009	5000	10	50,000
		TOTAL	1,00,000	10	10,00,000

13. The Directors of Respondent No.1 Company are as under:-

DIN/PAN	Name	Begin date	End date
00097865	RAM CHANDER SONI	07/03/2005	-
00097882	MANOJ KUMAR SONI	07/03/2005	-

- 14.** It is submitted that upon examining the records of the Corporate Debtor as available with the Applicant, it is observed that Respondent No.1 Company i.e. RCISL entered into a lease deed dated 21.07.2006 with Greater Noida Industrial Development Authority, a body corporate constituted under Section 3 read with Section 2(d) of the Uttar Pradesh Industrial Development Area Act, 1976 for leasing a plot of land, mentioned as Plot No. Tz-09, Pocket Nil, Sector Tech Zone (I.T. Park), situated in Greater Noida Industrial Development Authority (GNOIDA), District Gautam Budh Nagar, admeasuring 1,00,857 square meters, for a term of 99 years which was registered on 25.07.2006. The total consideration for the said lease as per the lease deed was Rs. 8,16,94,170/- (Rupees Eight Crore Sixteen Lacs Ninety Four Thousand One Hundred Seventy Only), of which Rs. 2,45,08,251/- (Rupees Two Crore Forty Five Lacs Eight Thousand Two Hundred Fifty One Only) was acknowledged and the balance amount of Rs. 5,71,85,915/- was stated as payable in 12 instalments with the interest at the rate of 12% p.a. with last instalment payable on 21.05.2011. The terms of lease further required the lessee to pay lease rent of Rs. 20,42,355/-.
- 15.** As per the terms of the said lease deed dated 21.07.2006, RCISL was required to develop "the project and facilities" as described in the lease deed for which RCISL was required to invest a minimum of Rs. 100 crore excluding the land cost, in the first three years from the date of execution of the lease deed. Further RCISL was required to invest a minimum of Rs. 266.72 crore, excluding the land cost, in seven years from the date of execution of the lease deed. The Corporate Debtor and RCISL entered into an unregistered notarized Memorandum of Understanding dated 31.07.2016 for the development of the said plot and setting up a Technology Park named as 'Kessel-i-Valley' in IT Industries and IT enabled services project.
- 16.** In terms of the said MoU dated 31.07.2006, the Corporate Debtor was required to pay Rs. 12 crore within one month of signing the MOU to

RCISL. Further, Rs. 3 crore was to be paid as the interest-free security deposit, out of which Rs. 2,95,20,000/- had been paid before entering the said MOU and receipt of the same was acknowledged in the said MOU. Further, Rs. 9 crore was stated as refundable. In addition, the Corporate Debtor was required to pay Rs. 25 crore refundable security deposit after taking vacant physical possession of the land.

- 17.** Further the aforesaid deposit of Rs. 3 crore was to be refunded by RCISL on satisfactory completion of the building as per the approved drawing and designs by the Greater NOIDA Authority. Further, the deposit of Rs. 34 crore (Rs. 9 crore + Rs. 25 crore) was agreed to be refunded by RCISL in subsequent stages as mutually decided from time to time. In terms of the said MOU, the Corporate Debtor was required to develop the said plot from the initial stage till the complete final stage, which included obtaining sanction of the plans. Further in terms of the MOU, the Corporate Debtor was also to book the space and receive the booking amount and ensure compliance with the said Lease Deed. Further, in terms of MOU it was agreed that the Corporate Debtor and RCISL shall share the Project Build Area in the ratio given hereunder:

- i. RCISL-15%*
- ii. Corporate Debtor - 85%*

- 18.** Further, the books of accounts of the Corporate Debtor show that the Corporate Debtor transferred Rs. 37.70 crores to RCISL between the months of June 2006 to December 2006 from time to time. It is submitted that the relevant documents as well as the books of accounts of the Corporate Debtor reveal that consideration paid by the RCISL to GNOIDA for execution of the lease deed was largely funded by the Corporate Debtor and the MOU was used as a conduit to achieve the same. The total consideration payable by RCISL for entering the said lease deed dated 21.06.2007 in respect of the said plot was Rs. 8.16 crores, whereas RCISL received Rs. 37 crores from

the Corporate Debtor by entering the said MOU dated 29.07.2017 in the guise of the refundable deposit payable under the said MOU.

- 19.** It is the case of the Applicant-Resolution Professional that the Corporate Debtor transferred Rs. 2.70 crores to RCISL between 24.06.2006 to 18.07.2006 i.e. before the execution of the lease deed, to enable the RCISL to pay the upfront consideration of Rs. 2.45 crores for entering the lease deed. A further sum of Rs. 0.25 lacs were transferred on 29.07.2006. The said MOU dated 31.07.2006 also records that the Corporate Debtor had paid RCISL Rs. 2.95 crores before execution of the MOU. The Corporate Debtor also transferred Rs. 35 crores to RCISL between August 2006 to December 2006. These transactions clearly demonstrate that the Corporate Debtor funded the entire consideration payable by RCISL for executing the said lease deed. It is also submitted that the RCISL paid only a fraction of the total cost to GNOIDA i.e. Rs. 2.45 crores i.e. approximately 30% of Rs. 8.16 crores which was also paid through funds provided by the Corporate Debtor.
- 20.** Further, the MOU also created beneficial rights in favour of RCISL to 15% of the Project Build Area, even though the Corporate Debtor was required to do all the activities related to the project. It is apparent from the records that the RCISL had funded the acquisition of the plot through the funds provided by the Corporate Debtor and passed on the development and execution of the project to the Corporate Debtor and yet created beneficial rights of 15% Project Build Area and took out funds from the Corporate Debtor.
- 21.** The financial statements of the Corporate Debtor for the financial year 2005-06 reflect that it had raised Rs. 95.43 crores as advance from the customers during the financial year 2005-06, whereas its share capital of the Corporate Debtor was only Rs. 11 lacs, which shows that the Corporate Debtor raised funds from several Financial Creditors being the allottees of the real estate project on promise of

assured returns and the said amount was remitted to the RCISL as interest free unsecured loans under the guise of the MOU.

- 22.** It is submitted that Respondent No.1 has not returned the deposit of Rs. 3 crores. The deposit of Rs. 9 crores which was a refundable deposit in the terms of the said MOU has also not been returned to the Corporate Debtor. Even though the terms of the MOU provide that the deposit of Rs. 9 crores as the refundable security deposit, the account heads in the Books of Accounts of the Corporate Debtor and the Audited Balance Sheet of RCISL for the financial year 2006-07 record the same as 'Advance Against Land Greater NOIDA'. The Respondent No.1 refunded the deposit of Rs. 25 crore spread over 2007- 2010. A sum of Rs. 12 crore provided as deposits and further advances of Rs. 31.96 lacs aggregating to Rs. 12.31 crore are still outstanding to be received by the Corporate Debtor from RCISL since July/August 2006 which is 1.5 times the total cost of the said plot even without factoring in the time value of money.
- 23.** It is submitted that RCISL has filed a claim with the Applicant, Resolution Professional wherein RCISL has raised a claim aggregating to Rs. 122.63 crores in respect of the 15% project build area under the said MOU. The RCISL has categorically admitted in the claim that it owes Rs. 12 crores to the Corporate Debtor received in the terms of the said MOU and has claimed it as a set-off of mutual debt.
- 24.** It is submitted that a review of the financial statements of the RCISL from the financial year 2005-06 to the last available financial statements on the website of the Ministry of Corporate Affairs for the financial year 2013-14, clearly demonstrates that RCISL did not carry any business activity since incorporation in pursuance of the objects for which it was incorporated. A summary of the business activity of RCISL for the financial year 2004-05 to 2013-14 is provided hereunder:

S. No.	Year	Sales	Other Income	TOTAL
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1.	FY 2005-06	NIL	NIL	NIL
2.	FY 2006-07	NIL	18,60,238.92	18,60,238.92
3.	FY 2007-08	NIL	15,86,431.01	15,86,431.01
4.	FY 2008-09	NIL	2,40,693.00	2,40,693.00
5.	FY 2009-10	NIL	NIL	NIL
6.	FY 2010-11	NIL	NIL	NIL
7.	FY 2011-12	NIL	NIL	NIL
8.	FY 2012-13	NIL	NIL	NIL
9.	FY 2013-14	NIL	NIL	36,88,269.93

25. It is, therefore, contended that RCISL was not incorporated for any real business activity, but as a part of a design whereby the assets and liabilities are parked in different corporate entities belonging to the same set of promoters, with an intent to defraud the financial creditors. Thus, the RCISL is a related party of the Corporate Debtor which is evident from the financial statements of the Corporate Debtor for the financial year ending 31.03.2011. Similarly, the Corporate Debtor was disclosed as a 'related party' in the financial statements of the RCISL for the year ending 31.03.2013. It is also submitted that 403 complaints have been filed by the various Financial Creditors against the promoters and directors of the Corporate Debtor with the Economic Offences Wing, which has been registered as FIR 173/2015 against Mr. Ram Chander Soni, Mr. Krishan Kumar, Mr. Prashant Soni, Mr. Naveen Soni, Mr. Ashish Gupta, Mr. Kapil Kumar and Mr. Ankit Gupta and the charge-sheet has been filed against the accused persons.
26. It is also submitted that the Investigating Authorities got the accounts of the Corporate Debtor for the period up to 31.03.2015 reviewed by their empanelled Chartered Accountant M/s. V. C Gautam & Co. and filed a supplementary charge sheet on the basis of the said audit report.

- 27.** It is therefore submitted that the facts and circumstances as enumerated above, evidently demonstrate that the MOU entered by the promoters and directors of the Corporate Debtor and its related party i.e. Respondent No.1 have been entered to defraud its own creditors i.e. the investors (Real Estate Residential and Commercial) who have invested their hard-earned money into the project and the Respondents have diverted the funds raised from the said investors i.e. financial creditors to its related entity and further entered into covenants for unjust enrichment of the related entity RCISL.
- 28.** The Applicant on the basis of the above averments has prayed to the Adjudicating Authority to lift the corporate veil and pass appropriate directions.

C. Submission of the Respondent Nos. 1 to 5:

- 29.** The Respondent Nos. 1 to 5 (M/s. R.C. Infosystem Limited, Mr. Arun Kumar Soni, Mr. Ram Chander Soni, Mr. Prashant Soni, Mr. Naveen Soni) and 13 (Mr. Manoj Kumar Soni) have filed their reply affidavit denying the allegations made by the Applicant and submitted that no such transaction was carried out by the answering Respondents with the intent to defraud the creditors of the Corporate Debtor or for any fraudulent purpose.
- 30.** It is also submitted that the Applicant is trying to mislead this Adjudicating Authority to believe that the MoU entered by the Respondent No. 1 and the Corporate Debtor was done in order to divert funds in related entities. To further buttress its argument, the Applicant is relying on the charge sheet filed by EOW in FIR 173/2015. It is submitted by the answering Respondents that the FIR and charge sheet has been filed by the Investigating agencies at the behest of certain customers/investors who in order to blackmail and create pressure to extract money from answering Respondents, have pressured the investigating agencies to file same. It is submitted that the said matter is yet to see the light of trial and there is very high

possibility that all the accused named thereunder shall be exonerated as soon as the defence is led by them in the matter.

- 31.** It is further submitted that the transactions which the Applicant is referring to as fund diversion transactions are actuality bone fide business transactions carried in the ordinary course of business and are in compliance with the law of land and have been duly reflected and finds mentioned in the audit accounts and reports and also submitted to statutory authorities, so there is no concealment of facts at any point of time.
- 32.** It is also submitted that the Applicant in a mala fide manner is trying to take away the rights and assets belonging to the Respondent No. 1 Company pertaining to Plot No. Tz-09, Pocket Nil, Sector-tech Zone (IT Park) situated in Greater Noida Industrial Development Authority, District Gautam Budh Nagar granted to them under the lease deed dated 21.07.2006 executed between the Respondent No. 1 herein and GNOIDA.
- 33.** It is submitted that under the said lease deed, the Respondent No. 1 herein was obligated to develop the project and facilities for IT industries and related services in the aforesaid plot described hereinabove and also invest huge sums of money in hundreds of crores excluding land cost as per the terms of the lease deed.
- 34.** In order to provide high quality, ready to use office spaces, the Respondent No. 1 herein was looking to utilize the expertise of a developer in carrying out the development work in terms of the lease deed. Thereafter, the Respondent No. 1 herein was approached by the Corporate Debtor and they offered to provide its services and investment for the purpose of development of the project.
- 35.** The Respondent No. 1 herein and the Corporate Debtor decided to enter into a business transaction and accordingly, executed an MoU dated 31.07.2006 to record the terms thereunder. In terms of the same, the Respondent No. 1 agreed to share the project Build Area in

the ratio of 15:85 (15% being with the Respondent No. 1 and 85% with the Corporate Debtor) subject to the Corporate Debtor investing money for the development of the project. Further, it was agreed that the Corporate Debtor shall develop the said plot as its own cost, initiative and expenses from the initial stage till completion and will also book space and receive the booking amount from the customers/investors. The development was to be carried out in accordance with the sanctioned plans.

- 36.** The Corporate Debtor agreed to initially pay sum of Rs. 12 crores within one month of execution of the MoU which was a refundable and also a further refundable sum of Rs. 25 crores after taking the vacant and physical possession of the land. It was further agreed that the said sums will be pro rata refunded by the Respondent No. 1 in subsequent stages as decided by the parties from time to time.
- 37.** It was further agreed that the development of the Technology Park should be completed within the following period and the time lines were mentioned in the MoU.
- i. Phase I (defined in MoU) within 3 years from 21.07.2009 which expired on 20.07.2009.
 - ii. Phase II (defined in MoU) within 18 months after expiry of 3 years of phase I expired on 19.01.2011.
 - iii. Phase III (defined in MoU) within 18 months after expiry of 3 years of phase II expired on 18.02.2013.
- 38.** The Corporate Debtor acting pursuant to the terms of the MoU transferred the money to the account of the Respondent No. 1. It is submitted that Respondent No. 1 returned Rs. 25 crores as refundable security to the Corporate Debtor in accordance with the Memorandum of Understanding (MoU) during the period between 01.04.2007 and 22.06.2010.
- 39.** The completion certificate for phase 1 and partially for phase II was granted on 07.12.2012. However, the final completion certificate for

phase II and III have not been obtained by the Corporate Debtor. The Respondent No. 1 after adjusting Rs 12 crores has a claim of Rs. 122,63,00,000/- crores from the Corporate Debtor. Accordingly, the Respondent No. 1 submitted its claim form to the Interim Resolution Professional.

40. It is completely wrong to suggest that the Respondent No. 1 has created beneficial rights of 15% project build area by entering into the said MoU and thus unjustly enriching themselves. In fact, the Respondent No. 1 has suffered damages because of delays.
41. The Applicant cannot take away the rights and assets which belong to the Respondent No. 1 Company based on conjunctures and hypothesis and seek relief under Section 66 of the Code against the answering Respondents. The Respondent No. 1 is a separate legal entity and its rights and obligations cannot be abridged by way of a sham and frivolous application.
42. It is submitted that the Respondent No. 1 Company entered into a lease deed with the Greater Noida Industrial Development Authority at its own discretion to develop the project and facilities for IT industries and related services in the said plot.
43. It is denied that the review of the documents annexed with the present application and books of accounts of the Corporate Debtor reveals that the consideration paid by the Respondent No. 1 to GNOIDA for execution of the lease deed was largely funded by the Corporate Debtor and the MoU was only used as a conduit to achieve the same. It is submitted that the lease deed was entered on 21.07.2006 and the Respondent No. 1 had already paid the initial amount of Rs. 2,45,08,251/- to GNOIDA at time of execution of the lease deed whereas the Corporate Debtor and Respondent No. 1 entered into the aforesaid MoU only later. This shows, that the transaction was carried out by the Respondent No. 1 entity on its own and not in connivance with the Corporate Debtor as has been alleged in the application.

- 44.** It is denied that the Corporate Debtor transferred Rs. 2.95 crores to RCISL before the date of execution of the lease deed in terms of the record filed and also in terms of the claim form. It is revealed that the aforesaid amount of Rs. 2.95 crores was paid to the Respondent No. 1 on the date of execution of the MoU i.e. 31.07.2006 and not before as alleged in the application. It is also denied that the entire consideration payable by RCISL under the lease deed was funded by the Corporate Debtor. In fact, that Respondent No. 1 between 01.04.2007 to 22.06.2010, returned Rs. 25 crores, refundable security to the Corporate Debtor in terms of the MoU. The fact that the Respondent No. 1 Company has refunded the substantial invested amount to the Corporate Debtor clearly shows its bonafide intentions to adhere to its independent business relationship and ethics with the Corporate Debtor. It is denied that the MoU was used as a conduit to transfer funds which were nearly 5 times the cost of the land.
- 45.** It is submitted by the answering Respondents that the FIR and the charge sheet has been filed by the investigating agencies at the behest of certain customers/investors who in order to blackmail and create pressure to extract money from answering Respondents, have pressured the investigating agencies to file same. The customers/investors have restored to unnecessary litigation with ulterior motives.

D. Submission of the Respondent Nos. 8 and 14:

- 46.** The Respondent Nos. 8 (Mr. Ankit Gupta) and 14 (Ms. Raj Rani) have filed the reply affidavit denying the allegations made by the Applicant and submitted that the Memorandum of Understanding (MoU) was entered into between the Corporate Debtor and Respondent No. 1 herein, for the purpose of joint development of Plot No. TZ-09 situated at Tech Zone, measuring 100857 sq. mtr. situated at Greater Noida (UP) for utilizing the same for development and settling up a

Technology Park named Keseel-i-Valley in IT industries and IT enabled services project.

47. As per terms of the MoU, the Corporate Debtor herein was given all rights of constructions/development/marketing along with rights for receiving booking and allotment of the entire project and the Corporate Debtor had received booking amounts and allotted spaces to the allottees/investors.
48. As per the MoUs entered into between the Corporate Debtor and the investors/allottees, the creditors were made aware of the fact that the Corporate Debtor herein was only the developer of the project. They were further made aware that the land in question was allotted to the Respondent No. 1 Company, and by MoU entered into between the Corporate Debtor and the Respondent No. 1 Company, the Corporate Debtor herein was the authorized developer of the project.
49. The arrangement between the Corporate Debtor and the Respondent No. 1 Company was not fraudulent in nature or for the unjust enrichment of the Respondent No. 1 Company as has been alleged.
50. The Corporate Debtor has demonstrated the true and correct picture to its financial creditor/real estate investors. The commercial arrangement entered into between the Corporate Debtor and the Respondent No. 1 Company was never to defraud its creditors thus lifting of the corporate veil would not be warranted in the instant case.

E. Submissions of the Respondent No. 9:

51. The Respondent No. 9 (Mr. Krishan Kumar) has filed the reply affidavit denying the allegations made by the Applicant and submitted that no such transaction was carried out by the answering Respondent with the intent to defraud the Creditors of the Corporate Debtor or for any fraudulent purpose. The contents of the application filed by the Applicant are a figment of his imagination and if allowed would result in vitiation of the entire Resolution Process which is against the

mandate of the Code and the purposes for which the Applicant/Resolution Professional has been appointed. The answering Respondent is only 12.5% shareholder in Corporate Debtor.

- 52.** It is contended that the transactions which the Applicant is referring as fund diversion transactions are in actual the bona fide business transactions carried in the ordinary course of business and are in compliance with the law of land and has been duly reflected and finds mention in the audit accounts and reports and also submitted to statutory authorities, so there is no concealment of facts at any point of time and the applicant's version of events is nothing but an effort on its part to build its case on surmises and conjectures without any established evidences.

F. Submissions of the Respondent No. 20:

- 53.** The Respondent No. 20 (Greater Noida Industrial Development Authority) has filed the reply affidavit denying the allegations made by the Applicant and submitted that Plot No. Tz-09, Pocket NIL, Sector-Tech Zone (I.T. Park), area situated in Greater Noida Industrial Development Area District, Gautam Budh Nagar admeasuring 100857.00 Sq. meter is available with M/s. R.C. Info Systems Pvt. Ltd. on a leasehold basis as per the terms and conditions of the lease deed dated 21.07.2006 and as per Letter of Reservation-Cum-Allotment dated 23.03.2005. The subject plot was allotted to and stands in the name of M/s R.C. Info Systems Pvt. Ltd. and not of M/s. AMR Infrastructures Limited. The allotment has not been made in the name of M/s. AMR Infrastructures Limited and at any time, under the terms of the registered lease deed, no permission has been granted to transfer the interest of the subject plot in the name of M/s. AMR Infrastructures Limited. Since there are no such transfer documents with the answering respondent, then the subject property continues to stand in the name of the allottee/lessee i.e. M/s. R.C. Info Systems Pvt. Ltd. In law, each Company has a separate and distinct identity.

Therefore, the said property could not be considered for any Corporate Insolvency Resolution Process of the Corporate Debtor, M/s. AMR Infrastructures Limited per order dated 10.05.2018 passed by this Adjudicating Authority. Thus, the present application is against the right and interest of answering respondent-GNIDA and is liable to be dismissed.

54. A plot No. Tz-09, Pocket NIL, Sector- Tech Zone (I.T. Park), area situated in Greater Noida Industrial Development Area District, Gautam Budh Nagar admeasuring 100857.00 Sq. meter is available with M/s. R.C. Info Systems Pvt. Ltd. on a leasehold basis as per the terms and conditions of lease deed dated 21.07.2006. Therefore, the said property could not be considered for any CIRP of Corporate Debtor, M/s. AMR Infrastructures Limited as per order dated 10.05.2018 passed by this Adjudicating Authority.
55. The Resolution Professional and the CoC are biased towards the answering respondent and is giving illegal favour to the Corporate Debtor including hiding the disqualification of the Corporate Debtor.
56. There are gross violations and infringement of the terms and conditions of the said allotment, lease deed dated 21.07.2006 and rules & regulations of the answering respondent by the lessee/Corporate Debtor/RP. The Corporate Debtor/RP has failed to perform their duty as per the above-mentioned public announcement on 15.05.2018 in Business Standard (English) and Business Standard (Hindi) only with the object to frustrate the lawful dues of the Authority by first not making the payment and then with a view to defraud the Govt. Authorities.
57. The lessee shall be required to get the detailed building plan approved from the Lessor within eighteen months from the date of execution of the lease deed of the plot with the lessor and will be required to complete construction of the first phase i.e. 40% of the total allowed covered area within three years from the date of possession of plot.

The lessee shall have to complete the construction of the whole “The Project and Facilities” within seven years from the date of execution of the lease deed of the plot i.e. up to 20.07.2013. The answering respondent has issued the completion certificate for the first phase of completion of the project but the answering respondent has not received any application for a completion certificate for the second phase or complete project as per terms of lease deed from the lessee, till date. As per the terms of lease deed, the development and functioning of the unit on the said plot allotted was/is required to be implemented and in case non-compliance then the allotment/lease deed shall automatically stand cancelled. The lessee has failed to make payment as per terms of lease deed and there is outstanding dues against allotment for lease rent of Rs. 10,55,19,237.71/- upto 15.11.2021, outstanding dues for Additional Compensation is Rs. 10,55,19,237.71/- and other outstanding dues against the above property.

- 58.** It is submitted that the Corporate Debtor, M/s. AMR Infrastructures Limited has not been authorized/permitted by the answering respondent for any shareholding or Co-developer company in the allotted property i.e. Tz-09, Pocket NIL, Sector- Tech Zone (I.T. Park), area situated in Greater Noida Industrial Development Area District, Gautam Budh Nagar admeasuring 100857.00 Sq. meter. It is further submitted that as per the record of the answering respondent there is no change in the constitution of shareholding of the lessee company of the allotted land in favour of Corporate Debtor, M/s. AMR Infrastructures Limited till date.
- 59.** It is submitted that the above property is allotted on leasehold basis wherein the answering respondent is a lessor and M/s. R.C. Info Systems Pvt. Ltd. is the lessee. Therefore, without permission of the answering respondent any assets transfer/shareholding transfer by M/s. R.C. Info Systems Pvt. Ltd. is completely illegal and not permissible under law.

- 60.** The COC and RP/Corporate Debtor have no charge and claim over the property i.e. Plot No. Tz-09, Pocket NIL, Sector- Tech Zone (I.T. Park), area situated in Greater Noida Industrial Development Area District, Gautam Budh Nagar admeasuring 100857.00 Sq. meter of the lessee M/s. R. C. Info Systems Pvt. Ltd. The answering respondent being owner/lessor has right and interest in the property i.e. Plot No. Tz-09, Pocket NIL, Sector- Tech Zone (I.T. Park), area situated in Greater Noida Industrial Development Area District, Gautam Budh Nagar.
- 61.** It is further submitted that the lessee company M/s. R.C. Info Systems Pvt. Ltd. has never been permitted to change in the shareholding or Co-developer company with M/s. AMR Infrastructures Limited. The answering respondent vide his letter dated 09.03.2015 has only permitted the lessee- M/s. R.C. Info systems Pvt. Ltd. to operate through any authorize person or constituted attorney, it is their choice but in all agreements the constituted attorney would act only for and behalf of his principal, namely M/s. R. C. Info Systems Pvt. Ltd. and not in their own right.

G. Analysis and findings

- 62.** The Applicant has contended that a lease deed dated 21.07.2006 was executed between the RCISL and GNOIDA with respect to the development of the project pertaining to plot No. Tz-09, Pocket Nil, Sector-Tech Zone (I.T. Park), situated in Greater Noida Industrial Development Authority (GNOIDA), District Gautam Budh Nagar, admeasuring 1,00,857 square meters and the entire rights arising under the said lease deed be treated as belonging to the Corporate Debtor as the same has been entirely funded by the funds raised from the Financial Creditors thus, nullifying the rights to 15% project build area in terms of the MoU dated 31.07.2006. The Applicant/Resolution Professional is also seeking a direction to Respondent no. 1 (M/s. R.C. Info Systems Limited) and GNOIDA to transfer the said lease deed in favour of the Corporate Debtor. The

Applicant/Resolution Professional has also prayed for other consequential reliefs.

- 63.** The Applicant/Resolution Professional has filed the present application under Section 66 of the Code on the premise that while examining the financials of the Corporate Debtor, the Applicant came across certain transactions of the Corporate Debtor carried out for fraudulent purpose and with an intent to defraud the Creditors of the Corporate Debtor.
- 64.** It is submitted that sub-section 1 of Section 66 of the Code provides that if during the CIRP, it is found that any business of the Corporate Debtor has been carried on with an intent to defraud Creditors of the Corporate Debtor or for any fraudulent purpose, the Adjudicating Authority may on an application of the Resolution Professional pass an order directing any person(s) who bare knowingly parties to the carrying on the business in such manner shall be liable to make such contribution to the assets of the Corporate as it may deem fit. Further, sub-section 2 of Section 66 states that if before the Insolvency commencement date, a Director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP in respect of such Corporate Debtor and such Director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor such Director shall be liable to make such contribution to the assets of the Corporate Debtor as the Adjudicating Authority may deem fit. Section 66 of the Code is reproduced below:-

“66. Fraudulent trading or wrongful trading – (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the

business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if.

(a) Before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) Such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor.

- 65.** Learned Counsel appearing for the Applicant submitted that the promoters/shareholders of the Corporate Debtor i.e. M/s. AMR Infrastructures Limited also promoted another Company namely M/s. RC Info Systems Ltd. (RCISL) i.e. Respondent No. 1 herein. He submitted that the promoters/shareholders of the Corporate Debtor i.e. M/s. AMR Infrastructures Limited are also the promoter/shareholder of M/s. RC Info Systems Limited i.e. Respondent No. 1. The Respondent No. 1 i.e. M/s. RC Info Systems Limited entered into a lease deed dated 21.07.2006 with Greater Noida Industrial Development Authority for leasing a plot of land, i.e. Plot No. Tz-09, Pocket Nil, Sector Tech Zone (I.T. Park), situated in Greater Noida Industrial Development Authority (GNOIDA), District Gautam Budh Nagar, admeasuring 1,00,857 square meters, for a term of 99 years. The said lease deed was registered on 25.07.2006. The total consideration for the said lease as per the lease deed was Rs.

8,16,94,170/- out of which Rs. 2,45,08,251/- was acknowledged and the balance amount of Rs. 5,71,85,915/- was stated as payable in 12 instalments with the interest at the rate of 12% p.a. with last instalment payable on 21.05.2011. As terms of the lease, the lessee was required to pay lease rent of Rs. 20,42,355/-.

- 66.** The Corporate Debtor and RCISL entered into an unregistered notarized Memorandum of Understanding dated 31.07.2016 for the development of the said plot and setting up Technology Park named as 'Kessel-i-Valley' in IT Industries and IT enabled services project. As per the said MoU dated 31.07.2006, the Corporate Debtor was required to pay Rs. 12 crore to be paid within one month of signing the MOU to RCISL. Further, Rs. 3 crore was be paid as interest free security deposit, out of which Rs. 2,95,20,000/- had been paid before entering the said MOU. Further, Rs. 9 crore was stated as refundable. Further, the Corporate Debtor was required to pay Rs. 25 crores refundable security deposit after taking vacant physical possession of the land.
- 67.** It is submitted that the books of accounts and other relevant documents revealed that consideration paid by the RCISL to GNOIDA for the execution of the lease deed was largely funded by the Corporate Debtor. Though the total consideration payable by RCISL for entering the said lease deed dated 21.06.2007 in respect of the said plot was Rs. 8.16 crore, the RCISL received Rs. 37 crore from the Corporate Debtor by entering the said MOU dated 29.07.2017 in the guise of the refundable deposit payable under the said MOU.
- 68.** It is also submitted that the financial statements of the Corporate Debtor for the financial year 2005-06 reflect that it had raised Rs. 95.43 crores as advance from the customers during the financial year 2005-06 whereas its share capital of the Corporate Debtor was only Rs. 11 lacs, which shows that the Corporate Debtor raised funds from several Financial Creditors who are the allottees of the real estate project on promise of assured returns and the said amount was

remitted to the RCISL as interest free unsecured loans under the guise of the MOU.

- 69.** In support of the contention that the Directors of the Corporate Debtor Company are also the Directors of M/s. AMR Infrastructures Limited, the Learned Counsel relied upon the Master Data of both the companies which clearly shows that they are common directors, who are directors/shareholders of Corporate Debtor and also directors/shareholders of Respondent No. 1 Company.
- 70.** Ld. Counsel appearing on behalf of Applicant has contended that Respondent No. 1 i.e. RCISL is a related party to the Corporate Debtor. The Respondent no. 2 to 9 are the promoters and shareholders of the Corporate Debtor. The Respondent Nos. 2, 3, 7, 13-19 are promoters and shareholders of Respondent No. 1 i.e. RCISL. The Respondent Nos. 8 to 12 are present and past directors of the Corporate Debtor and Respondent Nos. 3 and 13 are the directors in the Respondent No. Company. Ld. Counsel submitted that the Respondent No. 2, 3, 7 are directors and shareholders in the Corporate Debtor as well as in the RCISL i.e. Respondent No. 1 company.
- 71.** Ld. Counsel for Applicant submitted that the Respondents have incorporated Respondent No. 1-Company (RCISL) and the Corporate Debtor to defraud the allottees. The RCISL was incorporated not for doing any real business activity but the assets of the Corporate Debtor are parked in Respondent No. 1-Company, however, the liabilities are parked in the Corporate Debtor-Company. The MoU dated 31.07.2006 entered into between CD and RCISL is an instrument created by the two entities belonging to the same promoters by raising funds with one entity and then diverting the same by parking the assets somewhere else.
- 72.** The Respondent-RCISL funded the acquisition of the said property through the funds provided by the Corporate Debtor and the said

funds provided by the Corporate Debtor transferred to the Respondent-RCISL were in fact raised from the allottees which amounted to Rs. 95.43 crores raised as an advance from the customers during the financial year 2005-06 as revealed from the financial statements of the Corporate Debtor. The said funds raised from the allottees/FC have been diverted to the related party i.e. RCISL by the CD. Ld. Counsel also submitted that an FIR has been lodged by the allottees against the promoters and the directors of the Corporate Debtor and a charge sheet has been submitted by the EoW of Delhi Police after conducting an investigation.

73. The Ld. Counsel therefore submitted that the Respondent No. 2, 3, 8 are common promoters/shareholders in the CD and RCISL. Respondent No. 2 who is a promoter of CD is also a director in RCISL. Similarly, Respondent No. 3 is also one of the Directors in RCISL, is a relative of Respondent No. 2 and also the promoter and shareholder of the Corporate Debtor. Further, the financial statements of the CD reveal that an amount of Rs. 95.34 crores was raised as an advance from the customers for the financial year 2005-06 whereas the share capital of the Corporate Debtor was only Rs. 11 lacs which shows that the funds raised from the home buyers were remitted to RCISL as interest free to unsecured loans under the guise of the said MoU. The Ld. Counsel, therefore, submitted that the present case warns lifting of the corporate veil in order to find out the true nature of the transaction.

74. It is contended by the Ld. Counsel appearing on behalf of the Respondent Nos. 1 and 2 that the present application filed under 66 of the Code can be invoked in case it is found that any business of the Corporate Debtor has been carried on with intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose. It is submitted that Section 66(1) talks about fraudulent trading whereas Section 66(2) talks about wrongful trading either during the CIRP or Liquidation process or in the instant case, the Applicant has failed to

establish the same. It is further contended that the prayer made by the RP seeking to transfer the rights or interest arising under the lease deed between RCISL and GNOIDA is misconceived and beyond the scope of Section 66 of the Code and it is beyond the jurisdiction of the Adjudicating Authority to transfer rights or the status on an allegation of fraud unless clear evidence is placed on record to that effect. It is contended that the Respondent, RCISL is the owner of the land and not the Corporate Debtor, and therefore Section 66(1) cannot be attracted which talks about the assets of the Corporate Debtor.

75. It is also submitted that there is no justification for lifting the corporate veil because the Corporate Debtor, M/s. AMR Infrastructures Limited and Respondent, RCISL are two distinct ownership structures and the shareholders of RCISL and M/s. AMR Infrastructures Limited are different and therefore no corporate veil of the CD or of the RCISL can be invoked in this case.

76. The Ld. Counsel appearing on behalf of Respondent Nos. 8 and 14 submitted that as per the MoU, the Corporate Debtor transferred all rights of construction, development marketing, etc. to the Respondent and in terms of the MoU, the CD received the booking amount and allotted spaces to allottees/investors. The FC were aware of the arrangement between the CD and Respondent No. 1-company which is evident from the various MoUs, allotment agreements entered into between the Corporate Debtor and various allottees/investors. The arrangement between the CD and Respondent No. 1-company was purely commercial in nature and there is no requirement of lifting any corporate veil. It is submitted by Respondent No. 2 that originally GNOIDA was the owner of the property which was allotted to RCISL, Respondent No. 1 on a leasehold basis vide lease deed dated 21.07.2006 and letter of reservation allotment dated 23.03.2005. The Corporate Debtor i.e. M/s. AMR Infrastructures Limited and the Respondent No. 1 RCISL are separate legal entities and have separate status in law, therefore the assets of a third party i.e. Respondent No.

1 RCISL cannot be taken into consideration in the CIRP of the Corporate Debtor, M/s. AMR Infrastructures Limited. Thus, the assets of Respondent No. 1, RCISL cannot be treated to be the assets of the Corporate Debtor.

- 77.** It is also submitted that in view of the law laid down by the Hon'ble Supreme Court of India in the case of **“Gluckrich Capital Pvt. Ltd. vs. The State of West Bengal & Ors.”** reported in **2023 LiveLaw (SC) 464**, no power is conferred on the NCLT to pass any order under Section 66(1) of the Code against the arrangement/legal entities (other than the Corporate Debtor) with whom such business was carried out. It is, therefore, contended that the application is liable to be dismissed as not maintainable.
- 78.** In the above backdrop of the facts and circumstances of the case and the submissions made by the Ld. Counsel appearing for the parties, we have carefully examined the records.
- 79.** The first and foremost objection raised by the Applicant is that the promoters and shareholders of the Corporate Debtor are also the promoters and shareholders of the RCISL which is based on the master data of the Corporate Debtor available on the MCA Website and master data of the Respondent No. 1 available on the MCA Website respectively.
- 80.** The second ground taken by the Applicant is that the total consideration of Rs. 8.16 Crores payable by RCISL for entering the lease deed dated 21.06.2007 out of which Rs. 2.45 Crores was required to be paid at the time of entering the lease deed and balance of Rs. 5.71 Crores was payable in 12 half yearly installments upto May, 2011. The Applicant on the basis of the financial statements of the Corporate Debtor has found that the Corporate Debtor transferred Rs. 2.70 Crores to RCISL between 24.06.2006 to 18.07.2006 i.e. before the date of execution of the lease deed in order to enable the Respondent No. 1 to pay Rs. 2.45 Crores for entering the lease deed.

Thereafter, a sum of Rs. 0.25 Lakhs was transferred on 29.07.2006. Further, the MoU dated 31.07.2006 also records that the Corporate Debtor had paid Rs. 2.95 Crores to the RCISL before the execution of the MoU. The Corporate Debtor also transferred Rs. 35 Crores to RCISL between August 2006 to December 2006. There is no specific denial by Respondent Nos. 1 and 2 to the aforesaid transaction and therefore an inference can be drawn that the said amounts were transferred by the Corporate Debtor to RCISL for the purpose of execution of the lease deed.

- 81.** The financial statements of the Corporate Debtor for the Financial Year 2005-06 also shows that the Corporate Debtor raised Rs. 95.43 Crores as advance from the customers which was transferred to RCISL by the Corporate Debtor as interest free unsecured loans under the MoU. We are therefore, in agreement with the submissions of the Ld. Counsel for the applicant that MoU dated 31.07.2006 executed between the Corporate Debtor and the RCISL was a part of design whereby the assets in question is a part in the name of the Respondent No. 1 whereas all the liabilities are a part in the name of the Corporate Debtor which is nothing but an attempt to defraud the creditors.
- 82.** The argument advanced by Respondent Nos. 1, 2, 8 and 14 is that the MoU in question was entered into which was an arrangement between the Corporate Debtor and Respondent No. 1–Company which was purely commercial in nature and not for unjust enrichment of the Respondent No. 1–Company is not substantiated with any evidence and therefore, cannot be accepted.
- 83.** Based on the master data it is clear that although the Corporate Debtor and RCISL are two different corporate entities however the master data reveals that they have a similar set of directors and promoters. In the present case, this data reveals Corporate Debtor and RCISL are being run by the same individuals which goes on to give a suggestion that there is a potential risk that they might be

using the corporate veil to hide behind their separate legal identities for ulterior motives, such as avoiding liabilities, committing fraud, or circumventing legal obligations. Lifting of corporate veil will allow in the present situation to get an idea of common management who is managing the affairs of Corporate Debtor and RCISL, which will eventually ensure that the interest of stakeholders is protected.

- 84.** The doctrine of lifting the corporate veil is invoked when a corporate entity is used as a mere façade to conceal fraud or wrongful conduct. In the present case, the financial trail demonstrates that RCISL was not an independent commercial entity, but a vehicle used to siphon funds by the Corporate Debtor. The Corporate Debtor funded the lease acquisition entirely, while RCISL retained beneficial rights in the project without making any substantive contribution. The structured flow of funds, coupled with the lack of legitimate business activity on the part of RCISL, establishes that the corporate form was deliberately misused to facilitate wrongful gains at the expense of creditors, justifying the lifting of the corporate veil.
- 85.** A bare perusal of the MoU dated 31.07.2016 reflects that RCISL being the owner of leased land and the Corporate Debtor being the Developer agreed to share the project build-up area in 15% and 85% ratio respectively. In said MoU Corporate Debtor agreed to pay 12 crores as initial payment and 25 crores as a refundable sum. The said MoU also provides that the Corporate Debtor will book the space and receive the amount. This entire scheme of MoU suggests that it contemplates a mechanism where the Corporate Debtor transfers his money to the RCISL in the garb of MoU and keeps those sums out of the ambit of the CIRP process. The amounts mentioned in the MoU look like they were designed to obscure the actual financial position or operations of the Corporate Debtor, especially during the Corporate Insolvency Resolution Process (CIRP) thereby acting as a shield to assets of the Corporate Debtor from the CIRP which raises concerns of

fraudulent conduct or abuse of the legal fiction of separate legal entity.

- 86.** As provided under clause 7 and 8 of the MoU, the Developer (who is the Corporate Debtor) will book for Information Technology enabled Services (ITeS), Residential, commercial and other public utilities spaces and will receive booking amount which suggests that a parallel financial structure was created in the form of M/s. R.C. Info Systems Limited by the Corporate Debtor with an intention to divert funds. The terms of MoU prima facie give an impression that it was not for legitimate commercial purposes rather RCISL was used as a vehicle by the Corporate Debtor for evading legal obligations and diverting funds out of the CIRP process
- 87.** The design of the MoU suggests that the Corporate Debtor will initially as a developer infuse funds in RCISL and later through the parallel financial structure created get back those funds. In insolvency proceedings, the principle that creditors should be paid in an orderly and transparent process is paramount. Any attempt to shield assets through transactions, like the one described in the MoU, could be considered an obstruction to the insolvency process. Hence this Adjudicating Authority is duty-bound to lift the corporate veil to determine the true nature of the transactions and ensure fair distribution of assets to creditors in the CIRP process.
- 88.** A fundamental principle of corporate law is that separate legal personality cannot be exploited to shield wrongful conduct. Here, the promoters of the Corporate Debtor created a financial arrangement wherein RCISL, despite being fully funded by the Corporate Debtor, retained significant economic benefits. Such abuse of corporate personality, particularly to evade financial obligations, necessitates piercing the corporate veil to hold the true beneficiaries accountable.
- 89.** In the instant case, the financial statements of both the Corporate Debtor and RCISL confirm their status as related parties, with

disclosures establishing their close nexus. The promoters structured transactions in a manner that artificially separated assets and liabilities between the two entities, creating an illusion of independent business dealings while ensuring that control remained within the same set of individuals. Such collusive arrangements, designed to insulate assets from legitimate claims, warrant judicial intervention to prevent abuse.

- 90.** The present case involves substantial sums raised from investors in a real estate project, with assurances of returns that were never honoured. Instead, these funds were funneled into RCISL effectively depriving the financial creditors of their dues. Given the magnitude of financial harm, the number of complaints filed, and the ongoing criminal proceedings, it is evident that the corporate structure was orchestrated to shield the real perpetrators. In such circumstances, the lifting of the corporate veil is not merely justified but imperative to ensure that corporate structures are not misused as instruments of fraud and to uphold the integrity of commercial transactions.
- 91.** In view of the above, we are of the considered view that prayers sought against Respondent No. 1 and the promoters/shareholders in this application are necessary to fully uncover the facts and to prevent these Respondents from exploiting the situation to the detriment of Homebuyers (Financial Creditors). These Respondents are attempting to retain land in a separate entity, creating obstacles to resolving the Corporate Debtor. Additionally, the requested actions against Respondent No. 1 to 19 also address dues owed to Respondent No. 20.
- 92.** It is an admitted fact that Respondent No. 20 is the owner of the land in question. Accordingly, Respondent No. 20 has leased the land to Respondent No.1 vide Lease Deed dated 21.07.2006. It is also not in dispute that the lease had not been cancelled and is still in full force. So the objection of the Respondent No. 20 that the rights under Lease Deed cannot be transferred and only option for Respondent No. 20 is to cancel the Lease Deed with Respondent No. 1. is not sustainable.

- 93.** The prayer of the Applicant in this application to declare that all rights under the lease deed dated 21.07.2006 between RCISL and GNOIDA should belong to and be exercised by the Corporate Debtor and to ensure that the developed project area on plot No. Tz-09, Pocket Nil, Sector-Tech Zone (I.T. Park) in Greater Noida Industrial Development Authority (GNOIDA), District Gautam Budh Nagar, measuring 100,857 square meters, should belong to the Corporate Debtor is justified in the facts and circumstances of the present case. This is because the project has been fully funded by the financial creditors, thus nullifying the 15% Project Build Area right as per the MOU dated 31.07.2006. Accordingly, the Prayer (b) stands **allowed**.
- 94.** With respect to Prayer (g), we direct the GNOIDA to consider granting the Applicant (potential Resolution Applicant/Successful Resolution Applicant) an additional three-year period as requested. Additionally, we emphasize that GNOIDA should charge fees and other charges in a reasonable and transparent manner to facilitate the completion of the project.
- 95.** It may not be out of place to mention that the rights and interests of the bonafide homebuyers/allottees shall be protected in accordance with the law by the Resolution Professional/Successful Resolution Applicant.
- 96.** It is ordered as follows:
- i.** In view of the above, CA-1114/2018 stands **allowed to the extent mentioned above**.
 - ii.** The Registry is directed to send a copy of this order to the IBBI for their record.
- No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)