

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 424 of 2022

(Arising out of Order dated 21.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in C.A. No.2488/2019 in CP(IB) 875(PB)/2018)

IN THE MATTER OF:

E-Homes Infrastructure Private Limited
Through Mr. Subodh Kumar Sharma,
Authorised Representative, Dasnac Annexe I,
ECE House, 28A, Kasturba Gandhi Marg,
Delhi 110001.

.... Appellant

Vs

1. New Okhla Industrial Development Authority
Main Administrative Building,
Sector-6, Gautam Buddha Nagar,
Noida, Uttar Pradesh.
2. Neo Infrastructure Private Limited
Through its Resolution Professional,
Mr. Dinesh Sood, 85, Ground Floor,
World Trade Centre, Barakhamba Lane,
New Delhi 110001.

.... Respondents

Present:

**For Appellant: Mr. Nakul Dewan, Sr. Advocate, Mr.
Mrinal Harsh Vardhan, Mr. Neil
Chatterjee, Advocates**

**For Respondents: Mr. Sourav Roy, Mr. Prabudh Singh, Mr.
Kaushal Sharma, Mr. Vishal Malik,
Advocates for R-1/Noida Authority.**

With

Company Appeal (AT) (Insolvency) No. 434 of 2022

(Arising out of Order dated 21.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in C.A. No.2488/2019 in CP(IB) 875(PB)/2018)

IN THE MATTER OF:

Dinesh Sood
Resolution Professional of
Neo Infrastructure Pvt. Ltd.
Upper Ground Floor,
1/15 Tilak Nagar, New Delhi – 110018.

.... Appellant

Vs

New Okhla Industrial Development Authority
Main Administrative Building,
Sector-6, Gautam Buddha Nagar,
Noida, Uttar Pradesh – 201301.

.... Respondent

Present:

**For Appellant: Mr. I.P.S. Oberoi and Mr. Himrit Singh
Wadhwa, Advocates**

**For Respondent: Mr. Sourav Roy, Mr. Prabudh Singh, Mr.
Kaushal Sharma, Mr. Vishal Malik,
Advocates for Noida Authority.**

With

Company Appeal (AT) (Ins.) No. 458 of 2022

(Arising out of Order dated 21.02.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in C.A. No.2488/2019 in CP(IB) 875(PB)/2018)

IN THE MATTER OF:

1. Asha Aggarwal
W/o Sh. Raj Kumar Aggarwal,
R/o 221, Sector-15A, Noida,
Gautam Budh Nagar,
Uttar Pradesh-201301.
2. Manish Aggarwal
S/o Sh. Raj Kumar Aggarwal,
R/o 221, Sector-15A, Noida,
Gautam Budh Nagar,
Uttar Pradesh-201301.
Proprietor, M/ s Devi Dayal Builders and Developers
3. Japna Estates Private Limited
Having its office at:
Khasra No. 1080, Ground Floor,
Village Bhalswa, Jahangir Puri,
Delhi -110033.
Through its Director, Mr. Sharan Pal Singh Sethi
4. SC Khaneja and Sons HUF
Through Karta,
Subash Chandra Khaneja
S/ o Sh. Sant Lal Khaneja,
R/o House No. A-103, Vikas Marg,
Laxmi Nagar, Shakarpur, Delhi-110092.

5. Nihal Singh Iqbal
S/o Iqbal Hussain,
R/o D-125, Defense Colony, Jajmau,
Kanpur, ShiwanstTenray, Kanpur Nagar,
Uttar Pradesh - 208010.
6. Rakesh Projects Pvt. Ltd.
Through Its Director, Sh. Rajiv Kumar Jain,
W-10/18, Old No. H-36D, Westend Avenue,
Sainik Farms, New Delhi-110062.
7. Jatinder Pal Builders Pvt. Ltd.
Through Its Director, Sh. Manmohan Pal Singh Chadha,
RZ-289/345, Plot No. 85-A, Khasra No.345,
Gali No. 4, Shiv Puri, Sagar Pur,
New Delhi -110046. Appellants

Vs

1. New Okhla Industrial Development Authority
Main Administrative Building,
Sector-6, Gautam Buddha Nagar,
Noida, Uttar Pradesh.
2. Neo Infrastructure Private Limited
Through its Resolution Professional,
Mr. Dinesh Sood
85, Ground Floor, World Trade Centre
Barakhamba Lane, New Delhi 110001 Respondents

Present:

For Appellants: Ms. Tripti Kapoor and Mr. Rahul Malhotra, Advocates.
For Respondents: Mr. Sourav Roy, Mr. Prabudh Singh, Mr. Kaushal Sharma, Mr. Vishal Malik, Advocates for R-1/Noida Authority.

J U D G M E N T

ASHOK BHUSHAN, J.

These three Appeal(s) have been filed against the same order dated 21.02.2022 passed by the National Company Law Tribunal, New Delhi

Principal Bench in C.A. No.2488/2019 in CP (IB) 875 (PB)/2018, by which order, Adjudicating Authority allowed the Application filed by New Okhla Industrial Development Authority (“**NOIDA**”) – Respondent No.1.

2. Company Appeal (AT) (Ins.) No.424 of 2022 has been filed by E-Homes Infrastructure Private Limited, the Resolution Applicant, who has filed two Resolution Plans in Corporate Insolvency Resolution Process (“**CIRP**”) of two Corporate Debtors namely - Neo Infrastructure Private Limited and M/s Brys International Private Limited. The Company Appeal (AT) (Ins.) No.434 of 2022 has been filed by Dinesh Sood, Resolution Professional (“**RP**”) of Neo Infrastructure Pvt. Ltd. and Company Appeal (AT) (Ins.) No.458 of 2022 has been filed by Homebuyers, who have been allotted units by M/s Brys International Private Limited. The Appellants - Homebuyers were also Financial Creditors of the Corporate Debtor M/s Brys International Private Limited.

3. Brief facts and sequence of events necessary to be noticed for deciding issues raised in these Appeal(s) are:

- (i) The NOIDA entered into Lease Deed dated 17.01.2012 with M/s Logix Builders & Promoters Pvt. Ltd. (hereinafter referred to as “Lessee”), by which commercial Plot No.SC 01/A, situated at Sector 150, Noida measuring 2,69,430 sq. mtrs. was leased out for a period of 90 years on premium as detailed in the Lease Deed.
- (ii) A Sub-Lease Deed dated 15.04.2013 was entered between NOIDA, Lessee and Neo Infrastructure Pvt. Ltd. (hereinafter

referred to as a “Sub-Lessee”). Sub-Lease Deed contained various clauses requiring prior permission of the Lessor, i.e. NOIDA for transferring the Plot.

- (iii) A Collaboration Agreement dated 13.07.2013 was entered between Lessee and Sub-Lessee and one M/s Brys International Pvt. Ltd., under which for consideration of Rs.20 crores to be paid by Brys International Pvt. Ltd. to Lessee, various rights in the leased land were transferred to the developer, Brys International Pvt. Ltd.
- (iv) M/s Brys International Pvt. Ltd. and Neo Infrastructure Pvt. Ltd. had taken various financial facilities from Bank of Baroda. On an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by Bank of Baroda against Brys International Pvt. Ltd., CIRP was initiated by order dated 31.01.2019 and Shri Dinesh Sood was appointed as Interim Resolution Professional (“**IRP**”).
- (v) On an Application filed under Section 7 by the Bank of Baroda against Neo Infrastructure Pvt. Ltd., CIRP was initiated vide order dated 01.02.2019 by the Adjudicating Authority, in which Shri Dinesh Sood was appointed as IRP.
- (vi) In the CIRP of Neo Infrastructure Pvt. Ltd., NOIDA filed its claim, which was accepted in 3rd Meeting of the Committee of Creditors (“**CoC**”) on 15.05.2019 as Financial Creditor to the extent of Rs.443,066,019/- with voting share of 26.95%.

- (vii) On 15.10.2019, the Appellant – E-Homes Infrastructure Pvt. Ltd. has submitted two separate yet parallel Resolution Plan for the CIRP of Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd.
- (viii) On 13.11.2019 an CA No.2488 of 2019 was filed by Respondent No.1 – NOIDA, where a direction was sought, not to accept the Resolution Plans, which propose a composite Scheme for Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. A prayer was also made to stay on the voting of the Resolution Plan, which was submitted by M/s. E-Homes Infrastructure Pvt. Ltd. The Application was opposed by the RP, who filed a reply to the Application.
- (ix) Subsequent to the filing of Application by NOIDA, both the Resolution Plans were approved by the CoC on 28.02.2020 and an Application was filed by RP for approval of the Plans before the Adjudicating Authority.
- (x) The CA No.2488 of 2019 was heard by the Adjudicating Authority and by the impugned order, the Adjudicating Authority has allowed the Application filed by Respondent No.1.
- Aggrieved by the order passed by the Adjudicating Authority, these three Appeal(s) have been filed.

4. We have heard learned Counsel for the Appellant, i.e., Resolution Applicants, Resolution Professional as well as Homebuyers. We have also heard learned Counsel appearing for NOIDA.

5. The learned Counsel for the Successful Resolution Applicant submits that Adjudicating Authority has passed order on CA No.2488 of 2019, which Application became infructuous in view of the approval of the Resolution Plan and the order passed by the Adjudicating Authority is ineffective. The Adjudicating Authority has exceeded its jurisdiction in interpreting contractual rights and obligation of the parties. NOIDA never exercised its right to cancel the Sub-Lease Deed. The order passed by the Adjudicating Authority is also in violation of the principles of natural justice since Resolution Applicant was not party to the Application.

6. The learned Counsel for the RP also supported the submissions raised by learned Counsel for the Resolution Applicant and has reiterated that the Application has become infructuous on the date when it was heard. It is submitted that the order is non-speaking order. The voting on the Resolution Plan of the Resolution Applicant for Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. has already been held in February 2020. It is submitted that CIRP of both the Corporate Debtors have been carried out separately and not in consolidated process, although, Meetings of the CoC were held on the same day but separately. The Adjudicating Authority has wrongly observed in its order that RP has submitted that CIRP process in respect of both the Corporate Debtors has been carried out in a consolidated manner without any order of consolidation of the Adjudicating

Authority. The operative portion of the order is not very clear as to how the Corporate Debtors have violated the terms of the Lease Agreement. The Adjudicating Authority had no jurisdiction to adjudicate on an aspect which has not arisen and which is not in relation to CIRP of the Corporate Debtor. The issue of absence of jurisdiction was advanced by the Counsel for the RP. The Neo Infrastructure Pvt. Ltd. has transferred only the development and sales rights to Brys International Pvt. Ltd. It is submitted that NOIDA is an Operational Creditor in the CIRP of Neo Infrastructure Pvt. Ltd.

7. Shri Sourav Roy, learned Counsel appearing for the NOIDA, refuting the submission of learned Counsel for the Appellant(s), supports the order of the Adjudicating Authority and submits that the Lessee and Sub-Lessee have violated the terms of the Lease and Sub-Lease. The Collaboration Agreement, which was executed by Neo Infrastructure Pvt. Ltd. in favour of Brys International Pvt. Ltd. was in violation of the terms of the Sub-Lease. No approval of Respondent No.1 – NOIDA was obtained before transferring the development and sale rights in favour of Brys International Pvt. Ltd. The Collaboration Agreement executed by Sub-Lessee in favour of Brys International Pvt. Ltd., it transferred all rights including right to sell. The land which was leased out by the NOIDA, of which Noida continued to be the owner, could not be made asset of Corporate Debtor, nor the same can be taken in possession by the RP. The Collaboration Agreement, which was executed, was in violation of the terms of Sub-Lease Deed, is void and inoperative. The Resolution Applicant has cleverly submitted Resolution

Plans for both the Corporate Debtor, i.e. Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. providing for that approval of Resolution Plan of Neo Infrastructure Pvt. Ltd. is contingent to Resolution Plan of Brys International Pvt. Ltd. No order was passed by the Adjudicating Authority for consolidation of CIRP of both the Corporate Debtors and seeking approval of conjoint Resolution Plan by the Resolution Applicant was a clever device to take up the land of Respondent No.1 without obtaining its prior permission and without clearing its dues. Approval of Resolution Plan by the CoC was beyond the timeline of the CIRP period. The Plan was sought to be amended by the Resolution Applicant, even after voting on the Plan. The Application filed by Respondent No.1 has not become infructuous. Respondent No.1 has sought direction, not to accept consolidated Plan for both the Corporate Debtors, which were contrary to the IBC. The RP has failed to perform its obligation under the IBC and Regulations. The RP ought not to have certified that both the Plans are compliant of the IBC. The Resolution Plan submitted are void and non-est. The transfer of development rights and rights of sale to Brys International Pvt. Ltd. by way of Collaboration Agreement is non-est. No prior approval was obtained for consolidation of the CIRP of Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. All the three Appeal(s) deserve to be rejected.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. We need to notice few terms and conditions of the Lease Deed and Sub-Lease Deed, which were executed by the NOIDA. Lease Deed executed by NOIDA in favour of M/s Logix Builders & Promoters Pvt. Ltd. dated 17.01.2012, leased out Plot in question for development of Sports City for recreational, commercial and residential including group housing. As per Clause 28 of the Lease Deed, Lessee was entitled to Sub-Lease the sports, other facilities and institutional activity with prior approval of NOIDA. Transfer of whole Plot and Sub-Lease of built-up space was to be governed by Transfer Policy prevailing at the time of such transfer or sub-lease of built-up space.

10. A Sub-Lease Deed was executed on 15.04.2013 between NOIDA, Lessee and Neo Infrastructure Pvt. Ltd., Sub-Lessee. Sub-Lessee under the Lease Deed was to follow various obligations including obligation in Clause (II)(k), which provided:

“(k) The sub-lessee can. transfer the whole plot and the buildings constructed thereon with the prior permission of the LESSOR, after payment of transfer charges as per the prevailing policy of the Lessor. However, the lessor reserves the right to reject any such transfer application without assigning any reason whatsoever.

In addition to the transfer charges as per prevailing policy of the LESSOR, the sub-lessee shall also pay an amount of Rs. 10,000/- towards the processing fees.

All the terms and conditions of the brochure, the allotment, the permission for grant of transfer,

lease deed etc. shall be binding on the sub-lessee, as well, as the transferee(s).

No transfer charges shall be payable in case of transfer between son, daughter, husband, wife, mother, father and vice-versa, However, processing fee of Rs, 10,000/- will be payable on such transfer.

Change in Constitution will be permitted as per prevailing policy of the Lessor and as per terms and conditions of the brochure of the scheme.

No transfer charges shall be applicable if built up space of commercial, plot, is transferred within two years from the date of issuing of the completion certificate by the LESSOR. Thereafter, the transfer charges shall be payable on a pro-rata basis as applicable. In addition to the transfer charges, an amount of Rs.10,000/- shall also be payable against the processing fee. The sub-lessee will be permitted to transfer the built-up space on the fulfillment of the following conditions:-

- (i) The sub-lessee has made full payment of the plot premium along with interest thereon and the up-to-date lease rent along with interest, if any, due thereon.*
- (ii) The lease deed as per rules has been duly executed.*
- (iii) The sub-lessee has obtained the building completion certificate from the LESSOR.*
- (iv) The transferee(s) undertake to put to use the premises for the original permissible use only and the premises being transferred are*

as per completion certificate and are not part of any common area.

- (v) The Sub-lessee shall also execute a tripartite sub-lease deed between lessor, sub-lessee and proposed transferee(s) (sub-sub-lessees). The transferee(s) shall also ensure adherence to the building regulations and directions. All the terms and conditions of the allotment and sub-lease deed shall be applicable and binding on transferee(s) as well.*
- (vi) The transferee(s) shall also be required to pay pro-rata lease rent as applicable. The transferee(s) shall be required to make the built-up space functional within one year from the date of Tripartite Sub-lease and submit sufficient documents to the Lessor in proof thereof. Thereafter, extension charges, as applicable, shall be payable.*
- (vii) All the terms and conditions of the brochure, allotment, permission for grant of transfer, lease deed etc. shall be applicable on the sublessee as well as all transferee(s).*
- (viii) The sub-lessee is not eligible for any preferential allotment of the residential plot or house under various scheme of NOIDA.”*

11. As per Clause (III) 14.(h), Sub-Lessee was not allowed to assign or change his role in the project, in any way, till the completion of the project, without the prior written permission of the Lessor, which Clause is as follows:

“III.14(h) The sub-lessee shall not be allowed to assign or change his role in the project, in anyway, till the completion of the project, without the prior written permission of the LESSOR. In case of any violation of this, the lease shall be cancelled and entire money deposited shall be forfeited.”

12. Clause III.14(p) also contained provisions which entitles Sub-Lessee to further sub-lease the sports, other facilities and institutional activity, but only with the prior approval of the Lessor.

13. The Collaboration Agreement dated 13.07.2013 was entered between the Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. No prior approval was obtained from NOIDA for transferring of the rights by Neo Infrastructure Pvt. Ltd. in favour of Brys International Pvt. Ltd. In the Collaboration Agreement, development of sales rights were transferred to developer, i.e., Brys International Pvt. Ltd. on consideration. Clauses 3 and 4 of the Collaboration Agreement is as follows:

“3. GRANT OF DEVELOPMENT AND SALES RIGHTS

The Company in order to collaborate hereby transfers Development and Sales Rights of the Company Demised Plot in favour of the Developer and Developer hereby accept the transfer of such Development and Sales Rights, at a consideration provided in Clause 4 of this Agreement and simultaneously with such transfer, the Company hereby cease to have any Development and Sales Rights In the Company Demised Plot except in

relation to the Company Allocation, as more, specifically mentioned in this Agreement.

4. CONSIDERATION

4.1 As a consideration for transfer of Development and Sales Rights and in lieu of payment being made by Logix to Noida Authority under the Lease Deed, the Developer shall pay to the Logix, a sum of Rs.20,00,00,000/- (Rupees Twenty Crores Only) as non-refundable security deposit (“Non-Refundable Security Deposit”). Out of the aforesaid amount of Non-Refundable Security Deposit, the Developer has already paid an amount of Rs.17,50,00,000/- (Rupees Seventeen Crores Fifty Lakhs Only) to the Logix as per the following details:

S. No.	Cheque No./Date	Amount	Bank
1	512702 dated 30/03/2013	7,50,00,000/-	Bank of Baroda
2	251697 dated 06/06/2013	5,50,00,000/-	Bank of Baroda
3	251698 dated 06/06/2013	4,50,00,000/-	Bank of Baroda

4.2. For the balance amount i.e. Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) of Non-Refundable Security Deposit, the Developer is issuing postdated cheques of favour of Logix as per the following details:

S. No.	Cheque No./Date	Amount	Bank
1	000555 dated 11/07/2013	85,00,000/-	Bank of Baroda
2	000556 dated 11/08/2013	85,00,000/-	Bank of Baroda
3	000557 dated 11/09/2013	80,00,000/-	Bank of Baroda”

14. The Collaboration Agreement transferred the Sale Rights in the land without obtaining the approval of the Noida. The Brys International Pvt. Ltd. in pursuance of the Sale Rights took financial liabilities by allotting units to various Homebuyers. In the CIRP of Brys International Pvt. Ltd., the land which has been leased out, could not be made the subject matter of the Resolution Plan, nor the leased land could be dealt in the CIRP of Neo Infrastructure Pvt. Ltd. without there being any prior approval of the Noida.

15. Now, we come to the CA No.2488 of 2019, in which CA the impugned order has been passed by the Adjudicating Authority. In CA No.2488 of 2019, Respondent No.1 gave details of Lease Deed and Sub-Lease Deed and filing of claim by Noida as Financial Creditor in the CIRP of Neo Infrastructure Pvt. Ltd. It was pleaded in the Application that Resolution Applicant has submitted a composite Resolution Plan in the CIRP of Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. Reference of Clause 5.2.1 of the Plan was made in the Application. It was pleaded that under the provision of Sub-Lease, the Corporate Debtor, i.e., Neo Infrastructure Pvt. Ltd. cannot transfer any right to 3rd party without seeking approval of the Noida. Transferring of the development rights by Neo Infrastructure Pvt. Ltd. in favour of Brys International Pvt. Ltd. is illegal. Direction was sought to not accept the Plans, which proposes a composite scheme for the Corporate Debtor. The relief sought in the Application was to the following effect:

“V. RELIEF SOUGHT

In view of the facts mentioned above, the Applicant herein prays that the Hon’ble Tribunal may be pleased to:

- a. Direct the Respondent to not accept any resolution plans which propose a composite scheme for the Corporate Debtor and Brys International Pvt Ltd.*
- b. Grant a stay on the voting of the resolution plan which has been submitted by E-Homes Infrastructure Pvt Ltd in the CIRP of the Corporate Debtor;*
- c. any other relief or reliefs as this Hon'ble Tribunal deems fit;”*

16. In the Application several grounds were specifically taken by the Noida. Some of the grounds from (e) to (i) are as follows:

- “(e) Because, the Corporate Debtor cannot transfer, sub-divide, create encumbrance or transfer development rights to any other entity without the express permission of the Applicant. The Applicant has never given any such permission to transfer development rights or any other right to any 3rd party that is not party to the Sub-Lease Deed.*
- (f) Because, under the existing policy as far as the present plot allotted to the Corporate Debtor is concerned, there is no policy under which a sub-lessee can transfer development rights to a 3rd party.*
- (g) Because, any transfer of development rights that may have taken place between the Corporate Debtor and Brys International is illegal and the*

Applicant reserves the right to take civil as well as criminal remedies for the same.

- (h) Because, to give a cloak of legitimacy to a completely illegal transaction (i.e. the transfer of development rights from the Corporate Debtor to Brys international); the Applicant feels that an exercise in consolidation of CIRPs is taking place.*
- (i) Because, the diversion of development rights is a breach of public trust and it cannot be legalized by consolidation.”*

17. The Adjudicating Authority heard the Application and considered the reply submitted by the RP and came to the conclusion that Corporate Debtor, i.e. Neo Infrastructure Pvt. Ltd. has violated the terms of the Lease Agreement. The Adjudicating Authority has held that Corporate Debtor ought to have taken permission from the Noida. The prayers made in the Application, were consequently allowed.

18. The first submission, which has been pressed by the learned Counsel for the Appellant that the Application has become infructuous since the Resolution Plans submitted in CIRP of both the Corporate Debtors were subsequently approved by the CoC on 28.02.2020. As noted above, the Application was filed by the Noida much before the Resolution Plans came to be considered before the CoC. It is true that one of the prayers in the Application was that Respondent be directed not to consider the composite Resolution Plans, which prayer made in the Application still survives and has rightly been considered by the Adjudicating Authority in the impugned order. The submission of the Appellant that Application has become

infructuous cannot be accepted. When it has been pointed out before the Adjudicating Authority that the terms of the Lease Deed under which the land was leased out is being violated and the said land is sought to be dealt in the Resolution Plans, Adjudicating Authority had every jurisdiction to direct that composite Plan be not considered. It is an admitted fact that no order was passed by the Adjudicating Authority to consolidate the CIRP of Corporate Debtor, i.e., Neo Infrastructure Pvt. Ltd. and Brys International Pvt. Ltd. Clause 5.2.1 of 5th Amended Resolution Plan of Neo Infrastructure Pvt. Ltd., to which objection was raised by the Noida, needs to be noted, which is to the following effect:

“5.2.1 Approval of Plan submitted for M/s Brys International Private Limited

This Resolution Plan is a comprehensive plan submitted for the development of the Project and shall be read in conjunction with the Resolution Applicant’s plan submitted for the resolution of M/s Brys International Private Limited under the corporate insolvency resolution process, as the development of the Project and the resultant success of both the resolution plans are dependent on each other. Accordingly, this Resolution Plan is being submitted with the condition that this Resolution Plan shall come into effect only if Resolution Applicant’s Plan submitted for the resolution of M/s Brys International Private Limited is approved by Hon’ble NCLT and confirmed by the appellate authorities/ forums, in the event of any dispute/ litigation regarding the approval/ implementation of such resolution plan.

19. With regard to Resolution Plan of Brys International Pvt. Ltd., Clause 5.2.1 is again to the same effect and reads as under:

“5.2.1 Approval of Plan submitted for M/s Neo Infrastructure Pvt. Ltd.

This Resolution Plan is a comprehensive plan submitted for the development of the Project and shall be read in conjunction with the Resolution Applicant’s plan submitted for the resolution of M/s Neo Infrastructure Private Limited under the corporate insolvency resolution process, as the development of the Project and the resultant success of both the resolution plans are dependent on each other. Accordingly, this Resolution Plan is being submitted with the condition that this Resolution Plan shall come into effect only if Resolution Applicant’s Plan submitted for the resolution of M/s Neo Infrastructure Private Limited is approved by Hon’ble NCLT and confirmed by the appellate authorities/ forums, in the event of any dispute/ litigation regarding the approval/ implementation of such resolution plan.”

20. We have noticed above that in the CIRP of Neo Infrastructure Pvt. Ltd., the Noida was considered as Financial Creditor and in the CIRP of Brys International Pvt. Ltd., the Financial Creditors are large number of Homebuyers, whose financial liabilities were undertaken by the Brys International Pvt. Ltd. The learned Counsel for the Respondent – Noida has placed reliance on judgment of this Tribunal in **Greater Noida Industrial Development Authority (GNIDA) vs. Roma Unicon Designex Consortium in Company Appeal (AT) (Insolvency) No. 180 of 2022**, where in paragraph 51, following has been laid down:

“51. The Resolution Plan does not confine itself to the development rights, which were granted by the land owning company in favour of the Corporate Debtor on an unregistered Agreement, but also contemplates transfer of title of land in favour of Successful Resolution Applicant/ Special Purpose Company as contemplated in the Resolution Plan, which is an impermissible. The Development Agreement, which was unregistered document, could not have dealt with any right in the Project land and the lease hold right as per Development Agreement continued with the Lessee. Hence, the Resolution Plan could not have provided for transfer of the lease land in favour of Successful Resolution Applicant/ Special Purpose Company. Admittedly, the Appellant was not party to the Development Agreement, which was executed between land holding Company of the Corporate Debtor. The Appellant not being the creditor of the Corporate Debtor nor stakeholder in the CIRP Resolution Plan could not bind the Appellant in any manner. It is also relevant to notice that development agreement dated 09.09.2010 being an unregistered agreement could not have transferred any right in the lease land in favour of the developer. The Appellant not being party to such development agreement, the same is not binding on Appellant.”

21. The learned Counsel for the Appellant has also sought to contend that Adjudicating Authority has no jurisdiction to consider the issues raised by Noida and they have also placed reliance on judgment of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta and Ors. – (2021) 7 SCC 209**. The Hon'ble Supreme Court in the

above judgment while considering the ambit and scope of Section 60, sub-section (5) of the Code, laid down following in paragraph 69:

“69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] this Court observed that : (SCC p. 422, para 13)

“13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process.”

The principle was reiterated in Arcelor Mittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] where this Court held that : (SCC p. 88, para 84)

“84. ... The non obstante clause in Section 60(5) is designed for a different purpose : to ensure that NCLT alone has jurisdiction when it comes to

applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.”

Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist.”

22. The Hon’ble Supreme Court in the above case has clearly held that NCLT has jurisdiction to adjudicate dispute which arises solely from or which relate to the insolvency of the Corporate Debtor. In the facts of the present case, the NCLT has considered the Application filed by the Noida, which relate to composite Resolution Plan, which was submitted by the Resolution Applicant. The judgment of Hon’ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd.** (supra) has no application in the facts of the present case. We do not find any substance in the submission raised on behalf of the learned Counsel for the RP that Adjudicating Authority had no jurisdiction in the matter. The submission is wholly unfounded and is uncalled for from the RP, who is duty bound to ensure that provisions of the Code and Regulations are complied with. When the question that

composite Plan submitted by Resolution Applicant for approval, does not fulfil the criteria and is not valid or legal, the RP cannot be heard in saying that issues be not looked into by Adjudicating Authority. All acts of RP should be to ensure that Resolution Plan submitted in CIRP, does not violate any provision of law and is not in contrary to the interest of stake holders. The submission on behalf of learned Counsel for the RP that Adjudicating Authority has no jurisdiction is unfounded submission, which need to be strongly rejected.

23. One of the submissions raised by the learned Counsel for the Appellant is that order of Adjudicating Authority is not clear. When the Adjudicating Authority has allowed CA No.2488 of 2019 filed by the Noida, the clear intendment of the order is that substantial prayers made in the Application is allowed. It is true that the prayer with regard to staying the voting was not relevant at the time when order was passed, but first prayer in the Application, which was the main prayer of the Application still survived and has to be given effect to by all concerned.

24. The learned Counsel for Resolution Applicant submits that Resolution Applicant was not the party to the Application filed by the Noida, hence, there was violation of principle of natural justice. The RP was Respondent to the Application, who had also filed a reply opposing the Application *tooth and nail*. The RP was clearly supporting his steps taken in the CIRP, including the Resolution Plan, which he placed before the CoC, hence, it cannot be said that there was violation of principles of natural justice. The RP, who has to conduct the entire CIRP and is in-charge of the

entire process was impleaded as Respondent and was heard. When we look into the facts of the present case, it is clear that composite Resolution Plan submitted with regard to two different Corporate Debtors, whose CIRP is being conducted by RP simultaneously, without there being any order of consolidation of the CIRP and Resolution Applicant has submitted a composite Resolution Plan, dependent on each other, is nothing but clever device adopted to harm the interest of the stake holders, specially Respondent No.1

25. In view of the foregoing discussions, we do not find any error in the impugned order passed by the Adjudicating Authority. There is no merit in any of the Appeal(s), all the Appeal(s) are dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

15th March, 2023

Ashwani