NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)
IA-1484/ND/2023
IN
CP (IB) NO. 1781/(ND)/2018

IN THE MATTER OF CP NO. 1781/(ND)/2018

(Under Section 7 of IBC, 2016)

Indu Kumar & Ors. **... Financial Creditor**

Versus

M/s Saha Infratech Pvt. Ltd. **... Corporate Debtor**

AND IN THE MATTER OF IA-1484/ND/2023

(Under Section 60(5)(c) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

New Okhla Industrial Development Authority
Through Its Chief Executive Officer
Main Administrative Building
Sector 6, NOIDA **... Applicant**

Versus

Shiv Nandan Sharma
Resolution Professional
Saha Infratech Pvt. Ltd.
129, Navjeevan Vihar, Ground Floor,
New Delhi-110017 **... Respondent**

Order Delivered on: 11.08.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	**:**	Adv. Animesh Khandelwal, Adv. Rashi Gupta on behalf of Applicant Adv. Shimpy Arman Sharma and Adv. Priya Pachouri for the Applicants
For the SRA	**:**	Adv. Amrita Sarkar, Adv. Ashish Kumar Singh, Adv. Gitesh Sinha
For the NOIDA	**:**	Adv. Rachit Mittal, Adv. Srishti Agarwal, Adv. Abhishek Sinha, Adv. Aayushi Kiran
For the Sus. Dir.	**:**	Adv. Rajat Bhardwaj, Adv. Ankita M. Bhardwaj, Adv. Dushyant Chaudhary, Adv. Tushar Garg
For the RP	**:**	Adv. Ashish Makhija, Adv. Deep Bisht, Adv. Astitwa Kumar
For the Erstwhile RP	**:**	IB-1781/ND/2018 Shiv Nandan Sharma Erstwhile RP
For the Aashray Society	**:**	Adv. Raghavendra Mohan Bajaj, Adv. Kumar Karan

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

The captioned application has been preferred by New Okhla Industrial Development Authority (hereinafter referred to as Applicant) under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 praying therein for exclusion of Plot No. GH-02, Sector 143 Noida and rejection of Resolution Plan.

2. In the application filed by it, the Applicant has saliently espoused:-

i. The Plot No. GH-02, Sector 143, Noida measuring 1,00,090.00 sq. mtrs was allotted to a consortium led by M/s Logix Soft-tel Private Limited in terms of allotment letter dated 08.04.2011. As per the site plan received from the concerned engineering department the area of the plot

was rectified to 1,00,080.98 sq. mtrs. Thus, an amended allotment letter was issued on 08.06.2011 by the Applicant.

ii. In terms of the letter dated 26.05.2011, the consortium led by M/s Logix Soft-tel Pvt. Ltd. requested the Applicant to grant approval for development of the aforesaid plot allotted by a Special Purpose Company (SPC) namely M/s Logix City Developers Pvt. Ltd. The Applicant vide its letter dated 08.06.2011 approved the name of SPC i.e. M/s Logix City Developers Pvt. Ltd. in respect of group housing Plot No. GH-02, Sector 143, Noida (supra), subject to certain terms and conditions.

iii. Subsequently, a Lease Deed in respect of the aforementioned plot was executed in favour of M/s Logix City Developers Pvt. Ltd. which was registered with Sub Registrar-I, Noida vide Book No. 01, Vol No. 2537 pages 251 to 286 document No. 4971 dated 08.06.2011 for 90 years commencing from 08.06.2011. The Lease Deed stipulated certain terms and conditions regarding rights, liabilities and compliances etc., qua the Lessor and the Lessee. The relevant terms and conditions of the Lease Deed executed between Noida and M/s Logix City Developers Pvt. Ltd. i.e. the lessee as reproduced in the application reads thus:-

> ***"EXECUTION OF SUB LEASE DEED***
>
> *1. After the approval of the lay-out plan of the Lessor, the lessee shall have the option to sub-lease portions of land ear-marked for group housing, subject to minimum plot size of 10,000 sq. mtrs. and adherence to the planning norms of the Lessor, after prior approval from the Lessor.*

2. *The Lessee shall sub-lease an area only once the area development work such as internal-roads, sewerage, drainage, culverts, water-supply, electricity distribution/ transmission lines, street-lighting, etc in that area is in progress.*
3. *The Lessee shall have to execute the sub-Lease Deed in favour of the Sub Lessee in the form and format as prescribed by the Lessor.*
4. *On execution of such sub-Lease Deed(s), the sub-lessee(s) will be bound to comply with the provisions of payment of proportionate share of the lease premium, lease rent and all other charges payable to the Lessor in the proportionate share of the land area so sub-leased. Any default on the part of such sub-lessee to fully implement the terms and conditions of the Lease Deed/ sub-Lease Deed/ scheme shall not be automatically considered as a default of Lessee. The Lessor shall be entitled to take any action against the sub-lessee as well, including cancellation of the sub-Lease Deed/ scheme shall not be automatically considered as a default of Lessee. The Lessor shall be entitled to take any action against the sub-lessee as well, including cancellation of the sub-lease and and forfeiture of the premium etc. as per the terms and conditions of brochure of the scheme.*
5. *The Lesseel sub-lessee(s) shall have to fulfil the following conditions before the execution of the sub-lease(s) of the flats in favour of the individual allotee(s):*
    i. *Lessee/ sub-lessee(s) shall submit the temporary occupancy (completion) certificate/ occupancy (completion) certification of the constructed flats on the allotted plot from the building cell of the this as*

mentioned in clause- CONSTRUCTION of this document.

ii. *Lessee/ sub-lessee(s) shall submit "No Dues Certificate" in accordance with the payment schedule specified in the Lease Deed/ sub-Lease Deed from the accounts department (Residential) of the LESSOR.*

iii. *Rs. 1000/- shall be paid as processing fee in each case of SUB-LEASE in addition to other documents prescribed by the LESSOR.*

...

TRANSFER OF PLOT

Without obtaining the completion certificate the lessee/ sub-lessee shall have the right to sub-divide the allotted plot into suitable smaller plots as per the planning norms of the LESSOR and to transfer the same to the interested parties with the prior approval of the LESSOR on payment of transfer charges and policy prevailing on the date of transfer. However, the area of each of such sub-divided plot should not be less than 10,000 sq. mtrs. However, individual flat will be transferable with prior approval of the LESSOR as per the following conditions:-

(i) The dues of the LESSOR towards the cost of the land shall be paid in accordance with the payment schedule specified in the Lease Deed/ sub-Lease Deed before executing of sub-Lease Deed of the flat

(ii) The Lease Deed/ sub-Lease Deed has been duly executed.

(iii) Transfer of the flat will be allowed only after obtaining the temporary occupancy/ completion certificate for the respective phase by the Lessee/ sub-lessee.

(iv) The sub-lessee of the individual flat undertakes to put to use the premises for the residential use only.

(v) First sale of the flat to an individual allottee shall be through a sub-lease/ Lease Deed to be executed on the request of the lessee/ sub-lessee to the LESSOR in writing. No transfer charges will be payable in case of first sale. However, on subsequent sale, transfer charges shall be applicable on the prevailing rates as fixed by the LESSOR

(vi) Rs. 1000/- shall be paid as the processing fee in each case of sale of flat in addition to the applicable transfer charges.

...

CANCELLATION OF LEASE DEED

In addition to the other specific clauses relating to cancellation, the LESSOR will be free to exercise its right of cancellation of allotment/ lease/sub-lease in the case of:-

1.Allotment being obtained through misrepresentation/suppression of material facts, mis-statement and/or fraud.

2. Any violation of directions issued or rules and regulation framed by any authority or by any statutory body.

3. Default on the part of the lessee/ sub-lessee for breach/violation of the terms and conditions of the registration/allotment/lease/sub-lease and/or non-deposit of allotment amount.

4. If at the same time of such cancellation, the plot is occupied by the Lessee/sub-lessee, the amount equivalent to 25% of the total premium of the plot shall be forfeited and possession of the plot will be resumed by the LESSOR with structure(s) thereon, if any, and the

lessee/sub-lessee will have no right to claim any compensation thereof. The balance, if any, shall be refunded without any interest and no separate notice shall be given in this regard.

5. If the allotment is cancelled on the ground mentioned in para 1 above, the entire amount deposited by the lessee/sub-lessee, till the date of cancellation shall be forfeited by the LESSOR and no claim whatsoever shall be entertained in this regard.

OTHER CLAUSES

1. ***...***

12. The Lessee/ sub-lessee shall not be allowed change his role, otherwise the Lease/ sub-lease shall be cancelled and entire money deposited shall be forfeited."

iv. In terms of the letter dated 18.11.2017, M/s Logix City Developers Pvt. Ltd. requested the Applicant for approval of sub-division of Plot No. GH-02 in favour of its wholly owned subsidiary company. Resultantly, the Applicant issued letter dated 07.06.2018 permitting the sub-division of the plot in favour of M/s Docile Buildtech Private Limited, to the extent of 13961 sq. mtrs. Thus, on 30.10.2018 Logix City Developers Pvt. Ltd. executed a sub-Lease Deed with prior permission of the Applicant, in favour of Docile Buildtech Private Limited (Sub-lessee).

v. It was only on notice being issued to it by this Tribunal on 02.02.2023 regarding filing of IA No. 1100/2022 in CP(IB) 1781/2018 preferred for approval of the Resolution Plan that the applicant could know about the CIRP initiated qua the Corporate Debtor. On receipt of notice the applicant could discover that the Corporate Debtor was developing the

land without prior permission of the Applicant in the IA and the land under development by the Applicant had not been allotted to it. The land in issue was allotted to M/s. Logix City Developers Pvt. Ltd. and was sub leased to M/s. Docile Buildtech Private Limited. The Applicant could also discover that M/s Logix CITY Developers Pvt. Ltd. and the Corporate Debtor entered into a Joint Development Agreement dated 15.02.2013 and an addendum to JDA was executed on 25.07.2013. The JDA and addendum to it were executed between Logix City Developers Pvt. Ltd. and the Corporate Debtor without the prior approval of the Applicant and the Applicant was not party/signatory to the Agreement.

vi. The Resolution Plan further revealed that the Lessee viz. M/s. Logix City Developers Pvt. Ltd. executed an assignment deed dated 30.10.2018 in favour of sub-lessee i.e. M/s. Docile Buildtech Private Limited, in terms of which the rights and obligations of the lessee under the JDA and addendum to JDA were transferred to the sub-lessee.

vii. As per the terms and conditions of the Lease Deed dated 08.06.2011, no rights whatsoever in the land allotted by the Applicant can be transferred by the lessee without prior approval of the Applicant. In the present case, no prior permission was obtained from the Applicant before executing the assignment deed in favour of the CD. Similarly, the Applicant was not signatory to the Deed. M/s Logix City Developers Pvt. Ltd. despite being a lessee has categorically mentioned itself to be the owner of the plot in question and entered into the JDA with the CD. The JDA, the addendum to CD and assignment deed are void *ab initio* as Logix City Developers Pvt. Ltd. has illegally and without appropriate

rights and authority entered into the agreements with the CD. No ownership right was created in favour of Logix City Developers Pvt. Ltd. in terms of the Lease Deed dated 08.06.2011.

viii. Even the assignment deed executed in favour of Docile Buildtech Private Limited was also without prior approval of the Applicant. The assignment deed mentions Logix City Developers Pvt. Ltd. to be the owner and the entitlement of the owner under the agreement to sale was also transferred to sub-lessee. The factual position regarding assignment deed dated 30.10.2018 also came to the knowledge of Applicant only after this Tribunal issued notice to it. The Applicant could also learn that Docile Buildtech Pvt. Ltd. filed a claim with RP mentioning the amount due and payable to the Applicant and the amount could be admitted by the Respondent.

3. The Applicant is approached by SRA by way of filing detailed reply, espousing therein:-

(a) The Resolution Plan offered by it provides for payment of the entire principal amount of Rs. 91.08 Crores due to the Applicant as per the sub-Lease Deed 30.10.2018. The Applicant cannot be seen saying that it has any justifiable grievance which require redressal.

(b) The Applicant being a 'State' within the meaning of Article 12 of the Constitution of India is under obligation to act in furtherance of and to upheld the law of the country. The Code has been promulgated by the Parliament of India for the purpose of providing an effective legal framework for timely resolution of insolvency and bankruptcy in order to support development of credit market and facilitate more

investments leading to higher economic growth and development. The prayers made by the Applicant before this Tribunal is contrary to the purpose and objective of the Code and are intended to ensure that the CD is not able to revive itself and the amounts paid by the allottees to the CD, in excess of Rs. 200 Crores (during the period 201-14 till 2017-18), becomes unrecoverable for all times to come.

(c) The Applicant did not take any steps for filing its claim during the CIRP of the CD still the SRA made adequate provision in the plan for protection of the financial interest of the Applicant.

(d) The Resolution Plan qua the CD for approval of which the IA No. 1100 of 2022 in C.P. (IB) NO. 1781 of 2018 could be preferred not only provides for payment of entire principal amount due to the Applicant but also provides for payment of one-time lease rent to it. The Plan thus take due care of the financial interest of the Applicant.

(e) The stand of the Applicant that it came to know that the CD is developing the land (leased to Logix City Developers Pvt. Ltd. (Logix) and further sub-leased to Docile Buildtech Pvt. Ltd. (Docile) under a Joint Development Agreement dated 15.03.2013 read with the addendum to the Joint Development Agreement dated 27.07.2013 and the Assignment Deed 30.10.2018 taken by it only after this Tribunal issued notice to the Applicant vide order dated 02.02.2023 is false and incorrect.

(f) The Applicant was always aware that the project was being developed by the CD as Joint Development Partner of Logix. The Applicant had issued permission for mortgaging the subject land for enabling the CD

to issue secured debentures on 22.10.2016 and 07.09.2017. The project being developed by the CD was widely publicised in and around NOIDA and was also registered with Uttar Pradesh Real Estate Development Authority. The information in relation to the project of the CD being available in public domain, for a substantial period of time prior to initiation of CIRP of the CD, the Applicant cannot be permitted to plead ignorance about the development of the project by the CD since 2013.

4. We heard the counsels for the parties and perused the record. As can be seen from the Lease Deed dated 08.06.2011 enclosed as Annexure-A-4 to the application, the same was entered into between the New Okhla Industrial Development Authority (NOIDA) and M/s Logix City Developers Pvt. Ltd., a Special Purpose Company (SPC). It was an agreement between NOIDA and M/s Logix City Developers Pvt. Ltd. that the lessor (NOIDA) had agreed to demise and the Lessee i.e. M/s Logix City Developers Pvt. Ltd. had agreed to take on lease the Plot No. GH-02, Sector-143, NOIDA on the terms and conditions appeared in the Lease Deed, for the purpose of constructing Residential Flats according to the set-backs and building plan approved by the lessor. The Lease Deed take note of the fact that the Lessor through a Sealed Two-Bid tender awarded to the Consortium consisting of:- M/s Logix Realty Developers Pvt. Ltd. (RELEVANT MEMBER), M/s V.C. Solutions Pvt. Ltd. (RELEVANT MEMBER), M/s IT Enfraservices Pvt. Ltd. (RELEVANT MEMBER), M/s Noida Cyber Park Pvt. Ltd. (RELEVANT MEMBER) & M/s Lakshmi Constructions (RELEVANT MEMBER), A-4 & 5 Sector-16, Noida, U.P. the plot No. 02, SECTOR-143 NOIDA, after fulfilling the terms and

conditions prescribed in the brochure of Group Housing Scheme Code GH-2011(1) NO. NOIDA/GHP/GH-and its corrigendums, vide Reservation letter 2011(1)/2011/2961 dated 31.03.2011, Allotment letter No. NOIDA/GHP/GH-2011(1)/2011/3057 dated 08.04.2011 and Allotment letter (Corrigendum) No. NOIDA/GHP/GH-2011(1)/2011/3697 dated 08.06.2011 for the development and marketing of Group Housing Pockets/ Flats on the detailed terms and conditions set out in the allotment letter and brochure of the Scheme. The lessor approved the name and status of Special Purpose Company (SPC) on the request of the Consortium Members. The relevant excerpt of the Lease Deeds reads thus:-

"LEASE DEED"

This Lease Deed made on 8th day of June, 2011 (Two thousand and Eleven) between the ***NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY****, a body corporate constituted under Section 3 read with 2 (d) of the Uttar Pradesh Industrial Area Development Act, 1976 (U.P. Act No. 6 of 1976) hereinafter called the Lessor which expression shall unless the context does not so admit, include its successors, assigns of the one part and* ***M/s LOGIX CITY DEVELOPERS P. LTD.****, a Special Purpose. Company, within the meaning of Companies Act, 1956, having its registered office at* ***85 GROUND FLOOR, WORLD TRADE CENTRE, NEW DELHI*** *through its Authorized Signatory* ***SHRI. DAVENDER SAXENA S/O SH. LATE R. M. RAI SAXENA, R/O A-4 & 5, SECTOR-16, NOIDA-201301*** *duly authorized by the Board of Directors vide Resolution dated* ***21.05.2011*** *hereinafter called the Lessee (which expression shall unless the context does not so admit,*

include Society representatives, administrators and permitted assigns) of the other part.

WHEREAS the plot hereinafter described forms part of the land acquired under the Land Acquisition Act 1894 and developed by the Lessor for the purpose of setting up an urban and industrial township.

AND WHEREAS the Lessor has agreed to demise and the Lessee has agreed to take on lease the ***Plot No GH-02, Sector-143, NOIDA*** *on the terms and conditions hereinafter appearing for the purpose of constructing Residential Flats according to the set backs and building plan approved by the lessor.*

AND WHEREAS the Lessor has through a Sealed Two-Bid tender System awarded to the Consortium Consisting of:- M/s Logix Soft-tel Pvt. Ltd. (LEAD MEMBER), M/s Logix Realty Developers Pvt. Ltd. (RELEVANT MEMBER), M/s V.C. Solutions Pvt. Ltd. (RELEVANT MEMBER), M/s IT Enfraservices Pvt. Ltd. (RELEVANT MEMBER), M/s Noida Cyber Park Pvt. Ltd. (RELEVANT MEMBER) Mis Lakshmi Constructions (RELEVANT MEMBER), A-4 & 5 Sector-16, ***Noida, U.P.*** *the plot No. 02, SECTOR-143 NOIDA, after fulfilling the terms and conditions prescribed in the brochure* ***of Group Housing Scheme Code GH-2011(1)*** *NO.* ***NOIDA/GHP/GH-and its corrigendums, vide Reservation letter (2011(l) / 2011) / 2961 dated 31.03.2011****, Allotment letter No.* ***NOIDA/GHP/GH-2011(1)/2011/3057 dated 08.04.2011*** *and Allotment letter (Corrigendum) No.* ***NOIDA/GHP/GH-2011(I)/2011/3697 dated 08.06.2011*** *& for the development and marketing of Group Housing Pockets/*

Flats on the detailed terms and conditions set out in the said allotment letter and brochure of the said Scheme.

AND WHEREAS the lessor approved the name and status of Special Purpose Company (SPC) on the request of consortium members as mentioned in accordance with the allotment, vide letter No ***NOIDA/GHP/GH-2011(I)/2011/3699 dated 08.04.2011.***

AND WHEREAS the lessee is a Special Purpose Company comprising of following Directors/ Shareholders :-

LIST OF DIRECTORS	
S.NO.	NAME AND ADDRESS OF THE DIRECTORS
1.	SMT. MEENA NATH W/O SH. SHAKTI NATH, 34, FRIENDS COLONY EAST, MATHURA ROAD, NEW DELHI-110065
2.	SH. SHAKTI NATH S/O late SH. RAGHU NATH, 34, FRIENDS COLONY EAST, MATHURA ROAD, NEW DELHI-110065
3	SH. VIKRAM NATH S/O SHAKTI NATH, D-922, NEW FRIENDS COLONY, NEW DELHI-110065

LIST OF OF SHAREHOLDERS/MEMBERS			
SL. NO.	NAME	%AGE OF SHARE HOLDING	STATUS
1	M/s Logix Soft-tel Pvt. Ltd.	40.00%	LEAD MEMBER
2	M/s V.C. Solutions Pvt. Ltd.	20.00%	RELEVANT MEMBER
3	M/s Noida Cyber Park Pvt. Ltd.	05.00%	RELEVANT MEMBER
4	M/s IT Enfraservices Pvt. Ltd.	05.00%	RELEVANT MEMBER
5	M/s Lakshmi Constructions	05.00%	RELEVANT MEMBER
6	M/s Logix Realty Developers Pvt. Ltd.	25.00%	RELEVANT MEMBER
	TOTAL	100.00%	

And It has been represented to the lessor that the Special Purpose Co members have agreed amongst themselves that M/s Logix Soft-tel Pvt. Ltd., having its registered office at 85 GROUND FLOOR, WORLD TRADE CENTRE, NEW DELHI shall remain always be the Lead Member of the Special Purpose Company and whose shareholding in the Special Purpose Company shall remain unchanged till the temporary occupancy/ completion certificate of at least one phase of the project is obtained from the Lessor

(Authority). However, the SPC will be allowed to transfer up to 49% of its shareholding, subject to the condition that in case of a consortium, the original "Relevant Members" and the "Lead Member" (on the date of submission of the tender) shall continue to hold at least 51% of the shareholding in their respective SPCs and the shareholding of the "Lead Member" in his SPC shall remain at least 30% till the temporary occupancy/ completion certificate of at least one phase of the project is obtained from the LESSOR."

5. From the aforementioned, it is clear that the CD was not member of the Consortium which created the SPC/Allottee. In terms of the Lease Deed, the total premium for the land payable by the lessee was Rs. 235,69,07,079.00 (Rupees Two Hundred Thirty Five Crore Sixty Nine Lac Seven Thousand Seventy Nine only) out of which only 10% i.e. Rs. 23,56,90,707.90 (Rupees Twenty Three Crore Fifty Six Lac Ninety Thousand Seven Hundred Seven & Paise Ninety only) had been paid by the lessee to the lessor. There was moratorium of 24 months from the date of allotment and only the interest @ 11% per annum compounded half yearly was accrued during the moratorium period was payable in equal half yearly instalments. After expiry of moratorium period, the balance 90% premium i.e. Rs. 212,12,16,372.00 (Rupees Two Hundred Twelve Crore Twelve Lac Sixteen Thousand Three Hundred Seventy Two only) was to be paid in 16 half yearly instalments in the manner mentioned in the Lease Deed. The relevant clause of the Lease Deed reads thus:-

"II. NOW THIS LEASE DEED WITNESSETH AS FOLLOWS:-

1. *This in consideration of the total premium of. 235,69,07,079.00 (Rupees Two Hundred Thirty Five Crore Sixty Nine Lac Seven Thousand Seventy Nine only) out of which 10% of i.e. ₹. 23,56,90,707.90 (Rupees Twenty Three Crore Fifty Six Lac Ninety Thousand Seven Hundred Seven & Paise Ninety only) which have been paid by the Lessee to the Lessor (the receipt where of the Lessor doth hereby acknowledge). There shall be moratorium of 24 months from the date of allotment and only the interest @ 11% per annum compounded half yearly, accrued during the moratorium period, shall be payable in equal half yearly instalments. After expiry of moratorium period, the balance 90% premium i.e. 2. 212,12,16,372.00 (Rupees Two Hundred Twelve Crore Twelve Lac Sixteen Thousand Three Hundred Seventy Two only) of the plot along with interest will be paid in 16 half yearly instalments in the following manner:-*

SL NO	DUE DATE	INSTALMENT (in Rs.)	INTEREST (In Rs)	TOTAL (in Rs.)
1	07.10.2011	--	116666901	116666901
2	07.04.2012	--	116666901	116666901
3	07.10.2012	--	116666901	116666901
4	07.04.2013	--	116666901	116666901
5	07.10.2013	132576024	116666912	249242936
6	07.04.2014	132576024	109375230	241951254
7	07.10.2014	132576024	102083548	234659572
8	07.04.2015	132576024	94791866	227367890
9	07.10.2015	132576024	87500184	220076208
10	07.04.2016	132576024	80208502	212784526
11	07.10.2016	132576024	72916820	205492844
12	07.04.2017	132576024	65625138	198201162
13	07.10.2017	132576024	58333456	190909480
14	07.04.2018	132576024	51041774	183617798
15	07.10.2018	132576024	43750092	176326116
16	07.04.2019	132576024	36458410	169034434
17	07.10.2019	132576024	29166728	161742752
18	07.04.2020	132576024	21875046	154451070
19	07.10.2020	132576024	14583364	147159388
20	07.04.2021	132576024	7291682	139867706

In case of default in depositing the installments or any payment, interest @14% compounded half yearly shall be leviabie for defaulted period on the defaulted amount.

All payment should be made through a demand draft/pay order drawn in favour of "NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY" and payable at any Scheduled Bank located in New Delhi/Noida. The Lessee should clearly Indicate his name and detalls of plots applied for/ allotted on the reverse of the demand draft/pay order.

Premlum referred to in this document means total amount payable to the Lessor for the allotted plot.

All payments should be remitted by due date. In case the due date is a bank holiday then the lessee should ensure remittance on the previous working day.

The payment made by the lessee will first be adjusted towards the interest due, if any, and thereafter the balance will be adjusted towards the lease rent payable and then the premium due. No request of the lessee contrary to this will be entertained.

The area of the plot allotted may slightly vary at the time of handing over of the possession. The premium of the plot will proportionately vary due to such variations. The applicable rate of allotment of additional area shall be the accepted tender rate for the original plot plus simple interest @12% from the date of allotment or the reserve price or the accepted tender rate for the Group Housing Plots in the relevant sector or the nearby area, at the time of communication about the additional land, whichever is higher. Payment of premium and the lease rent of the additional land will be made as per the terms & conditions applicable to the land initially allotted."

6. It is specifically provided in the Lease Deed that without obtaining the completion certificate, the lessee/sub-lessee had the right to sub-divide the allotted plot into suitable smaller plots as per the planning norms of the

lessor and to transfer the same to the interested parties with the prior approval of the lessor on payment of transfer charges and policy prevailing on the date of transfer. The relevant clause contained in the Lease Deed reads thus:-

"TRANSFER OF PLOT

Without obtaining the completion certificate the lessee/ sub-lessee shall have the right to sub-divide the allotted plot into suitable smaller piots as per the planning norms of the LESSOR and to transfer the same to the interested parties with the prior approval of the LESSOR on payment of transfer charges and policy prevailing on the date of transfer. However, the area of each of such sub-divided plot should not be less than 10,000 sq. mtrs. However, individual flat will be transferable with prior approval of the LESSOR as per the following conditions:-

(i) The dues of the LESSOR towards the cost of land shall be paid in accordance with the payment schedule specified in the Lease Deed/sub-Lease Deed before executing of sub-Lease Deed of the flat.

(ii) The Lease Deed/sub-Lease Deed has been duly executed.

(iii) Transfer of the flat will be allowed only after obtaining the temporary occupancy/ completion certificate for the respective phase by the Lessee/sub-lessee.

(iv) The sub-lessee of the individual flat undertakes to put to use the premises for the residential use only.

(v) First sale of a flat to an individual allottee shall be through a Sub-lease/Lease Deed to be executed on the request of the Lessee/ sub-lessee to the LESSOR in writing. No transfer charges will be payable in case of first sale. However, on subsequent sale, transfer charges shall be applicable on the prevailing rates as fixed by the LESSOR.



(vi) Rs. 1000/- shall be paid as processing fee in each case of sale of a flat in addition to the applicable transfer charges."

7. It will not be out of context to make a reference to clause B (ii) of the Allotment Letter dated 08.04.2011, the Allottee/Lead Member/SPC, incorporated by the consortium had the responsibility to construct on their own a minimum of 30% of the total permissible FAR on the allotted area. The clause reads thus:-

"d) The members shall submit a registered/notarized Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Company(ies)', hereinafter called SPCs, that will subsequently carryout all its responsibilities as the allottee. The registered MOA must specify the equity shareholding of each member of the Consortium in the proposed SPCs. The SPCs must necessarily be Firm(s)/Company(ies) registered in India with the appropriate statutory Authority. The allottee and in the case of consortium, the lead member and/or the relevant member and/or SPC(s) incorporated by them, put together, will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area. In case of a consortium, the responsibility of construction this 30% of the total permissible FAR shall be clearly specified in the MOA submitted by the consortium along with bid document. The allottee and the members of the consortium shall have the option to sub lease a maximum of 70% of the land allotted to them as per the arrangements specified by them in the MOA."

8. The clause B (iv) of the Letter of Allotment also provides that the lessee/sub-lessee will be allowed to transfer upto 49% of its shareholding,

subject to the condition that in case of a consortium, the original "Relevant Members" and the "Lead Member" (on the date of submission of the tender) shall continue to hold at least 51% of the shareholding in the SPC and the shareholding of the "Lead Member" in SPC should remain at least 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the NOIDA.

9. The clause 10 of the Allotment Letter also provides that without obtaining the temporary occupancy/completion certificate, the lessee/sub-lessee(s) had the option to divide the allotted plot and to sub-lease the same with the prior approval of the NOIDA on payment of transfer charges and policy prevailing on the date of transfer/sub division. However, the area of such sub-divided plots should not be less than 10,000 sq. mtrs and those sub-divided plots should be as per the planning norms of the NOIDA. The clause J (1) of the Allotment Letter stipulated that after the approval of the lay-out plan by the NOIDA, the lessee shall have the option to sub-lease portions of land earmarked for group housing, subject to minimum plot size of 10,000 Sqm. and adherence to the planning norms of the NOIDA, after prior approval from NOIDA. In terms of the clause P of Allotment Letter, the lessee/sub-lessee could transfer the sub-divided plot with prior approval of NOIDA, on payment of transfer charges.

10. As has been espoused in the application, the Lessee/SPC/Allottee never obtained any prior approval from NOIDA to transfer the plot in question to CD. According to the Applicant, the SPC viz. Logix City Developers Pvt. Ltd. a SPC entered into a sub-Lease Deed with M/s Docile Buildtech Pvt. Ltd., a

100% owned SPC on 30.10.2018, thus, the CD had no claim on the plot in issue. It is on this backdrop, the Applicant had sought exclusion of Plot Bearing No. GH-02, Section 143, NOIDA, UP admeasuring 100080.98 sq. mtrs.

11. There is no denial by the SRA of the fact that when the CD could mortgage the plot in question in favour of bank to procure financial facility, the Applicant did not raise any objection. According to SRA, the mortgage deed was executed with due permission of the Applicant. It is also the issue raised on behalf of the SRA that when the JDA was executed on 27.07.2013 and the construction of the plot in question has been in progress, it not understood that how and why the Applicant never raised any issue. A copy of permission granted by the Applicant for mortgaging the plot in question is enclosed as Annexure R-2/1 of reply by SRA. As far as the permission letter is concerned, the same has been issued in favour of M/s Logix City Developers Pvt. Ltd. It is not so that the JDA was entered into with prior permission of the Applicant. The subsequent sub-Lease Deed entered into between the allottee/lessee and the third party also bring the JDA under shadow of doubt. We may also not ignore the fact that the stand taken by NOIDA regarding approval of sub lease in favour of Docile Buildtech Pvt. Ltd. is also self-contradictory (supra).

12. We are unable to appreciate that how the CD before us could not be conscious and concern about the requisite confirmation/approval from the Applicant qua the JDA. We can also be not oblivious of the sub-Lease Deed entered into between Docile Buildtech Pvt. Ltd. the third party and the

allottee on 30.10.2018. Merely because NOIDA turned blind eyes towards the plot measuring almost 25 Acre and could wake up only after we issued notice to it. After waking up the NOIDA, we cannot close our eyes towards the factual development brought on record by NOIDA. It would not be gainsaid that the use of expression 'homebuyer' in Real-Estate Project give rise to misplaced sympathy, which results into misuse of public land by unscrupulous elements in a designed manner. In Three C Group of Companies, Hon'ble Allahabad High Court had to order investigation by CBI into the affairs of the Real Estate Companies concerning primarily, the allotment of land by NOIDA. In the case of ***Mansi Brar Fernandes vs. Shubha Sharma And Anr.*** (Civil Appeal No. 3826 of 2020), Hon'ble Supreme Court could take note of the speculation in Real Estate and Pioneer Urban. As can be seen from the judgment, the homebuyer is not a homogeneous class and certain categories which appear as homebuyer may actually be speculative inspector. Paras 15.3, 18.1, 18.3, 18.6, 18.7 and 21 of the judgment reads thus:-

> *"**15.3.** The decision of this Court in **Pioneer Urban Land and Infrastructure Ltd v. Union of India** (supra) drew a distinction between speculative investors and genuine homebuyers. The present case affords an opportunity to reinforce that distinction through a principled intelligible differentia, so as to protect bona fide homebuyers, deter misuse of the Code by speculative investors, and prevent dishonest developers from exploiting systemic loopholes.*
>
> ***XXX***
>
> ***18.3.** This Court in **Pioneer Urban Land and Infrastructure Ltd v. Union of India** (supra), while upholding the constitutional validity of the 2018 amendment recognising allottees as financial*

creditors, drew a crucial distinction between genuine homebuyers and speculative investors. It clarified that speculative investors cannot be permitted to misuse the Code as a debt recovery mechanism. The judgment struck a balance: ensuring representation of genuine homebuyers in the CoC, while shielding developers and projects from being derailed by investors who never intended to take possession.

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18.6. *In C.A. No. 3903 of 2022 (Sunita Agarwal), the MoU dated 28.02.2015 provided for an investment of Rs. 25 lakhs per unit with assured returns of 25% per annum after 24 months. It contained a compulsory buyback clause and provisions for profit-sharing over and above guaranteed returns. The repeated use of the term "investment" coupled with a risk-free exit option, confirms that possession was never intended. While the NCLT admitted her Section 7 application ex parte, the NCLAT correctly reversed the order. As this Court has observed, a homebuyer cannot simultaneously demand refund with guaranteed returns while retaining the option to refuse possession. Such risk-free contracts place speculative investors in an advantageous position, to the detriment of genuine homebuyers and developers.*

18.7. *On the facts and law, it is evident that both appellants are speculative investors. Their claims are in the nature of recovery, not insolvency resolution.*

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21. *This Court reiterates that while investors are integral to any industry and their interests warrant protection, speculative participants driven purely by profit motives cannot be permitted to misuse the Insolvency and Bankruptcy Code, which is a remedial framework conceived for revival and the protection of sick companies and, in the case of real estate, genuine homebuyers. Such investors have alternative remedies under consumer law or RERA and even recourse to Civil Courts in appropriate cases. To*

admit speculative claims into insolvency proceedings would dilute the intelligible differentia underlying the legislative scheme, destabilize the residential real estate sector, and erode the social purpose embedded in housing as a fundamental right."

13. Merely because the interest of certain homebuyers is involved, we may not ignore the manipulation of the project by builders and the interested parties completely. It was the judgment of Hon'ble Supreme Court in ***Chitra Sharma & Ors. Vs. Union of India and Ors.*** [Writ Petition (Civil) No. 744 of 2017], wherein the Lordships could take note of the concern of homebuyers and thereafter, the homebuyers though held in the category of unsecured creditors are given such benefits/share out of plan value, which is in excess of what is given even to the secured creditors. Before that their interest was ignored. The homebuyers in Real Estate matters are treated differently, because the default is constituted/perceived when possession of allotted units is not handed over to the allottees/homebuyers and the insolvency is perceived as resolved with allotment of units to them. Unless a plan contains a provisions for allotment of units allotted to them to the homebuyers, the same is not perceived as viable plan. In such process, the secure creditors have to take back seats. So, when the homebuyers in a Real Estate project are given special status because the Resolution depends upon giving possession of the units allotted to them, the land owning agency, which makes the land available for the project need also be treated differently as implementation of the Resolution Plan which provides for handing over the units to the allottees/homebuyers depends upon the availability of land. The perception and thought that to ensure provisions for possession for the units

allotted to homebuyers to them at any cost may unavoidably encourage not only malpractices but even the fraudulent practices also. Having taken note of such practices in ***Three C Green Developers Pvt. Ltd. and Ors. v. State of U.P. and Ors.*** (Writ–C No. – 31823 of 2019), Hon'ble Allahabad High Court directed CBI investigation regarding the affairs of Three C Group of Companies and the allotment of plots of land to them. Paras 69 to 152 of the judgment reads thus:-

> *"**69.** We would be remiss in our duty if we ignore the illegalities committed by the Builders (sub-lessees) in connivance with the officials of Noida Authority which has snow-balled into a major land scam and which, according to CAG, has led to significant loss to the Noida Authority and the State Government and to the public at large. We are constrained to note the total lack of concern shown by the Authority on the report of the CAG and we wonder why no action has been taken against the Builders/ allottees / sub-lessees and the officers of the Noida Authority who were involved in this large-scale scam.*
>
> ***70.** The timeline of events, the total inaction of the NOIDA Authority and the apathy of the State Government, in the face of the CAG report compels us to pass suitable orders in the matter. A Court, much less a Constitutional Court, cannot sit helpless in the face of blatant illegalities and apparent collusion. This Court, under Article 226 of the Constitution, has the power to pass appropriate orders in the face of inexplicable illegality and loss of public money. This Court can, and does in these glaring facts, take cognizance of what seems like a glaring case of collusion between builders and officers of NOIDA Authority to grant undue benefit to them and cause loss to State exchequer and consciously turn a blind eye to a report of the CAG. In so doing, they have also created a difficult situation for the homebuyers, which is compounding the problem even further.*

71. *The following analysis, conclusions and our subsequent directions are aimed to address the malfeasance and provide relief to the affected stakeholders:*

H. SCHEME-2010-2011 FOR DEVELOPMENT OF SPORT CITY IN NOIDA AND ITS VIOLATION:

72. *Noida having been declared to be an Industrial Township is obligated to not only develop industries but also to develop a complete township by virtue of Article 2430 of the Constitution of India. The sports city scheme having been widely publicized on 03.03.2011 was to fulfil a laudable object. This is evident that the object of the scheme was to develop state-of-the-art sports facilities to be enjoyed by the public at large. This scheme was launched for developing Sports City at two different places in Noida, first of which is in Sector-78 & 79, admeasuring about 7,27,500 square metre and the other sports city in sector 150 in Noida. This case pertains to the former Sports City in Sector 78 & 79.*

73. *The reasons of allotting a huge parcel of land was for developing an international standard Sports facility. Looking at the size and the cost of the project it may not have been feasible for an individual company to complete the project. So a Consortium of companies were allowed to participate and develop the sports city project. It was never the intention of the Scheme to bifurcate the project of Sports City into a smaller plots and allow small builders to make group housing society in the sports city. But looking at the way the Authority allowed the haphazard development of the group housing, the entire concept and the scheme of sports city has been frustrated.*

74. *As per the scheme, a Brochure was issued which had several conditions, which conditions were breached by the allotees / sub-lessee in material respects disentitling them from being allotted the project, but which were hrushed under the carpet in connivance with the officers of the Noida Authority.*

75. *Some of the conditions and their glaring breaches are as follows:*

> ***"Members of consortium will have to specify one Lead Member who alone shall be authorized to correspond with the NOIDA. Lead member should be the single largest shareholder having at least 30% share in the consortium."***
>
> ***(emphasis supplied)***

On the request of the allottees, individual sub leases were executed by the Noida authority first in favor of the individual members of the consortium, and separate payment schedule was fixed. Subsequently these members started corresponding with the Noida authority and sending request contrary to the scheme and that same were accepted erroneously. The lead member was supposed to be the single largest shareholder having at least 30% share in the consortium. However in this case the lead member was completely ousted by the allottees and the officials of the Noida authority (together hereinafter referred as conniving parties) while executing the lease deeds with the members of the consortium.

76. The shareholding of the lead member in the consortium shall remain at least 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Noida.

(emphasis supplied)

This condition was also brazenly violated. The lead member was completely ousted by the allottees in connivance with the conniving parties, even much prior of getting a temporary occupancy competition certificate of first phase of the project

77. In case of Consortium, the members shall submit a Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme(s), and in case the plot is allotted to them, the MOA shall clearly define the role and

responsibility of each member in the consortium, particularly with regard to arranging debt and equity for the project and its implementation.

(emphasis supplied)

No such MOA was executed which defined role and responsibility of each of the members, neither the same was ever asked by the Noida Authority.

78. The members shall submit a registered/notarized Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Company(ies), hereinafter called SPCs that will subsequently carry out all its responsibilities as the allottee.

(emphasis supplied)

Though the SPC was there but was never taken any such responsibility, the officials of the Noida Authority never even asked for the same. On the contrary the entire project was divided in a number of plots and allotted to different companies. Each of these companies took on themselves with specific roles of developing the project, the division was such all the cream of the project were assigned to smaller companies. In all 21 companies got the advantage of developing the residential commercial project, and the entire responsibility of completing the sports facilities was assigned to petitioner no. 1 and one another company. These smaller companies were later on sold to other builders (who were not even qualified to apply), by transferring the shares of the sub-lessee companies. All the profits were siphoned off, and nothing was ploughed or held back for the development of the sports facilities. This also created a channel for back-door allotment to ineligible persons.

79. The allottee and in the case of consortium, the lead member and/or the relevant member and/or SPC(s)

incorporated by them, put together, will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.

(emphasis supplied)

In this case neither the lead member nor the relevant member constructed on their own the 30% of the total permissible FAR on allotted area. The lead member was ousted right in the beginning;

80. The "Lead Member" (on the date of submission of the tender) shall continue to hold at least 30% of the shareholding in the SPC till the temporary occupancy/completion certificate at least one phase of the project is obtained from the NOIDA.

(emphasis supplied)

In this case the lead member was not holding 30% of the share in the SPC and till date they have not completed the first phase of the project. But the officials of the Noida authority kept their eyes closed and allowed the allottees to continue the way they wanted.

81. In case of default in depositing the instalments or any payment, interest @ 14% compounded half yearly shall be leviable for defaulted period on the defaulted amount.

(emphasis supplied)

The allottees kept on defaulting in payment of the dues of the Noida authority but no efforts were ever made to recover the principal with the contractual interest from the allotee. In more than a decade only 3 or 4 stray notices have been sent. Even those were nothing but just an eyewash. The officials of the Noida authority have miserably failed to recover the dues. This was nothing but an outcome of the conniving parties, which led to a huge loss to the state exchequer.

82. The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional and other facilities

within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. However, the residential and commercial development/construction may be completed in phases within 7 years.

(emphasis supplied)

Though the Lessee were obligated to complete the construction of minimum 15% of the permissible area earmarked for sports, etc within a period of 3 years from the date of execution of Lease Deed, no part of this has been done till date. Further, a perusal of the provision also shows that the residential portion was to be developed as a quid pro quo for development of the sports facilities. However, by alienating the allotted land to third parties, money has been siphoned off by the allottees while no such development of the sports facilities has ever been carried out. Noida Authority never asked to complete the sports facilities part of the project either.

83. The 'Completion Certificate' will be issued by the NOIDA on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof.

(emphasis supplied)

This condition was also diluted by the conniving officials.

84. Without obtaining the completion certificate the lessee shall have the right to sub-divide the allotted plot into suitable smaller plot as per the planning norms of the NOIDA only for the area available for residential and commercial use and to transfer the same to the interested parties, if any, with the prior approval of the NOIDA on payment of transfer charges at the rate prevailing on the date of transfer.

(emphasis supplied)

Here the lessee had the right to sub-divide the allotted plot into suitable smaller plot only for the area available for residential and commercial use, and that too after getting the completion certificate. But here the entire project of sports city was subdivided, and further it was illegally transferred to third parties, without the prior approval of the NOIDA, neither the transfer charges were paid.

85. The NOIDA will monitor the implementation of the project.

(emphasis supplied)

The NOIDA Authority has miserably failed to monitor the implementation of the project.

86. *In the scheme the allotment price was kept far below the the market price of that point of time, as the scheme was for development of the sports facility and for this purpose, the price was purposely kept low so the cost of developing the sports facilities could be set off by developing the residential apartments/commercial area. However, the allottees took the undue benefit of the low price, and after the allotment, without paying the further instalments (which was 90% of the allotment cost) sold it off to smaller builders, by making a huge profit at the cost of Noida authority and the public at large. It was clear from the policy and brochure, that the lead member should be the single largest shareholder having at least 30% share in the Consortium and he was supposed to hold back his 30% shares till they get temporary occupancy or completion certificate of at least the first phase of the project. However, soon after the allotment of project to the Consortium, the Noida authority in complete violation of the policy and the scheme, went on dividing/ sub dividing the plots.*

87. *The intent of the consortium members was evident from the inception, as the subdivision of plots was clearly part of a calculated scheme. Their aim was to distribute all the advantages*

and assets of the Sports City among various smaller entities while concentrating the liabilities specifically, the obligation to develop sports facilities into two companies, of which one was the petitioner. The petitioner company claims to have taken a financial assistance by issuing debenture. Since the petitioner had not developed any thing one wonders where has the money been spent. The petitioner company, was pushed into insolvency as part of a broader strategy with the sole intention of defrauding the Noida authority and the State. The persons behind the said companies utilized the land earmarked for recovery of cost to build the sports facilities to third parties in connivance with Noida Authority officials, effectively putting these funds which were earmarked for public use outside the scope of recovery. These lands were meant for generation of revenue to complete the sports facilities, which was required to be put into the intended use.

88. *No doubt, the sub division of the plot was allowed but it had certain riders and condition attached to it, which were never followed in its true sense and spirit. In this case, the officers of the NOIDA Authority purposely chose to be blind to the attached condition and merely went on bifurcating the entire sports city, with the sole intention of extending undue advantage to the allottees/ Builders.*

89. *Sanction of the map, even if it exists, has to be read along with the scheme and the lease deed as well as the statutory provisions. Any sanction contrary to the provisions of the Act, brochure, allotment and lease deed will by itself be a deviation and this deviation being not recognized under the law, hence, the Grundnorm Principle would be applicable.*

90. *Therefore, the petitioner cannot claim right unfairly, particularly when, the layout plan was not prepared by the Noida Authority, but was prepared by the petitioner himself and*

deliberately taken the responsibility of developing the sports facility, though the petitioner had no intention of doing the same.

91. *From the material on record, it transpires that the promoter of the petitioner company are the same as that of 7 out of 9 consortium members companies, the internal division of the responsibilities, were made in a way that all the cream of the project was parked in smaller entities, and all the liabilities of completing the project into two companies. The intention of the petitioner right from the beginning was not to develop the sports city but just to sell of the smaller creamy portion of the project, and to make money.*

92. *Since in this case there has been a web of companies incorporated by the same promoters and all of his newly incorporated companies applied as a consortium, and there after the share holdings have changed in certain companies without the permission of the authority, contrary to the provisions of the sports city scheme. Hence it is necessary to pierce the corporate veil and see who are the people/entity responsible for the fraud/scam.*

1. INSOLVENCY-LIFTING OF CORPORATE VEIL

93. *In this case the project was allotted to a consortium, surprisingly all the members of the consortium companies were incorporated after the scheme was launched and the promoters of all the companies were same, which goes to show the consortium was not a genuine consortium but was made of a group of companies owned by same set of people, who after getting the allotment, got it sub-divided and a development plan was applied and approved in such a way, that all the assets of the Sports City were kept in by various small companies and the liability of developing the sports facility was kept with two companies.*

94. *Few of the companies in this consortium have gone into insolvency. The insolvencies of these companies were designed*

only to avoid payment to Noida Authority, banks/ financial institutions, State of U.P. to find out the actual accused person who was involved in this bungling/fraud, which resulted into the insolvency, it is necessary to lift the corporate veil of the web of these companies. And to see whether they are trying to hide their fraudulent activities and themselves under the mask of the company being a separate juristic personality.

95. *Out of all the companies, who are involved in the development of the Sports City following four companies have gone into insolvency, which are M/s Sequel Buidcon Pvt. Ltd., M/s Arena Super Structure Pvt. Ltd., M/s Kindle Developers Pvt. Ltd. M/s Three C Green Developers Pvt. Ltd. (petitioner herein). The first three companies named above were assigned the task of developing residential part of sports city. They were the original members of the consortium or their 100% subsidiary companies of the allottees and had only one business of developing the sports city. Surprisingly in all these companies the original promoters were the same (Ge. Niramal Singh, Surpreet Singh Suri and Vidur Bharadwaj). They have collected huge amount of money by selling part of the project to various other entities (by share transfer of various small holding companies). Obviously, this would have been sold at a price. The money would have come in the vendor company or any other of its concern or in personal accounts of the promoters (Le Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri). Now the question is where did the sale consideration go. This money was for the land which was to be used for generating the revenue to construct the sports facilities. No such facility has been made. The entire sale proceeds were syphoned off and thereafter allowed the petitioner company to slip into insolvency. Definitely, this insolvency is a tailor-made insolvency just to avoid civil and criminal liabilities and to avoid payment of the dues and completing the obligation of developing the Sports City. This is*

nothing but just a fraud played on Noida Authority as well as on the State and other stakeholders/creditors.

96. *Due to the occurrence of the above instances of fraud and irregularities, the law has taken change with its earlier exception that, a company is a separate juristic personality and the liability of the company cannot be recovered from the property of directors. In due course of time, certain exceptions have been carved out in the doctrine of separate juristic personality of the company. The doctrine of 'piercing of corporate veil was initially crystallized in* ***In Salomon v. Salomon & Co. Ltd. [Salomon v. Salomon and Co. Ltd.,****, the House of Lords had observed, the company is at law, a different person altogether from the subscriber. However, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is 'when the corporate personality is being blatantly used as a cloak for fraud or improper conduct.*

97. *This doctrine of lifting corporate veil was carved out to be used whenever and wherever the situation so warranted. Lord Denning in* ***Littlewoods Stores v. I.R.C.****", held:-*

> *"The doctrine laid down in Salomon's case has to be watched very carefully. It has been supposed to cast a veil over the personality of a limited company through which the Courts cannot see. But that is not true. The Courts can, and often do, draw aside the veil. They can, and often do, pull off the mask. The way with group accounts and the rest. And the Courts should follow suit..."*

98. *On the doctrine of piercing of corporate veil' the Hon'ble Supreme Court in the matter of* ***State of U.P. v. Renusagar Power Co"*** *has held that, in the expanding horizon of modern jurisprudence, the lifting of the corporate veil is not only permissible, its frontiers are unlimited and ever expanding. It further significantly observed that the lifting of the corporate veil was a changing concept and of expanding horizons.*

99. *The Hon'ble Supreme Court in* ***State of Rajasthan and others vs. Gotan Lime Stone Khanij Udyog Private Limited and another*** *has held as under-*

> *"The principle of lifting the corporate veil as an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion[7] but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation[8]. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."*

100. *The principle of lifting the veil of corporate personality has been upheld in* ***Subhra Mukharjee & another v. Bharat Cooking Coal Ltd. & another" Calcutta Chromotype Ltd. vs. Collector of Central Excise Kolkata, New Horizon Ltd. & another vs. Union of India and others" C.I.T. vs. Meenakshi Mills Ltd. Madura"; Telco & ors vs. State of Bihar" Juggi Lal Kamlapat vs. Commissioner of Income Tax, U.P.".***

101. *Hon'ble Supreme Court in the matter of* ***Delhi Development Authority v. Skipper Construction Company (P) Ltd. & Another*** *has been pleased to hold that lifting the corporate veil of the companies, forfeiture and attachment of property acquired by illegal and corrupt means by the builder behind the corporate veil as also properties of the family members can also be ordered by the Court.*

102. *The modus operandi of the promoters of the petitioner company is consistent. They get the plot allotted from Noida, do not pay the dues of Noida Authority, syphon of the money from the*

company and then push the company, which is to execute the public facilities part of the project into insolvency to avoid implementing the project and to avoid payment to the creditors and also to avoid civil and criminal liabilities. The High Court, in the matter of ***Nirmal Singh Vs State of U.P.*** *bearing* ***Writ C no 41110 of 2019****, had noticed the same trend by the same set of promoters in the judgment and order dated 29.02.2024.*

103. *This Court also finds that though it was a mandate given to the Noida Authority and it was their duty to ensure proper implementation of the Sports City, the Noida Authority has failed to oversee the implementation of the Sports City. For the past so many years the construction of group housing was being carried out and no sports facility was being developed. Still, the Noida Authority kept its eyes closed and allowed the builders to continue with the group housing project without even developing the sports facilities.*

104. *It is quite surprising to note that if the petitioner and other consortium members had no physical possession of the land, how could they apply for the sanction of map which were approved by the Noida Authority. There are two other things worth noticing. Firstly, the land on which the residential/commercial development is to take place is contiguous to the plot for sports facilities, therefore, to say that approach road is not made available for sports facilities is thus just an attempt to mislead the court. Secondly, the brochure clearly gives a breakdown of different facilities to he constructed in the sports facility, hence, some of these facilities could have been developed by the petitioner to demonstrate its honafide. But apparently no sports facilities in the Sports City was constructed.*

105. *The intention of the sports city scheme was not to allot small plots to small builders fly by night operators, then why did Noida Authority divided the plots into smaller holdings and allotted to*

various companies. The sub division of the sports city was carried out and Sub leases were granted to companies who were not even eligible to bid for the project. Noida Authority allowed to do thing indirectly what could not have been done directly.

106. *Undoubtedly, the petitioners had failed to pay the premium as per the term of the lease deed for paying the instalments. The officials of the Noida Authority never asked for the payment. The record shows that a notice was sent in 2015, another in 2019 and a third one in 2023 asking the petitioners to pay the instalments. These notices were nothing but an eyewash. We are shocked to see the conduct of the Noida Authority that in spite of the repeated failures, no action has been taken by the Noida Authority to recover its dues, neither they took any action for the cancellation of allotment nor any action was taken against the officials, who were involved in this scam.*

107. *The action of the officials of the Noida Authority is highly questionable. In fact, the entire process of allotting Sports City to the petitioners and in the implementation of the Sports City, there were large scale bungling and a huge benefit was extended to the builders by the conniving officials of the Noida Authority. Shockingly, no action is taken against the builders and the conniving officials whose deeds have resulted in such a huge scam.*

J. ZERO PERIOD

108. *The most surprising thing is that on 70% of the land area sports facility was to be developed and on the remaining 30% residential/commercial activity was permitted. Every builder is seeking henefit of zero period on the ground of encroachment. The question arises, as to how the encroachment were on an area where he was supposed to develop sports facility and there was no encroachment on the area where residential/commercial structure had to come up. When there was an opportunity to collect*

money by launching residential/commercial tower there was no encroachment or unavailability of infrastructure by Noida Authority, but when it came to develop sports facility, there was an excuse of encroachments. This theory set up by the builder are not at all believable. If there was no infrastructure available or there was encroachment, then they ought not have sold/booked the flats and if they were doing so without informing the homebuyers, then that amounts to committing a fraud on the homebuyers.

109. *Further the affidavit filed by the Noida Authority shows the date on which each of the allottee were given possession and the same was clear of any encroachment only in few cases there were very small encroachments. Had the builders started construction of sports facility on other areas and had they come to the Court with clean hands, this Court would have certainly treated the cases of the builders sympathetically. But, this is not a case here, the builders are raising this ground just to buy further time. Their conduct right from the day one was to deceive the homebuyers, banks. Noida Authority and not to pay them and not to carry out their obligations and for that they are playing every possible tricks.*

110. *As per the scheme, three years' time was granted for developing the first phase and five years for the development of the entire sports facility. This delay could not be explained. Even assuming there were some encroachments still major portion of the sports city project land were handed over to the allottees and the allottees, who had bifurcated the land amongst themselves, could have started development of project on the land over which there was no encroachment. However, they chose not to do so and Noida Authority also did not ask them to do so.*

K. SCAM

110. *This is a case where every action of the Noida Authority smacks of corruption and scam in collusion with the builders since inception of the Sports City Project. The entire process of development of the Sports City including conceiving the scheme, allotment, execution of the lease deed, sanction of map/ plan, and implementation of just one part of the sports city was all an outcome of malafide intentions. The allottees builder in connivance with the NOIDA official had played a huge fraud and victims are Noida Authority, State of U.P. and the Home buyers.*

111. *The most shocking part is the entire scam and fraud were carried under the aegis of the Noida Authority and, one after another, the officials kept mum and allowed the scam to continue. The allotment was made in the year 2011 and for the first time it was unearthed sometime in the year 2020, when the CAG carried out an audit. Shockingly for the last 9 years, the senior officials of the Noida Authority and the State were well aware of the scam and fraud and they allowed the affairs to continue and no action has been taken against them. They failed to see that the allottees were doing nothing towards the development of the sports facility, whereby the group company of the petitioner kept on selling to the subsidiary companies. which made huge amount by way of sale of land (by transferring the shareholdings of the subsidiary companies), but did not pay the dues of the Noida authority.*

112. *Even after the Master Plan was sanctioned on 16.06.2014, neither there was development of any sports facility over the project land nor the officers of Noida Authority even hothered to insist for the same from the allottees/builders. When the entire land was given, then why the allottee did not complete the sports facility within the stipulated time. Nothing has been done for development of sports facilities and the officers of Noida Authority kept their eyes closed and none of them ever made any serious and sincere effort to get the sports facilities developed. At the same*

time they chose to be mute spectators and allowed the builders/ sub-lessees to start construction of ancillary part of the project (residential), Construction of multi-storey buildings commenced right under their nose and still they did not make any effort to ensure development of the sports facilities which was the main part of the project.

1. FRAUD

113. *The corporate frauds specially in the insolvency case happens when the management individuals within or associated with the company are engaged in illegal practices and had failed to fulfil their fiduciary duty, which ultimately leads to insolvency and in such a case the stakeholders affected by such fraud including creditors and consumers become the victim of such fraud. Addressing this issue requires multifaceted approach.*

114. *It is apparent from the scheme that when it was formulated and allotment was made it was pre meditated design, wherein allottee wanted to get the land allotted only by paying 10% then get the benefit of zero period, in the meanwhile collect money from various financial institutions and without even developing the project go into insolvency. The officers of Noida Authority were completely hand in glove to this sinister design. They were part of fraud. They had approved the first consolidated lay out Plan wherein they have individually recognized the role of different companies and knowingly kept the development of all sports facilities in two companies, never followed on the development of the sports facilities in the sports city, never asked the allottees to pay their dues, and allowed the haphazard constructions which were completely contrary to the scheme, brochure conditions, and the conditions of the allotment and lease deed.*

115. Fraus Omnia Vitiat- Fraud vitiates everything: *The corporate fraud, which includes malpractices, breach of financial duty. financial manipulation, asset diversion siphoning off funds*

and the government failure, which results into undue advantage and illegal gains to the people calling the sort in the company would come under the ambit of corporate fraud.

116. *The Hon'ble Supreme Court in the matter of* ***Udgar Gagan Properties Limited v. Sant Singh and others*** *wherein it has been held that the petition under Article 226 of the Constitution of India is maintainable as it is only a rule of practice based on sound and proper exercise of discretion and not a jurisdictional bar. The Court can quash an illegal action based on Iraud or abuse of process of law. Ref, Madhukar Sadbha Shivarkar (D) hy Lrs. v. State of Maharashtra & ors".*

117. *In the* ***Law Lexicon, Second Edition (Reprint) 2001 by Sri P. Ramanatha Aiyer****, it is observed that 'abuse of process of court generally applies to proceeding wanting in bona fides and is frivolous, vexatious or oppressive wherein a person abuses the process of law for his personal advantage". Such kind of proceedings would fall under the ambit of fraud.*

118. *The fraudulent actions of builders and the connivance of Noida Authority officials resulted in significant financial losses to the State Exchequer and particularly the Noida Authority, along with severe exploitation of homebuyers. The key elements of this fraud are as follows:*

a) Manipulation of Allotment Process

Builders secured large land parcels by paying only 10% of the premium, gaining allotments at undervalued rates.

Despite failing to pay the remaining installments, builders were allowed to get maps sanctioned and proceed with collecting money from homebuyers.

Officials of Noida Authority deliberately ignored these violations and provided undue leniency to builders, allowing them to exploit the scheme without fulfilling their obligations

(b) Failure to Develop Sports Facilities

Builders made no effort to initiate the construction of sports facilities, which were the primary objective of the Sports City project

Claims of encroachments were used as excuses to delay sports facility construction.

Obligation to construct sports facilities was entrusted to dummy companies which were pre-destined to fail

(c) Active Connivance of Noida Authority Officials

Officials at all levels of the Nolda Authority knowingly allowed these fraudulent practices to continue.

They failed to monitor project implementation, recover outstanding dues, or enforce compliance with the terms of the scheme.

Their inaction, even after repeated violations, enabled the systematic defrauding of the State Exchequer and homebuyers.

Sub-Division and Sale of Plots

Builders subdivided the allotted plots and sold them to other business houses or developers at a premium, making substantial profits while avolding payment of full premiums to Noida Authority

This practice not only violated the terms of the allotment but also caused significant losses to the State Exchequer.

M. PIERCING OF ADMINISTRATIVE VEIL

119. *It is just not a case of piercing corporate veil containing of purchasers behind the scam but also a case where there should be piercing of administrative veil and see who were the officers/officials involved who had bent all the rules and*

regulations and allowed these scamsters to scam Noida Authority. Piercing the administrative veil is also important in order to see, who were the officers on top, who were involved in this, and on whose behest everything was carried out. If we just go by the person who has approved the map or took no action to get the instalments paid, then it will be like catching up small fish and allowing big ones who are actually responsible for such a big scam to go scot free. Each and every person, who was involved in decision making, and implementation, or keeping his eyes closed and allowed the scam to happen should be held accountable and suitable action should be taken against them. To utter shock of this Court, there is not even an FIR against such officers/officials. The Government's valuable resource has been lost.

120. *Even till date, no effort has been made by Noida Authority to recover its outstanding dues or the instalments from the date when it became due and it is a matter of enquiry as to why no action was taken against these companies for payment of dues. One would wonder what was the reason why for such a long period all the officers posted/connected with the instant matter kept silent and nobody ever asked payment of the installments which fell due. Or pursed the development of the sports city. When this question was asked by Noida Authority, no plausible reasons were given by them.*

121. *The first scam was done by the NOIDA Authority in allowing hifurcation of the plots into small plots and sold it to other small builders. who independently were not even qualified to make a bid, which caused loss to the State exchequer, as the fresh allotment was made treating it to he a Group Housing Plot, and also no stamp duty was paid for the transfer which caused further loss to the State exchequer. The plot was allotted at a very low price. Sale thereof would definitely have been at a premium.*

122. *The Hon'ble Supreme Court in the matter of* ***Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others*** *has held that when a Government in office misuses its powers figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Government acts through its bureaucrats, who shapes its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government.*

123. *The Noida Authority's failure to enforce compliance, recover dues, and monitor project implementation demonstrates gross negligence despite the Comptroller and Auditor General's (CAG) report highlighting irregularities and no action has been initiated against delinquent officials makes Noida Authority accountable for the same. The Supreme Court in* ***Union of India v. Hindustan Development Corporation*** *held that public authorities can be held accountable for creating legitimate expectations that are later breached. The project facility has not been constructed or delivered to the public despite advertisement.*

N. SCOPE OF JUDICIAL INTERFERENCE

124. *One of the points that falls for determination is the scope of judicial interference in matters of administrative decisions, administrative action of the State and its instrumentalities. What we have to ascertain now is whether the decision of the authority in allotment, implementation and development of the project was exercised in good faith or was done with malafide intentions to grant undue benefits to the builders.*

125. *The Hon'ble Supreme Court in the matter of* ***Udgar Gagan Properties Limited Vs. Sant Singh*** *has been held that the*

petition under Article 226 of the Constitution of India is maintainable as it is only a rule of practice based on sound and proper exercise of discretion and not a jurisdictional bar. The Court can quash an illegal action based on fraud or abuse of process of law.

126. *Normally the court would not have intervened in the administrative decisions, nor gone beyond the pray prayer made in the writ petition going* ***through the facts as taken in the pleadings it is clear that*** *the action of the Noida authority, right from the inception of the sports city project was marred with unfairness, irrationality and illegality and fraud. The administrative decision taken were completely contrary to the scheme of the project, contrary to the terms of the brochure, terms of the lease and the allotment letter, which had caused a huge loss to the state exchequer, hence we had no option but to intervene in the instant matter.*

127. *Looking into the public interest involved, the court is escalating the limits of this writ petition, and going beyond the prayer made in the writ petition. Court has the power to pass orders and to go beyond the prayer for substantial justice, and to take judicial notice of facts that are presented during the course of a case and pass appropriate directions. These facts show that not only is the Petitioner approaching the Court with unclean hands, the hands of officers of the Noida Authority are equally sullied. This has caused kiss of resources (land on which development was permitted as quid pro quo for the development of the sports facilities), loss of revenue (payment of lease rent, interest and penalty) and loss of public facilities (as the sports facilities have not been made).*

128. *The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of the interests of the citizens as*

a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

129. *The so-called public policy cannot be a camouflaged for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done.*

0. CBI INQUIRY

130. *This case can be a case study of the dirty nexus of the builders and the officials of the Noida Authority, where benefits after benefit were doled out to the builders, which was completely contrary to the Scheme, MOA and the implementation of the Sports City Scheme. In last so many years in the Noida Authority a number of officers would have come and gone and surprisingly no one blowed a whistle to the scam, or took any action against them, and did no efforts to recover the outstanding dues, and continued to extend undue benefits/favors to all the allotee/sub-lesses of the sports city. which was contrary to the interest of Noida Authority/Bank and the State Government.*

131. *What is most shocking is CAG unearthed the scam in 2021, hut till date Noida Authority or the State Government have not lodged a single FIR against any of the officials, who were involved in the scam. No effort has been made to retrieve the losses, only a*

notice was sent in 24.07.2023 asking the builders to pay the outstanding premium. However, no action has been taken to recover the dues. This shows how influential the builder lobby is, and how well entrenched there are in the government system.

132. *The Court will not be wrong to say that the efforts are made to shield the corrupt officers and also the builders who had made huge amount of money by defrauding the State Government, Noida Authority.*

133. *The court also realises that all investigations cannot be entrusted to the CBI. The courts should infact be reluctant in straight away referring the matters to CBI. However, in view of the possibility of involvement of high functionaries, a CBI enquiry is more desirable.*

134. *The Hon'ble Supreme Court has, in* ***Disha v State of Gujarat****, found justification in transferring matters to CHI or other Special Agencies when powerful and influential persons or State Authority are involved in the investigation and in cases where an investigation is not likely to go in the proper direction or be biased. This resort, the Hon'ble Court holds, is to lend. credibility to the final outcome. Considering that successive officers on various key positions in an institution like Noida Authority and State Government have turned the blind eye to monumental failure on the part of the allottees, and several of these officers are in important and high positions now, a direction to an independent agency to investigate the matter at hand would be appropriate. This is more so in view of the report of the CAG, on which no action has been taken either by the State or Noida Authority.*

135. *The Hon'ble Supreme Court in the matter of* ***State of West Bengal v. Committee for Protection of Democratic Rights****,* ***West Bengal****, has held as follows-*

> *"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution,*

while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

136. *The Hon'ble Supreme Court in the matter of* ***Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram****, has held that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CHI or any other similar agency.*

137. *The Hon'ble Supreme Court in the matter K.V. Rajendran V. Superintendent of Police, CBCID has held as follows-*

"13. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBL. It has been held that the power of transferring such investigation must be in rare and exceptional cases

where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly. when it is imperative to retain public confidence in the impartial working of the State agencies."

138. *The Hon'ble Supreme Court in the matter of* ***Sakiri Vasu v. State of U.P.*** *has held as follows:*

> *"31.... this Court or the High Court has power under Article 136 or Article 226 to order investigation by CHI. That, however, should be done only in some rare and exceptional case, otherwise, CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them."*

139. *The Hon'ble Supreme Court in the matter of* ***Rubabbuddin Sheikh v. State of Gujarat****, has held that when the accused are very senior officers of the state then, the investigation by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Then the investigation should he handed over to any other independent investigating agency.*

140*. In view of the above, this Court has no other recourse but to refer the investigation to the CBI. The CBI would also investigate the role of all the persons involved in this scam. We hope and trust that the investigation would be carried out and completed expeditiously.*

P. CORPORATE INSOLVENCY

141. *In the case of the petitioner the corporate insolvency process initiated seem to be tailor made, and is nothing but outcome of a nefarious design, of the petitioner and the fraud committed by the*

promoter/management of the petitioner company, to keep away from the entire responsibility of development of the sports facility of the sports city project. Here the promoters of the petitioner had made a web of companies and they requested to execute various lease deeds with the other member/ subsidiary companies, which were wholly owned and controlled by the promoters (namely, Nirmal Singh, Surpreet Singh Suri and Vidur Bhardwaj). On their request, Noida Authority had executed various sub-leases but it seems over a period of time they have sold off the companies/transferred the shares to third party/entities even without taking permission from Noida Authority as well as without completing the first milestone of the project, which was pre-condition of such transfer.

142. *The insolvency was a strategic manoeuvre designed solely to evade liabilities and shirk the responsibility of providing the promised sports facilities.*

143. *The question now is, as to whether the company which has gone into insolvency can be prosecuted for the offences done by the company in defrauding Noida Authority as well as the state and other stake holders/creditors.*

144. *The intention of Insolvency and Bankruptcy Code was not to allow the unscrupulous promoters to siphon away the money and then take the illegal advantage of the law and initiate, insolvency proceeding just to avoid to fulfil their obligations and also to avoid civil and criminal liabilities. Creation of companies for short periods and specific purposes leads to the futility of their resolution and even insolvency. It only carries liabilities which will extinguish or greatly diminish with the resolution/ liquidation process. This cannot have been the intention behind IBC.*

145. *The progress of law is seldom able to keep up with devices of misuse or provide for every eventuality. As such, in Common Law jurisdictions, the judiciary has the power, and the duty, to fill*

the gaps that are exposed on a case-to-case basis, keeping the object of the statute in mind. The object of the Insolvency and Bankruptcy Code, 2016 (IBC) is, inter alia maximization of value of assets of a corporate debtor, promotion of entrepreneurship. availability of credit and to balance interest of all stakeholders including the government. It is not the intent of IBC to allow parking and obliteration of loss or liability by resorting to CIRP. Such course of action would be an act of fraud on the statue. The intent of IBC is never to hamper the project of national importance.

146. *The IBC is still evolving both in India and abroad. In fact, the United Nations Commission on International Trade Law" has set up a Working Group V to fill up the void in Insolvency Law pertaining to insolvency of enterprise groups, on this issue the inter-dependence of (corporate) group members across different countries to provide for cross-border insolvency law guidelines. This need to fill up the void in the I.B. Code has also been recognized by the Government of India, Ministry of Corporate Affairs vide public notice dated 18.06.2018.*

Q. EFFECT ON CONSORTIUM WHEN A MEMBER OF THE CONSORTIUM GOES INTO THE INSOLVENCY

147. *As far as the insolvency of a member of a consortium is concerned, very few jurisdictions have any laws on the said subject matter. No significant development has come in the international law pertaining to the same which would give guidance in such situations. The present case thus presents a very interesting, and novel, legal question.*

148. What will be the effect on a Consortium when a Member of the Consortium goes into insolvency under the Insolvency and Bankruptcy Code, 2016?

149. *We are constrained to pass guidelines in the instant case as the Insolvency and Bankruptcy Code, 2016 is silent qua the rights*

of other consortium members, in case one of the members goes into insolvency. Since the companies of consortiums apply in development of mega projects and if this vacuum is not filled, even solvent companies, which are members of the consortium might be pulled into insolvency because of insolvency of one of the consortium members. As the insolvent member would not be able to complete its part of the project and non-completion of the project will definitely impact the other companies, who are the Members of the Consortium. The object of Ill Code, 2016 is not to pull a solvent company into insolvency.

R. RECOMMENDATIONS

150. *On the basis of analysis of law made in the foregoing paragraphs, we consider it appropriate to lay down the following recommendations in response to the question framed in Para 148:-*

> ***"(a) As a measure of first recourse, the IRP shall communicate to the company and the Authority for seeking Company's willingness to continue to perform its functions/ obligations in the contract awarded to the consortium of which the said company is a member. This would be in furtherance of the functions of the IRP under Section 20 of the IBC. This communication shall be done within a maximum period of 4 weeks of commencement of CIRP and shall be independent of the constitution of CoC. If no such intention is communicated within the said period, it will be presumed that the company is unwilling to participate in the subject project***
>
> ***(b) If the IRP, on an assessment of the capabilities of the Company (consortium member facing CIRP), is of the opinion that the said company cannot usefully or meaningfully participate in the business of the consortium, he shall so communicate to the other consortium members and the Authority (for the said project) within the period provided in para (a) above. The other consortium members (jointly or severally) shall then have an option to undertake the remaining project on their own and complete the same. The***

exercise of the option by the consortium members to complete the project shall be done within a period of 4 weeks, which shall commence either from the expiry of the 4 week period mentioned in para (a) above (in the event no communication is received from the IRP) or within 4 weeks from the communication of the IRP to the effect that the said company is not in a position to participate in the business of the consortium.

(c) If the consortium members fail to communicate their willingness to complete the project on their own and without the participation of the member facing CIRP or express their inability to complete the said project, the Authority shall make alternate arrangements to ensure timely completion of the project."

151. *These guidelines have been laid down bearing in mind the completion of the project and also to secure the interest of all the stakeholders.*

S. DIRECTIONS

152. *In view of the aforementioned facts and circumstances, this Court issues the following directions:*

(a) The parties hereto are directed to take steps in accordance with the recommendations made in para 150 of this judgment in the interest of expeditious completion of the subject project; and

(b)The Central Bureau of Investigation (CBI) is hereby directed to lodge a complaint against all the conniving officials of the Noida Authority and the allottees builders involved in allotment, development. sanction of Sports City Project and any other person who may be involved in the present scam.

(c) However, considering the overall conduct of the parties, we refuse to exercise our discretionary jurisdiction under Article

226 of the Constitution of India to accord any relief prayed for in the instant writ petition

(d)With the aforementioned directions, this petition stands disposed of.

(e) Parties to hear their own costs."

14. Here, it would not be out of context to make reference of the judgment of Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr.*** (Civil Appeal Nos. 7590-7591 of 2023) which could give rise to the concept of secured operational creditor. In the said judgment, Hon'ble Supreme Court could view that where the plan envisages use of land not owned by the CD but by third party such as the Greater Noida Industrial Development Authority, there has to be closer examination of the plan. The relevant excerpt of the judgment reads thus:-

"C. Under Regulation 38 (3) of the CIRP Regulations, 2016, resolution plan must, inter alia, demonstrate that (a) it is feasible and viable; and (b) it has provisions for approvals required and the time-line for the same. In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the COC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan

envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects."

15. From the aforementioned, it is clear that in Real Estate Project, in order to resolve insolvency of the CD, special concern need to be shown towards the interest of the land owning agency. Its role cannot be ignored with the thought that the homebuyers/allottee need to be given the possession of the allotted units at any cost and in any situation.

16. As can be seen from the rejoinder to the reply filed by the Resolution Professional, the Development Agreement dated 15.02.2013 as also sub-Lease Deed dated 30.10.2013 were executed without prior permission of the Applicant. It is also the case of the Applicant that the land parcel measuring 1,00,080 sq. mtrs. was never allocated to Logix City. The Applicant has also denied that the execution of the JDA was with its notice. As has been noted hereinabove, the permission was given to the Logix City and not to the CD. Such is the stand taken by the Applicant in its rejoinder also. Nevertheless, one cannot be completely oblivious of the fact that for a long period of 10 years, the Applicant remained sleeping over the issue and could wake up only after this Tribunal issue notice to it. Such approach of the officers of the authority towards huge chunk of land cannot be ignored very lightly and need to be viewed with all seriousness. At the same time, the concern towards homebuyer, as noted by Hon'ble Supreme Court in the case of Chitra Sharma (supra) cannot be ignored. In the said case, Hon'ble Supreme Court noted that a home for the family is a basic human yearning and in diverse contacts

Hon'ble Supreme Court has held that the home is a part of life as a fundamental constitution guarantee. However, we also need to keep in view the recent judgment of Hon'ble Supreme Court in the case of Mansi Brar (supra), which identify the classes amongst homebuyers. Paras 25, 38 and 40 of the judgment reads thus:-

> *"25 During the course of the hearing, there has been a unanimity of opinion that the liquidation of JIL will not subserve the interests of the home buyers. The home buyers have made valuable investments by contributing hard earned monies in the hope of obtaining a roof over their heads. A home for the family is a basic human yearning. In diverse contexts it has been held by this Court to be a part of the right to life, as a fundamental constitutional guarantee 10. All the counsel for the home buyers have earnestly appealed to the Court to exercise its jurisdiction to ensure complete justice to the home buyers instead of leaving them to the mercy of a liquidation process. The Court appreciates the substance in that plea, understanding at the same time, the need to abide by the discipline of the law.*
>
> ***XXX***
>
> *38 On behalf of the IRP, Mr Parag Tripathi, leamed senior counsel submitted that essentially, the Court has two options before it. The first option would be to revive the process of corporate insolvency by extending the time period of 270 days specified in the IBC in order to enable fresh consideration to be made of the prospect for a resolution which would now have take into account the interests of the home buyers under the amended IBC. The second option would, it was urged, be for this Court, in the exercise of its jurisdiction under Article 142 to appoint a Committee under its directions and supervision. The Committee would explore the possibility of a resolution which would obviate the need for the liquidation of the corporate debtor. The second option which has*

been proposed by learned senior counsel for the IRP forms the basis of the additional submissions tendered by Mr Nariman. As we have noted, Mr Nariman urged that on the expiry of the time lines prescribed in the IBC for the completion of the resolution process the only available alternative is to proceed outside the provisions of the IBC.

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40 As we have stated earlier, an amount of Rs 750 crores is lying in deposit before this Court pursuant to the interim directions, on which interest has accrued. The home buyers have earnestly sought the issuance of interim directions to facilitate a pro-rata disbursement of this amount to those of the home buyers who seek a refund. We are keenly conscious of the fact that the claim of the home buyers who seek a refund of monies deserves to be considered with empathy. Yet, having given our anxious consideration to the plea and on the balance, we are not inclined to accede to it for more than one reason. Firstly, during the pendency of the CIRP, it would as a matter of law, be impermissible for the Court to direct a preferential payment being made to a particular class of financial creditors, whether secured or unsecured. For the present, we leave open the question as to whether the home buyers are unsecured creditors (as was urged by Mr. Tripathi) or secured creditors (as was urged by counsel appearing for them). Directing disbursement of the amount of Rs 750 crores to the home buyers who seek refund would be manifestly improper and cause injustice to the secured creditors since it would amount to a preferential disbursement to a class of creditors. Once we have taken recourse to the discipline of the IBC, it is necessary that its statutory provisions be followed to facilitate the conclusion of the resolution process. Secondly, the figures which have been made available presently, following the opening of the web portal by the amicus curiae, indicate that 8% of the home buyers have sought a refund of their monies while 92%

would evidently prefer possession of the homes which they have purchased. We cannot be unmindful of the interests of 92% of the home buyers many of whom would also have obtained loans to secure a home. They would have a legitimate grievance if the corpus of Rs 750 crores (together with accrued interest) is distributed to the home buyers who seek a refund. The purpose of the process envisaged by the IBC for the evaluation and approval of a resolution plan is to form a composite approach to deal with the financial situation of the corporate debtor. Allowing a refund to one class of financial creditors will not be in the overall interest of a composite plan being formulated under the provisions of the IBC. Thirdly during the course of the hearing, the Court has been apprised of the concerns of the secured creditors, chief among them being the IDBI bank limited. In its submissions before this Court, IDBI bank has emphasised that one of the major reasons for the enactment of the IBC was to protect the interest of lenders. The debt owing to the banks and financial institutions has been secured by the assets of JIL, to protect their interests. This debt originates in the public deposits of the banks and financial institutions, who are answerable to their stakeholders. Fourthly, the RBI has moved this Court for permission to initiate an insolvency resolution process. Parliament enacted the Banking Regulation (Amendment) Act 2017 by introducing Section 35 AA and Section 35 AB into the Banking Regulation Act 1949. The amendment empowers the Central government to authorise RBI to issue directions to any banking company to initiate an insolvency resolution process in respect of a default as understood under the IBC. Such an order was issued by the Central government on 5 May 2017. The RBI constituted an Internal Advisory Committee (IAC) consisting primarily of its independent directors. The IAC took up for consideration accounts which were classified either partly or wholly non-performing from amongst the top 500 exposures in the banking system as on 31 March 2017. As a first step, the IAC

recommended all such non-performing asset accounts with fund and non-fund based outstandings exceeding Rs 5,000 crores. The IAC has initially taken up twelve accounts involving total exposure of Rs1,79,769 crores. JIL was one of the twelve accounts in respect of which directions have been issued to banks for initiating insolvency resolution. Subsequently, the IAC recommended that in respect of those accounts where 60% or more had been classified as NPAs as on 30 June 2017, banks may be directed to implement a viable resolution plan within six months failing which the accounts may be directed for a reference under the IBC by 31 December 2017. JAL was one such entity. No viable resolution plan could be found as a result of which it is also required to be referred for CIRP. RBI has carried out this exercise as a matter of economic policy in its capacity as the prime banking institution in the country, entrusted with a supervisory role, and the power to issue binding directions. The position of the RBI as an expert regulatory body particularly in matters of economic and financial policy has been reiterated in several decisions of this Court: ***[R.K.Garg v Union of India, Peerless General Finance and Investment Co.Ltd. v RBI, TN Generation and Distribution Corpn. Ltd. v CSEPDI-Trishe Consortium"].***"

17. In any case, indubitably, the JDA/MoU entered into between Allottee and the CD was never endorsed/approved by the applicant. In the absence of the approval, the applicant could not assert any claim against the CD, who is in process of developing the project. The allotment of land in favour of the allottee could be cancelled during CIRP qua the CD. However, the cancellation would not be hit by Section 14 of IBC, 2016, as the same could be ordered in respect of the plot allotted to SPC and not to CD. Still, we may not be oblivious of the fact that the applicant remained indifferent about the development and construction on the plot in question for a long period of ten years and it was

on account of such approach of the applicant that the homebuyers could rely upon the CD in applying for allotment of the units booked by them. In the totality of the facts, we are of the opinion that the CoC/RP should take up the issue regarding approval of the MoU entered between SPC/Allottee and the CD with the applicant. On the issue being taken up, the applicant should consider according the approval to MoU/JDA in terms of the extant provisions of law, subject to the terms and conditions to be determined by the applicant viz. CEO NOIDA. As, at the time of, approval of the Resolution Plan, there was no land available with the CD and even today also it has no land, the Resolution Plan approved by CoC is not implementable. In the wake, the **IA-1100/2022** filed for approval of Resolution Plan cannot be allowed. We find sufficient force in the plea raised in the IA-1428/ND/2023 for rejection of the Resolution Plan. Thus, as IA-1428/ND/2023 is partly allowed and the relief for rejection of Resolution Plan is granted. Resultantly, the **IA-1100/ND/2022** stands rejected and disposed of. After the issue regarding approval of the MoU between allottee and the CD, is resolved at the end of the applicant (NOIDA), the RP/CoC may take further/fresh steps in the changed circumstances. We extend the period of CIRP by 120 days from today. **No cost.**

Sd/-
(ATUL CHATURVEDI)
MEMBER(T)

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