

A.F.R.

Neutral Citation No. - 2025:AHC:25736-DB

Reserved on 25.11.2024

Delivered on 24.02.2025

Court No. - 42

Case :- WRIT - C No. - 6041 of 2024
Petitioner :- M/S Arena Superstructures Pvt Ltd And Another
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Ami Tandon
Counsel for Respondent :- C.S.C.,Kaushalendra Nath Singh

CONNECTED WITH

Case :- WRIT - C No. - 8447 of 2024
Petitioner :- Vishwanath Sharma
Respondent :- State Of Up And 4 Others
Counsel for Petitioner :- Nipun Singh
Counsel for Respondent :- C.S.C.,Kaushalendra Nath Singh

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

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- Both the writ petitions have been clubbed and heard together as they involve similar issue, and hence, they are being decided by this common judgement and order.
- Heard Sri Shashi Nandan, Senior Advocate assisted by Sri Ami Tandon, learned counsel for the petitioners, Sri Ritaj Vikram Singh, learned counsel for the petitioner in the connected petition (Writ-C No. 8447 of 2024), Sri Mohan Srivastava, learned Standing Counsel for the State-respondents and Sri Kaushalendra Nath Singh and Ms. Anjali Gokhlani, learned counsel for respondent-NOIDA.

FACTUAL MATRIX OF WRIT-C NO.6041 OF 2024

3. The instant writ petition has been preferred by the petitioners M/s Arena Superstructures Pvt. Ltd.¹ and M/s Purvanchal Project Pvt. Ltd.² through their authorised signatory.

4. Some time in the year 2010-2011, New Okhla Industrial Development Authority³ conceived a Policy to develop Sports City in Sector Nos. 78, 79, 101 and 150 and thereafter, a scheme was floated and brochure was issued. In pursuance thereof, applications were invited by the developers. A Consortium seems to have applied for the allotment of this land and the same was allotted to the Consortium of the Xanadu Estates Private Limited on 04.05.2011. Later, on the request of lead consortium members, NOIDA sub-divided the plots into six parts. Out of these six parts. The division was as follows:-

- 1). . SC-01/A Sector -79 M/s Sequel Buildcon Pvt. Ltd. - 1,00,000 Sq
- 2). . SC-01/B Sector -79 M/s Sequel Buildcon Pvt. Ltd. - 48,000 Sqm.
- 3). SC-01/C Sector -79 M/s Three C green Developer – 2,50,027.5 sq mts.
- 4). SC-01/D Sector -79 M/s Kindle Developers Pvt. Ltd. - 1,00,000 Sqm.
- 5). SC-01/E Sector -79 M/s Xanadu Realcon Pvt. Ltd. - 80,000 Sqm.
- 6). SC-01 Sector -78 M/s Xanadu Infratech Pvt. Ltd. - 14,272.50 Sqm,

5. The Plot No. SC-01/A, Sector-79 was allotted to M/s Sequel Building Concept Pvt. Ltd. with an area of 1,00,000 square metres, where the promoters were Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri and the shareholding of M/s Sequel Building Concept Pvt. Ltd. was 99.99% and 0.01% with Surpreet Singh Suri as nominee on behalf of M/s Three C Universal Developers Pvt. Ltd.

6. M/s Sequel Buildcon Pvt. Ltd. again asked the NOIDA to further sub-divide the plot into two parts of measuring 50,000 square metres each;

1 ASPL
2 PPPL
3 NOIDA

- i) First plot of 50,000 sq mts, being Plot No. SC-01/A1, Sector -79 was kept by M/s Sequel Buildcon Pvt. Ltd. and
- ii) Second plot of 50,000 square meters (being Plot No. SC- 01/A2, Sector 79) was allotted to the M/s Arena Superstructures Pvt. Ltd. who intended to develop the project in the name of Lotus Arena-I.

7. On 19.10.2012, NOIDA executed a tripartite sub-lease deed between M/s Sequel Buildcon Pvt. Ltd., who was the original allottee, the new allottee M/s Arena Superstructures Pvt. Ltd.⁴ (hereinafter mentioned as ‘M/s ASPL’ for the sake of brevity) and the NOIDA.

8. As per the agreement, M/s ASPL was supposed to pay Rs. 60,37,50,000/- plus the interest on the instalments. As per the lease deed the payment schedule of the petitioner was as follows :-

Sl. No.	Due Date	Principal Amount (Rs.)	Interest @ 11% p.a. (Rs.)	Total (Rs.)
Moratorium interest for 1 st half yearly	04.11.2011		2,98,85,625	2,98,85,625
Moratorium interest for 2 nd half yearly	04.05.2012		2,98,85,625	2,98,85,625
Moratorium interest for 3 rd half yearly	04.11.2012		2,98,85,625	2,98,85,625
Moratorium interest for 4 th half yearly	04.05.2013		2,98,85,625	2,98,85,625
1	04.11.2013	3,39,60,938	2,98,85,625	6,38,46,563
2	04.05.2014	3,39,60,938	2,80,17,774	6,19,78,712
3	04.11.2014	3,39,60,938	2,61,49,923	6,01,10,861
4	04.05.2015	3,39,60,938	2,42,82,071	5,82,43,009
5	04.11.2015	3,39,60,938	2,24,14,220	5,63,75,158
6	04.05.2016	3,39,60,938	2,05,46,368	5,45,07,306
7	04.11.2016	3,39,60,938	1,86,78,516	5,26,39,454
8	04.05.2017	3,39,60,938	1,68,10,665	5,07,71,603
9	04.11.2017	3,39,60,938	1,49,42,813	4,89,03,751
10	04.05.2018	3,39,60,938	1,30,74,962	4,70,35,900
11	04.11.2018	3,39,60,938	1,12,07,110	4,51,68,048
12	04.05.2019	3,39,60,938	93,39,258	4,33,00,196

4 M/s ASPL

13	04.11.2019	3,39,60,938	74,71,407	4,14,32,345
14	04.05.2020	3,39,60,938	56,03,555	3,95,64,493
15	04.11.2020	3,39,60,938	37,35,704	3,76,96,642
16	04.05.2021	3,39,60,938	18,67,852	3,58,28,790

79,69,02,831

9. Against the schedule of lease deed, the petitioner had made the following payment :-

Land Premium		
S.NO.	Date	Amount
1.		6,03,75,000
2.		4,67,00,000
3.	12-May-17	1,19,00,000
4.	17-May-17	41,00,000
5.	13-Jun-17	42,00,000
6.	28-Jun-17	67,00,000
7.	07-Jul-17	50,00,000
8.	09-Oct-17	1,51,00,000
9.	14-Nov-17	75,00,000
10.	12-Dec-17	26,67,000
11.	29-Dec-17	30,00,000
12.	05-Jan-18	1,00,00,000
13.	19-Jan-18	41,00,000
15	01-Feb-18	49,00,000
16	26-Feb-18	43,26,000
17	17-Mar-18	65,00,000
18	28-Mar-18	50,00,000
19	17-Apr-18	85,00,000
20	26-Apr-18	42,00,000
21	31-May-18	21,00,000
22	03-Jul-18	45,00,000
23	17-Jul-18	53,00,000
25	04-Aug-18	25,00,000
28	31-Aug-19	5,00,000
29	11-Sep-19	1,50,00,000
	Total	24,46,68,000

10. The builder M/s ASPL, as per the registered lease deed was supposed to construct the Group Housing Society within 5 years and the Multi Purpose Play Ground at a cost of Rs. 10 crores.
11. Apparently, M/s ASPL applied for sanction of layout map to complete the project and the same was sanctioned on 29.04.2014 for a period of 5 years from the date of execution of lease deed.
12. As per sanctioned map of NOIDA, M/s ASPL was allowed to construct as following :-

Tower No.	No. of Floors	RCC Slabs	Brick Work	Internal Plaster	External Plaster
		Completed	Completed	Completed	Completed
Tower-I	Stilt + 32	32 slabs	Ground Floor-25 th Floor	Nil	25%
Tower-II	Stilt + 32	32 slabs	Ground Floor-20 th Floor	Nil	Nil
Tower-III	Stilt + 32	32 slabs	Ground Floor-23 rd Floor	Nil	Nil
Tower-IV	Stilt + 29	29 slabs	1 st - 5 th Floor	Nil	Nil
Tower-V	Stilt + 29	29 slabs	1 st - 4 th Floor	Nil	Nil
Tower-VI	Stilt + 29	27 slabs	1 st Floor	Nil	Nil
Tower-VII	Stilt + 31	10 slabs	Nil	Nil	Nil
Tower-VIII	Stilt + 31	12 slabs	Nil	Nil	Nil
Tower-IX	Stilt + 31	10 slabs	Nil	Nil	Nil

13. Once the lease deed was executed in favour of M/s ASPL and layout map was sanctioned by the NOIDA, M/s ASPL started marketing the project. In this project there were 1080 flats, out of which, M/s ASPL sold out 785 flats to various homebuyers from 2014 to 2020 and in turn collected around Rs.387 crores. Thereafter, for some reasons, the petitioner stopped the construction.
14. The period of the sanctioned map was 5 years which came to an end on 28.4.2019. But the petitioner no 1 failed to complete the construction and

project came to a standstill and also failed to provide the sports facilities in the sports city project.

15. The petitioner no.1 had collected almost 387 crores and syphoned a major portion of the money, and then abandoned the project, the homebuyers who felt cheated lodged a criminal complaint against the officer-in-charge/ management of M/s ASPL under Section 120B, 406 and 420 I.P.C. Even some of the homebuyers had filed cases before the Economic Offences Wing, wherein, after investigation a charge sheet has been filed and the criminal proceedings are still going on.

16. There was some report of large scale bungling in the allotment and development of the sports city, so the matter went to the Controller and Auditor General for audit. After the audit CAG tabled a report, wherein it pointed out various irregularities in the allotment and development of the Sports City which resulted in a loss of almost 9000 crores to the State Exchequer. The irregularities pointed out were as follows:-

(I) As to how the Noida Authority had suffered a loss of almost Rs.9000 crores because of the wrong pricing of the Sports City.

(II) As per the brochure only residential and commercial plots could have been divided but the Noida Authority sub-divided entire plots, which were earmarked for Sports City as well.

(III) Bids of the allottee were not screened and the turnover of the candidates were not considered.

(IV) The Lead Member having the highest share were ousted from the project completely and thereafter, the allotment was done to various other companies, who individually could not have qualified in the financial bid evaluation.

(V) The finance department has issued a fresh payment plan considering each allottee company as a fresh allottee.

(VI) The transfer charges for second and third transfer were not collected.

(VII) In some cases occupancy certificate has been issued though sports facilities were not completely developed.

(VIII) The allottee was given an FAR of the group housing society though the land was marked for sports city with the specific FAR of 1.5.

(IX) The lease rent was also not recovered.

17. The CAG report reveals how the Noida Authority Officers were in connivance with the builders and have indulged in such a huge scam. In complete contravention of the policy the maps were sanctioned, and the Noida Authority allowed the allottees to carry out construction on the said allotted land.

18. As a knee jerk reaction of the CAG report, NOIDA convened its Board meeting on 18.01.2021 (201st Board Meeting), in which it has been resolved that a Committee should be formed which would look into the pointed out irregularities and place a report in the next Board meeting and stayed any further steps to be taken in the Sports City including revalidation of the maps. In the next Board (202nd Board Meeting) held on 26.07.2023 it was resolved that the issue may be placed before the State Government for its necessary direction and guidance. It was further resolved that only after getting direction from the State Government, NOIDA will take a call on all the issues related to the Sports City.

19. Looking into the gravity of the situation a Public Accounts Committee⁵ of Legislative Assembly was constituted by the State Government to look into the issue.

INSOLVENCY PROCEEDINGS

20. In the meanwhile M/s ASPL could not complete the project and meet up with their financial commitments, therefore one of the Financial Creditor had initiated proceeding under section 7 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016⁶ before the National Company Law Tribunal⁷ at New Delhi, which was admitted on 29.10.2020 and Corporate

5 PAC

6 IBC, 2016

7 NCLT

Insolvency Resolution Process⁸ was initiated. Initially, Mr. Pawan Kumar Singal was appointed as the Interim Resolution Professional, who was later on replaced by Mr. Ayyagari Viswanandha⁹ vide order of the Adjudicating Authority dated 09.06.2024. Thereafter, Committee of Creditors¹⁰ permitted homebuyers to participate in the committee and by virtue of their stake in the project they ended up being 71.11% of the creditors in the CoC.

21. The IRP made public announcements and calls for the claims from the creditors. The committee of creditors was constituted on 02.12.2020. The voting shares of the home buyers was 71.11%. The Noida Authority also made its claim. Over a period of time the COC met for 20 times. Thereafter, In terms of Section 25 (2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 invitation in Form 'G' for Expressions of Interest from potential resolution applicants was invited on 14.03.2021 and again on 30.06.2021. The notice was also published on the website of the Insolvency and Bankruptcy Board of India. In response to it, expression of interest were received from 19 different companies. After evaluation matrix, request for resolution plan was issued to the 17 prospective resolution applicants (for short 'PRAs') on 30.07.2021, and the last date for submission, of revised resolution plans was fixed on 17.05.2021 which was extended to 16.06.2022. Uptill the last date 6 PRAs had submitted their resolution plans.

22. In 19th COC meeting held on 01.07.2022 all the 6 resolution plans were discussed and out of which 4 were found to be in compliance with IBC provisions and, hence, the same were forwarded for voting. The resolution

8 CIRP

9 RP

10 CoC

plan submitted by Purvanchal was approved by members having 71.11% voting shares in the COC.

23. Thereafter, a letter of intent was issued by COC on 09.07.2022 to the petitioner no.2 being a “Successful Resolution Appellants” (hereinafter referred to as “SRA”). As per terms of the resolution plan the ‘SRA’ was supposed to complete the construction of the project and deliver flats to financial creditors/home buyers within three months. The SRA was also supposed to infuse Rs.20 crores.

24. The NOIDA participated in the CIRP proceeding and submitted a claim to the Resolution Professional in Form C for an amount of Rs. 84,19,00,446/-. However, the admitted claim by the RP was Rs. 68,90,93,950/-.

25. The Resolution Plan proposes to pay a sum of Rs.8,61,47,190 (Rupees Eight Crores Sixty One Lakhs Forty Seven Thousand One Hundred & Ninety Only) to Noida Authority towards satisfaction of its dues under the Sub-Lease as on the Insolvency Commencement Date. The total sum proposed for Operational Creditors was Rs.10,00,00,000 (Rupees Ten Crores Only) and the pro-rata share was to be given to Noida Authority.

26. That further, the Resolution Plan specifically earmarks a sum of Rs.10,00,00,000 (Rupees Ten Crores Only) towards development of Multipurpose Playground falling within the share of Petitioner as part of the larger Sports City infrastructure as per the Master Layout Plan of the Sports City Project in Sector 78 and 79. The said provision i.e. Clause 7.1(vi) of the Resolution Plan is reproduced below:-

“vi. The Resolution Applicant understands from the Letter dated 16.08.2021 issued by NOIDA and the provisions of the Lease Deed/Sub-Lease Deed and the approved Layout Plan, that a Multipurpose Playground has to be developed by the Corporate Debtor at a cost of INR 10,00,00,000, on a part of the Project land earmarked for the said purpose, which forms part of the integrated Sports City infrastructure to be developed in Sector

79, Noida. The Resolution Applicant has accordingly earmarked an amount of upto INR 10,00,00,000 for the said purpose and will utilize the same for constructing the Multipurpose Playground. Any additional funds' requirement towards the same will be borne by the Allottees in proportion to their flat areas."

27. The RP, after taking charge of Petitioner No. 1, sought certain queries from Noida Authority vide Email dated 03.08.2021, inter alia concerning the details of the larger Integrated Sports City complex, the Master Layout Plan of the said Project and the Corporate Debtor's obligation in respect of the same. In response to it, NOIDA issued a letter dated 16.08.2021 to the Resolution Professional, inter alia answering the query no. 2 in the following terms:-

"Response: with respect to the sports city infrastructure, it is clarified that Clause (dd) and (ee) of the said Sub-Lease Deed clearly states that the Corporate Debtor is liable to develop the integrated sports infrastructure in accordance with the approved layout plan. The relevant portion of translated clause (dd) & (ee) of the said Sub-Lease Deed are reproduced hereunder:

"(dd). Allottee agency shall get the layout plan (Bhuvinyas Manchitra) sanctioned together from the Authority for the entire allotted land (clubbing sub- divided plots of land also) for integrated planning and execution of Sport City Project on land allotted by time Authority in Sector-79 for Sport City Project. Planning of different activities shall be proposed in this plan as per the terms and condition of allotment of land.

(ee) The project shall be executed by the allottee agency only in accordance to the layout Plan (Bhuvinyas Manchitra) approved by the Authority. Member of Allottee Agency shall not transfer the sub-divided plots to any third person under any circumstances till the layout plan (Bhuvinyas Manchitra) is sanctioned by the Authority."

Therefore, it is hereby clarified that the construction of the sports city infrastructure has to be carried out in accordance with the layout plan. The layout plan dated 16.06.2014 has already been annexed to the present letter in the preceding paragraphs.

28. The RP submitted a Resolution Plan, in which it was stated that the payment proposed to be made to NOIDA (Operational Creditor) will be a final payment and the NOIDA under no stretch can ask or demand any additional amount. NOIDA will not demand any time extension charges. The Completion Date/End considered as the 'zero date' for calculation of time extension charges for the Project.

29. The Resolution Plan contained that all unpaid claims/debts/dues/demands including lease premium and rent, additional land compensation etc. along with any interest or penalty thereon and all other claims of NOIDA were to be written off in full and stand permanently extinguished, and the Corporate Debtor will at no point of time, be held responsible or liable in relation thereto. NOIDA shall give full effect to the terms and conditions, Lease Deed and the Sub-Lease Deed, and all breaches and/or defaults, accruing prior to the Effective Date, stand waived by way of this Resolution Plan. NOIDA shall not cancel the Lease Deed or take any coercive or adverse steps against the Corporate Debtor. All defaults of the Lease Deed, if any committed by the Corporate Debtor prior to the Effective Date, stand waived/cured by way of this Resolution Plan and NOIDA is under an obligation to give full effect of the terms of the Lease Deed/Sub-Lease Deed of the Project Land.

30. It further contained that upon completion of the Towers/ Project, NOIDA shall issue part/full Occupation/Completion Certificate in a timely manner and the same shall, unless restricted by the Applicable Laws, be done without insisting on completion of any sports or recreational facilities on the Total Land. Corporate Debtor/Resolution Applicant will not be liable for any defaults/breach committed by any other entity in respect of the Total Land and no such breach or default will hamper the development/construction of the Project and the grant of part/full Occupation/ Completion Certificates of the Project by NOIDA.

31. In addition to it, in the resolution plan, Rs. 10,00,00,000/- crores were earmarked towards development and Multi purpose playground falling within the share of the petitioner as part of the larger Sports City infrastructure as per the Master Layout Plan of the Sports City Project in Sector 78 and 79.

32. In the pending NCLT proceeding NOIDA made an application being I.A. No.5361 of 2021 seeking that NOIDA should be classified as financial creditors to the corporate debtor and also allow them to participate in the COC meeting and wanted 11% interest on the outstanding amount as per the lease deed and also wanted time extension charges 64.07% farmer compensation and wanted to claim rent/lease rent.

In this application i.e. I.A. No.5361 of 2021 NOIDA had sought the following relief :-

- “a. Direct the Respondent to classify the Applicant as the Financial Creditor to the Corporate Debtor;*
- b. Direct the Respondent to register the claim filed by the Applicant in the category of the Financial Creditor to the Corporate Debtor;*
- c. Direct the Respondent to allow the Applicant to participate in the CoC meetings of the Corporate Debtor;*
- d. Direct the Respondent to admit the Applicant's claim with respect to 11% p.a. Scheduled Interest forming the part of the Lease Premium amount under the Sub-Lease Deed for the period after the Insolvency Commencement Date;*
- e. Direct the Respondent to admit the Applicant's claim in respect of the ground rent/lease rent under the Sub-Lease Deed for the period after the Insolvency Commencement Date;*
- f. Direct the Respondent to admit the Applicant's claim with respect to Time Extension Charges under the Sub-Lease Deed for the period after the Insolvency Commencement Date;*
- g. Direct the Respondent to admit the Applicant's claim with respect to 64.7% farmers compensation payable in respect of the Demised Premises and;*
- h. Pass any other relief or reliefs as this Hon'ble Tribunal deems fit in the nature of justice, equity and good conscience.”*

33. Yet another application was filed by Noida Authority being I.A. No. 5979 of 2022 as an objection to the Resolution Plan, in which NOIDA sought the following relief:-

- “(i) Take the Objections of the applicant to the Resolution Plan on record;*
- (ii) Reject the Resolution Plan in terms of section 31(2) of the Insolvency & Bankruptcy Code;*

(iii) Pass any other relief or reliefs as this Hon'ble Tribunal deems fit in the nature of Justice, equity and good conscience."

34. The NCLT vide Judgment dated 19.07.2023 has approved the Resolution Plan under Section 31 of IBC, 2016 and rejected all objections filed against the Resolution Plan, including the objections filed by NOIDA in I.A. No.5361/2021 and IA No.5979/2022. The Resolution Plan is binding on all stakeholders, including NOIDA, by virtue of Section 31 of IBC, 2016. NCLT has directed the Petitioners to obtain requisite statutory approvals for implementing the Resolution Plan within a period of one year, as required by Section 31(4) of IBC, 2016. The operative portion of order dated 19.07.2023 reads as follows:-

"14. Orders

14.1. Subject to the observations made in this Order, the Resolution Plan of Rs. 584,50,14,060/- (Rupees Five Hundred and Eighty Four Crores Fifty Lakhs Fourteen Lakh and Sixty Only) is hereby approved. The Resolution Plan shall form part of this Order.

14.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.

14.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

14.4. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

14.5. IA (IB) 3392 (PB)/2022, IA No. 3556/2022, IVN. No. 04/2023 IA No. 5361/2021, IA No. 5979/2022 and IA No. 4615/2021 along with CP (IB) No. 875(PB)2020 shall stand disposed of accordingly.

14.6. The liberty is hereby granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.

14.7. A Certified copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.

14.8. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan especially as per Para 8 of this order with regard to PUFEE transaction.

14.9. The Resolution Professional is further directed to hand over all the records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The

Resolution Applicant shall have access to all the records, premises/factories/ documents through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.

14.10. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

14.11. Certified copy of this order may be issued, if applied for upon compliance of all requisite formalities.

14.12. File be consigned to records.”

35. Aggrieved by the order of the NCLT, NOIDA moved an appeal before National Company Law Appellate Tribunal¹¹, New Delhi and the NCLAT vide order dated 25.07.2023 did not grant any interim order in favour of the NOIDA, on the contrary NCLAT held as follows:-

*“14. To balance the equities of the parties, we are of the view that **the Successful Resolution Applicant may continue the implementation of the Resolution Plan**, however, the receivables from the allottees as well as the unsold units shall be utilized upto 50% only and rest of the 50% shall be kept in a separate Bank Account with regard to which orders shall be passed subsequently.”*

(Emphasis Supplied)

36. Thus, the order is very clear that SRA was to continue with the implementation of the RP. Though, the appeal is still pending, but the Noida Authority has not challenged this order anywhere and, hence, the same stood admitted to the NOIDA and it has attained finality.

37. In compliance of the order passed by the NCLAT, CIRP carried out all the activities as mentioned in the Resolution Plan. However the construction of the project could not be commenced as the layout plan was not revalidated. Hence a request was made to NOIDA for revalidation of layout map on 30.10.2023, which had already been approved earlier.

38. However, the NOIDA vide letter dated 01.11.2023 rejected the application of the petitioner for revalidation of the layout plan on the ground that petitioner No. 1 has not constructed its share of common Sports City

¹¹ NCLAT

infrastructure within time stipulated as per the sub lease deed,, and further the matter is pending with the State Government for necessary direction and unless and until some directions are passed by the State Government, NOIDA will not execute the revalidation of the layout map.

39. Aggrieved by the order impugned dated 01.11.2023, petitioners have filed the instant writ petition with the following prayer:-

“(i). Issue an appropriate writ, direction or order in the nature of CERTIORARI or any other appropriate writ for setting aside / quashing the decision taken by the Respondent No. 2 in its 2015 Board Meeting dated 18.01.2021 to put on hold the approval / revalidation of Layout Maps and grant of Occupation / Completion Certificates to Projects situated on the Sports City Land insofar as it relates to 'Lotus Arena-I' Project of Petitioner No. 1 situated at Plot No. SC-01/A2, Sector 79, Noida. (annexed as Annexure No. 17 to this writ petition)

(ii) Issue an appropriate writ, direction or order in the nature of CERTIORARI or any other appropriate writ for setting aside / quashing the Impugned Letter dated 01.11.2023 issued by Respondent No. 2 to Petitioner No. 1. (annexed as Annexure No. 14 to this writ petition)

(iii) Issue an appropriate writ, direction or order in the nature of MANDAMUS or any other appropriate writ directing / commanding the Respondent No. 2 to ensure full compliance with the provisions of the Sub-Lease Deed dated 19.10.2012 and extend full support and cooperation for ensuring the successful completion of the Project by the Petitioner No. 1.

(iv) Issue an appropriate writ, direction or order in the nature of MANDAMUS or any other appropriate writ restraining the Respondent No. 2 from placing reliance on past breaches or defaults under the Sub-Lease Deed dated 19.10.2012 alleged to have been committed by the erstwhile management of the Petitioner No. 1 in the pre-CIRP period.

(v) Issue an appropriate writ, direction or order in the nature of MANDAMUS or any other appropriate writ directing/commanding the Respondent No. 2 to take urgent and requisite steps to consider and approve the application/request dated 30.10.2023 submitted by the Petitioner No. 1 for revalidation of the Layout Maps of 'Lotus Arena- I' Project in an expeditious and timely manner and in accordance with law.

(vi) Issue an appropriate writ, direction or order in the nature of MANDAMUS or any other appropriate writ directing / commanding the Respondent No. 2 to take requisite steps to consider and grant the Occupation/Completion Certificate(s) to the Petitioner No. 1 / Project upon partial / full completion of the Project and in accordance with law.

(vii) Issue an appropriate writ, direction or order in the nature of MANDAMUS or any other appropriate writ directing / commanding the Respondent No. 1 to take a decision forthwith and expeditiously on the issue referred to it by Respondent No. 2 keeping in mind the continuance of obligations of respective parties under the Sub-Lease Deed and the valuable rights and interests of homebuyers.”

40. One of the homebuyers in this project, who was also aggrieved by refusal of the Noida Authority to revalidate the map had filed a separate writ petition being Writ C No.8447 of 2024 with the following prayer:-

“A. issue an appropriate writ, order, or direction in the nature of CERTIORARI or any other appropriate writ for setting aside/ quashing the decision taken by Respondent No 2, NOIDA, in its 201st board meeting of 18 January 2021 to discontinue the issuance of map approval/ revalidation and the grant of occupation/ completion certificates to projects situated on Sports City land insofar the decision applies to the Lotus Arena-I project of Respondent No 3, Arena Superstructures Private Limited, situated at Plot No SC-01/A2, Sector 79, Noida;

B issue an appropriate writ, order, or direction in the nature of CERTIORARI or any other appropriate writ for setting aside/ quashing the letter dated 1 November 2023 issued by Respondent No 2, NOIDA;

C issue an appropriate writ, order, or direction in the nature of MANDAMUS or any other appropriate writ directing Respondent No 2, NOIDA, to take steps to expeditiously consider and approve the application dated 30 October 2023 submitted by Respondent No 3. Arena Superstructures Private Limited, for the revalidation of the layout maps in respect of the Lotus Arena-I project situated at Plot No SC-01/A2, Sector 79, Noida;

D. issue an appropriate writ, order, or direction in the nature of MANDAMUS or any other appropriate writ directing Respondent No 2, NOIDA, to fully comply with the provisions of the sub-lease deed dated 19 October 2012 to extend full support and cooperation for ensuring the development of the Lotus Arena-I project situated at Plot No SC-01/A2, Sector 79, Noida;

E. issue an appropriate writ, order, or direction in the nature of MANDAMUS or any other appropriate writ directing Respondent No 1 to expeditiously decide on the issue referred to it by Respondent No 2 by way of the board meeting dated 18 January 2021, in view of the interests of the homebuyers and the Petitioner, and the obligations of all parties under both the sub-lease deed dated 19 October 2012 and the provisions of the Insolvency and Bankruptcy Code, 2016;

F. issue an appropriate, writ, order or direction in the nature of MANDAMUS or any other appropriate writ directing Respondent No 1 to implement the terms of the Resolution Plan insofar as they pertain to implementation of the Resolution Plan as specifically allowed by the Principal Bench, NCLT, New Delhi;

G. issue an order of an inquiry into the functionaries and officers of NOIDA involved in the allocation of plots, sub-division of the 'Sports City' project (thereby making the project untenable at inception) and the nature of the monitoring of the execution of the project by the officials of NOIDA by an appropriate investigative agency as may be deemed fit by this Hon'ble Court.”

ARGUMENT OF THE PETITIONERS

(Writ-C No.6041 of 2024)

41. Mr. Shashi Nandan, learned Senior Advocate appearing on behalf of the petitioners submitted that the instant writ petition is different from the

rest of the matters clubbed together and requested to hear this matter separately as the issue involved is completely different from rest of the matters. He submitted that this is the only case in which after the matter was referred to NCLT under the IB Code, the COC had held a meeting and after getting the resolution plans from different companies had approved the resolution plan and the petitioner no.2 had become Successful Resolution Applicant (SRA). Since the implementation of the project was now under the provisions of IB Code, hence, it ought to be heard separately.

42. He submitted that the issue raised by the NOIDA by the impugned letters about the matter being referred to the State Government, and Noida will wait for the outcome had been taken for the first time, as this issue were not raised before the NCLT. But just to prevent the implementation of NCLT order NOIDA has now raised this issue /objection on revalidation of the layout map.

43. He further submitted that NOIDA is bound to comply with the order of NCLT & NCLAT. Since order was passed after hearing the authority who were the party before the Tribunal and hence NOIDA cannot wriggle out of from the direction given by the NCLT & NCLAT.

44. He submitted that once the resolution plan is approved by NCLT, NOIDA is bound under section 31(1) of the IBC, 2016 by the contents of the Resolution Plan. The following parts of Clause 7.3(vi)(C) of the Resolution Plan are applicable to NOIDA:

"d. NOIDA shall give full effect to the terms and conditions of the Lease Deed and the Sub-Lease Deed of the Project Land, and any and all breaches and/or defaults thereof, arising or accruing prior to the Effective Date, stand cured/waived by way of this Resolution Plan. NOIDA shall not cancel/revoke/terminate the Lease Deed and the Sub-Lease Deed of the Project Land, or take any coercive or adverse steps against the Corporate Debtor or the Project Land, on account of any cause of action arising or accruing prior to the Effective Date or arising or accruing as a result of the haircut given to it under this Plan. All breaches and/or defaults of the Lease Deed/Sub-Lease Deed of the Project Land, if any committed by the

Corporate Debtor prior to the Effective Date stand waived/cured/compounded/regularized by way of this Resolution Plan and NOIDA is under an obligation to give full effect of the terms of the Lease Deed/Sub-Lease Deed of the Project Land.

.....

g. Upon completion of the Towers/Project, NOIDA shall issue part/full Occupation/Completion Certificate(s) in a timely manner and the same shall, unless restricted by the Applicable Laws, be done without insisting on completion of any sports or recreational facilities on the Total Land (of which the Project land is a part).

h. The Resolution Applicant understands that the Total Land was further sub-divided and accordingly various sub-lease deeds in favour of various entity/person were executed and registered as per the norms of NOIDA by Sequel Buildcon Private Limited. Upon approval of this Resolution Plan by the NCLT, the Corporate Debtor/Resolution Applicant will not be liable for any defaults/breach committed by Sequel Buildcon Private Limited, Corporate Debtor and/or any other entity in respect of the Total Land and no such breach or default will hamper the development/construction of the Project and the grant of part/full Occupation/Completion Certificates of the Project by NOIDA.

i. In consideration of the payment proposed in this Plan, NOIDA shall renew and/or revalidate all Business Permits of the Corporate Debtor without any charges, fee, cost, expenses, penalty, etc."

(emphasis supplied)

45. He further submitted that the Resolution Plan also requires NOIDA to grant certain permissions and licenses to the petitioner company. Clause 11.6 of the Resolution Plan states:

"11.6. Approvals / Licenses / Permits for undertaking construction activities

The following Approvals/Licenses/Permits may be required for undertaking the construction activities at the project site, which the concerned authorities shall endeavour to grant/renew/revalidate to the Corporate Debtor within 60 days from the date of application of the same:

i. Environment NOC

ii. Pollution NOC

iii. STO and CTO Pollution NOC

iv. Water Supply and Sever Connection NOC

v. Underground Water NOC (Borewell)

vi. NOC from Fire Department

vii. NOC from Electricity Safety Department for Lift

viii. NOC from Electricity Safety Department for Transformer and DG Set

ix. Occupancy and Completion Certificates from NOIDA

x. Revalidation of all approvals by NOIDA

xi. Any other Approvals/Licenses/Permits as may be required"

(emphasis supplied)

46. He further submitted that as per counter affidavit of the NOIDA Authority, the construction/development of the sports facility were given to the other companies and the petitioner was only under obligation to pay Rs. 10 crores towards developing the Multi Purpose Field. The petitioner is not shying away from its responsibilities to develop the Sports facility.

47. The decision of the Board meeting to refer the entire issue to the State Government for necessary direction/guidelines is contrary to the provisions of Section 41 of the Uttar Pradesh Urban Planning and Development Act, 1973

48. Learned Senior Counsel argued that the refusal by Noida Authority to revalidate layout map of the project amounts to violation of its obligations under the sub-lease deed. As per Clause II(g) of the sub-lease deed, M/s ASPL is bound to carry out construction activity in accordance with the approved layout map. The layout maps of the project were sanctioned by NOIDA on 29.04.2014 and were valid for five years, after the lapse of this period, it is mandatory to revalidate the layout map before restoring the condition.

49. It was submitted that as per the direction of the NCLT & NCLAT, the petitioner through the CIRP had sought revalidation of the layout map which was in sync with the resolution plan and also as per the direction given by the NCLT & NCLAT. NOIDA has filed an Appeal before NCLAT but there is no stay of the Order dated 19.07.2023. On the contrary, NCLAT has directed/ permitted the Petitioners to implement the Resolution Plan vide Order dated 25.07.2023.

50. The learned Senior Counsel argued that the approved Resolution Plan is binding on NOIDA under Section 31 of IBC. Further, as per Section 238,

the provisions of IBC override any 'law' or 'instrument' that is inconsistent with the provisions.

51. Learned Senior Counsel categorically made the submissions that the letter dated 01.11.2023, by which revalidation of the layout map was rejected, was completely contrary to the direction of the NCLT & NCLAT. Even RERA registration cannot be obtained without the revalidated maps. Thus, NOIDA has effectively disabled the petitioners from executing the project in terms of the sub-lease deed and the approval Resolution Plan.

52. The CAG has not directed/suggested for referral of any matter/issue to the State Government but has only recommended taking “exemplary action against the delinquent officers”.

53. There is no such direction to NOIDA in the CAG report. It certainly does not entitle or empower NOIDA to breach its obligations under the sub-lease deed as has been done by way of the Impugned decision taken in the 201st Board Meeting.

54. On the contrary, NOIDA's claim in the CIRP also included 'Time Extension charges', thus again implying the continuance of the Sub-Lease Deed and the grant of extension of time for completing the Project. NOIDA has chosen to take a stand contrary to the terms of the approved Resolution Plan, which is impermissible.

55. As per Letter dated 16.08.2021 read with the Master Layout Plan, ASPL is required to construct a Multi Purpose Playground at a cost of Rs. 10 crores.

56. The State Government has been sitting over the matter for over three years now and the resultant delay has completely stalled the Project despite

NCLT approval. Though NCLT's Order dated 19.07.2023 directs the Petitioners to obtain all approvals / permissions within one year.

57. Learned Senior Counsel strenuously submitted that because of the non implementation of NCLT's order, the Petitioners run the risk of incurring drastic penal and other legal consequences for failure to fulfil the terms of the Resolution Plan, including the provision for time-bound completion of the project.

58. In fact during the course of the argument, Mr. Shashi Nandan, learned Senior Advocate appearing for the petitioner very fairly stated that the SRA is going to complete the sports facilities assigned to the sub-lessee, which was multi purpose sports facilities at the cost of Rs.10 crores, which was stated in the brochure as well as in the lease deed and once they complete the sports facilities then only they will ask for the completion certificate of the residential towers.

59. He further submitted that the SRA undertakes to complete the Sports facility first, which he was obliged to build even before asking for the completion certificate of the project. However, to start building the sports facilities the Noida Authority has to revalidate the plan, which has already been sanctioned but has elapsed due to efflux of time.

ARGUMENT OF THE PETITIONER

(WRIT C No.8447 OF 2024)

60. Learned counsel for the petitioner submits that the homebuyers have become a victim in the tussle between the NOIDA and M/s ASPL. Apparently the Comptroller and Auditor General of India in its report alleges that there was a huge disparity in the allotment and implementation

of the Sports City project and NOIDA had turned a blind eye towards the illegal activities of builders.

61. He further submitted that the homebuyers have put in their life time savings with a dream and hope that they will get their own home to stay in. If there was any scam or illegal allotment or illegality committed by NOIDA/ builders, then they should be held responsible for the same and the homebuyers should not be by such penalised for such action. The petitioner had booked the flat and invested money, on the premise that, the project was crystal clear, as NOIDA had executed a registered sub-lease deed and layout map was also sanctioned, they found no illegality in the entire project.

62. He next submitted that M/s ASPL has collected 60% of the total amount from the home buyers, which as per the balance-sheet of the M/s ASPL was Rs. 349.03 crores and out of it Rs. 113.45 crores have been unlawfully misappropriated by the key managerial personals of M/s ASPL. This diversion was carried out in connivance with various related parties and Associate companies, diverging the amount through various transaction like interest free loans, inflated bills etc, with the sole intention to deceive and defraud the homebuyers. This diversion of fund is nothing but a fraud played at the homebuyer, Banks and the NOIDA. Because of the diversion of fund, the project could not be completed and as of now only 32% of the construction has been carried out.

63. The homebuyers have also lodged criminal complaints against the officer-in-charge of M/s ASPL under Section 120B, 406 and 420 I.P.C. Even some of the homebuyers had filed cases before the Economic Offences Wing.

64. On the complaints lodged by the home buyers, after investigation charge-sheet was filed against directors / management of M/s ASPL in Saket Court (South East District), Delhi, wherein it was stated as follows:-

“a. Accused persons by the way of advertisement intentionally induced the complainant by fraudulently representing that Arena Superstructures Pvt. Ltd. being part of Three C Universal Developers Pvt. Ltd. and Lotus Greens Developers Pvt. Ltd. has launched the said project at affordable prices.

b. The complainants were induced to buy units in the project of the accused company and the funds collected by the accused company from the buyers were siphoned off. Hence the company was left with no funds for construction and completion of the project. This caused the inordinate delay in the project and the complainants were left in the lurch.

c. Flats were sold with a forged site plan as the site plan of the project which is available on UPRERA site is different from that shown in brochures at the time of booking & supplied to the complainants as part of BBA.”

65. Criminal proceedings are still pending before the Court concerned.

66. After syphoning of the funds, the petitioner No.1 (of W.P.No.6041 of 2024) was pushed into insolvency to avoid payments of the dues which were running into few hundred crores to the creditors. If the illegally stashed syphoned / diverted money is brought back it will be sufficient for the payment of the entire dues of the Noida authority and also to develop the multi purpose sports facility, and the residential project.

67. The Resolution Plan which has been approved by NCLT is binding on NOIDA. Though the NOIDA has filed an appeal against the NCLT Order, but no stay had been granted, hence the order of NCLT has attained finality and is binding.

68. He further submitted that the officials of the NOIDA are solely responsible for the entire problems created by the builders. Now NOIDA cannot refuse to comply with the order of the NCLT on the ground that the matter had been referred to the State Government for necessary direction and guidance. The matter before the state government is pending since

2021, and the State Government is not taking any action. This cannot be a ground for review or revalidate the layout map, specially when the same has been ordered by the NCLT.

69. Learned counsel for the petitioner further submitted that the current situation of the project is as follows:-

(i) Land :

Land Area	50000 sq. mtrs. Located at Plot No. SC-01/A2, Sector 79, Noida, Uttar Pradesh-201301
Permissible FAR	1,44,375 sq. mtrs. (Including Green FAR)
Saleable Area	19,29,360 sq ft.
Built-Up Area	25,37,932 sq. ft.

ii. Tower wise proposed flats:

Tower No.	Floors	No. of Flats
Tower-I	Stilt + 32	384
Tower-II	Stilt + 32	
Tower-III	Stilt + 32	
Tower-IV	Stilt + 29	348
Tower-V	Stilt + 29	
Tower-VI	Stilt + 29	
Tower-VII	Stilt + 31	348
Tower-VIII	Stilt + 31	
Tower-IX	Stilt + 31	
TOTAL		1080

iii. Present construction status:

Tower No.	No. of Floors	RCC Slabs Completed	Brick Work	Internal Plaster	External Plaster
			Completed	Completed	Completed
Tower-I	Stilt + 32	32 slabs	Ground Floor-25 th Floor	Nil	25%
Tower-II	Stilt + 32	32 slabs	Ground Floor-20 th Floor	Nil	Nil
Tower-III	Stilt + 32	32 slabs	Ground Floor-23 rd Floor	Nil	Nil
Tower-IV	Stilt + 29	29 slabs	1 st - 5 th Floor	Nil	Nil
Tower-V	Stilt + 29	29 slabs	1 st - 4 th Floor	Nil	Nil

Tower-VI	Stilt + 29	27 slabs	1 st Floor	Nil	Nil
Tower-VII	Stilt + 31	10 slabs	Nil	Nil	Nil
Tower-VIII	Stilt + 31	12 slabs	Nil	Nil	Nil
Tower-IX	Stilt + 31	10 slabs	Nil	Nil	Nil

iv. Utilities and internal Development : NIL

v. Details of Sold/Unsold Flats:

Number of sold Flats	858
Number of unsold Flats	222
Inventory of Toral Saleable Area (Approx.)	4,06,000 sq. ft.
Total Sale Value of Sold Flats (excluding Taxes)	INR 7,225,957,994
Amount received for Sold Flats (excluding Taxes)	INR 3,872,125,141
Balance amount receivable for Sold Flats (excluding Taxes)	INR 3,353,832,853

70. That the NCLT vide its order dated 19.07.2023 has clearly stated that the Resolution Plan is binding on the Corporate Debtor and other ‘**Stakeholders**’ involved, so that the revival of the Debtor Company shall come into force with immediate effect. By not revalidating the map NOIDA who is Stakeholder is actually putting the “spoke in the wheel” in the revival of the Debtor Company and which is detrimental to the interest of the homebuyers. Even the NCLT on 25.07.2023 has held as follows:-

“To balance the equities of the parties, we are of the view that the Successful Resolution Applicant may continue the implementation of the Resolution Plan, however, the receivables from the allottees as well as the unsold units shall be utilized upto 50% only and rest of the 50% shall be kept in a separate Bank Account with regard to which orders shall be passed subsequently.”

71. Learned counsel for the petitioner lastly submitted that in Clause 11.6 of the plan, it is specifically stated that to undertake the construction activity of the project the Authority has to grant or to revalidate the approval within 60 days of the application. Though, NOIDA was a party in the NCLT proceedings and the order is applicable and binding upon them, yet they are violating the order with impunity.

ARGUMENT ON BEHALF OF NOIDA AUTHORITY

72. Sri Manish Goyal, learned Senior Counsel assisted by Sri Kaushlendra Nath Singh and Ms. Anjali Goklani, learned counsel for the Noida Authority submitted that before proceeding in the matter it is worthwhile to mention the connection of the petitioner-Company along with the Consortium and also their antecedents.

73. A supplementary counter affidavit has been filed on behalf of the Noida Authority. By way of this affidavit, Mr. Goyal, Senior Counsel submitted that the scheme for development of Sports City in Sector-78 & 79 was formulated and launched on 03.03.2011 and the same was to close on 24.03.2011. The main feature of the Sports City Scheme was setting up state of the art sports facilities of international standards, which was an integrated project and has to be developed as a whole. Even if a Consortium Company applied for the project, it was the Consortium as a whole that is assumed to be the lessee and not any individual company, and was supposed to develop the project.

74. In pursuance of the notice inviting tender, an application was made by the Consortium in which Lead Member was M/s Xanadu Estates Pvt. Ltd. along with other Consortium Members. A chart showing the composition of the Consortium and their date of registration, list of directors and shareholdings, are as follows:-

Sl.No.	Name of the Company	Lead Member/Relevant Member	Percentage	Date of Incorporation	Directors
1.	M/s Xanadu Estates Pvt. Ltd.	Lead Member	30%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri
2.	M/s Meriton Infotech Pvt. Ltd.	Relevant Member	5%	19.10.2005	Surpreet Singh Suri Vidur Bharadwaj Nirmal Singh Mayank Chaurasia Anand Kumar Chaurasia Hari Veerapaneni Krishna

3.	M/s Sulej Agro Products Limited	Relevant Member	5 %		Nirmal Singh Vidur Bharadwaj Supreet Singh Suri
4.	M/s Xanadu Infradevelopers Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri
5.	M/s Xanadu Infratech Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri
6.	M/s Xanadu Realcon Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri
7.	M/s Sequel Buildcon Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Supreet Singh Suri
8.	M/s Sequel Building Concepts.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri
9.	M/s Kindle Developers Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri

75. Out of 9 companies of the consortium, 7 of them were incorporated on 10.03.2011, even the Lead Member was incorporated on 10.03.2011, after the scheme was launched with the same set of Directors. This shows that all the companies were incorporated by same set of Directors who were the actual promoters. Normally, a Consortium is a group of different companies/ builders/ developers, who come together to complete a project, but here a number of companies were incorporated by the promoters of a company called M/s Three-C developers and all the companies, which were a newly incorporated company, were held by the same set of people.

76. A perusal of the Eligibility Clause of the scheme reflects that, the scheme mandated that 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 within 5 years. Furthermore, the lessee had to develop residential and commercial

component in the project in proportion to area earmarked for recreational uses.

77. Bid of this Consortium company, being the most compliant, was allotted the Sports City Project in Sector-78 and 79, which was for ad-measuring area 7,27,500 sqm. Accordingly, allotment letter was issued on 04.05.2011 to M/s Xanadu Estates Pvt. Ltd. (Consortium).

78. M/s Xanadu Estates Pvt. Ltd. (Lead Member of the Consortium) vide letter dated 11.10.2011 requested NOIDA to execute separate Lease Deeds in favour of the Relevant Members of the Consortium. It was in pursuance of the aforesaid request that NOIDA executed Lease Deeds in favour of the Relevant Members of the Consortium on 24.10.2011. Details of the aforesaid Lease Deeds are being summarized below :-

<i>Request for sub-division/Execution of lease deed through letter dt.11.10.2011 which was approved by the authority through letter dated 24.11.2011</i>				
S.No.	Plot No.	Allottee	Area (Sq. mtr.)	Date of Lease
1.	SC-01/A, SECTOR-79	M/s Sequel Buildcon Pvt. Ltd.	100000.00	24.10.2011
2.	SC-01/B, SECTOR-79	M/s Sequel Building Concept Pvt. Ltd.	48000	24.10.2011
3.	SC-01/C, SECTOR-79	M/s Three C Green Developer Pvt. Ltd.	250027.50	24.10.2011
4.	SC-01/D, SECTOR-79	M/s Kindle Developers Pvt. Ltd.	100000	24.10.2011
5.	SC-01/E, SECTOR-79	M/s Xanadu Realcon Pvt. Ltd.	80000	24.10.2011
6.	SC-01, SECTOR-79	M/s Xanadu Infratech Pvt. Ltd.	14272.50	24.10.2011

79. The Lead Member of the Consortium had also requested that M/s Three-C Green Developers Pvt. Ltd. would be the Special Purpose Company¹² (SPC) for development of Sports City in respect of Plot No.SC-01/C, Sector 79 for an area of 2,50,027.50 square metres. The Memorandum of Agreement was signed by nine companies on 22.03.2011. The signatures of the authorized representatives of the company, which were part of the Memorandum of Agreement shows only two persons have signed on behalf

12 SPC

of all the companies, which goes to show that all the nine companies were owned by the same entity or at best by two.

***Shareholding of SPC M/s Three C Green Developers Pvt. Ltd. Area 250027.50**

S.No.	Company Name	Director	Shareholder
1.	Three C Green Developers Pvt. Ltd.	- Nirmal Singh - Vidhur Bhardwaj - Surpreet Singh Suri	- M/s Xanadu Estates Pvt. Ltd. (62.50%) - M/s Meriton Infotech Pvt. Ltd. (18.50%) - M/s Sulej Agro Products Ltd. (9.50%) - M/s Xanadu InfraDevelopers Pvt. Ltd. (9.50%)

80. The original allottee representing the entire group filed a Master Plan for development of the entire Sports City. In this, it was made clear, as to what would be the role of each individual company /member of the Consortium and what activities/ development they were supposed to carry out. The map was approved on 16.06.2014, in which the roles and obligations of each companies were earmarked and was approved by Noida Authority. The chart, depicted the role of each company as to who will construct sports facilities and who will construct residential/commercial apartment, further the specific sports facility which was to be developed by the specific companies and the cost was also mentioned as per the brochure, which was as follows:-

SPORTS FACILITIES			
SUBSIDIARIES	PLOT NO.	FACILITIES TO BE IN LAND PARCEL	MIN. AMOUNT TO BE SPENT (IN CRORE)
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	GOLF COURSE (9 HOLE)	40.00
M/S ARENA SUPER STRUCTURE PVT. LTD.	SC-01/A2	MULTIPURPOSE PLAYFIELD	10.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	TENNIS CENTRE	35.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	SWIMMING CENTRE	50.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	PRO-SHOPS/FOOD AND BEVERAGE	30.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	IT CENTRE/ADMINISTRATION/MEDIA CENTRE	65.00

M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	INDOOR MULTIPURPOSE HALL, SPORTS HALL INCLUDING GYMNASTIC, TABLE TENNIS, SQUASH, BASKET BALL, VOLLEY BALL, BADMINTON, ROCK CLIMBING	30.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	CRICKET ACADEMY	50.00
ALL	-	INTERNAL ROADS AND PARKS	25.00
M/S XANADU INFRATECH PVT. LTD.	SC-01, SEC-78	HOSPITAL/SENIOR LIVING/MEDICINE CENTRE	60.00
ALL	-	CIRCULATION SPACES, CARPETING, UTILITIES ETC.	15.00

81. On the request of the M/s Sequel Buildcon Pvt Ltd, who was allotted 1,00,000 sq meters of land which was approved on 30.10.2012 was again subdivided in the following manner

S.No.	Plot No.	Allottee	Area (Sq.mtr.)	Date of Sub-Division	Date of Sub-Lease Deed
1.	SC-01/A1, SECTOR-79	M/S Sequel Builcon Pvt. Ltd.	50000	03.10.2012	19.10.2012 (Correction Deed)
2.	SC-01/A2, SECTOR-79	M/S Arena Superstructures Pvt. Ltd.	50000	03.10.2012	19.10.2012

82. After execution of sub lease deed in favour of the petitioner herein, the petitioner again applied for sanction of the map of residential block, which the petitioner was supposed to build. The map of the petitioner was sanctioned. As per the sanctioned map, the petitioner was supposed to develop 7 towers with the floor numbers ranging from 21 to 28.

83. The allotment and possession of the land was given to the Consortium as a whole, but a small portion due to certain problems could not be handed over to the Consortium, however, major portion of the land in sports city was handed over to the Consortium

84. The Consortium made a request on 30.12.2016 for grant of zero period as the possession of the entire land had not been granted to the Consortium. Noida Authority declared zero period for the sports city project till 31.01.2017 and also handed over a fresh payment plan.

85. In spite availing the benefit of the zero period, and after execution of the fresh payment plan, the petitioner company still did not pay the due of the Noida Authority, and a notice for payment of the dues was issued on 31.03.2015, 24.07.2019 and 21.08.2019.

86. However, as far as the petitioner is concerned, land was allotted to it, and possession was also given to them. Once the petitioner had the possession, then only they could have applied for sanction of map. If the petitioner did not had the possession of the land, the map could not have been applied or approved, neither they could have had started booking and collecting money from the homebuyers.

87. There were reports of large scale bungling and fraud in the allotment and development of the sports city project. Hence. an audit was conducted by Comptroller and Auditor General of India (CAG), who pointed out a scam in the allotment, implementation and development of sports city, vide its report, which was tabled in September 2020.

88. Thereafter, the Board Meeting of NOIDA was held on 18.01.2021 (201st Board Meeting) in which it was resolved that recommendation should be made to Public Accounts Committee to look into the deficiencies pointed out by CAG and give a report. As an interim measure, it was further resolved that no steps should be taken towards development of sports city, sub-division will not be carried out any further, nor any maps should be revalidated. Further, on the basis of the report submitted, in the next Board meeting (202nd) held on 25.06.2021, it was resolved that the matter may be referred to the State Government for necessary guidance and direction.

89. The decision of the Board meeting (201st meeting) is the main ground of challenge in various writ petitions filed by the developers in this Court.

90. Though, instead of a comprehensive lease deed in favour of the lessee consortium, individual lease deeds were executed in favour of members of the Consortium, this exercise was under taken on the request of Lead Member of the Consortium and same was in pursuance of letter of allotment as well as Sports City Scheme. Further, the sports city was to be developed as an integrated project. Sub-lessees were all 100% subsidiaries of regular members of the Consortium and were bound by the terms and conditions in the brochure, allotment letter and lease. Hence, all the subsidiaries were under an obligation to develop the Sports City Project and they are bound by the original terms and conditions mentioned in the Lease Deed. This sub-division was mere allocation on the request of allottees for proper implementation of the project and does not constitute a fresh transaction/allotment.

91. He further submitted that the way the allotment was carried out, sub divisions were made, due instalments were never asked for and not even paid; the way map was sanctioned, the allottees were allowed to start construction on the commercial and residential areas even without starting development of proportionate sports facilities, were not in accordance with the scheme or the rules. A perusal of said lease deed, elucidates that the Sports City Project was supposed to be developed as an integrated whole.

92. He further submitted that on the basis of aforesaid analysis it can be concluded that the sub-division in favour of the subsidiary is fully binding on the subsidiary company and the subsidiary company is to perform the obligations as are contained in the original terms of the lease and to develop the Sports City Project and cannot claim any independent existence for an independent project.

93. Noida Authority has been castigated for sanctioning the layout plan in favour of the Sub-lessees individually and has been targeted that these plans

do not contain any stipulation to the effect that any Sports facilities were to be developed by the Sub-lessee, inasmuch as, no Sports facility has been specified in the sanction layout plan of the petitioner.

94. No indefeasible right can be claimed by the Sub-lessees on the basis that a plan has been sanctioned in their favour. The submission of the plan wherein the sub-lessees had excluded the sports facilities keeping 70% ground coverage vacant was the own wrong doing of the sub-lessees for which they cannot take advantage. Hence no sanctity can be attached to an illegally sanctioned map. 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.

95. The entire scheme of the Sports City Project discloses that group housing/ residential purpose is complimentary to the principal objective of development of the sports facilities. The residential purpose and the commercial purpose being complementary to the development of sports facility, it can only be viewed to be an integrated project.

96. To buttress his argument he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Nand Kishore Gupta and others vs. State of U.P. and others**¹³ wherein while dealing with a matter relating to allotment of five land parcels alongside the Yamuna Expressway, the Court upheld the acquisition and allotment of the five land parcels treating them to be an integral part of the development of the Yamuna Expressway.

¹³ 2010(1) SCC 282

97. The sub-lessee, therefore, in the light of the law laid down by this Court as well as by Hon'ble Supreme court, cannot claim to be created only for development of Group Housing Project as this will be an antithesis to the integrated project scheme under which the allotment was done.

98. Since, Group Housing does not come in the category of project on a stand alone basis under the Sports City Scheme it cannot be conceived to be a complete project without development of the sports facilities, inasmuch as, sports facility is the primary project and group housing is complimenting the sports facility project and in that sense Group Housing becomes an integral part of the project.

99. He further submitted that the MOU/Master Agreement entered between the homebuyers, the petitioner and the IRP dated 19.09.2023 clearly shows that M/s Eka Life Limited is an statutory partner, who has agreed to infuse funds to the extent amount of Rs.75 crores as per clause 4.1 of the MOU. Further as per the MOU, it is clear that the promoter would get all the permissions from the Noida Authority within a period of 4 months (with a grace period of 3 months) and in case of extension of time it has to be a fresh agreement. However, in this case the time period has elapsed and there is nothing on record to show that the parties have entered into a fresh MOU that means this MOU has come to an end and in absence of the MOU, all the proceedings initiated thereafter is absolutely baseless.

100. He further submitted that in the meeting of the Public Accounts Committee it has been resolved that the builders would submit a fresh map in which 70% of their land, they have to leave as an open area for construction of the sports facilities. As the petitioner is obliged to develop the sports facilities in the 70% of the land and unless and until fresh map is submitted to the authority, the authority cannot revalidate the existing map,

which has been issued erroneously and contrary to the policies of the authority and contrary to the allotment letter.

101. He further submitted that the way things were modified/changed were quite questionable. It is only after change of the government, the scam was unearthed, and the Audit was referred to CAG. The State Government took a very proactive stand and did not grant any extension or revalidation of map because of the illegality done by the allottees.

INSOLVENCY PROCEEDINGS

102. Mr. Manish Goyal, Senior Counsel further submitted that here the corporate insolvency process initiated against the petitioner was tailor made and is nothing but outcome of a nefarious design, of the promoters/ erst while management of the petitioner and the fraud committed to keep away from the entire responsibility of development of the project. Here the original allottee had made a web of companies and on the request of the allottee various lease deeds were signed by the 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.

103. The following amount was outstanding against M/s ASPL, which was claimed by the NOIDA before the CIRP:-

Claim Head	Amount Claimed (INR)	Amount Admitted (INR)
Lease Premium alongwith interest	65,49,49,003	56,06,56,456

Lease Rent alongwith Interest	5,49,45,193	5,19,76,278
Time Extension charges till 23.04.2021	10,56,56,250	7,64,61,216
64.7% Farmers' Compensation	2,63,50,000	
Total	84,19,00,446	68,90,93,950

104. He further submitted that it is a perfect case of piercing the corporate veil and to see whether the companies were incorporated out of well-designed nefarious scheme/scam, or was done in the normal course of business.

PIERCING OF CORPORATE VEIL

105. 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.

106. M/s Three C Developers Pvt. Ltd. , a Special Purpose Company set up to develop sports city (as per ROC) was incorporated on 13.12.2010, which was much prior to the date of advertisement. Right from the date of incorporation, there were three directors namely, Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri and the same were the directors even on the date of execution of lease deed, even on most of the relevant companies (members) of the consortium were incorporated after the sports city scheme was launched and surprising all the companies had the same address and the promoters of all these companies were the same

107. A comprehensive and inclusive analysis of the present situation reveals that virtually the same set of individuals floated multiple companies to procure leases from the Authority for the development of the Sports City Project as an integrated whole. However instead of discharging their obligation towards integrated development of the Project, the aforementioned set of individuals who were effectively behind all the

members of the Consortium, under the garb of being independent companies, only focussed on residential development and completely ignored their responsibility for the development of sports facilities, and later got themselves in Insolvency.

108. After the allotment and execution of the sub lease deeds the share holdings have changed in certain companies, and few companies have defaulted the effect of which was the sports city could not be developed. Hence it is necessary to pierce the corporate veil and see who are the people / entity responsible for the debacle.

109. However, in the present case, the separate legal identity of the companies constituting the Consortium has been used to facilitate the evasion of legal obligations that the members held, jointly and severally, towards the development of the Sports City as an integrated whole. Accordingly, it is a fit case for piercing the corporate veil to reveal the true nature of the companies and identify the individuals exercising real control over them to hold such persons directly liable.

110. Since the line of distinction between the companies (developers involved in the Sports City Project) and their directors (virtually the same set of individuals who floated multiple companies) is blurred and the companies merely function as an alter ego of the owners evading their legal responsibility, the theory of 'alter ego' for piercing the corporate veil becomes applicable.

111. The legal principle that a company is a separate legal entity independent from its members and enjoys its own set of rights and obligations had been laid down in **Salomon vs. A. Salomon & Co. Ltd.**¹⁴

14 1897 AC 22

This position has since been used to separate a company's existence from its owners by way of a 'Corporate Veil.'

112. Additionally, since the same set of directors behind all the individual companies are using the separate corporate entities for their own benefit instead of using it for discharging the obligations undertaken by the companies, the theory of 'instrumentality' for piercing the corporate veil also applies.

113. Learned Senior Counsel further submitted that the reason for piercing the corporate veil in the instant case is to prevent evasion of dues of Noida Authority and the State and to prevent the other Associated Companies, which are inextricably connected and form as one entity, from being used as a front for illegal purposes, and to identify true nature of transactions involved and to prevent fraud being perpetrated and to secure the public interest as well as the interest of homebuyers. To buttress his argument, he has placed reliance on following judgments passed by Hon'ble Supreme Court :

- (i) *State of U.P. and others v. Renusagar Power Company and others*¹⁵
- (ii) *Delhi Development Authority v. Skipper Construction Company and another*¹⁶
- (iii) *Shubhra Mukherjee v. Bharat Coking Coal Ltd.*¹⁷
- (iv) *State of Rajasthan v. Gotan Limestone Khanij Udyog Pvt. Ltd. and another*¹⁸

114. In view of the law laid down in several decisions the tailor-made Corporate Insolvency in such cases will only result in reducing the total lease area and if that is so sports city can never come up inasmuch as the resolution plan is only for group housing but since the company has gone insolvent for the entire lease area. Noida becomes Operational Creditor and

15 1988(4) SCC 59 (Paras 17, 52 to 61, 65 to 70)

16 1996(4) SCC 622 (Paras 24 to 28)

17 2000(3) SCC 312 (Paras 10, 11 & 12)

18 2016(4) SCC 469 (Paras 23 to 31)

for the entire lease area the successful resolution applicant is having the control.

115. It becomes a classic case where 28% of the area is being used for construction for which resolution plan is being prepared and 72% area is available to the successful resolution applicant with absolutely no construction standing thereon. The successful resolution applicant is eager to invest in such kind of projects without disclosing the correct factual position to the NCLT causing dissipation public assets.

116. The project of Sports City is to be completed by the Consortium as a lessee and the Consortium cannot, therefore, run away by alleging that it has disintegrated though a statutory process of insolvency. To buttress his argument, he has placed reliance on following judgments passed by Hon'ble Supreme Court and NCLAT:-

- (i) Asia Foundations and Constructions Ltd. v. State of Gujarat and another¹⁹
- (ii) Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd.²⁰
- (iii) Vidarbha Industries Power Ltd. v. Axis Bank Ltd.²¹
- (iv) Raster Images Pvt. Ltd. v. State of U.P.²²

NON-DEVELOPMENT OF THE SPORTS FACILITIES

117. Non development of sports facilities frustrated the Sports City Project. Leaving of open space does not satisfy the object of developing sports facilities, it has to be developed as per brochure.

118. Even along with the petitions the petitioners have not placed any layout plan as to how they will be using the open space for development of

19 1985 SCC Online Guj 93 (Para 47)

20 Company Appeal (AT)(Insolvency) No.258 of 2021 (NCLAT) (Paras 34, 38 to 42, 44 & 45)

21 (2022) 8 SCC 352

22 2023 SCC Online 3594

the sports facility. The statement given in the court that they will develop multi purpose sports facility with an investment of 10 crores is also not appropriate , as the multi purpose sports facilities what was to be established in 2011, when the scheme was launched can not be provided now due to escalation in price. This clearly shows that there is no intention to use the open space for developing the sports facilities, what was to be developed in 2011.

119. Further there is no assertion that this sports facilities which they are developing is meant to be utilized by the members of the public. However, if these proposed sports facilities are restricted for the residents or the proposed residents of the group housing constructed by them, then that would negates the purpose for which the sports city was formulated.

INTEREST OF HOMEBUYERS

120. Mr. Manish Goyal, Senior Counsel further submitted that none of the homebuyers have stated that they have booked the flat on the assurance that the map sanctioned by Noida. Moreover, Noida cannot be held responsible for interest of the homebuyers as Noida is not privy to the contract between the homebuyers and the allottees. There does not exist any contractual obligation towards the home buyers as such they cannot be held responsible. The allottee having committed wrong to the homebuyers will be solely responsible to the Homebuyers and Noida cannot be fastened with any liability towards Homebuyers.

NOTICES FOR PAYMENT OF INSTALMENTS

121. Noida had served notices on the SPC (M/S Three C Green Developers Pvt. Ltd.) dated 01.11.2017, 26.12.2017, 06.10.2021 and 30.11.2022 for payment of dues, As far as the petitioner is concerned The notices for

payment of outstanding defaulted payment were sent on 31.03.2015, 21.08.2019 and 12.09.2019. As per Noida Authority, the total dues on the petitioner company as on 31.10.2024 is ₹99,14,75,095/-hence, it cannot be said that Noida Authority had not taken any steps for recovering the outstanding dues. It was further submitted that the entire insolvency proceeding initiated against the petitioner company is an outcome of a well thought out design to avoid payment of the dues of the Noida authority.

CHANGE IN SHAREHOLDINGS OF VARIOUS COMPANIES

122. As per the ROC, the share holdings of the allottee company has changed after the allotment, though the same was not permissible in the scheme and the brochure of the sports city. This was done without the permission of the Noida Authority. The chart showing name of allotted companies, directors, shareholdings at the time of allotment, and the present shareholdings as per ROC is as follows:-

S.No.	Plot No.	Name of Allottee	Date of sub-division	Director and Shareholder at the time of allotment	Present Directors as per record of ROC	Present shareholders as per record of ROC
1.	SC-01-01/78	M/S XANADU INFRATECH PVT. LTD.	24.10.2011	M/s Xanadu Infratech Pvt. Ltd. (100% share holding company of M/s Three C Universal Developers Pvt. Ltd.)- Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri	Additional Directors- 1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishth	Shareholders (as on 31.3.2017)
2.	SC-01/A-ALPHA/79	M/S SEQUEL BUILDCON PVT. LTD.	16.06.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri	Directors- 1. Anoop Kumar Srivastav 2. Manoj Kumar Singh 3. Dilip Kumar	Shareholders:(as on 31.03.2020) M/s Ajnara India Ltd. (99.94%) Sh. Pramod Kumar Gupta(0.01%)

						Sh. Ashok Kumar Gupta (0.01%) Sh. Vinod Kumar Gupta (0.01%) Smt. Mamta Gupta (0.01%) Smt. Padma Gupta (0.01%) Smt. Geeta Gupta (0.01%)
3.	SC-01/A-I(BETA0/79	M/S PINNACLE SUPER STRUCTURES PVT. LTD.	16.06.2014	Director :- 1. Sh. Deepak Khurana 2. Dinesh Kumar Pahwa Shareholders 1. M/s Sequel Buildcon Pvt. Ltd. Through Sh. Nirmal Singh (99.99 share) 2. Mr. Deepk Khurana(nominee Sequel Buildcon Pvt. Ltd.)(00.01)	Directors:- 1. Gurinder Singh Sikka 2. Akhil Gupta	Shareholders:- (as on 31.3.2019) 1. Sara Buildcon Pvt. Ltd.(75%) 2. Sikka Promoters Pvt. Ltd.(25%)
4.	SC-01/A-2/79	M/S ARENA SUPER STRUCTURE PVT. LTD.	16.06.2014	Director :- 1. Sh. Deepak Khurana 2. Dinesh Kumar Pahwa Shareholders 1. M/s Sequel Buildcon Pvt. Ltd. Through Sh. Nirmal Singh (99.99 share) 2. Mr. Deepk Khurana(nominee Sequel Buildcon Pvt. Ltd.)(00.01)	Directors:- 1. Shah Alam 2. Jagat Singh Thakur 3. Niraj Kumar Sinha 4. Joy George	Shareholders (as on 12.08.2023) 1. Shah Alam-(9%) 2. Purvanchal Projects Pvt. Ltd.(91%) Arena Superstructure went insolvency process
5.	SC-01/B-1/79	M/S SEQUEL BUILDING CONCEPT PVT. LTD.	03.10.2012	Director:- 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders 1. M/s Three C Universal	Directors:- 1. Bhupinder Singh Kochar 2. Ajay Khetrupal 3. Anand Goel 4. Prashant Agarwal 5. Pradeep Jain 6. Munish Kher	Shareholders (as on 31.3.2024) Sh. Pradeep Jain (22%) Sh. Bhupinder Singh Kochchar (22%) Sh. Ajay Khetrupal Singh Anand

				Developers Pvt. Ltd. (99.99 share) 2. Mr. Surpreet Singh Suri (as nominee on behalf of Three C Universal Developers Pvt. Ltd.) (00.01)		Goel(12%) Sh. Munish Kher(6%) Mrs. Meenu Kher(5%) Sh. Prashant Agarwal(6%) Sh. Pooja Agarwal (5%)
6.	SC-01/ B-2/79	M/S GOLF GREEN BUILDCON PVT. LTD.	03.10.2012	Shareholders	Directors:- 1. Bablu Kumar 2. Deena Ram	Shareholders (as on 31.3.2014) 1. Silver Sands Buildmart Pvt. Ltd.(25%) 2. Zephyr Projects Pvt. Ltd.-(25%) 3. Arun Kumar Ghai-(50%)
7.	SC-01/ C-1/79	M/S THREE C GREEN DEVELOPERS PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders- 1.M/s Three C Green Developers Pvt. Ltd.(99.99 share) through Sh. Nirmal Singh 2. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors:- 1. Anand Ram 2. Girish Chand Joshi	Shareholders (as on 31.3.2018) M/s Xanadu Estates Pvt. Ltd. (75%) M/s Xanadu Infradevelopers Pvt. Ltd. (25%)
8.	SC-01/ C-2/79	M/S ROBUST INNOVAEIONS PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors:- 1. Ashwani Kumar Gupta 2. Karan Sagar Agarwal	Shareholders:- (as on 31.3.2024) Sh. Arvind Goel (50%) Sh. Aswani Kumar Gupta (50%)

9.	SC-01/ C-3/79	M/S PIYUSH IT SOLUTION PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors: 1. Naveen 2. Gopal Singh	Shareholders- (as on 31.3.2020) M/s Eminent Homes Pvt. Ltd. (99.99%) Sh. Nirmal Singh (nominee of M/s Eminent Homes Pvt. Ltd. (0.01%)
10.	SC-01/ C-4/79	M/S THREE C INFRACREATIO N PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors: 1. Deepak Malhotra 2. Harshit Singh 3. Akhilesh Mishra	Shareholders- M/s Abhi Corporation Pvt. Ltd. (99.99%) Deepak Malhotra (nominee of M/s APCL Pvt. Ltd. (0.01%)
11.	SC-01/ C-5/79	M/S THREE C CITY DEVELOPERS PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors: 1. Jagdeep Singh Gill 2. Pradeep Singh Rathi	Shareholders- (2023-2024) Sh. Ajay Kumar (70%) Sh. Pratap Singh Rathi (10%) Sh. Praveen Kurele (20%)
12.	SC-01/	M/S WATER	16.09.2014	Director	Directors:	Shareholders-

	C-6/79	EPEARL INFORSOFTECH PVT. LTD.		1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	1. Rakesh Kumar Agarwal 2. Pankaj Kumar Garg 3. Madhur Garg 4. Sumit Garg 5. Sachin Goyal 6. Sunny Agarwal 7. Nikunj Garg 8. Khooshbu Agarwal 9. Aakash Garg	(as on 31.3.2024) Sh. Dhanesh Chand Agarwal (9%) Sh. Dhanesh Chand Agarwal & Sons (HUF) (6%) Mrs. Aparna Agarwal (5%) Sh. Mahesh Chand Goel (HUF) (5%) Sh. Mahesh Chand Goel (8%) Sh. Abhinav Goel (75) Sh. Sachin Goel (20%) Sh. Dinesh Garg (20%) Mrs. Nutan Garg (2.5%) Sh. Sumit Garg (2.5%) Sh. Madhur Garg (2.5%) Mrs. Shikha Garg (2.5%) Sh. Rakesh Kumar Agarwal (10%)
13.	SC-01/ C-7/79	M/S THREE C BUILDER PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Additional Directors: 1. Vinay Kumnr Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishith	Shareholders-(as on 31.3.2017) M/s Lotus Green Developers Pvt. Ltd. (25%) M/s Yashali Developers Pvt. Ltd. (25%) M/s Laurel Residency Pvt. Ltd. (25%) M/s Infrawiz Projects Pvt. Ltd. (25%)
14.	SC-01/ C-8/79	M/S THREE C BUILDER PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri	Directors: 1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar	Shareholders-(as on 31.3.2017) M/s Lotus Greens Developers Pvt.

				Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Vashishith	Ltd. (25%) M/s Yashali Developers Pvt. Ltd.(25%) M/s Laurel Residency Pvt. Ltd.(25%) M/s Infrawiz Projects Pvt. Ltd. (25%)
15.	SC-01/ D-1/79	M/S KINDLE DEVELOPERS PVT. LTD.	03.10.2012	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors: 1. Piyush Tiwari 2. Shikha Tiwari 3. Astha Gupta 4. Harshdeep Gandhi	Shareholders-(as on 30.9.2014) 1. Sh. Piyush Tiwari (55%) 2. Ms. Shikha Tiwari (5%) 3. M/s Sunwhite Infrastructure Pvt. Ltd. (40%)
16.	SC-01/ D-2/79	M/S GOLF GREEN RESIDENCE PVT. LTD.	03.10.2012	Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Kindle Developers Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana(Nominee of M/s Kindle Developers Pvt. Ltd. (0.01% share)	Additional Directors: 1. Anil Prakash Sharma 2. Krishan Kumar 3. Rahul Yadav 4. Usha Saraf	Shareholders-(as on 31.3.2020) M/s Sunshine Infratech Pvt. Ltd. (99.99%) Sunshine Infrahomes Pvt. Ltd. (0.01%)
17.	SC-01/ D-3/79	M/S GOLF GREEN ESTATE PVT. LTD.	03.10.2012	Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Kindle Developers Pvt. Ltd. (99.99% share) 2. Mr. Deepak	Directors: 1. Dinesh Kumar Jain 2.Rakesh Kumar Jain	Shareholders-(as on 31.3.2023) 1. Exotica Housing & Infrastructure Projects Privte Ltde.-(99.99%) 2. Mr. Dinesh Kumar Jain (as

				Khurana(Nominee of M/s Kindle Developers Pvt. Ltd. (0.01% share)		a nominee of Exotica Housing & Infrastructure Projects Pvt. Ltd.)(.01%)
18.	SC-01/ D-4/79	M/S GOLF GREEN MANSIONS PVT. LTD.	03.10.2012	Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Three C Universal Developers Pvt. Ltd. (99.99% share) through Sh. Vidur Bhardwaj 2. Mr. Surpreet Singh Suri (Nominee of M/s Three C Universal Developers Pvt. Ltd. (0.01% share)	Directors- 1. Vinod Bahl 2. Pramod Bahl 3. Vikas Gupta 4. Uma Shanker	Shreholders (as on 31.3.2024) Sh. Vinod Bahl (25%) Sh. Pramod Bahl (25%) Sh. Uma Shankar (25%) Sh. Amitabh Gupta (25%)
19.	SC-01/ E-1/79	M/S GAURSONS SPORTSWOOD PVT. LTD.	03.10.2012	Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Three C Universal Developers Pvt. Ltd. (99.99% share) through Sh. Vidur Bhardwaj 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Universal Developers Pvt. Ltd. (0.01% share)	Directors: 1. Manoj Gaur 2. Sarthak Gaur	Shareholders- (as on 31.3.2024) 1. Manoj Kumar Gaur-(4.65%) 2. Mrs. Manju Gaur -4.66% 3. Gaursons India Private Limited- (41.92%) 4. Shri Shayam Buildcon Private Ltd.- (41.92%) 5. Mr. Pradeep Kumar Agrawalla- (6.85%)
20.	SC-01/ E-2/79	M/S GOLF GREEN INFRA PVT. LTD.	03.10.2012	Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Xanadu Realcon Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana (as a nominee of M/s	Directors: 1. Dheeraj Jain 2. Shruti Jain 3. Divya Jain 4. Amit Jain	Shareholders- (as on 31.3.2023) M/s Mahagun India Pvt. Ltd. (9.99%) ICICI Prudential Venture Capital Fund Real Estates (.01%) Gaur Sons Sports Wood

				Xanadu Realcon Pvt. Ltd. (0.01% share)		Pvt. Ltd.(90%)
21.	SC-01/ E-3/79	M/S GOLF GREEN SUPERSTRUCTURE PVT. LTD.	03.10.2012	Shareholder:- 1. M/s Xanadu Realcon Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana (as a nominee of M/s Xanadu Realcon Pvt. Ltd. (0.01% share)	Directors: 1. Jai Prakash Gupta 2. Alka Goel	Shareholders- (as on 31.3.2023) 1. Civitech Housing India Pvt. Ltd. (85.71%) 2. Subodh Goel (7.14%) 3. Alka Goel (7.14%)
22.	SC-01/ A/101	M/S THREE C GREEN DEVELOPERS PVT. LTD.	03.07.2013	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors- 1. Anand Ram 2. Girish Chandra Joshi	Shareholders: M/s Xanadu Estates Pvt. Ltd. (75%) M/s Xanadu Infradevelopers Pvt. Ltd. (25%)
23.	SC-01/ B/101	M/S GOLF GREEN BUILDCON PVT. LTD.	03.07.2013	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors- 1. Anand Ram 2. Girish Chandra Joshi	Shareholders:- M/s Xanadu Estates Pvt. Ltd. (75%) M/s Xanadu Infrastructure Pvt. Ltd. (25%)

This change in shareholding/change of director/transfer of share/CIC was carried out by the petitioner without any approval from the Noida

Authority and the same was contrary to the terms of the brochure and the lease deed.

ANALYSIS

123. We have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, we have proceeded to peruse the pleadings, grounds taken in the writ petition, annexures appended thereof, the reply filed by the opposite party and also the rejoinder affidavit filed by the appellants.

124. The instant matter can be analysed into two parts, pre insolvency and post insolvency.

I-PRE INSOLVENCY PART

125. After the formulation of the scheme of sports city, the brochure was issued with certain conditions, thereafter allotment of sports city in sector 78-79 was made to the successful applicant.

126. A separate lease deed was executed between Noida and the petitioner, which laid down further conditions for execution of the project, however, the conditions were not followed. To extend undue benefit to the allottees / builders. Some of the relevant conditions of the lease deed which were flouted were as follows :-

i) Clause II. (a) prescribed that The lead member should be the single largest shareholder having at least 30% shares in the consortium. The percentage of shareholding of the lead member shall remain minimum of 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Lessor.

However the lessee flouted this condition of 30% share of the lead member was given a goby.

ii) The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional & 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.

This was also not carried out within the stipulated time, in fact nothing was done towards the development of the Sports City.

iii) The lessee has to develop residential and commercial component in the project in proportion to area earmarked for recreational uses.

This condition was also flouted no proportional recreational / sports facility were ever-developed proportionally

iv) As per the clause II (j) of the lease deed, the lessee was wholly and solely responsible for the implementation of the Project. The project may be implemented by lessee through Special Purpose Company and/or through its subsidiaries.

It was the duty of the lessee to implement the project, whether it was done by itself or SPC or through any of its subsidiaries. Herein, the petitioner being a subsidiary was responsible for the completion of the project, his obligations cannot be brushed aside on the ground that by a mutual understanding was arrived between the allottees and all the responsibilities were given to some other subsidiary company.

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

However here from the ROC website filed by the respondent authority it is clear that some of the company has been sold. By transferring the shares without the permission of the authority

(vi) All the terms and conditions of the brochure, the allotment, the permission for grant of transfer, lease deed etc. shall be binding on the lessee, as well as the transferee(s).

With this condition the lessee can not get away for their proportionate responsibility of developing the sports city though the terms of brochure and lease deed was not followed.

(viii) The lessee will be permitted to transfer the built-up space on the fulfilment of the following conditions :-

(i) The lessee has made full payment of the plot premium alongwith interest thereon and the up-to-date lease rent alongwith interest, if any, due thereon.

(ii) The lease deed as per rules has been duly executed.

(iii) The lessee has obtained the building completion certificate from the LESSOR.

(iv) The sub-lessees/transferees undertake to put to use the premises for the original permissible use only and the premises being transferred are as per completion certificate and are not part of any common area.

(v) The lessee shall also execute a sub-lease deed between lessor, lessee and proposed transferees (sub-lessees). The lessee/sub-lessees shall also ensure adherence to the building regulations and directions. All the terms and conditions of the allotment and lease deed shall be applicable and binding on transferee/sub-lessees as well.

(vi) The transferees/sub-lessees shall also be required to pay pro-rata lease rent as applicable. The transferees/sub-lessees shall be required to make the built-up space functional within one year from the date of sub-lease and submit sufficient documents to the LESSOR in proof thereof. Thereafter, extension charges, as applicable, shall be payable.

(vii) All the terms and conditions of the brochure, allotment, permission for grant of transfer, lease deed etc. shall be applicable on the lessee as well as the transferees(sub-lessees).

(viii) The lessee, sub-lessee are not eligible for any preferential allotment of the residential plot or house under various scheme of NOIDA.

These conditions were also openly flouted and not followed. Though the lessee was permitted to transfer only the built-up space on the condition that full payment of the plot premium along with interest thereon and the up-to-date lease rent is paid. But here instead of the transfer of the built up area the open area marked for recreation was also transferred without paying the dues (premium and lease rent). The transfer was to be affected subject to completion of the project and after obtaining the building completion certificate from Noida, but here the transfer was made much prior to the construction started. The lessee/sub-lessees did not follow the mandatory conditions of the allotment and lease deed, which was to be followed prior to the transfer. Though non payment of dues immediately calls for cancellation of the project, but the same was not done.

127. Though in the lease deed payment plan was mentioned in which there was a moratorium period, thereafter, the allottee had to pay the entire premium in 16 half yearly installment alongwith interest and other dues. M/s ASPL had defaulted in paying installment in time, however for the reasons best known to NOIDA Authority, they did not ever ask the allottees to pay the outstanding dues. While the Petitioner No.1 started developing the residential apartments, but they chose not to develop anything towards sports facilities, however, no serious action was taken by the Noida Authority to ensure that the sports facilities are developed first.

128. The officials of the Authority kept their eyes shut when it came recovery of dues. The allottees after getting the Map sanctioned, collected the money from the homebuyers, and instead of completing the project syphoned away the money from the homebuyers and did not even pay the dues of the NOIDA Authority, thereafter orchestrated insolvency just to get out of any civil and legal consequences. The entire past failure of the ASPL was in clear connivance of the Noida Authority.

CRIMINAL COMPLAINT/CHARGE SHEET

129. The homebuyers have also lodged criminal complaints against the officer-in-charge of M/s ASPL under Section 120B, 406 and 420 I.P.C. Even some of the homebuyers had filed cases before the Economic Offences Wing. After investigation, charge-sheet was filed against the M/s ASPL in which it was held that the accused persons started advertising and intentionally deceiving the home buyers by fraudulently representing that M/s ASPL is a part of M/s Three C Universal Developers Pvt. Ltd. and M/s Lotus Green Developers Pvt. Ltd., had launched a project at affordable price. After enticing the homebuyers to buy units accused company collected the fund from the homebuyers and a major portion was syphoned

off, with the result no fund was left for the construction and completion of the project. This resulted in inordinate delay in completion of the project. Further the flats were sold on the basis of forged site plan. As the plan available with U.P.R.E.R.A. was different than that was shown in the brochure at the time of booking to the homebuyers.

130. The officials right from the inception kept their eyes closed never asked the allottee/ petitioner to pay for the instalments, or the land premium or the farmers compensation, which was due. The petitioner no.1, M/s Arena Superstructures Pvt. Ltd., on the basis of approvals granted by the Noida Authority had collected Rs.387 crores from the home buyers and siphoned off a major portion of the same and had paid only pittance to the Noida Authority. The connivance of the petitioner and the officials and the Noida Authority is clearly visible as they virtually allowed the petitioner to go scot free by getting into insolvency.

131. The management of the petitioner no1 company cannot be absolved of their liabilities on the ground that the company has gone into insolvency and they no longer were responsible with the affairs of the Company. The moot question is to see whether the Company genuinely got into insolvency or the insolvency is engineered after syphoning of the fund, just to avoid payment to the creditors, and fulfilling their other obligations.

132. The only way to ascertain this fact is by piercing the corporate veil and to see as to who are the key persons and in actual charge of the company and whether a fraud has been played by those persons and also to see whether they are trying to hide their fraudulent activities and themselves under the mask of the company being a separate juristic personality, which has gone into insolvency.

PIERCING OF CORPORATE VEIL

133. It is trite law that the corporate veil cannot be lifted unless there is some impropriety or fraud been played, which is being masked as a separate juristic entity. And if so found, the veil may be pierced to see who is in actual control of the company and has created a facade and sham to camouflage the illegal action with a view to avoid payment of liabilities.

134. The doctrine of ‘piercing of corporate veil’ was initially crystallized in *In Salomon v. Salomon & Co. Ltd.* [*Salomon v. Salomon and Co. Ltd.*²³], 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’.*

135. The 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., 1969 (1) WLR 1241* 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.....”

136. Due to the occurrence of the above instances of fraud and irregularities, the law has taken change with its earlier exception that the 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

23 1897 AC 22 : (1895-99) All ER Rep 33 (HL)

personality of the company, which are being referred in the forthcoming paragraphs.

137. 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.**²⁴ 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.

138. The Hon’ble Supreme Court in the matter of **Balwant Rai Saluja v. Air India Ltd.**²⁵ has held that courts would be empowered to disregard the separate legal personality of a company and impose liabilities upon the person actually in control, the essential intent of the piercing of veil of a corporate structure must be guided by the necessity to remedy a wrong done by persons controlling the company and that the said principle would have to be tested based upon the facts and circumstances of each case.

139. The Hon’ble Supreme Court in **State of Rajasthan and others vs. Gotan Lime Stone Khanij Udyog Private Limited and another**²⁶ 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.

24 (1988) 4 SCC 59

25 (2014) 9 SCC 407

26 2016) 4 SCC 469

140. The Hon'ble Supreme Court in the matter of **Arcelormittal India Private Limited vs. Satish Kumar Gupta and others**²⁷ has observed as under:

"35. Similarly in Balwant Rai Saluja & Anr. etc. etc. v. Air India Ltd. & Ors., (2014) 9 SCC 407, this Court in following Escorts Ltd. (supra.), held:

"70. The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation.

141. The principle of lifting the veil of corporate personality has been upheld in **Subhra Mukharjee & another v. Bharat Cooking Coal Ltd. & another** (2003) 3 SCC 312; **Calcutta Chromotype Ltd. vs. Collector of Central Excise Kolkata** AIR 1998 SC 1631, **New Horizon Ltd. & another vs. Union of India and others**, 1995 (1) SCC 478, **C.I.T. vs. Meenakshi Mills Ltd. Madura** AIR 1967 SC 819; **Telco & ors vs. State of Bihar** AIR 1965 SC 40; **Juggilal Kamlapal vs.,** AIR 1969 SC 932.

142. Lifting of corporate veil can only take us to the accused who is involved in the syphoning, but the question then is how to prosecute the accused and get the illegal stacked money back.

MONEY LAUNDERING

143. The Prevention of Money Laundering Act²⁸ (in short 'PMLA Act') was enacted in 2002. For ready reference Sub-Clause (p), (u), (v), (y) and (za) of Clause 2 of Chapter I of the PMLA Act are quoted hereunder :-

(p) "money-laundering" has the meaning assigned to it in section 3;

u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any

²⁷ (2019) 2 SCC 1

²⁸ PMLA Act, 2002

property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

(v) “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

Explanation.—For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(y) “scheduled offence” means—

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule;

(za) “transfer” includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

144. The following provisions of IPC were included in Part A, Paragraph 1 of the Schedule. The Schedule :-

OFFENCES UNDER THE INDIA PENAL CODE (45 OF 1860)	
Section	Description of offence
120B	Criminal conspiracy
.....	
420	Cheating and dishonestly including delivery of property.

3. Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

145. After the amendment in PMLA Act the offence under Section 120B and Section 420 of IPC were included under the ambit of PMLA Act, 2002 and these offences would be a scheduled offence as per Section 2 (y) of PMLA Act. Since there were criminal complaints filed against the directors/

promoters of M/s ASPL, in which charge sheet has been filed under Sections 120B and 420 IPC, hence, these transactions fall within the ambit of PMLA Act and in the opinion of the Court, the appropriate agency, which is competent to look into and investigate the transactions, will be Enforcement Directorate.

146. Section 32A of the IB Code is as follows:-

“32A. Liability for prior offences, etc.—(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or **was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.”**

147. Section 32A of the IBC has been upheld by Hon’ble Supreme Court in **Manish Kumar v. Union of India**²⁹. This Court has held that the said section does not permit the wrong-doer to get away. Thus, if the argument of allowing the signatory/director to go scot-free after the approval of the resolution plan is accepted the same would run contrary to the legislative intent of Section 32A which has been upheld by this Court as under:

29 (2021) 5 SCC 1

"326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32-A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the Code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the interim resolution professional and thereafter into the hands of the resolution professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision."

148. The Hon'ble Supreme Court in the matter of **Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.** (*supra*) (Criminal Appeal No.170 of 2023) has held that, a section has been introduced by an amendment into the Insolvency Bankruptcy Code which focuses on the liability of offences committed by the directors of the corporate debtor prior to commencement of the corporate insolvency resolution process. The Court further held that every person who was in any manner in charge of, or responsible of the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence shall be proceeded with, in accordance with law. It is only the corporate debtor company (with the new management) will be safeguarded.

149 . It is apparent that the promoters/erstwhile management have played a fraud on the home buyers, Noida Authority, and on the State. If this amount which is illegally stashed / invested in other companies is brought back then most of the creditors would be paid off, but unfortunately it will be difficult for the Noida Authority to recover, and get the money back which has

already been syphoned off from the petitioner No. 1. After piercing the corporate veil, it will be clear as to who all as a director/ key personnel were responsible in this act of syphoning of funds and defrauding the stakeholders, just to avoid any civil or criminal liabilities, and with the sole intention to cheat the home buyers and to avoid payment of dues of Noida Authority.

150. We would be failing to discharge our constitutional obligation if we keep the eyes shut and allow the promoters to go scot free after having defrauded everyone and syphoning off funds from the company .

II-POST INSOLVENCY

151. After the insolvency was admitted, IRP appointed, COC constituted and the Resolution Plan was approved by the adjudicating authority wherein the learned NCLT/NCLAT vide order dated 19.07.2023 was approved and the same was binding on all the other stakeholders for the revival of the debtor/company. This order was challenged by the Noida Authority before NCLAT and the NCLAT on 25.07.2021 had directed that Successful Resolution Applicant may continue the resolution plan.

152. For implementation of the resolution plan petitioner no.2 made an application for revalidation of the map but the same was rejected vide order dated 01.11.2023 on the ground that M/s ASPL has not constructed its share of sports facilities within stipulated time. Hence, revalidation of the map cannot be granted.

153. Aggrieved by this order the petitioners have filed instant writ petition seeking mandamus of setting aside the board decision dated 08.10.2021 and order dated 01.11.2023 by which revalidation of map was rejected and further sought a mandamus for ensuring compliance of resolution plan for which revalidation of map was essential.

154. The Hon'ble Supreme Court in the matter of **Innovative Industries Ltd. v. ICICI Bank**³⁰ has held that, a resolution applicant has to prepare a resolution plan on the basis of the Information Memorandum, which is required to be prepared in accordance with Section 29 of I & B Code.

155. The resolution plan is required to be approved and after that and after that the same is binding on the corporate debtor as well as its employees, members, creditors and other stakeholders involved in the resolution plan.

156. The Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and sons Private Limited through the Authorized Signatory v. Edelwess Asset Reconstruction Company Limited Through The Director and others**³¹ has held as follows:-

102.1 That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;"

157. The Hon'ble Supreme Court in the matter of **Srei Multiple Asset Investment Trust Vision India Fund v. Deccan Chronicle Marketers & Ors. (Civil Appeal No.1706 of 2023)**³² has held that once the Resolution Plan stands approved, no alterations/modifications are permissible. It is either to be approved or disapproved, but any modification after approval of the Resolution Plan by the CoC, based on its commercial wisdom, is not open for judicial review unless it is found to be not in conformity with the mandate of the IBC Code.

30 (2018) 1 SCC 407

31 (2021) 9 SCC OnLine SC 657

32 2023 SCC OnLine SC 298

158. The abovementioned directions of the Hon'ble Supreme Court are in the cases where the insolvency are a genuine insolvency and the IRP is appointed, who makes a resolution plan, which once approved has to be implemented. However, the abovementioned cases did not had a chance while passing the ratio to deal with the cases where the insolvency proceedings were ingenuine proceedings initiated by the corporate debtor just to avoid the civil and criminal liabilities after syphoning away the funds.

FRAUD

159. The corporate frauds specially in the insolvency case happens when the management /individuals within or associated with the company are engaged in illegal practices or 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 multi-facet approach. This practice is mushrooming especially with the real-estate builders, who after collecting the money from the homebuyers prefer not to pay the dues of the Noida Authority or the creditor and after siphoning off the funds, by abusing the process of law, and taking undue advantage of the IB Code, 2016, pushes the company into insolvency.

160. **Fraus Omnia Vitiat- Fraud vitiate 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 shorts in the company would come under the ambit of corporate fraud.

161. The Hon'ble Supreme Court in the matter of **Udgar Gagan Properties Limited v. Sant Singh and others**³³ 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. The Court can quash an illegal action based on fraud or abuse of process of law. Ref; **Madhukar Sadbha Shivarkar (D) by Lrs. v. State of Maharashtra & Ors**³⁴.

162. The Hon'ble Supreme Court in the matter of **M/s Embassy Property Developments Pvt. Ltd v. State of Karnataka & Ors.**³⁵ has held that although the National Company Law Tribunal and National Company Law Appellate Tribunal can look into the fraudulent claims, but they are not allowed to make decisions on matters pertaining to public law or which involves decision made by quasi judicial authorities. Hon'ble Supreme Court has held as follows:-

“50. The objection of the appellants in this regard is well founded. Section 65 specifically deals with fraudulent or malicious initiation of proceedings. It reads as follows :

“65. Fraudulent or malicious initiation of proceedings. – (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

51. Even fraudulent tradings carried on by the Corporate Debtor during the insolvency resolution, can be inquired into by the Adjudicating Authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud

33 2016(11) SCC 378
34 2015(6) SCC 557
35 (2020)13 SCC 308

creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently “for any purpose other than for the resolution of insolvency or liquidation”.

52. Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely within the mischief addressed by Section 65(1). Therefore, it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61.”

163. In the **Law Lexicon, Second Edition (Reprint) 2001 by Sri P. Ramanatha Aiyer**, it is emphasized 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. Hon’ble Supreme Court in a number of cases has held that fraud vitiates all the proceedings.

164. In the instant case, some of the home buyers have taken the petitioner to NCLT, wherein the erstwhile Directors of the petitioner company chose to adopt reverse CIRP and on the basis of his recommendation, the learned NCLT allowed reverse CIRP and instructed IRP to complete the project, who in turn wrote to NOIDA for revalidation of Map.

165. The intention of cheating was clear right from the inception of the project. There was no will to complete the sports facility. Neither they were the serious developers. Infact, the original allottees are nowhere in the picture now. The allottees had sub divided the entire sports city project and had transferred/sold to small time builders, who were not even qualified to participate in the bidding process of the project. The original allottees, at the

time of allotment, had paid the bare minimum 10% of the premium to get the allotment and then got the map sanctioned and started collecting huge amount from the homebuyers, with no intention of completion of the project. They chose not to pay up the land premium installments and the Noida Authority officials, who were conniving in the fraud, kept their eyes closed and allowed the builders to collect more money from the homebuyers without paying the installments. A long rope was given by the Noida Authority officials, so that they may get more time to defraud the homebuyers and collect more money and then push the company into insolvency.

INTERESTS OF THE HOMEBUYERS

166. As far as the homebuyers are concerned, they are the worst effected individuals, they had booked their flats investing their lifetime savings/or has taken a bank loan with a dream that one day, they will have a roof on their head. Since the maps were duly approved by Noida Authority, they had no reasons to suspect a foul play and they fell in the trap. After paying the entire cost of the flat, the completion and bankable title is still a mirage further. Most of them do not have the ability or financial backing to contest the cases. Moreover, the issues herein are too messed up, which they have very little hope to unscramble the same.

167. The Noida Authority/development authorities have a statutory duty to ensure planned and systematic development. This includes statutory duty to monitor the progress of real-estate projects and ensure their timely completion.

168. The Hon'ble Supreme Court the matter of **Bhupinder Singh v. Unitech Ltd. (Civil Appeal No.10856 of 2016)** decided on 26.04.2024 has held that:-

“9.....This is most unfair to the homebuyers. In the absence of the grant of approvals to the layout plans and building plans, the construction to meet the needs of the homebuyers of Unitech cannot commence. This Court has been monitoring the entire issue pertaining to the homebuyers of Unitech for over four years in order to ensure that the homebuyers, who have invested funds in the expectation that they would receive the flats which were purchased in the foreseeable future, are not left in lurch. Unfortunately, both Noida and Greater Noida and their officials have stone-walled the process. They have failed to extend their cooperation.

10. Despite the succession of orders of this Court, it appears that no resolution has been found. Unless the Court were to interfere, at this stage, the matter would lie in limbo and there is a real danger that the homebuyers would lose all interest out of a sense of frustration. The homebuyers have undertaken financial liabilities towards the flats which were purchased and it is a matter of public interest that their concerns should be duly protected.”

169. It is a well settled law that the interest of the home buyers has to be given precedence (as per the law laid down in the judgement of **Bikram Chatterji (supra)**). The Noida Authority was well aware of the judgement, but it still took no action to protect the interest of the homebuyers.

170. The interest of the home buyers has also been recognised and echoed in the recommendations of the Insolvency Law Committee in 2018, it was later codified with the Insolvency and Bankruptcy (Amendment), 2018, which provided that the finances of real-estate allottees guaranteed towards the failed real-estate project would have the same commercial effect as that of the debt.

171. In fact, the Hon'ble Supreme Court also had the same view in the matter of **Jaypee Orchard Resident Welfare Society v. Union of India & Ors. (Writ Petition (Civil) No.854/2017)** wherein they held that, they will endeavour to do all in its power to safeguard interest of the home buyers.

172. Further, in **Chitra Sharma v. Union of India**³⁶ Hon'ble Supreme Court protected the interest of the home buyers in the project floated by Jaypee Infratech Limited and directed the CoC to be constituted afresh in accordance with the provisions of the Insolvency and Bankruptcy (Amendment) Ordinance, 2018.

173. The constitutional validity of the inclusion of allottees as financial creditors was tested in the matter of **Pioneer Urban Land And Infrastructure vs Union Of India**³⁷ wherein the Hon'ble Supreme Court rejected the challenge and upheld the Insolvency and Bankruptcy (Amendment) Ordinance, 2018. The Hon'ble Supreme Court further held that the interest of allottees in the matter of Insolvency in the real-estate company must be protected.

174. In the instant case, the NOIDA Authority cannot be allowed to penalise the home buyer because the current state of affairs of the sports city is due to the dereliction of statutory duty and failure of the Authority itself to Monitor construction progress; take timely action against defaulting builders, Enforce completion of the project timelines. The result of the failure of Noida Authority cannot be fastened upon the homebuyers.

HIGH COURT'S INTERFERENCE

175. Initially, there was an understanding that the Court should not interfere with the orders of NCLT. It is beyond any pale of doubt that the IBC, 2016 is a complete code in itself. Section 231 of IBC bars jurisdiction of civil court to interfere in respect of the matters, which NCLT/NCLAT are empowered to deal with.

36 2018(18) SCC 575
37 2019(8) SCC 416

176. As observed by Hon'ble Supreme Court in **M/s Innoventive Industries Ltd vs ICICI Bank**³⁸ it is an exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code and later the act of the High Court in entertaining the writ petition against the order of the NCLT were being questioned.

177. The Hon'ble Supreme Court in the matter of **M/s Embassy Properties Developments Pvt. Ltd.(supra)** has held that the NCLT lacks jurisdiction to issue direction in relation to the matters covered under the realm of public law wherein the NCLT had directed the government to execute the supplementary/extension of lease deed in favour of corporate debtor. Since the execution of the lease deed was in the realm of public law and, hence, does not fall within the jurisdiction of NCLT. The NCLT not being a superior Court is not vested with the power of judicial review. The proper forum for adjudication of public law claims is the writ jurisdiction of the High Court.

178. The power conferred to High Courts under Article 226 of the Constitution of India is plenary. This jurisdiction can be exercised without any specific challenge being raised. High Court has been granted powers under Article 226 of the Constitution of India to mould the relief to do substantial justice.

179. In view of the ratio laid down by the Hon'ble Supreme Court it is clear that the NCLT does not have the power to issue direction to the Noida Authority to revalidate the map. This power is only with Hon'ble Supreme Court and High Court under Article 226 of the Constitution of India.

³⁸ (2018) 1 SCC 407

180. In the matter of **M/s Innoventive Industries Ltd vs ICICI Bank(supra)**, one of the issues of this appeal was whether appeal of the director of the company, who are no longer in the management filed before the NCLT is maintainable after an Interim Resolution Professional is appointed. The Hon'ble Supreme Court has held that once an insolvency professional was appointed to manage the company, the erstwhile Director, who was no longer in the company cannot maintain the appeal on behalf of the company. Hence, an order passed by learned Tribunal on an appeal filed by the erstwhile directors of the company wherein they had given plan for reverse insolvency was not maintainable. Even if a reverse insolvency mechanism had to be introduced, the same had to be filed through IRP.

181. The Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and sons Pvt. Ltd. through the authorized signatory vs. Edelweiss Asset Reconstructions Company Limited through the Director & Others**³⁹ has held that the legislature has given paramount importance to the commercial wisdom of COC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under Section 31 of IB Code. However, it does not restrict the jurisdiction of the High Court to look into the issues. In this case, the COC has not passed any resolution in the reverse insolvency, hence, it cannot be said that the High Court cannot interfere in such kind of matters.

182. The ratio laid down by Hon'ble Supreme Court in the matter of **Ghanshyam Mishra (supra)** would not be applicable in the case in hand as the insolvency proceedings initiated in the instant case was an engineered proceeding and the entire proceeding was nothing but an outcome of fraud.

³⁹ 2021 (9) SCC 657

CONCLUSION

183. The instant writ petition is filed with specific prayer but while going into the merits of the matter, the Court realized that fraud has been played by the erstwhile management of the petitioner company. The Court finds it a fit case to intervene to correct the illegality and misuse of legal provisions and safeguard the interest of justice, specially when the Court finds that the entire reverse CIRP mechanism is nothing but a gross abuse of process of law and the fraud being played on the stakeholders and the Tribunal.

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

184. As far as the insolvency of a member of a consortium is concerned, no authority has been placed before us by the parties. We find that no significant development has taken place pertaining to the same, which may provide guidance in such situations. The present case thus presents a very interesting, and novel, legal question.

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

186. 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 IB Code, 2016 is not to pull a solvent company into insolvency.

187. In case the Member of a Consortium goes into insolvency then in the interest of the project and other stakeholders, learned NCLT may not initiate insolvency proceedings in a mechanical manner, but may decide the issue on the touchstone of the following recommendations :-

“(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.”

188. The Court is always cautious while determining and interfering with the orders passed by the NCLT/NCLAT, but while doing so, the Court

cannot shirk from its constitutional duty and approve helplessly the interpretation of a Statute or an order which is certain to subvert the societal goals and endanger the public good⁴⁰.

189. The petitioner did not pay the outstanding dues of the Noida Authority as well as other dues from the money, which came in the company after syphoning away the money, and has got the company pushed into insolvency. This entire proceeding is nothing but an engineered insolvency to avoid the liabilities. The NCLT should verify from the balance sheet and other documents to ensure that such kind of engineered insolvency proceedings should not be initiated if the same is malicious proceeding and has been filed as a part of greater design to get out of the liabilities. If such kind of Reverse CIRPs are allowed to continue it will actually be counter productive and contrary to the aims and objects of IB Code, 2016.

190. Since apparently a fraud has been played by management of the petitioner company and money has been misappropriated/syphoned off, hence we cannot blindly give seal to the orders passed by NCLT approving the reverse insolvency.

191. In the facts and circumstances, principle of 'Fraus Omnia Vitiat' is applicable here. The order passed by NCLT on application preferred under Section 7 of IBC, 2016 is not challenged in the instant writ petition and as such, on account of judicial propriety and territorial jurisdiction, we are unable to set aside the aforesaid order. However, it would be open to the parties to bring into the notice of the NCLT about the present order to take a rational decision bearing in mind that the project is an integrated project and it is the duty of the Consortium members to ensure that the entire facilities, as laid down in the Scheme, is being developed as per specification laid

40 Rattan Chand Hira Chand v. Askar Nawaz Jung, (1991) 3 SCC 67

down by the NOIDA Authority in the brochure of the Sports city Scheme. It is also made clear that the interest of the homebuyers is supreme and their interest should be well protected.

192. It is expected that in a proceeding under the Insolvency and Bankruptcy Code, 2016 initiated against a builder, before accepting the application, the learned NCLT/NCLAT may ensure and satisfy itself as to whether the insolvency proceeding is genuine or the same has been filed maliciously on the behest of the builder only to get away from civil/criminal liabilities after syphoning away the funds.

193. NCLT/ NCLAT may also consider the fact that the project was an integrated project and has to be developed as per the objects of the sports city and the IRP while choosing the developer should keep in mind the development of the project as an integrated project.

194. This Court at the same time realises that we will be failing in our duty, if we accept the fraud, which is writ large and the conduct of the builders/developers and senior officials of the NOIDA Authority. Since inception of Sports city scheme, the undue benefits had been extended by the NOIDA officials to the builders/developers. In the facts and totality of the circumstances, we find that this Court has no other recourse but to refer the instant matter to the Enforcement Directorate, which is competent to investigate. The ED must also ensure the fair investigation, as provided in law, to retrieve the siphoned/laundered money by the erstwhile management of the company and further the E.D. shall make all endeavours to find out the trail of syphoned/misappropriated money so that the same may be brought back into the company and with that the outstanding dues of NOIDA Authority, State Government, additional compensation to the farmers and the other dues may be paid off.

195. With the aforesaid observations, the writ petition stands *disposed of*.

196. Registrar (Compliance) is directed to send a copy of this judgment to the learned NCLT, Delhi and the Director of the E.D. for information and necessary compliance forthwith.

Order dated:-24.02.2025
S.P./Bhanu

(Prashant Kumar, J.) (Mahesh Chandra Tripathi, J.)