

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

IA-827/2023  
In  
(IB)-450(PB)/2018

**IN THE MATTER OF (IB)-450(PB)/2018:**

**M/s. Nupur Finvest Private Limited**

**..... Financial Creditor**

**VERSUS**

**M/s. IVR Prime IT SEZ Private Limited**

**..... Corporate Debtor**

**AND IN THE MATTER OF IA-827/2023:**

**New Okhla Industrial Development Authority**

**.... Applicant**

**VERSUS**

**Mr. Kashi Vishwanathan Sivaraman & Ors.**

1. Mr. Kashi Vishwanathan Sivaraman

Resolution Professional of M/s. IVR Prime IT SEZ Private Limited

2. Vasu Buildcon

Successful Resolution Applicant (SRA)

**.... Respondents**

**Order delivered On: 22.12.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**

**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant the** : Mr. Abdhesh Chaudhary, Ms. Geetanjali Sethi, Mr. Vinayak Mishra, Ms. Manisha Suri, Mr. Nishi Kant Singh, Ms. Meena Yadav, Advs.

**For the Respondent/RP the** : Mr. Amar Vivek, Ms. Swechcha Mishra, Ms. Damini, Advs.

**For the SRA** : Mr. Abhishek Anand, Adv.

---

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application has been filed by the New Okhla Industrial Development Authority (Applicant) on 01.02.2023 under section 60(5) read with Section 31(2) of the Insolvency and Bankruptcy Code, 2016 read with

**IA-827/2023 In (IB)-450(PB)/2018**

**Date of Order: 22.12.2023**

Rule 11 and Rule 23 of the National Company Law Tribunal Rules, 2016 raising objections to the Resolution Plan, for seeking following reliefs:

- 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.”*

2. The Applicant had entered into a lease deed dated 07.12.2007 (“Lease Deed”), with M/s. IVR Prime IT SEZ Private Limited (“Lessee”), whereby the Applicant had leased out the plot No. 05, admeasuring 1,00,000 sq. mtrs situated at Sector -144, Gautam Buddh Nagar, Uttar Pradesh - 201301, to the Lessee for a period of ninety (90) years commencing from the actual date of execution of lease deed.
3. The Applicant issued an allotment letter dated 13.11.2006 wherein the NOIDA authority decided to allot the plot measuring 1,00,000 sqm., for software IT unit/I.T enabled services on lease hold basis for 90 years subject to certain terms and conditions.
4. Pursuant to the prior approval of the Applicant, an Allotment letter dated 13.11.2006 was also issued by the Applicant wherein the NOIDA authority decided to allot the plot measuring 1,00,000 sqm., for software IT unit/I.T enabled services on lease hold basis for 90 years subject to certain terms and conditions as mentioned below:

<b>(A)</b> Plot no.	5/Sector- 144
<b>(B)</b> Total Area of Plot	1,00,000 Sq. Mtrs.
<b>(C)</b> Allotment Rate of Land	Rs. 3750/- per Sq. mtrs. + 2% location charges i.e. Rs. 3825/- per sq. mtrs.
<b>(D)</b> Total Premium of the Plot	Rs. 38,25,00,000/-
<b>(E)</b> One Year Advance Lease Rent	Rs. 95,62,500/-
<b>(F)</b> Balance Allotment Money+One year Lease rent to be deposited within 30 days from issue of this letter in any	Rs. 12,43,12,500/-

bank authorized by Noida	
<b>(G)</b> Balance 70% amount with interest @11 per annum will be payable in 16 half yearly instalments	Rs. 26,77,50,000/-

5. The Corporate Debtor was under an obligation to fulfill the conditions/requirements contained therein. The relevant clauses are as follows:

- a) As per Clause I (a) of the said lease deed dated 07.12.2007, the Corporate Debtor was under an obligation to pay total premium of Rs. 38,25,00,000/- (Rupees Thirty Eight Crore and Twenty Five Lakh Only).
- b) In clause I (iii)(c) & (d) of the lease deed, it is clearly stated that in the event of any failure by the Corporate debtor to deposit any one or more of the instalments with interest by the dates specified above, further interest on defaulted amount for delayed period shall be charged @14% per annum compounded every half yearly on the defaulted amount for the defaulted period and failure to submit the lease rent, an interest @14% shall be charged on the defaulted amount for the defaulted period.
- c) Further as per Clause II (c), the Corporate Debtor shall obtain all necessary permissions and clearances etc. from the concerned Department/Authority as required according to Law, Rules and Regulations in force.
- d) As per clause II (i) of the Lease Deed, the Corporate Debtor has the liability to pay the prescribed taxes, which are imposed either by Lessee or any Statutory body.
- e) Further as per clause II (1) of the Lease Deed, the Corporate Debtor was to construct a building on the plot as per Floor Area Ratio ("FAR") as applicable in accordance with bye-laws of the sanctioned plan and building regulation or as per present bye-laws.
- f) As per clause II (p) of the Lease Deed, the Corporate Debtor shall complete the construction and obtain an occupancy certificate from the building cell department within the validity period of the approved building plans. The Corporate debtor availed the benefit of exemption of

**IA-827/2023 In (IB)-450(PB)/2018**

**Date of Order: 22.12.2023**

payment of stamp duty and registration charges in respect of the lease deed and therefore, the Corporate Debtor was made aware that since the exemption is being availed, no extension for completion of the project as per schedule prescribed is permissible.

- g) As per clause II (v) of the said lease deed, no change in constitution of the lessee is permissible till the time of completion of the project.
  - h) As per clause II (cc) of the said lease deed, the Corporate Debtor with prior permission from the Applicant can mortgage the demised plot to any government organization or any government recognized institution for raising loans for purpose of construction of the building /functioning of the institution subject to such charges and terms & conditions as decided by the Applicant at the time of granting the permission and the first charge shall be of the lessor on the property.
  - i) As per clause (iii) (d) of the said lease deed, the opinion of the Applicant shall be final and binding and it shall be lawful for the lessor to re-enter the demised plot or any part thereof and determine this lease and forfeit the amount as per rules and thereupon.
  - j) Thus as per the lease deed, the Corporate Debtor was required to complete the constructions within 05 +02 years i.e by 27.12.2014. However, the allottee neither completed the construction nor made the payments and as such the allottee proposed for re-scheduling of payments, wherein re-scheduling of payment was allowed to the allottee till 31.03.2015, provided immediate payment was made of 25% of the balance amount. Admittedly, the allottee merely paid 10% of the balance amount and as such the re-scheduling of payments was not allowed by the authority.
6. Subsequently, the allottee in view of the project settlement policy proposed vide their letter dated 06.06.2017, was required to surrender the land in their possession as a settlement for the balance payment payable by them to the authority. However, the said surrender of land process is still pending with the authority as the letter dated 06.06.2017 does not give a clarity relating to the area meant for surrendering by the allottee.

Moreover, as per the letter dated 03.10.2017 issued by the financial controller/ competent authority for surrendering, since the date of policy lapsed on 14.06.2017, the whole process of surrendering the part land by the Corporate Debtor is still pending before the NOIDA authority.

7. In the meantime apparently the Corporate Debtor underwent the Corporate Insolvency Resolution Process (CIRP) as per the order dated 19.09.2019, passed by this Adjudicating Authority in the (IB)450-(PB)/2018, titled as **M/s. Nupur Finvest Private Limited vs. M/s. IVR Prime IT SEZ Private Limited**. This Adjudicating Authority vide order dated 09.09.2019, directed the Respondent No. 1/RP to take charge of the management and control of the Corporate Debtor with immediate effect.
8. The Respondent No. 1/RP vide letter dated 07.01.2023 informed the Applicant about the order dated 06.01.2023 passed by this Adjudicating Authority (Bench-I) in I.A.-2878/2022 in (IB)-450-(PB)/2018 wherein this Adjudicating Authority has passed the following direction with respect to the Applicant:

*“Neither any proof of service has been annexed. Resolution Applicant proposes to pay sum of Rs. 10 crores to the Operational Creditors including NOIDA Authority. After payment of this amount, the existing layout and building plans shall be deemed to be validated and renewed for a period of 6 years. It is directed to NOIDA to put their appearance and filed objections, if any, within 14 days of the receipt of this clarification order. Applicant is directed to serve a copy of this order upon the NOIDA. ”*

9. The following amount along with interest is due from 12.05.2007 to 06.01.2023 against the said land leased to the Corporate Debtor:

1.	Instalments due from 12.05.2007 to 06.01.2023	Rs. 123,71,82,853/-	“ANNEXUREA/1”
2.	Lease Rent due from 27.11.2007 to 06.01.2023	Rs. 45,99,84,500/-	“ANNEXUREA/2”
3.	Time Extension Charges	Rs. 12,24,00,000/-	“ANNEXUREA/3”
<b>Total: Rs. 181,95,67,353/-</b>			

10. It is the case of the Applicant that the total amount of Rs. 181,95,67,353/- from 12.05.2007 to 06.01.2023 is due against the CD, however the resolution professional has only given a meagre Rs. 10 crores without any justifiable reasons.
11. It is further submitted by the Applicant that Section 13 of the Uttar Pradesh Industrial Area Development Act, 1976, imposes a penalty and mode of recovery of arrears wherein the Section 13A of the Act constitutes a charge over the leased property by NOIDA that may be recovered as arrears of land revenue. This creates a statutory charge. The Applicant relied upon the judgement of the Hon'ble Supreme Court of India in the case of "**State Tax Officer (1) Vs. Rainbow Paper Limited** reported in (2022) SCC Online SC 1162", and contended that the Applicant is a statutory Secured Creditor and Applicant/NOIDA is statutory Secured Creditor and is entitled to recover statutory dues as per claim raised before the Resolution Professional in view of the provisions of the U.P. Industrial Development Act, 1976 and Uttar Pradesh Urban Planning and Development Act 1973.
12. The Respondent No. 1/Resolution Professional (RP) has filed a reply affidavit denying the allegations made by the Applicant and submitted that the CIRP of the Corporate Debtor was initiated vide Order dated 19.09.2019. Pursuant to which, the RP made public announcement in Form-A on 25.09.2019. The Applicant has not filed its claim with the RP till 06.01.2023 despite being requested by the RP vide communication dated 21.01.2020 and 21.10.2020.
13. Subsequent to the Order dated 06.01.2023, passed by this Adjudicating Authority (Bench-I) in I.A.-2878/2022 in (IB)-450-(PB)/2018, the Applicant filed the present IA-827-2023. It is submitted that the Resolution Plan is already approved by the CoC in its 16<sup>th</sup> CoC Meeting dated 31.03.2022 by 100% voting share which was submitted by the Vasu Buildcon, in which despite the fact that the Applicant did not file its claim, an amount of Rs. 10,00,00,000/- has been offered in the Resolution Plan by the SRA, treating them as an Operational Creditor.

14. It is further submitted by the RP that by way of the General Development Agreement (GDA), the construction and development on the Scheduled Property had to be completed by the Developer. Hence, the lease rights of the Corporate Debtor had not been transferred to the Developer, but the development rights of Scheduled Property had been transferred. Further, completion of the development of the Project had to be monitored by the Corporate Debtor, hence the Corporate Debtor shall ensure that Respondent No.2 completes the project in line with the Lease Deed and the GDA. The said lease deed was executed for a period of 90 years and the same has not been terminated by the Applicant and it is admitted that the Applicant is the owner of the leased premises.
15. The Respondent No. 2/Sucessful Resolution Applicant has filed a reply affidavit denying the allegations made by the Applicant and reiterated the submissions made by the RP and submitted that the CIRP of the Corporate Debtor was conducted by the RP as per the provisions of the Code and the Resolution plan submitted by the Vasu Buildcon was approved by the CoC in its 16<sup>th</sup> CoC Meeting dated 31.03.2022 by 100% voting share. Further, the RP filed an IA-2878-2022 under Section 30(2) of the IBC, 2016 which is pending before this Adjudicating Authority for approval.
16. We have heard the Ld. Counsel appearing for both parties. We have also perused the documents on record.
17. We find that in the present application, the Applicant has prayed for directing the Respondent/Resolution Professional to treat it as a “Secured Creditor” in the form of the Objections to the Resolution Plan and the object of the Applicant is to recover the dues of NOIDA.
18. The sole issue raised by the Applicant/NOIDA is that the NOIDA Authority should be treated as a Secured Creditor. Ld. Counsel for the Applicant has relied upon the Judgment passed by the Supreme Court of India in the case of **Rainbow Paper Limited Case (supra)** and submitted that the NOIDA Authority should be treated as Secured Creditor.
19. Ld. Counsel for the Applicant further submitted that Sections 13 and 13A of the Uttar Pradesh Act create a statutory charge over the property of the

NOIDA authority and the authority may recover the arrears of land revenue. In this regard, we would like to refer to order 05.12.2023 may observe that in a recent order passed in **IA-4445/2023 in IB-2130(ND)/2019** in the matter of **Greater Noida Industrial Development Authority, through its Manager (Builder) vs. Mr. Nilesh Sharma**, wherein this Adjudicating Authority had an occasion to examine an issue relating to the scope of Section 13 and 13A of the U.P. Act and also as to whether the Applicant/NOIDA can be treated as Secured Creditor. This Adjudicating Authority in the said order dated 05.12.2023 categorically held while dealing with the provisions of Section 13 and 13A of the U.P. Act and Section 48 of the Gujrat Act and this Adjudicating Authority held that there is a clear distinction in the said provisions of the Gujrat Act and the U.P. Act. Whereas the UP Act uses the expression “charge” and not “first charge”. It was further held that the expression “first charge” cannot read into said provisions of the U.P. Act to give a meaning to say that the provisions dealing with “first charge”. This Adjudicating Authority has further held that the Applicant/NOIDA can be treated as the “Operational Creditor” in view of the law laid down by the Hon’ble Supreme Court of India in the case **New Okhla Industrial Development Authority Vs. Anand Sonbhadra**, “Civil Appeal No. 2222 of 2021” wherein the Hon’ble Supreme Court has held that GNIDA will be treated as an “Operational Creditor”.

20. We are therefore unable to accept the submissions made on behalf of the Applicant that the NOIDA authority should be treated as Secured Creditor. We therefore do not see any merits in this application which is accordingly rejected. Accordingly, IA-827-2023 stands **dismissed**.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

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