IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

IA No. 367 of 2024 & IA No. 502 of 2024
IN CP(IB)No. 55/ALD/2017

(An application filed under Section 60(5) and Section 53(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016).

IN THE MATTER OF:

RDB Realty & Infrastructure Limited

CIN: L16003WB2006PLC110039
Regd Off: Bikaner Building 8/1 Lal Bazar Street Ist Floor, Kolkata, 700001.
Email: malay@malay.in/ secretarial@rdbindia.com

….. Applicant

Versus

Uttar Pradesh State Industrial Development Authority (UPSIDA)

Through Shri Vinod Kumar, Regional Manager
UPSIDC Complex A-1/4 Lakhanpur
Kanpur: 208024 Uttar Pradesh, India
Email: rmkanpur@upsidc.com

….. Respondent No. 1

Mr. Arun Gupta, Liquidator, M/s. L.M.L. Limited

IBBI Registration No. IBBI/IPA-002/IP-N00051/2016-2017/10095,
Office at: A-57 Sector 30, Noida 201301 UP India
Email: arungupta2211@gmail.com, Iml.liquidator@gmail.com

…… Respondent No 2

AND IN THE MATTER OF:

M/s. L.M.L. Limited (IN LIQUIDATION)

….. Corporate Debtor

Order Pronounced on: 02.09.2026

Coram:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

Appearances:

Ms. Babita Jain, Adv.	:	*For the Applicant*
Sh. Shubham Agarwal with Sh. Rahul Kr. Jadaun, Advs.	:	*For Res./ Liquidator*

ORDER

1. The instant application (bearing IA no. 367 of 2024) has been filed on 19.07.2024 by RDB Reality & Infrastructure Limited (hereinafter referred to as "Applicant/ Auction Purchaser") under section 60(5) of and Section 53(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") read with Rule 11 of National Company Law Tribunal Rules, 2016 against Uttar Pradesh State Industrial Development Authority (hereinafter referred as "Respondent No.1/UPSIDA") and the Liquidator (hereinafter referred as "Respondent No.2") of M/s L.M.L. Limited i.e., Corporate Debtor. The Applicant inter alia seeks the following prayers:

a. *Allow the present application;*

b. *May kindly, pass an ad-interim order directing Respondent No.1. Uttar Pradesh State Industrial Development Authority (UPSIDA) not to take any coercive steps over the Property No. A1, A2, A3,*

A4, E16A, E30, E30A, 3C-6, C7, C8, C9, C10 situated Site-II Panki Industrial Area Kanpur UP Area 61554.45 Sq. mt. during pendency of instant application;

c. *Kindly pass an interim and final order to the Respondent No.1 Uttar Pradesh State Industrial Development Authority (UPSIDA) not to restrain the Applicant of their Legal rights of subdivision / other legal formalities needed in respect of this property only because of non-payment due to Respondent No. 2 dues of Rs 31,39,398/- (Rupees Thirty one Lakhs Thirty Nine Thousand Three Hundred Ninety Eight only) as per the Demand Notices issued to the Applicant or any such other dues in connection with;*

d. *Pass an order declaring that Respondent No.1 Uttar Pradesh State Industrial Development Authority (UPSIDA) is not entitled to claim any dues of Respondent no. 2 LML Limited (In Liquidation) over the property of the Applicant;*

e. *Pass such other or further order(s) as may be deemed fit and proper the facts and circumstances of the instant case."*

2. During the course of hearing held on 27.08.2024, in IA 367 of 2024, this Tribunal directed as follows:

> *"4. In the meantime, no coercive steps would be taken by the non-applicant/ respondent arising out of the notices, which are attached with the present IA No.367/2024."*

3. Subsequently, during the pendency of IA No. 367 of 2024, the Applicant paid, under protest, the aggregate amount of Rs.35,31,779/- (vide demand drafts dated 08.09.2024) as demanded by Respondent No.1

under the two Transfer Memoranda dated 09.02.2024. Consequently, the Applicant filed IA No. 502 of 2024 on 11.10.2024 under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016, seeking, inter alia, refund of the said amount and bringing the subsequent payment on record. The Applicant inter alia seeks the following prayers:

a. *Allow the present application;*

b. *May kindly, pass an ad-interim order directing Respondent No.1. Uttar Pradesh State Industrial Development Authority (UPSIDA) to refund the total Amount of Rs 35,31,779/- (Rupees Thirty-Five Lakhs Thirty-One Thousand Seven Hundred Seventy-Nine only) was paid vide Demand Draft No 3898 & 3899 dated 08.09.2024 drawn on Axis Bank Limited towards the Dues of LML Limited (In Liquidation) during pendency of instant application;*

c. *Kindly pass an interim and final order to the Respondent No.1 Uttar Pradesh State Industrial Development Authority (UPSIDC) not to restrain the Applicant of their Legal rights of subdivision / other legal formalities needed in respect of this property only because of non- payment due to Respondent No 2 dues of Rs 35,31,779/ (Rupees Thirty Five Lakhs Thirty One Thousand Seven Hundred Seventy Nine only as per the Demand Notices dated 09.08.2024 issued to the Applicant or any such other dues in connection with;*

d. *To pass such other order as may deem fit.*

4. Since IA No. 502 of 2024 arises during the pendency of IA No. 367 of 2024 and concerns subsequent demands raised by Respondent No.1 in respect of the same properties, both these applications are being adjudicated together by way of this common order.

5. The brief facts as submitted by the Applicant are as follows:

a. The Corporate Debtor i.e., M/s L.M.L Limited was admitted into Liquidation on 23.03.2018, pursuant to an application filed by the Resolution Professional.

b. Pursuant to the issuance of Public Announcement in Form-A, Respondent No.1/UPSIDA submitted a claim of Rs.2,77,12,397/- against the Corporate Debtor, which was admitted in full by the Liquidator under the category of "Operational Creditor".

c. Thereafter, the Liquidator issued an auction notice dated 02.03.2023 for sale of the assets of the Corporate Debtor, pursuant to which an e-auction was conducted on 06.04.2023. The Applicant herein was declared as the successful bidder for Property No A1, A2, A3, A4, E16A, E30, E30A, 3C-6, C7, C8, C9, C10 Site-II, Panki Industrial Area, Kanpur. A sale certificate was issued in favour of the Applicant on 'as is where is basis', 'no recourse basis' on 07.07.2023, and possession of the aforesaid properties was handed over to the Applicant on 18.07.2023.

d. It is submitted that prior thereto, the Respondent No.1 had addressed demand letters dated 30.04.2021 to the Liquidator in respect of the subject properties, raising demands aggregating to Rs.31,39,398/-. which includes sum of Rs. 16,95,019/- (towards Maintenance Charges Rs. 4,98,848.28/-, Interest on Maintenance Charges Rs. 11,72,535.13/-, Lease Rent Rs. 20,030.40/-, GST on Lease Rent Rs. 3,605.47/-) for leased land/ Plot No A-1, A-2, A-

3, C-6 to C-10/PANKI-II and sum of Rs 14,44,379/- (towards Maintenance Charges Rs. 4,39,314.22/-, Interest on Maintenance Charges Rs. 9,92,779.50/-, Lease Rent Rs. 10,411.60/-, GST on Lease Rent Rs. 1,874.10/-) for leased land/plot No E-16, E-16A, E30A, E-30B & A-4/PANKI-II, the total amount of which is Rs. 31,39,398/-.

e. Subsequently, pursuant to the application dated 28.12.2023 seeking transfer of the subject properties in favour of the Applicant, Respondent No.1 issued two Transfer Memoranda dated 09.02.2024 directly in favour of the Applicant. Vide the first Transfer Memorandum relating to Plot Nos. A-1, A-2, A-3 and C-6 to C-10, Respondent No.1 permitted transfer subject to, inter alia, payment of outstanding dues of Rs.19,04,433/-. Vide the second Transfer Memorandum relating to Plot Nos. E-16, E-16A, E-30A, E-30B and A-4, Respondent No.1 permitted transfer subject to payment of outstanding dues of Rs.16,27,346/-. Thus, the aggregate amount stipulated to be paid by the Applicant towards the outstanding dues was Rs.35,31,779/-.

f. The Applicant, being aggrieved by the insistence of Respondent No.1 upon payment of the aforesaid outstanding dues as a condition for transfer and for undertaking subdivision and other legal formalities in respect of the subject properties, filed IA No.367 of 2024 on 19.07.2024.

g. During the pendency of IA No.367 of 2024, the Applicant states that it paid the aggregate amount of Rs.35,31,779/- demanded under the aforesaid Transfer Memoranda under protest vide demand drafts dated 08.09.2024. Consequently, the Applicant filed IA No.502 of 2024 on 11.10.2024 seeking, inter alia, refund of the aforesaid amount and bringing the subsequent development on record.

6. The Applicant submits that it is a bona fide purchaser of the said property and has already deposited the entire sale proceeds in the liquidation account of the Corporate Debtor. The Applicant also submits that the sale proceeds received by the liquidator were also duly distributed in accordance with Section 53(1) of the IBC.

7. The Applicant further submits that the creditors of the Corporate Debtor would receive their dues in terms of the waterfall mechanism provided under Section 53(1) of the IBC. In this regard reliance has been placed on the Judgement of Hon'ble NCLAT in *Bhatpara Municipality Th. Chairperson v. Nicco Eastern Pvt. Ltd., (Company Appeal (AT) (Ins) No. 714 of 2021).*

8. The Applicant finally submits that the Applicant is not liable for any payment of dues of LML Limited as per Section 53 and 32A of the Code and the demand of Respondent No.1 is not maintainable in terms of the provisions of the Code.

REPLY OF RESPONDENT NO.1

9. Respondent No.1 /UPSIDA in its reply filed vide diary no. 33 dated 08.01.2025 disputes and denies the averments made in the present application and submits that:

a. The Respondent No.1/ UPSIDA submits that the aforesaid properties were leased to the Corporate Debtor through lease deeds dated 29.06.1987 and 17.10.2001 and Corporate Debtor, being the original lessee should have informed Respondent No.1/ Lessor that the company is undergoing insolvency proceedings as per the covenants of the Lease Deed.

b. The Respondent No.1/ UPSIDA further submits that demand letters dated 30.04.2021 were also previously issued to Respondent No.2/ liquidator regarding dues of maintenance charges up to 31.03.2009 and Lease rate up to 31.03.2022 along with GST.

c. The Respondent No.1 contends that issuance of Transfer memorandum dated 09.02.2024 to the Applicant was only on execution of an affidavit and indemnity bond by Applicant on 29.01.2024 in favour of Respondent No.1 stating that Applicant shall immediately pay all demands raised by UPSIDA.

d. The Respondent further submits that by executing such indemnity bond and affidavit to pay outstanding dues, the auction purchaser voluntarily assumes responsibility for specific liabilities relating to said properties. Furthermore, acceptance of terms and conditions by the auction purchaser as outlined in E-auction, Possession/ Delivery Letter and certificate of sale, forms part of contractual obligations agreed on by the purchaser.

e. In support of its contention, the Respondent has placed reliance upon the judgement of Hon'ble High Court of Allahabad in *Palika Towns LLP v. State of UP and Ors.,* Civil misc. Writ (c) petition no. - 10123 of 2021 wherein it was held as follows:

> *"(b).* The *Insolvency Bankruptcy Code- 2016 grants limited protection to the petitioner (auction purchaser) while allowing it to step into the shoes of the Corporate Debtor but in order to the lessee of the principle lessor (GNIDA) the petitioner has to honor the commitments and discharge its contractual obligation as embodied in the lease deeds, Transfer Memorandum and Sale Certificate."*

f. The Respondent No.1 further submits that if the said outstanding dues have been partially or fully settled in the insolvency process, then the purchaser's indemnity obligation could be limited to those outstanding dues that remain after the insolvency resolution or liquidation process.

<u>REPLY OF RESPONDENT NO.2</u>

10. The Respondent No.2 / Liquidator has filed his reply dated 21.09.2024, in which he contends that:

a. The Respondent No.2 submits that Respondent No.1 has filed a claim of Rs. 2,77,12,397/- and the same was admitted in full by the Liquidator under the category "Operational Creditor".

Further, payments to Operational Creditor would be distributed to stakeholders by the liquidators as per Section 53 of the Code and payment to operational creditors are covered under Section 53(1)(f) of the Code.

b. Respondent No.2/ Liquidator submits that the Applicant was declared as successful bidder for aforementioned property and it was sold on "as is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis" as mentioned in clause Q of e-auction process document as well as certificate of sale.

c. Respondent No.2 also submits that he does not have any role in the present matter and all allegations are bought up against Respondent No.1.

FINDINGS AND ORDER

11. We have heard the learned counsels for the Applicant and Respondents and perused the material, reply and written submissions on record.

12. These applications have been filed by the Applicant/ Auction Purchaser under section 60(5) of the Code against U.P. State Industrial Development Authority (UPSIDA) claiming refund of the amount which has been deposited under protest as per the demand raised by UPSIDA on the property sold through e-auction by the liquidator during liquidation of the Corporate Debtor. The principle issue for consideration is whether the amount paid by the Applicant under protest to the Respondent No.1/UPSIDA is liable to be refunded.

13. From the record, it is evident that the properties in question were originally leased to the Corporate Debtor under the lease deeds dated 29.06.1987 and 17.10.2001. Pursuant to the liquidation of the Corporate Debtor, the applicant was declared as a successful auction purchaser of the properties No. A1, A2, A3, A4, E16A, E30, E30A, 3C-6, C7, C8, C9, C10 Site-II, Panki Industrial Area, Kanpur on 07.07.2023 by an E-auction held on 06.04.2023. A certificate of sale dated 07.07.2023 and possession letter dated 18.07.2023 have also been issued and attached with the application as Annexure 5 and 6 respectively. Thus, the Applicant became the lessee of the said properties on 07.07.2023, being the successful auction purchaser.

14. The Respondent No.1/ UPSIDA had issued the demand notice to the Liquidator on 30.04.2021 with respect to such plot of land to clear the outstanding rent dues to UPSIDA up to 31.03.2009. Subsequently, the Transfer Memoranda dated 09.02.2024 was issued by the Respondent No. 1/ UPSIDA requiring the Applicant to clear the outstanding amounts of Rs.19,04,433/- and Rs.16,27,346/- respectively.

15. On perusal of the demand notice raised by Respondent No.1/ UPSIDA dated 30.04.2021 along with transfer memorandum dated 09.02.2024, it can be inferred that the said demand relates to the period prior to initiation of CIRP and also prior to issuance of sale certificate. Thus, the present outstanding demand of UPSIDA are dues of the Corporate Debtor and relates to the period before the issuance of the sale certificate/ Letter of Possession.

16. The mere fact that the Transfer Memoranda required the Applicant to clear such amounts as a condition for transfer of the leasehold interest cannot, in the facts of the present case, alter the character of the underlying liability. Also, the affidavit and indemnity executed by the Applicant formed part of the documents furnished in connection with the transfer of the assets, and was given in the context of the payment made under protest. Therefore, the documents furnished for seeking transfer of the assets were consequential to the protest payment and cannot be treated as an independent undertaking or deposit by the Applicant towards the pre-CIRP dues of the Corporate Debtor.

17. It is further evident from the record that, pursuant to the public announcement in the liquidation proceedings, Respondent No. 1 lodged its claim for a sum of Rs.2,77,12,397/- against the Corporate Debtor, which was admitted by the Liquidator in full.

18. The Respondent No. 1 has relied upon the terms and conditions of the auction and the Certificate of Sale, particularly the stipulation that the

Asset was sold on "As is where is", "As is what is", "Whatever there is" and "No recourse" basis. It has also relied upon the provisions requiring the purchaser to undertake due diligence and to bear expenses relating to transfer, taxes, charges and other liabilities concerning the Asset. The Certificate of Sale further records that the Purchaser had satisfied itself regarding the dues in respect of the Asset. These clauses, however, have to be considered in the context of the nature of the liability sought to be recovered from the Applicant.

19. Although, the aforesaid conditions principally govern the nature and terms of the sale of the Asset and the obligations of the purchaser in relation to the Asset, arising in connection with the transfer. They cannot, by themselves, be construed as creating an independent liability upon the Applicant to discharge an admitted debt of the Corporate Debtor which had already arisen prior to the sale and had already been lodged as a claim by Respondent No. 1 in the liquidation proceedings. More particularly, the expression "As is where is" or "No recourse" cannot be construed in isolation so as to defeat the statutory mechanism for adjudication and distribution of the claims of creditors under the Code.

20. In this regard, reliance placed by Respondent No. 1 on *Palika Towns LLP v. State of U.P. & Ors.* (Civil misc. Writ (c) petition no. - 10123 of 2021) requires consideration. In the said case, the auction purchaser had accepted the terms of the Transfer Memorandum and had undertaken contractual obligations in respect of the leasehold property. The facts of the present case, however, materially differ inasmuch as Respondent No. 1 herein had already lodged its claim in the liquidation proceedings in respect of its dues, and the said claim was admitted by the Liquidator.

21. Further, during the course of hearing on 03.08.2026, on the point of distribution in accordance with Section 53 of the Code, the Ld. Counsels representing the respective parties submitted as follows:

"1. Ld. Counsel representing the applicant states that she is the successful Auction Purchaser and has purchased the assets in an open e-auction as a going concern in the auction process conducted by the Liquidator.

2. She states that there was a claim lodged by UPSIDA during the CIRP / liquidation process and the claim has been collated for pre-CIRP outstanding amount. However, UPSIDA was not executing the documents of transfer/ mutation. Ld. Counsel further submits that since the UPSIDA was not executing the documents, therefore it was compelled to deposit the dues of the pre-CIRP under protest.

3. The present applications have therefore been filed for seeking refund of the amount paid by the applicants to the UPSIDA on account of the formalities to be completed for the said purpose.

4. Ld. Counsel representing the Liquidator states that the liquidation assets have already been sold to the extent of about 280 crore, and out of which, approximately Rs. 259 crore has already been *distributed. The remaining amount is also in the process of being distributed in accordance with the provisions of section 53 of Code.*

5. Ld. Counsel, Mr. Rahul Kr. Jadaun, has put in appearance for UPSIDA and states that he would not have any grievance, if the distribution takes place in accordance with Section 53 of the Code and as per the entitlement of the UPSIDA."

22. At this juncture, it would also be apposite to refer to the law laid down by the Hon'ble NCLAT in *Bhatpara Municipality Th. Chairperson v. Nicco Eastern Pvt. Ltd.,* (Company Appeal (AT) (Ins) No. 714 of 2021) wherein it was held as follows:

"14. Thus the liquidator had a duty to prepare an asset memorandum containing the value of the assets. Clause (f) of sub regulation 2 of regulation 34 stipulates the inclusion of "any other information that may be relevant for the sale of the asset". Regulation 13 of the said Regulations (supra) enjoins upon the liquidator to submit a preliminary report to the Adjudicating Authority with the Asset Memorandum. Therefore, the liabilities with respect to the assets should have been brought to the notice of the Adjudicating Authority by the liquidator.

***15**. Clause (g) of sub section 1 of section 55 of the Transfer of Property Act, 1882 binds the seller as hereunder: -*

"(1) The seller is bound –

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is

sold subject to encumbrances, to discharge all encumbrances on the property then existing.

16. The outstanding dues of the property tax relating to period prior to sale confirmation are thus dues that are akin to claim of an unsecured creditor (Bhatpara Municipality in the present case) and should be discharged in terms of the properties regarding distribution of assets given in section 53 of IBC. The auction-purchaser cannot be held liable to pay any such dues relating to period prior confirmation of sale as has been held by the Hon'ble Supreme Court in the matter of AI Champdany Industries Ltd. vs. The Official Liquidator & Anr. (supra)."

23. Thus, in view of the law laid down by the Hon'ble NCLAT in *Bhatpara Municipality Through its Chairperson v. Nicco Eastern Pvt. Ltd.* (supra), the outstanding dues pertaining to the period prior to the issuance of the Sale Certificate/handing over of possession are to be treated as pre-CIRP liabilities of the Corporate Debtor and dealt with in accordance with the waterfall mechanism prescribed under Section 53 of the Code. Accordingly, the Applicant/Auction Purchaser cannot be held liable to pay the pre-CIRP dues of the Corporate Debtor.

24. As regards the payment of Rs.35,31,779/- made by the Applicant under protest pursuant to the demands dated 09.08.2024, the said payment cannot be treated as voluntary assumption of the Corporate Debtor's liability so as to defeat the Applicant's claim, particularly when the

Applicant had already approached this Tribunal challenging the demand and the payment was made during the pendency of the proceedings. The amount, being relatable to the pre-existing dues of the Corporate Debtor, is therefore liable to be dealt with in accordance with the liquidation process and not recovered from the Applicant.

25. In view of the foregoing discussion, the amount of Rs. 35,31,779/- as demanded by UPSIDA vide letters dated 14.08.2024 and paid by the Applicant under protest towards the pre-CIRP dues of the Corporate Debtor, is not liable to be borne by the Applicant. The expressions "As is where is", "As is what is", "Whatever there is" and "No recourse" contained in the auction documents and Certificate of Sale do not, in the facts of the present case, operate to transfer such pre-existing statutory liability of the Corporate Debtor to the Applicant. Respondent No. 1 is entitled to receive payment of its admitted claim in accordance with the applicable provisions of the Code and the distribution mechanism prescribed under Section 53 of the Code, as also recorded in the order dated 03.08.2026, wherein the Ld. Counsel representing UPSIDA submitted that UPSIDA would have no grievance if the distribution takes place in accordance with Section 53 of the Code and as per its entitlement. Accordingly, IA No. 502 of 2024 deserves to be allowed, and the Respondent No.1/ UPSIDA is directed to refund an amount of

Rs. 35,31,779/- to the Applicant which was paid under protest towards the dues of the Corporate Debtor.

26. By way of IA No. 367 of 2024, the interim order was passed on 27.08.2024 directing UPSIDA not to take any coercive steps. Since by this order we have also allowed IA No. 502 of 2024 for refund of the aforesaid amount to the Applicant by UPSIDA, therefore, no further order is required to be passed in IA No. 367 of 2024 and therefore, the same deserves to be disposed of.

27. Accordingly, the present application bearing IA No. 367 of 2024 stands disposed of and IA No. 502 of 2024 is allowed in the aforesaid terms.

-Sd-
Ashish Verma
Member (Technical)

-Sd-
Praveen Gupta
Member (Judicial)

Date: 02.09.2026