



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

**IA-2792/2023
In
IB-440(ND)/2021**

Under Section 60(5) (c) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.

IN THE MATTER OF:

Mr. Anil Kaushal & Ors

..... **Financial Creditor**

Versus

M/s. Logix Developers Pvt. Ltd.

..... **Corporate Debtor**

AND IN THE MATTER OF:

NOIDA

..... **Applicant**

Versus

Mr. Manohar Lal Viji- RP

..... **Respondent**

Pronounced On: 18.10.2023

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant : Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Aadarsh Srivastava, Advs.

For the Respondent :

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by the Applicant (New Okhla Industrial Development Authority) under Section 60(5) (c) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.
2. The Applicant is a statutory Authority constituted vide notification No. 4157-H1/XVIII-11 dated 17.04.1976. The Applicant allotted Plot No. GH-02, Sector 143, Noida to a consortium led by M/s. Logix Soft-tel Private Limited vide letter dated 08.04.2011 and a Lease Deed was executed and registered at Sub-Registrar-I, Noida.



3. The Applicant and the Corporate Debtor entered into a re-schedulement plan which was accepted by the Applicant vide letter dated 09.10.2013 re-scheduling the dues upto 07.10.2013. Thereafter, on the request of the Corporate Debtor, the Applicant issued a letter dated 07.06.2018 to permit the Sub-Division of Plot No. GH-02 to M/s. Docile Buildtech Private Limited for the plot admeasuring 13961.00 sq. mtrs. Accordingly, on 30.10.2018, the Corporate Debtor executed a sub-lease deed with the prior permission of the Applicant, in favour of M/s. Docile Buildtech Private Limited (Sub-Lessee).
4. The Corporate Insolvency Resolution Process was initiated by this Adjudicating Authority qua the Corporate Debtor vide order dated 17.08.2022.
5. The Applicant filed its claim on 01.09.2022 in FORM-B as an Operational Creditor. The details of the claim amount are as under:

Particulars	Amount (In Rupees)
Instalments along with interest	4,22,62,81,359/-
Re-scheduled instalments along with interest	92,95,21,861/-
Lease Rent along with interest	37,38,92,471/-
64.7% Farmers' Compensation along with interest	5,90,71,649/-
Time Extension Charges	47,73,81,468/-
Water and Sewer Charges	1,13,28,158/-
Total	6,07,74,76,966/-

6. The Resolution Professional/Respondent vide email dated 03.09.2022, provisionally admitted the claim of the Applicant to the tune of Rs. 5,13,97,26,617/-. The Applicant gave certain clarifications to the Resolution Professional and also provided certain documents to the Resolution Professional and requested the Resolution Professional vide



email dated 23.03.2023 to admit the entire claim of the Applicant to the tune of Rs. 6,07,74,76,966/-. The Applicant provided certain documents which are as follows:

- a) *Time Extension order dated 18.06.2015.*
- b) *Office orders pertaining to 64.7% additional farmer's compensation and also the details of the dues of the Applicant.*

7. The Resolution Professional vide email dated 28.03.2023 and 21.04.2023 raised queries to which the applicant duly replied.
8. The Applicant has submitted that a batch of writ petitions were decided by the Hon'ble High Court of Judicature at Allahabad with regard to the acquisition of land in various villages in Gautam Budh Nagar in which the Hon'ble High Court directed that the Petitioners in the said writ petitions are entitled to payment of additional compensation to the extent of 64.70% as paid for village Patwari in addition to the compensation received by them under 1997 Rules/Award. A judgment was passed by the Hon'ble High Court of Judicature at Allahabad in the case of Gajraj & Ors. Vs. State of U.P. & Ors. Reported in 2011 SCC Online Allahabad 1711. The said judgment of the Hon'ble High Court was challenged before the Hon'ble Supreme Court of India and was affirmed in the case of Savitri Devi versus State of U.P. reported in 2015 7 SCC 21.
9. The Applicant issued various notices to the Corporate Debtor for non-payment and default of the amount on 16.06.2012, 27.02.2013 and 28.08.2013. The Corporate Debtor vide letters dated 25.06.2013 and 08.10.2013 requested the Applicant for re-schedulement of outstanding dues of the Applicant which was accepted by the Applicant and a letter dated 09.10.2013, re-scheduling the dues upto 07.10.2013. As per the letter, 15 half-yearly instalments were to be paid by the Corporate Debtor commencing from 06.04.2014 upto 06.04.2021. The Applicant also issued certain office orders dated 20.12.2013, 04.04.2014, 14.07.2014 and 04.08.2014 with regard to 64.7% additional compensation award by the Hon'ble High Court of Allahabad. The



Applicant also issued an office order dated 18.06.2015 with regard to the levy of the time extension charges on the allottees of the Applicant.

10. It is submitted by the Ld. Counsel of Applicant that the Resolution Professional/Respondent raised four queries w.r.t. Farmer's compensation, Re-schedulement charges, Water and Sewage charges and Time Extension Charges. Pursuant to the said queries, the Applicant provided all details vide email dated 12.04.2023 (with respect to Farmer's compensation) as well as with regard to the other queries raised by the Resolution Professional. The Applicant has, therefore, prayed that the Resolution Professional/Respondent be directed to admit the claim of the Applicant to the tune of Rs. 6,07,74,76,966/-.

11. The Resolution Professional/Respondent in its reply has denied the allegations made by the Applicant herein. The Respondent has contended that the claim with respect to Farmer's compensation, Re-schedulement Charges, Water and Sewage Charges and Time Extension Charges were not admitted or reduced because of the following reasons:

I. Clarification regarding farmers' compensation:

The RP has submitted that there is no Clause of the Lease Deed regarding the payment of farmer compensation by the Corporate Debtor. The Applicant has failed to identify the relevant Clause under the Lease Deed which makes the Corporate Debtor liable to pay the farmer's compensation and therefore the liability of the Corporate Debtor cannot go beyond the terms of the contract i.e. Lease Deed executed between the Applicant and the Corporate Debtor and therefore the Corporate Debtor cannot be burdened with the additional farmer's compensation. It is submitted that Applicant has claimed Rs. 5,90,71,649/- towards farmer's compensation which has been calculated for the entire area of land 1000080.98 sq. mtr. of land whereas the Corporate Debtor's liability is limited to 86,101.98 sq. mtr. of land only. Further, the Applicant has not submitted any detailed calculation with respect to farmer's compensation i.e. total amount of compensation paid, land area for which compensation was paid and resultant rate per sq. mtr.



II. Time Extension Charges:-

It is contended that as per the terms of the Lease Deed, if the Corporate Debtor fails to complete the project within the stipulated timeline then an extension of the time period could be availed by the Corporate Debtor on payment of time extension charges. Thus, the time extension charges will become due only if the Corporate Debtor applies for an extension of time. The Applicant failed to provide any communication made by the Corporate Debtor for seeking extension or any bill/demand raised by the Applicant for giving extension/permission and therefore, the claim amount to the extent of time extension charges were not considered.

It is further submitted that the Applicant has calculated charges upto 07.09.2022, whereas the CIRP commencement date is 17.08.2022. It is therefore submitted that the claim only upto the CIRP commencement date can be admitted and any claim which has accrued after the commencement of CIRP cannot be admitted. The Resolution Professional/Respondent requested the Applicant to provide Excel sheet for the calculation of charges which was not provided.

III. Water and Sewage Charges:

It is submitted that Water and Sewage Charges were not admitted as part of the claim amount as the charges do not form part of the terms of the lease Deed. The Applicant did not provide any bill/sanction letter or any other supporting documents to substantiate the claim regarding water and sewage charges. The Resolution Professional/Respondent however submitted that he is willing to verify the claim regarding the water and sewage charges on the basis of new documents (connection request and order) provided by the Applicant and verify/admit the claims subject to the directions of this Tribunal.

IV. Instalment & Reschedulement charges:

It is submitted that as per the sub lease deed executed for land, the Corporate Debtor is responsible for the liability relating to balance land admeasuring 86,101.98 sq. mtr. However, Applicant has calculated instalment and re-schedulement charges for the entire plot area. It is



further submitted that the Applicant has admitted in the Application that the amount under interest & Re-schedulement was wrongly indicated and hence, revised calculation sheet was submitted. Further, the Applicant has failed to submit the Excel file of the old and new calculations so as to enable the Resolution Professional to understand as to how the amount has been calculated.

- 12.** The Applicant in its rejoinder has clarified the objections raised by the Respondents with regard to the issues of Farmer's Compensation, Time Extension Charges, Water & Sewage Charges and Instalment & Re-Schedulement Charges.
- 13.** With respect to Farmer's Compensation, the Applicant has submitted that the claim was submitted pursuant to the judgment and order dated 21.10.2011 passed by the Hon'ble High Court of Judicature of Allahabad in the case of Gajraj Singh & Ors. Versus State of U.P. & Ors. wherein the additional compensation to the extent of 64.7% was granted. The Applicant vide its email dated 12.04.2023 had clarified to the Resolution Professional about the same. Thereafter, the Respondent vide email dated 21.04.2023 requested the Applicant to provide a copy of the said judgment and for the first time, the Respondent had raised an objection with regard to the non-availability of a Clause in the lease deed for non-compensation.
- 14.** With regard to the Time Extension Charges, the Applicant has submitted that the claim has been made pursuant to the terms of the lease deed and also in terms of the office order dated 18.06.2015 which categorically mentions that the time extension charges would be leviable in case the project is not completed within the period granted under the lease deed i.e., within 7 years from the date of execution of the lease deed. The Respondent is deliberately asking the Applicant to provide an Excel sheet for the calculation, although, the calculations have already been provided to the Respondent in order to cause financial losses to the Applicant.
- 15.** With regard to the Water and Sewage Charges, the Applicant has submitted that the Corporate Debtor has applied for a grant of Water



and Sewage Connection which forms part of the record of the Corporate Debtor.

16. With regard to the Instalment & Re-Schedulement Charges, the Applicant has submitted that the objection raised by the Resolution Professional that the Applicant failed to submit the Excel sheet of the calculation is untenable and against the spirit of the provisions under the IBC, 2016.
17. We have heard the submissions made by the Learned Counsel appearing for the NOIDA/Applicant and Learned Counsel appearing for the Resolution Professional/Respondent and perused the records.
18. It is relevant to mention that the Claim filed by the Applicant is basically on the non-consideration of the following components i.e. Farmer's Compensation, Time Extension Charges, Water & Sewage Charges and Instalment & Re-Schedulement Charges.

Farmer's Compensation:

Admittedly a lease deed was executed between the Applicant and the Corporate Debtor on 08.06.2011 which was for a period of 90 years. The total premium as per the lease deed is Rs. 2,35,69,070.79 out of which 10% of the said amount i.e., 23,56,90,707.90 has been paid by the lessee to the lessor. The balance of 90% premium i.e. Rs. 212,12,16,372.00 (Rupees Two Hundred Twelve Crore Twelve Lac Sixteen Thousand Three Hundred Seventy Two Only) along with interest was to be paid after the expiry of the moratorium period in 16 half-yearly instalments.

The Applicant's claim is based on the judgment passed by the Hon'ble High Court of Judicature of Allahabad dated 21.10.2011, wherein additional compensation of 64.7% was granted, which was subsequent to the lease deed dated 08.06.2011. Further, the judicial pronouncements granting financial benefit to the party concerned cannot be overlooked merely on the grounds of the non-availability of a Clause in the lease deed. Therefore, the objection raised by the Resolution Professional that the lease deed did not contain a Clause for payment of additional compensation cannot be accepted. We, therefore,



hold that the Resolution Professional has committed an error of law in not taking into account the additional compensation granted by the Hon'ble High Court and ought to have admitted the amount.

Hence we direct the Resolution Professional to decide the Applicant's claim w.r.t. farmer's compensation in accordance with law taking into consideration the extent of liability of the Corporate Debtor.

Time Extension Charges:

The Applicant has claimed an amount of Rs. 47,73,81,468/- towards time extension charges. According to the Resolution Professional, the time extension charges will become due only in case the Corporate Debtor fails to complete the project within the stipulated timeline and also within an extended time period only if the Corporate Debtor applies for an extension of time. There is no dispute that the Applicant has calculated the time extension charges up to 07.09.2022 even though the CIRP commenced on 17.08.2022.

Therefore, we are of the considered view that the Resolution Professional has not committed any error in admitting the claim towards time extension charges up to the CIRP commencement date.

Water & Sewage Charges:

The Applicant has claimed an amount of Rs. 1,13,28,158/- towards Water and Sewage Charges. It is submitted that the Corporate Debtor applied for a water connection from the Applicant vide its application dated 01.08.2018, which was granted on 23.01.2019. The Resolution Professional submitted that the Applicant did not provide any bill, sanction letter or any supporting document to substantiate the claim. However, the Resolution Professional in its reply affidavit has stated that the claim with respect to Water and Sewage Charges will be verified on the basis of new documents provided by the Applicant and admit the claim on merits.

We therefore direct the Resolution Professional to verify on the basis of the new documents submitted by the Applicant and admit the claim in accordance with law.

Instalment & Re-Schedulement Charges:



The Applicant has claimed an amount of Rs. 92,95,21,861/- towards Instalment & Re-schedulement Charges. It is submitted that the Applicant has provided the calculations to the Resolution Professional on 11.11.2023. The Resolution Professional in response has submitted that the Applicant had calculated the Instalment and Re-Schedulement Charges for the entire plot area and subsequently, the Applicant submitted a revised calculation sheet.

We direct the Resolution Professional to examine the calculation sheet and determine the amount and consider the same in accordance with the law.

19. Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nittygritties involved in the CIRP of the Corporate Debtor.

20. In view of the foregoing discussions and observations, we direct the Resolution Professional to examine all issues and take appropriate decisions in accordance with law.

21. The IA-2792/2023 stands **partly allowed** and **disposed of** in terms of the above order.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**