



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 1526 OF 2023**

**Alpha Corp Development Private Limited**

**... Appellant**

**versus**

**Greater Noida Industrial Development Authority (GNIDA)  
and others**

**... Respondents**

**with**

**C.A. No. 1743 of 2023**

**C.A. No. 2491 of 2023**

**C.A. No. 2466 of 2023**

**C.A. Nos. 2406-2407 of 2023**

**C.A. No. 3438 of 2023**

**C.A. Nos. 3435-3437 of 2023**

**C.A. No. 2756 of 2023**

**C.A. No. 2763 of 2023**

**C.A. No. 4619 of 2023**

**and**

**C.A.(Diary) No. 19132 of 2023**

## **J U D G M E N T**

### **SANJAY KUMAR, J**

1. By judgment dated 30.01.2023, the National Company Law Appellate Tribunal, Principal Bench, New Delhi<sup>1</sup>, disposed of three company appeals filed by Greater Noida Industrial Development Authority (GNIDA), viz., Company Appeal (AT) (Ins) Nos. 180, 629 and 630 of 2022, and set aside the orders dated 05.04.2021, 08.06.2021 and 07.12.2021 passed by the National Company Law Tribunal, Bench III, New Delhi<sup>2</sup>.

2. By the order dated 05.04.2021 passed in C.A. No. 751 of 2019 in CP(IB)-401(ND)/2017, the NCLT had approved the resolution plan submitted by Roma Unicon Designex Consortium (Roma). This order was challenged by GNIDA in Company Appeal (AT) (Ins) No. 630 of 2022. By its order dated 08.06.2021 in IA No. 05 of 2020 in CP(IB)-401(ND)/2017, the NCLT had approved the resolution plan submitted by Alpha Corp Development Private Limited (Alpha). This order was assailed by GNIDA in Company Appeal (AT) (Ins) No. 629 of 2022. By the order dated 07.12.2021 in IA No. 4235 of 2021 filed by Roma in CP(IB)-401(ND)/2017, the NCLT directed GNIDA to give effect to the resolution plan approved by it by the order dated 05.04.2021. This order was challenged before the NCLAT by GNIDA in Company Appeal (AT) (Ins) No. 180 of 2022.

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<sup>1</sup> For short, 'the NCLAT'

<sup>2</sup> For short, 'the NCLT'

3. Aggrieved by the NCLAT's judgment dated 30.01.2023, the present appeals were filed under Section 62 of the Insolvency and Bankruptcy Code, 2016<sup>3</sup>. We may now note the details of these appeals. Civil Appeal Nos. 1526 and 1743 of 2023 were filed by Alpha and one Sanjay Bhalla respectively in so far as the judgment pertained to Company Appeal (AT) (Ins) No. 629 of 2022. Roma and Earth Towne Flat Buyers Welfare Association filed Civil Appeal Nos. 2491 and 2466 of 2023 respectively against the judgment in the context of Company Appeal (AT) (Ins) No. 630 of 2022. Civil Appeal Nos. 2406-2407 of 2023 were filed by Earth Infrastructures Limited, the corporate debtor (CD), against the judgment in the context of Company Appeal (AT) (Ins) Nos. 629 and 630 of 2022. Civil Appeal No. 3438 of 2023 was filed by Earth Copia Owners Society in relation to Company Appeal No. (AT) (Ins) No. 629 of 2022. Civil Appeal Nos. 3435-3437 of 2023 were filed by Earth United Consumer Association assailing the judgment apropos all three appeals. Civil Appeal No. 2756 of 2023 was filed by GNIDA aggrieved by denial of certain reliefs by the NCLAT in Company Appeal (AT) (Ins) No. 629 of 2022. Civil Appeal No. 2763 was also filed by GNIDA on similar grounds in relation to Company Appeal (AT) (Ins) No. 630 of 2022. Civil Appeal No. 4619 of 2023 was filed by Unific TechOne Patrons Independent Association (UTOPIA) against

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<sup>3</sup> For short, 'the Code'

the judgment insofar as it pertained to Company Appeal (AT) (Ins) No. 629 of 2022. Lastly, Earth Property Buyers Association filed Civil Appeal (Diary) No. 19132 of 2023 in relation to all three appeals.

4. As regards the appeals filed under Civil Appeal (Diary) No. 19132 of 2023, we find that there is a delay of 34 days in their filing. These appeals were filed only on 04.05.2023 against the judgment dated 30.01.2023. Section 62(2) of the Code empowers this Court to condone delay in filing up to 15 days but not more. These appeals are, thus, clearly barred by time and cannot be entertained. The appeals filed under Civil Appeal (Diary) No. 19132 of 2023 are, therefore, dismissed on this short ground.

5. By order dated 13.04.2023 passed in Civil Appeal No. 1526 of 2023 and batch, this Court directed the parties to maintain *status quo*.

6. The ostensible genesis of this litigation is the corporate insolvency resolution process (CIRP) initiated by one Deepak Khanna, a financial creditor, against Earth Infrastructures Limited (EIL), the CD, *vide* Company Petition IB-401(ND)/2017, under Section 7 of the Code. However, long prior thereto, GNIDA, an authority constituted under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976, allotted 73,942 square metres of land in Large Group Housing/Builders' Residential Plot No. GH-04, Sector 01, Greater Nodia, Uttar Pradesh, to a consortium, comprising EIL, Raus Infrass Limited and Shalini Holdings Limited, under allotment letter dated 19.03.2010. The letter indicated that

the Builders Scheme [Scheme Code BRS-01/2010-(I)] would form part of the allotment letter and would be binding on the allottees. GNIDA had formulated this scheme for plots of over 60,000 square metres area, inviting tenders for allotment of such plots on lease for 90 years. The terms and conditions for allotment/lease of such plots were detailed in the scheme. In the event the bidder was a consortium, Clause 8 thereof had application. Clause 8 reads thus: -

‘8. In case bidders have formed a consortium: -

(a) Members of the consortium will have to specify one Lead Member who alone shall be authorized to correspond with the Authority. The Lead member should be the single largest shareholder having at least 26% share in the consortium. The shareholding of the lead member in the consortium shall retain at least 26% till the completion certificate of at least one phase of the project is obtained from the Greater Noida Authority. Each member of the consortium with equity stake of at least 10% will be considered as a "relevant member". The Lead Member of the consortium must necessarily be a Firm/Company registered in India with the appropriate statutory Authority.

(b) The lead member and the relevant members should jointly fulfil the minimum requirement of net worth, solvency, turnover and experience. In case the tenderer/consortium member is a company, the qualifications of the holding company(ies) of the lead member and the relevant members or their subsidiary companies shall also be considered as the qualifications of the applying company/consortium member.

(c) In case of a Consortium, the members shall submit a Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme(s), and in case a plot is allotted to them, the MOA shall clearly define the role and responsibility of each member in the consortium, particularly with regard to arranging debt and equity for the project and its implementation. MOA should be submitted in original duly registered/notarized with the appropriate authority.

(d) The members shall submit a registered/notarized Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case a plot is allotted to them, to form Special Purpose Company(ies), hereinafter called SPCs, that will subsequently carryout all responsibilities as the allottee. The registered MOA must specify the equity shareholding of each member of the Consortium in the proposed SPCs. The SPCs must necessarily be a Firm/Company registered in India with the appropriate statutory Authority.

(e) Execution of the lease deed will be made in favour of either the relevant member(s) or the Special Purpose Company(ies) (SPC)(s), which should be a registered firm or an incorporated company. The relevant members/SPC's may, separately, or together in any combination, sub-divide this allotted plot. However, the area of each of such sub divided plots proposed for execution of lease deed, as described above, should not be less than 20,000 sq. mtrs and the said sub division should be in accordance with the planning norms of the GNIDA. The lead member of the consortium shall have to retain at least 26% of the shareholding as per MOA, till the completion certificate of at least one phase of the project is obtained from Greater NOIDA Authority.'

7. Thus, Clause 8(e) of the scheme required a consortium to form a 'Special Purpose Company' (SPC) to undertake development on the allotted plot. Accordingly, the consortium of EIL, Raus Infrass Limited and Shalini Holdings Limited incorporated Earth Towne Infrastructures Private Limited (ETIPL) on 21.07.2010 as the SPC. Lease deed dated 01.09.2010 was thereupon executed by GNIDA leasing out the subject plot to ETIPL for 90 years, commencing from 01.09.2010. The lease deed recorded that GNIDA had approved the name and status of ETIPL on the request of the consortium to develop and erect the project on the plot. It was also noted that the lessee, ETIPL, was a SPC, comprising EIL (78% shareholding – lead member), Raus Infrass Limited (11% shareholding – relevant member) and Shalini Holdings Limited (11% shareholding – relevant member). The lease deed also recorded that GNIDA had been informed that the SPC members had agreed amongst themselves that EIL would always remain the lead member of the SPC and its shareholding therein would remain unchanged till the occupancy/completion certificate of at least one phase

of the project was obtained from GNIDA. The lease deed, however, permitted the SPC to transfer/sell up to 49% of its shareholding, again subject to the same aforesaid condition. The total premium payable under the lease deed was ₹74,26,95,000/-. The lease deed noted that 10% of the premium plus the excess area amount, adding up to ₹7,46,91,000/-, was paid by the lessee, ETIPL. There was to be a moratorium of 24 months, during which period, only the interest was payable in half-yearly instalments and upon expiry of said period, the balance 90%, i.e., ₹66,84,25,500/-, was to be paid in 16 half-yearly instalments. Instalment Nos. 1 to 4, the half-yearly interest payments, commenced from 19.09.2010, and the premium payments started from 19.09.2012, with the final instalment payable on 19.03.2020. After execution of the lease deed, an unregistered development agreement was entered into on 09.09.2010 between ETIPL and EIL, whereby ETIPL conferred the right to develop the land upon EIL. The area-sharing ratio was stipulated as 18% to ETIPL and 82% to EIL.

**8.** Separately and much earlier, GNIDA had allotted 60,705 square metres of land in Plot No. 1 at Sector Tech Zone area in Greater Nodia Industrial Development Area, District Gautam Budh Nagar, to NIIT Multimedia Limited for development of IT industries and IT enabled services for 90 years. Pursuant thereto, lease deed dated 04.02.2008 was executed by GNIDA in favour of NIIT Multimedia Limited over a reduced

area of 58,866 square metres. Pertinently, this company became a subsidiary of EIL in 2011 and its change of name as Neo Multimedia Limited was approved by GNIDA on 21.02.2011. Development Agreement dated 25.04.2011 was executed by and between Neo Multimedia Limited and EIL, whereby the development on the subject plot of land was to be undertaken by EIL.

**9.** GNIDA had also allotted 20,235 square metres of land in Plot No. 48, Sector Knowledge Park-V, in Greater Nodia Industrial Development Area, District Gautam Budh Nagar, to Nishtha Software Private Limited, another subsidiary of EIL, for development of facilities relating to IT and IT enabled services. Pursuant thereto, GNIDA executed lease deed dated 01.09.2009 in its favour for 90 years for an increased area of 20,911.24 square metres. Memorandum of Understanding (MoU) dated 20.02.2010 was executed between Nishtha Software Private Limited and EIL, whereby development on the plot was to be undertaken by EIL.

**10.** In effect, EIL was to undertake the development on all three plots of land leased out by GNIDA. The residential project on the land leased out to ETIPL was named 'Earth Towne' while the project to be developed on the land leased to Neo Multimedia Limited was named 'Earth TechOne' and the project on the land leased to Nishtha Software Private Limited was called 'Earth Sapphire Court'. Building permissions were obtained by the respective lessees of these plots from GNIDA and a large number of

home/office space buyers booked homes/office spaces in these projects, paying substantial monies to the developer, EIL, and in some cases, to the lessees. The projects were also registered with the Uttar Pradesh Real Estate Regulatory Authority.

**11.** While so, at the instance of Deepak Khanna, a financial creditor, CIRP was initiated against EIL. His application under Section 7 of the Code was admitted by the NCLT on 06.06.2018. Initially, one Surinder Kumar Juneja was appointed as the Interim Resolution Professional (IRP) for EIL, the CD. The NCLT caused public announcement of initiation of the CIRP against EIL under Section 13 of the Code on 12.06.2018. The Committee of Creditors (CoC) was constituted and its first meeting was held on 05.12.2018. Later, Akash Singhal was substituted as the Resolution Professional (RP) by the CoC. The CoC comprised the HDFC Bank and 4,229 allottees, i.e., home/office space buyers.

**12.** 'Invitation for Expression of Interest' in Form G was issued by the RP on 19.04.2019 in respect of all the projects. However, there was no response thereto and the RP then invited resolution plans project-wise also, as an alternative, in addition to plans for all the projects. The revised Form G was published on 22.05.2019. In this regard, we may refer to the 'Clarification' to Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, whereby a Resolution Professional, after approval of

the CoC, is empowered to invite a resolution plan for each real estate project or group of projects of the corporate debtor. This clarification was inserted with effect from 15.02.2024, *vide* Notification dated 15.02.2024. Even before this amendment, the NCLAT and this Court have affirmed that the CIRP in real estate cases can be project-specific, limiting such insolvency process to projects in default so as to ensure protection of homebuyers in other projects, which still remain viable. In ***Indiabulls Asset Reconstruction Company Limited vs. Ram Kishore Arora and others***<sup>4</sup>, this Court refused to interfere with the NCLAT's order permitting insolvency process project-wise. More recently, in ***Mansi Brar Fernandes vs. Shubha Sharma and another***<sup>5</sup>, this Court observed that resolution of real estate insolvency should, as a rule, proceed on a project-specific basis rather than against the corporate debtor in its entirety, unless circumstances justify otherwise, as this would protect solvent projects and genuine homebuyers from collateral prejudice.

**13.** Pursuant to the revised Form G, three resolution applicants came forward, viz., BPT Infra Projects Private Limited, Roma and Alpha. BPT Infra Projects Limited's plan was rejected by the CoC. Roma's resolution plan for 'Earth Towne' was approved by the CoC in its 14<sup>th</sup> meeting held on 26.08.2019. After the CoC's approval, GNIDA addressed letter dated

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<sup>4</sup> AIR 2023 SC 2273

<sup>5</sup> (2025) 259 Comp Cas 769 = 2025 SCC OnLine SC 1972

18.09.2019 to the RP, stating that the dues payable to it by ETIPL were ₹148,37,46,148/-. The NCLT approved the acceptance of Roma's resolution plan, *vide* order dated 05.04.2021 passed in C.A. No. 751 of 2019 in CP (IB)-401(ND)/2017.

**14.** At this stage, we may note that, apart from the projects that were to be developed by EIL on the plots leased out by GNIDA, a separate project named 'Earth Copia' was also being undertaken by it on freehold land in Sector 112, Gurugram, Dwarka Expressway, Haryana. This land had nothing to do with GNIDA and, in consequence, no dues were payable to it in relation thereto. Alpha's resolution plan covered four projects of EIL, including Earth Copia. Alpha's resolution plan was approved by the CoC at its 19<sup>th</sup> meeting held on 11.11.2019. Thereafter, it was approved by the NCLT on 08.06.2021 in relation to three projects, viz., Earth TechOne, Earth Sapphire and Earth Copia. The fourth project, viz., Earth Iconic, was dealt with separately by the NCLT in another CIRP initiated by Celestial Estates Private Limited and Alpha's resolution plan was approved for that project in that case. The order dated 08.06.2021 passed by the NCLT, therefore, covered the remaining three projects. However, as stated earlier, Earth Copia had nothing to do with GNIDA. Notably, one of the appeals filed before the NCLAT by GNIDA assailed NCLT's order dated 08.06.2021, but no distinction was drawn by GNIDA between the projects that it had an interest in and Earth Copia, which had nothing to do with it.

The impugned judgment dated 30.01.2023 passed by the NCLAT also lost sight of this aspect, as reference was made therein to only two projects, i.e., Earth Sapphire and Earth TechOne, as being the subject matter of NCLT's order dated 08.06.2021 in the context of Alpha's resolution plan.

**15.** IA No. 4235 of 2021 was filed by Roma in CP (IB) No. 401(ND)/2017 seeking a direction to GNIDA to transfer the leased land in its favour. The application was opposed by GNIDA contending that such transfer would be against the terms of ETIPL's lease deed. However, the NCLT allowed the IA by order dated 07.12.2021, leading to GNIDA challenging it by way of Company Appeal (AT) (Ins) No. 180 of 2022. The NCLAT passed an interim order on 01.06.2022 in GNIDA's appeals to the effect that GNIDA was not obliged to transfer the leasehold lands in favour of the successful resolution applicants pursuant to the NCLT's orders. This interim order attained finality on 14.07.2022, when this Court dismissed Civil Appeal No. 4748 of 2022 filed by Earth Towne Flat Buyers Welfare Association.

**16.** The above sequence of events indicates that the land leases were in favour of the CD's two subsidiaries. As regards Earth Towne, the land allotment was in favour of the consortium, comprising EIL, Raus Infrast and Shalini Holdings Limited. However, as per GNIDA's own scheme, the SPC, viz., ETIPL, came to be incorporated and a lease was executed by GNIDA in its favour. The lease deed, however, made it clear that the lead member, EIL, was to retain the major shareholding therein, initially shown

as 78%, and was to retain its status as the lead member till issuance of the occupancy/completion certificate in relation to at least one phase of the project. We may also note that EIL, the lead member with 78% shareholding in ETIPL, thereafter increased it to 98%. As per the lease deed, it was the lessee, ETIPL, that was to undertake payment of the interest/premium as per the schedule therein. The paid-up capital of ETIPL was, however, only ₹1 lakh and it was EIL that paid ₹51.88 crores to GNIDA against the interest/premium payable under the lease deed. Admittedly, there was default thereafter in such payments. GNIDA issued notices to ETIPL in that regard on 04.04.2019, 16.07.2019, 29.01.2020 and 01.05.2020. By the year 2016, EIL had constructed only twelve towers and completed foundation work of five towers in Earth Towne.

**17.** GNIDA's complaint before the NCLAT was that the RP did not keep it informed of the proceedings in the CIRP and it was only after approval of Roma's resolution plan, *vide* order dated 05.04.2021, that GNIDA was informed of the same by the RP, *vide* letter dated 26.07.2021. As per GNIDA, as on 31.03.2022, ETIPL was to pay it ₹215,87,18,190/-. GNIDA also claimed that, as on 24.03.2022, Neo Multimedia Private Limited was liable to pay it ₹19,76,10,064/- and Nishtha Software Private Limited had to pay it ₹11,15,15,009/-. That apart, additional compensation and lease rentals were also allegedly payable. GNIDA claimed that several notices of defaults in payment were issued to these lessees also.

**18.** *Per contra*, the other side contended before the NCLAT that GNIDA was fully aware of the fact that the projects were being executed by EIL, as evidenced by its letter dated 11.05.2015 to the Senior Superintendent of Police, Gautam Budh Nagar, wherein GNIDA itself mentioned that EIL was engaged in the construction work. In this context it was argued before the NCLAT that ETIPL was nothing but an alter ego of EIL and this was a fit case to pierce and lift the corporate veil. It was also contended that the companies had common directors and promoters and ETIPL had no separate business of its own. It was pointed out that the RP sought relevant information/documents from GNIDA in respect of all three projects, viz., Earth TechOne, Earth Sapphire Court and Earth Towne, under his letter dated 28.05.2019 and, therefore, GNIDA could not claim ignorance of the CIRP proceedings. On this basis, it was argued that GNIDA, having kept silent all through the proceedings, could not seek to overturn the orders passed by the NCLT approving the resolution plans, which were binding on all the stakeholders. Alpha contended before the NCLAT that its resolution plan had been approved at the 19<sup>th</sup> CoC meeting held on 11.11.2019 with a whopping 91.39% vote share. According to it, GNIDA filed its claim at a belated stage only on 11.11.2021 with the IRP and not the RP, despite being aware of the CIRP proceedings.

**19.** Earth Towne Flat Buyers Welfare Association got impleaded before the NCLAT. Its grievance was that the construction of Earth Towne stood

stalled since 2016 and members of the association, being homebuyers, were suffering irreparable loss. The association pointed out that the RP had admitted the claims of 1,878 homebuyers, amounting to ₹438 crore. It stated that its members had met the Additional Chief Executive Officer of GNIDA on 28.06.2017, long before initiation of the CIRP against EIL, but despite the same no steps were taken by GNIDA to either recover its dues or hasten completion of the project. According to it, the Additional Chief Executive Officer of GNIDA had told them that it would recalculate the principal and interest and check if it could waive the penal interest from 2016 onwards, so as to bring in a new developer for a settlement.

**20.** The NCLAT also permitted Earth TechOne Patrons Independent Association and Sapphire Patrons Independent Common Association, which claimed to be registered associations of office space buyers in those projects, to participate in the proceedings. Their complaint was that Earth Sapphire Court had been launched in the year 2010 while Earth TechOne was commenced in the year 2012, whereupon EIL had collected monies from the prospective buyers in both projects. According to them, EIL had promised 12% assured returns which were paid till September, 2015, but no payments were made thereafter. They claimed that a meeting had been held on 20.05.2016, wherein the Chief Executive Officer of GNIDA had warned EIL that action would be taken against it in the light of the grievances put forth by the members of the associations.

They further claimed that they had given a representation on 27.07.2016 to GNIDA praying that strict action be taken against EIL, followed by meetings on 08.05.2017 and 16.05.2017. They claimed that despite such steps being taken, GNIDA had failed to take action against EIL. They contended before the NCLAT that Alpha's resolution plan contemplated waiver of the dues payable to GNIDA, but if GNIDA refused to waive such dues, the office space buyers undertook to bear the liability. They pointed out that Alpha undertook to complete construction and deliver units to the buyers in five years but the same stood compromised by GNIDA's stance.

**21.** Though it was also argued by the contesting respondents before the NCLAT that GNIDA's appeals were time-barred, in terms of Section 61(2) of the Code, the NCLAT rejected their contention, as extension of time had been granted by this Court, by freezing limitation, in Suo Moto Writ Petition (Civil) No. 3 of 2020, titled '***In re: Cognizance for Extension of Limitation***', owing to the Covid-19 pandemic. The appeals were, therefore, held to be within time. Having considered the matter on merits, the NCLAT framed the following issues for consideration:

- (I) Whether in the CIRP proceedings of the Corporate Debtor, i.e. Earth Infrastructures Limited, the assets of the land holding companies, i.e., subsidiary of the Corporate Debtor can be treated to be assets of the Corporate Debtor?
- (II) Whether, in the Resolution Plans submitted by the Successful Resolution Applicants, i.e., Roma Unicon Designex Consortium and Alpha Corp Development Private Limited, the assets of the subsidiary,

i.e., lease lands could have been dealt and the Resolution Plan could legally contain a clause for transfer of the lease hold rights by the Appellant in favour of Successful Resolution Applicant without there being any prior permission from the Appellant?

(III) Whether assets of the subsidiary companies can be dealt with in Corporate Insolvency Resolution Process of holding Company?

(IV) Whether the Appellant was required to be made party to the CIRP proceedings and heard before approval of any resolution plan dealing with the Project land?

(V) Whether, Resolution Professional acted within the ambit of I & B Code in giving a certificate that Resolution Plans submitted by Roma Unicon Designex Consortium and Alpha Corp Development Private Limited are in accordance with the provisions of the Code?

(VI) Whether Appellant was aware of the development carried out by the Corporate Debtor on the lease land before commencement of the CIRP of the Corporate Debtor?

(VII) What is the way out in the facts and circumstances of the present case?

**22.** Issues I, II and III were taken up together. The NCLAT noted that, in terms of the '*Explanation*' to Section 18, the assets of a subsidiary of the corporate debtor could not be included within the term 'assets'. This observation was made in the context of the leasehold rights having been conferred by GNIDA, not upon EIL, the CD, but upon ETI, which was practically its subsidiary. The same logic was applied to the leasehold rights held by the other subsidiary companies of EIL, viz., Neo Multimedia Limited and Nishtha Software Private Limited.

**23.** The NCLAT also noted that the Information Memorandum brought out by the RP did not include the project lands as the assets of EIL. The

NCLAT, therefore, opined that there was no occasion for the resolution applicants to include such project lands in their resolution plans. According to the NCLAT, the resolution plans sought to transfer not only the development rights over the project lands but also the title over the lands in favour of third parties, without obtaining prior approval of the lessor, GNIDA. The NCLAT noted that transfer of lands by GNIDA was subject to the terms in the lease deeds and the permission to transfer the lands was to be granted by GNIDA on fulfilment of the conditions mentioned therein. Ignoring the same, the resolution plans contained provisions, whereby GNIDA was obligated to transfer the project lands to the successful resolution applicants. Observing that GNIDA was not a party to the development agreements/MoU that EIL had with the lessees, its subsidiaries, whereby it undertook the development on the subject lands, the NCLAT held that GNIDA was neither the creditor of EIL, the CD, nor was it a stakeholder in the resolution plans and was, therefore, not bound by them in any manner.

**24.** Adverting to the contention that this was a fit case for lifting the corporate veil, reference was made by the NCLAT to the decision of this Court in ***Vodafone International Holdings BV vs. Union of India and another***<sup>6</sup>, which took note of the legal status of holding companies and

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<sup>6</sup> (2012) 6 SCC 613

subsidiary companies as they were, in essence, separate legal entities. Reference was also made to **Jaypee Kensington Boulevard Apartments Welfare Association and others vs. NBCC (India) Limited and others**<sup>7</sup>, wherein this Court held that only the assets of the corporate debtor could be subjected to the resolution plan and not the assets of its subsidiary. That was also a case involving the grant of leasehold rights to a corporate debtor by the Yamuna Expressway Industrial Development Authority (YEIDA), an authority constituted under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976, like GNIDA. This Court held that, without the approval of that authority, no transfer could have taken place even by way of a sub-lease. Reference was also made to the decision of this Court in **Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal and others**<sup>8</sup>, which held to the same effect.

**25.** The NCLAT then referred to the condition pertaining to transfer in the lease deed dated 01.09.2010 and opined that the resolution plan could not have contained a clause for transfer of that land without GNIDA approving such transfer. The NCLAT, accordingly, answered Issue No. I, holding that the assets of the three subsidiary companies of EIL, the CD, could not be treated as its assets. Issue No. II was also answered in the negative, holding that the resolution plans of Roma and Alpha could not

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<sup>7</sup> (2022) 1 SCC 401 = 2021 SCC OnLine SC 253  
<sup>8</sup> (2020) 13 SCC 234

have dealt with the project lands which were leased out to EIL's subsidiary companies by GNIDA. Issue No. III was answered on the same lines, holding that the assets of the subsidiary companies could not have been dealt with in the CIRP of the holding company, EIL, without the permission of the lessor, GNIDA.

**26.** On Issue No. IV, the NCLAT held that GNIDA ought to have been made a party to the CIRP proceedings before approval of any resolution plan involving GNIDA's project lands. On Issue No. V, the NCLAT found fault with the RP for not keeping GNIDA informed of the progress of the CIRP despite GNIDA's letter dated 18.09.2019. The NCLAT concluded that the RP failed to act within the ambit of the Code while certifying that the resolution plans submitted by Roma and Alpha were in accordance with the provisions thereof. The NCLAT, accordingly, directed its Registry to forward a copy of the judgment to the IBBI to examine the work and conduct of the RP and take action as it deemed fit and proper. On Issue No. VI, the NCLAT held that knowledge of GNIDA about the development being carried out by EIL was not sufficient to be treated as consent for transfer of the lands to the successful resolution applicants.

**27.** On Issue No. VII, the NCLAT took note of the fact that the homebuyers had approached the Allahabad High Court, which passed an order on 23.02.2016 directing them to represent the matter to the Chief Executive Officer of GNIDA, which was then required to deal with the

matter. Pursuant thereto, complaints were made by two associations of buyers, i.e., of Earth Sapphire Court and Earth TechOne, to the Chief Executive Officer of GNIDA on 27.07.2016, 02.08.2016 and 20.06.2017. Reference was also made to the meeting held with the Chief Executive Officer of GNIDA and the Minister concerned on 11.05.2017. Despite the buyers doing all this, no action was taken by GNIDA. The NCLAT also noted that during the meetings held with the allottees, it was stated on behalf of GNIDA that the issue of penal interest would be considered favourably. The NCLAT also noted that one of the obligations under the lease deeds that GNIDA had executed in favour of the lessees was that GNIDA would monitor development of the projects. The obligation to monitor the projects, *per* the NCLAT, included the obligation to ensure that the projects were completed in time and that necessary action would be initiated against defaulting parties. Reference was made by the NCLAT to the decision of this Court in ***Noida Entrepreneurs Association vs. Noida and others***<sup>9</sup>, wherein this Court had observed the ‘public trust doctrine’ is a part of the law of the land and has grown from Article 21 of the Constitution. It was noted therein that the power vesting in a public authority should be viewed as a trust coupled with duty, to be exercised in larger public and social interest, and public authorities could not play fast

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<sup>9</sup> (2011) 6 SCC 508

and loose with the powers vested in them. The NCLAT observed that the facts brought on record demonstrated that hundreds of crores were received from the allottees, who were waiting for the past several years to take possession of the units allotted to them, but the projects stood stalled since 2016. The NCLAT also noted the offer made by the associations of buyers of Earth Sapphire Court and Earth TechOne that they were ready to pay the dues of GNIDA in the interest of development of the projects. The NCLAT concluded that GNIDA had not been diligent in taking steps for recovery of its dues and was, therefore, not entitled to charge penal interest. The NCLAT, accordingly, directed GNIDA to waive the penal interest and recalculate its dues.

**28.** The NCLAT opined that the way out for the RP was to make an application along with the associations of buyers of the respective projects to GNIDA, seeking permission for transfer of the lands to prospective resolution applicants who were then to execute the projects after payment of GNIDA's dues. The NCLAT left it open to GNIDA to enter into arrangements with such resolution applicants and buyers' associations for payment of the dues, whereupon it could transfer the lands so that the projects could be developed by the resolution applicants. The RP was directed to publish a fresh Form G, inviting resolution plans with the specific condition that the resolution plans would be presented to the CoC for consideration only after GNIDA's dues were paid and its permission

was obtained for transfer of the leasehold lands. Roma and Alpha were also permitted to file their resolution plans. GNIDA was directed to recalculate its dues and communicate the same to the RP and the associations, without charging penal interest, within a time frame. The fresh resolution plans submitted by the resolution applicants were to be examined by the RP and placed before the CoC for consideration and approval. GNIDA was made a party to the CIRP proceedings and was held entitled to participate in the process thereafter. The steps to be taken pursuant to the judgment, till submission of an application by the RP to the NCLT for approval of the plans, if any, were to be completed within six months. The CIRP period was extended by six months from that date. The appeals were disposed of with these directions, setting aside the orders dated 05.04.2021, 08.06.2021 and 07.12.2021 passed by the NCLT.

**29.** This being the factual milieu, we may first take up the issue of EIL's Gurugram project, viz., Earth Copia. The land on which Earth Copia was to be developed was acquired by Aurochem Buildtech Private Limited, a wholly owned subsidiary of EIL, through Collaboration Agreement dated 30.07.2010 with eight landowners. Tripartite Agreement dated 04.05.2012 was then executed, whereby possession and full development rights were transferred to EIL and the landowners' claims stood fully settled. According to Earth Copia Owners Society, the appellant in Civil Appeal No. 3438 of 2023, it comprised 393 homebuyers of 536 units in Earth

Copia and majority of those homebuyers voted in favour of Alpha's resolution plan dated 15.10.2019. Earth Copia Owners Society pointed out that GNIDA's appeals before the NCLAT were only in relation to lands leased out by it to the subsidiary companies of EIL and, therefore, Earth Copia was not part of that litigation. It further pointed out that Alpha's resolution plan dated 15.10.2019 was severable, as it provided that any portion thereof which was held invalid would not affect the remaining parts, which would survive independently. It also pointed out that three blocks of the project had been completed up to 90% and the remaining blocks were still in the range of 40-80% completion. The Society contended that the NCLAT erroneously set aside the approval of Alpha's entire resolution plan without noticing that the order dated 08.06.2021 passed by the NCLT included approval of that resolution plan in relation to Earth Copia also, which had nothing whatsoever to do with GNIDA. We find considerable force in this argument, as GNIDA had no grievance apropos this project and ought to have clarified this aspect in its appeal before the NCLAT filed against the NCLT's order dated 08.06.2021.

**30.** An intervenor, Earth Buyers Association for Justice, seeks to come on record before us so as to challenge Alpha's resolution plan in so far as it relates to Earth Copia also. Alpha's resolution plan had been approved by 91.39% voting share of the CoC and the intervenor, was not a member of the CoC. Twenty-nine homebuyers who had not voted for the plan are

members of the intervenor. In this regard, Section 25A(3A) of the Code assumes importance. It provides that an authorised representative under Section 21(6A) of the Code would cast his vote on behalf of the class of financial creditors he represents, such as homebuyers, in accordance with the decision taken by a vote of more than 50% of the voting share of the financial creditors he represents, who have cast their vote. The homebuyers of Earth Copia were, accordingly, represented by their authorised representative, who voted in favour of Alpha's resolution plan dated 15.10.2019, as per the desire of majority of those homebuyers as a class. It is, therefore, not open to individual homebuyers, who may have been part of the minority that dissented thereto, to gain a foothold by opposing the majority's decision. A few persons within such class cannot dissent with the majority vote in favour of the resolution plan. In **Jaypee Kensington Boulevard Apartments Welfare Association** (*supra*), this Court held that allottees, even if not a homogeneous group, could vote either to approve or disapprove the resolution plan and even if divergence of views within the class may exist, when casting a vote in the CoC, the vote would have to be cast as a class.

**31.** Significantly, this intervenor had raised objections to the approval of Alpha's resolution plan but the same were rejected by the NCLT in its order dated 08.06.2021. Aggrieved thereby, the intervenor filed Company Appeal (AT) (Ins) No. 283 of 2022 but the same was dismissed by the

NCLAT, *vide* order dated 12.10.2022. Therein, the NCLAT noted that, if some of the homebuyers had not voted in favour of the plan, they still had to sail with the majority and the procedural violations alleged by them were not sufficient to interfere with the order approving the resolution plan. The NCLAT noted that the resolution plan was approved by 91.39% voting share in the CoC and the Earth Buyers Association for Justice was not a member of the CoC. Out of the 35 homebuyers who were sought to be brought on record individually by way of an application, 29 homebuyers had not voted for the plan. The NCLAT referred to Section 25A(3A) of the Code and observed that once the authorised representative of that class of voters cast his vote on behalf of the financial creditors he represents as per the decision taken by a vote of more than 50% of the voting share of those financial creditors, who had cast their vote, there is no possibility for the dissenting financial creditors in that class to maintain a separate voice of dissent against the majority vote. The NCLAT, accordingly, held that no grounds were made out to interfere with the order approving the resolution plan and dismissed the intervenor's appeal. This order attained finality as the intervenor did not choose to approach this Court by filing an appeal against the said dismissal order.

**32.** Though Earth Buyers Association for Justice claims that it represents 949 buyers in EIL's four projects, as of April, 2025, the fact remains that it was unsuccessful in its attempts before the NCLT and the

NCLAT in raising objections against Alpha's resolution plan. We are, therefore, of the opinion that Earth Buyers Association for Justice has no *locus* to seek intervention in these appeals and again raise objections to the approval of the resolution plans of Alpha and Roma.

**33.** We may also note that, upon a complaint, the Insolvency and Bankruptcy Board of India (IBBI) issued show-cause notice dated 27.10.2023 to Akash Singhal, the RP of EIL. Thereupon, the IBBI passed order dated 06.02.2025 suspending Akash Singhal's registration for three years, effective from 06.03.2025. WP(C) No. 2906 of 2025 was filed by Akash Singhal against the aforestated order dated 06.02.2025 and the same is pending before the Delhi High Court. However, while suspending the RP's registration, the IBBI left it to the CoCs/Stakeholders Consultation Committees of all the corporate debtors in whose cases Akash Singhal was providing services to decide about his continuation with those existing assignments. Pursuant to the liberty granted by the IBBI, the CoC of EIL decided to continue Akash Singhal as the RP, in terms of Section 23 of the Code, i.e., in relation to managing EIL's affairs, including the maintaining of bank accounts, preservation of assets and records, representing EIL before judicial and quasi-judicial fora, etc.

**34.** As regards the other three projects on GNIDA's leased lands, we may note that GNIDA is empowered under Section 7 of the Uttar Pradesh Industrial Area Development Act, 1976, to allot land on lease basis subject

to the terms and conditions determined by it. It is pursuant to this power that the subject lands were leased out by it to the companies under the control of EIL. We find that the lease deeds executed by GNIDA in favour of the lessees, viz., the three companies, specifically provided that the lessees would develop and erect the proposed buildings on the demised premises in accordance with the plans approved by it, duly ensuring compliance with the requirements set out in the schedules to the lease deeds. The lessees were not to erect or permit to be erected any new building without the permission in writing of GNIDA and except in accordance with the terms of such permission in writing and the plan, if any, approved by GNIDA. The lessees were to develop the projects meeting the stipulated norms of development as set out in the lease deeds. The lessees were to complete construction of the projects within the stipulated time frames, as set out in the lease deeds - seven years for all the three lessees. The lease deeds also provided that, in the event the lessees failed to complete construction within that time, it was lawful for GNIDA, without prejudice to other rights, to re-enter upon the premises and determine the leases. The lease deeds specifically provided that GNIDA would monitor implementation of the projects.

**35.** Insofar as the lease deed dated 01.09.2010 executed by GNIDA in favour of ETIPL is concerned, the same provided that the lessee was to use the allotted plot for construction of group housing/flats/plots and that

it was entitled to allot the dwelling units on sub-lease basis to its allottees. Further transfer/sub-lease was, however, to be governed by GNIDA's transfer policy. The sub-lessees were to use the premises only for residential use. The construction was to be completed within seven years from the date of execution of the lease deed but, prior to that, the lessee had to complete construction of a minimum 50% of the total floor area ratio of the allotted plot, as per the approved lay out plan, and get a completion/occupancy certificate of the first phase within three years from the date of execution of the lease deed. Extension of time for completion of the project was contemplated up to a maximum period of another three years only, coupled with penalty.

**36.** As already stated *supra*, after initiation of the CIRP proceedings against EIL on 06.06.2018, the NCLT caused public announcement of the same on 12.06.2018. The CoC was constituted and its first meeting was held on 05.12.2018. A public announcement was made by the IRP on 13.12.2018, inviting claims against EIL, the CD. On 19.12.2018, the IRP informed GNIDA about the initiation of CIRP proceedings against EIL. The RP was appointed on 18.03.2019 by the CoC. On 28.05.2019, the RP wrote to GNIDA, calling for its dues in relation to all three projects. GNIDA did not respond to these letters or submit claims at that time. On 21.06.2019, the RP published the Information Memorandum for the three projects on GNIDA's leased lands and the project on the freehold land in

Gurgaon. As GNIDA had not intimated its dues in time, the Information Memorandum mentioned only the estimated dues payable to GNIDA.

**37.** Roma's resolution plan was approved by the CoC on 26.08.2019 and the RP filed an application before the NCLT on 03.09.2019 seeking its approval. It was only thereafter, on 18.09.2019, that GNIDA addressed a letter to the RP stating its claimed dues in relation to Earth Towne. On 11.11.2019, Alpha's resolution plan was approved by the CoC for Earth TechOne, Earth Sapphire Court and Earth Copia. No claim was filed by GNIDA in relation to Earth Sapphire. On 11.11.2021, GNIDA filed a claim in relation to its dues for Earth TechOne, not before the RP, but before the IRP, who had exited from the picture long prior thereto.

**38.** GNIDA, being an operational creditor of Neo Multimedia Limited and Nishtha Software Private Limited, could file its claims during the CIRP proceedings against EIL, under Section 60(5)(b) of the Code. NCLT had jurisdiction thereunder to entertain claims by or against the corporate debtor, including claims by or against its subsidiary situated in India. Despite such entitlement, GNIDA failed to file its claims with the RP. It was only on 11.11.2021 that GNIDA filed its claim with the displaced IRP about its dues from Neo Multimedia Limited but no steps were taken by it in relation to Nishtha Software Private Limited.

**39.** This Court had directed the parties to maintain *status quo*, vide its order dated 13.04.2023 in Civil Appeal No. 1526 of 2023 and batch.

However, unmindful of the said order, GNIDA cancelled the allotment of lands in favour of Neo Multimedia Limited and Nishtha Software Private Limited, by order dated 16.06.2023. This order was communicated to the RP only on 22.07.2023 but was not informed to this Court on 04.07.2023, 11.07.2023 and 17.07.2023, when the matters were listed. It was only after the RP filed IA No. 180402 of 2023 in Civil Appeal Nos. 2406-2407 of 2023, that GNIDA withdrew the aforesaid cancellation order on 19.08.2025.

**40.** This Court also passed a separate order on 17.07.2023 in Civil Appeal No. 4619 of 2023, filed by UTOPIA, calling upon GNIDA to file an affidavit stating whether it was ready and willing to take up the projects and complete the construction so as to give homes/office spaces to the buyers on the terms agreed between such buyers and the builders. In the event GNIDA was not ready to do so, it was called upon to indicate how it intended to protect the interests of the buyers in the context of the rules and regulations framed by it or in terms of the policy decisions taken by it apropos situations where the builder committed default or was liquidated.

**41.** Pursuant to the order dated 17.07.2023, GNIDA filed affidavit dated 24.12.2024. Therein, its Manager stated that, owing to the limited infrastructure available with it, GNIDA would not be able to take up the projects and complete the construction. Details were furnished of the payments made by the lessees from time to time. We find that, insofar as

Neo Multimedia Limited is concerned, no payments were made after 06.01.2011 but the payments made earlier to that date were in excess of what was required to be paid. As regards Nishtha Software Private Limited, payments stopped on 20.09.2010. Again, the payments made prior to that date were in excess of the required payments. Lastly, ETIPL stopped payments after 28.02.2013. However, payments made by it earlier to that date were also in excess of the required payments. GNIDA stated that no details were available with it as to development of the land by Neo Multimedia Limited but insofar as Nishtha Software Private Limited was concerned, a site inspection was said to have been carried out in 2018 and it was found that a boundary wall had been constructed and the buildings were under construction. As regards ETIPL, a site inspection was stated to have been carried out by an auditor on 28.02.2018, which reflected that the project was lagging behind, but no steps were taken.

**42.** GNIDA also furnished details of the notices issued by it to the lessees in the context of defaults in payment. Notices were issued to Neo Multimedia Limited on 08.10.2012, 09.01.2019, 08.02.2019, 25.04.2019, 06.05.2019 and 04.03.2020. Nishtha Software Private Limited was issued notices on 28.09.2016, 19.06.2017, 12.10.2018, 02.01.2019, 08.02.2019, 18.03.2019, 22.10.2019 and 04.03.2020. ETIPL was issued notices on 15.10.2013, 25.05.2015, 08.07.2016, 06.09.2016, 30.09.2016 and 13.07.2018. GNIDA stated that a public notice was put up on its website

on 05.10.2017, listing defaulting builders, which included Neo Multimedia Limited, with dues of ₹7,65,48,821/-; Nitisha Software Private Limited, with dues of ₹2,09,12,037/-; and ETIPL, with dues of ₹105,02,87,896/-.

**43.** Thereafter, the Chairman of GNIDA filed an affidavit, notarised on 25.09.2025. He stated therein that he was holding office as an additional duty as there was no full-time Chairman appointed for GNIDA. He stated that the Chief Executive Officer of GNIDA was its highest full-time officer. He apologized for the order dated 16.06.2023 passed by GNIDA cancelling the allotment of lands to Neo Multimedia Limited and Nishtha Software Private Limited. He referred to the order dated 19.08.2025, recalling the same, and stated that no further action with regard to resumption of possession or refund of amounts was taken thereafter. According to him, the outstanding dues, including interest, payable to GNIDA as on 31.08.2025, stood as follows: Neo Multimedia Limited - ₹31,82,88,309/-; Nishtha Software Private Limited - ₹17,57,25,184/-; and ETIPL - ₹309,79,44,038/-. We may note that insofar as Neo Multimedia Limited is concerned, out of the total dues of ₹31,82,88,309/-, ₹1,97,91,781/- was penal interest payable on the premium dues; ₹1,23,18,440/- was the penal interest payable on the additional compensation; and ₹11,34,81,931/- was the time-extension penalty. Therefore, ₹14,55,92,152/-, in all, was attributable to penal interest/penal charges. Similarly, out of the total dues of ₹17,57,25,184/- payable by

Nishtha Software Private Limited, ₹43,12,694/- was the penal interest on the additional compensation; ₹87,29,431/- was the penal interest on the lease rent; and ₹8,31,69,781/- was the time-extension penalty. Thus, ₹9,62,11,906/- out of the total ₹17,57,25,184/- was attributable to penal interest/penal charges. We may also note that there was no default in payment of premium by Nishtha Software Private Limited. As regards ETIPL, out of the total dues of ₹309,79,44,039/-, the penal interest on the premium dues was ₹31,88,34,014/- while ₹5,48,38,863/- was the penal interest on the additional compensation and ₹4,26,96,421/- was the penal interest on the lease rent along with time-extension penalty of ₹18,02,05,897/-, totalling to ₹59,65,75,195/-. Therefore, devoid of penal interest/penal charges, the dues of ETIPL were just over ₹250 crore.

**44.** GNDIA is in appeal against the judgment dated 30.01.2023, insofar as the NCLAT denied it entitlement to claim penal interest. According to it, the finding of NCLAT that there was delay and inaction on its part is incorrect, as sufficient notices were sent by it to the lessees raising claims in that regard. GNIDA, therefore, has a grievance apropos the direction of the NCLAT to drop its penal interest/penal charges and to recalculate its dues. According to GNIDA, the terms of its lease deeds are sacrosanct and ought not to be interfered with, be it during the CIRP proceedings or thereafter. Though GNIDA would contend that the cost at which the successful resolution applicants, Alpha and Roma, would be selling the

homes/office spaces would include the cost of the land and construction apart from a profit component, the fact remains that the land would not be sold to the home/office space buyers, but they would only assume the status of sub-lessees. The ownership of the land would not stand transferred and would remain with GNIDA. This was the original intent of the scheme of allotment, and it does not stand altered even if the resolution plans are given effect to. What is contemplated under the resolution plans is merely transfer of possession of the lands to the successful resolution applicants to enable them to complete the projects and to deliver the units to the allottees, as sub-lessees.

**45.** In *Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and another*<sup>10</sup>, a 3-Judge Bench of this Court opined that, in terms of the Section 13-A of the Uttar Pradesh Industrial Area Development Act, 1976, GNIDA has to be treated as a secured creditor in respect of the amount payable to it by a corporate debtor and in that regard, a charge is statutorily created on the assets of such corporate debtor. Though reliance is placed on this decision by GNIDA, it is not open to it to approbate and reprobate. On the one hand, GNIDA contends that EIL, the CD, had nothing to do with the lands leased out by it to the three companies and that those lands ought not to have formed part of EIL's

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<sup>10</sup> (2024) 6 SCC 767

assets during the CIRP proceedings. On the other hand, GNIDA raised claims before the IRP and the RP and it also complained of not being kept abreast of CIRP proceedings against EIL.

**46.** Significantly, it was only on 11.11.2021 that GNIDA filed a claim in relation to Earth TechOne but, surprisingly, GNIDA addressed its letter to the IRP and not to the RP, though the IRP was replaced as long back as in March, 2019. This claim was also belated as Alpha's resolution plan was approved by the CoC on 11.11.2019 and by the NCLT on 08.06.2021. As noted by the NCLAT itself, there was no error made in the Information Memorandum which specifically recorded that the landholding entities for Earth Sapphire Court, Earth TechOne and Earth Towne were Nishtha Software Private Limited, Neo Multimedia Limited and ETIPL, the subsidiaries of EIL, to whom lands were leased out by GNIDA. Further, the resolution plans of both Alpha and Roma unequivocally recorded that only the development rights in relation to those projects formed part thereof and not the title to the underlying lands. It may be noted that the CoC approved Roma's resolution plan on 26.08.2019 and the RP filed an application before the NCLT seeking its approval on 03.09.2019. However, it was only on 18.09.2019 that GNIDA raised a claim for ₹148 crore. Surprisingly, in the said letter, GNIDA projected itself as a financial creditor of EIL; requested processing of its claims during the CIRP; and sought that the leasehold rights should not be transferred without securing

its dues. As this claim was, in any event, belated it could not have been considered in view of the decision of this Court in ***RPS Infrastructure Limited vs. Mukul Kumar and another***<sup>11</sup>. Surprisingly, GNIDA never raised a claim for its alleged dues in relation to Earth Sapphire Court.

**47.** Further, we may note that GNIDA is conveniently ignoring certain crucial facts. Two letters had been addressed to GNIDA after initiation of the CIRP proceedings against EIL - the IRP sent letter dated 19.12.2018 while the RP, after his appointment by the CoC, addressed letter dated 28.05.2019. These letters reflect that GNIDA was informed about the initiation of the CIRP proceedings against EIL; that the development rights over the project lands leased out by GNIDA to the three companies controlled by EIL were also included in the CIRP proceedings; and GNIDA was called upon to inform its dues. Despite the non-submission of claims by GNIDA within time, the RP intimated the dues of GNIDA to the prospective resolution applicants after gathering the same from the resources available. The RP's Information Memorandum clearly specified that only the development rights and leasehold rights of the lessees, which were 100% subsidiaries of EIL, were included therein.

**48.** Intermittent and sporadic notices with regard to defaults in payment are all that GNIDA has to offer at this stage. We may note that, though

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<sup>11</sup> (2023) 10 SCC 718

payments were allegedly stopped by the lessees, viz., Neo Multimedia Limited, Nishtha Software Private Limited and ETIPL, on 06.01.2011, 20.09.2010 and 28.02.2013 respectively, GNIDA did not bother to follow up on such defaults on a regular basis and only occasional notices were issued to the lessees. As regards Neo Multimedia Limited, the first notice was issued only in October, 2012 followed by a notice, over 8 years later, on 09.01.2019 and three notices, thereafter, in February, April and May, 2019, and the last notice on 04.03.2020. All the notices, except the first one, were issued after commencement of the CIRP proceedings! As regards Nishtha Software Private Limited, the last payment was allegedly made on 20.09.2010 but default notices were issued by GNIDA only in 2016, i.e., on 28.09.2016, followed by a notice more than 8 months later on 19.06.2017. Thereafter, with a gap of over one year and three months, GNIDA issued a notice on 12.10.2018. Later notices were in the year 2019 and the last was in March, 2020. Insofar as ETIPL is concerned, the last payment was stated to have been made on 28.02.2013 and the first default notice was issued by GNIDA on 15.10.2013. However, having issued the aforesaid notice within a short period of time after the default, GNIDA took no steps till 25.05.2015, when the second notice was issued. Again, GNIDA slept over the matter for a year and issued the next notice on 08.07.2016 followed by two notices in September, 2016. Then, with a hiatus of nearly two years, GNIDA issued the last notice on 13.07.2018.

**49.** We are, therefore, of the opinion that GNIDA contributed greatly to the present imbroglio by its persistent inaction and ineptitude all through. Having executed lease deeds for development of the lands, it failed to keep track of and monitor the development being undertaken on such lands to ensure timely completion thereof within the stipulated period of seven years. We may also note that long prior to initiation of the CIRP proceedings against EIL, the CD, GNIDA was informed by the aggrieved home/office space buyers of the tardy progress in the construction of the projects but failed to take necessary coercive steps against the lessees and/or the developer, EIL. In this regard, we may also note that GNIDA cannot claim ignorance of the fact that it was EIL that was executing the development of the projects on all three plots of land leased out by GNIDA to the three companies. Having addressed a letter to the police authorities in relation to EIL's construction on the land leased out to ETIPL, GNIDA cannot now seek to claim ignorance of the reality that it was EIL that was undertaking the construction of the projects on all three leased lands. This is further fortified by the fact that all three lessees submitted documents to GNIDA while seeking approval of building plans/sanctions based on the certification secured from various authorities by EIL itself. Though GNIDA would contend that it was not a party to the applications made by EIL for obtaining permissions/NOCs from various authorities, there is no escaping the fact that the lessees submitted all such documents to GNIDA

for securing sanction and permission for building plans. The question of GNIDA claiming ignorance of EIL's role in the development of the projects, therefore, does not arise.

**50.** Turning a blind eye to all that was going on and also not going on, GNIDA did not even choose to be vigilant after initiation of the CIRP proceedings against EIL. GNIDA was informed of the same by the IRP in December, 2018 and by the RP in March, 2019, but took no steps to participate in the proceedings. On the other hand, GNIDA seeks to blame the RP for not informing it of the progress of the CIRP proceedings!! GNIDA's correspondence was inconsistent and impulsive, unmindful of the strict timelines contemplated by the Code. The lack of responsibility and application of mind on the part of GNIDA is manifest from the fact that even when it did submit its hugely belated claim on 11.11.2021 in relation to its alleged dues from Neo Multimedia Limited, it addressed it to the IRP who had long before exited from the scene upon appointment of the RP by the CoC. GNIDA never ever raised a claim in relation to the dues of Nishtha Software Private Limited. Even as regards its dues from ETIPL, we may note that GNIDA addressed its letter to the RP only on 18.09.2019, after the approval of Roma's resolution plan by the CoC on 26.08.2019. The same non-application of mind is demonstrated by GNIDA's failure to point out to the NCLAT that its appeal against the NCLT's order dated 08.06.2021 was limited only to the projects on its own

leased lands and did not extend to the approval of Alpha's resolution plan in relation to Earth Copia, EIL's project on freehold land in Gurugram.

**51.** Having allowed so much water to flow under the bridge not only to its own detriment but also to the detriment of the innocent home/office space buyers who had invested their hard-earned monies for securing their own homes/office spaces, it is not open to GNIDA to portray itself as an uninformed and injured victim at this late stage. We may also note that, even before this Court, GNIDA chose to approbate and reprobate continuously. This incoherency and lack of consistency on its part is again illustrative of its continued failure to take timely measures, despite being fully aware of the situation. On one hand, GNIDA contends that it has no role to play as EIL, the CD, had no interest in the lands leased out by it to the three companies but, on the other, GNIDA did raise a claim in relation to two out of the three projects on those leased lands. In fact, it raised a claim before the RP in September, 2019, claiming to be a financial creditor and that its dues of ₹149 crore had to be admitted.

**52.** Before this Court, GNIDA attempted to bring in a third party, viz., Engineering Projects (India) Limited (EPIL), at the behest of the Earth Buyers Association for Justice, to complete EIL's stalled projects. We may note that EPIL, itself, has not come forward to stand by any such offer and only a letter addressed by it is relied upon. Perusal of the letter dated 23.12.2024 addressed to GNIDA by EPIL reflects that, pursuant to a

meeting held on 21.12.2024, the Executive Director of EPIL stated that they were ready and willing to complete the stalled projects of EIL situated at Greater Noida. Having stated so, he said that this was an 'in-principle approval' which was contingent upon further study of the financial and other documents/information of the projects that would be made available to the company. It was, therefore, not a firm or unconditional commitment by EPIL. Significantly, EPIL did not even choose to come before us, if it was really keen on pursuing its offer. Therefore, EPIL's offer is not worthy of consideration and is, accordingly, eschewed from consideration.

**53.** The sheet anchor of GNIDA's case is that the assets of subsidiary companies cannot be made part of the assets of the holding company that was subjected to CIRP proceedings. Section 2(87) of the Companies Act, 2013, defines a subsidiary company or subsidiary to mean a separate legal entity. Reliance was placed by GNIDA upon the recent judgment of this Court in ***BRS Ventures Investments Limited vs. SREI Infrastructure Finance Limited and another***<sup>12</sup>, which reiterated that a holding company and its subsidiaries are distinct legal entities and merely because the holding company owns the entire shareholding in the subsidiary company, it would not dilute its separate legal existence. No doubt, the concept of holding companies and subsidiary companies is

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<sup>12</sup> (2025) 1 SCC 456

firmly entrenched in our corporate scenario and once it is established that the holding and subsidiary companies are independent legal entities in their own right, the sanctity of such legal status has to be maintained unless circumstances exist that require lifting/piercing of the corporate veil. The question that arises is whether this was a fit case to lift the corporate veil. Though the NCLAT was averse to doing so, we are inclined to hold otherwise. In that regard, we may refer to the observations of a Constitution Bench in ***Life Insurance Corporation of India vs. Escorts Ltd. and others***<sup>13</sup> in the context of lifting of the corporate veil:

‘.....Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. 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 public interest, the effect on parties who may be affected, etc.’

**54.** As is clear from the aforesaid observations when, in reality, associated or group companies are inextricably connected so as to form part of one concern, the corporate veil should be lifted. Applying this principle in ***ArcelorMittal India Private Limited vs. Satish Kumar Gupta***

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<sup>13</sup> (1986) 1 SCC 264

**and others**<sup>14</sup>, this Court affirmed that where protection of public interest is of paramount importance or where a company has been formed to evade obligations enforced by law and by the Courts, the Court would disregard the corporate veil. It was further observed that this principle would be applied even to group companies so that one is able to look at the economic entity of the group as a whole.

**55.** Neo Multimedia Limited and Nishtha Software Private Limited were both wholly owned subsidiaries of EIL, the CD. They had leases over the lands in which EIL was to develop the projects, viz., Earth TechOne and Earth Sapphire Court. ETIPL was incorporated only to enable GNIDA's leasing of land for development of Earth Towne and was controlled by EIL, with a 98% shareholding. ETIPL, therefore, stands on a different footing from the other two companies, insofar as GNIDA is concerned. In any event, we may note that all three companies either share common directors with EIL and/or have their relations as directors. The only assets of the three companies were the lands leased out to them by GNIDA for these projects. The companies' shareholdings indicate that EIL was the dominant and majority shareholder.

**56.** Further, GNIDA was clearly aware that it was EIL, the CD, that was developing the projects on the lands leased out by it to the three

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<sup>14</sup> (2019) 2 SCC 1

companies. GNIDA cannot claim ignorance of this on the mere ground that it was not a party to the development agreements/MoU. This was the situation in relation to two projects – Earth Sapphire Court as well as Earth TechOne. Insofar as Earth Towne is concerned, as already stated, GNIDA itself required the consortium of the three companies to incorporate a SPC and it was pursuant to this requirement, that ETIPL was brought into existence. Further, the lease deed executed by GNIDA in favour of ETIPL made it clear that EIL was to be the lead member of ETIPL, retaining its majority shareholding as well as its lead role. It is an admitted fact that EIL, which had a 78% shareholding in ETIPL, increased it to 98%. ETIPL executed an agreement conferring the right to develop the project on the leased land in favour of EIL. GNIDA cannot, therefore, look askance at the role played by EIL in the development of Earth Towne. More so, in the light of its own letter to the police authorities acknowledging EIL's role in the development of Earth Towne, which we have already referred to. In effect, GNIDA cannot claim ignorance of the constructions by EIL in relation to all three projects. Each case that comes before a Court, in the context of lifting of the corporate veil, would have to turn upon its own individual facts. Given the facts obtaining presently, we are of the firm view that this was an eminently fit case for lifting the corporate veil, as EIL was the main driving force in the development of the projects and in payment of GNIDA's dues. The subsidiary companies were only a front. In the light of this

finding, we deem it unnecessary to deal with the issue raised in the context of Sections 18 and 25 of the Code, apropos the scope of the term 'assets'.

**57.** Alpha's resolution plan, which was approved by the CoC on 11.11.2019 and by the NCLT on 08.06.2021, provided under Clause 4 thereof, that it would seek a waiver from GNIDA of its dues but added that if such waiver was not granted, the dues would be proportionately distributed amongst all the allottees. Clause 12.1 of the resolution plan contemplated issuance of a 'No Dues Certificate' by GNIDA prior to conveyances in relation to Earth Sapphire Court as well as Earth TechOne. Alpha, however, stated before this Court that it was willing to pay GNIDA its dues without penal interest/penal charges, given sufficient amount of time, without burdening the homebuyers.

**58.** In EIL's CoC, HDFC Bank and the home/office space buyers were the only financial creditors. HDFC Bank, which claimed to be a secured financial creditor, dissented with Alpha's resolution plan. Its objection to the acceptance of the resolution plan was rejected by the NCLT and that order became final. Therefore, the Monitoring Committee comprised only the buyers. The Monitoring Committee was impleaded as a party respondent by GNIDA in Company Appeal (AT)(Ins) No. 629 of 2022 filed before the NCLAT. Sanjay Bhalla, the authorized representative of the Monitoring Committee, is supporting Alpha's resolution plan and filed Civil Appeal No. 1743 of 2023 assailing the judgment dated 30.01.2023 in

relation to Earth Sapphire Court and Earth TechOne. He supports Alpha, whose resolution plan was approved by the order dated 08.06.2021 and seeks restoration thereof. Notably, the Minutes of the Monitoring Committee's meeting held on 10.08.2025 evidence that Alpha undertook that it would absorb the dues payable to GNIDA and the same would not be burdened upon the allottees/buyers.

**59.** Earth Towne Flat Buyers Welfare Association represents about 1600 homebuyers of Earth Towne, of whom 1222 homebuyers are its registered members. The total number of homebuyers in the project are stated to be around 1,878. The majority of the homebuyers are, therefore, represented by this association, which supports Roma's resolution plan. We may also note that Roma, being the successful resolution applicant, expressed its willingness to settle the dues of GNIDA given sufficient time. Roma does not propose to charge GNIDA's dues from the homebuyers of Earth Towne and is willing to bear the entire burden by itself.

**60.** Earth Towne Flat Buyers Welfare Association filed Civil Appeal No. 2466 of 2023, aggrieved by the judgment dated 30.01.2023 insofar as it pertained to Company Appeal (AT) (Ins) No. 630 of 2022. This association participated in the proceedings before the NCLAT and contributed substantially, by bringing out relevant facts reflecting upon the somnolence and delay on the part of GNIDA in taking appropriate steps against EIL, despite its failures on all counts.

**61.** Civil Appeal No. 2491 of 2023 was filed by Roma assailing the judgment dated 30.01.2023 insofar as it related to Company Appeal (AT) (Ins) No. 630 of 2022,. Roma seeks restoration of the order dated 05.04.2021 approving its resolution plan.

**62.** UTOPIA is the association of allottees of the Earth TechOne, while Sapphire Patrons Independent Common Association (SPICA) is the association of allottees of Earth Sapphire Court. Both these associations participated in the proceedings before the NCLAT and supported the NCLT orders approving the resolution plans. On the same lines, they now support the said plans and seek setting aside of the judgment dated 30.01.2023 passed by the NCLAT, insofar as it pertained to Company Appeal (AT) (Ins) No. 629 of 2022.

**63.** Civil Appeal Nos. 3435-3437 of 2023 were filed by the Earth United Consumer Association, assailing the judgment dated 30.01.2023 in relation to all three appeals and supporting the orders approving the resolution plans of Roma and Alpha. The association claimed to be a consumer association, representing the buyers/allottees of EIL's projects. Significantly, this association was not a party to the earlier proceedings. In any event, as it is only playing a supporting role, reiterating the grounds taken by the parties to the litigation, we need not entertain the same.

**64.** Of relevant significance is the fact that the Ministry of Housing and Urban Affairs, Government of India, constituted a committee under the

chairmanship of Mr. Amitabh Kant, former Chief Executive Officer of the Policy Commission, *vide* order dated 31.03.2023, in relation to stalled real estate projects. This Committee was to recommend measures to protect the interests of homebuyers and to complete such stalled projects in a timely manner. The Committee submitted its report on 24.07.2023. The Committee noted that real estate was an important sector and more than 200 industries were linked to it, creating a large number of jobs. It was also noted that as per the estimate of the Indian Banks Association, about 4.12 lakh houses across the country were not completed due to financial constraints of the developers. Of these, around 2.4 lakh houses were stated to be in the National Capital Region under Authorities, such as NOIDA, GNIDA and YEIDA. Upon the recommendations made by the Committee, the Government of Uttar Pradesh was stated to have formulated a policy/package so as to protect the interests of all parties while promoting development. It was recorded that the main objective of the policy/package was to provide houses/flats with registry to the homebuyers as early as possible. Group housing projects were covered thereby but not projects that were commercial, industrial, etc.

**65.** The scheme of the policy/package envisages co-developers being given permission to complete the projects after recognizing them in the records of the Authority concerned and, thereupon, the responsibility for paying the dues of the said Authority and completing the project would be

jointly shared by the co-developer and the allottee. All outstanding amounts were to be re-verified by an independent chartered accountant/ third party and recalculated as per the conditions of the lease deed and the orders issued by the Authority from time to time. Time extension to complete the project was to be given, free of cost, subject to a maximum period of three years. Net outstanding amounts of upto ₹100 crore were to be paid in a maximum of one year while net dues of upto ₹500 crore could be cleared over two years. If the outstanding amount exceeded ₹500 crore, it could be paid within three years. In the event the developer failed to complete the project within the stipulated three years, penalty of 20% was to be levied on the remaining dues and efforts were to be made by the Authority concerned to get the project completed. If the dues were already paid in full to the Authority, then no fine was to be imposed. This policy/package was communicated by the Infrastructure and Industrial Development Commissioner, Government of Uttar Pradesh, to the Chief Executive Officers of the Authorities, including GNIDA and YEIDA.

**66.** Though, the aforestated policy/package would have application only to Earth Towne, being a residential project, and may not apply *stricto sensu* to the other two projects, which are commercial in nature, we may note the higher objective underlying this policy, i.e., to secure completion of stalled development projects. As that was the very aim of the CIRP proceedings initiated against EIL, the CD, we are of the opinion that by

adopting the policy to some extent to suit the present situation, the successful resolution applicants, Alpha and Roma, can be permitted to proceed with their resolution plans to complete the projects, viz., Earth Towne, Earth Sapphire Court and Earth TechOne, while protecting the interests of GNIDA also.

**67.** As rightly pointed out by the NCLAT, the inertia on the part of GNIDA and its failure to protect the interests of the home/office space buyers, apart from its own interests, clearly disentitles it from levying penal interest/penal charges/time-extension penalties at this stage. However, notwithstanding the lapses on its part, GNIDA would still be entitled to recover the principal amounts due to it, after deducting the penal interest, penal charges and time-extension penalties. The dues in that regard shall be recalculated by GNIDA, as indicated hereinabove, and communicated to Alpha and Roma within two weeks from the date of this judgment. Once such amounts are quantified, the resolution applicants shall make necessary arrangements for payment of those dues. We would expect Alpha and Roma, the successful resolution applicants, to stand by their commitment that such dues would not be burdened upon the home/office space buyers who have already suffered sufficiently by the delay in the execution of the projects. The said dues shall be cleared by Alpha and Roma on their own. The payments in that regard, in equated monthly instalments, shall be made over twenty four months. The first such

payment shall be made on or before the 7<sup>th</sup> day of July, 2026. Registration of the homes/office spaces in favour of the allottees shall be undertaken only after payment of the dues of GNIDA in totality and with its active participation, so as to confer the status of sub-lessees upon the buyers.

**68.** Given the fact that GNIDA is responsible for this litigation to a great extent, owing to its failure in monitoring the development of the projects and in taking timely measures to realise its dues from EIL, it would not be entitled to any interest on the principal amounts due for the extended period of twenty four months, during which the successful resolution applicants, Alpha and Roma, are required to clear its dues. The resolution plans of Alpha and Roma shall stand restored. The successful resolution applicants shall endeavour to complete the projects within the time frames indicated by them in their resolution plans. Those time frames shall commence from the 1<sup>st</sup> day of June, 2026.

**69.** On the above analysis, Civil Appeal Nos. 1526 of 2023, 1743 of 2023, 2491 of 2023, 2466 of 2023, 3438 of 2023 and 4619 of 2023 are allowed. Civil Appeal Nos. 2406-07 of 2023 are disposed of in the above terms. Civil Appeal Nos. 3435-3437 of 2023 and Civil Appeal (Diary) No. 19132 of 2023 are dismissed and lastly, Civil Appeal Nos. 2756 and 2763 of 2023 filed by GNIDA are also dismissed.

**70.** IA No. 174061 of 2023 was filed by Surinder Kumar Juneja, the erstwhile IRP who was appointed on 06.06.2018, at the time of admission

of the CIRP against EIL. He sought intervention in this appeal only because of the *status quo* order dated 13.04.2023 passed by this Court. Owing to the said order, his application in IA No. 1194 of 2021 pending before the NCLT, filed under Section 60(5) of the Code, for payment of his professional fees, has also been put on hold. As the appeals are being disposed of, the *status quo* order shall cease to operate. His application can, therefore, be considered by the NCLT, independently and on its own merits, in accordance with law.

**71.** IA No. 1878 of 2024 was filed by Airwil Intellicity Social Welfare Society, seeking to come on record on the ground that the issue raised in the present appeals is similar to that in the CIRP proceedings that it is interested in. The application is misconceived and is, accordingly, rejected. Similarly, IA No. 137704 of 2023 was filed by the consortium of One City Infrastructure Private Limited and APM Infrastructure Private Limited, seeking to intervene on the ground that their resolution plan, which was pending approval before the adjudicating authority, has been kept on hold owing to the pendency of these appeals. This application is equally misconceived and is, accordingly, dismissed.

**72.** IA No. 137215 of 2023 was filed by one Ms. Manish Rawat, Resolution Professional of Earth Gracia Buildcon Private Limited, seeking to intervene in these appeals on the ground that she is the Resolution Professional of a group company of EIL, which is also facing CIRP

proceedings, and has a direct interest in the outcome of these cases, as the decision in these appeals would decide the fate of numerous allottees in the project, which was the subject matter of the CIRP against that group company. However, we are not inclined to accept her intervention in these appeals and the application is dismissed.

**73.** IAs for intervention and relief filed by Sanjeev Kumar Singh and Beena Singh, claiming to be affected homebuyers of Earth Towne, are not considered as they were not parties before the NCLAT. In any event, their interests are adequately protected by their association. The applications are, accordingly, dismissed. IA Nos. 217541-217542 are also rejected, as the interest of the intervenor is sufficiently represented.

**74.** IA Nos. 166202 of 2023 and 50758 of 2025, filed by Jambey Tashi (deceased, represented by LRs) and others, seeking to intervene and also praying for a direction to NBCC (India) Limited or any other competent public sector undertaking to submit its detailed proposal for completion of the projects of EIL and to take over and complete such projects, so as to hand over the units to the buyers is also rejected.

**75.** IA No. 77861 of 2023, filed by Earth Buyers Association for Justice, seeking to come on record, is misconceived as its appeal against the order dated 08.06.2021 was dismissed and attained finality. Significantly, it did not disclose this fact in its application for impleadment. Its applications for directions are also rejected.

**76.** Apart from the aforestated applications, we may note that several intervention applications were filed by home/office space buyers seeking to be heard. However, as their interests are sufficiently represented by the associations which had participated in the proceedings before the NCLAT, we are not inclined to entertain such individual intervention applications.

**77.** Similarly, applications have been filed by persons claiming to be home/office space buyers, who had failed to submit their claims before the IRP/RP within time and now seek to be impleaded in these appeals to air their grievances in that regard. As they failed to take necessary steps at the relevant time by filing applications before the NCLT, if their claims were not admitted or entertained by the IRP/RP and as such issues are outside the scope of these appeals, we are not inclined to entertain the same. Intervention applications filed by such intervenors and their applications for directions are, accordingly, rejected.

All other applications shall also stand closed.

Parties shall bear their own costs.

.....J  
[SANJAY KUMAR]

.....J  
[ALOK ARADHE]

**New Delhi;  
May 05, 2026.**