NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1581 of 2023
&
I.A. No. 1020 of 2024, 2653 of 2025

IN THE MATTER OF:

Uttar Pradesh Housing and Development Board ...Appellant

Versus

K.S.N. Buildwell Pvt. Ltd. & Anr. ...Respondents

Present:

For Appellant(s)	:	Mr. Rana Mukherjee Sr. Adv. with Mr. Ritesh Agrawal, Ms. Oindila Sen, Ms. Priyanshi Sharma & Ms. Sneha Ahmed, Advocates
For Respondent(s)	:	Mr. K. Datta Sr. Adv. with Mr. Palash Singhai, Mr. Harshal Sareen, Ms. Aashima Gautam & Mr. Yash Tandon, Advocates for R-1

With
Company Appeal (AT) (Ins) No. 820 of 2025
&
I.A. No. 3183, 3184 of 2025

IN THE MATTER OF:

K.S.N. Buildwell Pvt. Ltd., Through Mohit Goyal, RP ...Appellant

Versus

Uttar Pradesh Housing and Development Board & Ors. ...Respondents

Present:

For Appellant(s)	:	Mr. K. Datta Sr. Adv. with Mr. Palash Singhai, Mr. Harshal Sareen, Ms. Aashima Gautam & Mr. Yash Tandon, Advocates
For Respondent(s)	:	Mr. Kunal Godhwani & Ms. Kinjal Chadha, Advocates Mr. Rana Mukherjee Sr. Adv. with Mr. Ritesh Agrawal, Ms. Oindila Sen, Ms. Priyanshi Sharma & Ms. Sneha Ahmed, Advocates for R-1

With
Company Appeal (AT) (Ins) No. 926 of 2025
&
I.A. No. 3598 of 2025

IN THE MATTER OF:

Jayanti Jain,
Authorised Representative of
Financial Creditors in Class
(Real Estate Allottees) **...Appellant**

Versus

Uttar Pradesh Awas Vikas Parishad
(UPAVP) & Anr. **...Respondents**

Present:

For Appellant(s)	**:**	Mr. Gaurav Mitra, Mr. Gaurav Singh, Mr. Dushyant Tiwari & Ms. Lavanya Pathak, Advocates
For Respondent(s)	**:**	Mr. K. Datta Sr. Adv. with Mr. Palash Singhai, Mr. Harshal Sareen, Ms. Aashima Gautam & Mr. Yash Tandon, Advocates for R-2 Mr. Rana Mukherjee Sr. Adv. with Mr. Ritesh Agrawal, Ms. Priyanshi Sharma Advocates for R-1

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The aforesaid three appeals are connected with the same matter and for the sake of convenience are being disposed of by passing this common judgment.

2. The factual matrix as is reflected from the material available on record is in terms that the appellant in CA (AT) (Ins) No. 1581 of 2023 i.e. Uttar Pradesh Housing and Development Board (UP Awas Evam Vikas Parishad) herein after referred to as UPAVP allotted a commercial plot no. 16

measuring 6860.959 sq. metre situated at C-1, Sector 16, Vasundhara Ghaziabad UP through auction to Respondent No. 2 – Mr. Ramesh Kumar Prasad on 23.12.2006 and an allotment letter was accordingly issued on 11.04.2008 and in view of the allotment letter the total amount of land was Rs. 256,267,693/- out of which 50% of the amount i.e. Rs. 128,133,800/- was payable by 30.03.2009 and the remaining 50% was payable through 72 monthly instalments along with interest of 18% p.a.

3. It is further reflected that vide letter dated 24.03.2010 the CD-Respondent No. 1 K.S.N Buildwell Pvt. Ltd. was added along with the name of Respondent No. 2 on his request and it was designated as joint allottee of the commercial property on the condition that the ownership of the original allottee would remain intact.

4. It is further reflected that the UP Housing Board (UPAVP) and Original allottee Ramesh Kumar Prasad as well as the CD entered into a hire purchase agreement dated 30.03.2010 with respect to the aforesaid land and as per the agreement the Respondents were to pay a quarterly instalment of Rs. 17,077,230/- to the UP Housing Board (UPAVP) from 01.01.2010 and in case of default the interest was payable @ 24% p.a.

5. It is also reflected that a map for construction of commercial and group housing on 8 floors was approved vide letter dated 19.04.2011 on payment of 1.2 F.A.R. (Floor Area Ratio) charges, however in the 224th meeting of the UPAVP it was decided that the change of land use would be after the payment of arrears and the F.A.R. was increased from 1.2 to 2.5.

6. It is further reflected that many notices were issued by the board for clearance of the dues by the Respondents and a notice dated 21.12.2015

was also issued informing that permission to change the land use from commercial to group housing would be on the condition that the arrears will be cleared and the process of registration would be completed by 31.12.2014 and this date was extended till 31.12.2015.

7. It is further reflected that vide letter dated 14.07.2016 the UPAVP informed that half of the amount shall be payable by 27.07.2016 and the rest of the amount shall be payable by 11.08.2016 failing which the arrears would be recovered through the District Collector.

8. It is further reflected that the OTS scheme with regard to the CD was also considered by the board however as claimed by the board the payment was not made even under the OTS scheme and a letter dated 10.11.2017 was issued with regard to ceiling/demolition of unauthorised construction made by the CD against the approved map and a show cause notice dated 28.10.2017 was issued and since no one appeared the order for demolition was passed under Section 28 (a) of the Uttar Pradesh City Planning and Development Act, 1973 and on 27.08.2019 in pursuance of the order dated 10.11.2017 the property was sealed under the powers granted under Section 51 (2) of the aforesaid Act.

9. It is contended by the UPAVP that various notices have been issued but the default amount was not paid and a recovery certificate for arrears of Rs. 816,295,193/- was issued on 22.01.2021 for the aforesaid amount to be collected through the District Magistrate and in pursuance of the same a proclamation of sale of the land and other immovable properties was also made by the District Magistrate.

10. It is further reflected that in the meantime, on an application moved by the Omkara Assets Reconstruction Company Ltd. under Section 7 of the Code the Ld. Adjudicating Authority vide order dated 11.10.2022 initiated insolvency process against the CD and Mr. Mohit Goyal was appointed as the IRP.

11. It is also reflected that an application being IA No. 5536 of 2022 was filed by the Resolution Professional of the CD seeking directions for the deceiving of the aforesaid property and vide order dated 17.10.2023 the Ld. Adjudicating Authority allowed the application and direction was given to de seal the property and this order of date 17.10.2023 is impugned in the CA (AT) (Ins) No. 1581 of 2023 filed by the UPAVP.

12. It is further reflected that on 13.01.2023 appellant-UPAVP filed claim of about 139 crores by filing Form B and during the insolvency proceeding a resolution plan was submitted by Bhati Associates which was approved by the CoC with 100% voting share and an application being IA No. 3259 of 2023 was filed by the RP under Section 30 (6) of the Code r/w CIRP Regulation 39 for approval of the resolution plan.

13. It is further reflected that in the meantime the housing project was substantially constructed comprising of 4 buildings and 144 flats and 44 commercial shops were allotted to the allottees.

14. It is also evident that UPAVP also filed IA No. 5187 of 2023 objecting to the resolution plan and the Ld. Adjudicating Authority vide order dated 27.03.2025 disposed of both the aforesaid applications and remanded the resolution plan back to the CoC for reconsideration on the ground that the third party property (land) has been included in the resolution plan and

aggrieved by the same the RP of the CD has preferred CA (AT) (Ins) No. 820 of 2025 while the authorised representative of the homebuyers namely Jayanti Jain has preferred CA (AT) (Ins) No. 926 of 2025.

15. Ld. Sr. Counsel appearing for the UPAVP while referring to clause 3 (o) (t), 4,5 and clause 16,17,18 of schedule-III appended with the hire purchase agreement submits that it is an admitted fact that due to defaults in payment, the CD has made all attempts to delay the resumption proceedings and ultimately vide order dated 23.01.2018 passed in Writ Petition No. 2982 of 2018 the Hon'ble High Court Allahabad directed the UPAVP to decide the representation of the CD which was accordingly considered and rejected vide office order dated 29.11.2019 observing that unauthorised construction on the property was made by the CD and the arrears have also not been cleared and by that office order the CD was directed to clear all the dues failing which appropriate action would be initiated for cancellation of allotment and illegal construction and by the conduct of the CD in instituting multifarious proceedings the process of attachment and eviction has delayed.

16. It is further submitted that after ceiling of the property an attachment order dated 20.07.2021 was passed for confiscation of property restraining the CD from transferring the same and much thereafter on 20.09.2021 M/s Omkara has filed the petition under Section 7 of the Code which was allowed and moratorium was declared.

17. It is further submitted that it is well settled Principle of law that a statutory right under special enactments override the provisions of the Code, in this regard Ld. Sr. Counsel has relied on the law laid down by the Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai**

(MCGM) vs. Abhilash Lal and Ors. (2020) 13 SCC 234 and **State Bank of India vs. Union of India, (2026) SCC Online 202**, wherein according to Ld. Sr. Counsel, the Hon'ble Supreme Court has taken a view that matters involving public interest and natural resources would fall outside the domain of insolvency adjudicatory framework and exception to Section 238 of the Code on statutory authorities has also been highlighted in **Victory Iron Works Ltd. vs. Jitendra Lohia and Anr. (2023) 7 SCC 227**.

18. It is further submitted that the law restrains the IRP from dealing with the properties which do not qualify as assets of the CD in terms of explanation (a) to Section 18 and Section 25 and 36 of the Code and it has been observed by the Hon'ble Supreme Court that asset owned by a third party specially a statutory authority like appellant even if it is in the possession of the CD under contractual agreements would remain out of the definition of term 'assets' in view of explanation of Section 18 of the IBC. In this regard reliance is placed on **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr. (2024) 6 SCC 767, Embassy Property Developments (P) Ltd. vs. State of Karnataka (2020) 13 SCC 308, Uttar Pradesh Awas Evam Vikash Parishad, (U.P. Housing and Development Board) vs. JNC Construction Pvt. Ltd., (2022) SCC Online NCLAT 3045).**

19. It is further submitted that merely submission of Form B by the UPAVP cannot divest it from the proprietary rights as envisaged under Section 54 of the Transfer of Property Act and the Provisions contained under Registration Act, 1908. In this regard reliance has been placed on

Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana, (2012) 1 SCC 656 and **Ramesh Chand vs. Suresh Chand, (2013) SCC Online SC 1565.**

20. It is further submitted that non-compliance of the provisions of the hire purchase agreement and by non-payment of three consecutive instalment the tenancy rights given to the CD have automatically terminated along with the hire purchase agreement, much before the initiation of the insolvency of the CD and on this score also the land owned by the appellant may not be made subject to a resolution plan.

21. It is further submitted that the Resolution Professional (RP)cannot prefer the appeal independently without the authorisation of the CoC. In this regard reliance has been placed on **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) 4 SCC 17, Regen Powertech Pvt. Ltd. vs. Giriraj Enterprises (Civil Appeal No. 5985-6001 of 2023), Hemant Sharma, Resolution Professional Today Homes and Infrastructure Pvt. Ltd. vs. Indian Renewable Energy Development Agency Ltd. (2025) SCC Online NCLAT 1306, Committee of Creditors of Think and Learn Pvt. Ltd. vs. Riju Ravindran Represented by his Power of Attorney Shaji Puthalath & Ors. (2026) SCC Online NCLAT 203.**

22. It is further submitted that Successful Resolution Applicant (SRA) has not challenged the impugned judgment whereby the plan has been remitted back to CoC.

23. It is further submitted that the hire purchase agreement being an executory contract would not confer tenancy right on the CD and therefore recourse to the UP Public premises (Eviction of Unauthorised Occupants) Act, 1972 would not be applicable and the adjudicating authority could not

exercise power of the Civil Court and could not decide the disputes with regard to the property rights. Therefore, the appeal preferred by the UPAVP be allowed and while the appeal preferred by the CD and homebuyers be dismissed.

24. Ld. Counsel for the Appellant in CA (AT) (Ins) No. 1581 of 2023 i.e. RP of the CD submits that in view of Section 61 (1) of the Code any person aggrieved by an order of the Adjudicating Authority may prefer an appeal to the Appellate Tribunal and the Resolution Professional being an aggrieved person in this case is empowered to file the appeal and in this regard the CoC of the CD vide Resolution dated 08/09 May 2025 has specifically authorised the RP to challenge the impugned order. Thus the RP was also authorised by the CoC to challenge the impugned order by filing the appeal.

25. It is further submitted that the hire purchase agreement confers assets on the CD and neither the hire purchase agreement nor the lease agreements were ever terminated by the UPAVP. It is highlighted that Section 18 of the Code empowers the RP to take into custody and control all assets and property and even actionable claims of the CD and explanation appended with Section 18 clarifies that assets include all types of assets whether tangible or intangible, movable or immovable. In this regard Regulation 37 of the CIRP Regulations, 2016 has also been referred, by Ld. Counsel for RP.

26. It is also submitted that vide hire purchase agreement dated 30.03.2010 rights were conferred upon the CD to possess, enjoy the land and also to make constructions thereon and to create third party interest in favour of flat/shop buyers and to further get execution of conveyance deed

upon full payment of instalments and this bundle of contractual, possessory and developmental rights constitutes assets of the CD and were rightly included in the Resolution Plan. In this regard the law laid down by this Appellate Tribunal in **Divyesh P. Desai RP of GPT Steel Industries Ltd. vs. Gujrat Industrial Development Corporation (GIDC) and Ors., CA (AT) (Ins) No. 1103/1084 of 2024** and the law laid down by the **Hon'ble Supreme Court in Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority, (2020) 13 SCC 208** has been highlighted.

27. It is also submitted that in identical situation this Appellate Tribunal in **Uttar Pradesh Awas Evam Vikas Parishad vs. JNC Construction Pvt. Ltd., CA (AT) (Ins) No. 855 of 2020 dated 04.04.2022** has held that the land allotted by the UPAVP to the CD would be considered as part of the CD's assets in the Resolution Plan however subsequently the plan approval order which was approved by this Appellate Tribunal was set aside by the Hon'ble Supreme Court on the limited ground of Prabhjit Singh Soni. Thus, the underline Principle as highlighted by this Appellate Tribunal still remains a good law in the present factual situation.

28. It is also submitted that the contention of UPAVP that the hire purchase agreement is automatically cancelled by not paying three consecutive instalment is not having any basis and in this regard no notice for cancellation of hire purchase agreement or the allotment has been given by the UPAVP and in utter contrast the demand was being regularly made for payment of instalment which evidently shows that UPAVP never treated or deemed the agreement or allotment as cancelled.

29. It is also submitted that the claim has also been filed by the UPAVP in Form B for about Rs. 139 Crores including the value of the plot after adjusting payments made by the CD and thus it was acknowledged that the agreement and allotment is existing even on the date of the commencement of the CIRP.

30. While referring to **Ghyanshyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. & Ors., (2021) 9 SCC 657** it is submitted that once the resolution plan is approved all claims including those of statutory authorities would stand extinguished except as provided in the resolution plan.

31. It is vehemently submitted that recovery/attachment proceedings are not equivalent to termination or eviction under the Uttar Pradesh (Eviction of unauthorised persons from public premises) Act, 1972.

32. It is further submitted that the judgment of **Greater Noida Industrial Development Authority (GNIDA) vs. Prabhjit Singh Soni and Anr. (2024) 6 SCC 767** is not having any applicability in the facts and circumstances of the instant case. As in that case a pre cancellation/ termination notice was issued by the GNIDA before the commencement of CIRP and it was highlighted in this case that the resolution plan must take into consideration the rights of the statutory authorities for feasibility of the plan particularly where the requisite approval of the statutory authority are absent.

33. It is further submitted that the plan submitted by the SRA was approved with 100% voting by the CoC and the UPAVP was also treated as creditor and Rs. 20 crores were also provided for it.

34. It is also submitted that a distinct factual situation is present in the instant case as the third party rights with regard to 144 flat buyers and 44 shop buyers have also been created on the subject land and the allottees have paid a handsome amount to the CD and by the approval of the impugned judgment the right of these homebuyers and shop buyers would be extinguished and they will be rendered remedy less.

35. In the last it is highlighted that the claim filed by the UPAVP includes the value of the land interest, FRA charges, land use conversion charges as well as the compounding fees. Therefore, once the UPAVP has entered into the process of insolvency resolution its claim is to be adjudicated in the background of the provisions contained under Section 53 of the Code.

36. Ld. Counsel for the authorised representative of the financial creditor in class submits that the allottees of the CD who have paid a handsome amount of their whole life savings cannot be made to suffer due to the dispute between UPAVP and CD.

37. It is further submitted that it is well settled that interest of the homebuyers and allottees is paramount in insolvency proceedings involving real estate companies however the impugned order fails to consider the plight of 144 flat buyers and 44 shop buyers.

38. It is next submitted that the hire purchase agreement itself provides and recognises the right of the CD to create third party rights in the land towards allottees and once such right have been created the status quo Ante could not be made.

39. While referring to the **Swiss Ribbons Pvt. Ltd. vs. Union of India, (2019) 4 SCC 17 and CoC of Essar Steel India Ltd. vs. Satish Kumar**

Gupta, (2020) 8 SCC 531 it is submitted that the object of the Code in the background of the judgments passed by the Hon'ble Supreme Court is the maximisation of the value of assets and a resolution of the CD and the liquidation should be the last resort.

40. It is also submitted that hire purchase agreement still subsists as the same has never been cancelled and there cannot be any deemed cancellation of agreement or plot.

41. Ld. Counsel for the authorised representative of the financial creditor in class has also placed reliance on **JNC Construction Pvt. Ltd. (supra)** and also supported the submissions made by Ld. Counsel for the RP with regard to the non-applicability of **Prabhjit Singh Soni (supra) and MCGM vs. Abhilash Lal** and it is submitted that the dispute between the parties is only for payment of money and the resolution plan provides about Rs. 20 Crore to the UPAVP.

42. It is further submitted that in none of the meetings of the CoC the UPAVP has ever objected to the resolution plan.

43. Section 238 of the IBC has also been highlighted in order to show that the provisions contained under SEZ Act, 2005 would not be having any effect in view of Section 238 of the Code and in this regard reliance is laid on **Noida SEZ Authority vs. Manish Agarwal and Ors. (2025) 1 SCC 415.**

44. Having heard Ld. Counsel for the parties, we proceed at first to take the issue of de sealing of the property by passing the order impugned in CA (AT) (Ins) No. 1581 of 2023. This order has been passed by Ld. Adjudicating Authority on IA No. 5536 of 2022 moved by the RP of the CD for de sealing of the premises and to further direct the UPAVP to file its claim, if any.

45. Having gone through the impugned order we notice that Ld. Adjudicating authority has given directions to de seal the property on the following grounds;

(i) any violation of the terms of the hire purchase agreement would not give any substantial ground to the board to seal the property of the CD in violation of moratorium order dated 13.05.2022 whereby the CIRP was initiated.

(ii) That the property has been sealed by the UPAVP during moratorium.

(iii) Sealing of the property by UPAVP who is an operational creditor and has also filed its claim in Form B, puts the RP in a position that he cannot carry out his mandatory duties to keep the CD as a going concern.

46. We at the level of the appeal has provided opportunity to the parties to file additional affidavits. Respondent RP of K.S. N. Buildwell Ltd. in its additional affidavit dated 08.01.2025 stated that the submission of UPAVP that due to the failure of the CD to make payments, the plot was sealed is wrong as vide order dated 29.11.2019 fresh demand was raised by the UPAVP. It is also stated that Section 69 of UPAVP Act, 1965 prescribes summary procedure for eviction and recovery of rent, thus confiscation/sealing cannot be termed as legal at the same is contrary to the specific provisions of UPAVP Act, 1965.

47. During the course of deliberations, it emerges that Section 69 of the UPAVP Act, 1965 has been repealed by U.P. Act No. 22 of 1972 on the basis of this it is contended by Ld. Counsel for the RP that no notice was also

issued under UP Act No. 22 of 1972 i.e. Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

48. The UPAVP in its additional affidavits dated 24.01.2025 and 29.03.2025 stated that the Ld. Adjudicating Authority without any material available on record concluded that sealing and confiscation has been done during moratorium. It is further stated that a notice was issued on 10.11.2017 to CD/allottees clearly stating to demolish the illegal/unauthorised construction within 7 days and thereafter a show cause notice was issued on 28.10.2017 and when no one appeared for the CD, by using powers under Section 28 (a) of UP City Planning and Development Act, 1973 order was passed for demolition of illegal construction and on 27.08.2019 in compliance of order dated 10.11.2017 unauthorised construction of the CD was sealed.

49. The UPAVP has also enclosed the copy of order dated 29.08.2019 which reflects that in pursuance of order dated 10.11.2017 the property was sealed on 27.08.2019. A communication dated 19.03.2025 written by executive engineer to the property manager of the UPAVP has also placed on record by UPAVP, wherein it is stated that the property was sealed on 27.08.2019 and was given in the custody of police.

50. It appears to be an admitted situation that the CIRP was initiated against the CD on 13.05.2022. True copy of the letter dated 10.11.2017 written by competent officer of the UPAVP to the allottees has also been placed at page no. 69 of the appeal paper book, which shows that direction has been given to demolish the legal structure, constructed contrary to the approved map within 7 days.

51. It is also stated therein that structure erected for five additional floors different from the approved plan has been constructed, which is illegal/ unauthorised and a tin shed of temporary nature has also been erected.

52. We also notice that true copy of communication dated 20.07.2021 has also been placed by the UPAVP at page no. 79 of the appeal paper book and a perusal of this would reveal that the property has been confiscated.

53. Therefore, it is reflected that sealing and confiscation of the said property was ordered much before the initiation of the CIRP and commencement of moratorium on 13.05.2022 and the sealing and confiscation was done on account of illegal construction made by the CD contrary to the approved plan and not on account of default in payment of instalments.

54. Thus, the very basis on which the impugned order dated 17.10.2023 was passed appears to have vanished and in our considered opinion the order dated 17.10.2023 could not survive and is liable to be set aside.

55. However, we clarify at this stage that Ld. Adjudicating Authority was not correct in deciding the possession of the property as even if the property was sealed and confiscated and was not in the possession of the RP, it was the duty of the Ld. Adjudicating Authority to see as to whether any right was granted by the owner in favour of the CD with regard to this land and therefore instead of the ownership of the property the search should have been made for the rights, if any possessed by the CD which could be included in the information memorandum and consequently in the resolution plan, we will deal with this aspect of the matter herein below.

56. Ld. Counsel for the UPAVP has given much emphasis on the submission that the Resolution Professional (RP) cannot prefer the appeal without the authorization of the CoC and in this regard the reliance has been placed on various judgments noted by us in paragraph no. 21 of this judgment.

So far as the above submission of the Ld. Counsel for the appellant with regard to the maintainability of the appeal by the RP of the CD is concerned we find that in the list of dates filed by the appellant in CA (AT) 820 of 2025 it has been specifically mentioned that on 30.04.2025, a meeting of the CoC was convened to discuss the future course of action in view of the impugned order and on 08.05.2025 the CoC passed a resolution authorizing the Resolution Professional (RP) to file an appeal against the impugned order before this Appellate Tribunal. However, in the reply filed by the UPAVP in CA (AT) (Ins) No. 820 of 2025 this fact has not been denied either expressly or even impliedly. In written submissions filed by the RP, it is reiterated that appeal has been filed by the RP in pursuance of the resolution passed by CoC. Thus, it appears that the appeal before this Appellate Tribunal has been filed by the RP in compliance of the Resolution passed by the CoC and thus the RP has acted under the instructions of the CoC and has not filed the appeal independently.

57. Coming to the factual matrix of this case, perusal of the hire purchase agreement would show that it has been executed between UPAVP (first party/owner) and Ramesh Kumar Prasad and authorised signatory of K.S.N

Buildwell Pvt. Ltd. on 30.03.2010. Relevant clauses of this agreement are placed herein below:

[3-]

Since, under the Vasundhara Scheme of U.P. Housing and Development Parishad, the rent-installment buyer has separately applied to the owner for allotment of a commercial plot under the rent-installment purchase scheme and the owner has subsequently paid the rent on the prescribed terms and conditions. Consent has been given to allot commercial plot to the installment buyer.

And since the total value of Commercial Plot No.16/Com-1 is Rs. 25,62,67,693.00 (Rs. Twenty-Five Crore Sixty-Two Lakh Sixty-Seven Thousand Six Hundred and Ninety-Three only). The rent-installment buyer has paid 30 percent of the total amount which is Rs. 7,68,80,308.00 (Rs. seven crore sixty eight lakh eighty thousand three hundred eight only) as advance amount and first installment.

Now this deed is witness to the fact that the owner does hereby consent and agree to the rent and the purchaser also does consent and agree to the owner in the following manner, namely:

1. Rent-installment is given to the buyer in the form of a commercial plot of the property whose number is 16/Com-1 and which is situated in Sector No.-16 in Vasundhara Yojana and for further clarification of which the given hereunder

[4-]

with the boundaries described more specifically in Schedule- I, possession will be given.

2. Rent-installment buyer will take the said property as a tenant for the rent-installment purchase period which will be for a fixed period of 6 (six) years i.e. the installment will start on the first date of January quarter of the year 2010 and will end on the end of March month of the year 2015. It will end on the last date as per the headquarters' letter no. 1757/S.P.-3/702-2802 dated 9.12.09 which has been recalculated by office letter no. 280 dated 12.2010

3. Rent-installment buyer without any demand from the owner till the end of the rent-installment period on the first day of every quarter Will pay Rs. 1,68,71,406.00 (Rs. one crore sixty-eight lakh seventy-one thousand four hundred six only) which includes 18% interest into 21 quarterly installments which can be deposited from the first date till the last date of each quarter.

a. Rent-installment-buyer, without waiting for any demand for the quarterly installment of Rs. 1,68,71,406.00 (Rs. one crore sixty-eight lakh seventy-one thousand four hundred and six only), will make payment every quarter after the month in which the quarterly installment becomes due

[5-]

at the office of the owner or at the specified place on the 1st of the month of 2010, the first such payment of which will be made by the rent-installment buyer mentioned above and which will be considered as the first installment of the month of January and such subsequent payment will be made on the last day of the month of the year 2010. Immediately after each calendar month on or before the date the rent installment becomes due or becomes payable for the period of purchase.

(a) As per the rules, 12% of the land value will be payable by the rent-installment buyer as free-hold fee by the prescribed date or 12 percent of the land value is included in the land value by the rent-installment buyer.

(b) The amount of all municipal or other taxes, fees and other levies, of whatever nature, collected by the local body or the State or Central Government, as determined in the scheme of allotment of rent-installment buyer, or by any other authorized agency in respect thereof on the said property hereby given on rent to the landlord or tenant

[6-]

will make payment directly to the concerned authorities. The hire-purchaser shall pay to the owner property tax, water charges and sewerage system charges as may be levied by the owner from time to time.

Provided that in case of non-payment by the rent-installment purchaser, the owner shall have the power to recover such due amount as arrears of land revenue or in such other manner as may be lawful to recover and treat the same as arrears of installment.

[8-]

(h) the rent-installment purchaser shall not sell, transfer, assign or withdraw from possession of the whole or any part of the said property without the prior written consent of the owner, which the owner shall be entitled to reject as per its discretion;

[11-]

(0) That the Hire-purchaser shall be liable to clear all its dues in full which are mentioned in the present agreement on time and for clearing the dues of installment the Hire purchaser will be at liberty to clear them within a month from the day they become due.

[12-]

In addition to the regular interest, he shall also be liable to pay an additional 18% p.a. penal interest. In case the dues are not cleared within time, then he shall be liable to pay 18% interest from the day of actual due. That in case of continuous three defaults of installments, the tenancy shall be treated as cancelled and the tenant can be evicted. That all the dues of lessee shall be recoverable as land arrears. That the water and electricity connection of hire purchaser can also be disconnected and would be connected again upon the agreed terms.

(p) If the hire-installment purchaser uses the property or the shared property or the shared services with a view to causing damage or deterioration to it or using it for any wrongful act, the hire-installment purchaser shall be liable for such damage, wear and tear to the owner or the registered agency will be liable to pay the amount for the misuse.

[13-]

(q) If the rent-installment purchaser wishes to automatically terminate the tenancy agreed to by him before the expiry of the period of rent-installment purchase, he shall give three months' notice to the owner and the owner shall recover the loss suffered by the owner due to such termination of tenancy along with all the dues payable by the rent-installment purchaser as per this contract.

[14-]

(s) The Owner hereby agrees that the Hire-Installment Purchaser shall, during the said period, make all payments due by him in accordance with this Deed and by fulfilling and observing all the conditions set forth herein, by the Owner or any person lawfully claiming under him. Barring any lawful impediment or hindrance, Hire-Installment Purchaser will peacefully occupy and enjoy the said property as a tenant.

Notwithstanding anything contained herein-before, the Tenant hereby agrees to pay any increase due to increase or due to such other contingencies as may be hereafter decided and agrees to make payment to the increase in Contractor's Bill due to any increase in the rent-purchase price fixed by the Parishad as a result of any increase in compensation for the land, or as a result of the Contractor's going to court, such payment shall be an amount proportionate to such increase as shall be fixed by the Parishad and shall be the final and binding for the Tenant.

[15-]

(t)The installment buyer hereby agrees to construct a building on the plot and complete the construction work within 3 years from the date of allotment, failing which the

land may be repossessed by the Parishad. The rent-installment buyer will get the building plan approved by the competent authority before starting the construction work.
4. The owner hereby agrees to transfer the said property to the hire installment purchaser after the expiry of the hire-installment purchase period by executing a conveyance deed in the prescribed form with him provided that before such execution he shall inform the owner and the public bodies, if any, that all dues have been paid. The rent installment purchaser will thereafter cease to be a tenant and will be the owner of the property as a lessee subject to the provisions of the conveyance deed to be executed as provided in para 5.
5. That the conveyance deed would be executed by the lessee only after the completion of the installments, and incase the Hire-purchaser tenant requests to

[16-]

complete tenancy before that and become owner of the said property and he pays all the amount of dues as per the lessee, then the conveyance deed could be executed.
7. The rent-installment buyer will complete the construction work within a period of 5 years from the date of allotment.
8. The allottee shall get the map of the proposed construction work approved from the competent authority of the Parishad.
9. The permissible FAR for office/commercial plots will be 1.2.
10. The cost of electricity/transformer will have to be borne by the buyer.

[17-]

12. It will be the responsibility of the rent installment buyer to execute the sale deed. According to the rules and provisions mentioned in the said deed, the payment of expenses related to the execution of the sale deed and the rules of the Government/Parishad made from time to time before or after the execution of the sale deed will be acceptable to the buyer.

[21-]

Schedule-III

(ANNEXURE TO THE HIRE-INSTALLMENT PURCHASE CONTRACT)
PROVISIONS FOR HIRE-INSTALLMENT PURCHASE

1. These provisions will be applicable to the installment rent buyer who along with each user of his commercial plot will be jointly and separately responsible for the maintenance.

[23-]

17. That the amount (sales proceeds) received from the allottees of the commercial property after the execution of Agreement to Sale, 50% of the said amount shall be deposited with Parishad within the stipulated time. This condition would be applicable till the time the installments to the Parishad are due.

18. In case of non-payment by the investors (allottees of commercial and group housing plots) as per the above due payment schedule or in violation of the provisions/conditions of the contract, the Parishad will have the right to recover the amount due to them as land revenue.

18. The Parishad will have the first right to make any kind of recovery from the property until the Parishad receives full payment in respect of the affected property.

58. Perusal of the aforesaid clauses would reveal that under Vasundhara Scheme of the UPAVP the CD/Rent Instalment Buyer had applied to the owner for allotment of commercial plot under the rent instalment purchase scheme and consent was given by the UPAVP to allot a commercial plot to the instalment buyer.

59. The total value of the plot was Rs. 256,267,693/- and rent instalment buyer/CD had paid 30% of the total amount i.e. Rs. 76,880,308/- as advance amount and first instalment.

60. Clause II of this agreement would suggest the CD/buyer was to take the said plot as a tenant for the purchase period which will be 6 years and the instalment was to start on the first date of January Quarter of the year

2010 and will end on the end of March 2015. The buyer/CD was required to pay Rs. 16,871,406/- to the UPAVP on the first day of every quarter.

61. Proviso appended with Clause III (b) of the agreement would suggest that in case of non-payment by the purchaser/CD the owner/ UPAVP shall have power to recover such amount as arrears of land revenue or in such other manner.

62. Clause III (o) of the agreement suggest that the purchaser shall be liable to clear all its dues within one month of their due and in addition to the regular interest it shall be liable to pay additional 80% interest p.a. and in case of continues three defaults of instalments the tenancy shall be treated as cancelled and the tenants can be evicted. All the dues of lessee shall be recoverable as land arrears and water and electricity connection may also be disconnected

63. As per Clause III (t) the buyer/CD was to construct building on the plot and complete the construction work within three years from the date of allotment failing which the board may repossess the land. The buyer was also required to get the building plan approved by the competent authority before starting construction work and as per clause IV the UPAVP was obliged to transfer the property to the buyer/CD by executing a conveyance deed subject to the payment of all dues and thereafter the buyer/CD will have seized to be a tenant and will be owner of the property as a lessee subject to the provisions of the conveyance deed.

64. As per Clause-V, VII and VIII the conveyance deed could also be executed before the stipulated period subject to payment of all dues. The CD/buyer was to complete the construction work within a period of 5 years

from the date of allotment and was further obliged for approval of the map of construction. According to clause IX permissible FAR for office commercial was 1:2.

65. Clause I of the schedule III appended with the agreement would reveal that provisions of the schedule were applicable to the buyer/CD, who along with each user of office commercial plot would be jointly responsible for maintenance and as per clause XVII, 50% of the amount of sale proceeds received from allottees of the commercial property, after the execution of agreement to sale, shall be deposited with the UPAVP till instalments to the board are due.

66. It is further reflected that according to the letter of allotment the total value of the plot was Rs. 256,267,693/- and out of this 50% amount was payable in instalments till 30.03.2009 and remaining 50% instalments were to be paid in 72 monthly instalments with interest of 18% p.a. and thus the instalment was calculated at Rs. 2,922,732/- and was payable from 01.04.2009. According to the allotment letter the possession of the plot was to be handed over by 31.03.2009 on payment of 50% amount. In case of delay 18% simple interest p.a. along with 6% additional interest was also payable.

67. It is further reflected that vide letter dated 15.12.2009 of the property manager Ghaziabad, U.P. permission was granted to recapitalise the remaining amount and possession was to be granted after deposit of 30% of the amount under the conditions mentioned in this communication. On the request of allottee on 01.02.2010 the total payable amount along with 18%

interest was equated in 21 trimonthly instalments and was payable from 01.01.2010. There was additional interest of 24% p.a. on delayed payment.

68. Significantly it is also reflected by office order dated 29.11.2019 whereby representation of CD was disposed of, that architectural planner unit-V vide its letter dated 19.04.2011 had approved the map with 1:2 FAR for construction of group housing on commercial and subsequent 8 floors, however the chief architect vide letter dated 27.08.2013 was informed about the decision of the UPAVP taken in its 225th meeting whereby it was decided that the process of land use change by the allottee can be started only after the entire land price has been paid by the allottee and the allottee has taken the registration in his favour.

69. It is also evident from the office order dated 29.11.2019 that on the request of buyer/CD through architectural planner letter dated 02.06.2015 information was given about the change in the use of land from commercial to group housing and information was sought from the executive engineer about the construction and infrastructure. Executive engineer vide letter dated 11.06.2017 informed the architectural planner that as per the approved map construction of basement stilts and 8 floors were permissible and the firm has constructed structure of basements and 8 floors in which the basement has been constructed below the structure. Thereafter various correspondence was exchanged between the parties with regard to the payment of instalments, OTS and rate of interest etc., however the payment of instalment was not made by the CD/buyer and in the meantime, executive engineer vide letter dated 10.11.2017 informed board regarding unauthorised construction of 5 additional floors by the CD in violation of the

approved map and as stated herein before a notice for demolishing the unauthorised structure was issued by the UPAVP on 10.11.2017 and in pursuance of the same the property was sealed on 27.08.2019.

70. It is further reflected that apart from sealing of the property, simultaneous exercise was undertaken by the UPAVP by issuing recovery certificate and in pursuance of the same the order was passed to sale the property by the District Magistrate Ghaziabad and prior to this the property was also confiscated on 20.07.2021.

71. At the cost of repetition, we place on record the fact that on 13.01.2023 UPAVP has filed its claim of about Rs. 139 crores including remaining value of the land along with interest, charges of approval of MAP, observation chagres, Malwa charges, layout charges, charges towards sellable FAR, shelter fee, charges towards *shaman* (compounding).

72. It is also reflected that in the meantime, the CD has taken advance money from allottees and allotted 144 flats and 44 shops and by doing this the interest of homebuyers and shop buyers was created on the land.

73. Perusal of impugned judgment in CA (AT) (Ins) No. 820 of 2025 and 926 of 2025 would reveal that the same has been passed on two applications, one moved by the RP for approval of the resolution plan and another being the objections filed by the UPAVP and relevant part of this impugned judgment is reproduced as under:

> *"10. In insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC), only those assets that belong to the corporate debtor or where the debtor holds a legal or beneficial interest can be included in the resolution plan. In the present case, the Applicant, Uttar Pradesh Housing and Development Board, has demonstrated through title documents and land records that the*

ownership of the plot rests solely with the Applicant. Despite this, the Resolution Professional has proceeded to include the said property in the resolution plan without providing any definitive evidence of ownership or leasehold rights by the corporate debtor.

11. The change in land use and increase in FAR in the Plan without statutory permissions raises concerns of statutory and regulatory non-compliance, which undermines the sanctity of the resolution process. Section 30(2) of the IBC mandates that a resolution plan must be in compliance with the provisions of applicable laws. By incorporating changes that are not legally: permissible, the plan violates statutory requirements.

12. The role and discretion of the CoC, though commercial in nature, must operate within the boundaries of the law. We are aware of the fact that the present Resolution Plan in question has been approved by CoC with 100% votes. However, we are of the view that, while the CoC has the prerogative to decide on the commercial feasibility and viability of a resolution plan, its decision must comply with the statutory framework. In this case, it appears that the CoC has approved the plan without adequately scrutinizing the legal status of the proposed plan. The inclusion of a third-party property reflects a lapse in due diligence and a failure to recognize the statutory limitations on what constitutes the corporate debtor's assets. The CoC's decision cannot be considered sacrosanct when it is based on an incorrect legal foundation.

13. Based on the facts of the case, it is evident that the resolution plan in its present form is not in compliance with the statutory requirements laid down under Sections 18,25, 29, and 30(2)(e) of the Insolvency and Bankruptcy Code, 2016 (IBC)".

74. Thereafter discussing the ratio of decisions in **Embassy Property (supra)** the adjudicating authority held that resolution plan violates Section 30 (2) (e) of the Code and also found the plan to be in contravention of the Principles laid down by the Hon'ble Supreme Court in **Prabhjit Singh Soni (supra)** and concluded in para no. 18,19,20 and 21 as under:

*"**18.** Regulation 7 of the CIRP Regulations, 2016 deals with submission of a claim by a person who claims himself to be an operational creditor. Such claim is to be submitted in Form B specified in the Schedule. Whereas Regulation 8 deals with submission of a claim by a person who claims himself to be a financial creditor. Such a claim is to be submitted in Form C.*
Regulations 8-A, 9 and 9-A deal with other classes of creditors with which we are not concerned here.

***19.** Regulation 12 mandates submission of proof of the claim by the date specified. Whereas, Regulations 13 speaks of verification of claim by the Interim Resolution Professional (IRP) or the the RP, as the case may be. Regulation 14 provides for determination of amount of claim where the amount claimed is not precise.*

***20.** The use of the words "[a] person claiming to be an operational creditor" in the opening part of Regulation 7, and the words "[a] person claiming to be a financial creditor" in Regulation 8, indicate that the category in which the claim is submitted is based on the own understanding of the claimant. Thus, there could be a situation where the claimant, in good faith, may place itself in a category to which it does not belong. However, what is important is, the claim so submitted must be with proof. As to what could form proof of the debt/claim is delineated in sub-regulation (2) of Regulations 7 and 8 of the CIRP Regulations, 2016.*

***21.** Once a claim is submitted with proof under any of the regulations (i.e. Regulations 7, 8, 8-A, 9 and 9-A), the IRP or the RP, as the case may be, as per Regulation 13, has to verify the claim, as on the insolvency commencement date, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it in terms of Regulation 12-A".*

75. Instant Appeals raises an important question in terms as to whether rights arising under a Hire Purchase Agreement executed by a statutory development authority in favour of a Corporate Debtor constitute assets capable of being dealt with under a Resolution Plan notwithstanding that

legal title in the land continues to vest in the statutory authority. The controversy, therefore, in these Appeals is not merely whether the Corporate Debtor owned the land, the fundamental question is whether the Corporate Debtor possessed any subsisting contractual, possessory or developmental rights on the Insolvency Commencement date which could legitimately may constitute part of its insolvency estate and could be possessed by IRP/RP under Sections 18 and 25 of the Code.

76. To recapitulate the facts Uttar Pradesh Awas Evam Vikas Parishad ("the Parishad") which is a statutory authority constituted under the Uttar Pradesh Awas Evam Vikas Parishad Act allotted a parcel of land to the Corporate Debtor under a Hire Purchase Agreement. Under the Agreement, ownership of the land was expressly reserved in favour of the till all the instalments are paid by the CD. The consideration payable for the land was agreed to be discharged in 72 equal monthly instalments. Pending payment of the entire consideration, possession of the land was delivered to the Corporate Debtor and tenancy rights were created in its favour for a period corresponding to the instalment schedule. The Agreement further contemplated execution of a conveyance deed only after payment of the entire consideration and fulfilment of other contractual obligations by the CD. During the subsistence of the Agreement, the Corporate Debtor commenced construction over the land. A substantial residential-commercial project came into existence and one hundred forty-four residential flats and forty-four commercial shops were stated to be allotted to third-party purchasers. The rights of such allottees had, therefore, intervened long before commencement of CIRP. The Corporate Debtor

defaulted in payment of instalments due under the Hire Purchase Agreement. Before initiation of CIRP, officials of the Parishad sealed the project and resumed possession. Significantly, according to the material placed before this Appellate Tribunal, the possession was resumed primarily on the allegation that construction had been raised contrary to sanctioned building plans and applicable building bye-laws. It is also evident that no separate order cancelling the Hire Purchase Agreement or expressly terminating the allotment has been passed by the UP Housing Board. The UPAVP, however, contends that no such order was necessary since Clause 3(o) itself provides automatic cancellation of the hire Purchase Agreement and consequently allotment upon occurrence of three consecutive defaults in payment of instalments.

77. At this juncture we also recall that Insolvency and Bankruptcy Code is not an enactment intended to transfer ownership of assets from one person to another. Its primary object is to preserve the Corporate Debtor as a going concern, maximise the value of its assets and balance the interests of all stakeholders. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531** has held that value maximisation and balancing of stakeholders' interests constitute the fundamental objectives of the Code. It is also a well settled principle that the Code does not create proprietary rights where none existed prior to commencement of CIRP. The Resolution Professional merely steps into the shoes of the Corporate Debtor and can neither acquire nor transfer a better title than what the Corporate Debtor has possessed. It is, therefore,

imperative to ascertain the exact nature of the rights which were vested in the Corporate Debtor on the Insolvency Commencement date.

78. Section 18 and 25 of the Code are as under:

> ***"Section 18: Duties of interim resolution professional****.*
>
> *The interim resolution professional shall perform the following duties, namely: —*
>
> *(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—*
>
> *(i) business operations for the previous two years;*
>
> *(ii) financial and operational payments for the previous two years;*
>
> *(iii) list of assets and liabilities as on the initiation date; and*
>
> *(iv) such other matters as may be specified;*
>
> *(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*
>
> *(c) constitute a committee of creditors;*
>
> *(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
>
> *(e) file information collected with the information utility, if necessary; and*
>
> *(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—*
>
> *(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
>
> *(ii) assets that may or may not be in possession of the corporate debtor;*
>
> *(iii) tangible assets, whether movable or immovable;*
>
> *(iv) intangible assets including intellectual property;*

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation. —For the purposes of this [section], the term "assets" shall not include the following, namely: —

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator".

Section 25: Duties of resolution professional.

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —
(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
(c) raise interim finances subject to the approval of the committee of creditors under section 28;
(d) appoint accountants, legal or other professionals in the manner as specified by Board;
(e) maintain an updated list of claims;
(f) convene and attend all meetings of the committee of creditors;
(g) prepare the information memorandum in accordance with section 29;
[(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor

and such other conditions as may be specified by the Board, to submit a resolution plan or plans.].
(i) present all resolution plans at the meetings of the committee of creditors;
(j) file application for avoidance of transactions in accordance with Chapter III, if any; and
(k) such other actions as may be specified by the Board".

79. Section 18 of the IBC obligates the Interim Resolution Professional to take control and custody of all assets over which the Corporate Debtor has ownership rights. The Explanation to Section 18 assumes significance. It clarifies that assets owned by a third party in possession of the Corporate Debtor under contractual arrangements, including bailment, are excluded. Though the Explanation excludes third-party ownership from the insolvency estate it does not declare that contractual rights of the Corporate Debtor automatically cease to exist. Thus the distinction between ownership of property and contractual rights arising in relation thereto appears to be fundamental for our purpose.

80. Section 25 casts a statutory duty upon the Resolution Professional to preserve and protect the assets of the Corporate Debtor. The expression "assets" occurring in Section 25 cannot be narrowly confined to absolute ownership of immovable property. Modern commercial jurisprudence recognises numerous valuable commercial rights which, although may fall short of ownership, nevertheless constitute economically significant assets. Thus, there may be many rights which may not be associated with the ownership such as leasehold rights, mining leases, development rights, concession agreements, licences coupled with commercial rights, intellectual property, contractual receivables etc. Therefore, the inquiry is not required to be confined only, whether ownership of the property is/was vested in the

Corporate Debtor, but in our opinion the inquiry must be with regard to whether any legally enforceable commercial right(s) existed on the Insolvency Commencement Date in favour of the CD.

81. Section 14 of the Code imposes a moratorium upon institution or continuation of proceedings against the Corporate Debtor after commencement of CIRP. The Moratorium, however, does not revive rights already extinguished before commencement of CIRP. Likewise, Section 14 cannot be invoked to defeat completed acts of lawful termination of any contract preceding CIRP. However, where contractual rights continue to subsist on the Insolvency Commencement date, unilateral interference therewith after commencement of CIRP may come within the four corners of Section 14. Thus, the applicability of Section 14 in instant case would depend upon the fact whether the Hire Purchase Agreement had been validly terminated prior to the commencement of CIRP against CD.

82. Section 30 of the Code empowers the Committee of Creditors to approve the Resolution Plan. Section 31 authorises the Adjudicating Authority to approve such Plan if it satisfies the statutory requirements. The jurisdiction of the Adjudicating Authority while considering approval of the Resolution Plan is undoubtedly circumscribed. However, where implementation of the Resolution Plan necessarily depends upon rights in immovable property belonging to third parties, the Adjudicating Authority cannot shut its eyes to such issues.

83. Perusal of the impugned judgment dated 27.03.2025 would reveal that the Adjudicating Authority has proceeded on the premise that since ownership of the land never vested in the Corporate Debtor, the land could

not form part of the Resolution Plan. We are of the considered view that such narrow formulation of the issue by Ld. Adjudicating Authority was not correct. The issue was not as to whether the land in issue belonged to the Corporate Debtor? The real issue to our understanding was whether the Corporate Debtor possessed any subsisting contractual, possessory or development rights capable of being dealt with under the Resolution Plan within the frame work of the IBC? It is to be recalled that ownership is only one species of proprietary interest. As said earlier Commercial law recognises several lesser interests which possess substantial economic value. Insolvency proceedings routinely involve assignment or continuation of leases, concessions, licences and contractual rights without transferring ownership of the underlying property. Therefore, rejection of a Resolution Plan solely because legal title did not vest in the Corporate Debtor requires closer scrutiny in order to assess as to whether the Hire Purchase Agreement has conferred upon the Corporate Debtor any rights which are of independent commercial value and could be dealt with in the resolution Plan. Therefore, from the material available on record, it is to be inferred whether the Hire Purchase Agreement created only a contractual tenancy or also created proprietary rights akin to leasehold interests, whether Clause 3(o) of the Hire Purchase agreement automatically extinguished every right of the Corporate Debtor upon default of three instalments, whether the Corporate Debtor retained valuable contractual and development rights notwithstanding absence of ownership and also whether such rights, if any was subsisting on the Insolvency Commencement date, could legitimately constitute part of the insolvency estate under Sections 18 and 25 of the Code.

84. Having examined the statutory framework of the Insolvency and Bankruptcy Code, we now proceed to determine the true nature of the rights created in favour of the Corporate Debtor under the Hire Purchase Agreement. The Resolution Professional contends that the rights created under the Agreement are akin to leasehold rights and constitute valuable assets capable of being dealt with under the Resolution Plan. The UPAVP, on the other hand, contends that the Corporate Debtor was merely a contractual tenant whose rights automatically stood extinguished under Clause 3(o) of the hire Purchase agreement upon default in payment of three consecutive instalments. The controversy, therefore, requires an examination pertaining to the nature of "tenancy" under the Hire Purchase Agreement and whether such tenancy is synonymous with a lease contemplated under the Transfer of Property Act, 1882.

85. Section 105 of the Transfer of Property Act defines a lease as a transfer of a right to enjoy immovable property made for a certain time or in perpetuity in consideration of a price paid or promised to be paid. The essential ingredients of a lease are: (i) transfer of an interest in immovable property; (ii) right to exclusive possession; (iii) certain duration; (iv) consideration.

86. A lease thus creates an interest in the immovable property itself, however the Ownership does not pass and it remains with the owner. Nevertheless, the lessee acquires a proprietary interest recognised by law. Such interest is transferable unless restricted by contract or law and is also

heritable and enforceable even against the lessor subject to contractual stipulations.

87. Hon'ble Supreme Court in **2026 INSC 199, CIVIL APPEAL NO. OF 2026, Special Leave Petition (Civil) No. 9558 OF 2023, The General Secretary, Vivekananda Kendra vs Pradeep Kumar Agarwalla and Others**, draws distinction between the lease and licence in following words;

> *"15. The expressions "lease" and "licence" are the subject of reported decisions, and the often-quoted paragraph in **Associated Hotels of India Ltd. v. R.N. Kapoor, AIR 1959 SC 1262** sets out the ingredients of a lease and a licence, as well as the distinction between these two conceptual legal terms. The relevant paragraph is excerpted below:*
>
> *"28. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas Section 52 of the Indian Easements Act defines a licence thus:*
>
> *"Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."*
>
> *Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively*

establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in Errington v. Errington [(1952) I All ER 149, wherein Lord Denning reviewing the case-law on the subject summarizes the result of his discussion thus at p. 155:

xxx xxx xxx

<u>The following propositions may, therefore, be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties — whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.”</u>

(Emphasis Supplied)

*16. Relying on the above reasoning, this Court in **Mrs M.N Clubwala and another v. Fida Hussain Saheb and others, 1965 AIR SC 610** held that the decisive consideration in determining whether an agreement creates the relationship of lessor and lessee or merely that of licensor and licensee is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement.*

*17. In **Annaya Kocha Shetty (Dead) Through LRs v. Laxmi Narayan Satose, Since Deceased Through LRs and others,** 2025 INSC 466, a Bench consisting of both of us, referred to the broad principles with respect to the construction of deeds and tools adopted:*

“17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:

17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.

17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.

17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.”

19. If the words in a contract/deed are clear, there is very little the courts must do in the construction of the contract in determining the *intention of the parties. In furtherance of determining the intention, the deed must be read as a whole to ascertain the true meaning of its clauses, and the words of each clause should be interpreted harmoniously. This intention must be derived directly from the plain and ordinary meaning of the text itself. Furthermore, these words should be understood exactly as the intended parties would commonly use them. The covenants must be applied precisely as written, neither diluted into irrelevance nor stretched beyond their original scope.5 If the construction of the contract/deed, through its words and context, does not provide the court with the parties' intention, the court may have regard to the circumstances surrounding its creation and the subject matter to which it was designed and intended to apply. "*

The true nature of the relationship thus depends upon, the intention of parties; the substance of the agreement; rights created; obligations undertaken; and surrounding circumstances wherein the agreement has been executed. The law in this regard is well settled that nomenclature of the agreement is never conclusive and therefore calling a person "tenant" does not automatically create a tenancy or lease in his favour under Section 105 of the Transfer of Property Act and nature of his rights would have to be assessed in view of the terms and stipulations of the contract.

88. Having carefully examined the Hire Purchase Agreement executed between the parties, we find that the Agreement repeatedly declares that ownership shall continue to vest in the UPAVP till it is divested by conveyance and Conveyance is expressly postponed until payment of the entire consideration by the CD. The Corporate Debtor could neither demand execution of a sale deed before completion of payments nor assert its ownership against the terms of the Agreement. On the other hand, the Agreement conferred substantial rights upon the Corporate Debtor. The CD was put in possession; authorised to undertake construction; permitted to develop the project; entitled to exploit the property commercially; permitted

to induct purchasers subject to contractual conditions and these rights, in our understanding were neither illusory nor insignificant, rather these rights constituted the base upon which the whole project came into existence.

89. One may say that this Hire Purchase Agreement executed between UPAVP and CD amounts to lease, however the Agreement does not satisfy the necessary ingredients of lease as provided under Section 105 of the Transfer of property Act as the purpose of the Agreement titled as Hire Purchase agreement, was not merely to confer possession on the CD and in fact it was to facilitate eventual transfer of ownership after payment of the entire consideration. Thus, delivery of possession was only one component of a broad commercial transaction. It is also significant to mention that by this agreement the CD was also permitted to create third party rights in the land on which the substantial structure is reported to have already been constructed.

90. Keeping in view the peculiar features the Agreement, it appears to be a composite arrangement having features of licence, contractual tenancy, instalment sale, development agreement and also of conveyance. Such an arrangement could not be mechanically termed an ordinary lease. The Agreement, in our considered opinion can also not be reduced to a bare licence as a licence ordinarily creates no interest in the property. The present Agreement goes far beyond a licence as in view the terms and condition of this agreement the Corporate Debtor was to remain in exclusive possession, invested capital, permitted to construct permanent structures and to create third-party interests and surprisingly undertook commercial

development over many years. Such rights are inconsistent with the agreement of licence. Therefore, the agreement in our understanding is neither a simple lease; nor a mere licence; nor an outright sale and appears to be a hire-purchase development agreement under which ownership remains with the UPAVP, while possession and development rights were conferred upon the allottee subject to fulfilment of contractual obligations including payment of value of land. In view of the various clauses of the agreement the Corporate Debtor before us acquired valuable contractual rights, including (a) right to remain in possession;(b) right to construct; (c) right to commercially exploit the project; (d) right to obtain conveyance upon payment; (e) right to transfer units constructed over the land subject to the provisions of the agreement and these rights undoubtedly possess economic value.

91. The next question is whether the aforesaid rights existed in favour of the CD, may come under the term "assets" used under the IBC.

92. In **Victory Iron Works Ltd. Vs. Jitendra Lohia and Ors., MANU/SC/0229/2023** Hon'ble Supreme Court while considering the nature of leasehold rights opined as under: –

> *"19. Section 3(27) of the IBC defines the word "property" as follows:*
>
> *3. Definitions. – – In this Code, unless the context otherwise requires,*
>
> *— xxx xxx xxx*
>
> *(27) "property" includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including*

present or future or vested or contingent interest arising out of, or incidental to, property. But the word "asset" is not defined either in Section 3 or in Section 5 or in Section 79 of the Code, though Section 79(14) defines the expression "excluded assets".

22. It may be noticed from Sections 18 and 25 that the word "asset" and not the word "property" is what is used in these provisions, though the word "property" is defined in Section 3(27). But the said word "asset used in Sections 18 and 25 is not defined in the IBC. We have seen from Section 3(37) that it makes a reference to seven different enactments, to which one can take recourse, for finding the definition of words and expressions used but not defined in the Code. Therefore, let us find out whether those seven enactments will be of any assistance to find out the meaning of the word "asset" used, but not defined in IBC.

26. As we have pointed out earlier, the word "asset is not defined, either in IBC or in any of the seven enactments referred to in Section 3(37) of the Code. But the word "asset" is defined in Section 102(2) of the Income Tax Act, 1961 to include "property or right of any kind". Though Section 102 applies as such to Chapter X-A of the Income Tax Act, the definition throws light on the fact that property or right of any kind is considered to be an asset."

93. Thereafter Hon'ble Supreme Court after considering the factual matrix of that case came to a conclusion that by executing lease of land in favour of Corporate Debtor a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question and goes on to held as under: –

"*35. From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become* *the owner of the property in dispute. Therefore, the development rights created in favour of the Corporate Debtor constitute "property" within the meaning of the expression Under Section 3(27) of IBC. At the cost of repetition, it must be recapitulated that the definition of the expression "property" Under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest arising out of or incidental to property". Since the expression "asset in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor has over the property in question would constitute "asset" within the meaning of Section 18(f) and Section 25(2)(a) of IBC.*

36. In Sushil Kumar Agarwal (supra), this Court brought out the distinction between different types of Development Agreements, with particular reference to Section 14(3)(c) of the Specific Relief Act, 1963. After summarizing the different types of Development Agreements in paragraph 17 of the decision, this Court held in paragraph 19 as follows:

> *19. ...An essential incident of ownership of land is the right to exploit the development potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property...*

37. Therefore, it is not very difficult to conclude, that a bundle of rights and interests were created in favour of the Corporate Debtor, by a series of documents such as (i) the

MoU dated 24.01.2008; (ii) the shareholders agreement dated 24.01.2008; (iii) the flow of the consideration from the Corporate Debtor to the UCO Bank and to Energy Properties; (iv) the Development Agreement dated 16.06.2008; (v) the Memorandum Recording Possession dated 02.03.2010 executed by the original shareholders of Energy Properties; (vi) the Memorandum Recording Possession dated 24.06.2010 executed by Energy Properties in favour of the Corporate Debtor; and (vii) the Leave and License Agreement primarily executed by the Corporate Debtor in favour of Victory, which was merely confirmed by Energy Properties as a confirming party. Some of these bundle of rights and interests, partake the character and shade of ownership rights. Therefore, these rights and interests in the immovable property are definitely liable to be included by the Resolution Professional in the Information Memorandum and the Resolution Professional is duty bound Under Section 25(2)(a) to take custody and control of the same."

94. This Appellate tribunal in **Company Appeal (AT) (Insolvency) No. 71 of 2024, Shristi Infrastructure Development Corporation Ltd. vs. Avishek Gupta, Resolution Professional [Sarga Hotel Pvt. Ltd.] & Anr., decided on 4th April, 2024** held as under:

"17. The submission of the Appellant is that as per explanation (a), assets shall not include assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangements. The expression 'asset' has not been defined in the IBC. However, IBC defines expression 'property' in Section 3(27) in following manner: –

"3. Definition. (27) "property" includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property;"

18. Corporate Debtor claims leasehold rights by virtue of Registered Lease Deed dated 31.03.2007. Expression 'lease' has been defined in Section 105 of the Transfer of Property Act, 1882, which is as follows: –

"105. Lease defined. — A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

19. As per the above definition, lease of the immoveable property is a transfer of a right to enjoy such property, made for a certain express or implied, or in perpetuity, in consideration of a price paid or promised. The present is a case where on payment of monthly rent as reserved in the lease deed, Corporate Debtor has given possession and right to erect building of the land. Thus, by lease, Appellant has acquired a right to enjoy the property. Leasehold rights which has been granted to the Corporate Debtor is property within the meaning of Section 3(27) and has to be treated as an asset for the purposes of Section 18(1)(f). Much reliance has been placed by the Appellant on explanation (a) and what is sought to be contended is that the land under the lease is owned by the Appellant, hence, the possession of the said land ought not to have been taken by the Resolution Professional. The expression 'assets' occurring in explanation (a) has wide meaning which meaning encompasses itself the immoveable land as well as leasehold rights.

20. The leasehold rights which are owned by the Corporate Debtor consists of right to enjoy the immoveable property by virtue of Registered Lease Deed dated 31.03.2007. Explanation (a) does not come into way of the Corporate Debtor in enjoying the leasehold rights i.e. enjoyment of the property by virtue of Registered Lease Deed. We, thus, do not find any substance in the submission of the Appellant that the leasehold rights should be excluded from the assets of the corporate debtor".

95. Therefore, contractual developmental rights are capable of constituting assets for the purposes of Sections 18 and 25 of the Code. However, Resolution Professional of the CD cannot claim greater rights than those possessed by the Corporate Debtor. If those contractual rights, as claimed by the U.P. Housing Board had already stood lawfully terminated by not payment of three consecutive instalments, prior to commencement of CIRP, no Resolution Plan can revive them. Contrary to this if these rights continued to subsist on the Insolvency Commencement Date, they constitute Assets which the Resolution Professional is duty-bound to preserve. Thus the important question is whether Clause 3(o) of the Hire Purchase Agreement automatically extinguishes all contractual and development rights of the CD before commencement of CIRP?

96. Here we would like to clarify that, prima facie, we are unable to accept the submission of the Resolution Professional that the Corporate Debtor acquired leasehold rights in its strict legal sense. Equally, we are unable to accept the submission of the U.P. Housing Board that the Corporate Debtor do not possess any legally protectable interest whatsoever. In our considered

opinion, the Corporate Debtor possessed valuable contractual and development rights, though not ownership or a conventional leasehold estate.

97. It is contended by UPAVP that upon default in payment of three consecutive instalments, the tenancy automatically stood cancelled by operation of the contract itself. Consequently, according to the UPAVP, no contractual or proprietary right has survived in favour of the Corporate Debtor on the Insolvency Commencement date. The Resolution Professional, on the other hand, submits that Clause 3(o) cannot be read in isolation and must be construed harmoniously with the remaining provisions of the Agreement. The case of the Resolution Professional further is that the conduct of the UPAVP itself demonstrates that the contractual relationship was never treated by it as finally terminated.

98. It is well settled that a commercial contract must be construed as a whole. No clause of a commercial contract can be read and interpreted in isolation so as to render the remaining clauses/provisions redundant. It is also settled principle that where two constructions are reasonably possible, the construction which gives effect to all provisions of the contract must ordinarily be adopted over one which renders any provision as useless. An approach which is harmonises to all clauses of the agreement rendering the commercial agreement as workable must be adopted.

99. Here we recall that as per the admitted case of UPAVP, they have proceeded under Section 69 of Uttar Pradesh Awas Vikas Adhiniyam 1965 (Act No.1 of 1966). While the documents provided by them at Appellate

stage would reveal that the property has not been sealed due to non-payment of instalments and for this purpose (non-payment of instalment) 'Recovery Certificate' was issued against the CD. It is evident that the property has been sealed for raising illegal and unauthorised constructions made by the CD, in violation of approved plan under relevant provisions of the Uttar Pradesh Urban Planning and development Act,1973. It is also reflected that no proceedings under Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972, which has repealed Section 69 of the UPAWPA, has been filed by the UPAVP for eviction of the CD from the property in question. Thus the contract between the parties may not be deemed to have been terminated. Even if possession was resumed by the Board under municipal or statutory powers for regulatory purposes, such action cannot automatically be equated with determination/termination of contract.

100. In our considered opinion eviction from immovable property cannot ordinarily be accomplished merely because a contractual clause exists in a contract. The lessor must proceed in accordance with the governing statute and principles of natural justice unless specifically excluded by law. The subsequent conduct of the parties also furnishes a valuable guide to determine whether a contract has been deemed to have actually terminated. It is an admitted fact that the UPAVP filed its claim before the Resolution Professional and that the claim was not confined to damages alone rather, it included, balance consideration of the plot; outstanding instalments; interest; compounding charges; other contractual dues. This conduct of the UPAVP is of considerable significance. If the contractual relationship, as

argued by UPAVP had completely perished long before commencement of CIRP, one would ordinarily expect the claim to be confined to consequences flowing from termination of the contract. Instead, the U.P. Housing Board continued to quantify and claim the balance consideration payable under the Hire Purchase Agreement itself. The claim for the compounding charges, claimed by the UPAVP is also significant. Compounding presupposes that the construction which is being termed as unauthorised, is capable of regularisation. A claim seeking compounding charges is, prima facie, inconsistent with claim of the UPAVP that the project itself had become legally non-existent.

101. Learned counsel for the Resolution Professional submits that filing of the proof of claim amounted to affirmation of the Hire Purchase Agreement. We are unable to accept such a broad proposition as Clause 3(o) itself provides for recovery of dues notwithstanding deemed cancellation of tenancy. Merely because the U.P. Housing Board submitted its claim before the Resolution Professional cannot, by itself, amount to extinguishment of contractual rights arising under Clause 3(o). Participation in CIRP is a statutory remedy available to every creditor. Exercise of such remedy cannot automatically operate as waiver but the contents of the claim filed by the UPAVP are relevant. A claim demanding the balance consideration and compounding charges constitutes significant evidence regarding how the UPAVP itself understood the continuing legal relationship between the parties. In our considered understanding once the UPAVP elected to participate in the insolvency process as a creditor, its claim required consideration in accordance with the provisions of the Code. Thus the

Resolution Professional was justified in considering the U.P. Housing Board as a creditor of the CD for the purposes of formulation of the Resolution Plan and we do not find any illegality in the same.

102. The crucial question, therefore, is not whether Clause 3(o) has authorised UPAVP to cancel the agreement, the question is whether cancellation had attained legal finality before the Insolvency commencement date. It appears to be an admitted situation in the present case that no formal order either for cancellation of agreement or determining the allotment has been passed by the Board and the sealing/possession appears to have been resumed principally for building construction violations.

103. These circumstances create serious doubt in our mind as to whether every contractual right of the CD stood extinguished before commencement of CIRP. Even for the sake of argument, it is assumed that tenancy stood determined under Clause 3(o) of the agreement, another question still survives pertaining to the fact whether the determination also extinguishes every accrued contractual and development right arising out of a substantially completed housing project involving 144 residential allottees and 44 commercial shop purchasers? The Agreement is silent on this aspect. It does not provide that how third-party rights lawfully created before cancellation of agreement and commencement of the CIRP shall automatically become void nor does it provide that completed construction shall be deemed to have never existed. Such questions, in our considered view require examination not merely under the contract but also in the light of the Insolvency and Bankruptcy Code and the law declared by the Hon'ble Supreme Court and also by this Appellate Tribunal.

104. Learned Senior Counsel appearing for the UPAVP has placed considerable reliance upon the judgment of the Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai v. Abhilash Lal (Supra)**. Since the decision constitutes one of the principal authorities governing the controversy, it becomes necessary to examine its ratio in some detail. In the facts of this case the Seven Hills Health Care (P) Ltd. (Seven Hills/CD) agreed to develop some land parcels owned by Municipal Corporation Greater Mumbai (MCGM) by constructing a 1500 bed hospital and for this purpose the lease of the land was to be made in favour of the Seven Hills for thirty years. The construction was to be completed within 60 months and lease deed is to be executed within one month of completion of construction. The sixty-month period expired and construction was not completed and lease deed was not executed. Further, Seven Hills had to pay lease rent at the annual rent of Rs 10,41,04,000. MCGM alleges that there has been defaults in these payments and issued a show cause notice proposing termination of contract as the Seven Hills owed MCGM an amount of Rs 76,05,07,780. The Seven Hills borrowed money by mortgaging said lands, however was not able to pay leading to the commencement of CIRP and a resolution plan was ultimately submitted by Shetty's New medical centre (SNMC) and after revision was approved by COC. The Hon'ble Supreme Court held as under:

> ***"32.*** *A cumulative reading of the stipulations reveals that the contract/agreement contemplates that the lease deed was to be executed after the completion of the project. The contract reveals that:*
>
> *(a) the project period was for 60 months starting from the date excluding the monsoon period;*

(b) by Clauses 5 and 17, Seven Hills could mortgage the property for securing advances from financial institutions for the construction of the project and thereafter towards its working. Such mortgage/charge or interest was subject to approval by MCGM.

In the event the contract was to be terminated, it was agreed that MCGM would not in any manner be liable towards the mortgaged amount and all its rights and ownership would continue to vest in it free from encumbrances (Clause 17).

33. *The show-cause notice in this case preceded admission of the insolvency resolution process. In view of the clear conditions stipulated in the contract, MCGM reserved all its rights and its properties could not have therefore, in any manner, been affected by the resolution plan. Equally in the opinion of this Court, the adjudicating authority could not have approved the plan which implicates the assets of MCGM especially when SevenHills had not fulfilled its obligations under the contract.*

35. *Section 92 unequivocally prescribes the method whereby MCGM's properties can be dealt with through lease or by way of creation of any other interest. The only mode permitted is through prior permission of the corporation. It is a matter of record that in the present case, the resolution plan was never approved by the corporation and that it was put to vote. The contesting parties, including the RP and CoC were unable to point out to anything on the record to establish that a valid permission contemplated by Section 92 was ever obtained with regard to the proposal in the resolution plan. The proposal was approved by NCLT and MCGM's appeal was rejected by Nclat. The proposal could be approved only to the extent it did not result in encumbering the land belonging to MCGM.*

39. *The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in Nazir Ahmad v. King Emperor has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all.*

47. *In the opinion of this Court, Section 238 cannot be read as overriding MCGM's right—indeed its public duty—to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92-A of the MMC Act.*

This Court is of the opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like MCGM is involved. Therefore, in the absence of approval in terms of Sections 92 and 92-A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question, which undeniably are public properties. The resolution plan, therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM)".

105. The Hon'ble Supreme Court held that neither the Resolution Professional nor the Adjudicating Authority could compel the Municipal Corporation to renew a lease contrary to law. It was further held that the Insolvency and Bankruptcy Code does not create proprietary rights in favour of the Corporate Debtor. The Resolution Professional merely represents the Corporate Debtor and he cannot claim a better title than what the Corporate Debtor itself possessed. The Court further observed that NCLT cannot exercise appellate jurisdiction over administrative decisions of statutory authorities where such decisions are taken in exercise of public law powers.

106. Ld. Senior Counsel appearing for the UPAVP submits that **Abhilash Lal** completely concludes the present controversy. We, however, are unable to accept such proposition. Every precedent must be understood in the factual context in which it was rendered. Hon'ble Supreme Court itself has

repeatedly cautioned that a judgment is an authority only for what it actually decides and is not for every proposition which may logically flow therefrom. The essential principle emerging from Abhilash Lal is that the IBC cannot be employed to divest a statutory authority of ownership or compel renewal or creation of proprietary rights contrary to the governing statute or contract. The decision does not lay down that every contractual right connected with immovable property automatically ceases to exist merely because ownership remains vested in another, nor does it hold that every Resolution Plan involving third-party land is legally impermissible.

107. The next decision requiring consideration is **Embassy Property Developments Pvt. Ltd. v. State of Karnataka (supra).** In that case, the dispute concerning cancellation/renewal of a mining lease by the State Government was in issue. The Resolution Professional sought intervention of the NCLT to renew the lease and the Tribunal issued such a direction to the State of Karnataka. In this backdrop of facts Hon'ble Supreme Court held that where the dispute concerns exercise of sovereign or statutory powers, NCLT cannot assume the role of a constitutional court. This decision propounds that questions involving exercise of sovereign statutory powers ordinarily fall outside the limited jurisdiction conferred upon the Adjudicating Authority under the IBC. However, the Hon'ble Supreme Court simultaneously recognised that contractual matters intimately connected with CIRP may fall within the jurisdiction of NCLT.

108. This Appellate Tribunal in **BSE Ltd. vs. Avil Menezes, IPR of Future Corporate Pvt. Ltd., CA (AT) (Ins) No. 1786 of 2025 and 1862 of 2024 decided on 24.03.2026** has held in para no. 71 to 74 as under:

> *"71. Perusal of Section 60(5) of the Code will reveal that it provides power to the Adjudicating Authority which can be invoked to entertain or dispose of any claim made by or against the corporate debtor or corporate person and also any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Section 238 of the Code creates an overriding effect which provides that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. We are of the firm view that* ***Embassy Property Developments (P) Ltd. and Gujrat Urja Vikas Nigam (Supra)*** *are the sheet anchor so far as the determination of the jurisdiction of NCLT is concerned. It has been held in* ***Gujrat Urja Vikas Nigam (Supra)*** *that the non-obstante clause in Section 60(5) is designed for a different purpose to ensure that the NCLT alone has the jurisdiction when it comes to the applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings. It is held that the NCLT has the jurisdiction to adjudicate such disputes, which arise solely from or which relate to the insolvency of the corporate debtor but it has also been cautioned that while doing so, the Tribunal may not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor and nexus with the insolvency of the corporate debtor must exist.*
>
> *72. Since much emphasis has been given by Ld. Counsels for the Appellant and Respondent No.3 on the two cases (****Embassy Property Developments (P) Ltd. and Gujrat Urja Vikas Nigam (Supra)****. It is pertinent to mention that in the facts of the case of* ***Gujrat Urja Vikas Nigam (Supra)*** *PPA was terminated solely on the ground of insolvency since the event of default contemplated was the commencement of insolvency proceedings against the corporate debtor. In absence of the insolvency of the corporate debtor, there would be no ground to terminate the PPA. The termination was not independent of the*

insolvency, therefore, the dispute in that case was solely arising out of and relates to the insolvency of the corporate debtor and it was thus held that the RP can approach the NCLT for adjudication of the dispute which was related to the insolvency resolution.

73. In the case of ***Embassy Property Developments Pvt. Ltd. (Supra)****, the corporate debtor was holding a mining lease granted by the Government of Karnataka which was to expire on 25.05.2018. A notice for premature termination of the lease was issued on 09.08.2017, on the allegation of violation of the terms and conditions of the lease deed, no order of termination had been passed till the date of initiation of the CIRP. The IRP wrote many letters to various authorities informing them of the commencement of CIRP. and also for seeking the benefit of deemed extension of the lease in terms of Section 8-A (6) of the mines and minerals (development and regulation) Act, 1957. RP also filed a writ petition seeking a declaration that the mining lease should be deemed to be valid up to 31.03.2020 but during the pendency of the writ petition, Government of Karnataka rejected the proposal for deemed extension. The RP thereafter moved an application before the NCLT for setting aside the order of the Government of Karnataka and seeking a declaration that the lease should be deemed to be valid up to 31.03.2020 which was allowed by the NCLT and ultimately the Adjudicating Authority directed the Government of Karnataka to execute the supplement lease deed. In the background of these facts, the Hon'ble Supreme Court held that in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot through the RP, take a bypass and approach NCLT for the enforcement of such a right. Similarly, in the case of* ***Tata Consultancy Service Limited (Supra)*** *the Hon'ble Supreme Court has reiterated that the RP can approach the NCLT for adjudication of disputes which relate to the insolvency resolution process, but when the dispute arises dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority, even at an interim stage.*

74. Having considered the aforesaid legal position with regard to the jurisdiction of the NCLT as provided under Section 60 (5) of the Code and keeping in view Section 238 of the Code wherein a specific provision has been made that in case of any conflict with the IBC with any other law, the provisions of the IBC would be having overriding *effect and notwithstanding anything contained in any other law for the time being enforce the NCLT shall have jurisdiction to entertain or dispose of any question of fact or law arising out of or in relation to the Insolvency Resolution or Liquidation Proceedings of the Corporate Debtor or Corporate Person under this Code, in our, considered opinion, the issue of de-freezing of the Demat account of the CD, wherein the shares, which are admittedly the property of the CD, were lying, was/is a question of fact arising out of and in relation to the insolvency resolution and liquidation proceedings of the corporate debtors, as provided under Section 60 (5) (c) of the Code".*

109. The present controversy is not one of involving challenge to legislative or sovereign action. The dispute essentially concerns interpretation of a commercial contract executed by the UPAVP and its legal consequences under the Insolvency and Bankruptcy Code. Therefore, **Embassy Property** does not oust the jurisdiction of the Adjudicating Authority. It merely cautions that insolvency jurisdiction cannot override public law.

110. The next case is **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) ibclaw.in 44 SC** which in our considered opinion assumes considerable importance because it explains the distinction between contractual rights of the Corporate Debtor and proprietary rights belonging to third parties. The dispute before the Hon'ble Supreme Court was pertaining to termination of a Power Purchase Agreement after commencement of CIRP. The Court recognised that certain contracts constitute the lifeline of the Corporate Debtor's business. If such contracts are arbitrarily terminated solely because of insolvency, the objective of resolution may itself become impossible. Thus the Hon'ble Supreme Court recognised that valuable contractual rights constitute an integral part of the

insolvency estate and such rights deserve protection where their termination is intrinsically connected with the insolvency process.

111. In **Gujarat Urja**, the issue was related to continuation of a commercial contract forming the foundation of the Corporate Debtor's business. Thus, Hon'ble Supreme Court recognised the contractual rights stand on a different footing from proprietary rights, highlighting that the NCLT is a statutory body whose powers are conferred by law, specifically the IBC and Section 60(5)(c) of the IBC must be interpreted in light of the legislative intent to consolidate insolvency law and avoid multiplicity of fora, as reflected in the Statement of Objects and Reasons and judicial precedents. While discussing judicial precedents (e.g., *Innoventive Industries Ltd. v. ICICI Bank*, *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta*) it is opined that they confirm that Section 60(5) vests exclusive jurisdiction in the NCLT for applications and proceedings by or against a corporate debtor under the IBC and that the NCLT has jurisdiction to adjudicate disputes arising solely from or relating to the insolvency of the corporate debtor, however, it must not usurp the jurisdiction of other fora for disputes not so related and a nexus with insolvency is required. The NCLT's jurisdiction is supervisory and process-driven, not unlimited and since the PPA was terminated solely on the ground of insolvency, the dispute arises out of and relates to the insolvency process, and the NCLT has jurisdiction under Section 60(5)(c). Section 238 of the IBC provides that the IBC overrides other laws and instruments having effect by virtue of law; the PPA is such an instrument, and its inconsistent provisions are overridden. It is held that NCLT's

jurisdiction is properly invoked here because the termination of the PPA was sought solely on the ground of the CIRP.

112. Coming to facts of the present case it is not disputed that ownership of the land never vested in the Corporate Debtor. Consequently, no Resolution Plan can proceed on the assumption that title stood transferred to the CD. Equally, it is undisputed that the Corporate Debtor had, over many years, constructed a substantial commercial/housing project with the implied permission of the UPAVP and had created rights in favour of 144 residential allottees and 44 commercial purchasers. Such commercial and contractual rights cannot be ignored merely because the title in the land remained vested in UPAVP.

113. The next decision requiring careful consideration is the judgment of the Hon'ble Supreme Court passed in **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni (supra)**. The dispute in this case before the Hon'ble Supreme Court arose from allotment of land by the Greater Noida Industrial Development Authority. The allottee committed defaults in payment of instalments. CIRP commenced against the allottee. The Resolution Plan proposed treatment of the Authority's dues in a manner inconsistent with the terms governing the allotment. Hon'ble Supreme Court examined the legal character of the rights created under the lease deed and the statutory regulations governing the Authority and propounded as under:

> ***"54.*** *In our view the resolution plan did not meet the requirements of Section 30(2) IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following reasons:*

54.1. *The resolution plan disclosed that the appellant did not submit its claim, when the unrebutted case of the appellant had been that it had submitted its claim with proof on 30-1-2020 for a sum of Rs 43,40,31,951. No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different form. As already discussed above, in our view the form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in acknowledging the claim made but also in mentioning the correct figure of the amount due and payable. According to the resolution plan, the amount outstanding was Rs 13,47,40,819 whereas, according to the appellant, the amount due and for which claim was made was Rs 43,40,31,951. This omission or error, as the case may be, in our view, materially affected the resolution plan as it was a vital information on which there ought to have been application of mind. Withholding the information adversely affected the interest of the appellant because, firstly, it affected its right of being served notice of the meeting of the CoC, available under Section 24(3)(c) IBC to an operational creditor with aggregate dues of not less than ten per cent of the debt and, secondly, in the proposed plan, outlay for the appellant got reduced, being a percentage of the dues payable. In our view, for the reasons above, the resolution plan stood vitiated. However, neither NCLT nor Nclat addressed itself on the aforesaid aspects which render their orders vulnerable and amenable to judicial review.*

54.2. *The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations, 2016, a resolution plan must provide for the measures, as may be necessary, for insolvency resolution of the CD for maximisation of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per Explanation 1, distribution under clause (b) of sub-section (2) of Section 30 must be fair and equitable to each class of creditors. Non-placement of the appellant in the class of secured creditors did affect its interest. However, neither NCLT* *nor Nclat noticed this anomaly in the plan, which vitiates their order.*

54.3. *Under Regulation 38(3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that:*

(a) it is feasible and viable; and

(b) it has provisions for approvals required and the timeline for the same.

In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the CoC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects".

114. It is important to recall that in this case Hon'ble Supreme Court was not called upon to decide whether a Corporate Debtor possessing subsisting contractual development rights in a substantially completed housing project continues to possess "assets" within Sections 18 and 25 of the Code. Hon'ble Supreme Court also did not examine a case where construction had already been almost completed, hundreds of third-party purchasers had acquired rights and the statutory authority itself had lodged a comprehensive financial claim in CIRP, where in the compounding charges were also claimed and the agreement and allotment was not cancelled. Therefore, while **Prabhjit Singh Soni (supra)** undoubtedly governs proprietary rights, it does not completely cover the present controversy.

115. One of the main submissions advanced by Ld. Counsel for the Resolution Professional is that the Resolution Plan does not seek transfer of ownership. We have already carefully examined this submission. As stated earlier ownership of land and contractual rights arising from development of that land are not identical legal concepts. A developer may possess valuable commercial rights although title remains vested elsewhere. Such distinction is recognised throughout commercial jurisprudence. Hon'ble Supreme Court in **Prabhjit Singh Soni (supra)** did not hold that every contractual right connected with public land automatically perishes upon insolvency, what the Court prohibited was compulsory divesting of statutory ownership. Thus in our considered opinion if contractual rights otherwise survive under the governing agreement, they may still require consideration within CIRP framework.

116. As stated earlier, prior to commencement of the Corporate Insolvency Resolution Process, the Corporate Debtor had developed substantial housing project and had allotted 144 residential flats and 44 commercial shops to third-party purchasers. Any interpretation of the Hire Purchase Agreement which results in automatic rejection of the entire project, without examining the surviving contractual rights, would directly affect the statutory rights conferred upon the allottees. These allottees are not strangers to the insolvency proceedings. Following the amendment introduced by the Insolvency and Bankruptcy Code in year 2018, allottees in real estate projects stand recognised as financial creditors in a class. The constitutional validity of such recognition has also been upheld by the Hon'ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India,**

(2019) 8 SCC 416. The amount raised from allottees have the commercial effect of borrowing and that homebuyers constitute an important class of stakeholders whose interests deserve protection under the Code. Therefore, while their rights cannot override the proprietary rights of the UPAVP, they are relevant while considering whether a viable Resolution Plan ought to receive consideration.

117. Contrary to this sympathy for homebuyers cannot justify disregard of proprietary rights belongs to the UPAVP. The duty of the Court is to balance interests of both within IBC framework. We are unable to accept the submission that the existence of homebuyers by itself perfects the title in favour of the Corporate Debtor. A purchaser ordinarily acquires no better title than what is possessed by his vendor. Consequently, if the Corporate Debtor itself lacked ownership, the allottees cannot independently claim ownership against the UPAVP merely because units were allotted to them. However, the converse of it is equally true. The existence of hundreds of allottees fundamentally alters the commercial context. The legislative intent is to preserve real estate projects wherever it is legally possible. Therefore, interpretation of contractual clauses must also bear in mind this objective.

118. We at this stage again recall that the UPAVP filed its claim before the Resolution Professional comprising of balance consideration of the land, instalments, interest and compounding charges. We have already held that the filing of the claim by itself does not amount to waiver, however filing of claim for compounding charges presupposes that the existing construction was capable of consideration under the applicable statutory framework for

compounding. Similarly, a claim for balance consideration indicates that obligations flowing from the original contractual arrangement continued to be asserted. These circumstances become relevant while deciding whether every contractual relationship had finally disappeared before CIRP. Having harmoniously considered **Abhilash Lal, Embassy Property, Gujarat Urja and Prabhjit Singh Soni (Supra)** it emerges that (i) Ownership of the land always remained vested in the UPAVP (ii) No Resolution Plan can compel transfer of ownership contrary to the Hire Purchase Agreement. (iii) The Resolution Professional cannot acquire a superior title. (iv) However, contractual and development rights, if subsisting on the Insolvency Commencement Date, require independent examination and (v) the compounding of the illegal construction is within the statutory powers conferred on the UPAVP and the Resolution professional in view of the ratio propounded in Embassy Properties cannot by pass the statutory authority who would be alone competent to compound the illegal/ unauthorised construction made by the CD.

119. Learned Senior Counsel appearing for the RP has also placed substantial reliance upon the judgment of this Appellate Tribunal in **U.P. Awas Evam Vikas Parishad v. JNC Construction Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 855 of 2020, decided on 04.04.2022**.

120. Learned Senior Counsel appearing for the UPAVP submits that the aforesaid judgment has been set aside by the Hon'ble Supreme Court vide order dated 24.07.2024 passed by the Hon'ble Supreme Court in Civil

Appeal No. 5767of 2022. Consequently, it is submitted that **JNC Construction** can no longer be treated as laying down the correct law.

121. We have perused the order dated 24.07.2024 passed by the Hon'ble Supreme Court in Civil Appeal No. 5767of 2022 whereby the judgment dated 04.04.2022 passed by this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 855 of 2020 has been set aside. The said judgment passed by Hon'ble Supreme Court is placed below;

> *"Our attention is drawn to the judgment dated 12.02.2024 passed in Civil Appeal Nos.7590-7591 of 2023, titled "Greater Noida Industrial Development Authority v. Prabhjit Singh Soni and Another*
>
> *In view of the said judgment, the order dated 04.08.2020 passed by the National Company Law Appellate Tribunal, approving the resolution plan, has been set aside. The resolution plan has been sent back to the Committee of Creditors for re-submission after satisfying the parameters set-out in the Insolvency and Bankruptcy Code, 2016.*
>
> *The appeal is allowed and disposed of in terms of the aforesaid judgment dated 12.02.2024".*

Thus having been set aside by the Hon'ble Supreme Court, the judgment passed by this Appellate Tribunal in **JNC Construction Pvt. Ltd.** may not be having precedential value.

122. But in our considered opinion by the discussion held so far it emerges that (a) Ownership of the land remains with the statutory authority and cannot be divested through a Resolution Plan. This is the binding ratio of **Prabhjit Singh Soni**. (b) Contractual and development rights, if subsisting

on the Insolvency Commencement Date, may nevertheless constitute assets capable of examination under Sections 18 and 25 of the IBC. (c) The Resolution Professional can never claim a higher right than what the Corporate Debtor itself possessed (d) Whether such contractual rights survived depends upon the terms of the agreement and the facts of each case. (e) The RP could not bypass the statutory provisions governed by the public law and the compounding of illegal constructions is in the exclusive domain of the Housing Board, in view of the binding precedent of **Embassy properties (supra).**

123. A copy of the Resolution Plan which has not been approved by Ld. Adjudicating authority has been placed on record by the RP and we notice that RP has admitted claim of one Financial Creditor namely Omkara Assets Reconstruction Private Ltd. for Rs 32,15,72,653 and 153 claims of Financial Creditors in Class amounting to Rs 78,26,16,253 totalling all the admitted claims as of Rs 1,10,41,88,906/-.It is also reflected that the structural part of the construction is stated to be complete and only finishing work has remained. We also notice that the claim filed by the U.P. Housing Board for Rs 1,39,47,89,026 was admitted and in the resolution Plan Rs 20,00,00,000 has been proposed for it. Rs 36,85,77,485 are shown to be receivables from real estate allottees. Significantly clause 8.7.2.1 of the Resolution plan will reveal that the liquidation value of the creditors other than financial creditors has been assessed as NIL. Rs. 20,00,00,00 has been proposed for UPAVP and other creditors of this category. The note appended with clause 8.7.2.3 would reveal that Rs. 20 Crore proposed for U.P. Housing Board shall be considered as Rs 10,00,00,000 towards the full and

final payment for transfer of land in favour of the CD and remaining Rs. 10,00,00,000 for approval of revised building map with FAR up to 2.5 along with other requisite approval. It is clarified that this amount of Rs. 20 Crore would be treated as full and final payment of all dues for all the charges/ payments due.

124. Perusal of Resolution Plan would further reveal that after acceptance of the plan by Ld. Adjudicating Authority it cannot levy any penalty or charges including compounding fees and U.P. Housing Board shall approve the drawing as per the existing construction without any extra charges. Validity of all approvals would be deemed to have extended till the completion of the project and also that U.P. Housing Board shall issue permission to mortgage the project land as and when required by the CD and the project would be de sealed. In the time line provided for payment to U.P. Housing Board, Rs. 10 Crore would be given at the time of execution of sale deed in favour of the CD.

125. Thus it is evident that the land owned by the UPAVP has been considered by the COC as the land owned by the CD, instead of the contractual rights which have been created in favour of the CD. It is an admitted fact that the CD had not acquired any title or ownership of the land on which the project has been constructed and the same could only be acquired after payment of instalments along with the interest as provided in various clauses of the Hire Purchase Agreement. By the proposed provisions in the plan the U.P. Housing Board was restrained to charge any compounding fee and significantly to pass/ approve map as per the existing

construction, which has been constructed in utter violation of approved map. We emphasise that insolvency jurisprudence cannot become an instrument for validating illegal constructions or defeating statutory town planning laws, unless the same could be legally compounded by the appropriate authority. If the project suffers from violations incapable of regularisation / Compounding under the governing statute, no Resolution Plan can compel the UPAVP to compound such violations. Conversely, where the governing statute itself contemplates compounding or regularisation upon satisfaction of prescribed conditions, the mere existence of CIRP cannot deprive the Resolution Applicant of seeking such statutory remedies. It is to be clarified that once the UPAVP elected to participate in the insolvency process as a creditor, by submitting its claim, the claim require consideration in accordance with the provisions of the Code, which appears to have been considered, however this does not mean that its ownership would stand transferred to the CD.

126. From the foregoing discussion we conclude that the Hire Purchase Agreement did not create ownership in favour of the Corporate Debtor. The Corporate Debtor acquired contractual possession coupled with development rights and such contractual and development rights were/are capable of constituting assets under Sections 18 and 25 of the Insolvency and Bankruptcy Code and also that neither **Abhilash Lal** nor **Prabhjit Singh Soni (Supra)** authorises compulsory divesting of ownership of public land through a Resolution Plan. The Ld. Adjudicating Authority appears to have erred in only considering the issue of ownership of the land on which the project has been constructed, without examining whether any

contractual or development rights have survived in favour of the CD and has also not considered the fact that third party rights have been created on the land as 144 units have been allotted to the homebuyers apart from 44 commercial shops to the shop owners and as per the plan itself the 153 home and commercial buyer's claim of Rs 78,26,16,253 has been admitted, which means that they have paid this amount to CD as advance with regard to these units. Therefore, keeping in view the fact that the land in the proposed Resolution plan has been transferred to the CD in compulsion and the contractual rights occurred in favour of the CD have not been dealt with in the Resolution Plan and the illegal construction raised by the CD is shown to be mandatorily regularised without discussing whether it could be compounded or regularised as such under existing legal framework, we are of the considered opinion that the land of the third party has been dealt with in the plan, while the contractual rights acquired by the CD should have been dealt with and for the reasons given herein before (And not solely on the reasons given by the Ld. Adjudicating authority) we do not find any infirmity in the impugned judgment whereby the Resolution plan has only been remanded back to the COC of the CD for reconsideration. Resultantly CA (AT) (Ins) No. 820 of 2025 and CA (AT) (Ins) No. 926 of 2025 preferred by the RP of the CD and Authorised Representative of the home buyers appears to be devoid of force and are **dismissed** as such.

127. For the reasons given in earlier paragraphs no. 44 to 54 of this judgment the CA (AT) (Ins) No. 1581 of 2023 filed by the U.P. Housing Board is **allowed** and the impugned order dated 17.10.2023 passed by the Ld. Adjudicating Authority is hereby **set aside.**

128. However, the U.P. Housing Board shall maintain status quo with regard to the land in question, on which the structure has been constructed and the same would be subject to any further order which may be passed by the Ld. Adjudicating Authority.

129. There is no order as to costs.

130. Pending IA's if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
14.07.2026.
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