NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1479 of 2024

(Arising out of Order dated 24.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-II in Company Petition No. (IB)-1248(PB)/2018)

IN THE MATTER OF:

THE AUTHORISED REPRESENTATIVE
FOR GRANITE GATE PROPERTIES PRIVATE LIMITED
MS. RAKESH VERMA,
A-342, Logix Technova, Tower A, Sector 132,
Noida, Uttar Pradesh- 201304. **.... Appellant**

Vs

1. MR. DEVENDRA SINGH
Assotech Business Cresterra, Office No. 216,
2nd Floor, Tower-1, Sector-135,
Noida, Uttar Pradesh, 201305
Email: dev_singh2006@yahoo.com

2. MR. ASHMEET SINGH BHATIA
12-A, Savitri Sahini Enclave,
New Hyderabad, Lucknow- 226007,
Email: ashmeet@gmail.com

3. M/s Granite Gate Properties Private Limited
C-23, Greater Kailash Enclave,
Part - I, New Delhi – 110048
E-mail: irpgranite@gmail.com

4. M/s New Okhla Industrial Development Authority
Main Administrative Building, Sector - 6,
NOIDA, Uttar Pradesh
Email: noidalawdepartment@gmail.com **.... Respondents**

Present:

For Appellant: Mr. Kunal Tandon, Sr. Advocate with Mr. Ravinder Singh, Ms. Raveesha Gupta, Ms. Natasha, Advocates.

Cont'd…/

For Respondents: Mr. Sumant Batra, Mr. Sanyam Saxena, Mr. Shivam Sharma, Mr. Nubair Alvi, Mr. Sarthak Bhandari, Ms. Riya Arora, Advocates for RP.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Arijit Mazumdar, Ms. Anshula Mazumdar, Advocates for SRA (SMV Agencies).

Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Kanishk Raj, Mr. Abhishek Sinha, Advocates for NOIDA.

Ms. Ridhima Verma, Ms. Aparajita Singh, Advocates for Applicant in IA No.5864 of 2024.

With

Company Appeal (AT) (Insolvency) No. 1713 of 2024

(Arising out of Order dated 24.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-II in Company Petition No. (IB)-1248(PB)/2018)

IN THE MATTER OF:

New Okhla Industrial Development Authorities
Main Administrative Complex, Sector 6
Noida, Gautam Budh Nagar – 201301
Email: noidalawdepartment@gmail.com **.... Appellant**

Vs

1. M/s Granite Gate Properties Private Limited
Through Resolution Professional
C-23, Greater Kailash Enclave,
Part-I, New Delhi-110048
Email : irpgranite@gmail.com

2. Committee of Creditors
Through Authorized Representative of
Financial Creditors in a Class (Homebuyers)
A-342, Logix Technova,
Tower A, Sector- 132,
Noida, Uttar Pradesh
Email: rverma@ravkassociates.com **.... Respondents**

Present:

For Appellant: Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Kanishk Raj, Mr. Abhishek Sinha, Advocates.

For Respondents: Mr. Sumant Batra, Mr. Sanyam Saxena, Mr. Shivam Sharma, Mr. Nubair Alvi, Mr. Sarthak Bhandari, Ms. Riya Arora, Advocates for R-1.

Mr. Kunal Tandon, Sr. Advocate with Mr. Ravinder Singh, Ms. Raveesha Gupta, Ms. Natasha, Advocates for R-2.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Arijit Mazumdar, Ms. Anshula Mazumdar, Advocates for SRA (SMV Agencies).

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been field challenging the same order dated 24.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-II in various IAs filed in Company Petition No. (IB)-1248(PB)/2018. The Adjudicating Authority vide the impugned order dated 24.07.2024 issued various directions on different applications including application filed by the Resolution Professional for approval of the Resolution Plan submitted by M/s SMV Agencies Private Limited, which was approved by the Committee of Creditors (CoC) on 22.07.2020.

2. Company Appeal (AT) (Ins.) No.1479 of 2024 has been filed by the Authorised Representative for M/s Granite Gate Properties Private Limited representing the CoC which consist of 100% homebuyers. The CoC had approved the Resolution Plan of M/s SMV Agencies Private Limited on 22.07.2020, for approval of which resolution an IA was filed by the Resolution Professional being IA No.3255 of 2020. In the appeal reliefs have been sought in reference to directions issued in Para 79 (a), (b), (d) and (h). The relief claimed in the Appeal are as follows:

> *a. set aside/ modify the directions issued in Paragraph 79(a) & (d) of the Impugned Order dated 24.07.2024 passed in C.P. (IB) NO. 1248 of 2018, to the extent that the same directs stalling of the decision of the COC as to the stage from which the instant CIRP should resume until the Forensic Audit and subsequent fresh valuation of assets of the Corporate Debtor and direct that the instant CIRP be concluded within the timeframe fixed by this hon'ble Appellate Tribunal;*
>
> *b. set aside/ modify the direction issued in Paragraph 79 (b) of the Impugned Order to the extent that the present IP, Mr. Devendra Singh is suo moto replaced and IPE-ARCK Resolution Professionals LLP (IBBI/IPE-0030/IPA1/2022-23/50013) is appointed to act as RP to conduct the CIRP qua the CD, and pass necessary directions to place the observations of the Ld. Adjudicating Authority in the Impugned Order dated 24.07.2024, before the CoC to decide whether to continue the services of Mr. Devendra Singh or to*

replace Mr. Devendra Singh with another Resolution Professional in the manner provided under Section 27 of the Code;

c. set aside/modify the directions issued in Paragraph 79(h) of the Impugned Order to the extent that the NOIDA has been entitled to claim two instalments of lease premium for the lands allotted/leased to corporate debtor as CIRP Cost;

d. Pass any such Order(s)/ direction(s) as this Hon'ble Appellate Tribunal may deem fit in the facts and circumstances of the instant case."

3. Company Appeal (AT) (Ins.) No.1713 of 2024 is filed by New Okhla Industrial Development Authority (NOIDA), who has filed its claim (revised claim dated 17.06.2019) in the CIRP of the Corporate Debtor – M/s Granite Gate Properties Private Limited. NOIDA has executed a lease deed dated 30.12.2008 for GH plot No.GH-003, Sector 100 admeasuring 1,20,009 sq. mtrs. Another lease deed was executed on 29.12.2009 for GH plot No.GH-005, Sector 110 admeasuring 164,120 sq. mtrs. The Corporate Debtor launched two projects – Project Lotus Bolevard in Plot of Sector 100 and Lotus Panache in plot of Sector 110. NOIDA was initially accepted as a Financial Creditor of the Corporate Debtor which categorization changed as Operational Creditor after judgment of the Hon'ble Supreme Court in ***Anand Sonbhadra's case***. In response to 2nd Form G issued by the Resolution Professional, Expression of Interest (EOI) was expressed and in response to Request for Resolution Plan (RFRP), five Resolution Applicants

submitted their resolution plan. The resolution plan was approved of M/s SMV Agencies Private Limited, in which NOIDA voted against the plan. It was on 17.05.2022 that NOIDA was declared Operational Creditor in case of ***New Okhla Industrial Development Authority Vs. Anand Sonbhadra.*** Appellant has filed its objections to the Resolution Plan before the Adjudicating Authority. NOIDA also filed an application IA No.2298 of 2021 on 20.05.2021 praying for various reliefs including payment towards water and sewer charges, instalments, re-scheduled instalments and time extension charges during CIRP period. The Adjudicating Authority heard all the applications and passed orders on 24.07.2024 issuing directions. NOIDA aggrieved by the order dated 24.07.2024 has come up in Appeal. In the Appeal, NOIDA prayed for setting aside / modify direction issued in Para 79(a) of the impugned order. The reliefs prayed by the NOIDA in the appeal are as follows:

> *"a) Set aside/modify the directions issued in paragraph 79 (a) of impugned order dated 24.07.2024 passed in CP(IB) No.1248(PB)/2018 to the extent that it does not prescribe for the stage of resumption of CIRP and the said decision has been left on the wisdom of CoC; and/or,*
>
> *b) Direct the resolution professional to conduct the CIRP from the stage of preparation of information memorandum; and/or*

c) Pass any other order(s) which this Hon'ble Appellate Tribunal deems fit and proper as per the facts and circumstances of the case."

4. We have heard Shri Kunal Tandon, learned senior counsel appearing for the Appellant in Company Appeal (AT) (Ins.) No.1479 of 2024, Shri Rachit Mittal, learned counsel has appeared for the Respondent in Company Appeal (AT) (Ins.) No.1479 of 2024 as well as Appellant in Company Appeal (AT) (Ins.) No.1713 of 2024. Shri Sumant Batra, learned counsel has appeared for the Resolution Professional. Shri Abhijeet Sinha, learned senior counsel appeared for the Successful Resolution Applicant i.e. M/s SMV Agencies Private Limited. Ms. Ridhima Verma, learned counsel has appeared for the Respondent No.2 in Company Appeal (AT) (Ins.) No.1479 of 2024. We have also heard the submissions of learned counsel for the Applicant in IA No.8844 of 2024.

5. Shri Kunal Tandon, learned counsel for the Appellant appearing in in Company Appeal (AT) (Ins.) No.1479 of 2024 has submitted that in so far as prayers made in the appeal regarding Resolution Professional, Resolution Professional has already filed an appeal which has already been heard and orders reserved, hence, said issue has to be decided in the appeal filed by Mr. Devendra Singh, Resolution Professional. Shri Tandon has referred to directions issued in Para 70 (a) and (d) to submit that the said directions stall the decision of the CoC. He prays for setting aside/ modify the directions to the extent as to from what stage the CIRP process

should resume. Learned counsel for the Appellant submits that the direction should be issued to conclude the CIRP within timeframe fixed by this Tribunal. The Appellant has especially challenged the direction issued in Para 79(h) in so far as it directed for payment of two instalments premium and amount / payment towards water and sewer charges as also time extension charges by the Corporate Debtor as CIRP Cost. Shri Tandon submits that payment of two instalments is towards premium of the land which cannot fall within the meaning of CIRP cost. It is submitted that the CIRP Cost is a cost which is incurred in running of the Corporate Debtor as going concern. Instalment of premium of land which fell due during the CIRP period cannot be treated to be CIRP cost. It is submitted that time extension charges are also not leviable as CIRP cost. It is submitted that under the lease deed time extension charges are provided for maximum period of three years and after expiry of maximum period of three years, there is no time extension. It is submitted that as far as water and sewer charges, Resolution Professional himself has submitted that said charges shall be paid treating it to be CIRP cost. Learned counsel for the Appellant submits that said direction issued in Para 79(h) needs to be set aside. Learned counsel for the Appellant relied on judgment of this Tribunal in ***Company Appeal (AT) (Ins.) No.622 of 2022, Sunil Kumar Agrawal Vs. New Okhla Industrial Development Authority*** where this Tribunal categorically held that the payment of land premium which fell due during CIRP period cannot be treated to be CIRP Cost and the order of Adjudicating Authority in the above case which directed for payment of premium amount

was set aside. It is submitted that although Civil Appeal No.901 of 2023 has been filed before the Hon'ble Supreme Court by NOIDA against the said judgment of this Tribunal dated 12.01.2023, the judgment has not been stayed by the Hon'ble Supreme Court. It is submitted that the said judgment fully covers the issue regarding two instalments which has been directed by the Adjudicating Authority. Learned counsel for the Appellant further submitted that the Resolution Professional has never accepted to make payment of two instalments which submission has already been advanced by learned counsel for the Resolution Professional. It is submitted that the Appellant is Authorized Representative of the Homebuyers i.e. Financial Creditors in a Class who are waiting for handover of their units for last several years. Entire process needs to be completed within a time frames which may be fixed by this Tribunal.

6. Shri Sumant Batra, learned counsel appearing for the Resolution Professional submits that the Resolution Professional has never accepted to make payment of two instalments as has been observed by the Adjudicating Authority in Para 70 of the impugned order. The Resolution Professional has made statement for payment of lease rent, water and sewer charges which fell due during the CIRP period. Shri Sumant Batra has submitted before the Adjudicating Authority that lease rent has already been paid and the water and sewer charges, if any, which fell due during the CIRP period, which are not paid, shall be paid as CIRP cost, however, learned counsel for the Resolution Professional never made statement that

two instalments as claimed by the NOIDA i.e. 19th and 20th instalment shall be paid as CIRP cost. Shri Sumant Batra submitted that in fact in the claim which was submitted by NOIDA, the claim was after including 19th and 20th instalment which fell due after commencement of the CIRP, hence, the Resolution Professional has not accepted the claim with respect to 19th and 20th instalment. Shri Batra, however, submitted that in event this Tribunal permits, the Resolution Professional is ready to accept revised claim including claim of 19th and 20th instalment as pre-CIRP dues. Learned counsel for the Resolution Professional further submitted that the CIRP cost as contemplated under Regulation 31(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is CIRP cost which is to offset the loss. The premium instalments were not paid by the Corporate Debtor since 2015, hence, NOIDA cannot claim benefit of Regulation 31(b) of CIRP Regulations, 2016. Two instalments which fell due during the CIRP period are not CIRP cost. Shri Batra submitted that time extension charges cannot be CIRP cost.

7. Shri Rachit Mittal, leaned counsel appearing for the NOIDA refuting the submissions made on behalf of the Appellant in Company Appeal (AT) (Ins.) No.1479 of 2024 submits that NOIDA is aggrieved by the direction issued in Para 79(a) where the Adjudicating Authority has left it to the discretion of the CoC to take a decision as to from what stage CIRP need to be commenced. It is submitted that the CIRP should be resumed from the stage of issuance of Information Memorandum. It is submitted that in the

Information Memorandum liquidation cost having been reflected by the Resolution Professional, the said reflection vitiated the confidentiality of the liquidation cost, vitiating the entire process. Shri Mittal submits that two instalments which fell due during the CIRP period are the CIRP cost which are fully covered by Regulation 31(b) of the CIRP Regulations, 2016. It is submitted that the Adjudicating authority rightly directed for payment of two instalments as CIRP cost. Shri Mittal submits that verification of the claim has to be on the insolvency commencement date, hence, NOIDA has rightly claimed for two instalments i.e. 19th and 20th instalment which fell due during the CIRP period, has to be paid as CIRP cost. It is submitted that the judgment of this Tribunal in Sunil Kumar Agrawal relied by the Appellant is not applicable. NOIDA is not relying on Section 14(1)(d) of the I&B Code rather NOIDA is relying only on Regulation 31(b). The judgment of Sunil Kumar Agrawal has relied Section 14(1)(d), which is not applicable in the present case. In any view of the mater, NOIDA has filed Civil Appeal No.901 of 2023 before the Hon'ble Supreme Court challenging the order of this Tribunal where the Hon'ble Supreme Court has passed a detailed order while issuing notice, where the Hon'ble Supreme Court clarified that even though order of this Tribunal has not been stayed but that shall not prejudice the rights of NOIDA if they succeed and appropriate orders will be passed to ensure that the NOIDA is not put to any loss. It is submitted that NOIDA is entitled for time extension charges. Time extension charges for period of three years is provided in the lease deed after which ordinarily time extension is not to be granted but NOIDA may grant time extension

even after three years since the construction was going on. Thus, time extension charges have rightly been included as CIPR cost. NOIDA has never claimed any lease rent as CIRP cost. It is submitted that the resolution plan which is submitted by M/s SMV Agencies Private Limited is not in accordance with the Section 30(2)(e) since the liquidation value was disclosed. It is further submitted that valuation of entire area of land was not taken and valuation of only 3990 sq m was taken whereas total area was 2,84,000 sq m. It is submitted that the resolution plan had proposed initially Rs.230 crores and after disclose of Liquidation Value only Rs.21 Crores. Learned counsel for the NOIDA relying on judgment of Hon'ble Supreme Court in ***"(2020) 9 SCC 729, Karad Urban Cooperative Bank Ltd. vs. Swwapnil Bhingardevay & Ors."*** submits that when confidentiality is breached by disclosing the liquidation value in the Information Memorandum, from that stage of Information Memorandum the CIRP process is required to be commenced.

8. Shri Abhijeet Sinha, learned counsel appearing for the Successful Resolution Applicant (SRA) submits that the SRA has submitted its plan by which the SRA stands today also. The SRA stands by its commitments. The SRA should be given an opportunity to give Resolution Plan and the CIRP is needed to be commenced only from the stage of Resolution Plan by giving opportunity to the SRA to give revised Resolution Plan as claims have already been crystalized.

9. We have heard learned counsel appearing for the intervener – six homebuyers who had filed IA No.8844 of 2024 as well as learned counsel appearing for the Respondent No.2 in Company Appeal (AT) (Ins.) No.1479 of 2024. It is submitted by learned counsel that Authorized Representative is not adopting any transparent process and all homebuyers are not being informed with regard to steps undertaken by the Authorized Representative. It is submitted that Authorized Representative has filed the appeal without proper authority. The conduct of Authorized Representative is against the interest of homebuyers.

10. We have considered the submissions of learned counsel for the parties and perused the record.

11. Both the appeals arising out of the same impugned order have been heard together and are being decided by this common judgment. As noted above, both the appeals raise only limited issues in reference to directions issued by the Adjudicating Authority in Para 79 of the order. Para 79 of the order is extracted for ready reference:

> *"79. In the wake of the aforementioned findings and discussions and in view of the irregularity in valuation and accounting of assets of CD and the plea raised in IA-506/2024, it is ordered thus:-*
>
> *a) The Resolution Plan stands remitted back to the CoC. It would be for CoC to take a call, as to whether the CIRP should resume from the stage of preparation of IM or from any other stage or the*

present SRA/PRA's should be given opportunity to submit revised Resolution Plan after Forensic Audit and proper fresh valuation of the assets of the CD.

b) *The present IP who is functioning as RP qua the CD is replaced with the IPE- ARCK Resolution Professionals LLP (IBBI/IPE-0030/IPA-1/2022-23/50013) and henceforth the said Insolvency Professional Entity would act as RP to conduct CIRP qua the CD.*

c) *The present RP would extend all assistance to IPE as a professional.*

d) *The Insolvency Professional Entity would first get the transaction/ forensic audit be conducted qua the CD and then would get the valuation of its assets done in accordance with Regulation 27 read with Regulation 35 of IBBI (CIRP) Regulations, 2016.*

e) *The 'I-Ring' project would be treated as asset of the CD. Nevertheless it would be open to SRA to deal with the same in accordance with the provisions of regulation 37 (1) a of IBBI (CIRP) regulations 2016 and in the process the SRA may deal with Shomit Finance Limited.*

f) *The plea regarding replacement of AR stands nixed.*

g) *The NOIDA would be treated as Secured Creditor with all consequences.*

h) The NOIDA would be entitled to two instalments of premium and the amount which is payable towards water and sewage charges as also the time extension charge, etc. to it by the CD as CIRP cost.

i) The IA-3926/2023 is allowed and the IA-3325/2020, IA-3025/2022 and IA-3330/2020 stands dismissed as withdrawn. Nevertheless, as has been directed above the project ('I-ring') mentioned in IA-3926/2023 would be treated as asset of CD and would be dealt with in terms of the Resolution Plan."

12. From the submissions of learned counsel for the parties and materials on the record following are issues which arise for consideration in the present appeal:

(I) Whether two instalments i.e. 19th and 20th instalment, which fell due after commencement of CIRP can be treated to be CIRP cost and the direction issued by the Adjudicating Authority in Para 79(h) for payment of above two instalments can be sustained?

(II) Whether the amount which is payable towards water and sewer charges is CIRP cost?

(III) Whether time extension charges as claimed by NOIDA are CIRP cost, which is liable to the paid in the resolution plan?

(IV) Whether the Adjudicating Authority while remitting back the resolution plan to CoC could have left it to the discretion of CoC as to whether the CIRP should resume from the stage of preparation of Information Memorandum or from any other stage or the present SRA should be given opportunity to submit revised Resolution Plan after forensic audit and fresh valuation of the assets of the CD?

13. We need to first notice the submissions raised by counsel for Respondent No.2 in Company Appeal (AT) (Ins.) No.1479 of 2024 that Appellant has no authority to file the appeal. Counsel appearing for Respondent No.2 as well as counsel appearing for Applicants in IA No.8844 of 2024 has submitted that the Authorized Representative of Creditor in Class is not observing transparency. It is submitted that in the Appeal Authorized Representative has referred to receiving thousand e-mails from the homebuyers for filing the appeal whereas in the appeal reference was made to only three e-mails. We have noticed that the Respondent No.2 in Company Appeal (AT) (Ins.) No.1479 of 2024 had already filed an IA before the Adjudicating Authority for replacement of Authorized Representative which application has not been acceded to by the Adjudicating Authority and the prayer for replacement of Authorized Representative has been rejected. Authorized Representative is thus the Authorized Representative who was approved by the Adjudicating Authority and is entitled to represent Financial Creditors in Class and we see no lack of authority in

filing the appeal by Authorized Representative on behalf of Financial Creditors in Class. It is also noteworthy that none of the other Respondents including Resolution Professional, NOIDA or the SRA has raised any objection regarding authority of Authorized Representative to file Company Appeal (AT) (Ins.) No.1479 of 2024. Authorized Representative having selected for representing the Financial Creditors in Class, he has every right to file appeal to protect the interests of Creditors in Class. We, thus, do not find any substance in the submissions raised by counsel for Respondent No.2 in Company Appeal (AT) (Ins.) No.1479 of 2024 as well as Applicants in IA No.8844 of 2024.

ISSUE NO. I

14. The copy of lease deed dated 29.12.2009 has been brought on record. The lease deed dated 29.12.2009 was executed in favour of the Corporate Debtor with respect to allotting land to the Corporate Debtor for consideration of Rs.372,55,24,000/- and moratorium was granted for 24 months from the date of allotment and only the interest @ 11% per annum compounded half yearly was required to be paid. 10% of amount was paid at the time of allotment and 90% was to be paid in next 8 years. 19th instalment became payable on 09.06.2019 for an amount of Rs.23,26,12,405/- and 20th instalment became due on 09.12.2019 for Rs.22,10,86,565/-. Thus, two instalments i.e. 19th and 20th instalment became due after commencement of the CIRP period. The NOIDA in its claim, which was filed before the Resolution Professional included the said

two instalments i.e. 19th and 20th instalments also, however, the Resolution Professional did not accept the claim pertaining to 19th and 20th instalment. Rest of the claim was admitted. The NOIDA has filed an application being IA No.2298 of 2021 before the Adjudicating Authority, copy of which application has been brought on the record by the appellant in Company Appeal (AT) (Ins.) No.1479 of 2024 by Convenience Compilation. In IA No.2298 of 2021, Noida has prayed for following prayers:

"PRAYER

In the aforesaid facts and circumstances, it is most humbly and respectfully prayed that this Hon'ble Bench may graciously be pleased to:

(a) Direct the Respondent- Resolution Professional not to give effect to the minutes of 21 meeting of Committee of Creditors dated 20.04.2021;

(b) Direct the Respondent not to hand over the possession of the apartments/ flats/ units in violation to the provisions of Section 13 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010;

(c) Declare the handing over of possession by the Respondent after commencement of CIRP as null and void, same being illegal in terms of Section 13 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010;

(d) Direct the Respondent to make payment of amounts which are due and payable towards the water and sewer charges, instalments, re-scheduled instalments, time extension charges etc. during the CIRP period or in the alternative make them a part of the CIRP cost under Regulation 31(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulations, 2016;

(e) pass such other order / directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case."

The prayer (d) of the above application clearly prayed to accept the said payment of installment as part of the CIRP cost under Regulation 31(b).

15. The question for consideration is as to whether the 19th and 20th instalment which fell due after commencement of CIRP are within the definition of CIRP cost. The Adjudicating Authority in Para 79(b) has issued direction to make payment of two instalments as CIRP cost. Section 5(13) of the I&B Code defines insolvency process cost, which is as follows:

*"**5(13) "insolvency resolution process costs"**[3A] means—*

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;"

16. The CIRP Regulation, Regulation 31 deals with insolvency resolution process cost. Regulation 31 of CIRP Regulation provides following:

*"**31. Insolvency resolution process costs.** "Insolvency resolution process costs" under Section 5(13)(e) shall mean-*

(a) amounts due to suppliers of essential goods and services under Regulation 32;
(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
(d) expenses incurred on or by the resolution professional fixed under Regulation 34;
(e) and other costs directly relating to the corporate insolvency resolution process and approved by the committee."

17. Learned counsel for NOIDA has specifically pleaded that the payment of two instalments is covered by Regulation 31(b). It is submitted that the two instalments, which became due to the NOIDA after commencement of CIRP are fully covered by Regulation 31(b) since rights of NOIDA were prejudicially affected on account of the moratorium. Shri Kunal Tandon, learned counsel submits that Regulation 31(b) is not applicable. It is submitted that the Corporate Debtor was not paying the instalments since 2015, hence, there was no occasion of NOIDA being prejudicially affected by moratorium. Shri Tandon has specifically placed reliance on judgment of this Tribunal in ***"Company Appeal (AT) (Ins.) No.622 of 2022, Sunil Kumar Agrawal Vs. New Okhla Industrial Development Authority"***, decided on 12.01.2023. We need to notice the said judgment in some detail. The above appeal was filed by the Resolution Professional challenging the order of the Adjudicating Authority by which order the Adjudicating Authority directed for payment of lease premium which feel due between 11.10.2019 to 30.06.2021. In the above case, CIRP had commenced on 10.10.2019. The amount of lease premium which fell due after commencement of CIRP was being claimed and the Adjudicating Authority passed an order on 27.09.2021 for payment of the amount as CIRP cost. In Para 4 of the judgment this Tribunal has quoted two paragraphs of the order of the Adjudicating Authority. Para 4 of the order of this Tribunal is as follows:

"4. The Authority submitted a letter dated 04.06.2021 to the RP highlighting its dues towards lease premium calculated from 11.10.2019 to 30.06.2021 of a sum of Rs. 15,54,52,427/- and lease rent of the year 202021 and 2021-22 of Rs. 60,74,170/-. The Authority had requested the RP to make the payment of the dues which comes to Rs. 16,15,26,597/- within a period of 15 days and since the said dues were not paid within the stipulated period, therefore, the Authority presumed that the RP has declined the same and filed the application before the Adjudicating Authority on 27.09.2021. The Appellant filed the reply to the application and contested the same. The Adjudicating Authority allowed the application by the impugned order recording its finding in paras 16 & 17, which are reproduced as under for a ready reference:-

> *"16. At this juncture, we would also like to refer to Section 14(1)(d) which restrain the owner or lessor from recovery of any property where such property is occupied or is in possession of the Corporate Debtor. But as per explanation of Section 14(1) of the IBC, this provision is subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period.*
>
> *17. Admittedly, to enjoy the lease granted by NOIDA Authority to the Corporate Debtor, lease premium and lease rent are to be paid for during the period 11.10.2019 to 30.06.2021 as per the letter dated 04.06.2021, sent by the Applicant to the Resolution Professional. Therefore, even if we accept the contention of the Resolution Professional that the lease rent does not fall*

> *under the categories of supplies to the essential goods and services, but in terms of explanation of Section 14(1) of the IBC 2016 added w.e.f. 28.12.2019, the applicant is entitled to get lease premium amount as well as lease rent arising for the use or continuation of the lease during the moratorium period, failing which the moratorium will not apply for the suspension or termination of lease. In view of the above, as the Resolution Professional has failed to pay the lease premium and lease rent due to the NOIDA Authority, therefore, the respondent is directed to make the payment of the current amount, which is due and payable within 6 months or include the said amount as Insolvency Resolution Process Cost under Regulation 31 of the IBBI (Insolvency Resolution Process of Corporate Person).""*

18. The submission which was made on behalf of the Resolution Professional is noticed in Para 5, which is as follows:

> *"5. Counsel for the Appellant has submitted that the Adjudicating Authority has erred in applying explanation of Section 14(1)(d) of the Code for the purpose of allowing the application of Respondent because the said explanation is not applicable at all. In this regard, it is submitted that Section 14(1)(d) provides that after the declaration of moratorium, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor but the explanation appended with Section 14(d) clarifies that a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Govt., State Govt., local authority, sectoral regulator or any other*

authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but it shall continue if there is no default in payment of the dues of the said license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. It is sought to be argued that the lease rent and the premium are conspicuous by its absence in the said explanation and cannot be read into it."

19. This Tribunal after hearing the parties noticed the issue in Para 8, which is as follows:

"8. The only issue in this case is as to whether the Adjudicating Authority has rightly applied the explanation under Section 14(1)(d) of the Code for the purpose of directing the Appellant to pay the lease premium amount and the lease rent to the Respondent?"

20. In Para 9, this Tribunal extracted Section 14 and in Para 10 and 11 laid down following:

"10. Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However, explanation appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either

given by the Central Govt., State Govt. local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but there would be a condition for its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.

11. Thus, in view of the aforesaid facts and circumstances, in our considered opinion, the impugned order is patently illegal and deserves to be set aside. Consequently, the appeal is allowed and the impugned order is set aside though without any order as to costs."

21. This Tribunal held in the above judgment that premium amount of lease rent is not covered by explanation to Section 14(1)(d). The said judgment fully supports the submission of Shri Kunal Tandon raised in Company Appeal (AT) (Ins.) No.1479 of 2024.

22. Shri Mittal appearing for NOIDA sought to distinguish judgment of this Tribunal in ***Sunil Kumar Agrawal*** stating that NOIDA does not rely on Section 14(1)(d) and the reliance is only placed on Regulation 31(b) of

the CIRP Regulations, 2016. The above submission of the NOIDA cannot be accepted. Regulation 31(b) also refers to Section 14(1)(d), hence, it does gives applicability of Section 14(1)(d). The rights of NOIDA can be said to be prejudicially affected, hence, claim can fall under 31(b). Explanation having been added after Section 14(1) w.e.f. 28.12.2019, the said explanation was very much on the statute on the relevant date.

23. Learned counsel for NOIDA relied on order of the Hon'ble Supreme Court dated 17.02.2023 in Civil Appeal No.901 of 2023. The Hon'ble Supreme Court on 17.02.2023 in appeal passed following order:

"O R D E R

Learned senior advocate appearing on behalf of the appellant relies upon Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 to urge that the current dues have to be accounted for in the resolution plan. Current dues, he submits, would be the dues payable after/from the date of admission of application and onwards.

Issue notice, returnable in the month of September 2023.

Notices will be served by all modes, including dasti.

We clarify that we have not stayed the operation of the order dated 12.01.2023 passed by the National Company Law Appellate Tribunal, Principal Bench,

New Delhi in Company Appeal (AT) (Insolvency) No. 622/2022.

This observation will not prejudice the rights of the appellant if they succeed, and appropriate orders will be passed to ensure that the appellant is not put to any loss."

24. The above order indicates that although the Hon'ble Supreme Court has not stayed the operation of order passed by NCLAT, it was noted *"This observation will not prejudice the rights of the appellant if they succeed, and appropriate orders will be passed to ensure that the appellant is not put to any loss."*. Thus, the above order protected NOIDA that at time of decision of the appeal the claim which was raised by the NOIDA of the above lease premium be treated CIRP cost could have been accepted by deciding the appeal.

25. The judgment of this Tribunal in ***Sunil Kumar Agrawal*** is a judgment of Coordinate Bench which reject the claim of treating lease premium as CIRP cost. We, sitting in the Coordinate Bench of two-member bench, feel ourselves bound by the said judgment. We, however, hasten to add that in view of the protection which has been given in Civil Appeal No.901 of 2023, NOIDA is also entitled to similar protection. In case, it is held by the Hon'ble Supreme Court that the lease premium is a CIRP cost, as contemplated in order dated 17.02.2023, the amount of 19th and 20th instalment, as is claimed by the NOIDA, shall be payable by SRA. The resolution plan which shall henceforth be submitted for consideration as

per the order of the Adjudicating Authority remitting the resolution plan for consideration, there need to be undertaking to the above effect by the Resolution Applicant who has to pay the aforesaid 19th and 20th instalment, if it is held as CIRP cost in Civil Appeal No.901 of 2023. We, thus answer Issue No. I accordingly.

ISSUE NO. II

26. Before us it is not even disputed that amount towards water and sewer charges which is payable in CIRP is CIRP cost. Learned counsel for the Resolution Professional very fairly submitted that the unpaid amount towards water and sewer charges shall be paid. We, thus, hold that water and sewer charges are CIRP cost and unpaid water and sewer charged are liable to be paid as CIRP cost. Issue No. II is answered accordingly.

ISSUE NO. III

27. As noted above, there are two lease deeds executed in favour of the Corporate Debtor dated 30.12.2008 and 29.12.2009 in Sector 100 and Sector 110 of Noida on which projects namely Lotus Bolevard (Sector 100) and Lotus Panache (Sector 110) are under construction. Both the lease deeds provide for time extension for construction. We need to notice the relevant clauses of the lease deed which provide for time extension. In lease deed dated 30.12.2008 with regard to construction and extension of time following is stipulated:

"CONSTRUCTION

The lessee is required to submit building plan for approval within 3 months from the date of possession and shall start construction within 6 months from the date of possession. Date of execution of lease deed shall be treated as the date of possession. The Lessee shall be required to complete the construction of group housing pocket on allotted plot as per approved layout plan and get the occupancy certificate issued from Building Cell Department of the Authority as per schedule given below:- (subject to the approval of the State Govt.)

S. No.	*Size of the Plot (in sq. mtrs.)*	*Minimum Constructed Area (percentage of total permissible FAR)*	*Time limit for obtaining Completion Certificate for 1st Phase of the project to be developed in Phases*	*Maximum time limit for obtaining completion certificate of the full project*
1.	*Upto 4000*	*50%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Five years from the date of execution of Lease Deed/ Possession.*
2.	*4000-10000*	*40%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Five years from the date of execution of Lease Deed/ Possession.*
3.	*10000-20000*	*35%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Five years from the date of execution of Lease Deed/ Possession.*
4.	*20000-40000*	*30%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Six years from the date of execution of Lease Deed/ Possession.*
5.	*40000-80000*	*30%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Seven years from the date of execution of Lease Deed/ Possession.*

6.	*80000-200000*	*25%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Eight years from the date of execution of Lease Deed/ Possession.*
7.	*200000-400000*	*20%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Nine years from the date of execution of Lease Deed/ Possession.*
8.	*Above 400000*	*15%*	*Three years from the date of execution of Lease Deed/ Possession.*	*Ten years from the date of execution of Lease Deed/ Possession.*

I) All the peripheral/external development works as may be required to be carried out up to the allotted plot including construction of approach road, drains, culverts, electricity distribution/transmission lines, water supply, sewerage will be provided by the Lessor /Authority. However, all the expenses as may be required to connect these services with the internal system of services of plot shall be Incurred by the Lessee.

II) Without prejudice to the Authority's right of cancellation, the extension of time for the completion of Project, can be extended for a maximum period of another three years only with penalty as under:

- *For first year the penalty shall be 4% of the total premium.*
- *For second year the penalty shall be 5% of the total premium*
- *For third year the penalty shall be 6% of the total premium.*

Extension for more than three years as stated above, will not be permitted under any circumstances.

III) In case the Lessee does not construct building within the time provided including extension granted, if any, for above, the allotment/ lease deed as the case may be, shall be liable to be cancelled. Lessee shall lose all rights to the allotted land and buildings appurtenant there to.

The lessee shall be required to complete the construction of Group Housing pocket on allotted plot as per schedule from the date of execution of lease deed as per the approved layout plan and get the occupancy certificate from the office of Building Cell of the lessor, as per building rules and regulations prevailing at that time."

28. Similarly, in lease dated 29.12.2009 with respect to construction following has been stipulated:

*"**CONSTRUCTION***

1. The lessee is required to submit building plan together with the master plan showing the phases for execution of the project for approval within 6 months from the date of possession and shall start construction within 12 months from the date of possession. Date of execution of lease deed shall be treated as the date of possession. The Lessee shall be required to complete the construction of group housing pockets on allotted

plot as per approved layout plan and get the occupancy certificate issued from Building Cell Department of the LESSOR in maximum 5 phases within a period of 7 years from the date of execution of lease deed. The lessee shall be required to complete the construction of minimum 15% of the total F.AR. of the allotted plot as per approved layout plan and get temporary occupancy/completion certificate of the first phase accordingly issued from the building cell of the LS SOR within a period of three years from the date of execution of lease deed.

In case of plotted development, the final purchaser/sub-lessee of plot shall have to obtain completion certificate from the LESSOR within the period of 5 years from the date of execution of lease deed.

2. *All the peripheral/external development works as may be required to be carried out up to the allotted plot including construction of approach road, drains, culverts, electricity distribution/transmission lines, water supply, sewerage will be provided by the Lessor. However, the expenses as may be required to connect thee services with the internal system of services of plot shall be incurred by the Lessee.*

3. *Without prejudice to the Lessor's right of cancellation, the extension of time for the completion of Project, can be extended for a*

maximum period of another three years only with penalty as under:

- *For first year the penalty shall be 4% of the total premium.*
- *For second year the penalty shall be 5% of the total premium*
- *For third year the penalty shall be 6% of the total premium.*

Extension for more than three years as stated above, will not be permitted under any circumstances.

4. *In case the Lessee does not construct building within the time provided including extension granted, if any, for above, the allotment/ lease deed as the case may be, shall be liable to be cancelled. Lessee shall lose all rights to the allotted land and buildings appurtenant thereto.*
5. *There shall be total liberty at the part of allottee /lessee to decide the size of the flats/ plots (in case of plotted development) or to decide the ratio of the area for flatted/ plotted development. The F.A.R. earmarked for commercial/Institutional use would be admissible but the allottee /lessee may utilize the same for residential use as per their convenience.*

6. *The allottee/ lessee may implement the project in maximum five phases and the occupancy certificate/completion certificate shall be issued by the LESSOR phase wise accordingly enabling them to do phase-wise marketing."*

29. The period for completion of construction with respect to lease deed dated 30.12.2008 is eight years from the date of execution of lease deed and for lease deed dated 29.12.2009 it shall be seven years from the date of execution of lease deed. After the expiry of eight and seven years, respectively, extension of time for completion of project can be extended for maximum another three years only with penalty. For first year penalty shall be 4% of the total premium; for second year penalty shall be 5% of the total premium and for third year penalty shall be 6% of the total premium. The clause further stipulates that extension for more than three years normally will not be permitted. Thus, clauses of both the lease deeds, as noted above, clearly stipulate that the maximum period of completion of project can be extended for **a maximum period of another three years only with penalty.** The penalty as provided for 1st, 2nd and 3rd year is 4%, 5% and 6%, respectively. We, thus, are of the view that NOIDA is entitled to levy penalty charges for extension as per above stipulation for a maximum period of three years. The said time extension clause does not clothe the NOIDA to keep on levying penalty for time extension beyond three years.

30. Time extension being related to the completion of project and the Resolution Professional having decided to carry on project as on going concern, the time extension charges are charges for keeping the project as going concern and the time extension charges upto maximum period of three years after expiry of maximum period of construction can be levied

by NOIDA. Thus, time extension charges upto three years after expiry of maximum period of completion can be treated as CIRP cost. Issue No. III is answered accordingly.

ISSUE NO. IV

31. The Adjudicating Authority by the impugned order has directed for conducting fresh valuation. Learned counsel for the Resolution Professional during submissions has submitted that Draft Valuation Report has already been received from the Valuer appointed in pursuance of the impugned order. Regulation 35 of the CIRP Regulations, 2016 which provides for fair value and liquidation value has been amended. Regulation 35 has been substituted w.e.f. 15.02.2024. Regulation 35 is as follows:

> *"**Regulation 35: Fair value and Liquidation value.***
> *(1) Fair value and liquidation value shall be determined in the following manner:-*
>
> *(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;*
>
> *[2][Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at*

valuation to the members of the committee before computation of estimates.]

[3][(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).

Explanation.– For the purpose of clause (b),

(i) "asset class" means the definition provided under the Companies (Registered Valuers and Valuation) Rules, 2017;

(ii) "significantly different" means a difference of twenty-five per cent. in liquidation value under an asset class and the same shall be calculated as (L1-L2)/L1, where,

L1= higher valuation of liquidation value

L2= lower valuation of liquidation value.]

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

[4][(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value, the liquidation value and valuation reports to every

member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value, the liquidation value and valuation reports and shall not use the information contained in the valuation reports to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.]

(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.]"

32. As per Regulation 35 Sub-regulation (2) after receipt of resolution plans in accordance with the Code under these regulations, the resolution professional shall provide the fair value, the liquidation value and valuation reports to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value, the liquidation value and valuation reports. Under the orders of the Adjudicating Authority the matter having remitted to the CoC, fresh resolution plan is to be submitted, hence, the valuation received in pursuance of the impugned order is required to be shared with the CoC after obtaining undertaking regarding confidentiality.

33. Shri Rachit Mittal, learned counsel appearing for NOIDA submits that since in earlier Information Memorandum liquidation value was reflected, which has breached the confidentiality, hence, it is necessary that

CIRP may commence from the stage of Information Memorandum. Learned counsel for NOIDA relied on judgment of Hon'ble Supreme Court in ***"(2020) 9 SCC 729, Karad Urban Cooperative Bank Ltd. vs. Swwapnil Bhingardevay & Ors.".*** In the above case, the NCLT has approved the resolution plan, which order was set aside by NCLAT and the matter was remanded by NCLAT, which order was challenged by the Financial Creditor before the Hon'ble Supreme Court. One of the reason given by NCLAT for interfering with the order of NCLT has been extracted in Para 9.2, which is as follows:

> *"9.2. That inasmuch as the liquidation value mentioned by the successful resolution applicant in its resolution plan tallied exactly with the liquidation value obtained by the resolution professional, there appears to have been a breach of confidentiality, violating Regulation 35(2)."*

34. Learned counsel for the NOIDA has relied on Paras 20, 25, 26 and 28, which are as follows:

> *"20. It is true that in the last paragraph of the impugned order, namely, para 14, the Appellate Tribunal holds that the CIRP suffered from material irregularities and the resolution plan approved suffers from feasibility and viability. But then the operative portion of the impugned order' does not take the findings on other issues to their logical end. For instance, the Tribunal holds that the advertisement inviting expression of interest itself was defective and*

that there was breach of confidentiality inasmuch as the liquidation value appears to have been leaked out. These findings should have taken the Appellate Tribunal to the point of setting aside the entire process and directing the resolution professional to start the process all over again from the stage of issue of a fresh advertisement. NCLAT did not do so. In the operative portion, NCLAT merely remanded the matter back to the adjudicating authority with a direction to send back the resolution plan to the Committee of Creditors to resubmit the plan after taking into consideration the law laid down by this Court.

25. By the order impugned in the present civil appeals, NCLAT granted only a limited relief, as can be seen from the operative portion of the order of NCLAT which we have extracted earlier.

26. Therefore, in the light of the above facts, the consideration of all other issues, such as breach of confidentiality and defective invitation to offer would only be academic, as NCLAT did not grant any relief to the Promoter/Director of the corporate debtor, which could logically flow out of those other grounds.

28. The second ground on which NCLAT interfered with the decision of NCLT is the alleged breach of confidentiality. The contention of the Promoter/Director of the corporate debtor is that the liquidation value mentioned in the resolution plan submitted by the SRA exactly tallied with the liquidation value obtained by the resolution professional and that the whole

sequence of events would show clearly that there was an attempt to cover up."

35. The order of the NCLAT was not approved by the Hon'ble Supreme Court. In Para 43, following was held:

"43. But the conclusions reached by NCLAT in this regard cannot hold water for two reasons. If NCLAT was convinced that the very process of inviting expression of interest was vitiated, NCLAT should have issued a direction to start the process afresh all over again by issuing a fresh advertisement. NCLAT did not do this and the person who raised this point is not on appeal."

36. Ultimately, the Hon'ble Supreme Court allowed the appeal, set aside the order of NCLAT and upheld the approval of the plan. Learned counsel for the NOIDA has relied on observation made by the Hon'ble Supreme Court in Para 20 where Hon'ble Supreme Court has observed that finding given by the Appellate Tribunal should have taken to the point of setting aside the entire process and directing the resolution professional to start the process all over again from the stage of issue of a fresh advertisement, which was not done. The reasons are given by the Hon'ble Supreme court for upholding the Resolution Plan. One of the reason was that liquidation value sought was only Rs.13.53 Crores whereas resolution plan was valued Rs.29.74 Crores. Judgment of NCLAT being set aside, the above judgment cannot be relied by the NOIDA to contend that in a case where liquidation value was reflected in Information Memorandum, it is necessary/

mandatory to start the process from the stage of Information Memorandum. The Adjudicating Authority has rightly held that in the Resolution Process there was breach of CIRP Regulation, 2016 due to which Resolution Plan cannot be approved and the plan was remitted to the CoC.

37. In the present case, the CIRP period has already came to an end before approval of resolution plan and the Adjudicating Authority has granted 60 days' period from 19.06.2020 which came to an end on 18.08.2020. The resolution plan being approved by the CoC on 22.07.2020, before expiry of said period, application for approval of resolution plan was filed by the Resolution Professional, which remained pending before the Adjudicating Authority till 24.07.2024, when impugned order was passed. There were several applications before the Adjudicating Authority including objection by NOIDA. Four years' period elapsed during pendency of the proceeding before NCLT for approval of plan. When the CIRP period has already came to an end and the Adjudicating Authority has remitted the matter to CoC for fresh consideration of the resolution plan, we do not see any justification in starting the entire process from the stage of Information Memorandum. The timeline for completing the CIRP process does not permit directing for commencement of process from the stage of Information Memorandum. We, however, permit the Resolution Professional to issue Addendum to the Information Memorandum which may be necessitated due to subsequent facts.

38. In the CIRP of the Corporate Debtor, five Resolution Applicants were included in the final list of Resolution Applicants, who all have submitted resolution plan before the CoC. The fact that period of about five years has elapsed from approval of resolution plan and a fresh valuation has been directed by the impugned order, which now has been submitted, we are of the view that timelines has to be kept in mind. Learned counsel for the CoC has contended that the Appellate Tribunal should fix the timeline for completion of process and leaving it to the CoC to take a decision on the stage leads to uncertainty and further delay in the matter. We find substance in the submission of CoC. We are of the view that in the facts of the present case interest of all shall be met in permitting the CoC to issue Request for Resolution Plan (RFRP) to the Resolution Applicants whose name was included in the final list of Resolution Applicants to submit their resolution plan for resolution of the Corporate Debtor and Resolution Applicants be asked to submit plan within maximum period of 30 days. In the RFRP, the Resolution Professional shall also include the undertaking with respect to CIRP cost of two installments as indicated above, which shall be liable to be paid as CIRP cost in event it is held by the Hon'ble Supreme Court in Civil Appeal No.901 of 2023 that lease premium is a CIRP cost, which is stipulated in the order of the Hon'ble Supreme Court dated 17.02.2023, as noticed above. The resolution plan need to contain stipulation to the above extent, which may be specifically added in the Request for Resolution Plan. As observed above, the Resolution Professional may issue an Addendum to Information Memorandum to

facilitate the Resolution Applicants to submit the Resolution Plan. The Addendum be issued simultaneously with issuing Request for Resolution Plan.

39. We, thus, are of the view that direction issued by the Adjudicating Authority in Para 79(a) needs to be modified. Modified Para 79(a) shall read:

> "*a) The Resolution Plan stands remitted back to the CoC. The CoC to direct the Resolution Professional to issue Request for Resolution Plan to the Resolution Applicants whose names were included in the final list of Resolution Applicants to submit the Resolution Plan, within a period of thirty (30) days. The CoC will proceed to consider the Resolution Plan and take final decision within period of 90 days from the date of this order.*"

40. The period during which the applications remained pending before the Adjudicating Authority and decided on 24.07.2024 and the period during which the Appeals against the said order remained pending before this Tribunal need to be excluded from the CIRP period, which is hereby excluded. Further extension of 90 days is granted for completion of entire process of the CIRP. Issue No. IV is answered accordingly.

41. In view of the foregoing discussion and conclusions, both the appeals are disposed of in following manner:

(i) Para 79(a) of the impugned order dated 24.07.2024 is modified to the following extent:

a) The Resolution Plan stands remitted back to the CoC. The CoC to direct the Resolution Professional to issue Request for Resolution Plan to the Resolution Applicants whose names were included in the final list of Resolution Applicants to submit the Resolution Plan, within a period of thirty (30) days. The CoC will proceed to consider the Resolution Plan and take final decision within period of 90 days from the date of this order.

(ii) Para 79(h) is modified to the following extent:

(h)(i) Two instalments of premium i.e. 19th and 20th instalments shall be payable by the Resolution Applicant as CIRP cost, in event the Hon'ble Supreme Court hold the lease premium as CIRP cost in Civil Appeal No.901 of 2023, as stipulated in order dated 17.02.2023. Request for Resolution Plan shall contain a stipulation requiring the Resolution Applicant to give above undertaking.

(ii) The water and sewer charges are treated as CIRP cost and all unpaid amount towards water and sewage charges shall be treated as CIRP cost.

(iii) The time extension charges with regard to both the lease deeds dated 30.12.2008 and 29.12.2009 are treated to be CIRP cost for the maximum period of three years after expiry of the period provided in the lease deed for completion of the project only, as CIRP Cost.

Both the Appeals are disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

17th July, 2025

Archana