NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 184 of 2023 & I.A. No. 669, 670, 671 of 2023

Arising out of Impugned Order dated 12.09.2022 passed by National Company Law Tribunal, New Delhi Bench (Court No. IV), at New Delhi in C.A. No.485/2019

IN THE MATTER OF:

Greater Noida Industrial Development Authority
Plot No.01, Knowledge Park-04
Greater Noida, Gautam Budh Nagar
Uttar Pradesh-201308 …Appellant

VERSUS

1. **Anand Sonbhadra**
Resolution Professional M/S Subhkamna Buildtech
Private Limited
AAA, Insolvency Professional, LLP
Address: E-10a, Kailash Colony,
Greater Kailash-1 New Delhi 110048 …Respondent No.1

2. **The Committee of Creditors**
For M/S Subhkamna Buildtech Private Limited
Address: E-10a, Kailash Colony,
Greater Kailash-1 New Delhi 110048 … Respondent No.2

3. **The Resolution Applicant**
For M/S Subhkamna Buildtech Private Limited
Address: Community Centre, 303b, Apra Plaza B,
Plot No, 28, Rd Number 44, Pitam Pura,
New Delhi, 110034 Respondent No.3

Present

For Appellant Mr. U.N Singh, Advocate.

For Respondents Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr. Vanshika Dhoot, Advocates for R-1.

Mr. Nipun Gautam, Advocate

Mr. Amar Vivek, Mr. Aditya Gauri, Mr. Damini Srestha, Mr. Anant Jain & Mr. Aryan Chhabra, Advocates for SRA.

With

Comp. App. (AT) (Ins) No. 1107 of 2023
& I.A. No. 3820, 3832, 3833 of 2023 & 4002 of 2025

Arising out of Impugned Order dated 12.09.2022 passed by National Company Law Tribunal, New Delhi Bench (Court No. IV), at New Delhi in CP No. IB 1059/ND/2018

IN THE MATTER OF:

New Okhla Industrial Development Authority
Having its Office at: Administrative Building,
Sector-6, NOIDA, Gautam Buddha Nagar,
Uttar Pradesh201301

…Appellant

VERSUS

1. **Anand Sonbhadra**
Having Office At: E-10A, Basement Kailash Colony,
Greater Kailash-I, New Delhi-110048
Also At: FlatNo.2183, Sector-B, Pocket-2, Vasant
Kunj, New Delhi-110070

…Respondent No.1

2. **Surender Kumar Singhal**
Having office at A2-602, Sahara Grace,
Behind Sahara Mall, MG Road,
Gurugram, Haryana-122002 …Respondent No.2

3. **Sunil Kumar Agarwal**
Having office at A2-602, Sahara Grace,
Behind Sahara Mall, MG Road, Gurugram, Haryana-
122002 …Respondent No.3

Present

For Appellant Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Kanishk Raj, Ms. Srishti Agrawal, Mr. Abhishek Sinha, Ms. Aayushi Kiran & Mr. Shivansh Bansal, Advocates.

For Respondents Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Ms. Vanshika Dhoot, Advocates for R-1.

Mr. Nipun Gautam, Advocate.

Mr. Aditya Parolia, Mr. Vivek Kumar, Mr. Akshay Srivastava & Ms. Raveena Panikar, Advocates in I.A No. 4002 of 2025

J U D G E M E N T

(16.09.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals before us i.e. Company Appeal (AT) (INS) No. 184 of 2023 and Company Appeal (AT) (INS) No. 1107 of 2023 filed by the Appellants, Greater Noida Industrial Development Authority and New Okhla Industrial Development Authority, respectively.

Company Appeal (AT) (INS) No. 184 of 2023

2. The appeal is filed by the Appellant i.e., Greater Noida Industrial Development Authority (**GNIDA**) under Section 61 of the Insolvency and Bankruptcy Code, 2016, ("**Code**") arising out of Impugned Order dated 12.09.2022 passed by National Company Law Tribunal, New Delhi Bench, (Court No. IV) ("**Adjudicating Authority**"), at New Delhi in C.A. No. 485 of 2018 in in CP No. IB 1059/ND/2018.

Mr. Anand Sonbhadra, Resolution Professional of M/s Shubhkamna Buildtech Private Limited, is the Respondent No.1 herein.

Committee Of Creditors (**CoC**) for M/s Shubhkamna Buildtech Private Limited, is the Respondent No.2 herein.

The Successful Resolution Applicant (**SRA**) of M/s Shubhkamna Buildtech Private Limited, is the Respondent No.3 herein.

3. The Appellant submitted that it is a statutory authority constituted under the provisions of the U.P. Industrial Area Development Act, 1976, and is entrusted with the development of urban and industrial townships. The Appellant stated that it is the owner/lessor of the land in question, which was acquired under the Land Acquisition Act, 1894, and thereafter developed for the purpose of establishing an integrated urban and industrial township. The Appellant further submitted that it had agreed to demise the subject plot to the Corporate Debtor, M/s Shubhkamna Buildtech Pvt. Ltd., on leasehold basis for construction of residential flats and/or residential plots in accordance with the approved building plans and applicable terms and conditions.

4. The Appellant contended that Plot No. GH-02, Sector-01, measuring 81,800 sq. mtrs., was originally allotted on 18.08.2010 to a consortium comprising M/s Shubhkamna Buildtech Pvt. Ltd., M/s JSS Buildcon Pvt. Ltd., M/s Supertech Estates Pvt. Ltd. and M/s Surya Merchants Ltd. At the request of the lead member, the plot was subsequently subdivided into GH-02/A and GH-02/B, measuring 67,119.31 sq. mtrs. and 14,724 sq. mtrs., respectively. Thereafter, Plot No. GH-02/A was further subdivided into two equal parts of approximately 33,583 sq. mtrs. each and renumbered as GH-02/A and GH-02/B, while the earlier GH-02/B was renumbered as GH-02/C. The Appellant submitted that possession of the subject plot was handed over to the Corporate Debtor pursuant to execution of the lease deed.

5. The Appellant further submitted that the total premium payable for the plot was Rs. 37,38,26,200/-, out of which 10% was paid by the Corporate Debtor, while the balance 90% was payable in 16 half-yearly instalments spread over eight years, together with interest at the stipulated rate. It was contended that, in the event of default, interest at 15% per annum, compounded half-yearly, was leviable on the defaulted amount. The Appellant stated that the Corporate Debtor failed to make payment of the instalments despite rescheduling, pursuant to which a demand notice was issued and, subsequently, a Recovery Certificate dated 20.11.2018 was issued for an amount of Rs. 37,83,48,790/- towards the outstanding dues.

Company Appeal (AT) (INS) No. 1107 of 2023

6. The appeal is filed by the Appellant i.e., New Okhla Industrial Development Authority (NOIDA) under Section 61 of the Code, arising out of Impugned Order dated 12.09.2022 passed by National Company Law Tribunal, (Adjudicating Authority) New Delhi Bench (Court No. IV), at New Delhi in CP No. IB 1059/ND/2018

Mr. Anand Sonbhadra, Resolution Professional of M/s Shubhkamna Buildtech Private Limited, is the Respondent No.1 herein.

Surender Kumar Singhal, who is the Successful Resolution Applicant of M/s Shubhkamna Buildtech Private Limited, is the Respondent No.2 herein.

Sunil Kumar Agarwal, who is the Successful Resolution Applicant of M/s Shubhkamna Buildtech Private Limited, is the Respondent No.3 herein.

7. The Appellant submitted that it is a statutory authority constituted under Notification dated 17.04.1976 and had allotted Plot No. GH-05/B, Sector-137, NOIDA, measuring 22,565.77 sq. metres, to the Corporate Debtor under a registered 90-year lease deed dated 30.07.2010, pursuant to which possession was handed over. Upon commencement of CIRP against the Corporate Debtor, the Appellant filed its claim on 22.02.2019 for ₹99,32,55,183/- towards outstanding dues, though inadvertently in Form B instead of Form C. The Appellant contended that while the initial Resolution Plan dated 10.08.2019 proposed payment of ₹41.40 crore in six half-yearly instalments, the Revised Resolution Plan dated 12.10.2019 arbitrarily reduced the amount to ₹25 crore without justification. It accordingly raised detailed objections before the Adjudicating Authority against the reduction and challenged the legality, fairness and equity of the Resolution Plan.

8. The Appellant further submitted that despite its objections, the Adjudicating Authority, by order dated 12.09.2022, approved the Resolution Plan without adjudicating upon the issues raised, particularly the reduction from ₹41 crore to ₹25 crore and whether the proposed payment was fair, equitable or below the liquidation value. It was contended that the approval was contrary to Section 30 of the Code and other applicable laws, including the Uttar Pradesh Urban Planning and Development Act, 1973. The Appellant therefore questioned whether the reduction in payment was arbitrary and unreasonable, whether the Plan provided an amount below the liquidation value, whether it satisfied the statutory requirement of fairness and equity, and whether the Adjudicating Authority erred in approving a Plan contrary to the provisions of the Code and applicable law.

Common Pleadings

9. Although both the Appellants, pleaded separately by two different counsels, in two separate appeals however, by and large had adopted similar arguments. Hence, we will record their pleadings in conjoint manner hereinafter and refer them collectively as Appellants or Authorities and will dispose both the appeals by one common order as both appeals were connected before us.

10. The Appellants contended that the outstanding lease premium, lease rent, additional compensation and other statutory and contractual dues payable to the respective authorities are secured against the leased properties by virtue of the statutory charge created under the applicable provisions of the Uttar Pradesh

Industrial Area Development Act, 1976. It was therefore submitted that the Appellants fall within the definition of a "secured creditor" under Sections 3(30) and 3(31) of the Code, and cannot be treated merely as an ordinary or unsecured claimant.

11. The Appellants stated that its statutory dues constitute a charge over the demised premises and that the respective authorities possess statutory powers to recover such dues, including recovery as arrears of land revenue and, where permissible, enforcement of its rights over the leased property. It was contended that such statutory security and proprietary rights could not be diluted, ignored or extinguished merely because the Corporate Debtor had entered into the Corporate Insolvency Resolution Process (CIRP) and Resolution Plan of SRA has been approved.

12. The Appellants submitted that the Resolution Plan erred in treating the Authority as an ordinary creditor and in failing to recognise the security interest attached to its statutory dues. It was contended that once the respective Authorities are recognised as secured creditors, the consequential treatment and payment available to secured creditors under the Code, must necessarily follow, subject to the applicable provisions of the Code and the settled law declared by the Hon'ble Supreme Court and this Appellate Tribunal.

13. The Appellants further contended that the Resolution Plan could not override the statutory charge or deprive the respective Authorities of the benefit flowing from such securities merely by characterising its dues as statutory or governmental dues. It was submitted that the fact that the respective Authorities might not have participated in the CoC in the same manner as a financial creditor does, not by itself, extinguish or dilute the security interests created in this favour. The Appellants asserted that its statutory rights over the leased property survive the commencement of CIRP and must receive appropriate recognition while determining its entitlement under the Resolution Plan.

14. The Appellants contended that the judgment of the Hon'ble Supreme Court in ***State Tax Officer v. Rainbow Papers Ltd.*** *(2023) 9 SCC 545* recognises the statutory charge of a government authority and the corresponding status of such authority as a secured creditor where the applicable statute creates a charge over the property. It was submitted that the same principle is applicable to the statutory charges claimed by Authorities i.e. Noida/Greater Noida, and consequently, the Authorities cannot be placed at par with an unsecured operational or statutory claimant.

15. The Appellants further submitted that it continues to retain ownership and statutory control over the subject land, whereas the Corporate Debtor had only leasehold rights governed by the lease deed. It was contended that the Resolution Applicant could not acquire any greater or better rights than those possessed by the Corporate Debtor and that the statutory and contractual conditions attached to the lease, including the Authority's rights in respect of its dues, could not be bypassed through the insolvency process.

16. The Appellants contended that its status as a secured creditor has a direct bearing upon the manner in which its claim is to be dealt with under the Resolution Plan. It was submitted that the reduction of the amount payable to the respective authorities, without first determining and giving effect to its secured status and the value of the security created in its favour, was arbitrary and contrary to the statutory scheme of the Code. The Appellants stated that the respective Authorities' first charge/security interest over the demised premises could not be diluted under the guise of insolvency resolution. It was contended that recognition of the Authority merely as an ordinary creditor would defeat the very purpose and legal effect of the statutory charge and would confer an unwarranted benefit upon the Successful Resolution Applicant at the expense of the secured statutory interest of the Authorities.

17. The Appellants further submitted that the settled principles laid down by the Hon'ble Supreme Court, including in ***Rainbow Papers (Supra),*** and the subsequent jurisprudence of this Appellate Tribunal in the case of ***Assets Care & Reconstruction Enterprise Limited vs Mr. Viswanadha Sarma (Resolution Professional of Arena Superstructures Private Limited)*** (Company Appeal (AT) (Ins) No. 949 of 2023) require the statutory charge and the secured status of the Authority to be duly recognised while considering the distribution or treatment of its claim under the Resolution Plan. The Appellant empathetically pleaded that the present appeals are squarely covered in the ratio of ***Assets care (supra).*** It was contended that the Authorities are consequently entitled to the consequential benefits flowing from its status as a secured creditor, and that its claim cannot be dealt with in the same manner as an unsecured statutory claim.

18. The Appellants submitted that, during the course of deliberations, before this Appellate Tribunal in the present Appeals the Counsel appearing for the parties were in agreement that the only issue remaining for adjudication in the present appeals is with regard to the designation or treatment of Noida and Greater Noida as secured creditors and the consequential benefits, if any, flowing therefrom, in light of the settled principles laid down by the Hon'ble Supreme Court and this Appellate Tribunal.

19. Concluding the arguments, the Appellants requested this Appellate Tribunal to consider their claim in terms of settled legal position.

20. Per contra, the Respondent No. 1, the Resolution Professional denied all the averments made by the Appellants.

21. The Respondent No. 1 submitted that the Appellants, being operational creditors, are entitled only to the statutory minimum contemplated under Section 30(2)(b) read with Section 53 of the Code and cannot claim parity with secured or financial creditors. The liquidation value attributable to the Appellants was assessed as NIL; nevertheless, the Successful Resolution Applicant proposed payment of Rs. 25 Crores to the Appellant in Appeal No. 1107 of 2023, which was substantially higher than the statutory entitlement, while in Appeal No. 184 of 2023, Rs. 18.5 Crores was earmarked against the Appellant's claimed dues of approximately Rs. 62 Crores. The Respondent No. 1 stated that the Code does not guarantee full recovery of an operational creditor's dues and that equitable treatment means equitable treatment among similarly situated creditors, and not equality between financial and operational creditors.

22. The Respondent No. 1 contended that the Appellant's reliance upon ***Rainbow Papers (Supra)*** is misconceived and distinguishable. Unlike ***Rainbow Papers (Supra)***, where the State's claim was secured by an express statutory first charge under the Gujarat VAT Act, the present claims arise from allotment and lease-related dues and no comparable statutory charge creating security over the Corporate Debtor's assets has been established. The Respondent No. 1 stated that Section 13-A of the U.P. Industrial Area Development Act, 1976 was neither invoked nor enforced by the Appellants during the CIRP and, in any event, the Appellants' status as an operational creditor has already been conclusively adjudicated. The ratio of *Rainbow Papers (Supra)* therefore cannot be extended to confer secured-creditor status upon the Appellants.

23. The Respondent No. 1 stated that the Resolution Plan was approved by the CoC with an affirmative voting share of 87.60% after due deliberation over competing plans, negotiations and consideration of the commercial requirements of the Corporate Debtor. In the case of the real-estate Corporate Debtor, the CoC legitimately prioritised completion and delivery of units to homebuyers, whose admitted claims were approximately Rs. 537 Crores, and such prioritisation falls within the commercial wisdom of the CoC. The Respondent No. 1 submitted that Regulation 37(f) permits reduction or restructuring of debts, including statutory dues, and that judicial review under Sections 30, 31 and 61 of the Code is confined to the statutory parameters and cannot extend to substituting the Tribunal's assessment for the commercial wisdom of the CoC.

24. The Respondent No. 1 contended that the Appellants' grievance essentially seeks recovery of its entire outstanding dues, whereas the Code is a mechanism for insolvency resolution and reorganisation and not a substitute for recovery proceedings. Once the Resolution Plan was approved by the CoC with the requisite majority and thereafter approved by the Adjudicating Authority, it became binding on all stakeholders under Section 31 of the Code. The Respondent No. 1 therefore stated that, in the absence of any demonstrated violation of Section 30(2) or other statutory requirement, this Appellate Tribunal cannot interfere with the quantum or manner of distribution determined by the CoC in exercise of its commercial wisdom. Accordingly, the Appellants' challenge seeking a higher payment or a different classification of its claim is legally untenable.

25. Concluding arguments, the Respondent No.1 requested this Appellate Tribunal to dispose the Appeals suitably, in accordance with the Order that 06.07.2026 to deliver only the limited issue.

26. Per contra, the Respondents SRA also denied all the averments made by the Appellant as misleading and baseless.

27. The Respondents SRA submitted that they are the successful Resolution Applicants of Shubhkamna Buildtech Private Limited and that the Resolution Plan submitted by them was duly approved by the CoC with an affirmative vote of 87.57% on 17.10.2019. It was stated that the Resolution Plan was compliant with the provisions of the Code and the legal position prevailing on the date of its approval. The Respondents SRA further stated that the Appellants had not raised any objection before the Adjudicating Authority either regarding its classification as an unsecured operational creditor or concerning the treatment of its claim under the Resolution Plan, and that the contention seeking treatment as a secured creditor was raised for the first time in the present Appeals.

28. The Respondents SRA submitted that the claims of the Appellants were duly considered and provided for under the category of Statutory/Government Operational Dues, with an amount of Rs. 25 Crores earmarked under the Resolution Plan towards the dues of NOIDA Authority and Rs. 18.5 Crores towards the dues of Greater NOIDA Authority. It was stated that the Resolution Plan could not be faulted for not treating the Appellants as secured creditors, as the legal position recognising NOIDA as a secured creditor was settled subsequently by the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Ors.*** (2024) 2 S.C.R. 258 decided on 12.02.2024, whereas the Resolution Plan had already been approved in 2019.

29. The Respondents SRA submitted that the amount payable to different classes of creditors is essentially a matter of commercial wisdom of the CoC and that a secured creditor cannot demand a higher amount merely by reference to the value of its security interest. It was further stated that, without prejudice, even if the Appellants were subsequently held entitled to an enhanced amount in view of the judgment in *Prabhjit Singh Soni* (Supra), Clause 8.6, Paragraph 15 of the approved Resolution Plan contains an express mechanism for meeting any additional liability arising pursuant to a subsequent order of the NCLT, NCLAT or any competent Court, with the homebuyers being liable to contribute the excess amount on a pro-rata basis. Consequently, the Respondents SRA contended that the reliance placed by the Appellants upon ***Assets Care & Reconstruction Enterprise Limited v. Mr. Viswanadha Sarma & Ors.*** CA (AT)(lns.) No. 949/2023 was misplaced, as the present Resolution Plan itself specifically contemplated and provided for any additional liability arising from a subsequent judicial determination.

30. The Respondents SRA stated that the Monitoring Committee, in its 9th Meeting held on 12.09.2022, had also undertaken to stand by the approved Resolution Plan and to take further action, if any, in accordance with the orders or directions of this Appellate Tribunal. It was submitted that the Resolution Plan thus contains an in-built mechanism safeguarding the interests of all stakeholders and is capable of accommodating any additional amount that may become payable pursuant to a subsequent judicial determination without disturbing its commercial structure or implementation.

31. In view thereof, the Respondents SRA contended that although the Appellants are not entitled to any amount higher than provided in the Resolution Plans, no prejudice however would be caused to the Appellants, even if their claims are re-determined and additional payments are made by Homebuyers as provided in the Resolution Plan, and accordingly, the present Appeals may be disposed by this Appellate Tribunal.

32. The Homebuyers representing CoC, as a class of (Homebuyers) submitted that the surviving issue in the present appeals, as identified by this Appellate Tribunal vide order dated 06.07.2026, concerns the designation or treatment of NOIDA and Greater NOIDA as secured operational creditors and the consequential benefits, if any, arising therefrom. The Homebuyers stated that, pursuant to the said order, the Authorised Representative ("AR") convened a meeting of the Homebuyers and sought their views and votes on the issue of treating NOIDA and GNIDA as secured operational creditors. The Homebuyers submitted that an overwhelming 95.6% of the Homebuyers who participated in the voting rejected the proposal to treat NOIDA and GNIDA as secured operational creditors, with only 4.4% voting in favour of the proposal.

33. The Homebuyers stated that in view of the categorical rejection by the Homebuyers, the approved Resolution Plan ought not to be altered or modified at this stage. It has also been submitted that the Hon'ble Supreme Court, in ***NOIDA v. Anand Sonbhadra,*** [2022] 5 S.C.R. 319, had recognised NOIDA only as an operational creditor. They contended that, in view of the said authoritative pronouncement, there remains no justification for permitting NOIDA or GNIDA to be subsequently treated as secured operational creditors so as to confer upon them any enhanced or preferential distribution under the Resolution Plan.

34. The Homebuyers submitted that the Resolution Plan, having been duly approved by the CoC and sanctioned by the Adjudicating Authority, cannot be reopened merely on account of the pendency of an appeal preferred by one of the stakeholders. They stated that, under Section 31(1) of the Code, an approved Resolution Plan is binding upon all stakeholders and submitted that any modification at this stage would disturb the integrated commercial arrangement embodied in the Resolution Plan and adversely affect the rights and entitlements of the Homebuyers.

35. The Homebuyers contended that the lease deed does not create any mortgage, charge, proprietary interest or security interest in favour of the Appellant. They submitted that the provision in the lease deed permitting the lessee to mortgage the property in favour of banks or financial institutions, subject to prior approval, merely regulates such transactions and does not confer upon the Appellant the status of a secured creditor. They further stated that the limited contractual rights reserved under the lease deed, including recovery of unearned increase, cannot be equated with a "security interest" within the meaning of Section 5(31) of the Code. Accordingly, the Homebuyers submitted that the Appellants cannot claim the status of a secured creditors or seek alteration of its treatment under the already approved Resolution Plan.

36. The Homebuyers stated that the reliance sought to be placed upon the judgment of the ***Prabhjit Singh Soni (supra),*** for treating GNIDA as a secured creditor by operation of law, is no longer sustainable in view of the 2026 amendment to the definition of "security interest" under the Code. They submitted that the amended provision expressly excludes security interests arising by operation of law and is clarificatory in nature, and therefore operates retrospectively. The Homebuyers contended that NOIDA and GNIDA are consequently disentitled from relying upon the earlier observations to claim secured creditor status.

37. The Homebuyers further submitted that NOIDA and GNIDA had not claimed the status of secured operational creditors before the Adjudicating Authority at the stage when the Resolution Plan was considered and approved. They stated that the order dated 12.09.2022 of the Adjudicating Authority records that such a contention had not been raised at the relevant stage and, therefore, the Authorities must be deemed to have waived the same. They further relied upon the explanation to Section 53(1)(e)(i) of the Code to contend that Government dues falling within the prescribed two-year period preceding the liquidation commencement date are dealt with under Section 53(1)(e) of the Code, irrespective of whether such dues are secured by a security interest or arise by operation of law, whereas Government dues beyond such period fall within the residual category under Section 53(1)(c) of the Code.

38. The Homebuyers further stated that any interference with the approved distribution mechanism at this stage would undermine the certainty and finality contemplated under the Code and would amount to interference with the commercial wisdom of the CoC. The Homebuyers pleaded that the commercial wisdom of the CoC is paramount and that the approved Resolution Plan ought not to be disturbed in the absence of legally sustainable grounds.

39. The Homebuyers submitted that permitting NOIDA and GNIDA to alter their status from operational creditors to secured creditors at this stage would materially prejudice the Homebuyers, disturb the distribution contemplated under the approved Resolution Plan, and defeat the principles of finality and certainty underlying the insolvency resolution process. They therefore prayed that this Appellate Tribunal to dismiss the present appeals.

Findings

40. These connected appeals i.e. Company Appeal (AT)(Ins.) No. 184 of 2023 preferred by the Greater Noida Industrial Development Authority ("**GNIDA**") and Company Appeal (AT)(Ins.) No. 1107 of 2023 preferred by the New Okhla Industrial Development Authority ("**NOIDA**") arise out of the Corporate Insolvency Resolution Process of Shubhkamna Buildtech Private Limited ("**Corporate Debtor**"), and assail, inter alia, the treatment accorded to the Appellants' respective claims under the Revised Resolution Plan dated 12.10.2019 as approved.

41. We consciously note the amount provided in the Resolution Plan w.r.t. Financial Creditors and Operational Creditor, which reads as under:

FINANCIAL CREDITOR	**CLAIM**	**AMOUNT PROVIDED UNDER THE PLAN**	**% Hair Cut**
Homebuyers	5,25,51,80,390 (consisting of principal amount and interest amount)	The interest component of Rs. 1,55,03,28,799/- is being waived off. In addition to payment of balance Principal Amount the homebuyers are liable to pay and aggregate of Rs. 2,22,76,73,000/- as escalation cost.	**75.70%**
Merina Commotrade Pvt. Ltd.	10,21,25,000	1 crore	**90.21%**
Canara Bank	68,15,374	0.20 crore	**70.67%**
DHFL	21,50,39,400	1.5 crore	**93.01%**
Unsecured	43,55,19,582	a. UCO Bank- being home loan provider shall be entitled to exercise their right of subrogation over the units which Home Loan has been extended b. Rishi Kapoor shall be paid 0.90 crores c. Corporation Bank- being home loan provider shall be entitled to exercise their right of subrogation over the units which Home Loan has been extended	
OPERATIONAL CREDITOR			
NDA Authority	99,32,55,183	25	**74.84%**
Greater NDA Industrial Development Authority	60,64,54,762	18.5	**69.47%**

42. A perusal of the aforesaid distribution clearly demonstrates that the present CIRP was a homebuyer driven insolvency, wherein the homebuyers themselves have accepted a substantially higher haircut than the haircut proposed for the Appellants. The commercial allocation under the Resolution Plan, therefore, prima facie cannot be said to be arbitrary or discriminatory qua the Appellants. The Appellants seek to contend that it ought to rank pari passu with secured financial creditors in terms of Section 53(1)(b)(ii) of the Code. However, even assuming such contention, the Appellants cannot, in any circumstance, claim an amount exceeding what it would have been entitled to receive in liquidation. Section 30(2)(b)(i) of the Code specifically mandates that the Resolution Professional must ensure that the Resolution Plan provides for payment of operational creditors in a manner which is not less than the amount payable to them in the event of liquidation.

43. At the outset, we would like to place on record the vital facts that our findings are limited to common question that lies at the heart of both appeals i.e., whether GNIDA and NOIDA are entitled to be treated as secured creditors of the Corporate Debtor by reference to the two registered Lease Deeds executed in its favour, namely: (i) the GNIDA Lease Deed dated 04.04.2011 for Plot No. GH-02A, Sector-01, Greater Noida (32,296 sq.m. clear area, sub-divided out of Plot GH-02), and (ii) the NOIDA Lease Deed dated 30.07.2010 for Plot No. GH-05/B, Sector-137, NOIDA (22,565.77 sq.m.). We observe that other grounds raised in the two appeals were pleaded but no more remains relevant based on consensus of parties to Lis, as recorded in our order dated 06.07.2026 which reads as under:

> *"During the course of deliberations, Ld. Counsel for the Parties appear to be in agreement that the only issue which has remained in these appeals, to be adjudicated by us, is continued to the designation or treatment of the Noida and Greater Noida as the secured creditor and what consequential benefit they may get in the background of the*

> *<u>settled principles laid down by the Hon'ble Supreme Court and also by this Appellate Tribunal.</u>*
>
> *<u>We have heard Learned Counsel for the Parties, on this limited issues.</u>*
>
> *Arguments heard and concluded. However, at this juncture, we provide an opportunity of being heard to the Authorised Representative of the home buyers/financial creditor in a class. Thus, we request Learned Counsel for the RP to instruct RP to ask the Authorised Representative, Shri B.N. Kalra to remain present before us along with the RP on the next date of listing.*
>
> *Accordingly, list this appeal on 28.07.2026, at 2:00 PM.*
>
> *We clarify that as the appeals have been completely heard, the same may not be adjourned on the next date."*
>
> *(Emphasis supplied)*

44. We note that the Corporate Debtor was taken through the CIRP, culminating in a Revised Resolution Plan dated 12.10.2019, which was placed before the CoC and thereafter approved. GNIDA's claim was classified in the Plan as an unsecured "Statutory/Government Operational Due" and allocated approximately Rs. 18.5 Crores. NOIDA's admitted claim of Rs. 41.53 Crores was, under the Revised Plan, reduced to approximately Rs. 25 Crores. Aggrieved, both Authorities preferred the present appeals in 2023.

45. Both Authorities contend, in substance, that this treatment is contrary to law inasmuch as their dues, being secured by a first charge over the leased plots, ought to have been computed and satisfied as secured debt under Section 30(2)(b) read with Section 53(1)(b) of the Code rather than as unsecured statutory/operational dues falling under Section 53(1)(e)/(f) of the Code.

46. We also note that the relevant paragraph of the judgement passed by the Hon'ble Supreme Court in case of ***Greater Noida Industrial Development Authority V. Prabhjit Singh Soni & Ors.*** (2024) 2 S.C.R. 258

> *54. <u>In our view the resolution plan did not meet the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following r</u>easons:…………………………..*
>
> *b. The <u>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</u>. 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 maximization 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. Nonplacement 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……*
>
> *55. <u>As we have found that neither NCLT nor NCLAT while deciding the application /appeal of the appellant took note of</u>*

> *the fact that,- (a) the appellant had not been served notice of the meeting of the COC; (b) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant; (c) the appellant had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and (d) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016, we are of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned order dated 24.11.2022 is set aside. The order dated 04.08.2020 passed by the NCLT approving the resolution plan is set aside. The resolution plan shall be sent back to the COC for re-submission after satisfying the parameters set out by the Code as exposited above. There shall be no order as to costs.*
>
> *(Emphasis supplied)*

47. We note that amendment of section 3(31) of the Code as commenced are quite relevant in the present case. The amended Section 31 of the code as amended in April 2026 reads as under:

> *(31) "**security interest**" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other*

> *<u>agreement or arrangement securing payment or performance of any obligation of any person:</u>*
>
> *Provided that security interest shall not include a performance guarantee;*
>
> ***<u>Explanation. For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force;"</u>***
>
> (Emphasis supplied)

48. In this connection, we will refer to the judgement of Hon'ble High Court of ***Madras in the case of Avenue Realty v. Assistant Commissioner Srirangam (GST Circle) and Ors.*** *(2026) ibclaw.in 2350 HC*, which support the view that amendment of this nature i.e. clarificatory amendment, will have retrospective applicability. The relevant portion of the said judgement reads as under:

> *38. <u>Section 2 of the Amendment Act amends Section 3(31) of the Insolvency and Bankruptcy Code, thereby clarifying the nature of "security interest", which reads as follows</u>: "Explanation. For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties,*

and shall not include a security interest created merely by operation of any law for the time being in force."

39. *The Statement of Objects and Reasons for the aforesaid amendment is as follows: "Clause 2 of the Bill seeks to amend section 3 of the Insolvency and Bankruptcy Code, 2016 ('Code'). It seeks to insert an explanation in clause (31) of section 3 of the Code to clarify that security interest shall exist only when it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement by the act of two or more parties and shall not include a security interest created merely by operation of any law for the time being in force. Hence, a provision in central or state legislation or a subordinate law that states that a charge will be made on the property of the corporate debtor for non-payment of tax or a penalty shall not be considered a security interest. A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in writing. For instance, a charge created over the property of the corporate debtor to secure the financial debt under an agreement, or an arrangement where a mortgage is created by deposit of title deeds of its property between two or more persons."*

40. ***Thus, the amendment explicitly seeks to undo the consequences of the decision in Rainbow Papers. Being a clarificatory amendment, there is no doubt that it will have retrospective application.***

41. In this regard, the judgment of the Hon'ble Supreme Court in R. Rajagopal Reddy vs Padmini Chandrasekharan reported in AIR 1996 SC 238, is extracted below:

"17. As regards, reason No. 3, we are of the considered view that the Act cannot be treated to be declaratory in nature. Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. On the express language of Section 3, the Act cannot be said to be declaratory but in substance it is prohibitory in nature and seeks to destroy the rights of the real owner qua properties held benami and in this connection it has taken away the right of the real owner both for filing a suit or for taking such a defence in a suit by benamidar. Such an Act which prohibits benami transactions and destroys rights flowing from such transactions as existing earlier is really not a declaratory enactment. With respect, we disagree with the line of reasoning which commanded to the Division Bench. In this connection, we may refer to the following observations in 'Principles of Statutory Interpretation', 5th Edition 1992, by Shri G.P. Singh, at page 315 under the caption 'Declaratory statutes' : The presumption against retrospective operation is not applicable to declaratory statutes. As states in CRAIES and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing

<u>a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes.</u> Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. <u>An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.</u> It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. <u>An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force the amending Act also will be part of the existing law</u>.

In Mithilesh Kumari v. Prem Bihari Khare, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for it was not passed to clear any doubt existing as to the common law or the meaning or effect of any statute. The conclusion however, that Section 4 applied also to past benami transactions may be supportable on the language used in the section."

After taking into consideration above judgement, we hold that the ratio is directly applicable in the present case and Section 3 (31) of the code as stand modified in April 2026, thus shall have retrospective effect.

49. In this background, now we shall refer to the specific clause in approved Resolution Plan of the SRA, which reads as under:

8.6 Payment to Financial Creditors:

a) Class of Financial Creditors: As per information Memorandum the financial creditors have been broadly classified into:

i) Home Buyers

ii) Non Home Buyers

iii). Unsecured Financial Creditors

b. Treatment of Financial Creditors / Contribution Commitment [Home Buyers):

<u>*RA will Infuse the amount in the CD and the amount towards Balance Consideration together with Enhanced*</u>

> *Amount will be called from the investors/allottees/ Financial Creditors as specified in detail in Chapter VII hereinabove to complete the Project and deliver the possession to the respective unit holders / Financial Creditors. The allotted units will be delivered to them upon payment of Balance Consideration together with Enhanced Amount as envisaged in the plan subject to the conditions mentioned below:*
>
> *…………………………………………………………….*
>
> *15. The RA/CD shall only be liable to pay the Financial Creditors and Operational Creditors to the extent specifically provided for in the Plan.* ***If at any later date, the Resolution Applicant/ Corporate Debtor is required to pay any amount over and above the amount provided for in the plan by virtue of a NOLT/NCL.AT/Court Order, the Homebuyers shall be liable to contribute the excess amount on a pro-rata basis.***
>
> *(Emphasis supplied)*

50. Coming back to the present case, the Successful Resolution Applicant before us, defended the classification on three grounds: (a) that the classification of GNIDA's dues as unsecured was correct on the law as it stood in 2019, secured-creditor status of authorities of this kind having been settled only later, in ***Prabhjit Singh Soni (Supra)*** (decided 12.02.2024); (b) that the commercial wisdom of the CoC, in approving the Resolution Plan is entitled to differential treatment of claims and (c) that, without prejudice to (a) and (b), Clause 8.6/Paragraph 15 of the approved Plan already provides a pro-rata, homebuyer-funded top-up mechanism for any court-directed enhancement, which is said to distinguish Assets Care (Supra)even if that decision were otherwise thought applicable.

51. We also note the submissions of the Homebuyers that minutes of the Ninth Meeting of the Implementation and Monitoring Committee held on 16.05.2026 record that the Monitoring Committee declined to alter the creditors inter se status and resolved to stand behind the Approved Plan pending further directions of this Appellate Tribunal, while noting that and implementation of the Resolution Plan is at a standstill.

52. After noting rival contentions of all parties, on the material now available before us, including the two Lease Deeds of the Appellants placed on record, the issue for determination by us is narrow i.e. whether the GNIDA and NOIDA Lease Deeds create, or evidence, a "security interest" within the meaning of Section 3(31) of the Code in favour of the Appellants, such that their claims fall to be classified as secured debt under Section 53(1)(b), rather than as unsecured statutory/operational dues under Section 53(1)(e)/(f) of the Code.

53. At outset we note carefully that both Lease Deeds though executed on different dates, by different Authorities, in respect of different plots in the present appeals are in materially identical standard form, used by GNIDA and NOIDA respectively for allotment of Group Housing plots. It is convenient to extract the identical clauses in both Lease Deeds capable of bearing on the question of security. For the sake of convenience, we will reproduce only once the common and identical cause of Lease Deeds of NOIDA and GNIDA in the present appeal.

54. From both lease deeds as available in the appeals we note that Clause F ("MORTGAGE") of the GNIDA Lease Deed dated 04.04.2011, and the correspondingly placed clause of the NOIDA Lease Deed dated 30.07.2010 (materially identical in terms, and so extracted once), reads, as under:

> *"The Lessee may, with prior permission of the Lessor, mortgage the land to any Financial Institution(s) / Bank(s) for raising loan for the purpose of financing his investment in the project ... Provided that in the event of sale or foreclosure of the mortgaged/charged property the LESSOR shall be entitled to claim and recover such percentage, as decided by the LESSOR, **of the unearned increase in values of properties in respect of the market value of the said land as first charge,** having priority over the said mortgage charge, the decision of the LESSOR in respect of the market value of the said land shall be final and binding on all the parties concerned.*
>
> *The LESSOR's right to the recovery of the unearned increase and the pre-emptive right to purchase the property as mentioned herein before shall apply equally to involuntary sale or transfer, be it bid or through execution of decree of insolvency/court."*
>
> *(Emphasis supplied)*

55. Based on above clauses of Lease Deeds, we are of opinion that two features of the said clause are significant. At the first instance, the "first charge" it speaks of is not a freestanding, general charge over the plot securing the whole of the Lessor's dues i.e. premium, interest, lease rent and all other sums payable under the Deeds. It only secures the Lessor's share of the unearned increase in the value of the land. Second, and more importantly, the charge is expressly conditional: it arises, and can be enforced, only "in the event of sale or foreclosure of the mortgaged/charged property" that is, only where the Lessee has itself created a mortgage in favour of a bank or financial institution and that mortgage is thereafter enforced by sale or foreclosure. On the record before us, no such mortgage, sale or foreclosure involving the Corporate Debtor's plots is shown to have occurred. We are of considered view that this clause creates, at best, a contingent right of priority in a hypothetical future scenario and it does not, constitute a present, subsisting charge securing the premium, interest and lease-rent arrears that in fact make up GNIDA's and NOIDA's claims as secured creditors in these proceedings.

56. We have also gone through other clause of the two Lease Deeds which could be capable of bearing even remotely on the question of treatment of the Appellants as secured creditors. We take note of only clause which seem relevant on the question before us i.e. Clause 11 under "OTHER CLAUSES," which provides simply: "All arrears due to the Lessor would be recoverable as arrears of land revenue." This is not, on its face, a clause by which the parties agreed to create a charge on the demised property. At the best, it is a mode of recovery, ordinarily available to statutory development authorities under Sections 13 and 13-A of the Uttar Pradesh Industrial Area Development Act, 1976 ("UPIDA"). Whatever security character this mechanism may carry, it does so by force of the statute or law and not by the private bargain of the parties recorded in the Deed, which can make the class of the Appellants as secured creditors. In view of this, we are not inclined to accept the proposition, on which GNIDA and NOIDA principally rely is that a statutory charge of this kind, created under Sections 13, 13-A and 14 of the UPIDA, constitutes a "security interest" for the purposes of the Code which was settled in their favour by the Supreme Court in ***Prabhjit Singh Soni (supra),*** tracing its lineage to ***Rainbow Papers Ltd. (supra).***

57. We further observe that this position no longer holds without qualification. The Insolvency and Bankruptcy Code (Amendment) Act, 2026 (Act No. 6 of 2026), which received Presidential assent on 06.04.2026, inserts an Explanation to Section 3(31) of the Code providing, in substance, that a "security interest" does not include any interest, lien or charge created purely by operation of law including a statutory charge and that a security interest, to so qualify, must arise from an agreement or arrangement between two or more parties. A corresponding Explanation to Section 53(1)(e)(i) of the code further amplify that amounts due to the Central or State Government are not to be accorded secured-creditor priority by reason only of a charge created by operation of law. These provisions, along with Sections 8 to 33 of the 2026 Act generally, were brought into force with effect from 26.05.2026 by notification S.O. 2625(E) dated 22.05.2026 issued by the Ministry of Corporate Affairs.

58. We need to appreciate the effect of above is that the statutory-charge route recognised in ***Prabhjit Singh Soni (Supra)*** resting on the charge created "by operation of" Sections 13, 13-A and 14 of the UPIDA is no longer available, as the Appellants to treat their clause as "security interest" status under the Code. We are of considered view that to that extent, GNIDA's and NOIDA's claim, to secured creditors, rests on the statutory recovery mechanism recorded in Clause 11 of the two Lease Deeds (noted earlier), which does not provide any protection to the Appellants against this changed legal position as discussed above.

59. It is necessary for us now to deal directly with ***Assets Care (Supra)*** decided by the co-ordinate Bench of this Appellate Tribunal on 30.06.2026 i.e. after the 2026 Amendment came into force relied by the Appellant.

Relevant portion of the judgement the ***Assets Care and Reconstruction Enterprise Ltd.*** *(Company Appeal (AT) (INS) No. 949 of 2023)*, reads as under:

> *174. The only issue in this appeal is whether the Appellant/NOIDA is entitled to a treatment different from that of an ordinary Operational Creditor in view of the rights arising from the registered Sub-Lease Deed dated 19.10.2012 and the statutory framework governing the project land, and whether the Resolution Plan approved by the Adjudicating Authority adequately considered those rights in accordance with law?*

180. Further, <u>Part II of the said Sub lease document</u> deals with payment by Sub-Lessee to Lessor. In sub-clause (f) the following declaration is given about the charge: -

"II. AND THE SUB-LESSE DOTH HEREBY DECLARE AND COVENANT WITH THE LESSOR IN THE MANNER FOLLOWING:

(a)….

(f)….

<u>Lessor shall have the first charge on the plot towards payment of all dues of Lessor."</u>

181. We note the following from the aforesaid portions of Lease Deed:

a. It's a tripartite Sub-Lease Deed between NOIDA-the Lessor; Sequel Buildcon the Lessee; and Arena Superstructures the CD herein as Sub-Lessee.

b. The Sub-Lessee Arena Superstructures (CD) is a 100% subsidiary of the Lessee.

c. The Sports City Plot No. SC-01/A Sector 79 having an area of 100,000Sqm was further divided by NOIDA in 2 plots having equal area of 50,000Sqm each, and the second plot no. SC-01/A2 Sector 79 having an area of 50,000Sqm was further sub-Leased to Arena Superstructures (CD).

184. <u>We note from the above that the aforesaid sub-lease deed creates the first charge in favour of NOIDA to secure payment of its dues from the corporate debtor. The charge is created by an agreement and not by operation of a statute. We also note that the rights asserted by NOIDA are based on this agreement and the its reliance on the statutory charge under</u>

Sections 13 and 13-A of the Uttar Pradesh Industrial Area Development Act, 1976 is only to further strengthen its case.

185. We also note that the Parliament has inserted an Explanation to Section 3(31) of the IBC through Section 2 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, and the same has been brought into force through Gazette Notification S.O. 2625(E) dated 22.05.2026. The Explanation clarifies that a security interest created merely by operation of law would not qualify as a security interest under the Code. However, in our considered view, in this case the reliance is upon a registered lease deed and not upon creation of statutory charge by operation of law.

186. It is to be noted that the RP in its submission has stated that two elements are essential to constitute a security interest under Section 3(31) of the Code: (i) the right, title, interest or claim must be created by a transaction; and (ii) such transaction must secure payment or performance of an obligation. Further the word 'transaction' is itself defines under Section 3(33) of the Code as:

"3(33) Transaction" includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor."

We are of the view that the registered sub-lease deed meets all the requirements as laid down in Section 3(31) and 3(33) of the Code and accordingly NOIDA should have been treated as the Secured Creditor in the Resolution Plan.

191. Accordingly, we are of the view that the claim of NOIDA requires reconsideration, as their claim is held to be that of a

> *Secured Creditor, arising from the registered Sub-Lease Deed dated 19.10.2012. The Resolution Plan incorrectly classifies the claim of NOIDA to be that of an Operational Creditor.*
>
> *192. In view of our findings above and in in earlier paragraphs, we dispose of the appeals in the following manner:*
>
> *(i) CA (AT) (Ins) No. 949 of 2023 and 1117 of 2023 are dismissed.*
>
> *(ii) CA(AT) (Ins) No. 1231 of 2023 is disposed of in the following*
>
> *a) Impugned Order is set aside to the limited extent of distribution proposed in the Resolution Plan. There would be no change to the remaining part of the Resolution Plan.*
>
> *b) RP is directed to propose an addendum to the Resolution Plan, treating NOIDA as a Secured Creditor and revising the distribution proposed in the Resolution Plan. CoC to consider the revised distribution and after approval of the CoC, the same may be placed before Ld. Adjudicating Authority for final approval.*
>
> (Emphasis supplied)

60. In the above appeal NOIDA (as Appellant in Company Appeal (AT)(Ins.) No. 1231 of 2023) succeeded in establishing its status as a secured creditor of the corporate debtor, and the Coordinate Bench of this Appellate Tribunal directed the Resolution Professional, to place an addendum to the resolution plan treating NOIDA as secured and to revise the distribution accordingly, keeping remaining part of the Impugned Order intact.

61. On examination, however, we hold that the ratio in ***Assets Care (supra)*** rests on a factual foundation materially different from that established by the Lease Deeds now before us, discussed above in detail and does not, in our considered view, compel a like conclusion here.

62. From facts of ***Assets Care (supra),*** we note that NOIDA's claim in that case was founded, as its own pleadings record, on a registered, tripartite Sub-Lease Deed dated 19.10.2012 between NOIDA and the Lessor, "M/s Sequel Buildcon Pvt. Ltd., the Lessee," and "M/s Arena Superstructures Pvt. Ltd., the Sub-lessee" (the corporate debtor in that case). As recorded at paragraph 143 of that judgment, NOIDA's case which the Coordinate Bench of this Appellate Tribunal, accepted, reads as follows:

> *"... The sub-lease also provides that the lessor shall have the first charge on the plot towards payment of all dues of Lessor."*
>
> *(Emphasis supplied)*

63. Thus, we find above clause in ***Assets care (supra)*** is a general, unconditional, standing charge, created by the express agreement by all concerned parties to that Sub-Lease Deed, extending to the whole of the sums payable to NOIDA under the lease premium, ground rent, extension charges and all other dues and not confined to any particular contingency.

64. On the contrary, we find in present appeals, nothing resembling that clause appears in either Lease Deed now before us. As discussed earlier, the GNIDA and

NOIDA Deeds relied upon in the present appeals are not sub-lease deeds specially negotiated for a sub-leasing arrangement. Rather these deeds seem to be the standard-form, bulk-allotment head Lease Deeds executed directly between the NOIDA and GNIDA as lessor and the Corporate Debtor as original lessee/developer. The only charge language these deeds contain in clause discussed earlier is (i) the narrow, contingent "unearned-increase-on-mortgage-foreclosure" clause, and (ii) the statutory-recovery clause, neither of which purports to create a general first charge securing "all dues of Lessor". The former of which is, in any event, not shown to have been triggered on the facts of present case. Thus, it seems that the Coordinate Bench of this Appellate Tribunal, considering NOIDA's claim after 26.05.2026, had every reason to rest on the surviving contractual-charge route rather than the now-qualified statutory-charge route, based on the documents in that case, unlike the Lease Deeds before us, happened to contain no such similarly placed clause capable of sustaining it as secured creditors. Thus, based on the record available before us, we are of the considered view that Assets Care (supra) is factually distinguishable and does not govern the present appeals. The Lease Deeds relied upon by GNIDA and NOIDA in present Appeals 184 and 1107 of 2023, do not contain a clause of the kind that founded NOIDA's success in the case of ***Asset Care (supra).***

65. Based on above detailed discussion, we record that neither the GNIDA Lease Deed dated 04.04.2011 nor the NOIDA Lease Deed dated 30.07.2010 contains a general, unconditional first-charge clause of the kind relied upon by NOIDA in Assets Care (supra). The only charge language in either Deed before us and discussed earlier, is the Mortgage clause, which we find is limited to the Lessor's share of unearned increase and is contingent upon a mortgage-foreclosure event that is not shown to have occurred in the present appeals. We also hold that Clause 11 of the Lease Deeds (under general clause) i.e. arrears recoverable as arrears of land revenue is a statutory recovery mechanism and not a charge created by agreement of parties. We observe that to the extent it cannot be treated as founding a security interest at all and rather, falls within the category of charge "created purely by operation of law" that the Explanation to Section 3(31) of the Code, inserted by the IBC (Amendment) Act, 2026 (in force from 26.05.2026), now excludes from "security interest." We would reiterate that Assets Care (supra) being founded on a materially different, general first-charge clause in a bespoke tripartite Sub-Lease Deed, is clearly factually distinguishable and does not require us to hold GNIDA and NOIDA to be secured creditors of the Corporate Debtor on the Lease Deeds before us. The consequences follow that the classification of GNIDA's and NOIDA's claims as unsecured statutory/operational dues under the Revised Resolution Plan dated 12.10.2019 and their consequent treatment cannot be faulted on the ground urged, namely, the existence of a security interest under the two Lease Deeds.

66. Based on above detailed discussion, we do not find any merit in either of two appeals. The Appeals fail and stand rejected. I.A., if any stand closed. There shall be no order as to cost.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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Shweta