

into keeping in view the object of the State's policy to promote industries in the State so as to increase the opportunities of employment and attract inflow of foreign currency to the State.

88. The impugned order has been passed by the U. P. Pollution Control Board in disregard to the State's policy to promote industries in the State so as to increase the opportunities of employment and attract inflow of foreign currency to the State. It has been passed in utter disregard to the Memorandum of Understanding dated 22.02.2018 entered into by the Hon'ble Governor of the State agreeing to facilitate the establishment of the industry.

89. In view of the foregoing discussion, we are of the considered view that the impugned order dated 14.11.2024 passed by the Chief Environment Officer, U. P. Pollution Control Board is unsustainable in law.

90. Accordingly, the Writ Petition is allowed. The impugned order dated 14.11.2024 passed by the Chief Environment Officer, U. P. Pollution Control Board cancelling the Consolidated Consent to Operate and Authorisation issued to the petitioner on 23.08.2024 for running an animal slaughter house, is **quashed**. The opposite parties are directed to permit the petitioner to operate the modern animal slaughter house in furtherance of the Consolidated Consent to Operate and Authorisation dated 23.08.2024 and to facilitate it in operating the industry keeping in view the State's policy to promote industries in the State so as to increase the opportunities of employment and attract inflow of foreign currency to the State as well as the Memorandum of Understanding dated

22.02.2018 entered between the Hon'ble Governor of the State and the petitioner assuring that the Governor would facilitate the petitioner to establish the project in a time bound manner.

91. The parties would bear their own costs of litigation.

(2025) 2 ILRA 561

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 24.02.2025

BEFORE

**THE HON'BLE MAHESH CHANDRA
TRIPATHI, J.**

THE HON'BLE PRASHANT KUMAR, J.

Writ C No. 21238 of 2024

**M/s Sequel Buildcon Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Anr. ...Respondents**

Counsel for the Petitioner:

Sri Gaurang Kulshreshtha, Sri Rohan Gupta,
Sri Shikhar Kaushal, Sri Anuj Chauhan, Sri
Anil Tiwari (Sr. Advocate)

Counsel for the Respondents:

C.S.C., Sri Kaushalendra Nath Singh, Ms.
Anjali Gokhlani, Sri Manish Goyal (Sr.
Advocate)

**(A) Constitutional Law - Corporate
Insolvency & Fraud - Urban Planning and
Development / Real Estate - Insolvency
and Bankruptcy - Revalidation of Map -
Insolvency Resolution Process (IRP) -
Corporate Insolvency Resolution Process
(CIRP) - Constitution of India, 1950 -
Article 254 - Insolvency and Bankruptcy
Code, 2016 - Sections 7, 14, 29A, 65 &
238 - The Insolvency and Bankruptcy
(Amendment), 2018, U.P. Industrial Area
Development Act, 1976 - The Prevention
of Money Laundering Act, 2002 - Sub-**

Clause (p), (u), (v), (y) and (za) of Clause 2 of Chapter I - Doctrine of Repugnancy - Moratorium - Reverse CIRP as Abuse of Process - Fraudulent Insolvency - Integrated Project Obligations - Public Interest & Fraud Prevention - Consortium Liability - Doctrine of Piercing Corporate Veil - In the event of a conflict between the Union law and a State law in concurrent field, the former prevails over the latter - Orders of NCLT/NCLAT passed under IBC, 2016 override decisions of State Authorities under U.P. Industrial Area Development Act - Reverse CIRP cannot be invoked to bypass liabilities in cases of fraudulent insolvency engineered to evade dues and obligations under an integrated project. (Para - 45 to 49, 120 to 123 ,136)

NOIDA launched a Sports City Scheme in 2011 - Petitioner, a consortium member, was allotted land - Sub-divisions and lease deeds were executed - After failure to deliver the project, homebuyers filed insolvency against petitioner - Reverse CIRP was initiated under NCLT/NCLAT orders - IRP and stakeholders sought map revalidation from NOIDA - which was refused citing Board resolutions and CAG report - petition was filed challenging the refusal. **(Para - 2 to 28)**

HELD: - Orders passed by the NCLT and NCLAT have to be complied with and Noida Authority cannot raise any objection or create any hindrance in compliance of the order.

Reverse CIRP is inapplicable in cases of fraudulent insolvency designed to evade dues and project obligations. Corporate veil of the companies pushed into insolvency can be lifted to prosecute the directors for committing fraud for syphoning funds and neglecting integrated project duties. NOIDA's refusal to revalidate maps is justified given the fraud and CAG findings. **(Para -50,120 to 123 ,136)**

Petition disposed of. (E-7)

List of Cases cited:

1. M.C. Mehta Vs Kamalnath, (1997) 1 SCC 388

2. M.I. Builders Vs Radheyshyam Sahu, 1999 (6) SCC 464

3. Rajiv Suri Vs D.D.A., (2022) 11 SCC 1

4. R.N.R. Ltd. Vs R.I. Ltd., 2010 (7) SCC 1

5. Center for P.I.L. Vs U.O.I., 2012 (3) SCC 1

6. Manmohan Lal Chaddha Vs U.O.I., 2014 (9) SCC 516

7. C.I.T. Vs Monnet Ispat & Energy Ltd., SLP No. 6483-2018 & ors.

8. Innoventive Industries Ltd. Vs ICICI Bank & anr.,(2018) 1 SCC 407

9. M/s E.P.D. Pvt. Ltd. Vs St. of Karn. & ors., 2019 SCC Online SC 1542

10. P.U.L.I. Ltd. & anr. Vs U.O.I. & ors., (2019) 8 SCC 416

11. Nand Kishore Gupta & ors. Vs St. of U.P. & ors., 2010 (1) SCC 282

12. St. of U.P. & ors. Vs Renusagar Power Co. & ors., 1988 (4) SCC 59

13. D.D.A. Vs Skipper Construction Co. & anr., 1996 (4) SCC 622

14. Shubhra Mukherjee Vs B.C.C.L., 2000 (3) SCC 312

15. St. of Raj. Vs G.L.K.U. Pvt. Ltd. & anr., 2016 (4) SCC 469

16. I.I.T. Ltd. Vs Motorola Incorporated & ors., 2011 (1) SCC 74

17. Asia Foundations & Constructions Ltd. Vs St. of Guj. & anr., 1985 SCC Online Guj 93

18. Hytone Merchants Pvt. Ltd. Vs Satabadi Investment Consultants Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 258 of 2021

19. V.I.P. Ltd. Vs Axis Bank Ltd., (2022) 8 SCC 352

20. Raster Images Pvt. Ltd. Vs St. of U.P., 2023 SCC Online 3594

21. Bikram Chatterji & ors. Vs U.O.I. & ors.,(2019) 19 SCC 161

22. Ghanashyam Mishra & Sons Pvt. Ltd. Vs E.A.R. Co. Ltd. & ors., (2021) 9 SCC 657

23. Flat Buyers Association Winter Hills Vs Umang Realtech Pvt. Ltd., 2020 SCC Online NCLAT 1199

24. Salomon Vs Salomon & Co. Ltd., 1897 AC 22:(1895-99) AII ER

25. Littlewoods Stores Vs I.R.C., 1969 (1) WLR 1241

26. St. of U.P. Vs Renusagar Power Co., (1988) 4 SCC 59

27. St. of Raj. & ors. Vs G.L.S.K.U. Pvt. Ltd. & anr.,(2016) 4 SCC 469

28. Subhra Mukharjee & anr. Vs B.C.C.L. & anr.,(2003) 3 SCC 312

29. Calcutta Chromotype Ltd. Vs Collector of Central Excise Kolkata, AIR 1998 SC 1631

30. New Horizon Ltd. & anr. Vs U.O.I. & ors., 1995 (1) SCC 478

31. C.I.T. Vs Meenakshi Mills Ltd. Madura, AIR 1967 SC 819

32. Telco & Ors Vs St. of Bihar, AIR 1965 SC 40

33. Juggi Lal Kamlapat Vs C.I.T., U.P., AIR 1969 SC 932

34. Arcelor Mittal India Pvt. Ltd. Vs Satish Kumar Gupta & ors., 2019 (2) SCC 1

35. D.D. A. Vs Skipper Construction Company (P) Ltd. & anr., 1996 (4) SCC 622

36. Udgar Gagan Properties Ltd. Vs Sant Singh & ors., 2016 (11) SCC 378

37. Madhukar Sadbha Shivarkar (D) by Lrs. Vs St. of Maha. & ors., 2015 (6) SCC 557

38. M/s E.P.D. Pvt. Ltd Vs St. of Karn. & ors., (2020) 13 SCC 308

39. Noida Toll Bridge Company Ltd. Vs F.N.R.W.A. & ors., Civil Appeal No0...../2024 [SLP(C) No. 33403/2016

40. Jaypee Orchard Resident Welfare Society Vs U.O.I. & ors., Writ Petition (Civil) No.854/2017

41. Chitra Sharma Vs U.O.I., 2018 (18) SCC 575

42. Pioneer Urban Land & Infrastructure Vs U.O.I., 2019 (8) SCC416

43. M/s Innoventive Industries Ltd Vs ICICI Bank, (2018) 1 SCC 407

44. Ghanshyam Mishra & sons Pvt. Ltd. Vs E.A.R. Co. Ltd. , 2021 (9) SCC 657

45. Rattan Chand Hira Chand Vs Askar Nawaz Jung, (1991) 3 SCC 67

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.

&

Hon'ble Prashant Kumar, J.)

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1. Heard Sri Anil Tiwari, learned Senior Counsel assisted by Sri Shikhar Kaushal and Sri Anuj Chauhan, learned counsel for the petitioner, Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Devesh Vikram, learned Additional Chief Standing Counsel and Sri Mohan Srivastava, learned Standing Counsel for the State-respondent no.1 and Sri Manish Goyal, learned Senior Counsel assisted by Sri Kaushalendra Nath Singh and Ms. Anjali Gokhlani, learned counsel for respondent no.2.

FACTS OF THE CASE

2. New Okhla Industrial Development Authority¹ sometime in the year 2011 floated a scheme known as "Sports City-II" which was to be developed in Sectors 78, 79 and 150 of NOIDA. The scheme was launched on 03.03.2011 and closed on 24.03.2011. As per the scheme, a Sports City was to be developed on a land parcel

of 72.75 hec. in Sector 78, 79 and another 80 hec. in Sector 150 of NOIDA. The reserve price for the scheme was set at Rs.11,500/- per square metre. The price was purposely kept low as the developer was supposed to create sports facilities over 70% of the entire land allotted to them, which was not marketable, and on top of it, the developer had to spend his funds to develop the same. In the remaining 30% of the land, 28% was meant for Group Housing and 2% for commercial purpose. The scheme clearly stated that the population density in this Sports City would be 1650 per hectare. In this scheme, maximum permissible Floor Area Ratio² of the total land was 1.5. The open/green area of the recreational component (i.e. sports activities such as Golf course, stadium etc. and open spaces) was to be considered as open green areas for the entire land.

3. In response to aforesaid scheme, only two companies applied for the allotment of Sports City, first being M/s Wave Pvt. Ltd., which had applied at the reserved price and the second was a consortium of companies led by M/s Xanadu Estates Pvt. Ltd. (Lead Member) along with 8 other companies being the Relevant Members. The bid of the consortium of M/s Xanadu Estates Pvt. Ltd. was found to be the most compliant for the development of the sports city, and hence, the project was allotted to them. The NOIDA Authority issued an Acceptance Letter on 28.03.2011 and informed the Lead Member about the allotment. Thereafter, Noida Authority issued an Allotment-cum-Reservation Letter dated 04.05.2011 and called upon the Consortium to deposit the allotment money of Rs.35,76,01,125/- within 60 days, failing which action as per terms and conditions of the brochure shall be taken. In the allotment letter, it was informed to the

Consortium that total land parcel admeasuring 7,27,500 sqm. in Plot No.SC-01-01, Sector 78 & 79, NOIDA was reserved in favour of the Consortium as per the terms and conditions mentioned in the brochure of the Scheme.

4. Vide letter dated 11.10.2011, the Consortium requested the authorities to make sub division of the allotted plot in favour of the Consortium members, who have together applied as a Consortium. The request of the Consortium was accepted by the Noida Authority on 24.10.2011 and the entire sports city project was divided into six parts. The relevant part of the acceptance letter was as under:-

“With reference to your letter dated 11th October, 2011 on the above subject, I have been directed to inform you that in view of the terms and conditions of the brochures of the scheme, your request has been accepted by the competent authority to sub-divide the aforesaid plot in six (6) parts in the following manner;

Sub division of the plot No.SC-01 Sector-79 in 5 parts & Plot No.SC-01 Sector-78, which is the part allotted area total 712981.00 sqmts. of plot no.SC-01 Sector-79 Noida i.e.

(1) SC-01/A admeasuring 71,00,000 Sqm.

(2) SC-01/B admeasuring 48,000 Sqm.

(3) SC-01/C admeasuring 2,50,027 Sqm.

(4) SC-01/D admeasuring 1,00,000 Sqm. And

(5) SC-01/E admeasuring 80,000 Sqm. (total 5,78,027.50 Sqm.)

(6) SC-01 Sector-78 14,272.50 Sqm. which is the part allotted area total

14,519.00 sqmts of plot no.SC-01 Sector - 78 Noida.

Simultaneously in view of the terms and conditions of the brochures of the Scheme, the SPC for Plot No.SC-01/C Sector-79 measuring 2,50,0207.50 Sqm. namely M/s Three C Green Developers Pvt. Ltd. consisting of consortium member (1) M/s Xanadu Estates Pvt. Ltd. - 62.5%, (2) M/s Meriton Infotech Pvt. Ltd. - 18.50%, (3) M/s Sutlej Agro Products Ltd. - 9.5% (4) M/s Xanadu Infra Developers Pvt. Ltd. - 9.50%-2,50,027.50 Sqm., is approved for execution of lease deeds.

Execution of lease deeds of sub divided plot No.SC-01/A Sector-79 in favour of relevant member namely M/s Sequel Building Concepts Pvt. Ltd. - 48,000 Sqm is approved.

Execution of lease deeds of sub divided plot No.SC-01/B Sector-79 in favour of relevant member namely M/s Sequel Building Concepts Pvt. Ltd. - 48,000 Sqm. is approved.

Execution of lease deeds of sub divided plot No.SC-01/D Sector – 79 in the name of relevant member M/s Kindle Developers Pvt. Ltd. - 1,00,000 Sqm. is approved.

Execution of lease deeds of sub divided plot No.SC-01/E Sector – 79 in the name of relevant member M/s Xanadu Realcon Pvt. Ltd. - 80,000 Sqm. is approved.

Execution of lease deeds of sub divided plot No.SC-01 Sector – 79 in the name of relevant member M/s Xanadu Infratech Pvt. Ltd. - 14,272.50 Sqm. Which is the part allotted area total 14519.00 sqmts of plot no.SC-01 Sector 78 Noida is approved”

5. Thereafter, separate lease deeds were executed between Noida Authority and different members of the Consortium. Accordingly, the Noida Authority executed a lease deed in favour of M/s Sequel Buildcon Pvt. Ltd.³ in respect of SC-01/A Sector-79 admeasuring 1,00,000 sqr. mtrs. of land for development of Group Housing project under the Sports City Scheme on 24.10.2011. The NOIDA Authority had also issued a possession certificate on 11.11.2011 in favour of the petitioner company.

6. The petitioner company again requested NOIDA Authority to further subdivide the plot of the petitioner company into two parts of 50,000 square metre each, plot no.SC-01/A1, was retained by the petitioner company and plot no.SC-02/A2 was allotted to M/s Arena Super Structure Pvt. Ltd., which is the 100% subsidiary of the petitioner company. Accordingly, fresh sub leases were executed by the authority for those two companies admeasuring 50,000 square metre each.

7. The NOIDA Authority by now had divided the entire sports city of Sector 78 & 79 into various plots and allotted the same to various companies, which were 100% subsidiaries of the allotted companies. An integrated plan for development of the sports city was filed by the allottees together, in which it had sports, commercial as well as residential area to be developed and was approved by the Noida authority on 16.06.2014. Each sub lessees/ companies were separately assigned areas for developing residential, commercial as well as sports facilities. In the chart of the approved map, obligation of various companies for completion of residential, commercial and sports facilities were marked, which was as follows :-

| SN | Company, Their Plot No. & (Plot area given to each company in sq. mtr.) | PAR. to be developed each company in sq. mtr. | PROPOSED GROUND COVERAGE (SQ.M.) | | | | PROPOSED PAR. (SQ.M.) | | | |
|----|---|---|----------------------------------|----------------------------|---------------------------|-----------------------|----------------------------|---------------------------|-----------------------|--|
| | | | SPORTS (IN SQ.M.) | Residential (IN SQ.M.) (A) | Commercial (IN SQ.M.) (B) | SPORTS (IN SQ.M.) (C) | Residential (IN SQ.M.) (P) | Commercial (IN SQ.M.) (Q) | SPORTS (IN SQ.M.) (R) | |
| 1 | M/S SEQUEL BUILDCON PVT. LTD. SC-01/A1, SEC-79 (50,000.00) | 1,37,500.00 | 35000.00 | 15000.00 | 0.00 | 0.00 | 137500.00 | 0.00 | 0.00 | |
| 3 | M/S ARENA SUPERSTRUCTURES PVT. LTD. SC-01/A2, SEC-79, (50,000.00) | 1,37,500.00 | 35000.00 | 15000.00 | 0.00 | 0.00 | 137500.00 | 0.00 | 0.00 | |
| 4 | M/S SEQUEL BUILDING CONCEPT Pvt. Ltd. SC-01/B1, SEC-79, (24,000.00) | 66,000.00 | 16000.00 | 6735.00 | 465.00 | 0.00 | 65340.00 | 680.00 | 0.00 | |
| 5 | M/S GOLFGREEN BUILDCON PVT.LTD. SC-01/B2, SEC-79, (24,000.00) | 0.00 | 16000.00 | 7200.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | |
| 6 | M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/C1, SEC-79, (3,04,209.30) | 2,57,250.95 | 190390.51 | 101101.78 | 417.01 | 4300.00 | 250856.95 | 400.00 | 6000.00 | |
| 9 | M/S ROBUST INNOVATIONS PVT.LTD. SC-01/C2, SEC-79, (8000.00) | 12,000.00 | 5600.00 | 2400.00 | 0.00 | 0.00 | 12000.00 | 0.00 | 0.00 | |
| 10 | M/S KINDLE DEVELOPERS PVT.LTD. SC-01/D1, SEC-79, (40,000.00) | 78,714.00 | 28000.00 | 11740.00 | 260.00 | 0.00 | 77014.00 | 900.00 | 0.00 | |
| 11 | M/S GOLFGREEN RESIDENCY PVT. LTD. SC-01/D2, SEC-79, (10,000.00) | 22,500.00 | 7000.00 | 2830.00 | 170.00 | 0.00 | 22330.00 | 170.00 | 0.00 | |
| 12 | A/S GOLFGREEN ESTATES PVT. LTD. SC-01/D3, SEC-79, (25,000.00) | 56,250.00 | 17500.00 | 7250.00 | 250.00 | 0.00 | 55750.00 | 500.00 | 0.00 | |
| 13 | M/S GOLFGREEN MANSIONS PVT. LTD. SC-01/D4, SEC-79, (25,000.00) | 62,500.00 | 17500.00 | 7175.00 | 325.00 | 0.00 | 61012.50 | 687.50 | 0.00 | |
| 14 | M/S XANADU REALCON PVT. LTD. SC-01/E1, SEC-79, (40,000.00) | 1,10,000.00 | 28000.00 | 11680.00 | 300.00 | 0.00 | 108998.00 | 1002.00 | 0.00 | |
| 15 | M/S GOLF GREEN INFRA | 55,000.00 | 14000.00 | 5795.00 | 205.00 | 0.00 | 54795.00 | 205.50 | 0.00 | |

| | | | | | | | | |
|--|---|---------------|---|-----------|------------------------------------|---------|-----------|---------|
| | PVT.LTD. SC-01/A2, SEC-79, (20,000.00) | | | | | | | |
| 16 | M/S GOLF GREEN SUPERSTRUCTURES PVT. LTD. SC-01/A3, SEC-79, (20,000.00) | 55,000.00 | 14000.00 | 5000.00 | 400.00 | 0.00 | 54100.00 | 550.00 |
| 17 | M/S XANADU INFRA TECH PVT. LTD. SC-01, SEC-79, (14,272.50) | 4,281.75 | 9990.75 | 0.00 | 0.00 | 4781.75 | 0.00 | 4281.75 |
| 18 | M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/A, SEC-101, (19,170.00) | 0.00 | 19170.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 19 | M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/B, SEC-101, (28,350.00) | 0.00 | 28350.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | | | | | | | | |
| | PROPOSED DEVELOPMENT 7,03,000.80 | 10,54,502.70 | ----- | ----- | ----- | 28.78 | ----- | 5074.00 |
| | PERMISSIBLE DEVELOPMENT 7,03,000.80 | 10,54,502.70 | 492161.26 | 198840.50 | 14040.01 | 5081.75 | 852038.18 | 5624.01 |
| SPORTS FACILITIES | | | | | | | | |
| SUBSIDIARIES | | PLOT NO. | FACILITIES TO BE IN LAND PARCEL | | MIN. AMOUNT TO BE SPENT (IN CRORE) | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | GOLF COURSE (9 HOLE) | | 40.00 | | | |
| M/S ARENA SUPER STRUCTURE PVT. LTD. | | SC-01/A2 | MULTIPURPOSE PLAYFIELD | | 10.00 | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | TENNIS CENTRE | | 35.00 | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | SWIMMING CENTRE | | 50.00 | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | PRO-SHOPS/FOOD AND BEVERAGE | | 30.00 | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | IT CENTRE/ADMINISTRATION/MEDIA CENTRE | | 65.00 | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | INDOOR MULTIPURPOSE HALL, SPORTS HALL INCLUDING GYMNASTIC, TABLE TENNIS, SQUASH, BASKET BALL, VOLLEY BALL, BADMINTON, ROCK CLIMBING | | 30.00 | | | |
| M/S THREE C GREEN DEVELOPERS PVT. LTD. | | SC-01/C1 | CRICKET ACADEMY | | 50.00 | | | |
| ALL | | - | INTERNAL ROADS AND PARKS | | 25.00 | | | |
| M/S XANADU INFRA TECH PVT. LTD. | | SC-01, SEC-78 | HOSPITAL/SENIOR LIVING/MEDICINE CENTRE | | 60.00 | | | |
| ALL | | - | CIRCULATION SPACES, | | 15.00 | | | |
| | | | CARPETING, UTILITIES ETC. | | | | | |

8. As per the approved integrated map of 16.6.2014, the obligation of the petitioner company was on plot No.SC-01/A-1 Sector 79 area of 50,000 sqm, with an FAR of 1,37,500 sq. mts. with 30% coverage for residential (15,000 sqm being 30% of the total land) and the sports facility to be developed by them was 0.00 sqm. As such, 70% of the land was to be left open for sports facility. The petitioner company was neither allotted development of any commercial area nor it was obliged to develop sports facility.

9. Yet again, the petitioner company requested NOIDA Authority to sub divide its Plot No.SC-1/A1 in Sector 79, into two plots bearing SC-01/A-1 ALPHA, Sector-79, Noida measuring 30,000.00 sqm, which was retained by the petitioner company, and SC-01/A1-BETA, Sector-79, NOIDA, measuring 20,000.00 square metre, which was later on transferred in favour of M/s Pinnacle Superstructures Pvt. Ltd. The Noida Authority executed a separate lease deed in its favour on 11.12.2014 on the same terms of allotment and lease conditions.

10. On 02.02.2015 the petitioner company submitted an application for sanction of building plan for plot no. SC-01/A1- ALPHA, which was 30,000.00 sqm and allotted to the petitioner. On 13.03.2015 the building map was sanctioned with the condition that the sanctioned map would be valid for a period of five years (i.e. till 12.03.2020).

11. As per sanctioned map, the petitioner was supposed to make seven towers of 27 floors. The approved plan of these towers as well as current situation of completion of the project by the petitioner company is as follows:-

| Sl. No. | Plot no. | Area (Sq. m.) | Name of Allottee | Approved tower | Constructed tower | Current status of construction of sports activity |
|---------|-----------------------|---------------|-------------------------------|---|--|---|
| 2. | SC-01/A-1 (ALPHA) /79 | 30000 | M/S SEQUEL BUILDCON PVT. LTD. | Towers A=S+27 B=S+25 C=S+23 D=S+21 E=S+24 F=S+26 G=S+28 21 Villas | Towers S+17 S+17 S+19 S+19 S+1 S+5 S+6 Not Constructed | Open Area is part of Sports Activity which is not developed |

12. The petitioner company had proposed to make seven towers consisting of 660 flats, out of which they sold 342 flats. Although the petitioner company was supposed to complete the project in time but due to certain reasons cited by them, they did not complete the project. On the other hand, the petitioner company, in spite of collecting money from the homebuyers, chose not to pay the dues to Noida Authority.

ZERO PERIOD

13. There were certain issues about delay in handing over the clear possession of the land, hence, the allottees requested Noida Authority to grant Zero period as Noida Authority failed to provide the actual physical possession, because of which the builders could not start construction.

14. After due deliberation, the Noida Authority agreed to grant benefit of Zero period till 31.01.2017 for certain area, and thereafter handed over the land with new payment plan by which payment was extended till 31.01.2025.

15. It transpires that there were some report of scam in development of sports city, hence, the entire issue was referred to Comptroller and Auditor General⁴. The CAG thoroughly evaluated the matter and submitted a report. The report given by the CAG was shocking and unearthed the entire scam. The report contains as to how the Noida Authority and the State Government had suffered a huge loss amounting to Rs.9000/- crores, as Noida Authority while making the scheme has done wrong pricing of the Sports City.

16. As per the brochure only residential and commercial plots could have been divided but the Noida Authority sub-divided the entire plots, which were earmarked for Sports City as well. The bids of the allottees were not screened and the turnover of the candidates were also not considered before allotting the plot. The Lead Member having the highest share was completely ousted from the project and thereafter, the allotment was done to various other companies, who individually could not have qualified in the financial bid evaluation. This dubious methodology adopted by the Noida Authority had resulted in allotment of plots to those, who were not even entitled to apply individually. The Noida Authority did not

even bother to collect the installments dues and no efforts were made by them in this regard, which gave an undue and illegal advantage to the allottees. The finance department of NOIDA has issued a fresh payment plan considering each allottee company as a fresh allottee. The transfer charges for second and third transfer were not even collected. In some cases occupancy certificate has been issued even without development of sports facilities. The lease rent was also not recovered by the NOIDA.

17. As a knee jerk reaction of the CAG report, the NOIDA Authority held its Board meeting on 18.01.2021 (201st Board Meeting) in which it has been resolved that in order to complete the sports facilities in the Sports City, a Committee should be formed, which would look into the situation and put-forth a report in the next Board meeting and stayed any further steps to be taken in the Sports City including revalidation of the maps.

18. The next Board's meeting was held on 26.07.2021, wherein it was resolved that no further sub division of plots in the sports city would be carried out, and further the matter was referred to the State Government for direction and guidance.

19. After the CAG report, looking into the gravity of the situation a Public Accounts Committee⁵ comprising of members of Legislative Assembly was constituted to look into the issue. During the hearing, PAC decided that it will not venture on the issues, which are pending before the High Court and National Company Law Appellate Tribunal⁶.

20. Since nothing was happening after the Board Meeting and no decision was taken by the State Government, and

because of the stalemate the promised flats could not be delivered to the allottees, so some of the flat owners chose to file a Petition under Section 7 of Insolvency and Banking Code, 2016⁷ before NCLT, Delhi, **(Mr. Neerav Bhatnagar & Ors. vs. M/s. Sequel Buildcon Private Limited and Anr.)** which was admitted on 16.06.2023 and moratorium period was declared in terms of Section 14 of the IBC, 2016 and one Mr. Amar Pal was appointed as Interim Resolution Professional⁸.

21. The suspended Director of the petitioner-company filed an appeal before the NCLAT being Appeal No.823/2023 seeking 'Reverse Corporate Insolvency Resolution Process' wherein it was stated that an understanding has been arrived between the builder/promoter as well as the Home Buyers Association, wherein the petitioner has agreed to arrange for interim finance and project may be continued in the supervision of the IRP. On his request, the appeal was entertained and constitution of 'Company of Creditors'⁹ was stayed till the next date of hearing.

22. Thereafter, on 12.07.2023, the MOU was executed in between IRP, homebuyers, petitioner and third party M/s Eka Life Limited, who had agreed to bring interim finance and infuse it into the project.

23. Learned NCLAT passed an order in terms of the MOU arrived between the parties in which it was provided that Rs.20 crores will be deposited by the third party M/s Eka Life Limited in the RERA approved escrow account and further held that moratorium will continue to operate on the Corporate Debtor and the IRP will continue to keep the Corporate Debtor and will submit his report on the project progress with the executing authority on a quarterly basis.

24. On 28.07.2023, the Interim Resolution Professional requested NOIDA for providing details of pending dues so that the possibility of making payments can be ascertained. On the request, the Noida authority had given a break up of the outstanding dues of the petitioner.

25. It was on 01.08.2023, the IRP requested NOIDA for map revalidation and extending the same till February, 2026 so that the order of NCLAT could be complied with.

26. On 16.10.2023, the NCLAT again passed an order directing all concerned stakeholders to take steps. Relevant part of the said order is quoted hereunder :-

“(iii) All concerned to take steps to act in pursuance of our order dated 25.07.2023. IRP with the assistance of promoter to take steps for renewal of registration of the project and obtain all other necessary permission to start the construction which may be completed within 30 days from today. The construction of the project may commence immediately thereafter.”

27. The NOIDA gave a letter on 30.10.2023 stating that, in the Sports City the CAG has raised certain objections and the Board of NOIDA had recommended the matter to the State Government for its orders and directions, which is still pending. It was further stated that the issue is also pending before the PAC. It is only after their decision any action will be taken on the revalidation of the map.

28. Aggrieved by the action of Noida Authority, the petitioner company has preferred the instant writ petition seeking following reliefs:-

“I. Issue a writ, order or direction in the nature of certiorari or setting aside

the decision of the respondent no.2 taken on 201st Board Meeting of respondent no.2 dated 18.01.2021 qua to stop/put on hold sanction/re-validation of building plans and other approvals in respect of Sports City Plot; and

II. Issue a writ, order or direction in the nature of mandamus directing respondent no.2 to grant approval in respect of application for revalidation of map/building plans submitted by the petitioner on 25.06.2021 for the purpose of construction and development of a ground housing project namely “Belvedere” on plot no.SC-01/01 A, admeasuring 30000 sq. meters located in the sports city plot No.SC-01-01, Section 78/79, Noida Gautam Budh Nagar, U.P. and

III. Issue a writ, order or direction in the nature of mandamus directing respondent no.2 to grant zero period with regard to the payment of lease premium, annual lease rent, interest, installment, and time extension charges in respect of the Subject Plot for the period commencing from 25.06.2021 i.e. date on which the petitioner applied for approval/sanction/revalidation of maps/building plans and other approvals in respect of the said plot till the date on which the respondent no.2 issues approvals in respect Application for Revalidation of map/building plans submitted by the petitioner in respect of the Subject Plot; and

IV. Issue a writ order or direction in the nature of mandamus directing the respondent no.2 to grant an extension of time with regard to the time period stipulated in the Lease Deed for completion of the project commencing from the period commencing from 25.06.2021 i.e. date on which the Board of respondent no.2 has suspended the approval/ sanction/

revalidation of map/building plans and other approvals in respect of the sports city plots in Noida till the date on which the respondent no.2 issues approvals in respect of Application for Revision of Building Plans submitted by the petitioner in respect of the Subject Plot; and

V. Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to not issue any demand notice or any further or subsequent default notices till the time the Application of the Petitioner for revalidation of map/building plans in respect of Subject Plot is not approved by the respondent no.2; and

VI. Issue a writ, order or direction to award compensation to the petitioner for not considering the approval of maps, re-validation of maps as per the applicable laws in the requisite time plans; and

VII. Issue another order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case;”

29. In reply to the contents of said writ petition, NOIDA has filed a detailed counter affidavit, in response to which a rejoinder has also been filed by the petitioner.

ARGUMENTS ON BEHALF OF THE PETITIONER

30. Sri Anil Tiwari, learned Senior Counsel appearing for the petitioner company submitted that the petitioner is IRP representing the company. He further submitted that Noida Authority in its 201st Board meeting held on 18.01.2021 had resolved that in order to ensure completion of sports facilities for the Sports City project, a Committee should be formed and

the said Committee, after considering all the facts and circumstances, shall place revised sports city proposal in the next meeting and till then, no approval for the building plan would be accorded to any of the builder/allottee in the Sports City. Thereafter, in the second Board meeting the Noida Authority referred the matter to the State Government to seek instructions and directions but till date, no action has been taken by them and because of the inaction of the Noida Authority/State Government, the petitioners are suffering a huge loss.

31. Learned Senior Counsel for the petitioner submitted that out of the 23 divisions made in the sports city of Sector 78-79, the maps have been approved only on 12 plots and out of which the construction has started only on 11 plots, hence more than 70% of the land is still vacant on which the sports facilities can be developed by the companies, which have been assigned with the responsibility of developing the sports facility in the sports city.

32. He further submitted that the way sports city has been bifurcated, it is difficult to develop the sports facilities as mentioned in the scheme and the brochure.

33. He next submitted that because of the inaction of the respondent nos.1 & 2, the petitioner company could not complete the project and hence, once the debtor had initiated Insolvency Proceedings against the petitioner company, Noida Authority went to the extent of issuing default notice on 24.03.2023 calling upon the petitioner to pay Rs.16,61,73,510/- as arrears regarding the said plots, which was due till 31.03.2023. The National Company Law Tribunal¹⁰ vide order dated 16.06.2023 had directed for initiation of Corporate Insolvency Resolution Process¹¹ and appointed Mr. Amar Pal as Interim

Resolution Professional and also declared moratorium.

34. Learned Senior Counsel submitted that the erstwhile management of the petitioner company, who had all the intention to complete the project and hand over the flats to the home buyers, in the on going proceedings under the IBC, 2016, moved an application for initiating reverse IRP as that was the only way to make his company survive and also to finish the project and handover the flats to the flat owners. To complete the project the former Directors had arranged for interim financing, and for that it had entered into Memorandum of Understanding¹² between the homebuyers and the Company through the IRP and the third party, M/s Eka Life Limited, who was ready to infuse funds in the project for its completion.

35. He submitted that the NCLAT, Delhi, after verifying the contents of the MOU and the other documents available on record, was satisfied that in the best interest of the company, homebuyers and the other Corporate Debtors, reverse CIRP had to be initiated and, accordingly, allowed the reverse CIRP and directed the IRP to take all the necessary steps for completion of the project.

36. In this backdrop, he submitted that the instant petition is filed by the IRP, which, in compliance of the order of NCLT, had approached the Noida Authority to revalidate the map, so that further construction could be carried out and the project may be completed and handed over to the homebuyers. Since, revalidation was refused by Noida Authority on frivolous grounds, the petitioner was left with no other alternative but to file the instant writ petition.

37. He further submitted that the petitioner company is governed by the conditions of the lease deed executed between the petitioner company and Noida Authority, and further, it had to carry out construction as per the sanctioned layout plan by Noida Authority. As per the sanctioned map/approved plan, the petitioner was not obliged to develop any sports facility in the sports city. There was no deviation in the plan and further there was no reason for Noida Authority for not revalidating the layout plan.

38. It was submitted that since Noida Authority was a party before the NCLT and NCLAT, all the orders passed by NCLT & NCLAT are binding on it. The Noida Authority was well aware that revalidation of the map was a part of the resolution process plan and by not revalidating the map they are virtually putting spoke in the wheel in revival of the company and are openly flouting the orders/directions passed by NCLT and NCLAT.

39. He further submitted that NCLT had taken cognizance on the report of the IRP and held that because of inaction of Noida Authority in revalidation of the layout plan, the construction could not start in absence of sanction of the layout plan. The NCLT has clearly directed that “Be that as it may”, the restoration of the registration of the project with the RERA and sanction of the NOIDA are necessary conditions for starting any construction in the project. Matter being pending before the relevant authorities i.e. NOIDA, RERA and the State Government, the NCLT was of the view that the concerned authorities may take expeditious steps, and the IRP was directed to file further Status Report bringing subsequent development on record.

40. He further submitted that as per the clarification letter of Noida Authority, the construction of sports facilities in the Sports City was assigned to only two companies (i.e. M/s Three C Green Developers Pvt. Ltd. and Xanadu Infratech Pvt. Ltd). As a matter of fact, the entire Sports City in Sector-78 & 79 were divided in 24 parts (companies), and all the other companies were not assigned the responsibility of setting up the Sports City. However, the allottees were assigned to pay for the sports facilities, hence, the petitioner company has no obligation to develop the sports facilities, but has to pay for development of such facilities as directed by Noida Authority, for which the petitioner company is ready and willing to pay.

41. He further submitted that the MOU/Master Agreement, entered between the homebuyers, the petitioner company and the IRP dated 19.09.2023, clearly shows that M/s Eka Life Limited is a statutory partner, who has agreed to infuse funds to the extent amount of Rs.75 crores as per Clause 4.1 of the MOU. As per Clause 4.1.1 of the agreement, a sum of Rs.20 crores shall be disbursed by M/s Eka Life Limited upon completion of the condition precedent as set out in Annexure No.1 of the MOU and upon its fulfilment only, another tranche of Rs.55 crores would be infused as an interim funding. As per Clause A(I) and rules and responsibilities of the MOU, it is clear that the promoter would get all the permissions from the Noida Authority within a period of four months (with a grace period of three months).

42. The learned Senior Counsel assertively submitted that there has been endless shortcomings on the part of Noida Authority and its officers, hence, it is high

time that just like lifting the corporate veil, the administrative veil has to be lifted to find out the real perpetrators of this large scale bungling/scam.

43. To buttress his arguments, learned Senior Counsel has placed reliance on the following judgments passed by Hon'ble Supreme Court in the matter of **M.C. Mehta v. Kamalnath**¹³. Thereafter, in **M.I.Builders v. Radheyshyam Sahu**¹⁴, **Rajiv Suri v. Delhi Development Authority**¹⁵, **Reliance Natural Resources Limited v. Reliance Industries Limited**¹⁶, **Center for Public Interest Litigation v. Union of India**¹⁷, **Manmohan Lal Chaddha v. Union of India**¹⁸.

44. He submitted that in order to preserve the integrity of administrative law and to avoid any further damage, and in furtherance to the development of the sports city, the compliance to the orders passed by NCLT/ NCLAT has to be adhered to in toto, and the maps are ought to be revalidated.

Doctrine or Repugnancy Article 254 – Inconsistency between law made by Parliament and laws made by the State Assembly.

45. Learned Senior Counsel further submitted that in the event of a conflict between the Union law and a State law in concurrent field, the former prevails over the latter. In the present case, also the order to stop any further development of the sports city taken in 201st Board Meeting by the NOIDA directly clashes with the orders passed by NCLT and NCLAT.

46. He submitted that by virtue of Section 238 of the IBC, 2016 and Article 254 of the Indian Constitution, no State Act or Rule can stand in the way of corporate

insolvency resolution process under the Code in the compliance of learned NCLAT's orders, which is paramount. Since the very lease deed and brochure of the Sports City Scheme is governed by U.P. Industrial Area Development Act, 1976¹⁹, and the orders of the NCLT being passed under the Insolvency and Bankruptcy Code, 2016²⁰ i.e. a Central Act, hence, the orders of NCLT and NCLAT will prevail over any order passed under the Act, 1976.

47. He further submitted that Section 238 of the IBC, 2016 clearly lays down that the provisions of IBC would override anything contained in any other law in force or any instrument having effect by virtue of such law. This provision clearly accords supremacy to the provisions of IBC, 2016, if it is inconsistent over any other law.

48. To buttress his argument, learned counsel for the petitioner has placed reliance on the judgement in **Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.**²¹ wherein Hon'ble Supreme Court has held that the IBC, 2016 would override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961.

49. He had also placed reliance on the judgement in the matter of **Innoventive Industries Ltd. v. ICICI Bank & Another**²² in which Hon'ble Supreme Court has held that if any Act is repugnant to the IBC, and if there is a direct clash between moratoriums under the two Statutes. The non-obstante clause of the IBC will prevail over the non-obstante clause of the State Act. In the matter of **M/s Embassy Property Developments Pvt. Ltd. v. State of Karnataka & others**²³, Hon'ble Supreme Court has observed that it is clear that the IBC is a complete code in itself. It is an exhaustive code on

insolvency in relation to corporate entities and others. It is also true that the IBC is a single unified umbrella code, covering all law relating to insolvency resolution of corporate persons and others in a time-bound manner.

50. He had placed reliance on the judgement in the matter of **Pioneer Urban Land and Infrastructure Ltd. and another v. Union of India & others**²⁴ in which Hon'ble Supreme Court has held that RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies, that are given to allottees of flats/apartments, are, therefore, concurrent, and such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA. Hence, in case of any decision taken by the State, which clashes with the provisions of IBC, 2016, the provisions of the IBC, 2016 will prevail, specially, when the same has attained finality as NOIDA authority chose not to challenge the same. It was submitted that the orders passed by NCLT/NCLAT has to be complied with and Noida Authority cannot raise any objection or create any hindrance in compliance of the order.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

51. Sri Manish Goyal, learned Senior Counsel appearing for the NOIDA Authority submitted that before proceeding in the matter, it is worthwhile to mention the connection of the petitioner-company along with the Consortium and also their antecedents. To buttress his arguments, the learned Senior Counsel made the following submissions.

52. A supplementary counter affidavit has been filed on behalf of the NOIDA Authority. By way of this affidavit, Sri Goyal, learned Senior Counsel submitted that the scheme for development of Sports City in Sector-78 & 79 was formulated and launched on 03.03.2011 and the same was to close on 24.03.2011. The main feature of the Sports City Scheme was to provide sports facility, which is an integrated project and has to be developed as a whole. Even if a Consortium Company applied for the project, it was the Consortium as a whole that is assumed to be the lessee and not any individual company.

53. An application was made by the Consortium in which Lead Member was M/s Xanadu Estates Pvt. Ltd. along with other Consortium Members. A chart showing the composition of the Consortium and their date of registration, list of directors and shareholdings, is as follows:-

| Sl.No. | Name of the Company | Lead Member/ Relevant Member | Percentage | Date of Incorporation | Directors | Holding of the Company |
|--------|--------------------------------|------------------------------|------------|-----------------------|---|------------------------|
| 1. | M/s Xanadu Estates Pvt. Ltd. | Lead Member | 30% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj Surpreet Singh Suri | |
| 2. | M/s Meriton Infotech Pvt. Ltd. | Relevant Member | 05% | 19.10.2005 | Surpreet Singh Suri Vidur Bhara dwaj Nirmal | |

| | | | | | | |
|----|--------------------------------------|-----------------|-----|------------|--|--|
| | | | | | Singh Mayan k Chaura sia Anand Kumar Chaura sia Hari Veerap aneni Krishna | |
| 3. | M/s Suttlej Agro Products Limited | Relevant Member | 10% | | Nirmal Singh Vidur Bhara dwaj Surpreet Singh Suri | |
| 4. | M/s Xanadu Infradevelopers Pvt. Ltd. | Relevant Member | 10% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj Surpreet Singh Suri | |
| 5. | M/s Xanadu Infratech Pvt. Ltd. | Relevant Member | 10% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj Surpreet Singh Suri | |
| 6. | M/s Xanadu Realcon Pvt. Ltd. | Relevant Member | 10% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj | |

| | | | | | | |
|----|---------------------------------|-----------------|-----|------------|---|--|
| | | | | | waj Surpreet Singh Suri | |
| 7. | M/s Sequel Buildcon Pvt. Ltd. | Relevant Member | 10% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj Supreet Singh Suri | |
| 8. | M/s Sequel Building Concepts. | Relevant Member | 10% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj Surpreet Singh Suri | |
| 9. | M/s Kindle Developers Pvt. Ltd. | Relevant Member | 10% | 10.03.2011 | Nirmal Singh Vidur Bhara dwaj Surpreet Singh Suri | |
| | | | | | | |

54. He submitted that out of nine companies of the Consortium, seven of them were incorporated on 10.03.2011 and even the Lead Member was incorporated on 10.03.2011 after the scheme was launched with the same set of Directors. This shows that all the companies were incorporated by same set of Directors, who were the actual promoters. The bid of this Consortium company was the most compliant and the Consortium company

was allotted the Sports City Project in Sector-78 and 79, which was for admeasuring area 7,27,500 sqm. Accordingly, the allotment letter was issued on 04.05.2011 in favour of M/s Xanadu Estates Pvt. Ltd. (Consortium).

55. He further submitted that, the way the allotment was carried out, sub divisions were made, due instalments were never asked for and not even paid; the way map was sanctioned, the allottees were allowed to start construction on the commercial and residential areas even without starting development of sports facilities, were not in accordance with the scheme or the terms of the brochure or the lease conditions.

56. It was submitted that normally, a Consortium is a group of different companies/builders/developers, who come together to complete a project, but here a number of companies were incorporated by the promoters of a company called M/s Three-C Developers and all the companies were newly incorporated companies and the shareholdings were held by the same set of people.

57. He submitted that M/s Xanadu Estates Pvt. Ltd. (Lead Member of the Consortium) vide letter dated 11.10.2011 requested NOIDA Authority to execute separate Lease Deeds in favour of the Relevant Members of the Consortium. It was in pursuance of the aforesaid request that NOIDA executed Lease Deeds in favour of the Relevant Members of the Consortium on 24.10.2011. Thereafter, on the request of the petitioner, 1,00,000 sq. meters of its land was subdivided in the following manner:-

“M/S SEQUEL BUILDCON PVT. LTD.,
Plot A SC-01/A, SECTOR-79, AREA-
100000 sq.m.

- Request for Sub-Division into two part by M/s Sequel Buildcon Pvt. Ltd. Through letter dated 28.08.2012, which was approved on 3.10.2012.

| S.No. | Plot No. | Allottee | Area (Sq. mtr.) | Date of Sub- Division | Date of Sub-Lease Deed |
|-------|---------------------|-------------------------------------|-----------------------|-----------------------------|---------------------------------|
| 1. | SC-01/A1, SECTOR-79 | M/S Sequel Buildcon Pvt. Ltd. | 50000 | 03.10.2012 | 19.10.2012 (Correction Deed) |
| 2. | SC-01/A2, SECTOR-79 | M/S Arena Superstructures Pvt. Ltd. | 50000 | 03.10.2012 | 19.10.20 |

- The petitioner M/S Sequel Buildcon Pvt Ltd further requested to sub-divide Plot SC-01/A1, Area-50000sqmtr, Sector-79, into Two Parts through letter dated 02.04.2014, which was approved on 16.6.2014, and the further division was as follows :

| S.No. | Plot No. | Allottee | Area (Sq.mtr.) | Date of Sub- Division | Date of Sub-Lease Deed |
|-------|--------------------------|--|-------------------|-----------------------------|------------------------------|
| 1. | SC-01/A1ALPHA, SECTOR-79 | M/S Sequel Buildcon Pvt. Ltd. | 30000 | 16.06.2014 | No Sub-Lease was executed |
| 2. | SC-01/A2, SECTOR-79 | M/S Pinnacle Superstructures Pvt. Ltd. | 20000 | 16.06.2014 | 11.12.2014 |

- 58. He submitted that after execution of sub lease deed in its favour, petitioner company again applied for sanction of the

map of residential block, which the petitioner was supposed to build. The map of the petitioner was sanctioned. As per the sanctioned map, the petitioner was supposed to develop seven towers with the floor numbers ranging from 21 to 28. However, a perusal of said lease deed, (specifically Clauses 42 and 43) elucidates that the Sports City Project was supposed to be developed as an integrated whole.

59. He submitted that the original allottee representing the entire group filed a Master Lay Out Plan for development of the entire Sports City. The map was approved on 16.06.2014, in which the rolls and obligations of each companies were earmarked and was approved by Noida Authority. This decision was an internal arrangement between the consortium members. As far as Noida authority is concerned, the sports city is an integral project, which was to be developed by the consortium as per the scheme. The Noida Authority had never bifurcated the project or has assigned the responsibilities to the individual companies.

60. It was submitted that the Consortium made a request on 30.12.2016 for grant of Zero period as the possession of the entire land had not been granted to the Consortium. The Noida Authority declared Zero period for the sports city project till 31.01.2017 and also handed over a fresh payment plan. In spite of availing the benefit of the Zero period, and after execution of the fresh payment plan, the petitioner company still did not pay the due instalments and notices for payment of the dues were issued by the NOIDA Authority on 24.02.2015, 24.07.2023 and 30.08.2024.

61. He submitted that an audit was conducted by CAG, which pointed out certain deficiencies in the allotment,

implementation and development of sports city vide its report, which was tabled in September 2020. Thereafter, the Board Meeting of NOIDA was held on 18.01.2021 (201st Board Meeting) in which it was resolved that recommendation should be made to Public Accounts Committee to look into the deficiencies pointed out by CAG and give a report. As an interim measure, it was further resolved that no action should be taken towards development of sports city nor any maps should be revalidated. Further, on the basis of the report submitted in the next Board meeting (202nd) held on 25.06.2021, it was resolved that the matter may be referred to the State Government for necessary guidance and direction. The decision of the Board meeting (201st meeting) is the main ground of challenge in various writ petitions filed by the developers in this Court.

62. He submitted that the NOIDA Authority has been castigated for sanctioning the layout plan in favour of the Sub-lessees individually and has been targeted that these plans do not contain any stipulation to the effect that any Sports facilities were to be developed by the Sub-lessee, inasmuch as, no Sports facility has been specified in the sanction layout plan of the petitioner. The sanction plan explicitly contains the clause that Sports facilities are to be developed by the Sub-lessee. No indefeasible right can be claimed by the Sub-lessees on the basis that a plan has been sanctioned in their favour.

63. He submitted that the sanction of the map, even if it exists, has to be read along with the scheme and the lease deed as well as the statutory provisions. Any sanction contrary to the provisions of the Act, brochure, allotment and lease deed, will by itself be a deviation and this

deviation being not recognized under the law. Hence, the Grundnorm Principle would be applicable.

64. He submitted that from the perusal of the brochure, it is evident that various components of development in the Project has been clearly demarcated in percentages. The entire scheme of the Sports City Project discloses that group housing/residential purpose is complimentary to the principal objective of development of the sports facilities. The residential purpose and the commercial purpose being complementary to the development of sports facility, thus sports city project can only be viewed to be an integrated project.

65. To buttress his argument, he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Nand Kishore Gupta and others vs. State of U.P. and other**²⁵ wherein while dealing with a matter relating to allotment of five land parcels alongside the Yamuna Expressway, the Apex Court upheld the acquisition and allotment of the five land parcels treating them to be an integral part of the development of the Yamuna Expressway. He submitted that the sub-lessee, therefore, in the light of the law laid down by this Court as well as by Hon'ble Supreme Court, cannot claim to be created only for development of Group Housing Project as this will be an antithesis to the integrated project scheme under which the allotment was done.

66. He submitted that since, Group Housing does not come in the category of project on a stand alone basis under the Sports City Scheme, it cannot be conceived to be a complete project without development of the sports facilities, inasmuch as, sports facility is the primary

project and group housing is complimenting the sports facility project and in that sense Group Housing becomes an integral part of the project. This further goes to show that the SPC was nothing but the same Consortium Company, which had applied for the project. In the MOU of the Consortium, all the parties have jointly and severally agreed to execute the project in accordance with terms of the agreement and the Lead Member of the Consortium was made responsible to construct at least 30% of the total permissible FAR and the parties confirmed that they will execute the said development. A site plan was given for the development of the sports city as a whole by these companies.

67. He further submitted that the way, things were modified/changed, was quite questionable. It is only after change of the State Government, the scam was unearthed, and the Audit was referred to CAG. The State Government took a very proactive stand and did not grant any extension or revalidation of map because of the illegality done by the allottees.

68. It was contended that M/s Three C Developers Pvt. Ltd., a Special Purpose Company set up to develop sports city (as per Registrar of Companies²⁶), was incorporated on 13.12.2010, which was much prior to the date of advertisement. Right from the date of incorporation, there were three Directors namely, Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri and the same were the Directors even on the date of execution of lease deed.

69. He further submitted that it is a perfect case of piercing the corporate veil and to see whether the companies were incorporated out of well-designed nefarious scheme/scam or was done in the normal course of business. The MOU/Master Agreement entered between the

homebuyers, the petitioner and the IRP dated 19.09.2023 clearly shows that M/s Eka Life Limited is a statutory partner, who has agreed to infuse funds to the extent amount of Rs.75 crores as per Clause 4.1 of the MOU. Further as per the MOU, it is clear that the promoter would get all the permissions from the Noida Authority within a period of four months (with a grace period of three months) and in case of extension of time, it has to be a fresh agreement. However, in this case the time period has elapsed and there is nothing on record to show that the parties have entered into a fresh MOU. It means that this MOU has come to an end and in absence of the MOU, all the proceedings initiated thereafter is absolutely baseless.

70. He further submitted that in the meeting of the PAC it has been resolved that the builders would submit a fresh map in which on 70% of their land, they have to leave as an open area for construction of the sports facilities. As the petitioner is obliged to develop the sports facilities in the 70% of the land and unless and until fresh map is submitted to the authority, the authority cannot revalidate the existing map, which has been issued erroneously and contrary to the policies of the authority and contrary to the allotment letter.

INSOLVENCY PROCEEDINGS

71. Sri Manish Goyal, learned Senior Counsel further submitted that here the corporate insolvency process initiated against the petitioner was tailor made and was nothing but outcome of a nefarious design of the promoters/erstwhile management of the petitioner and the fraud committed to keep away from the entire responsibility of development of the project. Here the original allottee had made

a web of companies and on the request of the allottee, various lease deeds were signed by the companies, which were wholly owned and controlled by the promoters (namely, Nirmal Singh, Surpreet Singh Suri and Vidur Bhardwaj).

72. It was submitted that the petitioner company was originally allotted 1,00,000 sqm of land, which on its request was bifurcated. Out of the allotted land, 70,000 (50,000 + 20,000) sqm was placed into two different companies, which were initially shown as 100% subsidiary of the petitioner's company. These two companies, as per the website of the Registrar of Companies, have sold off the companies/transferred the shares to third party/entities even without taking permission from NOIDA Authority as well as without completing the first milestone of the project, which was pre-condition of such transfer. The sale proceeds were diverted/syphoned and the dues of the Noida Authority and the additional compensation to the farmers were not paid. The builders did not stop here, they further collected money from the home buyers, of which a major portion was again diverted/syphoned off, and thereafter the management of the company pushed the company into insolvency. Hence the insolvency of the petitioner company is not a genuine insolvency and has been initiated as a part of the bigger fraudulent design, on the behest of the management, just to avoid paying its dues. It is nothing but a novel way of defrauding the creditors.

REVERSE CIRP IS NOT APPLICABLE

73. Sri Manish Goyal, learned Senior Advocate submitted that the concept of Reverse Corporate Insolvency

Resolution Process or "Reverse CIRP" is relatively new and has been recognised by the Indian Courts as recently as in 2019. It is the process which is specifically exercised in real estate projects. In Reverse CIRP, the promoter of the project against which the CIRP has been initiated may be allowed to act as the financial lender (from the outside) of the project and infuse funds to complete remaining construction of the project, subject to certain conditions. The basic purpose behind adopting the concept of Reverse CIRP was to protect the interest of allottees (being the financial creditor) which may be adversely affected in the general practice of CIRP.

74. He submitted that since the project in the present case is the integrated Sports City Project, insolvency of an individual developer involved in the project cannot warrant the invocation of the Reverse CIRP mechanism. As the project was entrusted to a Consortium, in the event of insolvency of individual developers, their responsibilities under the project are to be assumed by the remaining members of the Consortium. Invocation of the Reverse CIRP mechanism by developers like Sequel Buildcon in the present case is not warranted.

PIERCING OF CORPORATE VEIL

75. Sri Manish Goyal, learned Senior Advocate submitted that in the present case, the separate legal identity of the companies constituting the Consortium has been formed to facilitate the evasion of legal obligations of the members, who were jointly and severally responsible towards the development of the Sports City as an integrated project. Accordingly, it is only after piercing the corporate veil, the true

nature of the companies and identity of the individuals exercising real control over them would be revealed.

76. He submitted that a comprehensive and inclusive analysis of the present situation reveals that virtually the same set of individuals floated multiple companies to procure leases from the Authority for the development of the Sports City Project as an integrated whole. However, instead of discharging their obligation towards integrated development of the Project, the aforementioned set of individuals, who were effectively behind all the members of the Consortium under the garb of being independent companies, only focussed on residential development and completely ignored their responsibility for the development of sports facilities, and later got themselves in Insolvency.

77. He submitted that since the line of distinction between the companies (developers involved in the Sports City Project) and their directors (virtually the same set of individuals, who floated multiple companies) is blurred and the companies merely function as an alter ego of the owners evading their legal responsibility, the theory of 'alter ego' for piercing the corporate veil becomes applicable. Additionally, since the same set of Directors behind all the individual companies are using the separate corporate entities for their own benefit instead of using it for discharging the obligations undertaken by the companies, the theory of 'instrumentality' for piercing the corporate veil also applies.

78. Learned Senior Counsel further submitted that the reason for piercing the corporate veil in the instant case is to prevent evasion of dues of Noida Authority and the State and to prevent the other

Associated Companies, which are inextricably connected and form as one entity, from being used as a front for illegal purposes, and to identify true nature of transactions involved and to prevent fraud being perpetrated and to secure the public interest as well as the interest of homebuyers. To buttress his argument, he has placed reliance on the judgments of Hon'ble Supreme Court in **State of U.P. and others v. Renusagar Power Company & others**²⁷, **Delhi Development Authority v. Skipper Construction Company & another**²⁸, **Shubhra Mukherjee v. Bharat Coking Coal Ltd.**²⁹ and **State of Rajasthan v. Gotan Limestone Khanij Udyog Pvt. Ltd. and another**³⁰.

79. He submitted that the instant insolvency is not a genuine insolvency but has been initiated with malice, just to avoid payment of dues of Noida Authority and additional compensation of the farmers, and also not to develop the sports facilities for which the project was allotted. The entire insolvency proceeding is nothing but just a castle built on fraud. The management had siphoned off the major portion of money and want to hide under the mask of corporate insolvency. Hence, in such cases of fraud it is necessary to pierce the corporate veil and to see who are the real culprits of the fraud.

REVERSE PIERCING OF CORPORATE VEIL

80. Learned Senior Advocate submitted that reverse piercing of corporate veil is an antithesis to the doctrine of piercing of corporate veil. Unlike piercing of corporate veil where an individual is held liable for wrongs committed in the name of the company, the doctrine of

reverse piercing of the corporate veil imposes liability upon the subsidiary or controlled company for the acts of the parent company or the individual controlling the company. Reverse piercing of corporate veil can be classified into inside reverse piercing and outside reverse piercing. When the piercing of the corporate veil is applied in the interest of an insider to the company, it is inside reverse piercing and when such piercing is applied in the interest of a third party or an outsider to the company, it is outside reverse piercing.

81. He elaborated that the concept of reverse piercing of corporate veil is derived from the equitable doctrine of 'piercing the corporate veil' which has been applied in cases where as shareholder has attempted to shield his or her personal assets from liability for the debts of the corporation. Under the doctrine of piercing of corporate veil, the courts may disregard the separate legal entity of a corporation and hold the shareholders personally liable for the debts and obligations of the corporation if the shareholders have abused the corporate form as per section 339, Section 464 etc. of the Companies Act, 2013.

82. He submitted that the concept of reverse piercing of corporate veil is similar to the extent as it involves disregarding the separate legal entity of a corporation, but it is applied in a different context. The doctrine of reverse piercing of the corporate veil holds the corporation liable for the actions of an individual member. Since the present case is a glaring example of the blatant abuse of the corporate form of the individual companies as explained above, it also warrants application of doctrine of reverse piercing

of the corporate veil to hold the erring directors behind the companies personally liable for the debts and obligations of the companies floated by them.

83. To buttress his argument, he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Iridium India Telecom Ltd. vs. Motorola Incorporated and others**³¹.

84. He submitted that it becomes a classic case where 28% of the area is being used for construction for which resolution plan is being prepared and 72% area is available to the successful resolution applicant with absolutely no construction standing thereon. The successful resolution applicant is eager to invest in such kind of projects without disclosing the correct factual position to the NCLT/NCLAT causing dissipation of public assets.

85. The project of Sports City is to be completed by the Consortium as a lessee and the Consortium cannot, therefore, run away by alleging that it has disintegrated though a statutory process of insolvency. To buttress his argument, he has placed reliance on the judgments passed by Hon'ble Supreme Court and NCLAT in **Asia Foundations and Constructions Ltd. v. State of Gujarat and another**³², **Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd.**³³, **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.**³⁴ and **Raster Images Pvt. Ltd. v. State of U.P.**³⁵

86. In view of the law laid down in several decisions, the tailor-made Corporate Insolvency in such cases will only result in a new trend where all the builders, instead of paying their dues of the State, Noida Authority, additional

compensation of farmers would initiate insolvency proceeding of Reverse Insolvency and get over with their liabilities. This process which has been introduced for a good purpose, would be grossly abused.

NON-DEVELOPMENT OF THE SPORTS FACILITIES

87. Sri Manish Goyal, learned Senior Advocate submitted that non-development of sports facilities frustrated the Sports City Project. Leaving of open space does not satisfy the object of developing sports facilities, it has to be developed as per brochure. Even along with the writ petition the petitioner has not placed any layout plan as to how he will be using the open space for development of the sports facility nor any proposed layout plan has been placed for the kind consideration of this Hon’ble Court. This clearly shows that there is no intention to use the open space for developing the sports facilities.

INTEREST OF HOMEBUYERS

88. Sri Manish Goyal, learned Senior Counsel further submitted that Noida cannot be held responsible for interest of the homebuyers and it is only the allottee who can be held responsible for making false promises to the homebuyers.

89. He submitted that Noida is not privy to the contract between the homebuyers and the allottees. There does not exist any contractual obligation to watch interest of any third party. NOIDA Authority has only granted permission to mortgage but nobody (allottee or homebuyers) has approached Noida for execution of sub-lease deed in their favour.

The allottee having committed wrong to the homebuyers will be solely responsible to the Homebuyers and Noida cannot be fastened with any liability towards Homebuyers.

90. The fact that there are no homebuyers before this Court clearly discloses the fact that the homebuyers are not aggrieved by the action of Noida Authority but they are aggrieved on account of the false promises made by the allottee.

NOTICES FOR PAYMENT OF INSTALMENTS

91. As far as M/s Sequel Buildcon Pvt. Ltd. is concerned, lease deed is of date 24.10.2011 for area 30,000sqm and date of allotment is 16.03.2010. The notices for payment of outstanding defaulted payment were sent on 24.02.2015, 24.07.2023 and 30.08.2024. As per Noida Authority, the dues on petitioner company as on 31.10.2024 is ₹25,29,11,918/-.Apart from these there are other dues as well.

CHANGE IN SHAREHOLDINGS OF VARIOUS COMPANIES

92. He also emphatically argued that as per the ROC the share holdings of the allottee company has chagrined after the allotment, though the same was not permissible in the scheme and the brochure. This was done without the permission of the Noida authority. The chart showing name of allotted companies, directors, shareholdings at the time of allotment, and the present shareholdings as per ROC is as follows:-

| SN | Plot | Name of | Date of sub- | Director and | Present Directors | Present |
|----|------|---------|--------------|--------------|-------------------|---------|
|----|------|---------|--------------|--------------|-------------------|---------|

| | No. | Allottee | division | Shareholder at the time of allotment | as per record of ROC | share holders as per record of ROC |
|----|---------------------|--------------------------------|------------|--|---|--|
| 1. | SC-01-01/78 | M/S XANADU INFRATECH PVT. LTD. | 24.10.2011 | M/s Xanadu Infratech Pvt. Ltd. (100% share holding company of M/s Three C Universal Developers Pvt. Ltd.)- Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri | Additional Directors- 1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishth | Share holders (as on 31.3.2017) |
| 2. | SC-01/A - ALP HA/79 | M/S SEQUEL BUILDCON PVT. LTD. | 16.06.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj | Directors - 1. Anoop Kumar Srivastav 2. Manoj Kumar Singh 3. Dilip | Share holders:(as on 31.03.2020) M/s Ajnara India Ltd. (99.94 |

| | | | | | | |
|----|----------------------|---|------------|---|--|---|
| | | | | 3. Sh. Surpreet Singh Suri | Kumar | (%) Sh. Pramod Kumar Gupta (0.01 %) Sh. Ashok Kumar Gupta (0.01 %) Sh. Vinod Kumar Gupta (0.01 %) Smt. Mamta Gupta (0.01 %) Smt. Padma Gupta (0.01 %) Smt. Geeta Gupta (0.01 %) |
| 3. | SC-01/A - I(BETA0/79 | M/S PINNACLE SUPER STRUCTURES PVT. LTD. | 16.06.2014 | Director :- 1. Sh. Deepak Khurana 2. Dinesh | Directors:- 1. Gurinder Singh Sikka 2. Akhil | Share holder s:-(as on 31.3.2019) 1. Sara Buildc |

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|----|--------------|-------------------------------------|------------|---|-----------------------|--|
| | | | | Kumar Pahwa | Gupta | on Pvt. Ltd.(75%) |
| | | | | Shareholders | | 2. Sikka Promoters Pvt. Ltd.(25%) |
| | | | | 1. M/s Sequel Buildcon Pvt. Ltd. Through Sh. Nirmal Singh (99.99 share) | | |
| | | | | 2. Mr. Deepk Khurana(nominee Sequel Buildcon Pvt. Ltd.)(0.01) | | |
| 4. | SC-01/A-2/79 | M/S ARENA SUPER STRUCTURE PVT. LTD. | 16.06.2014 | Director :- | Directors:- | Share holder s (as on 12.08.2023) |
| | | | | 1. Sh. Deepak Khurana | 1. Shah Alam | 1. Shah Alam-(9%) |
| | | | | 2. Dinesh Kumar Pahwa | 2. Jagat Singh Thakur | 2. Purvanchal Projects Pvt. Ltd.(91%) |
| | | | | 3. Niraj Kumar Sinha | 3. Joy George | Arena Supers structure went insolvency |
| | | | | Shareholders | | |
| | | | | 1. M/s Sequel Buildcon Pvt. Ltd. Through Sh. | | |

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|----|--------------|---------------------------------------|------------|---|----------------------------|-----------------------------------|
| | | | | Nirmal Singh (99.99 share) | | process |
| | | | | 2. Mr. Deepk Khurana(nominee Sequel Buildcon Pvt. Ltd.)(0.01) | | |
| 5. | SC-01/B-1/79 | M/S SEQUEL BUILDING CONCEPT PVT. LTD. | 03.10.2012 | Director:- | Directors:- | Share holder s (as on 31.3.2024) |
| | | | | 1. Sh. Nirmal Singh | 1. Bhupinder Singh Kochhar | Sh. Pradeep Jain (22%) |
| | | | | 2. Sh. Vidur Bhardwaj | 2. Ajay Khetrapal | Sh. Bhupinder Singh Kochhar (22%) |
| | | | | 3. Sh. Surpreet Singh Suri | 3. Anand Goel | Sh. Ajay Khetrapal Singh |
| | | | | Shareholders | 4. Prashant Agarwal | Sh. Anand Goel(12%) |
| | | | | 1. M/s Three C Universal Developers Pvt. Ltd. (99.99 share) | 5. Pradeep Jain | Sh. Munish Kher(6%) |
| | | | | 2. Mr. Surpreet Singh Suri (as nominee on behalf | 6. Munish Kher | Mrs. Meenu Kher(|

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|----|----------------------|--|----------------|---|---|--|
| | | | | of Three C Univers al Develo pers Pvt. Ltd.) (00.01) | | 5%) Sh. Prasha nt Agarw al(6%) Sh. Pooja Agarw al (5%) |
| 6. | SC- 01/B- 2/79 | M/S GOLF GREEN BUILD CON PVT. LTD. | 03.10.2 012 | Share holders | Directors: - 1. Bablu Kumar 2. Deena Ram | Share holder s (as on 31.3.2 014) 1. Silver Sands Build mart Pvt. Ltd.(2 5%) 2. Zephy r Projec ts Pvt. Ltd.- (25%) 3. Arun Kuma r Ghai- (50%) |
| 7. | SC- 01/C- 1/79 | M/S THREE C GREEN DEVELO PERS PVT. LTD. | 16.09.2 014 | Directo r | Directors: - 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardw aj | Share holder s (as on 31.3.2 018) M/s Xanadu Estate s Pvt. Ltd. |

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| | | | | 3. Sh. Surpre t Singh Suri Share holders- | | (75%) M/s Xanadu Infrade velop ers Pvt. Ltd. (25%) |
| | | | | 1.M/s Three C Green Develo pers Pvt. Ltd.(99 .99 share) through Sh. Nirmal Singh 2. Surpre t Singh Suri (Nomin ee of M/s Three C Greens Develo pers Pvt. Ltd.(0. 01% share) | | |
| 8. | SC- 01/C- 2/79 | M/S ROBUST INNOVA EIONS PVT. LTD. | 16.09.2 014 | Directo r | Directors: - 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardw aj 3. Sh. | Share holder s:- (as on 31.3.2 024) Sh. Arvin d Goel (50%) Sh. |

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|----|--------------|----------------------------------|------------|--|---|---|
| | | | | Surpreet Singh Suri | | Aswani Kumar Gupta (50%) |
| | | | | Shareholders:- | | |
| | | | | 1. M/s Three C Greens Developers Pvt. Ltd. (99.99 % share) through Sh. Nirmal Singh | | |
| | | | | 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share) | | |
| 9. | SC-01/C-3/79 | M/S PIYUSH IT SOLUTION PVT. LTD. | 16.09.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh | Directors : 1. Naveen 2. Gopal Singh | Share holders-(as on 31.3.2020) M/s Emine nt Home s Pvt. Ltd. (99.99 %) |

| | | | | | | |
|-----|--------------|-------------------------------------|------------|--|--|--|
| | | | | Suri | | Sh. Nirmal Singh (nominee of M/s Emine nt Home s Pvt. Ltd.(0.01%) |
| | | | | Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99 % share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share) | | |
| 10. | SC-01/C-4/79 | M/S THREE C INFRACREATION PVT. LTD. | 16.09.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri | Directors : 1. Deepak Malhotra 2. Harshit Singh 3. Akhilesh Mishra | Share holders- M/s Abhi Corporation Pvt. Ltd. (99.99 %) Deepa |

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| | | | | Shareholders: - 1. M/s Three C Greens Developers Pvt. Ltd. (99.99 % share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)) | | k Malhotra (nominee of M/s APCL Pvt. Ltd.(0.01%) |
| 11. | SC-01/C-5/79 | M/S THREE C CITY DEVELOPERS PVT. LTD. | 16.09.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri | Directors : 1. Jagdeep Singh Gill 2. Pradeep Singh Rathie | Shareholders-(2023-2024) Sh. Ajay Kumar (70%) Sh. Pratap Singh Rathie |

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| | | | | Shareholders: - 1. M/s Three C Greens Developers Pvt. Ltd. (99.99 % share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)) | | (10%) Sh. Praveen Kurele (20%) |
| 12. | SC-01/C-6/79 | M/S WATER EPEARL INFORS OFTECH PVT. LTD. | 16.09.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri | Directors : 1. Rakesh Kumar Agarwal 2. Pankaj Kumar Garg 3. Madhur Garg 4. Sumit Garg | Shareholders-(as on 31.3.2024) Sh. Dhaneesh Chand Agarwal (9%) Sh. Dhaneesh Chand |

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|--|--|--|--|---|---------------------|----------------------------------|
| | | | | | 5. Sachin Goyal | Agarwal & Sons (HUF) (6%) |
| | | | | Shareholders:- | 6. Sunny Agarwal | Mrs. Aparna Agarwal (5%) |
| | | | | 1. M/s Three C Greens Developers Pvt. Ltd. (99.99 % share) through Sh. Nirmal Singh | 7. Nikunj Garg | Sh. Mahesh Chand Goel (HUF) (5%) |
| | | | | 2. Sh. Surpreet Singh Suri (Nomin ee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share) | 8. Khooshbu Agarwal | Sh. Mahesh Chand Goel (8%) |
| | | | | | 9. Aakash Garg | Sh. Abhinav Goel (75%) |
| | | | | | | Sh. Sachin Goel (20%) |
| | | | | | | Sh. Dinesh Garg (20%) |
| | | | | | | Mrs. Nutan Garg (2.5%) |
| | | | | | | Sh. Sumit Garg (2.5%) |
| | | | | | | Sh. Madhur |

| | | | | | | |
|-----|--------------|--------------------------------|------------|---|--|--|
| | | | | | | Garg (2.5%) |
| | | | | | | Mrs. Shikha Garg (2.5%) |
| | | | | | | Sh. Rakesh Kumar Agarwal (10%) |
| 13. | SC-01/C-7/79 | M/S THREE C BUILDERS PVT. LTD. | 16.09.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99 % share) through Sh. Nirmal Singh | Addition al Directors : 1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishit h M/s Yashali Developers Pvt. Ltd. (25%) M/s Laurel Residency Pvt. Ltd. (25%) M/s Infrawiz Projects Pvt. | Share holders-(as on 31.3.2017) M/s Lotus Green Developers Pvt. Ltd. (25%) M/s Yashali Developers Pvt. Ltd. (25%) M/s Laurel Residency Pvt. Ltd. (25%) M/s Infrawiz Projects Pvt. |

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| | | | | 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)) | | Ltd. (25%) |
| 14. | SC-01/C-8/79 | M/S THREE C BUILDERS PVT. LTD. | 16.09.2014 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders: - 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh | Directors : 1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishit Shareholders-(as on 31.3.2017) M/s Lotus Greens Developers Pvt. Ltd. (25%) M/s Yashali Developers Pvt. Ltd. (25%) M/s Laurel Residency Pvt. Ltd. (25%) M/s Infrawiz Projects Pvt. Ltd. | |

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|-----|--------------|---------------------------------|------------|--|---|-------|
| | | | | 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)) | | (25%) |
| 15. | SC-01/D-1/79 | M/S KINDLE DEVELOPERS PVT. LTD. | 03.10.2012 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders: - 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh | Directors : 1. Piyush Tiwari 2. Shikha Tiwari 3. Astha Gupta 4. Harshdeep Gandhi Shareholders-(as on 30.9.2014) 1. Sh. Piyush Tiwari (55%) 2. Ms. Shikha Tiwari (5%) 3. M/s Sunwhite Infrastructure Pvt. Ltd. (40%) | |

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| | | | | 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)) | | |
| 16. | SC-01/D-2/79 | M/S GOLF GREEN RESIDENCE PVT. LTD. | 03.10.2012 | Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Kindle Developers Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana (Nominee of M/s Kindle Developers Pvt. | Additional Directors : 1. Anil Prakash Sharma 2. Krishan Kumar 3. Rahul Yadav 4. Usha Saraf M/s Sunshine Infratech Pvt. Ltd. (99.99%) Sunshine Infratomes Pvt. Ltd. (0.01%) | Shareholders-(as on 31.3.2020) M/s Sunshine Infratech Pvt. Ltd. (99.99%) Sunshine Infratomes Pvt. Ltd. (0.01%) |

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|-----|--------------|-----------------------------------|------------|--|---|--|
| | | | | Ltd. (0.01% share) | | |
| 17. | SC-01/D-3/79 | M/S GOLF GREEN ESTATE PVT. LTD. | 03.10.2012 | Director 1. Sh. Deepak Khurana 2. Dinesh Pahwa Shareholder:- 1. M/s Kindle Developers Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana (Nominee of M/s Kindle Developers Pvt. Ltd. (0.01% share)) | Directors : 1. Dinesh Kumar Jain 2. Rakesh Kumar Jain 1. Exotic Housing & Infrastructure Projects Private Ltd.-(99.99%) 2. Mr. Dinesh Kumar Jain (as a nominee of Exotic Housing & Infrastructure Projects Pvt. Ltd.)(0.01%) | Shareholders-(as on 31.3.2023) 1. Exotic Housing & Infrastructure Projects Private Ltd.-(99.99%) 2. Mr. Dinesh Kumar Jain (as a nominee of Exotic Housing & Infrastructure Projects Pvt. Ltd.)(0.01%) |
| 18. | SC-01/D-4/79 | M/S GOLF GREEN MANSIONS PVT. LTD. | 03.10.2012 | Director 1. Sh. Deepak Khurana 2. | Directors - 1. Vinod Bahl 2. Pramod | Shareholders (as on 31.3.2024) Sh. Vinod Bahl |

| | | | | | | |
|-----|--------------|------------------------------------|------------|--|--------------------|--|
| | | | | Dinesh Pahwa | Bahl | (25%) |
| | | | | | 3. Vikas Gupta | Sh. Pramod Bahl (25%) |
| | | | | | 4. Uma Shanker | Sh. Uma Shankar (25%) |
| | | | | Shareholder:- | | |
| | | | | 1. M/s Three C Universal Developers Pvt. Ltd. (99.99 % share) through Sh. Vidur Bhardwaj | | Sh. Amitabh Gupta (25%) |
| | | | | 2. Mr. Surpreet Singh Suri (Nomin ee of M/s Three C Universal Developers Pvt. Ltd. (0.01% share) | | |
| 19. | SC-01/E-1/79 | M/S GAURSONS SPORTS WOOD PVT. LTD. | 03.10.2012 | Director | Directors : | Share holders-(as on 31.3.2024) |
| | | | | 1. Sh. Deepak Khurana | 1. Manoj Gaur | |
| | | | | 2. Dinesh Pahwa | 2. Sarthak Gaur | 1. Manoj |

| | | | | | | |
|-----|--------------|--------------------------------|------------|--|--------------------|--|
| | | | | Shareholder:- | | Kumar Gaur- (4.65 %) |
| | | | | 1. M/s Three C Universal Developers Pvt. Ltd. (99.99 % share) through Sh. Vidur Bhardwaj | | 2. Mrs. Manju Gaur - 4.66% |
| | | | | 2. Sh. Surpreet Singh Suri (Nomin ee of M/s Three C Universal Developers Pvt. Ltd. (0.01% share) | | 3. Gaursons India Private Limited- (41.92 %) |
| | | | | | | 4. Sri Shayam Buildcon Private Ltd.- (41.92 %) |
| | | | | | | 5. Mr. Pradeep Kumar Agrawalla- (6.85 %) |
| 20. | SC-01/E-2/79 | M/S GOLF GREEN INFRA PVT. LTD. | 03.10.2012 | Director | Directors : | Share holders-(as on 31.3.2023) |
| | | | | 1. Sh. Deepak Khurana | 1. Dheeraj Jain | |
| | | | | 2. Dinesh Pahwa | 2. Shruti Jain | M/s Mahagun India Pvt. |
| | | | | | 3. Divya Jain | |

| | | | | | | |
|-----|--------------|--|------------|--|--|---|
| | | | | Shareholder:- 1. M/s Xanadu Realcon Pvt. Ltd. (99.99 % share) 2. Mr. Deepak Khurana (as a nominee of M/s Xanadu Realcon Pvt. Ltd. (0.01% share) | 4. Amit Jain | Ltd. (9.99 %) ICICI Prudential Venture Capital Fund Real Estate s (.01%) Gaur Sons Sports Wood Pvt. Ltd.(9 0%) |
| 21. | SC-01/E-3/79 | M/S GOLF GREEN SUPERS TRUCTURE PVT. LTD. | 03.10.2012 | Shareholder:- 1. M/s Xanadu Realcon Pvt. Ltd. (99.99 % share) 2. Mr. Deepak Khurana (as a nominee of M/s Xanadu Realcon Pvt. Ltd. (0.01% share) | Directors : 1. Jai Prakash Gupta 2. Alka Goel | Share holders-(as on 31.3.2023) 1. Civitech Housing India Pvt. Ltd. (85.71 %) 2. Subodh Goel (7.14 %) 3. Alka |

| | | | | | | |
|-----|-------------|--|------------|--|--|---|
| | | | | | | Goel (7.14 %) |
| 22. | SC-01/A/101 | M/S THREE C GREEN DEVELOPERS PVT. LTD. | 03.07.2013 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders:- | Directors - 1. Anand Ram 2. Girish Chandra Joshi M/s Xanadu Estate s Pvt. Ltd.(7 5%) M/s Xanadu Infradevelopers Pvt. Ltd. (25%) | Share holders: M/s Xanadu Estate s Pvt. Ltd.(7 5%) M/s Xanadu Infradevelopers Pvt. Ltd. (25%) |

| | | | | | | |
|-----|-------------|-----------------------------------|------------|---|--|---|
| | | | | (0.01% share) | | |
| 23. | SC-01/B/101 | M/S GOLF GREEN BUILDCON PVT. LTD. | 03.07.2013 | Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri Shareholders: - 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nomininee of M/s Three C Greens Developers Pvt. Ltd. (0.01% | Directors:- 1. Anand Ram 2. Girish Chandra Joshi M/s Xanadu Estate Pvt. Ltd. (75%) M/s Xanadu Infrastructure Pvt. Ltd. (25%) | Shareholder s:- M/s Xanadu Estate Pvt. Ltd. (75%) M/s Xanadu Infrastructure Pvt. Ltd. (25%) |

| | | | | | | |
|--|--|--|--|--------|--|--|
| | | | | share) | | |
|--|--|--|--|--------|--|--|

93. Since the instant insolvency is not a genuine insolvency, hence no benefit can be extended to the petitioner. Moreover, such a practise of Reverse insolvency has to be discouraged, if the insolvency has been initiated just to avoid the payment of the dues, and specially in cases where the money has been siphoned away from the company.

REJOINDER ARGUMENTS ON BEHALF OF THE PETITIONER

94. Sri Anil Tiwari, learned Senior Advocate submitted that the company and the home buyers are the victims of fraud played by the builders. In reply to the submissions made on behalf of NOIDA, the learned Senior Counsel submitted as under:-

95. The entire sports city of Sector 78 and 79 has now been divided into 23 companies/ builders. Out of these 23 companies/ builders, maps were approved of 12 builders. However, construction was carried over only 11 plots. He further submitted that the total area of this sports city in SC-01, Sector-78, 79 was 703001.8 sqm. Out of which plans were approved on 3,31,000 sqm of land. In each of sanctioned map 70% of the area was left open and in any case, Noida Authority has still more than 70% land i.e. open area which they can still continue and carry out development of the sports facilities as was laid down in the original scheme. And this sports facilities has to be developed by the companies who had been assigned the task of development. As per the approved master lay out plan the development of the

sports facilities was not the obligation of the petitioner.

96. Learned Senior Advocate submitted that in this case, the allottee was a consortium. As per the scheme (clause 5 of the Mode of payment), if the allottee was the consortium it has to deposit stamp paper for execution of lease deed but in this case, the first lease was never executed between Noida Authority and the consortium. The leases were executed directly with the petitioner and other similar entities instead of executing it with the consortium. The brochure of the sports city scheme had three different words i.e. allottee, lessee and sub lessee. However, while executing the lease deed the main allottee was found missing, and the lease were executed by Noida Authority and the sub-lessees.

97. He submitted that the argument advanced by learned counsel for Noida Authority that sub leases were executed on behalf of lead member M/s Xanadu is also not correct as on the letter of Xanadu, six different lease deeds were executed in favour of six new companies and all these leases were given different payment plans, which shows Noida authority has recognised them as individual lessees.

98. He submitted that in the master lay out map, which was approved in 2014 when there were only 16 allottees, the entire liability of setting up of sports facility was fastened to two companies. However, for the rest of the companies, their individual maps were sanctioned and they were allowed to build, sell and collect money from the homebuyers even without building the sports facilities. This entire bungling /scam has been done in clear connivance with the builders, and officers of the Noida Authority.

99. He further submitted that in such cases where the interest of Noida Authority, builders and homebuyers are at stake, Hon'ble Supreme Court in the matter of **Bikram Chatterji and others vs. Union of India and others**³⁶, has categorically laid down that the interest of homebuyers should be supreme, and should get first preference and be taken care of.

100. He further submitted that Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd. And others**³⁷ has held that approved resolution plan shall be binding and hence, it is not open for Noida Authority not to implement the orders passed by the NCLT/NCLAT, specially when the order was passed in their presence. Had they been aggrieved by the order they ought to have challenged it but they cannot stop implementation of the order, if they have not challenged the same.

101. He further submitted that the implementation of the project has to be done in time bound manner and because of the delay caused by Noida Authority in revalidating the map it is actually working against the interest of the homebuyers, who had already suffered a loss.

ANALYSIS BY THE COURT

102. We have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, we have proceeded to peruse the pleadings, grounds taken in the writ petition, annexures appended thereof, the reply filed by the opposite party and also the rejoinder affidavit filed by the appellants.

A. SCHEME-2010-2011 for development of Sport City in NOIDA :-

103. The NOIDA having been declared to be an Industrial Township is obligated to not only develop the industries but also to develop a complete township by virtue of Article 243Q of the Constitution of India. The Sports City Scheme was formulated and launched on 03.03.2011.

104. This is evident that the object of the Sports City scheme was to develop state of the art sports facilities to be enjoyed by the public at large. This scheme was launched for developing Sports City at two different places in Noida, first in Sector 78 & 79, admeasuring about 7,27,500 square metre and the other sports city in Sector 150 in Noida.

105. As per the Scheme, the allotment price was Rs.11500/- per sqm. As the Scheme was for the development of the sports facilities in the open area and for this purpose the price was purposely kept low to set off the cost of developing the sports facilities by developing the residential apartments and commercial complex.

106. The reasons of allotting a huge parcel of land was for developing sports facilities as per the specifications laid out by NOIDA. Looking at the size and the cost of the project it was not feasible for an individual company to complete the massive project, so a Consortium company was allowed to participate and develop the sports city project. It was never the intention of the Authority to bifurcate the plot of Sports City into smaller plots and allow small builders to make Group Housing society in the sports city, and for this reason, the qualification hurdle was kept high.

107. The entire sports city project was an integrated project of sports facilities as well as residential/commercial project. The development of both were intertwined. The

allottee had to complete both simultaneously, giving precedence to the sports part as the same had to be completed in five years i.e. prior to the completion of the residential part. Both the developments were complimentary to each other, failure to develop one would adversely effect the other.

108. A stand alone group housing was not the object of the sports city. Group housing could not have been developed without developing the sports facilities. Any division or bifurcation of the project contrary to its scheme would be illegal.

B. ALLOTMENT TO A CONSORTIUM & SUB-DIVISION

109. Normally, a Consortium is a group of different companies/builders/developers, who come together to complete a project, but here a number of companies were incorporated by the promoters of a company called M/s Three-C Universal Developers and all the companies were newly incorporated companies and their shareholdings were held by the same set of people (i.e Nirmal Singh, Surpreet Singh Suri and Vidur Bharadwaj). Apparently, the intention of these promoters, right from day one, was not to develop the project, but somehow to illegally divide the project and sell off the same to the other builders/developers/companies at a very high profit. The *mens rea* of these promoters and Directors of the Consortium Members of the company was writ large.

110. Consortium Members/allottees had applied and got the master layout plan approved on 16.06.2014 by which they had divided the scope of development among themselves. The division of obligations clearly depicts the *mens rea* of the

consortium members. All the liabilities were kept in two companies, i.e. M/s Xanadu Infratech Pvt. Ltd. and M/s Three C Green Developers Pvt. Ltd, while the others were assigned with the cream of the project. Noida Authority on its own cannot go against the tender conditions. However, the approval of the Master lay out Plan and further sanction of individual maps of the sub-allottees was completely contrary to the scheme, the tender conditions, and the terms of the lease deeds. These two exploits had virtually jeopardised the integrated project of sports city.

111. Since the project was allotted to a Consortium, whatever may be the internal arrangement between the members of the Consortium but if one of the members fails to fulfil its obligations it was the duty of other members in the Consortium to complete the same. Since no individual rights have been assigned to any of the sub lessee, hence, failure to perform any part by any member of the Consortium would amount to failure on part of the performance of the Consortium. Since, in this case failure of one of the members to perform its part has been taken to NCLT in insolvency proceedings and the NCLT has passed directions for part completion of the project. This direction would actually effect all the members of the Consortium as the internal arrangement between the members gets dis-balanced. Learned NCLT before passing the direction ought to have considered the interest of other stakeholders and at first, would have called the Consortium Members to ascertain whether they were ready and willing to complete the part of the obligations of the insolvent company before approving the resolution plan.

112. From the above four, the first three companies were assigned the task of

developing residential part of sports city. They were the original members of the consortium or their 100% subsidiary companies of the allottees and had only one business of developing the sports city. They have collected huge amount of money from the homebuyers and a very small amount has been spent in the project and at the same time, they have not paid the due instalments of Noida Authority.

113. The two companies namely, M/s Xanadu Infratech Pvt. Ltd. and M/s Three C Green Developers Pvt. Ltd. were assigned the task of developing entire sports facility of the sports city. Out of these two companies, M/s Three C Green Developers Pvt. Ltd., who was supposed to develop the sports facilities, had not spent any amount towards development and has gone into insolvency.

114. In this case, the project was allotted to a Consortium and surprisingly all the members of the Consortium were incorporated after the Scheme was launched and the promoters of all the companies were the same, which goes to show that the Consortium was not a genuine Consortium, but it was made of a group of companies owned by the same set of people, who after getting the allotment, got it sub-divided and applied for approval of the Master Plan, which was later approved in such a way that all the profit yielding part of the Sports City were kept in by various small companies and the liability of developing the Sports Facilities was kept with only two companies.

115. A comprehensive and inclusive analysis of the present situation reveals that virtually the same set of individuals floated multiple companies to procure the sports city project and also the leases from the Authority for the development of the Sports City Project as an integrated whole.

However, instead of discharging their obligation towards integrated development of the Project, the aforementioned set of individuals, who were effectively behind all the members of the Consortium, under the garb of being independent companies, only focussed on residential development and completely ignored their responsibility for the development of sports facilities, and later got themselves into insolvency.

INSOLVENCY

116. Out of all the companies, who are involved in the development of the Sports City, following four companies have gone into insolvency, which are as follows:-

- (1) M/s Sequel Buidcon Pvt. Ltd.
- (2) M/s Arena Super Structure Pvt. Ltd.
- (3) M/s Kindle Developers Pvt. Ltd.
- (4) M/s Three C Green Developers Pvt. Ltd.

117. In the present case, both the companies M/s Sequel Buildcon Pvt. Ltd. & M/s Three C Green Developers Pvt. Ltd. were promoted by the same set of persons i.e. Nirmal Singh, Surpreet Singh Suri and Vidur Bharadwaj. Thereafter on the request of M/s Sequel Buildcon Pvt. Ltd. (whose plot size was 1,00,000 sqm) was again subdivided into two parts. First (being plot of 30,000 sqm) was retained by the petitioner company and the other remaining 20,000 sqm was allotted to M/s Pinnacle Superstructures Pvt. Ltd. Though, as per the ROC website, the shareholding of M/s Arena Super Structure Pvt. Ltd., Arena (50,000 sqm) square meter and M/s Pinnacle Superstructures Pvt. Ltd. (20,000 sqm) have changed. Hence, it can safely be concluded that the original promoters have sold off/transferred 70,000 sqm of land to

some other entities. Obviously, this would have been sold at a price. The money would have come in the sellers company/or any other of its concern or in personal accounts of the promoters (i.e. Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri). Now the question is where did the sale consideration go. In addition to it, the petitioner had collected money from the homebuyers, out of which a small portion was spent in developing the residential structure. The entire sale proceeds and the major portion of this collected money from the homebuyers was also syphoned off and thereafter allowed the petitioner company to slip into insolvency. Definitely, this insolvency is a tailor-made insolvency just to avoid civil and criminal liabilities and to avoid payment of the dues and completing the obligation of developing the Sports City.

118. The insolvencies of these companies were designed only to avoid payment to Noida Authority, Banks, State of U.P. and the homebuyers. The effect of these insolvencies would be that the sports facilities would never get completed.

119. Therefore, it is not wrong to infer that these insolvencies were tailor made and artificially engineered just to avoid civil and criminal liabilities on the Directors/promoters as well as on the companies. This act is actually a fraud played upon the NOIDA authority as well as the homebuyers.

D. REVERSE INSOLVENCY

120. Since the inception of IBC, 2016, the Act has been amended more than once for betterment of the homebuyers. Although, even after these amendments it is tough to say that the Code now addresses every concern of the homebuyers. At times

like this where the Code is of no help, judiciary has come up with innovative mechanisms based on the cases before them, so that appropriate relief could be given to the homebuyers/allottees. One such mechanism introduced by the judiciary is the Reverse CIRP, even though the same has no origin in the IBC, 2016. This mechanism was introduced for the first time in Company Appeal (AT) (Insolvency) No.926 of 2019 decided on 04.02.2020 (**Flat Buyers Association Winter Hills v. Umang Realtech Pvt. Ltd. Through IRP and others**)³⁸. In this case, the NCLAT held that real estate companies. CIRPs are unique and different from other insolvent companies. As a result, the NCLAT discussed 'whether a corporate debtor in the real estate industry could be resolved in IBC without the approval of a third-party Resolution Plan.' These discussions opened the door for the highly creative idea of **Reverse CIRP**, in which the corporate debtor's promoters can get pass the obstacle set under Section 29A of IBC and submit a plan to finish and deliver their stalled project, subject to the necessary approval from creditors and stakeholders and under the guidance of a Resolution Professional (RP) and the NCLT.

121. Taking advantage of this new mechanism of Reverse CIRP, the petitioner herein has devised a novel way of completing the project, yet not pay any of the liabilities towards the corporate debtors and dues of the State, Noida Authority and additional compensation for farmers. This novel device is nothing but gross abuse of process of law. The petitioner company already had sufficient money, which it got from selling 70,000 sqm land and further collecting money from the homebuyers and after syphoning off the same, the petitioner had got his company pushed into

insolvency and thereafter using this novel method of reverse insolvency wants to complete the project, book more flats, and further collect money by selling the remaining flats, collect more amount and still not pay the outstanding dues and pay the other creditors. The way petitioner has proceeded through this CIRP is nothing but a fraud played on the State, the Noida Authority as well as on NCLT.

122. If this process of reverse insolvency is allowed to continue then every builder, specially in Noida where he gets land allotted by merely paying 10% of the land amount, would push the companies into insolvency and thereafter would come forward to complete the project through process of reverse insolvency. Such kind of fraud cannot be allowed to be perpetuated.

123. The aims and objects of enacting the Insolvency and Bankruptcy Code, 2016 was not to give benefit to such kind of unscrupulous builders, who could abuse the process of law by invoking such mechanism.

E. LIFTING OF CORPORATE VEIL

124. Since the line of distinction between the companies (developers involved in the Sports City Project) and their directors (virtually the same set of individuals who floated multiple companies) is blurred. The companies merely function as an alter ego of the owners evading their legal responsibility, the theory of 'alter ego' for piercing the corporate veil would become applicable. Additionally, since the same set of directors behind all the individual companies are using the separate corporate entities for their own benefit instead of using it for discharging the obligations undertaken by

the companies, the theory of 'instrumentality' for piercing the corporate veil also applies.

125. The question now is, as to whether the company which has gone into insolvency can be prosecuted (through its directors) for the offences done by the company in defrauding Noida Authority, State, as well as not paying the additional compensation of the farmers.

126. The only way to ascertain this fact is by piercing the corporate veil and to see as to who are the key persons and in actual control of the company and whether a fraud has been played by those persons and also to see whether they are trying to hide their fraudulent activities and themselves under the mask of the company being a separate juristic personality.

127. Due to the occurrence of such instances of fraud and irregularities, the law has taken change with its earlier exception that the company is a separate juristic personality and the liability of the company cannot be recovered from the property of directors. In due course of time, certain exceptions have been carved out in the doctrine of separate juristic personality of the company, which are being referred in the forthcoming paragraphs.

128. The concept of the corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

129. The doctrine of 'piercing of corporate veil' was initially crystallized in

Salomon v. Salomon and Co. Ltd.³⁹ The House of Lords had observed that the company is at law a different person altogether from the subscribers to the memorandum. However, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is 'when the corporate personality is being blatantly used as a cloak for fraud or improper conduct.

130. The doctrine of lifting of the corporate veil was carved out to be used whenever and wherever the situation so warranted. Lord Denning in **Littlewoods Stores v. I.R.C.**⁴⁰ held:-

"The doctrine laid down in Salomon's case has to be watched very carefully. It has been supposed to cast a veil over the personality of a limited company through which the Courts cannot see. But that is not true. The Courts can, and often do, draw aside the veil. They can, and often do, pull off the mask. The way with group accounts and the rest. And the Courts should follow suit....."

131. On the doctrine of 'piercing of corporate veil' the Hon'ble Supreme Court in the matter of **State of U.P. v. Renuagar Power Co.**⁴¹ has held that, in the expanding horizon of modern jurisprudence, the lifting of the corporate veil is not only permissible, its frontiers are unlimited and ever expanding. It further significantly observed that the lifting of the corporate veil was a changing concept and of expanding horizons.

132. The Hon'ble Supreme Court in **State of Rajasthan and others vs. Gotan Lime Stone Khanij Udyog Private Limited and another**⁴² has held as under:-

"The principle of lifting the corporate veil as an exception to the

distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion[7] but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation[8]. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”

133. The principle of lifting the veil of corporate personality has been upheld in **Subhra Mukharjee & another v. Bharat Cooking Coal Ltd. & another**⁴³; **Calcutta Chromotype Ltd. vs. Collector of Central Excise Kolkata**⁴⁴; **New Horizon Ltd. & another vs. Union of India and others**⁴⁵; **C.I.T. vs. Meenakshi Mills Ltd. Madura**⁴⁶; **Telco & ors vs. State of Bihar**⁴⁷; **Juggi Lal Kamlapat vs. Commissioner of Income Tax, U.P.**⁴⁸

134. It is pertinent to mention that Hon’ble Supreme Court in **Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and others**⁴⁹ while interpreting the statutory provision of Section 29A of the Insolvency and Bankruptcy Code, 2016 has held that the corporate veil may be lifted when a statute itself contemplates lifting the veil or improper conduct is intended to be prevented, or a taxing statute or beneficial statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern.

135. Hon’ble Supreme Court in the matter of **Delhi Development Authority v.**

Skipper Construction Company (P) Ltd. & Another⁵⁰ wherein it has been held that lifting the corporate veil of the companies, forfeiture and attachment of property acquired by illegal and corrupt means by the builder behind the corporate veil as also properties of the family members can also be ordered by the Court.

136. The intention of Insolvency and Bankruptcy Code, 2016 was not to allow the unscrupulous promoters to siphon away the money and then take the illegal advantage of the law and engineer insolvency proceeding just to avoid civil and criminal liabilities. Therefore, in the light of above discussion, this Court is of the firm opinion that the corporate veil of the companies pushed into insolvency can be lifted to prosecute the directors for committing fraud.

F. IMPLEMENTATION OF PREVENTION OF MONEY LAUNDERING ACT

137. The Prevention of Money Laundering Act⁵¹ was enacted in 2002. For ready reference Sub-Clause (p), (u), (v), (y) and (za) of Clause 2 of Chapter I of the PMLA Act are quoted hereunder :-

“(p) “money-laundering” has the meaning assigned to it in section 3;

u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that “proceeds

of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

Explanation.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(y) "scheduled offence" means—

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule;

(za) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;"

138. The following provisions of IPC were included in Part A, Paragraph 1 of the Schedule. The Schedule :-

"OFFENCES UNDER THE INDIA PENAL CODE (45 OF 1860)

Section Description of offence

120B Criminal conspiracy

.....

420 Cheating and dishonestly including delivery of property.

3. Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such

time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.”

139. After the amendment in PMLA Act the offence under the IPC of fraud cheating and criminal conspiracy were included under the ambit of PMLA Act, 2002 and these offences would be a scheduled offence as per Section 2(y) of PMLA Act.

G. FRAUD

140. The corporate frauds specially in the insolvency case happens when the management /individuals within or associated with the company are engaged in illegal practices or had failed to fulfil their fiduciary duty, which ultimately leads to insolvency and in such a case the stakeholders affected by such fraud including creditors and consumers become the victim of such fraud. Addressing this issue requires multi-facet approach. This practice is mushrooming especially with the real-estate builders, who after collecting the money from the homebuyers prefer not to pay the dues of the Noida Authority or the creditor and after siphoning off the funds, by abusing the process of law, and taking undue advantage of the IB Code, 2016, pushes the company into insolvency.

141. Fraus Omnia Vitiat- Fraud vitiate everything:- The corporate fraud, which includes malpractices, breach of financial duty, financial manipulation, asset diversion, siphoning off funds and the government failure, which results into undue advantage and illegal gains to the people calling the shorts in the company would come under the ambit of corporate fraud.

142. The Hon'ble Supreme Court in the matter of **Udgar Gagan Properties Limited v. Sant Singh and others**⁵² held that the petition under Article 226 of the Constitution of India is maintainable as it is only a rule of practice based on sound and proper exercise of discretion. The Court can quash an illegal action based on fraud or abuse of process of law. Ref; **Madhukar Sadbha Shivarkar (D) by Lrs. v. State of Maharashtra & Ors**⁵³.

143. The Hon'ble Supreme Court in the matter of **M/s Embassy Property Developments Pvt. Ltd v. State of Karnataka & Ors.**⁵⁴ has held that although the National Company Law Tribunal and National Company Law Appellate Tribunal can look into the fraudulent claims, but they are not allowed to make decisions on matters pertaining to public law or which involves decision made by quasi judicial authorities. Hon'ble Supreme Court has held as follows:-

“50. The objection of the appellants in this regard is well founded. Section 65 specifically deals with fraudulent or malicious initiation of proceedings. It reads as follows :

“65. Fraudulent or malicious initiation of proceedings. – (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon

such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees."

51. *Even fraudulent tradings carried on by the Corporate Debtor during the insolvency resolution, can be inquired into by the Adjudicating Authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently "for any purpose other than for the resolution of insolvency or liquidation".*

52. *Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely within the mischief addressed by Section 65(1). Therefore, it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61."*

144. In the **Law Lexicon, Second Edition (Reprint) 2001** by **Sri P. Ramanatha Aiyer**, it is emphasized that 'Abuse of process of court generally applies to proceeding wanting in bona fides and is frivolous, vexatious or oppressive wherein a person abuses the process of law for his personal advantage'. Such kind of proceedings

would fall under the ambit of fraud. Hon'ble Supreme Court in a number of cases has held that fraud vitiates all the proceedings.

145. In the instant case, some of the home buyers have taken the petitioner to NCLT, wherein the erstwhile Directors of the petitioner company chose to adopt reverse CIRP and on the basis of his recommendation, the learned NCLT allowed reverse CIRP and instructed IRP to complete the project, who in turn wrote to NOIDA for revaluation of Map.

146. The intention of cheating was clear right from the inception of the project. There was no will to complete the sports facility. Neither they were the serious developers. Infact, the original allottees are nowhere in the picture now. The allottees had sub divided the entire sports city project and had transferred/sold to small time builders, who were not even qualified to participate in the bidding process of the project. The original allottees, at the time of allotment, had paid the bare minimum 10% of the premium to get the allotment and then got the map sanctioned and started collecting huge amount from the homebuyers, with no intention of completion of the project. They chose not to pay up the land premium installments and the Noida Authority officials, who were conniving in the fraud, kept their eyes closed and allowed the builders to collect more money from the homebuyers without paying the installments. A long rope was given by the Noida Authority officials, so that they may get more time to defraud the homebuyers and collect more money and then push the company into insolvency.

H. DOCTRINE OF PUBLIC TRUST

147. This case exposes a significant nexus of corruption between the builders and the officials/officers of the Noida Authority,

resulting in gross violations of public trust, fraudulent practices and financial losses, amounting to Rs.9000 crores to the Noida Authority, as per the CAG report.

148. We would be failing in our duty, if we ignore the illegalities committed by the Builders (sub-lessees) in connivance with the officials of the Noida Authority, which has snowballed into a major land scam.

149. Under the doctrine of public trust the Government is bound to safeguard its resources so that the same can be used for the general public and it should not be used for commercial purposes for some private gains.

150. The public trust doctrine is a part of the law of the land. The public authorities such as Noida are duty bound to observe that the leased property is not frittered away along with the money of home-buyers. Unfortunately in the instant case, the public authorities, who were the repositories of the property, have miserably failed to protect the interest of the State and the Homebuyers.

I. CONNIVANCE

151. It is a classic case of connivance between the allottees/builders and the officials of Noida Authority. There is complete violation of the scheme and the provision of brochure of the Sports City, Lease Deed and the Policy. As per the Scheme, the transfers were only permitted of the residential area, and that too, after meeting the first milestone of development of the sports facilities. However, in this case, officials of the Noida Authority have openly violated the terms contained in the brochure of the Sports City Scheme and bifurcated the entire project and they also allowed transfer of the recreational area in favour of other companies. Just not that, the

Lead Member, who had 30% share in the Consortium, on the very first day was given a go by and as such, the company who was the Lead Member of the Consortium which was allotted the project, was found missing when the lease was signed. A joint MOA conveying the formation of SPC and their responsibilities was also found missing though, it was an integral part of the Scheme. The layout map was approved by the officers of the Noida Authority in spite of the outstanding dues. Allottees were given undue benefit by not asking for the payment of the outstanding dues of the Noida Authority. No sincere efforts were made by the officers of the Noida Authority to recover the additional compensation, which was to be paid to the farmers. A timeline of three to five years was set for developing the sports facility and seven years' time was given to develop the residential facilities. However, officials of Noida Authority did nothing to pursue the timeline for development of the sports city. It is seen that the conduct of the officials of Noida Authority through out was to grant undue benefits to the builders and because of their action/inaction, the present situation has arisen.

152. The balance 90% of the outstanding premium was to be paid in 16 half yearly instalments @ 11% interest per annum. However as per Noida Authority, the petitioner (M/s Sequel Buildcon Pvt Ltd.) only paid 4 instalments and thereafter defaulted and did not pay any further. The petitioner kept on defaulting and the outstanding dues kept on mounting. Noida Authority got up too late from its deep slumber and issued a notice for outstanding dues on 27.03.2023 after the CAG report wherein instalment and interest were asked for, from all the individual co-allottees, but shockingly yet again no serious efforts were made to recover the amount. No

explanation was called from the concerned officers of Noida Authority for not doing the same. This dereliction of duty on behalf the Noida Authority has become the root cause of all the problems today.

153. On the request of the petitioner the original plot of 1,00,000 sqm was divided into three parts out of which 30,000 sqm was kept by the petitioner and the remaining 70,000 sqm was transferred to two other companies, which were 100% subsidiaries of the petitioner's company, but later both the companies were transferred and the shares which were owned by the petitioner company were sold. The sale proceeds must have come in the company. All this money was transferred without paying dues of the Noida and the other creditors. Noida Authority had been a mute spectator and allowed the companies to carry out development of residential part and further collect money from the homebuyers and at the same time nothing was done towards development of sports facility.

154. Hon'ble Supreme Court in the matter of **Noida Toll Bridge Company Ltd. vs. Federation of Noida Residents Welfare Association and others**⁵⁵ has held as under:-

“32. Considering the onus placed upon the State, it requires no further elaboration that every action or decision of the State or its instrumentalities in conferring any form of largesse or benefit must be grounded in a just, transparent, and well-defined policy. Such a policy should be made known to the public through appropriate publication and implemented through non-discriminatory means, free from bias or favouritism. Even when the Government awards a contract or grants similar benefits, such bestowal must meet the standards of reasonableness and

public interest. Should either of these criteria remain unmet, the conferment would be deemed unconstitutional. As a necessary corollary thereto, the Government must not act in a manner benefitting private entities at the expense of the State. Such actions, if unreasonable and contrary to the aegis of public interest, would undermine the State's Constitutional obligations.

35. The golden principle thus is that Government procedures or policies pioneered in public interest must genuinely serve the public and not merely enrich private entities. When public interest is overshadowed, it does raise concerns as to whether the Government has acted in a manner that appears capricious or arbitrary. It then becomes imperative for the Court to scrutinise whether such actions vitiate the Constitutional mandate of equality. Such procedures, must therefore satisfy the litmus test of due application of mind, fairness, transparency and most pertinently, being bona fide.”

J. INTERESTS OF THE HOMEBUYERS

155. As far as the homebuyers are concerned, they are the worst effected individuals, they had booked their flats investing their lifetime savings/or has taken a bank loan with a dream that one day, they will have a roof on their head. Since the maps were duly approved by Noida Authority, they had no reasons to suspect a foul play and they fell in the trap. After paying the entire cost of the flat, the completion and bankable title is still a mirage further. Most of them do not have the ability or financial backing to contest the cases. Moreover, the issues herein are too messed up, which they have very little hope to unscramble the same.

156. The Noida Authority/development authorities have a statutory

duty to ensure planned and systematic development. This includes statutory duty to monitor the progress of real-estate projects and ensure their timely completion.

157. The Hon'ble Supreme Court the matter of **Bhupinder Singh v. Unitech Ltd. (Civil Appeal No.10856 of 2016)** decided on 26.04.2024 has held that:-

“9.....This is most unfair to the homebuyers. In the absence of the grant of approvals to the layout plans and building plans, the construction to meet the needs of the homebuyers of Unitech cannot commence. This Court has been monitoring the entire issue pertaining to the homebuyers of Unitech for over four years in order to ensure that the homebuyers, who have invested funds in the expectation that they would receive the flats which were purchased in the foreseeable future, are not left in lurch. Unfortunately, both Noida and Greater Noida and their officials have stone-walled the process. They have failed to extend their cooperation.

10. Despite the succession of orders of this Court, it appears that no resolution has been found. Unless the Court were to interfere, at this stage, the matter would lie in limbo and there is a real danger that the homebuyers would lose all interest out of a sense of frustration. The homebuyers have undertaken financial liabilities towards the flats which were purchased and it is a matter of public interest that their concerns should be duly protected.”

158. It is a well settled law that the interest of the home buyers has to be given precedence (as per the law laid down in the judgement of **Bikram Chatterji (supra)**. The Noida Authority was well aware of the judgement, but it still took no action to protect the interest of the homebuyers.

159. The interest of the home buyers has also been recognised and echoed it the

recommendations of the Insolvency Law Committee in 2018, it was later codified with the Insolvency and Bankruptcy (Amendment), 2018, which provided that the finances of real-estate allottees guaranteed towards the failed real-estate project would have the same commercial effect as that of the debt.

160. In fact, the Hon'ble Supreme Court also had the same view in the matter of **Jaypee Orchard Resident Welfare Society v. Union of India & Ors. (Writ Petition (Civil) No.854/2017)** wherein they held that, they will endeavour to do all in its power to safeguard interest of the home buyers.

161. Further, in **Chitra Sharma v. Union of India**⁵⁶ Hon'ble Supreme Court protected the interest of the home buyers in the project floated by Jaypee Infratech Limited and directed the CoC to be constituted afresh in accordance with the provisions of the Insolvency and Bankruptcy (Amendment) Ordinance, 2018.

162. The constitutional validity of the inclusion of allottees as financial creditors was tested in the matter of **Pioneer Urban Land And Infrastructure vs Union Of India**⁵⁷ wherein the Hon'ble Supreme Court rejected the challenge and upheld the Insolvency and Bankruptcy (Amendment) Ordinance, 2018. The Hon'ble Supreme Court further held that the interest of allottees in the matter of Insolvency in the real-estate company must be protected.

163. In the instant case, the NOIDA Authority cannot be allowed to penalise the home buyer because the current state of affairs of the sports city is due to the dereliction of statutory duty and failure of the Authority itself to Monitor construction progress; take timely action against

defaulting builders, Enforce completion of the project timelines. The result of the failure of Noida Authority cannot be fastened upon the homebuyers.

K. HIGH COURT'S INTERFERENCE

164. Initially, there was an understanding that the Court should not interfere with the orders of NCLT. It is beyond any pale of doubt that the IBC, 2016 is a complete code in itself. Section 231 of IBC bars jurisdiction of civil court to interfere in respect of the matters, which NCLT/NCLAT are empowered to deal with.

165. As observed by Hon'ble Supreme Court in **M/s Innoventive Industries Ltd vs ICICI Bank⁵⁸** it is an exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code and later the act of the High Court in entertaining the writ petition against the order of the NCLT were being questioned.

166. The Hon'ble Supreme Court in the matter of **M/s Embassy Properties Developments Pvt. Ltd.(supra)** has held that the NCLT lacks jurisdiction to issue direction in relation to the matters covered under the realm of public law wherein the NCLT had directed the government to execute the supplementary/extension of lease deed in favour of corporate debtor. Since the execution of the lease deed was in the realm of public law and, hence, does not fall within the jurisdiction of NCLT. The NCLT not being a superior Court is not vested with the power of judicial review. The proper forum for adjudication of public law claims is the writ jurisdiction of the High Court.

167. The power conferred to High Courts under Article 226 of the Constitution of India is plenary. This jurisdiction can be exercised without any specific challenge being raised. High Court has been granted powers under Article 226 of the Constitution of India to mould the relief to do substantial justice.

168. In view of the ratio laid down by the Hon'ble Supreme Court it is clear that the NCLT does not have the power to issue direction to the Noida Authority to revalidate the map. This power is only with Hon'ble Supreme Court and High Court under Article 226 of the Constitution of India.

169. In the matter of **M/s Innoventive Industries Ltd vs ICICI Bank(supra)**, one of the issues of this appeal was whether appeal of the director of the company, who are no longer in the management filed before the NCLT is maintainable after an Interim Resolution Professional is appointed. The Hon'ble Supreme Court has held that once an insolvency professional was appointed to manage the company, the erstwhile Director, who was no longer in the company cannot maintain the appeal on behalf of the company. Hence, an order passed by learned Tribunal on an appeal filed by the erstwhile directors of the company wherein they had given plan for reverse insolvency was not maintainable. Even if a reverse insolvency mechanism had to be introduced, the same had to be initiated and filed through IRP.

170. The Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and sons Pvt. Ltd. through the authorized signatory vs. Edelweiss Asset Reconstructions Company Limited through the Director & Others⁵⁹** has held that the legislature has given paramount

importance to the commercial wisdom of COC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under Section 31 of IB Code. However, it does not restrict the jurisdiction of the High Court to look into the issues. In this case, the COC has not passed any resolution in the reverse insolvency, hence, it cannot be said that the High Court cannot interfere in such kind of matters.

171. The ratio laid down by Hon'ble Supreme Court in the matter of **Ghanshyam Mishra (supra)** would not be applicable in the case in hand as the insolvency proceedings initiated in the instant case was an engineered proceeding and the entire proceeding was nothing but an outcome of fraud.

L. CONCLUSION

172. The instant writ petition is filed with specific prayer but while going into the merits of the matter, the Court realized that fraud has been played by the erstwhile management of the petitioner company. The Court finds it a fit case to intervene to correct the illegality and misuse of legal provisions and safeguard the interest of justice, specially when the Court finds that the entire reverse CIRP mechanism is nothing but a gross abuse of process of law and the fraud being played on the stakeholders and the Tribunal, wherein the erstwhile Director/Management had pushed the company into insolvency after illegally syphoning the money out of the company.

173. In this matter, an application under section 7 of IBC 2016 was filed before NCLT, Delhi against the petitioner company. Probably, it was not brought to the notice of NCLT that the entire project was an integrated project and was allotted

to a Consortium. In case, one of the Consortium Members goes into insolvency then if a third party is brought to complete the project in part, that would adversely affect the interest of the other members of the Consortium. Before allowing the reverse CIRP mechanism as suggested by the management of petitioner company, NCLT should have considered that the instant project was not a stand alone Group Housing Project, but was a small part of a larger project, which was to be developed by a Consortium. NCLT ought to have considered this aspect and also considered the interest of other stakeholders specially the other Consortium Members.

174. Section 65 of Insolvency and Bankruptcy Code 2016 lays down provision for imposition of fine. In case, malicious insolvency proceedings has been initiated, Section 7 application has only to be accepted after proof of default. The proof of default not merely means that default by the company but the adjudicating authority shall also see as to whether the application for insolvency filed is genuine or is a part of malicious proceeding.

175. In the above backdrop, we are of the view that the NCLT, before forwarding the corporate insolvency proceeding, specially in real estate sector, should consider the fact whether the insolvency is a genuine insolvency or the same is being engineered only to avoid statutory dues and other dues to the creditors.

M. EFFECT ON CONSORTIUM WHEN A MEMBER OF THE CONSORTIUM GOES INTO THE INSOLVENCY

176. As far as the insolvency of a member of a consortium is concerned, very

few authorities are on the said subject matter. No significant development has come in the law pertaining to the same which would give guidance in such situations. The present case thus presents a very interesting, and novel, legal question –

177. What will be the effect on a Consortium when a Member of the Consortium goes into insolvency under the Insolvency and Bankruptcy Code, 2016?

178. We are constrained to pass guidelines in the instant case as the Insolvency and Bankruptcy Code, 2016 is silent qua the rights of other consortium members, in case one of the members goes into insolvency. Since the companies of consortiums apply in development of mega projects and if this vacuum is not filled, even solvent companies, which are members of the consortium might be pulled into insolvency because of insolvency of one of the consortium members. As the insolvent member would not be able to complete its part of the project and non completion of the project will definitely impact the other companies, who are the Members of the Consortium. The object of IB Code, 2016 is not to pull a solvent company into insolvency.

179. In case the Member of a Consortium goes into insolvency then in the interest of the project and other stakeholders, learned NCLT may not initiate insolvency proceedings in a mechanical manner, but may decide the issue on the touchstone of the following recommendations :-

“(a) As a measure of first recourse, the IRP shall communicate to the company and the Authority for seeking Company’s willingness to continue to perform its functions/

obligations in the contract awarded to the consortium of which the said company is a member. This would be in furtherance of the functions of the IRP under Section 20 of the IBC. This communication shall be done within a maximum period of 4 weeks of commencement of CIRP and shall be independent of the constitution of CoC. If no such intention is communicated within the said period, it will be presumed that the company is unwilling to participate in the subject project.

(b) If the IRP, on an assessment of the capabilities of the Company (consortium member facing CIRP), is of the opinion that the said company cannot usefully or meaningfully participate in the business of the consortium, he shall so communicate to the other consortium members and the Authority (for the said project) within the period provided in para (a) above. The other consortium members (jointly or severally) shall then have an option to undertake the remaining project on their own and complete the same. The exercise of the option by the consortium members to complete the project shall be done within a period of 4 weeks, which shall commence either from the expiry of the 4 week period mentioned in para (a) above (in the event no communication is received from the IRP) or within 4 weeks from the communication of the IRP to the effect that the said company is not in a position to participate in the business of the consortium.

(c) If the consortium members fail to communicate their willingness to complete the project on their own and without the participation of the member facing CIRP or express their inability to complete the said project, the Authority shall make alternate arrangements to ensure timely completion of the project.”

180. The following conclusions and our subsequent directions are aimed to address the malfeasance and to provide relief to the affected stakeholders.

181. The Court is always cautious while determining and interfering with the orders passed by the NCLT/NCLAT, but while doing so, the Court cannot shirk from its constitutional duty and approve helplessly the interpretation of a Statute or an order which is certain to subvert the societal goals and endanger the public good⁶⁰.

182. In totality of the facts and circumstances mentioned above, this Court is of the considered opinion that the instant case is a classic case wherein the petitioner, M/s Sequel Buildcon Pvt. Ltd. was allotted 1,00,000 sqm land out of which 70,000 sqm land was bifurcated and allotted to its 100% other subsidiary company. The shares of which were held by the petitioner company. These share holdings were sold off and the company was transferred. Obviously, the transfer has to be on the basis of some monetary consideration. The consideration must have come to the company. The petitioner did not pay the outstanding dues of the Noida Authority as well as other dues from the money, which came in the company after syphoning away the money, and has got the company pushed into insolvency. This entire proceeding is nothing but an engineered insolvency to avoid the liabilities. The NCLT should verify from the balance sheet and other documents to ensure that such kind of engineered insolvency proceedings should not be initiated if the same is malicious proceeding and has been filed as a part of greater design to get out of the liabilities. If such kind of Reverse CIRPs are allowed to continue it will actually be

counter productive and contrary to the aims and objects of IB Code, 2016.

183. Since apparently a fraud has been played by management of the petitioner company and money has been misappropriated/syphoned off, hence we cannot blindly give seal to the orders passed by NCLT/NCLAT approving the reverse insolvency.

184. In the facts and circumstances, principle of 'Fraus Omnia Vitiat' is applicable here. The order passed by NCLT on application preferred under Section 7 of IBC, 2016 (Mr. Neerav Bhatnagar & Ors. vs. M/s. Sequel Buildcon Private Limited and Anr.) approving reverse CIRP, is not challenged in the instant writ petition and as such, on account of judicial propriety and territorial jurisdiction, we are unable to set aside the aforesaid order. However, it would be open to the parties to bring into the notice of the NCLT/NCLAT about the present order to take a rational decision bearing in mind that the project is an integrated project and it is the duty of the Consortium members to ensure that the entire facilities, as laid down in the Scheme, is being developed as per specification laid down by the NOIDA Authority in the brochure of the Sports city Scheme. It is also made clear that the interest of the homebuyers is supreme and their interest should be well protected.

185. It is expected that in a proceeding under the Insolvency and Bankruptcy Code, 2016 initiated against a builder, before accepting the application, the learned NCLT may ensure and satisfy itself as to whether the insolvency proceeding is genuine or the same has been filed maliciously on the behest of the builder only to get away from civil/criminal liabilities after syphoning away the funds.

186. NCLT/NCLAT may also consider the fact that the project was an integrated project and has to be developed as per the objects of the sports city and the IRP while choosing the developer should keep in mind the development of the project as an integrated project.

187. The offence of financial fraud comes within the ambit of sub-clause (u), (v), (y), (za) of Clause 2 of Chapter 1 of the PMLA Act. Since the offence committed by the promoters of the petitioner company falls under the definition of the schedule offence under PMLA Act, hence the Enforcement Directorate⁶¹ is directed to proceed against all the accused directors/promoters/designated officers and all other key managerial persons, who were directly or indirectly in control of the petitioner's company, and who were involved in misappropriation/siphoning away the money from the Company. The E.D. is directed to lodge Enforcement Case Information Report (ECIR) against the Director/Management/Key Personnel, who are directly or indirectly in control of the petitioner company and are responsible in diversion of funds.

188. We further direct that the E.D. shall investigate whether the syphoning/diversion of funds have taken place by transferring money from the company to personal accounts or to other companies wherein the promoters have interest directly or indirectly, or any transaction to benefit third party, which includes transferring of the assets on under valued price or to give preference to certain creditors in repayment, or any fraudulent connivance where the assets had been sold below the market price.

189. The E.D. shall also investigate as to whether there was any bogus transaction or transaction in shell

companies or drawing hefty salary by the Directors or burdening the companies with personal or other expenses not associated with the company.

190. The E.D. is further directed to investigate on all possibilities which may have been undertaken by the above personnels to syphon off the funds. The E.D. shall make all endeavours to find out the trail of syphoned/misappropriated money so that the same may be brought back into the company and with that the outstanding dues of NOIDA Authority, State Government, additional compensation to the farmers and the other dues may be paid off.

191. Under the facts and circumstances of the case, we are of the considered opinion that no reprieve can be accorded to the petitioner in the present matter. Accordingly, the instant writ petition stands **disposed of** with the aforesaid directions.

192. Registrar (Compliance) is directed to send a copy of this judgment to the learned NCLT, Delhi and the Director of the E.D. for information and necessary compliance forthwith.

(2025) 2 ILRA 612

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 24.02.2025

BEFORE

**THE HON'BLE MAHESH CHANDRA
TRIPATHI, J.**

THE HON'BLE PRASHANT KUMAR, J.

Writ C No. 26640 of 2021

**M/s Xanadu Estates Pvt. Ltd. ...Petitioner
Versus**

State of U.P. & Ors. ...Respondents

Counsel for the Petitioner: