

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (Insolvency) No. 881/2022**

**(IA Nos. 2446, 2447 & 2449 of 2022)**

**(Arising out of the Impugned Order dated 03.06.2022 in IA No. 598 of 2021  
in CP (IB) No. 114/Chd/Pb/2017, passed by the National Company Law  
Tribunal, Chandigarh Bench, Chandigarh)**

**In the matter of:**

**SEL Manufacturing Company Ltd.**

Having its registered office at:

274, GT Road, Dhandari Kalan, Ludhiana

Punjab- 141014.

...Appellant

**Versus**

**Punjab Small Industries & Export Corporation Limited**

Having its Registered Office at:

18, Himalaya Marg,

Udhyog Bhawan, Sector 17-A,

Chandigarh- 160017.

...Respondent

**Present :**

For Appellant : Ms. Purti Gupta and Ms. Heena George, Advocates.

For Respondents : Mr. Anurag Ekka and Mr. Bhupesh Narula, Advocates.

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

**(Hybrid Mode)**

**(20.03.2024)**

**[Per: Ajai Das Mehrotra, Member (Technical)]**

1. The present appeal has been filed by M/s SEL Manufacturing Company Limited (hereinafter called the 'Appellant') against the order dated 03.06.2022 of

National Company Law Tribunal, Chandigarh passed in IA No. 598 of 2021 in CP(IB) No. 114/Chd/Pb/2017.

2. The appellant has filed IA No.2447/2022 seeking Condonation of Delay of 07 days in filing the present appeal. Cause shown is sufficient. The delay of 07 days is condoned. IA No.2447 of 2022 is disposed of accordingly.

3. Briefly stated the facts of this case are that a Lease Deed dated 22.12.2008 was executed between the appellant and Punjab Small Industries & Export Corporation Limited (hereinafter called the 'Respondent') with respect to Plot No.256-57, Phase-VIII, Focal Point, Ludhiana for a period of 99 years.

4. Insolvency proceedings were initiated against the appellant vide order dated 11.04.2018. The public announcement was made by the Insolvency Resolution Professional (IRP) and claims were invited. No claim was filed by the respondent before the Resolution Professional during the CIRP proceedings. The resolution plan submitted by Consortium of Arr Ess Industries Private Limited and Leading Edge Commercial FZE (hereinafter referred as Successful Resolution Applicant or SRA), was approved by the Adjudicating Authority on 10.02.2021. On 05.03.2021, the respondent issued a demand notice pertaining to Plot No. 256-57, Phase-VIII, Focal Point, Ludhiana (hereinafter called the 'subject plot') whereby it claimed an amount of Rs.1,12,97,128/-. The demand was raised in term of Clause 2(iii) of the Allotment Letter dated 01.12.1995 and Clause 2(i) of the Lease Deed dated 22.12.2008.

5. In the oral arguments and the written submissions, the appellant has submitted that the subject plot forms a part of the resolution plan and has to be sold to pay the creditors. The appellant had filed IA No. 598 of 2021 before National Company Law

Tribunal, Chandigarh seeking quashing of the said demand, which was dismissed vide impugned order dated 03.06.2022. The appellant submitted that they have furnished demand draft of Rs.1,05,34,414/- to the respondent (without prejudice to the legal rights and contentions of the Company) on 27.06.2022, which was returned by the respondent on the premise that the Amnesty Scheme under which the amount is being paid had expired. The respondent vide communication dated 27.06.2022 have enhanced the demand to Rs.2,17,74,283/-.

6. The main prayers sought in this appeal are to set aside the impugned order, to quash the demand notice dated 05.03.2022 and 27.06.2022 and to direct the respondent to issue 'No Objection Certificate' (NOC) for the subject plot.

7. The appellant has submitted that respondent is an Operational Creditor as per Section 5(20) of Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC, 2016); that it had not filed any claim during the CIRP, therefore, it cannot be permitted to raise belated claims at this stage; that the demand raised by the respondent does not form part of the approved resolution plan and it is not sustainable in the eyes of law as the past dues stand extinguished as per Clause-6 of the approved resolution plan; that the successful resolution applicant (hereinafter called SRA) cannot be saddled with fresh liabilities; that resolution plan is binding on all the stakeholders under Section 31 of IBC, 2016; that the Operational Creditors are being paid 3% of the verified claims and at best 3% of the claim amount can be paid to the respondent like other Operational Creditors. The appellant relied upon the following judgments in support of its contentions:

- (i) *Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Assets Reconstruction Company Limited SCC Online SC 313*
- (ii) *Principal Commissioner of Income Tax Vs. Moneet Ispat and Energy Ltd. (2018) 18 SCC 786.*
- (iii) *M/s Ruchi Soya Industries Ltd. vs. Union of India & Ors. (2022) 6 SCC 343.*
- (iv) *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 531*
- (v) *Manish Kumar vs. Union of India & Anr. (2021 SCC Online SC 30)*
- (vi) *NCLAT Judgment dated 12.01.2021 in Company Appeal (AT) (INS)No. 274 of 2020- Amit Bharana vs. Gian Chand Narang.*
- (vii) *New Okhla Industrial Development Authority Vs. Anand Sonbhadra 2022 SCC Online SC 631*
- (viii) *Paschimanchal Vidyut Vitran Nigam Ltd. Raman Ispat Pvt. Ltd. & Ors. (Judgment dated 17.07.2023 in Civil Appeal No.7976/2019)*

**8.** In oral and written submissions, the respondent has submitted that it is a public sector undertaking of Government of Punjab; that the demand raised by the respondent is only in terms of mutually agreed terms and conditions of the allotment letter in which there is a specific Clause that in the event of compensation of land being enhanced by the court of competent jurisdiction, the allottee or his successor has to make payment of enhanced amount as ordered by the Court; that the allottee and its assignees are legally bound to deposit the enhanced amount of compensation; that the respondent had to pay land owners enhanced amount of compensation in the proceedings under Land Acquisition.

**9.** The respondent drew our attention to Clause 2(iii) of the Allotment Letter dated 01.12.1995, which provides as under:-

*“2(iii) the above price of the plot is subject to variation with reference to the actual measurement of the plot and cost of acquisition of land. In case of enhancement of compensation on account of acquisition of land of this Focal Point by the court or otherwise you shall have to pay the additional price of the plot, if any, as may be determined by the Corporation within 30 days from the dates of demand.”*

Further Clause 2(ii) provides as under:-

*“2(ii) The plot has been allotted on lease hold basis for 99 years in the first instance, as such you shall also pay annual Lease rent of Rs.1/- per 1000 sq. yards in advance for 99 years at the time of execution of lease deed agreement.”*

**10.** The respondent submitted that the appellant had purchased the said lease hold land from M/s Preet Hosiery Exports Limited, Ludhiana on whom an additional outstanding demand of Rs.1,73,54,010/- was made by letter dated 25.07.2008. Part payment was made by M/s Preet Hosiery Exports Limited leaving a balance outstanding of an amount of Rs.17,42,010/- in the year 2008. An Indemnity bond dated 28.07.2008 was also executed by M/s Preet Hosiery Exports Limited to keep the respondent indemnified against all claims. Vide order dated 19.11.2008 passed in CWP No.8821 of 2001, the enhanced compensation became final. It was further submitted by the respondent that the State Bank of Bikaner and Jaipur vide their letter dated 25.12.2008 had approached answering respondent for NOC for mortgage of the subject plot and also demanded a copy of original lease deed in favour of the allottee. The respondent further stated that mortgage and the lessee rights of M/s SEL

Manufacturing Company Limited was executed on 24.12.2008. There was clear stipulation in para no.2 and 3 that the price of the plot was tentative and was subject to variation of actual measurement of plot and enhancement in the cost of acquisition of the land. In Clause-3, it was provided that non-payment of delayed payment was to attract 3% penal interest in addition to normal interest of 15% with half yearly compounding effect. Vide letter dated 05.10.2009, the appellant was required to deposit sum of Rs.33,91,978/- towards cost enhancement in respect of the said plot. Another letter dated 18.05.2011 was issued towards cost enhancement in respect of said plot. In view of the judgment of the Hon'ble Punjab & Haryana High Court dated 25.08.2008 and judgment of Hon'ble Supreme Court of India dated 25.03.2015, the additional amount was determined @ Rs.474/- per sq. yard and demand was raised accordingly vide letter dated 15.03.2016. Upon failure of the appellant to pay the demand a show cause notice of cancellation on account of failure to deposit enhanced amount of Rs.1,05,10,685/- was issued vide letter dated 08.03.2019. The said demand and show cause notice was challenged by the appellant by filing a civil suit before the learned Civil Judge, Ludhiana and the matter is still *subjudice*. The appellant was served with revised demand notice dated 27.09.2019, 02.12.2019 and 05.03.2021 and no payment was made by the appellant. The factum of charge and repeated demands of enhanced land cost compensation was not brought to the notice of either the Insolvency Resolution Professional (IRP) or the Committee of Creditors (CoC) by the appellant. It was submitted that the Corporate Debtor had not only cheated the answering respondent, but has also misled the IRP and CoC. The respondent, on the other hand, was not informed about the CIRP or the resolution plan and it was only on

27.10.2021 while requesting for issuance of No Due Certificate, the appellant informed about the approval of resolution plan by the learned Adjudicating Authority. It was submitted by the respondent that the learned Adjudicating Authority had rightly observed that the vendor cannot pass on a better title than the one he has. There was already a clog on the ownership of lease holder's rights due to non- payment of enhanced compensation and that neither the original allottee nor the Financial Creditor or the CoC can pass on a clear title in favour of the SRA. In spite of full knowledge that demand for enhanced land cost was pending, this was not brought to the knowledge of IRP, CoC or the Adjudicating Authority before approval of the resolution plan. It was submitted that the appellant has resorted to forum hunting by seeking approval of Hon'ble Adjudicating Authority while the Civil Suit on the same subject matter was pending for adjudication before learned Civil Judge (Senior Division), Ludhiana. The demand notice asking for enhanced land cost payable was communicated prior to initiation of CIRP and it is not linked to CIRP proceedings and is essentially the demand for payment towards removal of defects in the title of land. It was submitted that learned Adjudicating Authority had rightly observed that the ownership of the subject plot continues to vest with respondent and the lease rights cannot be transferred/ alienated without prior consent of the respondent. The respondent relied upon following judgments in support of its arguments :-

- (i) *Hotel Queen Road Pvt. Ltd. Vs. Union of India & Ors, (2015) (SC) SCC DEL 9807*
- (ii) *Mohd. Noor & Ors. Vs. Mohd. Ibrahim & Ors. MANU/SC/00841995 : (1994) (SC) 5 SCC 562*

- (iii) *Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority and Ors. (19.02.2020-SC) : MANU/SC/0226/2020 Civil Appeal No. 12248 of 2018*
- (iv) *Embassy Property Developments Private Limited vs. State of Karnataka and Ors (2020) (SC) 13 SCC 308*
- (v) *NCLAT Judgment dated 30.01.2019 in Company Appeal (AT) (Insolvency) No. 229 of 2018- M/s Dynepro Pvt. Ltd. Vs.Mr. V. Nagarajan.*
- (vi) *NCLAT Judgment dated 30.01.2023 in Company Appeal (AT) (Insolvency) No. 180, 629 and 630 of 2022- Greater Noida Industrial Development Authority Vs. Roma Unicon Designex Consortium and Ors.*
- (vii) *NCLAT Judgment dated 04.05.2022 in Company Appeal (AT) (Insolvency) No. 1004 of 2021- Maharashtra Industrial Development Corporation Vs. Santanu T. Ray and Ors.*
- (viii) *NCLAT Judgment dated 19.04.2022 in Company Appeal (AT) (Insolvency) No. 998 of 2021- New Okhla Industrial Development Authority Vs. Abhishek Anand, Liquidator of Mega Soft Infrastructure Pvt. Ltd.*

**11.** In the rejoinder filed on behalf of the appellant, the appellant firstly stated that the appeal was filed within the condonable period under Section 61(1) of the IBC, 2016. It was submitted that the CIRP Order dated 16.10.2019 as well as the public announcement made by the IRP subsequent to the admission were in public domain and the contention of the respondent that it was not aware about the Insolvency Proceedings does not hold water. The appellant reiterated respondent is only an Operational Creditor and should have filed its claim before Resolution Professional during CIRP and the respondent cannot be permitted to raise any claim at this belated stage. Since no claim was filed by the respondent, the same does not form the part of the approved resolution plan and as per the settled law all past dues are extinguished, including the claim of the respondent, on approval of resolution plan. The new



management cannot be saddled with new liability of the past dues which are not incorporated in the resolution plan. However, the rejoinder is silent on the issue raised by the respondent that the Corporate Debtor had not informed the IRP or the CoC regarding pending demand raised by the respondent and have thus misled the IRP and CoC.

**12.** We have gone through the submissions of the appellant and the respondent including the judgments relied upon by them. The appellant has mainly relied upon the ‘clean slate principle’ enunciated in the judgments of *Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Assets Reconstruction Company Limited and Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.* cited *supra* by the appellant. It is appellant’s contention that under the said principle, the new management cannot be saddled with any unexpected claims and should be allowed to commence and restart the business on a ‘clean slate’. The said principle is coded in Section 31(1) of the IBC, 2016 which states that an approved resolution plan is binding on all stakeholders including Corporate Debtor, its employees, Members, Creditors, including Central & State Government or any local authority or Guarantors. The cases cited by the appellant are in support of the said ‘clean slate principle’.

**13.** The issue for consideration in this case is whether in the factual matrix of this case, the successful resolution applicant can be granted ownership of leasehold rights over the subject plot without payment of dues to the respondent. In other words, whether the said ‘clean slate principle’ will be applicable to the facts of this case.

**14.** The subject asset was allotted to the Corporate Debtor on lease hold basis for 99 years. One of the conditions of the allotment was that the price of the plot is subject to variation with reference to the actual measurement of the plot and cost of acquisition of land and in case of enhancement of compensation on account of acquisition of land by the Court or otherwise, the allottee was required to pay the additional price of the plot within 30 days from the date of demand, as per the Clause 2(iii) of Allotment Letter dated 01.12.1995, which is reproduced in para-9 above. The respondent had time and again written to the appellant to make payment of enhanced land price due to enhancement in respect of said plot, in view of enhanced compensation confirmed in the judgment of Hon'ble Punjab and Haryana High Court dated 25.08.2008 and Judgment of Hon'ble Supreme Court of India dated 25.03.2015. After the judgment of the Hon'ble Supreme Court, the appellant was informed vide letter dated 15.03.2016, much before the initiation of CIRP and was asked to pay the enhanced cost. It is the case of the respondent that the Corporate Debtor failed to inform the Interim Resolution Professional or the Committee of Creditors regarding the enhanced demand towards subject lease hold asset. As noted in para-11 above, the rejoinder filed by the appellant to the reply of respondent is silent on this issue, thereby confirming the allegation that despite demand of enhanced land price, the IRP and the CoC were never informed about it. The IRP had also not specifically informed about initiation of CIRP to the respondent and is taking the plea that publication of notice of CIRP should have been noticed by the respondent.

**15.** The respondent has stated that the adjudication against demand notice issued by it was pending before the Civil Judge (Senior Division), Ludhiana in the Civil Suit

filed by the Corporate Debtor, at the time of initiation of CIRP. A copy of Resolution Plan is annexed in the appeal paper book. Ongoing through the resolution plan, we find that Schedule 8 of the Resolution Plan at page 237 to 255 of the appeal paper book contains list of pending litigations. This Schedule of 17 pages lists litigations pending in various courts and before various Authorities such as Income-Tax Department, Enforcement Directorate, Central Bureau of Investigation, etc.,. It also lists ligations pending before Court's abroad. We find that litigation before Civil Judge (Senior Division), Ludhiana relating to the subject plot is not listed in Schedule 8 of the Resolution Plan, though otherwise it is a list running into 17 pages regarding all pending litigation matters. Further the Resolution Plan at 02 places mentions about the subject property. The relevant portion of reference to the subject plot is reproduced below for reference. These references appear at page-73 of the appeal paper book and the same also appears at page- 275/ 276 of the appeal paper book and is part of the Resolution Plan.

Terms of Term Loan II: The non-interest-bearing secured debt of Rs. 50.00 crores shall be repaid out of the sale proceeds of Identified Assets, in a manner pre-approved by the Asset Monetisation Committee which sale proceeds as payable to the Financial Creditors shall be equivalent to the actual realisation or at least Rs 50.00 Crore (Rupees Fifty Crore) in any case. The sale proceeds shall be received first by the Corporate Debtor and simultaneously upon the receipt of the sale proceeds, the Resolution Applicant shall distribute the said actual realisation or at least Rs. 50.00 Crore (Rupees Fifty Crore) to the Financial Creditors on a Pass Through Structure Basis. The Resolution Applicant shall endeavour to implement the Pass Through Structure Basis causing the distribution of the said actual realisation or at least Rs. 50.00 Crores to the Financial Creditors within 1 year from the Effective Date. In case, there is any shortfall in envisaged proceeds of Rs 50 Cr from asset sale, funds to bridge the corresponding shortfall shall be infused by the Resolution Applicant, within 90 days of realization of proceeds from the last sold asset. The Financial Creditors shall give requisite No Objection Certificates, remove the mortgage and security encumbrances, give the title deeds to the buyer and take other appropriate steps for the smooth implementation of the sale of the Identified Assets.

Identified Assets shall be land and building situated at the following:

- a) C-256/257, Focal point, Phase-VIII, Ludhiana
- b) A-15, Focal point, Phase – VII, Ludhiana
- c) Plot No – 706, Industrial Area – A, R.K. Road, Ludhiana
- d) Plot No – 106, Industrial Area, Baddi (SFS), Solan, Himachal Pradesh

We note that the pending demand regarding the cost of land is nowhere mentioned in the Resolution Plan, though mortgage of the said plot with financial creditor, and its release by the financial creditor against payment is mentioned. The subject property appears at S.No. (a) above. It is also stated that the *“Financial Creditors shall give requisite No Objection Certificates, remove the mortgage and security encumbrances, give the title deeds to the buyer and take other appropriate steps for the smooth implementation of the sale of the Identified Assets.”*

**16.** We also note that the transfer of the lease hold land could not have been done without the approval of the respondent. The land is not owned by the appellant and it

is leased out to it by the respondent. The transfer of land to the successful resolution applicant is governed by the terms and conditions of the lease deed.

17. To better understand the relationship between the Respondent and the Corporate Debtor regarding the subject plot, we refer to the following clauses of the lease deed given on pages 338 to 344 of the appeal paperbook:

(iii) *The above price of the plot is subject to variation with reference to the actual measurement of the plot and cost of acquisition of land. In case of enhancement of compensation on account of acquisition of land of this Focal point by the Court or otherwise you shall have to pay the additional price of the plot, if any, as may be determined by the Corporation within 30 days from the dates of demand.*

.....

(xiv) *As the land is to be given on Lease hold basis the ownership will vest in the Punjab Small Industries & Export Corporation Limited.*

.....

(xix) *The Corporation shall have the first and paramount charge over the plot and without prior consent of the Corporation you shall have no rights to transfer your lease right by way of sale/ or otherwise of the plot or any right, title or interest.*


.....

(xxv) *In the event of breach of any terms and conditions of the allotment the Corporation shall have right to cancel the allotment of plot, and take back possession of plot/ building also forfeited amount equivalent to earnest money and remaining deposited amount, if any, over and above the earnest money towards the cost of plot shall be refunded.*

It is clear from the lease deed that the ‘subject plot’ shall remain the property of the respondent; that the appellant only has leasehold right over the subject asset; that the lessee would be required to pay the enhancement of land cost within 30 days of the demand and that without consent of the Corporation/ Respondent, the lessee will have no right to transfer the lease rights of the land. The Respondent also has the right to cancel the allotment in case of breach of any terms and conditions.

18. The demand for enhanced land cost was raised by the Respondent on 15.03.2016 and was payable much before the initiation of CIRP. The letter of Respondent raising the said demand is reproduced below:

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 **PUNJAB SMALL INDUSTRIES & EXPORT CORPORATION LTD**  
UDYOG BHAWAN HIMALAYA MARG, SECTOR-17A CHANDIGARH

No:PSIED/Estate/  
REGISTERED 20652 Dated: 15/3/2016

M/s. SGL Manufacturing Company Ltd.,  
C-256-257, Phase-VIII, Focal Point,  
Ludhiana

Sub: Demand Notice for recovery of additional price of plot No.C-256-257, Phase-VIII, Focal Point, Ludhiana; accruing from enhancement in land compensation awarded by the Judicial Courts

Whereas Industrial plot No C-256-257, Phase-VIII, Focal Point, Ludhiana measuring 12384 sq yd was allotted/transfered to you vide letter of Intent/Allotment/Transfer No.17231 dated 17.12.2008.

AND WHEREAS as per clause No. 2 of the above said LOI/Allotment letter/transfer letter and clause No. \_\_\_\_\_ of lease deed, you are bound to make payment to additional price, if any as may be determined by the Corporation within 30 days from the date of demand in the event of enhancement of compensation on account of acquisition of land of this focal point by the courts or otherwise.

AND WHEREAS, the Corporation in view of the judgment of Hon'ble Punjab & Haryana High Court dated 25.8.2008 read with judgment of Hon'ble Supreme Court of India dated 25.3.2015 has determined the additional price of this industrial plot @ Rs.474/-PSY as on 31.3.2015 on account of enhancement of land compensation which amount becomes payable by you in view of the above clause of allotment/lease deed.

AND WHEREAS through this notice, you are hereby called upon to make payment of Rs. 58,70,016/- towards additional price determined by the Corporation as detailed above, on or before 31.3.2016 through demand draft drawn in favour of PUNJAB SMALL INDUSTRIES AND EXPORT CORPORATION LIMITED, payable at Chandigarh.

In case of any default in payment of dues, the interest/penal interest will be charged as laid down in terms of allotment letter/transfer letter/policy of the Corporation. Notwithstanding above, in the event of non receipt of payment, the Corporation will be within its right to cancel the allotment of plot and take punitive action as per terms & conditions of allotment.

*g.f.* Estate Officer

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*HM  
Ammar*

19. Before deciding the issue in hand, we refer to the following judgments on this issue:

19.1 Hon'ble Supreme Court in the *Municipal Corporation of Greater Mumbai vs. Abhilash Lal and Ors. (2020) 13 SCC 234*, through order dated 15.11.2019 has held that the provisions of Section 238 of IBC, 2016 do not override the rights of Municipal Corporation of Greater Mumbai (MCGM) to control and regulate how its properties are to be dealt with. It is public duty of MCGM to control and regulate how its properties are dealt with. The provisions of Section 238 could be of importance when the properties and assets are of debtor and not when a third party like MCGM are involved and therefore in the absence of approval in the terms of Sections 92 and 92-A of the Mumbai Municipal Corporation Act, 1880 (MMC), the Adjudicating Authority under IBC, 2016 cannot create a fresh interest in respect of MCGM's property and lands. The relevant extracts of the said judgment relating to facts of the case, given in para 2 to 5, and the decision, given in para 47, are reproduced below for reference:-

*"2. MCGM owns inter alia, Plots Nos. 155-156, 162 and 168 (all plots E hereafter called "the lands") in Village Marol, Andheri (East) Mumbai. By a contract (dated 20-12-2005) Seven Hills Healthcare (P) Ltd. (the company facing insolvency proceedings, hereafter "SevenHills") agreed to develop these lands (which were to be leased to it for 30 years) and construct a 1500 bed hospital. MCGM stipulated several conditions, including that 20% of the beds had to be reserved for use by the economically deprived, and that SevenHills had to complete the construction in 60 months (excluding monsoons). The sixty-month period ended on 24-4-2013; the project, however, was not completed. In terms of Clause 15(g), the lease deed had to be executed within a month after completion. However, the deed was not executed as the project was not completed. Further, SevenHills had to pay lease rent at the annual rate of Rs 10,41,04,000. MCGM alleges that there were defaults in*

these payments. In these circumstances, MCGM issued a show-cause notice on 23-1-2018, proposing termination of the contract/agreement. It is submitted that SevenHills owed MCGM an amount of Rs 76,05,07,780.

**3.** On the strength of the contract, SevenHills had borrowed from banks and financial institutions. It had created security by way of mortgage of the said lands, citing Clause 5, which enabled the creation of such encumbrances. SevenHills' inability to repay its debts led to the initiation of insolvency proceedings by Axis Bank. On 13-3-2018, before the period given by MCGM'S show-cause notice ended, the petition [CP (IB) No. 282/7/HBD/2017) was admitted by the Hyderabad Bench of NCLT. The first respondent was appointed as the Resolution Professional (hereafter "RP"); this was approved by the Committee of Creditors (CoC) as required by the Code, on 12-4-2018. A publication for expression of interest (EOP) was issued on 14-5-2018; late on 25-6-2018 and 16-7-2018, the terms of the request for proposal (RFP) and criteria for evaluation (of RFPs received) were approved. As a result of the RFP published, a resolution plan was submitted by Dr Shetty's New Medical Cen (SNMC). After discussion with CoC, a revised RFP was submitted by RP. The revised resolution plan was approved by CoC on 4-9-2018.

**4.** The resolution plan projected infusion of over Rs 1000 crores by SNMC. That amount was to be borrowed; for this purpose, SevenHills' properties movable and immovable, were proposed to be secured by hypothecation mortgage respectively. Operational creditors were to be paid off to the extent of 75%. Further, the plan proposed payout to the tune of Rs 102.3 crore to MCGM as against its total claim of Rs 140.88 crores, and also committed to honouring the terms of the agreement entered into by SevenHills and providing 20% of the beds (of the hospital to be constructed) to the poor and weaker sections of society. The net worth certificate furnished by SNMC indicated that it possessed sufficient funds.

**5.** MCGM filed an application (IA No. 207 of 2018) claiming that it ought to be declared as a financial creditor and a member of the Committee of Creditors. It made several submissions, which indicated that subject to stipulations with respect to completion of the hospital project in a time-bound manner, and subject to SNMC providing 20% beds in the completed hospital, for use by the economically weaker



sections (and at the disposal of MCGM) and, 5 lastly, subject to clearing its (MCGM's) claims to the tune of Rs 140.88 crores, it was agreeable to the resolution plan. However, later during the proceedings, it opposed the resolution plan, arguing that being a public body as well as a planning authority, it had to comply with the provisions of the Mumbai Municipal Corporation Act, 1888 (the MMC Act), which meant that all action and approval had to be taken by the Improvement Committee of the Corporation. It was also stated that the show-cause notice (SCN) dated 23-1-2018 had been already issued by MCGM proposing to terminate the contract (with Seven Hills) to which there was no response and that in the absence of a lease, the provisions of Section 14(1)(d) of the Code could not prevent MCGM from terminating the agreement. Another argument made was that the period of CIRP in the case began on 13-3-2018 when the petition was admitted and the period of 270 days expired on 8-9-2018; an extension of 90 days provided in Section 12(3) was granted by the adjudicating authority on 4-9-2018 and the extended period came to an end on 7-12-2018 thus the CIRP has lapsed by efflux of time.....”

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

**19.2** In the case of *Maharashtra Industrial Development Corporation Vs. Santanu T. Ray & Ors.*, NCLAT Principal Bench, Delhi in Company Appeal (AT) (Insolvency) No. 1004 of 2021 in order dated 04.05.2022, after going through the facts of the case and relevant judgments has held that the appellant MIDC can take appropriate action, once the CIRP is over, as per terms and conditions of the lease. The relevant portion of the judgment giving facts of the case and the decision are reproduced below for ready reference:

*“1. This Appeal has been filed against the order dated 12.04.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No. 1 in M.A No. 3691 of 2019. Brief facts of the case giving rise to this Appeal are:- The Appellant-‘Maharashtra Industrial Development Corporation’ allotted Plot No. B-11 to the Corporate Debtor on 23.12.2014. A Lease Agreement was executed between the Appellant and the Corporate Debtor on 2 Comp. App. (AT) (Ins.) No. 1004 of 2021 20.01.2015 whereunder license was granted in respect of the plot for two years subject to condition that it must complete 20% construction within two years i.e. from 20.01.2015 till 19.01.2017. Tri-partite Agreement was executed between the Corporate Debtor, the Appellant and DHFL, whereunder the Plot was mortgaged to DHFL and loan amount of Rs.7,22,80,214/- was disbursed to the Corporate Debtor. A Notice dated 01.11.2018 was issued by the Appellant to the Corporate Debtor asking it to show cause as to why action as provided in Clause 5(b) (i) of the Agreement to lease should not be taken against it since the Corporate Debtor has not completed the construction work of the factory building. By order dated 11.03.2019, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor on an Application filed by ‘Kay Bee Foundry Services Private Limited’- (Operational Creditor). On 29.01.2019, the Appellant had issued a letter to DHFL informing that the Corporate Debtor had committed the breach and the Appellant would be taking possession of the plot. The Respondent No.2- ‘Asset Reconstruction Company (India) Limited’ assignee of the DHFL filed Writ Petition No. 2470 of 2019 challenging the letter dated 29.01.2019 in the Bombay High Court which petition was dismissed on 04.11.2019 holding that lease was liable to be revoked if the Corporate Debtor had committed default in complying with the terms of the lease. On 08.11.2019, the Appellant issued a Notice to the Corporate Debtor cancelling the Lease Agreement dated 20.01.2015 directing the license holder to vacate the plot. Notice communicated that Authorised Officer will visit the plot on 14.11.2019 to take possession. The Resolution Professional filed an M.A No. 3691 of 2019 before the Adjudicating Authority praying for following reliefs:-*

*‘a. To quash and set aside the notice dated 8.11.2019 issued by the Respondent as null and void and to restrain the Respondent from taking any steps in further of the said notice dated 8.11.2019;*

*b. To direct the Respondent to restrain from terminating the lease agreement dated 21.1.2015 till the completion of the corporate insolvency resolution process or to take any further step in this respect;*

*c. To direct the Respondent to extend their co-operation in concluding the corporate insolvency resolution process in terms of the Insolvency and Bankruptcy Code, 2016;*

*d. Till the disposal of this MA, to pass an order directing and injuncting the Respondent from taking possession of the said leasehold land till such time this MA is disposed of.*

*e. For interim and ad interim orders in terms of prayers (1) to (3) above.’*

**2.** *The Adjudicating Authority heard the parties on MA 3691 of 2019 and by impugned order, allowed the prayer (a) in the Application. Following is the operative portion of the order in paragraph 13:-*

*“13. In view of the above discussion the Application is accordingly allowed. Prayer (a) is allowed. As far as prayer (b) to (d) are concerned, R1 shall not take any coercive steps till the Application for approval of the Resolution Plan (MA No. 3960 of 2019) is heard by this Bench. List MA No. 3960 of 2019 forthwith for hearing.”*

**3.** *The Appellant aggrieved by the impugned order has come up in this Appeal.*

.....

**26.** *The present is a case where CIRP was initiated on 11.03.2019 and the Notice dated 08.11.2019 terminating the lease agreement and notice for taking possession was issued on 08.11.2019 i.e. after the imposition of Moratorium.*

**27.** *The purpose and object of Moratorium is to temporarily freeze all actions as contemplated under Section 14 to enable the Corporate Debtor to resolve its Insolvency and to revive it. Prohibition on action against the Corporate Debtor is only to preserve the status quo as it exists on the date of initiation of CIRP so that all claims against the Corporate Debtor on the date of initiation of CIRP be collated and dealt with to take steps to revive by approving appropriate Resolution Plan, if any, to bring it back. All the institution of suits or continuation of pending suits and proceedings against the Corporate Debtor are prohibited under Section 14(1)(a) of the Code with the object that status quo regarding Corporate Debtor be maintained and further proceedings against the Corporate Debtor be not permitted during the continuance of the CIRP to preserve the Corporate Debtor from any financial assault*

or other proceeding to stop off its current situation for purpose of Resolution. Similarly, under Section 14(1)(d), recovery of any property by any owner or lessor which is occupied by the Corporate Debtor is prohibited.

**28.** From the law of the Hon'ble Supreme Court as laid down in "Embassy Property Developments Private Limited" and "Tata Consultancy Services Limited" (supra), the Adjudicating Authority has no jurisdiction to judicial review of any action taken by the Government or Statutory Authority in relation to matters which is in the realm of public law. Thus, in the facts of the present case, the Appellant who had granted a lease to the Corporate Debtor is well within its jurisdiction to take appropriate action on account of breach of conditions by the Corporate Debtor but limited question for consideration is as to whether it has to stay its hand from taking such action during currency of CIRP.

**29.** After considering the facts on the record and arguments of the parties, we are of the considered opinion that in view of the fact that Moratorium has kicked in w.e.f. 11.03.2019 due to currency of Moratorium, the Appellant could not have taken possession of the leased property by virtue of restrain under Section 14(1)(d). Further continuation or initiation of any other proceeding under Section 14(1)(a) which also prohibited the Appellant to cancel the lease during currency of the Moratorium. Although after CIRP is over, there is no fetter on the right of the Appellant to take proceeding for breach of terms of the lease by the Corporate Debtor.

**30.** We have noticed that the Adjudicating Authority by its impugned order has allowed the prayer (a) i.e. quash the Notice dated 08.11.2019. The order having passed during the currency of the Moratorium, no exception can be taken to the order passed by the Adjudicating Authority. We however, hasten to add that the quashing of the Notice dated 08.11.2019 does not create any fetter on the rights of the Appellant to pass appropriate order for breach of terms of lease after CIRP is over. The Adjudicating Authority with regard to prayers (b) to (d) has directed the Appellant not to take any coercive action till the Application for approval of the Resolution Plan is heard by the Adjudicating Authority. The above direction was also to protect the status quo which was existing on the date of initiation of CIRP. We, however, make it clear that as soon as the CIRP is over, the Appellant shall have all powers to take appropriate action.

**31.** Learned Counsel for the Appellant has expressed its apprehension that in event the plot, in question, which is the subject matter of the lease by the Appellant is dealt in Resolution Plan and is handed over to the Successful Resolution Applicant, the rights of the Appellant shall be fettered. We find that the said apprehension is without any basis. What rights and liability Corporate Debtor had to the plot, in question, the same at best can be transferred to the Resolution Applicant in event any Resolution Plan is approved. The Resolution Applicant cannot acquire better right nor can wash out its liability under the lease deed merely on the ground that Resolution Plan has been approved.

**32.** *We, thus, are of the view that in this Appeal, we need to issue certain clarifications for protecting the rights and interests of the Appellant. We, thus, dispose of the Appeal with following directions:-*

*(i) We uphold the direction issued in paragraph 13 by the Adjudicating Authority which order has been issued only in reference to Section 14 of the Code.*

*(ii) After CIRP is over, it shall be open for the Appellant to deal with the lease land which was leased to the Corporate Debtor in accordance with its rights as envisaged by the Lease Deed dated 20.01.2015.*

*(iii) In event, the plot, in question, is included in the Resolution Plan, the Resolution Applicant shall not acquire any better right to the rights which were held by the Corporate Debtor in the lease land along with liabilities attached therein. After CIRP is over, there is no fetter in the rights of the Appellant to take appropriate action in accordance with law with regard to lease land.*

**33.** *The Appeal is disposed of with aforesaid directions.”*

**19.3** NCLAT Principal Bench, New Delhi vide order dated 19.04.2022 in Company Appeal (AT) (Insolvency) No. 998 of 2021 has recognised the rights of the appellant (New Okhla Industrial Development Authority) to transfer plot to the successful Auction Purchaser only in accordance with the terms and conditions of their policy namely “The Policy & Procedure for Institutional Property Management- March 2009”. The relevant para of the judgment giving the facts of the case and the decision are extracted below for ready reference:-

*“2. The facts and sequence of events giving rise to this Appeal are:*

- (i) The Appellant had allotted the Plot No.02/2 admeasuring 4615.13 sq. mtrs located at Sector 154, Gautam Buddh Nagar, Noida in favour of Corporate Debtor M/S Mega Soft Infrastructure Pvt. Ltd.*
- (ii) The Adjudicating Authority in Company Petition filed by Neelam Singh against the Corporate Debtor initiated the Corporate Insolvency Resolution Process (“CIRP”) by an order dated 23.08.2017. The Adjudicating Authority vide order dated 28.02.2018 ordered the liquidation of the Corporate Debtor and appointed the Respondent as Liquidator.*

- (iii) Liquidator issued an E-Auction Sale Notice of the Plot. The Appellant had sent letter to the Liquidator that its total pending dues are Rs.20,50,000/- and also informed about the pendency of the Original Suit No.184/2018 titled M/s. Mahavir Hanuman Developers Private Limited vs. M/s. Mega Soft Infrastructure Pvt. Ltd. Before the Court of Ld. Civil Judge (Senior Division) Gauttam Budh Nagar.
- (iv) Liquidator vide its letter dated 13.02.2021 informed the Appellant that Plot No.02/2 at Sector 154, Gautam Buddha Nagar, which was leased to the Corporate Debtor vide lease deed dated 22.07.2015 has been put to E-Auction on 04.01.2021 in which M/s. Groovy Structures LLP was ranked H1. The Appellant on 05.03.2021 again wrote to the Liquidator that amount due against the Plot No.02/2 is Rs.40,50,108/-.
- (v) The Liquidator filed an application being I.A. No.1612 of 2021 before the Adjudicating Authority praying for following relief:
  - “a. Direct the Respondent to transfer the Plot No.02/2 at Sector 154, Gautam Buddha Nagar, Uttar Pradesh-201310 (“Noida Property”) in favour of Groovy Structures LLP, the Highest Bidder;
  - b. Issue directions to the Respondent to file Claim Form for payment of pending dues towards lease rent and interest as per provisions of the Insolvency and Bankruptcy Code, 2016;
  - c. Pass such other order/s as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.”
- (vi) The Application was objected by the Appellant. In the reply, the Appellant stated that there is policy for transfer of the institutional property, which also contemplate payment of transfer charges to the extent of 10% of the current allotment premium of the Plot and there are several other conditions of transfer. In the reply, however, it was stated that Respondent (Appellant before us) has no objection in transferring Plot No.02/2, Sector 154 Noida, in case the Applicant makes an application in compliance with the terms and conditions of the Policy of the Respondent after adopting the procedure to be followed as per the Policy.
- (vii) The Adjudicating Authority heard the parties on the Application and disposed of the Application by issuing following direction in paragraph 8:
  - “a. Respondent shall transfer the said plot in the name of the auction purchaser in terms of provisions of IB Code, 2016 and the IBBI (LP) Regulations.
  - b. Respondent authority if it intends to recover any of its prior dues may prefer its claim in appropriate Form before the liquidator.
  - c. The auction purchaser shall be liable to pay the Ground Rent and interest thereon and other charges, if any, to the Respondents arising after the date of auction purchase of the said institutional property.”
- (viii) The Appellant aggrieved by the said direction has come upon in this Appeal.

.....

11. The learned Counsel for the Appellant has also placed reliance on judgment of Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai vs. Abhilash Lal and Ors.* (2020) 13 SCC 234. In the above case, an Appeal was filed by the Municipal Corporation of Greater Mumbai ("Corporation") against the order of the NCLAT. In the Appeal it was contended on behalf of the Corporation that direction of the Adjudicating Authority was in violation of Section 92 of the *Municipal Corporation of Greater Mumbai Act, 1888* ("MMC Act"), which was the provision governing the disposal of municipal property. Section 92 of the MMC Act provided that with sanction of the corporation, the Commissioner may by lease, sell or otherwise convey any immovable property to the corporation. The Hon'ble Supreme Court after considering the provision of Section 238 of the IBC, laid down following in paragraph 42 and 43:

"42. Now, this Court proposes to deal with the contention that the provisions of the Code override all other laws and hence, that the resolution plan approved by NCLT acquires primacy over all other legal provisions. Facially, this argument appears merited. Section 238 enacts that:

"238. Provisions of this Code to override other laws.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

43. The scope of this provision has been the subject matter of debate in several judgments of this Court. In *Employees Organization v. Jaipur Metals & Electricals Ltd.* [*Employees Organization v. Jaipur Metals & Electricals Ltd.*, (2019) 4 SCC 227], the correctness of a High Court's view [*Jaipur Metals Electricals Ltd., In re*, 2018 SCC OnLine Raj 1472] which refused to transfer winding-up proceedings pending before it and set aside NCLT's order admitting an insolvency resolution application at the behest of a financial creditor, was in issue. This Court held as follows, setting aside the judgment impugned in that case : (SCC pp. 235-36, paras 19-20)

"19. It is clear that Respondent 3 has filed a Section 7 application under the Code on 11-1-2018, on which an order has been passed admitting such application by NCLT on 13-4-2018. This proceeding is an independent proceeding which has nothing to do with the transfer of pending winding-up proceedings before the High Court. It was open for Respondent 3 at any time before a winding-up order is passed to apply under Section 7 of the Code. This is clear from a reading of Section 7 together with Section 238 of the Code which reads as follows:

'238. Provisions of this Code to override other laws.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.'

20. Shri Dave's ingenious argument that since Section 434 of the *Companies Act, 2013* is amended by the Eleventh Schedule to the Code, the amended Section 434 must be read as being part of the Code and not the *Companies Act, 2013*, must be rejected for the

reason that though Section 434 of the Companies Act, 2013 is substituted by the Eleventh Schedule to the Code, yet Section 434, as substituted, appears only in the Companies Act, 2013 and is part and parcel of that Act. This being so, if there is any inconsistency between Section 434 as substituted and the provisions of the Code, the latter must prevail. We are of the view that NCLT was absolutely correct in applying Section 238 of the Code to an independent proceeding instituted by a secured financial creditor, namely, the Alchemist Asset Reconstruction Company Ltd. This being the case, it is difficult to comprehend how the High Court could have held that the proceedings before NCLT were without jurisdiction. On this score, therefore, the High Court judgment [Jaipur Metals Electricals Ltd., In re, 2018 SCC OnLine Raj 1472] has to be set aside.”

The Hon’ble Supreme Court further held that Section 238 cannot be read as overriding Municipal Corporation of Greater Mumbai’s right in its public duty to control and regulate how its properties are dealt with. In paragraph 47, following has been laid down:

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

12. The above judgment of the Hon’ble Supreme Court fully supports the contention of the learned Counsel for the Appellant that Section 238 of the IB Code cannot be pressed to override the power of the Appellant as entrusted to it under the UP Industrial Area Development Act, 1976. We, thus, are of the opinion that the order of NCLT allowing the Application filed by the Liquidator regarding transfer of Plot in favour of auction purchaser does not obviate the consideration of transfer of Application as per the existent Policy namely the Policy & Procedure for Institutional Property Management – March, 2009. The Adjudicating Authority ought to have issued direction to consider the Transfer Application for transferring the auctioned Plot in accordance with the existent Policy. We, thus, are of the view that the direction of the Adjudicating Authority issued in paragraph 8(a) has to be read to



*mean that Adjudicating Authority directed the Appellant to consider the transfer of the Plot and expression “shall transfer” need not be read to mean that the Appellant has to transfer the Plot without the Respondent complying with the requirements of the Transfer Policy. The Respondent having already made an application on 16.02.2022 in the prescribed proforma and is ready to comply all the terms and conditions of the Policy, the Appellant may consider the Application made on 16.02.2022 on merits and take an appropriate decision at an early date without considering its order dated 03.03.2022, by which the Application was rejected on the ground of pendency of Court case.*

*13. In view of foregoing discussions, we dispose of this Appeal with following directions:*

*(i) The Application dated 16.02.2022 filed by the Respondent in terms of existent Transfer Policy be considered by the Appellant on merits in accordance with law.*

*(ii) The Appellant to dispose of the Application dated 16.02.2022 at an early date preferably within a period of two months from the date of this order.*

*Parties to bear their own costs.*

From the perusal of the aforesaid judgments, it follows that the rights of the Public Sector/ State Land Development Authorities on assets owned by them cannot be overridden by provisions of IBC, 2016 and any transfer to the successful Auction Purchaser or Successful Resolution Applicant has to be in accordance with the terms and conditions of the original allotment or lease deed or policy of the Authority.

**20.** We find that demand for enhanced land cost was raised much before initiation of CIRP and evidently, it was not brought to the notice of the IRP or the CoC. Even the pending litigation before Civil Judge (Senior Division), Ludhiana regarding the subject plot was not brought to the notice of the CoC and the successful Resolution Applicant.

**21.** In our opinion, the protective umbrella of IBC, 2016 for CIRP cannot be extended to an extent that public authorities are asked to part with their assets without full payment of their dues or without compliance to terms and conditions of the sale or

lease deed or their transfer policy. The ‘clean slate principle’ will not apply to the factual matrix of the present case, where there was prior demand from public sector land authority which was also not disclosed during CIRP to the IRP or the CoC.

**22.** The Adjudicating Authority in the impugned order has rightly noted that the payment demanded by the respondent is to clear the defect in the title of the land itself, and is not linked to the CIRP proceedings.

**23.** Regarding the second notice dated 27.06.2022 issued by the respondent, the said notice was issued after issue of impugned order dated 03.06.2022. We refrain to comment on the said notice as it was not the subject matter of IA before the Adjudicating Authority.

**24.** In the result, we do not find any reason to interfere in the order of the Adjudicating Authority. The Company Appeal (AT) (Insolvency) 881 of 2022 is dismissed. All IAs pending, if any, are closed. No orders as to cost.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Ajai Das Mehrotra]**  
**Member (Technical)**

Harleen/ Kam