

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
IA-3686/2022**

**IN**

**Company Petition No. (IB)- 652(PB)/2019**

**IN THE MATTER OF:**

M/s Jones Lang Lasalle Building Operations Pvt. Ltd. .... ***Financial Creditor***

**Vs.**

M/s Celebration City Projects Pvt. Ltd. ... ***Respondent***

**AND**

**IN THE MATTER OF IA 3686 of 2022**

Ghaziabad Development Authority ... ***Applicant***

**Vs.**

Mr. Amit Agarwal .... **Resolution Professional**

**Pronounced on: 22.01.2025**

**CORAM:**

**JUSTICE (RETD.) RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the RP : Mr. Gaurav Mitra Adv., Mr. Pankaj Agarwal Adv., Mr. Shashwat Srivastava Adv. with Mr. Amit Agarwal RP in person

For the Applicant/ GDA : Mr. Sanjeev Kumar Dubey Sr. Adv., Mr. Abhishek Chaudhary Adv., Mr. Zeeshan Ahmad Adv., Mr. Pradeep Kr. Singh (Add. Sec.)

## ORDER

1. IA-3686/2022 has been filed by Ghaziabad Development Authority (GDA) for seeking the following relief:

- a) pass an order, setting aside the order/communication dated 18.04.2022, sent by the Ld. Interim Resolution Professional vide email dated 18.04.2022;*
- b) direct the Ld. Interim Resolution Professional to accept the claims of the Applicant as a 'financial creditor' of the corporate debtor;*
- c) direct the Ld. Interim Resolution Professional to include the applicant in the committee of the creditors of corporate debtor;*
- d) restrain the Ld. Interim Resolution Professional from putting resolution plan in respect of the corporate debtor for voting before the committee of creditors till the pendency of the present application; and*
- e) pass any other or further order of any nature, direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

The brief facts which are relevant for the present case are as follows:

2. In the year 2006, GDA, being the owner of the Plot, admeasuring an area 45936 sq. meter, situated at Nehru Vikas Minar Commercial Complex, GT Road, Ghaziabad, through a public auction, invited bids for sale wherein M/s Vridhi Merchant Pvt. Ltd. (now known as 'Celebration City Project Pvt. Ltd.') CD, being the highest bidder for a total consideration of Rs.100 crores, for developing a commercial complex at the site was declared successful as a purchaser of the said plot of land.
3. On 6th July 2007, a registered Agreement to Sale was executed between the GDA, the First Party and M/s Vridhi Merchant Pvt. Ltd. (now known as 'Celebration City Project Pvt. Ltd. '), the Second Party. This agreement to sale acknowledges the receipt of payment of Rs.25 crores i.e. 25% of sale consideration + freehold charges etc. and the

- balance 75% of sale consideration payable in 16 quarterly instalments along with the 12% interest. In the event of default, the interest @ 15% would be charged. Further, the physical possession of the plot was handed over to the CD.
4. The Agreement to sale provided that the CD shall have the right to contract to sale for constructed space together with required appurtenant portion of the plot, but sale deed/conveyance deed will be in respect of the built up area, proportionate to the premium already paid to the GDA. Further, the GDA will have no objection to the CD raising loan against the Plot, in that case, the CD will execute a tripartite agreement with GDA and the Financial Institution. The GDA will permit the CD to mortgage the property in question for raising loans, and create the charge to the financial institution in proportionate part of the premium paid.
  5. CD failed to make the payment of the sale consideration and for which, the re- scheduling of the said consideration was carried out, on repeated occasions. CD vide letter dated 28.02.2018 requested that the balance amount was being organized with the financial help from Sakshi Fincap and has requested for the payment of balance amount in 5 (five) quarterly installments. GDA vide letter dated 23.03.2018 granted the permission, on the conditions mentioned therein. Neither the CD, nor the Sakshi Fincap deposited the balance amount and therefore the said permission was cancelled vide letter dated 18.03.2019.
  6. On 21.03.2022, CIRP was initiated by order of this Adjudicating Authority against the CD and GDA filed its claim dated 13.04.2022 for recovery of Rs. 147,59,04,687 (Rupees One Hundred Forty-Seven Crores Fifty-Nine Lakhs Four Thousand and Six Hundred Eighty-Seven) before the RP as a financial creditor. The RP rejected the claim of GDA

as a 'financial creditor' stating that the said claim falls under the category of 'operational creditor'. The operative portion of the communication email dated 18.04.2022 is extracted below:

However, after examining the form CA , we have come across the following deficiency:

a) You have filed the claim in Form CA i.e Class of Financial Creditors but your claim is based on the sale consideration of the Land , your claim fall in the Operational Debts.

b) Hon'ble Tribunal has already declared NOIDA as operational Creditors and akin to this case you are also the operational creditor.

Hence, you are advised to file your claim in Form -B as operational creditor.

**AMIT AGRAWAL**

**INTERIM RESOLUTION PROFESSIONAL**

**For Celebration City Projects Private Limited**

**Reg. No: IBBI/IPA-002/IP-N00185/2017-18/10456**

**H-63, VIJAY CHOWK, LAXMI NAGAR, DELHI - 110092**

**TEL : 011-49423788**

**Note:-** Hon'ble Supreme Court in its judgment dated 12.02.2024 titled as *G.NOIDA v. Prabhjit Singh Soni & Anr (Civil Appeal No. 7590-7591 of 2023)* has held that G.NOIDA is a secured creditor.

**Submissions made by Ld. Counsel appearing for the GDA**

- i. The CD had agreed to pay the outstanding balance along with 12% interest in 16 quarterly instalments which is 15% in case of default. Further, the first charge on the property shall be of GDA and the financial institution will only get the second charge.

These terms and conditions of the registered agreement to sale dated 06.07.2007 satisfy the requirement of Section 5(8)(d) & (f) of the code and makes it clear that the said dues constitutes a financial debt.

*Section 5(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–*

*(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

- ii. The submission made by counsel for RP that the disbursement is the main criteria to constitute a 'financial debt' in view of the Supreme Court's decision in para 46 of the judgment **(2020) 8 SCC 401 'Anuj Jain (IRP) for JP Infratech Ltd. Vs. Axis Bank Ltd.**, is incorrect as the said judgment is distinguishable and is not applicable in the facts and circumstances of the present case. In the instant case the GDA's claim is of outstanding dues, i.e., the balance sale consideration along with interest, and default interest arising out of the registered Agreement to Sale which has been implemented in part.

Whereas, in the Anuj Jain's case, the issue was as to whether on the strength of a mortgage created by the Corporate Debtor, Jaiprakash Infratech Ltd. (JIL) as a collateral security of the debt of its holding Company,

Jaiprakash Associate Ltd (JAL), the lender of JAL could be categorized as a 'financial creditors' of JIL for the purpose of the Code, in view of the fact that there was no direct "transaction" between the lenders of JAL with the Corporate Debtor, JIL.

- iii. The view taken in para 46 of the judgment (2020) 8 SCC 401 '**Anuj Jain (IRP) for JP Infratech Ltd. Vs. Axis Bank Ltd. (2 judges bench)**' may not be correct in view of the law laid down in (2019) 8 SCC 416 '**Pioneer Urban Vs. UOI' (3 Judges Bench)**'. The perusal of the said judgement make its abundantly clear that the 'disbursal' cannot be considered as the sole and only criteria to constitute the financial debt under Section 5(8) of IBC.
- iv. Perusal of Agreement to sale dated 06.07.2007 makes it clear that even otherwise the nature of said agreement, can also be construed as **hire-purchase** contract under the Indian Accounting Standards. The Accounting Standard (AS) 19 is a financial lease, which envisages as under:

*“6. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incident to ownership. Title may or may not eventually be transferred. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incident to ownership.*

*8. Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than its form. Examples of situations which would normally lead to a lease being classified as a finance lease are:*

- (a) the lease transfers ownership of the asset to the lessee by the end of the lease term;*
- (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable such that, at the inception of the lease, it is reasonably certain that the option will be exercised;*
- (c) the lease term is for the major part of the economic life of the asset even if title is not transferred;*
- (d) at the inception of the lease the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset; and*
- (e) the leased asset is of a specialised nature such that only the lessee can use it without major modifications being made.*

*12. Transactions and other events are accounted for and presented in accordance with their substance and financial reality and not merely with their legal form. While the legal form of a lease agreement is that the lessee may acquire no legal title to the leased asset, in the case of finance leases the substance and financial reality are that the lessee acquires the economic benefits of the use of the leased asset for the major part of its economic life in return for entering into an obligation to pay for that right an amount approximating to the fair value of the asset and the related finance charge.”*

On this premise the impugned proceedings is challenged

**Submissions made in reply by Ld. Counsel for the RP**

- i. It is clear and evident from the facts and record that the Agreement to sale dated 06.07.2007 entered in-between the GDA and CD is a pure lease, wherein the GDA has charged

the 25% premium amount as advance and balance 75 % as lease Rent and the advance was paid as the premium and balance was to be paid as rent with interest over a period of time.

- ii. The Hon'ble Supreme Court in the case of New Okhla Industrial Development Authority v. Anand Sonbhadra C.A. NO.2222 OF 2021, had dealt the matter of Development Authorities being an operational creditor at great length and the similar facts will apply in the instant case also.
- iii. The claim of GDA that the agreement to sale has the "commercial effect of borrowing" is flawed and erroneous. Further, no element of disbursement of any amount to CD is shown by GDA against the time value of money, therefore prescription of Section 5(8) of the code are not met.
- iv. The claim of GDA is plainly covered by the definition of operational debt under the Code.

### **Analysis and Findings**

- i. We have heard the Ld. Counsel for the GDA as well as the Ld. Counsel for the RP who appeared before us on numerous hearings and have perused the pleadings and documents on record. The attempt to resolve the issue in these numerous mediation proceedings did not fructify and we have recorded it in our proceedings.
- ii. We take note that reliance is placed by Ld. Counsel for the RP on the judgment passed by the Hon'ble NCLAT ~which was subsequently affirmed by the **Hon'ble Supreme Court of India in Civil Appeal No. 2222 of 2021 titled as New Okhla Industrial Development Authority v. AnandSonbhadra** to contend that applicant is not a financial creditor as the dues of applicant arise against the sums payable for the sale of property and not pursuant to any 'debt' which was disbursed to the CD. However, we find

that the judgment above relied on is based on lease deed wherein Noida, the lessor remains owner of the lease till the end of the lease term and the land reverts back to Noida after completion of lease period. Accordingly, Hon'ble Supreme Court has held that the lease deed entered into by Noida with the allottee CD is not a financial lease. In this case, however, it is contented by the Ld. Sr. Counsel for the GDA that the respondent CD executed the registered agreement to sale deed dated 06.07.2007 wherein ownership of the Land is transferred to the CD to the extent of 25% at the time of execution of sale deed and ownership of balance 75% to be transferred to the CD proportionate to the premium paid by the 2<sup>nd</sup> party. Full ownership is envisaged to be transferred to the CD after payment of all the instalments. This has been effected in principle.

**iii.** Ld. Sr. Counsel for the applicant drew our attention to paras 35 and 37 of the application, the same is extracted below:

35. Insolvency and Bankruptcy Code 2016, under Section 5 (7) and Section 5 (8), envisages as under :

(7) *"financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

(8) *"financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-*

(a) xxx xxx xxx;

(b) xxx xxx xxx;

(c) xxx xxx xxx;

(d) *the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

xxx xxx xxx;

37. That the applicant is assailing the impugned order/communication vide email dated 18.04.2022 by the Ld. IRP *inter-alia* on the following grounds:

A. Because the Ld. IRP passed the impugned order/communication vide email dated 18.04.2022, without considering the actual and material facts, only on the basis of judgment in *New Okhla Industrial Development Authority v. AnandSonbhadra*, rejecting the claim of the applicant as financial creditor and directing to file as operational creditor, whereas the subject matter of the aforesaid case was lease having no element of transfer of ownership. Whereas, the present case deals with the transfer of ownership and specifically covered under section 5(8)(f) of IBC. As is evident from the fact that the Applicant has and the Respondent entered into registered agreement to sale dated 06.07.2007. the terms of the said agreement to sale *inter-alia* envisages as the payment of 25% of total consideration at the time of execution of the registered agreement to sale and remaining 75% of total consideration, out of Rs.100 crores in 16 installments out of the said sale consideration the applicant has a financial claim against the judgment debtor and therefore under the financial creditor.

He further submitted that the lease here would be in the nature of the financial lease, wherein the lease transfers ownership of the asset to the lessee by the end of the lease term.

He further submits that the ingredients of Section 5(8)(d) are present in the application as paras 35 & 37(a).

However, inadvertently, para 5(8)(d) of the IBC, has been omitted to be mentioned in para 37(a). The ingredient are however captured.

- iv.** The present case is in the nature of financial lease with transfer of ownership as specifically covered under Section 5(8)(d) of the code. Further the element of time value of money as laid in Section 5(8) of the code is present in the instant case also as there are specific clauses in the Agreement to Sale dated 06.07.2007 governing interest component (12% on the remaining 16 quarterly instalments and 15% in case of committing default in making the due payments). This specific clause makes the present case different on facts.
- v.** Further, Ld. Sr. Counsel for GDA drew our attention to the additional documents dated 15.04.2023 as filed by applicant GDA with this Tribunal wherein it has attached a copy of writ petition bearing no. Civil Misc Writ Petition No. 60608 of 2017 as filed by CD (M/s Celebration City Projects Pvt. Ltd) before Hon'ble Allahabd High Court. Para 25, 26 and 27 of the writ petition read as under:

**25.** *That in order to resolve the pending issues, the Petitioner vide representation dated 20.09.2017 offered to proportionately surrender the unbuilt portion of the said land. It is submitted, that moreover petitioner also suggested to the Respondent no. 2 to permit the petitioner to get the sale deed of 60% of plot area including the built up area to be executed and be get registered in favour of the petitioner as the same will enable to gain confidence of the buyers/investors who have already invested huge sum of money in the project to run the business establishment from their respective units thus making their contribution to the economy by paying taxes, levy etc enriching exchequer. The revival of the investor's confidence would also result into the availability of finance enabling the petitioner to carry and raise the construction of Phase-II of the said project. It is further submitted that the petitioner is even today prepared to surrender the above said area ad measuring 24000 sq mts appx. It is pertinent to point that the said present*

circle rate of the said land is Rs. 75,000/ per Sq Mts which is much higher then the auction rate which was @ Rs. 21770 Per Sq. Mts. **The value of the land will come higher than the amounts claimed by the respondents and even more than the amount payable i.e approximately 180 Crore.** The value of land proposed to be surrendered calculated at the present circle rate would fetch an amount much higher than the amount payable to the Respondent No.2 herein. It is further submitted that at the time of entering agreement to sell, petitioner have already paid stamp duty on 100% of the amount of the bid amount to the tune of Rs. 10,77,18,000. A copy of the representation with layout/site plan showing the proposed surrender is attached as Annexure no.15

**26.** The land proposed to be surrendered to the respondents have due ingress and egress and was planned for development separately as phase 2 by the petitioner. The same can thus be developed sold and used as a separate site without any impediment. **The land in the said form if accepted under the surrender policy claimed by the petitioner would not only satisfy the claim of the respondents, but would allow the already developed mall site to function granting respite to various third parties whose rights have been duly created by the petitioner and respondent no. 2 by virtue of sale deeds, lease deeds and mortgagage deeds.** It will not be out of place to mention that the said third parties include multinational brands like lifestyle(Dubai), H & M (Sweden). Forever 21(USA) and Cinepolis (Mexico / America). The said multinational brands along with several domestic and local business have been closed and their stocks are lying inside the mall premises. The delay in descaling of the mail would result in huge losses to the above and would bring disrepute to the nation as a whole which is promoting the concept of ease of doing business in India to attract foreign investments.

**27.** That it is important to mention that the Petitioner have tried their level best to develop the said land by complying all the terms mentioned in the terms and conditions. **It is submitted that the petitioner has tried to make the payments under the OTS and moreover is ready to surrender the part of the said land in favour of the Respondent No. 2, however the Respondent No. 2 did not take any necessary and required steps to get the issue resolved. It is submitted that Respondent No. 2 on 30.11.2017 through their officials have visited the project land to seize the said property on**

*accounts of non-payments of dues; that the respondents in colourable exercise of their authority and totally ultra vires their power have sealed the operational mall operating on a portion of the project land.*

Perusal of above depicts that respondent in their writ petition themselves considered pending amount towards applicant GDA as non-payment of dues admitted. They have given OTS proposal and undertaken to surrender part of land.

**vi.** Per Contra, during the course of hearing Ld. Counsel for the RP also referred to paragraph no. 31, 32 and 45 of the Judgment of Hon'ble NCLAT in the case of ***Sandeep Mittal v. M/s ASREC (India) Ltd. and ors. Company Appeal (AT)(Ins) No. 37 of 2024*** to contend that disbursement of money which has been paid against the consideration for time value of money is contemplated under Section 5(8) and disbursement of property would not be covered by the definition of financial debt. Para 31, 32, and 45 of the Judgement of Hon'ble NCLAT reads as under:

*“31. We may also notice one more submission, which has been advanced by learned Counsel for Respondent No.1 that Section 5, sub-section (8), does not contemplate disbursement of money only. It is submitted that it is not essential that disbursement of money should take place in favour of the Corporate Debtor. There can be transaction without any disbursement to the Corporate Debtor, which can be treated as financial debt. It is submitted that in the present case, the property has been disbursed to the Corporate Debtor by the Financial Creditor. Learned Counsel for Respondent No.1 has referred to Section 5, sub-section (8), sub-clause (f) and submits that sub-clause (f) is residuary clause, which encompasses all other transactions, which are not covered by clauses (a) to (e). The submission of the learned Counsel for Respondent No.1 is that disbursement of money is not essential condition and disbursement of property, which had taken place in the present case is also covered by financial debt.*

32. *The Hon'ble Supreme Court in Pioneer Urban and Infrastructure Ltd. (supra) has categorically held that the disbursement as contemplated in Section 5, sub-section (8) is disbursement of money, which has been paid against the consideration for time value and money. In paragraphs 70 and 71 of the judgment, the Hon'ble Supreme Court has categorically held that the "expression 'disbursed' refers to money which has been paid against consideration for the 'time value of money'". The above pronouncement of the Hon'ble Supreme Court is clear and disbursal of property as suggested by learned Counsel for Respondent No.1, cannot be accepted to be covered by definition of 'financial debt' under Section 5, sub-section (8).*

45. *In view of the foregoing discussion, we are satisfied that there was no financial debt, on the basis of which Respondent No.1 could have filed Section 7 Application for initiating CIRP against the Corporate Debtor. The Adjudicating Authority committed error in returning a finding that there was disbursement in favour of the Corporate Debtor, whereas it categorically held that transaction in question was Sale Agreement and not a Loan Agreement.*

He further submitted that the agreement to sale is not a lease and a claim has been filed as financial creditor which is not admissible.

**vii.** We observe that the aforesaid judgment of the Hon'ble NCLAT covers the situation that applies to the facts of that particular case, wherein the CD had taken over the property in an auction against consideration of payment in which he defaulted. Therefore, the submission of the Respondent in the appeal that sub Section 5 (8)(f), which is a residuary clause would be attracted has been turndown by Hon'ble NCLAT. The facts of the present case basis the various clauses of the agreement, the nature of transaction and the debt and interest in default that is conceded at various stages in different proceedings makes the case different.

**viii.** However, the instant case would be covered under definition 5(8)(d) as extracted below:

***"5. Definitions. –***

*(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-*

*d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;"*

This is basis the nature of transaction entered into by parties.

- ix.** It is rightly contended by Ld. Sr. Counsel for GDA that the liability arises on the part of the Corporate Debtor in respect of the sale agreement which is in the nature of a financial lease under the Indian Accounting Standard as explained supra. Therefore, this judgment of Hon'ble NCLAT does not come to the rescue of the Corporate Debtor.
- x.** We are of the view that the judgment relied by CD is on a different footing based on a different factual matrix in which primarily the ingredients of Section 5(8)(f) of the code were covered whereas in the present case ingredients of Section 5(8)(d) of the code is applicable wherein it is a case of liability of CD, as is in the form a financial lease with the element of time value of money being incorporated in the agreement to sale itself and part transacted and balance defaulted with interest liability.
- xi.** In view of the above and for the reasons recorded therein we are inclined **to allow IA No. 3686 of 2022** filed for directing the RP to admit the claim of Applicant/GDA as a financial creditor.

**Order**

- xii. IA-3686/2022 is allowed and stand disposed of in aforesaid terms.**
- xiii.** The Ld. RP is directed to accept the claim of the applicant/GDA as a financial creditor. He is further directed

to include the applicant in Committee of Creditors of the  
CD.

**Sd/-**  
**RAMALINGAM SUDHAKAR**  
**PRESIDENT**

**Sd/-**  
**AVINASH K. SRIVASTAVA**  
**MEMBER (TECHNICAL)**