NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.493 of 2023
&
I.A. No. 3017, 3703 of 2023 & 2535, 2548, 2660, 2669 of 2024

Arising out of Order dated 07.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench in IA No.3306/PB/2021 in Company Petition No. (IB)-77(ALD)/2017)

IN THE MATTER OF:

Yamuna Expressway Industrial
Development Authority ... Appellant

Versus

Monitoring Committee of Jaypee Infratech Ltd.
Through Anuj Jain, Secretary & Ors. ... Respondents

Present:

For Appellant : Mr. N Venkataraman, ASG Sr. Advocate and Mr. Gopal Jain, Sr. Advocate with Mr. Amar Gupta, Mr. Aniket Aggarwal, Mr. Divyam Aggarwal, Mr. Mohit Sharma, Mr. Rijul Uppal, Advocates.

For Respondents : Mr. Sumant Batra, Mr. Sanjay Bhatt, Ms. Nidhi Yadav, Ms. Apoorva Chowdhury and Mr. Sarthak Bhandari, Advocates for R-1/IMC.

Mr. Mukul Rohatgi, Sr. Advocate with Mr. Krishnendu Datta, Sr. Advocate, e with Mr. Rajshekhar Rao, Sr. Advocate and Mr. P. Nagesh Sr. Advocate with Mr. Mahesh Agarwal, Ms. Geetika Sharma, Mr. Sagar Bansal, Ms. Eshna Kumar, Mr. Akshay Sharma, Mr. Shivam Shorewala, Advocates for R2 & R3.

Mr. Abhishek Verma. Mr. Anant Singh and Mr. Arun Yadav, Advocate in IA 3017/2023.

Mr. S. Niranjan Reddy, Sr. Advocate with Mr. Raunak Dhillon, Ms. Aishwarya Gupta, Mr. Ashutosh Singh, Mr. Nityesh Dadhich, Advocates for I.A. No. 2535/2823 of 2024.

Mr. Sumesh Dhawan, Mr. Shaurya Shyam, Ms. Vatsala Kak, Advocates for Intervenor IA No. 2660/2024.

Mr. Gaurav Mitra, Mr. Ishan Roy Choudhary Chitranshul Sinha, Advocate for homebuyers.

Ms. Parul Sharma, Advocate for Intervenor/ I.A. No. 3703/2023.

Mr. M. Krishnan Venugopal, Sr. Advocate with Mr. Anupam Choudhary, Mr. Sarvesh Mehra, Mr. Avinash Mathews and Mr. Krishan Agarawal, Advocates for Intervenors (Sai Prakash associates Ltd.)- Applicants in I.A. No. 1881 of 2024

Mr. Akshat Hansaria, Amit Kumar Mishra, Ms. Mitaksara Goyal and Mr. Shivam Singh, Advocates for Homebuyers.

Ms. Srishti Kaul, Mr. Harish Nadda, Mr. Vikalp Singh, Mr. Kumar Shashank, Mr. Rishab Singh, Mr. Shashank Shekhar Shukla, Ms. Deepanwita Chakraborty, Mr. Arun Yadav, Mr. Anant Singh and Mr. Abhishek Sharma, Advocates for SRA.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal filed by Yamuna Expressway Industrial Development Authority (constituted under Uttar Pradesh Industrial Area Development Act, 1976), who has filed its claim as Operational Creditor in the Corporate Insolvency Resolution Process ("**CIRP**") of Jaypee Infratech Limited (the Corporate Debtor - "**JIL**") has been filed aggrieved by order dated 07.03.2023 passed by National Company Law Tribunal, New Delhi, Special Bench approving the Resolution Plan submitted by Suraksha Realty Limited ("**Suraksha**"), the Successful Resolution Applicant ("**SRA**'), Respondent No.2 herein. The Appellant aggrieved by treatment of its claim filed in CIRP of the Corporate Debtor has come up in this Appeal.

2. The CIRP of the Corporate Debtor JIL underwent a protracted litigation in several rounds, which need to be noticed herein for deciding this Appeal. The brief background facts giving rise to this Appeal are:

(i) Yamuna Expressway Industrial Development Authority, earlier named as Taj Expressway Industrial Development Authority was constituted under Notification issued under Uttar Pradesh Industrial Area Development Act, 1976 ("**the 1976 Act**"). The name of the Appellant was changed from Taj Expressway Industrial Development Authority to Yamuna Expressway Industrial Development Authority ("**YEIDA**") vide notification dated 11th July, 2008. The 1976 Act was to provide for the constitution of an Authority for the development of certain areas in the State into industrial and urban township and for matters connected therewith. The object and function of the YEIDA included, to acquire land in the industrial development area; to prepare a plan for the development of the industrial development area; and to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial commercial or residential purposes and such other land uses as per master plan etc.

(ii) In exercise of its function under the 1976 Act, the Taj Expressway Industrial Development Authority ("Authority) entered into a Concession Agreement executed on 07.02.2003 between Authority and Jaiprakash Associates Limited ("**JAL**")

(then known as Jaiprakash Industries Limited) for construction of six-lane 160 km long super expressway, connecting NOIDA and Agra along with service roads and allied facilities. Under the Concession Agreement, Concessionaire had to bear all the costs of acquiring and developing of the land leased to it. In return, it was granted the rights to collect toll on the Yamuna Expressway for 36 years and to commercially exploit the land for development, i.e., 6,177 acres of land abutting the Yamuna Expressway. The land, which was leased to the Concessionaire had been acquired by the YEIDA between year 2007-2014. The Concession Agreement was assigned to the Corporate Debtor - Jaypee Infratech Ltd. on 19.10.2007.

(iii) There were several acquisitions of land by two other Industrial Development Authority constituted under the 1976 Act, i.e. NOIDA and Greater Noida. Acquisitions made by NOIDA and Greater Noida were challenged before the Allahabad High Court by means of several writ petitions. The Allahabad High Court vide its judgment dated 21.10.2011 in ***Gajraj Singh vs. State of Uttar Pradesh*** decided all the writ petitions upholding the acquisition, except for acquisitions in few villages, where no development was carried out by the NOIDA. Full Bench of the High Court, although found the invocation of urgency clause not in accordance with law, but to balance the equities, of the farmers, whose lands were acquired and the

developments carried out by NOIDA, directed for payment of additional compensation to the farmers of 64.7%, with certain other reliefs. The judgment of Allahabad High Court in **Gajraj Singh** came to be challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 14.05.2015 in ***Savitri Devi vs. State of Uttar Pradesh and Ors. – (2015) 7 SCC 21*** affirmed the judgment of Allahabad High Court directing for additional compensation of 64.7%.

(iv) After the decision of Allahabad High Court in **Gajraj Singh**, other farmers, whose land was acquired by YEIDA also begun agitation and demanded additional compensation. In order to quell the farmers' agitation and demands, the State of UP constituted an Expert Committee, under the Chairmanship of Shri Rajendra Chaudhary, which submitted a Report to the State Government. The State Government vide Government Order dated 29.08.2014 issued a policy, providing for payment of additional compensation as 'no litigation incentive' to farmers who withdrew their challenge to the acquisitions. The YEIDA accepted the UP Government Order and resolved to implement it through its Resolution dated 15.09.2014. After the above Government Order, YEIDA demanded additional compensation from the Lessees of land including the Corporate Debtor. The Corporate Debtor aggrieved by the demand made by YEIDA initiated arbitration proceedings in accordance with

Concession Agreement. An arbitration award was made in favour of the Corporate Debtor, which award was challenged by YEIDA under Section 34 of the Arbitration and Conciliation Act, 1996, which proceedings are said to be pending.

(v) An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**Code**") was filed by IDBI Bank against the Corporate Debtor before the National Company Law Tribunal, Allahabad Bench. An order dated 07.08.2017 was passed by NCLT Allahabad Bench admitting Section 7 Application. Shri Anuj Jain was appointed as IRP. On 12.08.2017, the IRP invited the creditors to submit their claims. On 23.08.2018, YEIDA submitted its claim in Form-B of Rs.6111.591 crores.

(vi) On a writ petition filed by Homebuyers, the Hon'ble Supreme Court vide order dated 09.08.2018 in ***Chitra Sharma & Ors. vs. Union of India - Writ Petition (C) 744/2017*** directed reconstitution of Committee of Creditors ("**CoC**") and to include the Homebuyers.

(vii) The IRP applied for exclusion of time period and by order dated 06.05.2019, the NCLT Allahabad Bench directed the IRP and CoC to proceed with the CIRP subject to outcome of the pending applications. An Appeal was filed by IDBI Bank before NCLAT, challenging the order dated 06.05.2019. The Appellate Tribunal passed an order on 30.07.2019 granting certain

exclusion of time and IRP and CoC were directed to call for and consider fresh Resolution Plans, which order was challenged by JAL before the Hon'ble Supreme Court. On 06.11.2019, the Hon'ble Supreme Court in the appeal filed by JAL, directed the completion of CIRP within 90 days. It was further directed that only revised Plans of Suraksha and NBCC should be invited and considered by the CoC.

(viii) Revised Resolution Plans were submitted and NBCC Resolution Plan was approved by 97.36% vote share of the CoC. An Application was filed by the IRP on 19.12.2019 before the NCLT Allahabad Bench, seeking approval of the Plan. The Principal Bench of NCLT, vide order dated 13.01.2020 transferred the proceedings from NCLT Allahabad Bench to NCLT Principal Bench.

(ix) On 23.01.2020, YEIDA filed an Application before the Adjudicating Authority, challenging the treatment of its claim and raising objections against the First Plan. On 03.03.2020, the First Plan was approved by the Adjudicating Authority with certain modifications. The approval of Plan order was challenged by the NBCC by way of an Appeal before the NCLAT. On 22.04.2020, NCLAT refused to grant stay on the approval order. Various Homebuyers/ Associations challenged the order dated 22.04.2020 before the Hon'ble Supreme Court. The Hon'ble Supreme Court withdrew all the Appeals pending

before the NCLAT and heard the matters and by a detailed judgment dated 24.03.2021, in ***Jaypee Kensington Boulevard Apartments Welfare Association vs. NBCC (India) Ltd. – Civil Appeal No.3395/2020*** set aside the approval order, extended the time period for completion of the Corporate Debtor's CIRP and directed Suraksha and NBCC to submit revised Resolution Plans in conformity with its observations and findings in the Jaypee Kensington judgment. The Hon'ble Supreme Court in its judgment dated 24.03.2021, also dealt with claims of YEIDA.

(x) Revised Resolution Plans were submitted by Suraksha and NBCC with addendum. The Resolution Plan of Suraksha was approved by CoC in June 2021 with 98.66% votes. The IRP filed an IA No.2836 of 2021 before the Adjudicating Authority seeking approval of Suraksha Resolution Plan. YEIDA filed an IA No.3306 of 2021 objecting to Suraksha Resolution Plan on various grounds. The objections by YEIDA were replied by IRP and Suraksha. Suraksha also filed its rejoinder to the objections raised by YEIDA.

(xi) It is also relevant to note that against Government order dated 29.08.2014, directing the additional compensation of 64.7%, the farmers, whose land were acquired by YEIDA writ petitions in the High Court were filed by several allottees including the Corporate Debtor, which writ petitions were allowed by

Allahabad High Court vide its judgment dated 28.05.2020 by quashing the Government Order dated 29.08.2014. YEIDA aggrieved by the judgment dated 28.05.2020, filed ***Civil Appeal Nos.4178-4197 of 2022 – Yamuna Expressway Industrial Development Authority Etc. vs. Shakuntla Education and Welfare Society & Ors. Etc. – (2022) SCC OnLine SC 655***, which was allowed by the Hon'ble Supreme Court vide its judgment dated 19.05.2022. The Hon'ble Supreme Court in the above judgment upheld the Government Order dated 29.08.2014 and held that State Government order was in larger public interest taking care of the concerns of the allottees as well as the farmers.

(xii) The Adjudicating Authority heard the learned Counsel for the YEIDA, IRP, SRA, CoC, JAL, Homebuyers and others and by judgment dated 07.03.2023, approved the Suraksha Resolution Plan. The objections filed by the YEIDA were dismissed. In the impugned order dated 07.03.2023, the objections filed by YEIDA were dealt with in Part-VIII – IA No.3306/PB/2021 under the heading 'Objections of YEIDA' from paragraphs-51 to paragraph-92 of the judgment. In the Resolution Plan with regard to claim towards External Development Charges, the SRA has proposed payment of an amount of Rs.10 lakhs, against the admitted claim of Rs.6,111.591/- crores, which allocation was upheld by the

impugned order. Coming to the issue of claim of additional compensation payable to farmers, the Adjudicating Authority upheld the allocation of Rs.10 lakhs to the YEIDA. The payment of Rs.10 lakhs towards the additional compensation, which was treated to be contingent liability was held to be sufficient, YEIDA having been held to be Operational Creditor, whose liquidation value being Nil. The Adjudicating Authority also rejected the objection of YEIDA that it is a Secured Creditor and held that it is only Operational Creditor and entitled to be treated as Operational Creditor according to the Scheme of Code.

(xiii) The YEIDA aggrieved by rejection of its objection raised to the Resolution Plan has come up in this Appeal challenging the order dated 07.03.2023.

3. It is relevant to notice that challenge in the Appeal filed by YEIDA to the order dated 07.03.2023, approving the Resolution Plan of Suraksha, is only to the extent, insofar as it uphold the provisions of Resolution Plan dealing with the claims of the YEIDA. The prayers made by the YEIDA in this Appeal are as follows:

> "i) Set aside the Impugned Order dated 07 March 2023 to the extent and insofar as it upholds the provisions of Suraksha's Resolution Plan dealing with the claims of the Appellant (paras 51-92);

(ii) Pending grant of prayer (i) above, in the interim, direct that the operation and effect of paras 51-92 of the Impugned Order dated 07 March 2023 are stayed;

(iii) Pass an order awarding the costs of the present Appeal; and

(iv) Pass such any other or further order(s) or direction(s) that this Hon'ble Appellate Tribunal may deem fit and necessary in the facts and circumstances of the case."

4. The extent of the Appeal is, thus, confined to the prayers made in the Appeal as noted above.

PROCEEDINGS IN THIS APPEAL

5. We after hearing the learned Counsel for the parties by our detailed order dated 25.04.2023 issued notice to the Respondents. All Respondents had appeared through their Counsel on 25.04.2023 itself, hence, no fresh notice was issued. Learned Counsel appearing for the Homebuyers has also sought intervention, who were granted liberty to file the Applications. Directing for listing of the Appeal for hearing, following interim order was passed in paragraphs 19 and 20 on 25.04.2023:

> "**19.** In the meantime, we direct that impugned order dated 07.03.2023 insofar as it determines the claim of the Appellant regarding additional farmers compensation shall not be relied in determination of rights and liabilities of the Appellant and the Corporate Debtor in the pending proceedings in Arbitration Case No.03 of 2020 pending before the Commercial Court.
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> **20.** We make it clear that pendency of this Appeal and the above interim order may not be treated as any restraint in implementation of the Plan insofar as other aspects of the Plan are concerned."

6. During the hearing of the Appeal, a statement was made by learned Counsel for SRA that they have given proposal to the Appellant and the matter was adjourned awaiting the decision on the proposal. In the proceedings on several dates, the statement of Counsel for the parties were noted that proposal is pending, which has been placed before the State Government for consideration. This Tribunal also drew attention of learned Counsel for the parties on the judgment delivered by the Hon'ble Supreme Court on 12.02.2024 in the matter of ***Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr., Civil Appeal Nos.7590-7591 of 2023***. Both the parties were also asked to look into the judgment of the Hon'ble Supreme Court. On 19.02.2024, in proceedings of this Appeal following was recorded:

> "**19.02.2024:** Learned counsel for the Appellant, Mr. Amar Gupta, submits that proposal received from Resolution Applicant for settlement has been placed before the State Government and the same is under consideration of the State of UP. Learned counsel for the Appellant submits that the matter may be listed in the month of March, 2024 to enable him to inform the decision taken by the State Government on the proposal submitted by the SRA.
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> Attention of Learned counsel for the parties have been drawn to a recent Judgement delivered by Hon'ble Supreme Court on 12.02.2024 in the matter of Greater Noida Industrial Development Authority Vs. Prabhjit Singh & Others, Civil Appeal No.7590-7591 of 2023. Both the parties to look in to the above judgement also.
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> As prayed, List the Appeal on **6th March, 2024.**"

7. In proceedings dated 06.03.2024, it was noted that in event by the next date, no settlement is brought on record, Appeal shall be proceeded to

be heard on merits and the Appeal was listed for hearing on 18.04.2024. Arguments commenced in the Appeal on 18.04.2024. On 18.04.2024, learned Counsel appearing for SRA stated that without prejudice to its rights, the SRA is offering to pay an amount of Rs.1216 crores towards additional compensation, which according to SRA is 100% payment towards the additional compensation claimed by the Appellant. This Tribunal permitted the SRA to file an additional affidavit, bringing 'without prejudice' Suraksha offer on record. The Appellant was also granted time to respond to the additional affidavit. The SRA, i.e. Suraksha Realty Limited filed an additional affidavit dated 18.04.2024 bringing on record 'without prejudice' Suraksha offer dated 18.04.2024, offering to make payment. The Appellant filed a reply affidavit dated 29.04.2024, responding to 'without prejudice' offer made by Suraksha. The Appellant in the reply affidavit stated that offer of the SRA of Rs.1216 crores towards due of additional compensation is not offer for payment of 100% additional compensation claim. It is submitted that in the claim, the SRA has reduced the amount by Rs.473 crores, without any valid reason. It was further stated that the amount proposed to be paid within four years is not acceptable. In the reply filed by the Appellant, the Appellant has also made pleadings with regard to treatment of External Development Charges ("**EDC**"). A rejoinder was also filed to the reply filed by the Appellant by Implementation and Monitoring Committee dated 01.05.2024. An additional affidavit on behalf of the Appellant was also filed on 04.05.2024,

bringing on record certain discrepancies in the Appellant's computation, which was earlier reflected in the reply affidavit.

8. We have heard learned Counsel for the parties on additional affidavit and the reply affidavits on 06.05.2024, on which date the judgment was reserved.

9. Before we proceed to notice respective submissions of learned Counsel for the parties, it is relevant to notice certain special facts regarding CIRP of the Corporate Debtor – Jaypee Infratech Limited. As noted above, the YEIDA vide Concession Agreement had granted rights to Corporate Debtor to construct a six-lane 160 km long, super expressway with rights to collect toll on the Yamuna Expressway and to commercially exploit the land for development for 6,177 acres of land abutting the Yamuna Expressway. The Corporate Debtor who was substituted as concessionaire in the year 2008, proceeded to carry out the construction of commercial as well as development of land abutting the Yamuna Expressway.

10. A Status Report has been filed by the Implementation and Monitoring Committee (Respondent No.1 herein) in this Appeal, which indicates that Corporate Debtor has commenced several projects on land located for development. From the materials brought on record in the Status Report, it is clear that large number of projects have been undertaken by the Corporate Debtor and as on 08.07.2023, 32724 units have been sold in 27 projects. Physical possession was also given to certain unit holders in July

2023. Construction and details of work in progress in different towers have also been brought on record. It is further stated that with regard to certain project work has completely stalled. The Report indicates that there are large number of Homebuyers, running in more than 30,000, who are affected by the project. The CIRP commenced against the Corporate Debtor by order dated 07.08.2017, on an Application filed by IDBI Bank. There have been several rounds of litigation, which have already been noticed above. Resolution Plan approved on 03.03.2020, was set aside by the Hon'ble Supreme Court. In consequence thereof, fresh Resolution Plan was submitted in the year 2021, which has been approved on 07.03.2023, which approval has been challenged by Appellant and other stakeholders. It is relevant to notice that Income Tax Department, whose claim was also considered in Resolution Plan and only Rs.10 lakhs were allocated, has challenged the order dated 07.03.2023 by means of Company Appeal (AT) (Insolvency) No.549 of 2023, which Appeal has been dismissed by this Tribunal by its order dated 26.09.2023. Two more Appeal were filed, i.e., by Jaiprakash Associates Ltd. (Company Appeal (AT) (Insolvency) No. 548 of 2023) and Manoj Gaur, Promoter and Director (Company Appeal (AT) (Insolvency) No. 559 of 2023), challenging the order dated 07.03.2023, which Appeals were heard and also dismissed by this Tribunal by order dated 21.02.2024. In the present Appeal, several Intervention Applications have been filed by Homebuyers and Homebuyers' Association. Intervention Application has also been filed by Jaiprakash Associates Ltd. and Manoj

Gaur, Promoter/ Director. An Application for Intervention has also been filed on behalf of NARCL.

11. We have heard Shri N Venkataraman, learned ASG and Shri Gopal Jain, learned Senior Counsel appearing for the Appellant with Shri Amar Gupta; Shri Mukul Rohatgi, learned Senior Counsel and Shri Krishnendu Datta, learned Senior Counsel appearing for SRA; Shri Sumant Batra, learned Counsel appearing for Respondent No.1. We have also heard learned Counsel for the Intervenors including Shri Krishnan Venugopal, learned Senior Counsel appearing for Ex. Promoter; Shri S. Niranjan Reddy, learned Senior Counsel appearing for NARCL. We have also heard learned Counsel appearing for Homebuyers, who had filed Intervention Applications and sought intervention in the present Appeal.

12. Shri N. Venkataraman, learned ASG appearing for the Appellant, challenging the order contends that Adjudicating Authority has not passed the order dated 07.03.2023 in accordance with the observations and findings as returned by the Hon'ble Supreme Court in its judgment dated 24.03.2021 in ***Jaypee Kensington Boulevard Apartment Welfare Assocaition & Ors. vs. NBCC (India) Ltd.*** It is submitted that earlier Resolution Plan submitted by NBCC, which has extinguished the claim of the Appellant towards additional compensation and other claims had been disapproved by the Hon'ble Supreme Court. The Hon'ble Supreme Court in the above judgment has noted that the Concession Agreement entered with Concessionaire and YEIDA was in accordance with the provisions of UP Industrial Area Development Act, 1976, which contract could not have

been tinkered with, without the approval and consent of the YEIDA. It is submitted that the claim of the Appellant regarding additional compensation and EDC have been not dealt with in accordance with law. The Resolution Plan having earmarked only Rs.10 lakhs, each for the aforesaid claim. The learned ASG submits that the YEIDA is a Secured Creditor of the Corporate Debtor by Section 13 and 13A of the 1976 Act. The learned ASG placed reliance on the recent judgment of the Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority vs. Prabhjit Singh*** (supra) to support his submissions that the Appellant has to be treated as Secured Creditor. The treatment of the claim of the Appellant, ought to have been as Secured Creditor and admittedly the Appellant had been treated as only an Operational Creditor by allocating of Rs.10 lakhs each for the claims of additional farmers' compensation and EDC. The order approving such Resolution Plan deserves to be set aside. The treatment under Suraksha Resolution Plan of the Appellant's claim alter the Concession Agreement and violates the directions of Hon'ble Supreme Court in **Jaypee Kensington**. It is submitted that as per the Concession Agreement, Concessionaire was to bear entire cost of acquisition. The learned ASG has referred to Clauses 4.1(b), 4.1(d) and 4.3(c) of the Concession Agreement. It is submitted that the issue of liability of allottees to pay entire cost of acquisition is now settled by judgment of the Hon'ble Supreme Court in ***YEIDA vs. Shakuntla Education and Welfare Society & Ors. Etc.*** (supra) decided on 19.05.2022. The learned ASG further submits that in the judgment of the

Hon'ble Supreme Court in **Jaypee Kensington**, the Hon'ble Supreme Court has already held that the claim of additional farmers' compensation to the extent of 64.7% is payable by the Concessionaire. As per judgment of the Allahabad High Court in Gajraj case, as affirmed by the Hon'ble Supreme Court in **Savitri Devi's** case, entire payment of additional compensation as claimed by YEIDA in the CIRP, i.e., Rs.1689 crores has to be paid. Coming to the claim filed by the Appellant, toward the EDC, it is submitted that the claim was filed by Appellant towards the EDC of Rs.1197 crores, whereas the IRP has admitted the claim of EDC of Rs.409 crores. The learned ASG referring to his additional affidavit dated 04.05.2024 submits that in view of the pleadings brought by the parties on record, rectified amount of EDC as per Concession Agreement is now Rs.525.91 crores only. It is submitted that Suraksha has already undertaken to make payment of EDC for land parcel at Tappal and Agra, as when the external development work is carried out in Tappal and Agra, which payable claim shall be of Rs.572.89 crores. The learned ASG submits that the claim filed by the Appellant towards the EDC is also a secured claim, since the claim of EDC arises out of Concession Agreement between the parties and by virtue of Section 13 of the 1976 Act, this claim is also a secured claim. The learned ASG during the submissions has reiterated the submissions of the Appellant, which was also recorded by the Hon'ble Supreme Court in **Jaypee Kensington**'s judgment that YEIDA ""*does not stand to oppose the resolution plan only for the sake of opposition; rather it would like the plan to succeed but, it has a public duty to ensure that the framework under CA is preserved*". The

learned Senior Counsel for the Appellant submits that Appellant in this Appeal is only concerned with regard to treatment of its claim in the Plan and the Appeal has been filed only qua the treatment of the Appellant towards its claim. Shri Venkataraman further submits that additional compensation payable to the farmers against the acquisition of land is their constitutional right guaranteed under Article 300A of the Constitution of India and the said right, cannot be taken away by any means.

13. The Payment of just and fair compensation is a constitutional requirement and cannot be extinguished by way of a Resolution Plan. Shri Venkataraman further submits that the proposal dated 18.04.2024 submitted by Suraksha does not deal with EDC claim. The Judgment of Hon'ble Supreme Court in ***NOIDA vs. Anand Sonbhadra in Civil Appeal No.2222 of 2021*** relied by the Adjudicating Authority for holding that the Appellant is only an Operational Creditor is not relevant for the present case. The principle of law enunciated by the Hon'ble Supreme Court in **Jaypee Kensington** are not confined to NBCC Plan. The law laid down by the Hon'ble Supreme Court are required to be complied and the Adjudicating Authority is statutorily obliged to check the compliances under Section 30, sub-section (2)(e) of the Code. The claim of EDC, which arises out of Concession Agreement, is also a secured charge cover under Section 13 and 13A of the 1976 Act. The terms of Concession Agreement are unalterable without YEIDA's approval. The consent of YEIDA was necessary for transfer of land to SRA/ Assenting Financial Creditor. Shri Venkataraman also relied on Regulation 37, sub-section (1) of CIRP

Regulations, 2016. It is further submitted that extinguishment of existing liability qua YEIDA is not a relief that could be given to the Resolution Applicant.

14. The Learned Senior Counsel appearing for Suraksha Reality Limited refuting the submission of learned Senior Counsel for the Appellant submits that proposal dated 18.04.2024 submitted by Suraksha is a proposal to end the litigation and pave a way for implementation of Resolution Plan, which implementation is for protection of the rights of more than 20,000 Homebuyers waiting for their houses for last several years. It is submitted that by 'without prejudice' offer dated 18.04.2024, the SRA has offered 100% payment payable towards additional farmers' compensation. It is submitted that the Appellant has claimed additional farmers' compensation to the extend of Rs.1689 crores, in which claim, the additional farmers' compensation of Rs.330 crores pertaining to land parcel of 1537 acres already subleased by the Corporate Debtor to third parties before CIRP commencement date, cannot be included. It is submitted that Information Memorandum itself noted the fact of sub-lease of land parcel of 1537 acres. It is further submitted that amount of additional farmers' compensation of Rs.143 crores pertaining to land in Noida where projects of Homebuyers are situated also need to be deducted, since additional farmers' compensation regarding the said land has already been paid by Noida Authority. The Appellant cannot seek reimbursement on behalf of Noida Authority. It is submitted that deducting the amount of Rs.330 crores and Rs.143 crores as noted above, additional farmers' claim made

by the Appellant, comes to only Rs.1216 crores, which has been 100% offer made by the Suraksha to the Appellant in 'without prejudice' proposal. It is submitted that payment of Rs.1216 crores in a period of four years is also payment in priority to Financial Creditors. The payment to Operational Creditor is in priority does not mean upfront payment of the entire amount. It is submitted that insofar as recovery of additional farmers' compensation from sub-lessees, Suraksha shall extend all cooperation to YEIDA. It has been submitted that offer has been made in line of larger object of the Code, i.e. insolvency resolution, balancing interest of the stakeholders, which shall also subserve the claim of farmers as well as Homebuyers. It is submitted that even otherwise, the amount offered by the Suraksha comes to 89% payment to the Appellant as compared to Institutional Financial Creditors. It is submitted that claims towards EDC of land parcel located at Tappal and Agra cannot be included in the EDC claims. It is submitted that EDC claim is not a secured claim and the liquidation value of the Appellant being Nil, as per the provisions of Section 30, sub-section (2), the Appellant is not entitled to any payment for EDC claim. It is submitted that no consent of YEIDA is required for transfer of lease hold rights to the SRA and Assenting Financial Creditors. It is submitted that reliance on paragraph 107 of **Jaypee Kensington** judgment by YEIDA is misplaced. It is submitted that the observation of the Hon'ble Supreme Court in the **Jaypee Kensington** judgment is limited to the specific treatment, which was proposed by NBCC with regard to the transfer of Expressway and land parcels into different SPVs. Such

treatment of NBCC required consent of YEIDA as per Clause 18.1 of the Concession Agreement. The NBCC had proposed the same treatment without requiring the YEIDA's consent, therefore, the said Plan of the part of disapproved. The present is not a case where any transfer of land as per Clause 18.1 is contemplated. The argument with respect to Windfall gain to Suraksha is incorrect. It is submitted that construction work of more than Rs.6,000 crores is to be executed to deliver 20,000 homes to Homebuyers, wherein there is a significant increase in construction costs since submission of Plan in 2021. Resolution of insolvency, is resolution for more than one lakh people and 20,000 Homebuyers families, 5,000 public depositors families and 10,000 farmers families, 9 Public Sector Banks and State Government.

15. Learned Counsel appearing for Implementation & Monitoring Committee (Respondent No.1) submits that YEIDA claims has to be decided within the discipline of the Code. The submission of YEIDA that Concession Agreement dated 07.02.2003 are from a project of public importance under the UP Industrial Area Development Act, 1976, and thus should be treated outside of Code, is misplaced and contrary to law. All dues of all the creditors of the Corporate Debtor, including the Appellant have to be dealt with in accordance with the provisions of the Code. All creditors are required to submit their claims and the Appellant in the present case already submitted its claim in Form-B, accepting the proceedings before the Adjudicating Authority in the CIRP of the Corporate Debtor. YEIDA cannot claim that its consent is required for payment

towards its dues, since the payment of dues to the creditors have to be dealt with in accordance with the Code and no creditor can say that without its consent no payment can be proposed to it. It is submitted that IRP has not admitted the claim of additional farmers' compensation and no challenge was made by the Appellant to non-admission of the claim. It is submitted that IRP has verified and admitted the claim to the extent of Rs.461 crores only, which decision was communicated by detailed letter dated 28.11.2017, which also provided a comprehensive explanation for admission and non-admission of various amounts. The claim submitted by YEIDA fell into three broad categories – Firstly, the IRP admitted only Rs.51.4 crore towards amount for pending works, which work was completed by JIL during CIRP, which is not disputed by YEIDA. Secondly, the claim of Rs.1689 crores for additional farmer compensation, which was not admitted, since the matter was sub-judice. Award passed in favour of JIL by Arbitral Tribunal was under challenge and the judgment of Hon'ble Supreme Court in **Shakuntala Devi**'s case had not come by that time. Thirdly, with regard to claim of EDC, the IRP admitted only Rs.409.6 crores. In view of the reply dated 02.05.2024 to SRA's additional affidavit dated 18.04.2024 and the YEIDA additional affidavit dated 04.05.2024, it is now admitted that EDC claim with regard to land in Tappal and Agra were not due as no external development had been done by the YEIDA in these areas. Now it is admitted by the Appellant that the said dues can be recovered only after external development are done in future. In the additional affidavit filed by YEIDA dated 04.05.2024, it is now admitted fact that total

EDC liability as on date is Rs.572.89 crores. It is submitted that EDC claim is not a secured claim. It is submitted that operational debt is to be paid in priority, but not upfront.

16. In this Appeal several Intervention Applications have been filed and we have also heard learned Counsel for the Intervenors. We may briefly notice the prayers made by Intervenors in their Applications.

17. **IA No.2823 of 2024** has been filed on behalf of National Asset Reconstruction Company Limited ("NARCL")acting in its capacity as the Trustee of NARCL. Vide assignment deed dated 20.01.2023, the Lenders of the Corporate Debtor assigned their admitted financial debt aggregating to Rs.18,080 crores, representing 94.38% of the secured financial debt and 40.82% stake in the CoC to NARCL. Therefore, the NARCL is a majority Financial Creditor of the Corporate Debtor. It is submitted that YEIDA is an unsecured Operational Creditor. Without prejudice to aforesaid any purported charge under 13-A of the 1976 Act could be subservient to the charge of the Lenders. The SRA proposal regarding additional farmers' compensation over and above the amount to YEIDA should be accepted for timely resolution of the Corporate Debtor. It is submitted that no approval of the YEIDA is required for transfer of ownership to Assenting Financial Creditor. It is submitted that learned Counsel for the Suraksha has already made submission that additional payment, which has been offered by the Suraksha shall not affect any payout to the Financial Creditors. NARCL has prayed for intervention in the Appeal.

18. **IA No.2535 of 2024** has also been filed by NARCL, seeking impleadment of the Applicant as party. We have permitted the NARCL to intervene in the matter without allowing the Application for Intervention.

19. **IA No.1881 of 2024** has been filed by Jayprakash Associates Limited to be impleaded in the Appeal, who claims to be erstwhile Promoter of the majority of the shareholder in Corporate Debtor and Corporate Guarantor of the loans to JIL by secured Financial Creditors. The Applicant refers to judgment of this Tribunal dated 21.02.2024 in ***Jaiprakash Associates Ltd Vs. Jaypee Infratech Ltd. & Ors.*** in ***Company Appeal (AT) (Insolvency) Appeal No. 548 of 2023***, where the issue raised by the Applicant regarding challenge to the Resolution Plan insofar as YEIDA claims is concerned was not considered. Shri Krishnan Venugopal, learned Senior Counsel appearing for the Promoter advanced submissions in support of the Intervention Application.

20. **IA No.2660 of 2024** has been filed by Kuldeep Verma, Authorized Representative of Homebuyers of Jaypee Infratech Ltd., seeking intervention in the Appeal. It is submitted that JAL under the garb of Appeal and Applications filed by Promoter is hindering the implementation of the Resolution Plan, which is causing hardship to the Homebuyers and other stakeholders. JAL by filing Intervention Application in this Appeal, is again trying to delay the disposal. The construction of housing project is being carried out at a very low speed, while the appeals are pending, non-termination of related party agreements between the Corporate Debtor and JAL is adversely affecting the housing project. The JAL under the garb of

such related party contracts is taking undue advantage of the process. It is submitted that various submissions raised by JAL has already been dismissed by this Tribunal in the Appeal filed by JAL, hence, submission of JAL needs no consideration.

21. **IA No.2669 of 2024** has been filed by Neena Sahani seeking intervention in the Appeal. It was stated in the Application that Appeal filed by JAL having been dismissed, the Plan be immediately implemented. The Applicant in the Application has also given the details of various sequence of events and litigation, which we have already noticed above.

22. **IA No.3703 of 2023** has been filed by Tajender Khanna praying for intervention. The Intervenor refers to Development Agreement dated 01.05.2009, entered with Corporate Debtor and JAL. It is submitted that 20,000 Homebuyers have booked their homes till 2011 with an assurance that they will get their houses within 3-4 years as per the terms of allotment letter. However, default being committed in repayment of loan. The Reserve Bank of India declared the Corporate Debtor among 12 NPAs and recommended that IBC proceedings be initiated against the Corporate Debtor. The Applicant also seeks immediate implementation of the Plan.

23. **IA No.3017 of 2023** has been filed by JIL Real Estate Allottees Welfare Society through its President Shri Ashish Mohan Gupta seeking intervention. The Applicant seeks direction to expedite the construction and delivery of homes to sufferer Homebuyers and to provide security to Suraksha for infusion of funds for the projects and deployment of 12000

labourers as envisaged in the Resolution Plan. Suraksha may be directed to continue the construction as there is no stay in implementation of the Plan.

24. An **IA No.2650 of 2024** has been filed by Jaypee Infratech Ltd., through its Implementation & Monitoring Committee praying for following directions:

> "(a) Allow the instant Application;
>
> (b) Direct the erstwhile promoter Jaiprakash Associates Ltd. to handover physical possession of the Project sites i.e., Garden Isles, Krescent Homes, Kasa Isles, Orchard, Kube, Pebble Court, Wish Point, 15 stalled towers in two on-going Project sites i.e., Kensington Boulevard Apartments and Kosmos, to IMC, without any obstruction so as to enable IMC to take necessary future steps of award of tenders for construction in Stalled Projects;
>
> (c) Direct Jaiprakash Associates Ltd. to provide the relevant information and details as sought for in para 30 of the instant Application and cooperate further for any relevant information to revive the stalled projects and towers.
>
> (d) Pass any other order or directions as may be deemed fit and proper."

25. Shri Sumant Batra, learned Counsel appearing for Applicant submits that tenders have been taken out by IMC for award of 97 towers, where work is stalled and JAL is not allowing access to these towers, nor providing information or allowing IMC to replace the security agency with that of IMC.

26. Submissions have also been made on behalf of Jaypee Kensington Boulevard Apartments Welfare Association and Ors, who also sought

intervention in the Appeal. It was submitted that Intervenor – Homebuyers are directly affected and they are a collective five Associations consisting of 5000 individual Homebuyers, who have invested their life savings in the projects floated by the Corporate Debtor. Intervenors – Homebuyers consist of 60% of the CoC, who have voted in favour of the Resolution Plan, which was approved by 98.66% majority. Since passing of Resolution Plan various litigations are going on, which is delaying the implementation of the Plan. The construction activities on approximately 97 towers have remained pending since 2010. JAL is creating obstruction in the implementation of the Plan. It is submitted that this Tribunal may pass order protecting the interest of the Intervenors/ Homebuyers.

27. We have considered the submissions of learned Counsel for the parties and have perused the records.

28. From the submissions of learned Counsel for the parties and materials on record, following issues arises for consideration in this Appeal:

(1) Whether YEIDA is Secured Creditor of the Corporate Debtor?

(2) Whether, in event the YEIDA is held to be Secured Creditor, the treatment of claim of YEIDA in the Resolution Plan and in the order of Adjudicating Authority is sustainable?

(3) Whether the claim submitted by YEIDA in CIRP of the Corporate Debtor of Rs.1689 crores needed to be considered in CIRP and IRP erred in disregarding the claim on the ground of pending litigation?

(4) Whether entire claim of Rs.1689 crores submitted by YEIDA towards additional farmers' compensation need consideration or in the above amount deduction of Rs.330 crores pertaining to land parcels of 1537 acres already sub-leased by Corporate Debtor to third parties and Rs.143 crores, pertaining to 744.6 acres land arranged from NOIDA, where farmers compensation already paid to farmers need to be done?

(5) Whether without prejudice offer dated 18.04.2024 of SRA proposing 100% payment of additional compensation to YEIDA is actually 100% payment towards additional farmers compensation?

(6) What is the amount of claim towards EDC in view of the pleadings of the parties before Adjudicating Authority and in this Appeal?

(7) Whether claim towards EDC is also a secured claim under 1976 Act and needs to be dealt in the Resolution Plan as secured claim?

(8) Whether for treatment of claims filed by YEIDA in CIRP of Corporate Debtor, consent of YEIDA is required for proposing a payment to YEIDA in the Resolution Plan?

(9) Whether for transfer of leasehold rights of Corporate Debtor to the SRA and Assenting Financial Creditor, in the Resolution Plan, consent of YEIDA is necessary?

(10) What relief the Appellant is entitled in this Appeal?

29. Before we proceed to consider the questions as framed above, we need to notice details of the claim filed by the Appellant in CIRP of the Corporate Debtor, treatment of said claim in the Resolution Plan submitted by Suraksha and certain findings of the Adjudicating Authority while considering the approval of the Resolution Plan. In pursuance of publication made by the IRP, Appellant- YEIDA filed its claim in Form-B on 23.08.2017 and 28.11.2017 with the IRP. The summary of the claims filed by YEIDA and the amount admitted by the IRP as well as the treatment in the Resolution Plan have been noticed by the Adjudicating Authority in paragraph 54 of the judgment, which is as follows:-

> "54. It is further submitted by YEIDA that it had filed its claims arising on account of different reasons in Form B on 23.08.2017 and 28.11.2017 with the IRP. The summary of the claims filed by YEIDA and their treatment in the Resolution Plan is reproduced below:

S. No.	***Claim***	***Amount Claimed (INR Crores)***	***Amount Admitted (INR Crores)***	***Treatment in Suraksha's Plan (INR Crores)***
1.	*Claim towards Pending Works*	*98.1*	*51.4*	*0.10*
2.	*Claim toward External Development Charges (EDC) including interest*	*624.6*	*409.6*	
3.	*Claim for works to be taken up in future*	*2024*	*-*	*Nil*
Claims under Arbitration				
4.	*64.7% Additional Compensation payable to Farmers*	*1689.0*	*-*	*0.10*
Claims not admitted				
5.	*EDC for land parcels at Tappal and Agra (undeveloped land)*	*572.9*	*-*	*Nil*
6.	*Miscellaneous works*	*340*	*-*	*Nil*

7.	*Capital Cost of Noida-Greater Noida Expressway**	*750*	*-*	*Nil*
8.	*Lease Rent*	*2.607*	*-*	*Nil*
9.	*Consultancy Fees*	*10.42*	*-*	*Nil*
	Total	***6,111.591***	***461***	***0.20***

The YEIDA has mainly raised objections to the treatment meted out in the Resolution Plan to its claims pertaining to:

i. Pending works and External Development Charges (EDCs) including interest

ii. Unexecuted External Development Works and Other future Works; and

iii. 64.7% Additional Compensation Payable to farmers."

30. The above table indicate that 64.7% additional compensation payable to farmers was claimed as Rs.1,689 Crores. The IRP has sent the reply after receiving the claim from the Appellant. IRP vide letter dated 28.11.2017 sent a communication to the Appellant where with regard to Rs.1,689 Crores it was mentioned that the claim is under arbitration. Claim of Rs.1,689 Crores was not admitted and in the column of amount as verified word 'NA' was mentioned. EDC claim was admitted for Rs.409.6 Crores. One other claim was admitted by the IRP was claim towards pending work i.e. Rs.51.4 Crores. Adjudicating Authority in paragraph 54, as noted above, has noticed that the Appellant has raised objections to the treatment meted out in the Resolution Plan pertaining to (i) pending works and External Development Charges including interest; (ii) un-executed External Development Works and other future works and (iii) 64.7% additional compensation payable to farmers. Appellant has raised objection regarding treatment of its claim when earlier plan was submitted by NBCC which plan

was approved by the Adjudicating Authority on 03.03.2020 which was made subject matter of challenge before the Hon'ble Supreme Court and the Hon'ble Supreme Court has set aside the plan approval by its order in ***"Jaypee Kensington v. NBCC (India) Ltd.- Civil Appeal No. 3395 of 2020"***. When the Resolution Plan was submitted by Suraksha and was approved by the CoC, Appellant filed IA No.3306 of 2021 objecting to the Resolution Plan submitted by Suraksha. The application/objection filed by the Appellant raised various grounds to object its treatment in the Resolution Plan. It is useful to notice that the Appellant in its IA No.3306 of 2021 in paragraph 8 of the objection has reiterated its case that it does not stand to oppose the Resolution Plan rather it would like the plan to succeed but, it has a public duty to ensure that the framework under CA is preserved. It is useful to extract paragraph 8 of the application filed by the Appellant, which is as follows:-

> "8. YEIDA submits that it has been and continues to be in favour of rehabilitation of the Yamuna Expressway Project. YEIDA is however bound by its public duties and must act in public interest. Throughout the proceedings in respect of JIL's CIRP, YEIDA has maintained that it supports the resolution of the Corporate Debtor JIL and would like to it succeed. However, it has duty to ensure public interest and the preservation of the CA. Hon'ble Supreme Court has acknowledged YEIDA's stand as follows:
>
> > *"Before concluding on this point for determination where we have accepted the major parts of the objections of YEIDA, we may, in fairness to all the parties concerned, reiterate that* ***despite stating its objections, YEIDA has consistently maintained before the NCLT as also before this Court that it does not stand to oppose the resolution plan only for the sake of opposition;***

rather it would like the plan to succeed but, it has a public duty to ensure that the framework under CA is preserved and else it would be ready to do everything within its power to ensure that the plan is a success.

(Emphasis added)

With that context, YEIDA submits that its objections to Suraksha's resolution plan, as set out below, are not intended to disrupt or stall the plan but are solely and exclusively for the reason that Suraksha has disregarded the observations and findings of the Hon'ble Supreme Court."

31. The Adjudicating Authority in the impugned order from paragraphs 51 to 92 has noted the objection by the YEIDA filed vide IA No.3306 of 2021. It is useful to notice that the Adjudicating Authority has made observation that since Suraksha is willing to execute and bear all costs pertaining to future works as per the terms and conditions of the Concession Agreement, the issue with regard to cost pertaining to un-executed work and other future works require no adjudication. In paragraph 62 of the judgment, following has been observed:-

"62. Before, we proceed to adjudicate upon the objections of YEIDA, we observe from the SRA/Suraksha's reply that it is willing to execute and bear all costs pertaining to "Future works" as per the terms of the Concession Agreement. The contents of the relevant reply, reads thus:

"c. The Resolution Applicant is ready and willing to execute all the future works as and when required, as per the terms and conditions of the Concession Agreement. With regard to work from which external development charges arise, it is submitted that the same is to be decided and done in future, therefore Resolution Applicant is not liable to pay the same as on today

and will deal with the same in future as per terms of the Concession Agreement.

d. As the Resolution Applicant is willing to execute the future work, as and when required, and bear all the costs under the terms and condition of the Concession Agreement, no amount is due and payable to YEIDA at present."

Hence, in view of the above referred willingness/undertaking of the SRA, the dispute with regard to "Costs pertaining to unexecuted External Development works and other future works." requires no adjudication."

32. The Adjudicating Authority in its impugned order has noticed the judgment of *Jaypee Kensington* (supra) and has extracted paragraphs 103, 104, 104.1, 104.2, 104.3, 104.4 and 104.5 and made following observations in paragraphs 67 and 68:-

"67. On perusal of the above paragraphs, it is observed that the Hon'ble Supreme Court has, inter alia, observed in Para 103 (ibid) that any tinkering with the contract in question, that is, the Concession Agreement, could not have been carried out without the approval and consent of the authority concerned, that is, YEIDA, while referring to the provisions of Regulation 37 of IBBI (CIRP) Regulations 2016.

68. On conjoint reading of para 103 with para 104, we notice that the abovesaid observations, however, were made in the context of the facts elaborated in para 104 in context of the provision in the NBCC's Resolution Plan regarding creation of SPVs, splitting up of rights available to the Concessionaire vis-a-vis the Expressway and the land for commercial development, in each case without specific approval of YEIDA. Therefore, in Para 104.4 the Hon'ble Apex Court again observed that "all the terms of the Concession Agreement cannot be forsaken. Any alteration in the essentials of the Concession Agreement would require the consent of YEIDA"."

33. The Adjudicating Authority further took the view that YEIDA being the Operational Creditor and is not part of the CoC, it has no right to negotiate with the SRA, that if its claim is not fully discharged, it shall object to the Resolution Plan. In paragraphs 72 and 73, following observations have been observed:-

> "72. It is a matter of fact that YEIDA, though an "Authority", being an "Operational Creditor" is not the part of the CoC of the Corporate Debtor, which alone is empowered under law to consider and approve or reject a Resolution Plan on commercial terms. However, under the provisions contained in Regulation 37(1) of IBBI (CIRP) Regulations, 2016, approval of YEIDA is still required as an Authority, if any of the proposals in the Resolution Plan seeks to alter the term of the Concession Agreement. However, this does not give any right to the Authority (i.e., YEIDA) to negotiate with the Successful Resolution Applicant, that if its claim is not fully discharged, it shall object to the Resolution plan. In our considered view, what YEIDA cannot get directly as an "Operational Creditor", it cannot get it indirectly under the attire of being an "Authority".
>
> 73. In the instant case, if we ignore the reliefs and concessions sought in the Resolution Plan for a moment, then in our view, we find no such provision in the Suraksha's Resolution Plan, which is in violation of the terms of the Concession Agreement (CA) under reference. Further, the proposal regarding extinguishment of claim of YEIDA in the Resolution Plan, because of it being the Operational Creditor, does not amount to violation of the Concession Agreement by the Successful Resolution Applicant, as the same is being effected due to operation of law."

34. After making the above observations, Adjudicating Authority came to the conclusion that provision of Rs.10 Lakhs towards the operational claim

relating to External Development Charges is not illegal. In paragraph 74 with regard to External Development Charges, following has been observed:-

> "74. Hence, we find no illegality in the Resolution Plan, so far as it relates to provision of Rs. 10 Lakhs towards the operational claim relating to External Development Charges (EDC) of YEIDA."

35. The Adjudicating Authority also proceeded to consider the claim of the Appellant regarding additional amount of compensation to the farmers. Paragraphs 105 to 107 of the judgment of *Jaypee Kensington (supra)* was extracted by the Adjudicating Authority. In paragraph 77 of the judgment, Adjudicating Authority observed:-

> "77. From the aforesaid paragraphs of the Jaypee Kensington, it is noticed that the Hon'ble Supreme Court has specifically observed in Para 106 that the contingency towards additional amount of compensation was required to be provided in the Resolution Plan in case liability would be ultimately fastened on the corporate debtor/JIL."

36. Adjudicating Authority relied on the judgment of the Hon'ble Supreme Court in ***"New Okhla Industrial Development Authority Versus Anand Sonbhadra- (2023) 1 SCC 724"*** and noticing the said judgment came to the opinion that the liquidation value owed to the Operational Creditor (Appellant) in the proposed Resolution Plan being 'nil', there is no illegality in providing for Rs.10 Lacs for the contingency towards the additional farmers compensation. In paragraphs 79 and 80 of the impugned judgment, following have been observed:-

"79. We find credence in the submissions made by the Ld. Senior Counsel appearing for the SRA that the dues of YEIDA even if found payable, are at the most, in the nature of an Operational Debt. We are aware that the Hon'ble Supreme Court in the matter of New Okhla Industrial Development Authority Versus Anand Sonbhadra in Civil Appeal No. 2222 of 2021, in the context of NOIDA Authority, (which is similar in status as YEIDA) has held vide its Judgement dated 17.05.2022 that NOIDA Authority is an Operational Creditor. The relevant extracts of the Judgement are reproduced below:

> *"144. The appellant would, in fact, point out that it is not necessary to probe the matter further, in view of the concurrent findings that the appellant is an operational creditor. No doubt, Smt. Madhavi Divan does point out that the words 'arising under any law', may not be the same as amounts being made recoverable under a law. Of course, she would point out that as far as the rental part of the claim, it may be relatable to the first limb of an operational debt. When questioned further, as to what her position is, if this Court found that the appellant is not a financial creditor, the appellant may be entitled, at least, to be treated as an operational creditor. We would think that, having regard to the fact that both the NCLT and NCLAT have proceeded on the basis that the appellant is an operational creditor, we need not stretch the exploration further and pronounce on the questions, which may otherwise arise. We must not be oblivious to the following prospect, should we find that the appellant is not an operational creditor, even under the IBC Regulations apart from claims by financial creditors and operational creditors, claims can be made by other creditors. However, there are, undoubtedly, certain advantages, which an creditor enjoys over the other creditors. We would proceed on the basis that, while the appellant is not a financial creditor, it would constitute an operational creditor."*
>
> *(Emphasis Supplied)*

> 80. Further, we are conscious of the fact that under the provisions of IBC 2016, NCLT has no 'equity jurisdiction'. It can neither interfere with the commercial wisdom of CoC nor it can go beyond the provisions of the Code. Since YEIDA itself had filed its claim as an "Operational Creditor" and the Liquidation value owed to the Operational Creditors in the proposed Resolution Plan is 'Nil', and the SRA/Suraksha has still provided an amount of Rs. 10 Lakh for this contingency in its Resolution Plan, we find no illegality committed by the SRA/Suraksha by treating the claim of YEIDA as an Operational Debt and making a provision towards its payment in accordance with the provisions of IBC, 2016."

37. We having noticed the above, now we proceed to consider the questions framed in the appeal as above.

Question Nos. (1), (2) and (3)

38. The above questions being inter-related are being considered together. We may first notice the claim of the appellant of Rs.1,689 Crores filed in the CIRP of the Corporate Debtor towards additional farmers compensation. The claim although was filed before the IRP but IRP has not admitted the aforesaid claim on the ground that the claim is under arbitration. We have noted above that on the basis of judgment delivered by the Allahabad High Court in ***"Gajraj & Ors. vs. State of UP & Ors.- (2011) 11 ADJ 1"*** where compensation for the land acquired by Noida and Greater Noida was increased to 64.7%. The farmers whose land was acquired by the appellant- YEIDA also started agitation claiming increased in the additional compensation. To quell the farmers' demand and agitation, State Government appointed a Committee namely "Chaudhary

Committee" which submitted a report recommending payment of additional compensation to the farmers of YEIDA also. The Government of UP issued a Government order on 29.08.2014 communicating a policy decision for payment of additional compensation as "no litigation incentive" to farmers who withdraw their writ petition. Government order dated 29.08.2014 was implemented by the resolution passed by YEIDA dated 15.09.2014. In pursuance of the Government Order and resolution, YEIDA raised demand on its allottee including the Corporate Debtor for payment of additional compensation. YEIDA demand on account of additional compensation was challenged by the concessionaire (corporate debtor in arbitration) which resulted in arbitral award dated 02.11.2019 in favour of the corporate debtor. Appellant filed an Arbitration Case No.03/2020 before the Commercial Court, Gautam Budh Nagar challenging the arbitral award. The Government Order dated 29.08.2014 claim to be challenged before the Allahabad High Court by means of writ petition. One of the writ petition was also filed by the corporate debtor.

39. The judgment of the Allahabad High Court in quashing the Government order dated 29.08.2014 has been set aside by the Hon'ble Supreme Court in appeal filed by the Appellant i.e. "***Yamuna Expressway Industrial Development Authority etc. vs. Shakuntla Education and Welfare Society and Others- 2022 SCC OnLine SC 655***". The Hon'ble Supreme Court in *Shakuntla's* judgment in paragraph 50 held as follows:-

> "50. It could thus be seen that the recommendations of the Chaudhary Committee were principally intended to resolve the

issue between the farmers and the allottees, and to find out a workable solution to the problem. The Chaudhary Committee recommended similar treatment to be given to the farmers whose lands were acquired for YEIDA, as was given to the farmers whose lands were acquired for the benefit of NOIDA and Greater NOIDA. The Chaudhary Committee found that the same benefits as were given to the farmers whose lands were acquired for the benefit of NOIDA and Greater NOIDA in view of the judgment of the High Court in the case of Gajraj (supra), as affirmed by this Court in the case of Savitri Devi (supra) should also be given to the farmers whose lands were acquired for the benefit of YEIDA. However, this was made conditional. Additional benefit was granted to the landowners on the condition that they would handover the physical possession of land to YEIDA and withdraw the writ petitions/cases filed by them pending before the High Court."

40. The Hon'ble Supreme Court in Shakuntla's Judgment in paragraphs 66, 70 and 71, following was held:-

"66. We further find that the respondents have indulged into the conduct of approbate and reprobate. They have changed their stance as per their convenience. When their projects were stalled on account of the farmers' agitation, it is they who approached the State Authorities for finding out a solution. When the State Government responded to their representations and came up with a policy which was equitable and in the interest of both, the farmers and the allottees and when the said policy paved the way for development, when called upon to pay the additional compensation, the respondents-allottees somersaulted and challenged the very same policy before the High Court, which benefitted them. We have already hereinabove made reference to the various communications made by the allottees of the land for intervention of the State Government.

xxx xxx xxx

70. In conclusion, we are of the considered view that the policy decision of the State Government as reflected in the said G.O. dated 29th August, 2014 and the Resolution of the Board of YEIDA dated 15th September, 2014 were in the larger public interest, taking care of the concerns of the allottees as well as the farmers. As already discussed hereinabove, had the said decision not been taken, there was a hanging sword of the acquisition being declared unlawful. The development of the entire project was stalled on account of farmers' agitation. Before taking the policy decision, the State Government, through the Chaudhary Committee, had done a wide range of deliberations with all the stakeholders including the allottees, farmers and YEIDA. The policy decision was taken after taking into consideration all relevant factors and was guided by reasons. In any case, it is a settled position of law that in case of a conflict between public interest and personal interest, public interest will outweigh the personal interest. The High Court was therefore not justified in holding that the policy decision of the State was unfair, unreasonable and arbitrary. We are of the considered view that the High Court has erred in allowing the writ petitions. The present appeals, therefore, deserve to be allowed.

71. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The impugned judgment and order dated 28th May, 2020, passed by the Allahabad High Court in Writ Petition No. 28968 of 2018 and companion matters is quashed and set aside;

(iii) The writ petitions filed by the respondents covered by the impugned judgment and order dated 28th May, 2020 passed by the Allahabad High Court are dismissed;"

41. The judgment of the Hon'ble Supreme Court in Shakuntla's case delivered on 19.05.2022 made it clear that the farmers whose land was acquired by the appellant are entitled for additional compensation of 64.7%

which compensation has to be recovered from the lessee/allottees of the land and in consequence of the said Government Order, demands were issued to the allottees including the Corporate Debtor for payment. As noted above, IRP did not accept the claim on the ground that it is under arbitration. In view of the judgment of the Hon'ble Supreme Court in Shakuntla's case, the issue has been finally determined by the Hon'ble Supreme Court which law is binding on all concerned. We, thus, are of the view that the appellant's claim filed in the CIRP of the corporate debtor for additional farmers' compensation of Rs.1,689 Crores deserves consideration. As noted above, the appellant has been agitating their rights by filing objections to the resolution plan and with regard to resolution plan of Suraksha, IA No.3306 of 2021 was filed, as noted above, where claim for additional compensation of Rs.1,689 Crores towards farmers' compensation was agitated.

42. While noticing the fact of the present case, it has been noticed that after delivering of judgment of the Hon'ble Supreme Court in ***"Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Another- 2024 SCC OnLine SC 122"***, attention of learned counsel for the parties was invited to the aforesaid judgment by our order dated 19.02.2024 passed in the present appeal. We, thus, answer Question No.(3) in following manner:-

43. The claim submitted by YEIDA in CIRP of the corporate debtor of Rs.1,689 crores needed to be considered in the CIRP and IRP clearly erred in disregarding the claim on the ground of pending litigation.

44. Now, we come to the question as to whether YEIDA is Secured Creditor of the Corporate Debtor. The Uttar Pradesh Industrial Area Development Act, 1976 has been enacted to provide for the constitution of an authority for the development of certain areas in the State into industrial and urban township and for matters connected therewith. Under the aforesaid Act by notification issued under Section 3, the Appellant Authority was constituted (earlier name as Taj Expressway Industrial Development Area Authority). The functions of Authority as per Section 6 of the Act are to acquire land in the industrial development area, by agreement or proceedings under the Land Acquisition Act, 1894 for the purpose of development of the industrial development area. Section 6(2) enumerated the functions of the authority. One of the functions as contemplated by Section 6(2)(f) is as follows:-

> "**6. Functions of the Authority.-** (2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions:-
>
> xxx xxx xxx
>
> (f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial commercial or residential purposes and such other land uses as per master plan."

45. Section 7 empowers the Authority in respect of transfer of land. Section 7 of the Act is as follows:-

> "7. The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to the Authority in the industrial development area on such terms and

conditions as it may, subject to any rules that may be made under this Act, think fit to impose."

46. The authority in exercise of its functions under 1976 Act entered into a Concession Agreement with Jaiprakash Industries Ltd. dated 07.02.2003. Under the Concession Agreement, land for construction of expressway (160 km from Noida to Agra) as well as land for development was leased out to the concessionaire which came to be assigned in favour of the Corporate Debtor in the year 2008 as noted above. Two more sections of the 1976 Act need to be noticed. They are Section 13 and Section 13-A. Section 13-A was inserted by U.P. Act 10 of 2016, Section 13 and 13A are as follows:-

> ""**13.** Where any transferee makes any default in the payment of any consideration money or installment thereof or any other amount due on account of the transfer of any site or building by the Authority or any rent due to the Authority in respect of any lease, or where any transferee or "Occupier makes any default in payment of any amount of" in the payment of any fee or tax levied under this Act, the Chief Executive Officer may direct that in addition to the amount of arrears, a further sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.
>
> **13-A.** Any amount payable to the Authority under section 13 shall constitute a charge over the property and may be recovered as arrears of land revenue or by attachment and sale of property in the manner provided under sections 503, 504, 505, 506, 507, 508, 509, 510, 512, 513 and 514 of the Uttar Pradesh Municipal Corporations Act, 1959 (Act no. 2 of 1959) and such provisions of the said Act shall mutatis mutandis apply to the recovery of dues of an authority as they apply to the recovery of a tax due to a Municipal Corporation,

so however, that references in the aforesaid sections of the said Act to Municipal Commissioner', 'Corporation Officer' and 'Corporation' shall be construed as references to 'Chief Executive Officer' and 'Authority' respectively;

Provided that more than one modes of recovery shall not be commenced or continued simultaneously."

47. Counsel for the Appellant relied on Section 13 and Section 13-A to support his submission that Appellant is secured operational creditor of the corporate debtor since any amount payable to the authority under section 13 constitute a charge over property. Section 13 refers to any consideration of money instalment thereof. Any amount due on account of transfer of any site and building of the authority. Admittedly, by the Concession Agreement dated 07.02.2003 land as comprised in the lease deed was transferred on lease as per the Concession Agreement in favour of the concessionaire. Thus, the amount payable consequent to the transfer is fully covered by Section 13. We may also notice certain clauses of the Concession Agreement dated 07.02.2003 as per which concessionaire is liable to pay all acquisition cost for acquisition of land. In Chapter IV of the Concession Agreement, Clause 4.1 provides:-

"CHAPTER-TV

LAND

4.1. Land for construction of Expressway shall be provided by TEA to the Concessionaire, generally in a width of 100 meters along the alignment of the Expressway with additional land width, where required, for developing other facilities like Toll Plazas etc., on following terms & conditions."

48. Clause 4.1 (d) provides as follows:-

> "d. The sole premium of the transferred land shall be equivalent to the acquisition cost plus a lease rent of Rs. 100.00 (Rupees one hundred) only per hectare per year. The acquisition cost shall be the actual compensation paid to the land owners without any additional charge and shall be payable by the Concessionaire as per applicable rules. The lease rent shall be payable annually."

49. Clause 4.3 deals with land for development. Clause 4.3 provides that premium of the transferred land shall be equivalent to the acquisition cost plus a lease rent of Rs.100 per hectare per year. Thus, the acquisition cost is part of the premium of transferred land and acquisition cost has to be borne by the concessionaire as per the Concession Agreement. We, thus, are of the view that the amount of additional compensation towards 64.7% as allowed by the order issued by the State of Uttar Pradesh and have been affirmed by the Hon'ble Supreme Court in case of Shakuntla (supra), clearly makes the concessionaire i.e. corporate debtor liable to make the payment of additional cost and additional compensation cost which is required to be paid by concessionaire to the appellant. Hence, appellant is clearly a secured creditor with respect to additional compensation of Rs.1,689 Crores payable by the corporate debtor to the appellant.

50. We may also notice the judgment of the Hon'ble Supreme Court delivered on 12.02.2024 in ***"Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Another- 2024 SCC OnLine SC 122"*** as noted above. In the above case, land was acquired under 1976 Act

by the Greater Noida Authority which plot was allotted to the corporate debtor for 90 years lease. Corporate Debtor was put into insolvency during which insolvency proceeding claim was filed by the Greater Noida regarding unpaid instalment payable towards release of lease. Appellant filed its claim as financial creditor whereas Resolution Professional asked the Greater Noida Authority to file its claim in Form B. Greater Noida did not file its claim in Form B afresh. CoC has approved the Resolution Plan which was also approved by the Adjudicating Authority on 04.08.2020, questioning the approval, the Greater Noida Authority has filed an IA before the Adjudicating Authority questioning the Resolution Plan and the decision of the IRP to treat the Greater Noida as operational creditor. Another application was filed for recall of the order dated 04.08.2020. NCLT rejected the application filed by the Greater Noida against which an appeal was filed by the Greater Noida which came to be dismissed. The Hon'ble Supreme Court has occasion to consider the submission of the parties in the above context. Hon'ble Supreme Court in the said case noticed that the Resolution Plan did not specifically place the Greater Noida in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, charge was created on the assets of the corporate debtor. In paragraph 55 of the judgment, Hon'ble Supreme Court laid down following:-

> "55. In our view the resolution plan did not meet the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following reasons:

a. The resolution plan disclosed that the appellant did not submit its claim, when the unrebutted case of the appellant had been that it had submitted its claim with proof on 30.01.2020 for a sum of Rs. 43,40,31,951/- No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different Form. As already discussed above, in our view the Form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in acknowledging the claim made but also in mentioning the correct figure of the amount due and payable. According to the resolution plan, the amount outstanding was Rs. 13,47,40,819/- whereas, according to the appellant, the amount due and for which claim was made was Rs. 43,40,31,951/- This omission or error, as the case may be, in our view, materially affected the resolution plan as it was a vital information on which there ought to have been application of mind. Withholding the information adversely affected the interest of the appellant because, firstly, it affected its right of being served notice of the meeting of the COC, available under Section 24 (3) (c) of the IBC to an operational creditor with aggregate dues of not less than ten percent of the debt and, secondly, in the proposed plan, outlay for the appellant got reduced, being a percentage of the dues payable. In our view, for the reasons above, the resolution plan stood vitiated. However, neither NCLT nor NCLAT addressed itself on the aforesaid aspects which render their orders vulnerable and amenable to judicial review.

b. The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations 2016, a resolution plan

must provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per Explanation 1, distribution under clause (b) of sub -section (2) of Section 30 must be fair and equitable to each class of creditors. Non-placement of the appellant in the class of secured creditors did affect its interest. However, neither NCLT nor NCLAT noticed this anomaly in the plan, which vitiates their order.

c. Under Regulation 38 (3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that (a) it is feasible and viable; and (b) it has provisions for approvals required and the time-line for the same. In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the COC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects."

51. After making observations in paragraph 55, the Hon'ble Supreme Court set aside the plan and remitted the plan to the CoC for re-submission.

52. The above judgment of the Hon'ble Supreme Court has specifically noticed Section 13-A of the 1976 Act and has set aside that with regard to amount which was payable in the above case were charge within the meaning of 1976 Act. From the facts as noticed by the Hon'ble Supreme Court in the judgment, it is clear that in paragraph 5 of the judgment following has been noted:-

> "5. Pursuant to the public notice, in the month of January 2020, appellant submitted a claim of Rs. 43,40,31,951, being unpaid instalments payable towards premium for the lease. The claim was set up by the appellant as a financial creditor of the CD."

53. The above case clearly was a case where unpaid instalments were payable towards premium for the lease which amount was held to be secured charge. Similarly, in the present case, additional farmers' compensation payable to the farmers is part of the acquisition cost which as per the provision of the Concession Agreement, as noted above, is required to be paid by the concessionaire. We, thus, are of the clear opinion that amount of additional compensation payable to the farmers towards additional cost of 64.7% for compensation is secured charge.

54. Question No.(1) is answered as follows:-

YEIDA is secured creditor of the corporate debtor with respect to claim of Rs.1,689 Crores towards additional farmers' compensation claim.

55. Now we come to Question No.(2). Adjudicating Authority in the impugned order has considered the objection of the YEIDA regarding claim

of additional compensation and the Adjudicating Authority held that the Appellant is operational creditor and is not entitled to anything more than the liquidation value of the operational creditor. We have already noticed paragraphs 79 and 80 of the judgment of the Adjudicating Authority where Adjudicating Authority has held that YEIDA itself had filed its claim as operational creditor and liquidation value owed to the operational creditor in the proposed Resolution Plan as 'nil' and SRA- Suraksha has still provided an amount of Rs.10 lakhs for contingency in the plan, hence, there is no illegality committed by the SRA. Adjudicating Authority has relied on the judgment of ***"New Okhla Industrial Development Authority Versus Anand Sonbhadra- (2023) 1 SCC 724"***. The judgment of the Hon'ble Supreme Court in ***"New Okhla Industrial Development Authority Versus Anand Sonbhadra- (2023) 1 SCC 724"*** was delivered in a case where Noida has filed its claim as a financial creditor of the corporate debtor. In the above case also, lease was granted by Noida. Claim was filed by NOIDA initially in Form B and subsequently in Form C claiming as financial creditor. Adjudicating Authority held that there is no financial lease in terms of the Indian Accounting Standard and there was no financial debt challenging the said decision, the Appeal was filed by the Noida. In the above context, the Hon'ble Supreme Court held that Noida was an operational creditor. It was held that lease, in question, did not fall under Section 5(8)(f). In paragraph 222, following was held by the Hon'ble Supreme Court:-

> "**222.** We would think that, having regard to the fact that both NCLT and Nclat have proceeded on the basis that the appellant is an operational creditor, we need not stretch the exploration further and pronounce on the questions, which may otherwise arise. We must not be oblivious to the following prospect, should we find that the appellant is not an operational creditor, even under the IBC Regulations apart from claims by financial creditors and operational creditors, claims can be made by other creditors. However, there are, undoubtedly, certain advantages, which an operational creditor enjoys over the other creditors. We would proceed on the basis that, while the appellant is not a financial creditor, it would constitute an operational creditor."

56. The above judgment was not a case where question of security interest by an operational creditor came for consideration. Present is a case where the appellant is claiming secured creditor of the corporate debtor in reference to additional farmers' compensation. We, thus, are of the view that the judgment of the ***"New Okhla Industrial Development Authority Versus Anand Sonbhadra"*** (supra) is not applicable in the facts of the present case. Adjudicating Authority failed to notice the provision of Section 13 and 13-A and considered of the claim of the appellant was only as operational creditor. Appellant being secured operational creditor, it is entitled for a different treatment in the resolution plan which is meted out to the other secured creditors. We have already noticed above that after the order of the Hon'ble Supreme Court, this Appellate Tribunal in this appeal drew attention of both the parties to judgment of ***"Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni"*** (supra), the SRA has come up with without prejudice offer of Rs.1216 Crores payment

towards additional farmers' compensation which offer is clearly in recognition of the fact that Appellant is a secured creditor.

57. Counsel for the Appellant has placed various other submissions including the submission that consideration of treatment of the claim of the appellant by the Adjudicating Authority is not in accordance with the judgment of the Hon'ble Supreme Court in *"Jaypee Kensington"* (supra). We need to notice few paragraphs of the judgment of the Hon'ble Supreme Court in *"Jaypee Kensington"* (supra) where while considering the earlier plan submitted by NBCC objections of the appellant were noticed to the plan. Hon'ble Supreme Court in *"Jaypee Kensington"* (supra) clearly held that the liability of compensation with reference to the land under expressway is of the concessionaire. It was held that the Resolution Applicant could not decide of its own that there be no liability of concessionaire or its assignee towards the land under expressway. In paragraph 106, 106.2 and 107, following was held:-

> "**106.** The question is yet to be finally determined as to whether such a liability towards additional amount of compensation rests with the corporate debtor JIL or with YEIDA, because the arbitral award made in favour of JIL is the subject matter of challenge in the Court. However, the contingency was required to be provided in the plan in case liability would be ultimately fastened on the corporate debtor JIL. It has not been suggested that any such bifurcation of liability, qua the land under Expressway on one hand and other parcels on the other, is a subject matter of the arbitration proceedings. However, going by the terms of the CA, prima facie, we are unable to find any indication therein that the liability for compensation with reference to the land under Expressway is not of the concessionaire.

In any case, while making a provision for meeting with this contingent liability of additional amount of compensation, the resolution applicant could not have decided of its own that there will not be any liability of the concessionaire or its assigns towards the land under Expressway.

106.2. Similarly, the resolution applicant of its own, could not have decided that end-user would mean sub-lessee and thereby deflect even collection of the amount towards this liability on YEIDA and that too when YEIDA was not going to be a party in creation of any sub-lease. The structuring of these propositions regarding contingent liability turns out to be wholly illogical, apart from being at loggerheads with the terms of the Concession Agreement.

107. Apart from the aforesaid, the reliefs and concessions as sought for by the resolution applicant in relation to YEIDA in Clauses 4, 14 and 27 of Schedule 3 are also required to be disapproved. We are unable to countenance the proposition that by way of a resolution plan, it could be enjoined upon an agency of the government like YEIDA to give up or withdraw from a pending litigation. Similarly, extinguishment of existing liability qua YEIDA is not a relief that could be given to the resolution applicant for askance. For the same reason, the resolution applicant cannot seek extension of time period of the Concession Agreement by way of a clause of 'relief in the resolution plan without the consent of a governmental body like YEIDA."

58. It was held by the Hon'ble Supreme Court that NBCC who is Resolution Applicant before the Hon'ble Supreme Court in *"Jaypee Kensington"* (supra) case could not extinguish the liability of YEIDA. The observations made by the Hon'ble Supreme Court in paragraphs, as noticed above, clearly supports the submission of the appellant. The Adjudicating Authority although noticed the relevant paragraphs of the judgment of the

Hon'ble Supreme Court in *"Jaypee Kensington"* (supra) but failed to consider the claim of the Appellant correctly in accordance with law. We, thus, are satisfied that the order of the Adjudicating Authority considering the treatment of the claim of additional farmers' compensation of the YEIDA in the Resolution Plan is unsustainable. Question No.(2) is answered as follows:-

> **"We having held that YEIDA is secured creditor, the treatment of YEIDA in the resolution plan and in the order of the Adjudicating Authority is unsustainable."**

Question Nos. (4) & (5)

59. Both the questions inter-related are being taken together. The claim submitted by the Appellant for additional farmers' compensation was Rs.1,689 Crore. In the additional affidavit filed by Suraksha dated 20.04.2024, as noted above, it has brought on record, 'without prejudice' Suraksha's offer dated 18.04.2024. Learned Senior Counsel for the SRA-Suraksha has also submitted that SRA undertakes to make payment of Rs.1216 Crores towards additional farmers' compensation which is 100% of payment of additional farmers' compensation. Suraksha's offer dated 18.04.2024 is relevant to be noticed which is as follows:-

"LAKSHDEEP INVESTMENTS AND FINANCE PRIVATE LIMITED

Registered Office: 3, Narayan Building, 23, LN Road, Dadar (East), Mumbai 400 014. CIN: U67120MH1993PTC072685 | Tel: +91 22 43341999 | Email: lakshdeepinvestments@gmail.com

WITHOUT PREJUDICE

Annexure-1

SURAKSHA OFFER

April 18, 2024

Without going into the merits of the matter and despite having provision in the CoC approved plan that Suraksha shall not bear any additional liability, only with good intent and bona-fide, in order to bring this CIRP process to logical conclusion as per directions of Hon'ble SC, In line with larger objects of the Code of insolvency resolution and in larger public Interest, Suraksha is willing to unconditionally pay additional amount of Rs 1216 crore to farmers by Jaypee for the land of 8,640 acres (excluding 1537 acres of land already sold to third parties by Jaypee before submission of the resolution plan and also excluding land of 744 acres at NOIDA where stuck projects of homebuyers are situated for which farmers have already received additional compensation - Refer page 28 of Information Memorandum) in 4 years (25% each year with 10% upfront in 90 days) committed schedule as under table below.

Timeline for payment	***Land Parcels (Acres)***	***Payment Proposed***	***% Payment proposed***
Upfront payment within 90 days from the Approval Date		*122*	*10%*
At the end of Year 1 from the Approval Date		*182*	*15%*
At the end of Year 2 from the Approval Date		*304*	*25%*
At the end of Year 3 from the Approval Date		*304*	*25%*
At the end of Year 4 from the Approval Date		*304*	*25%*
Total Compensation for land parcels aggregating to 9,384 acres	***8,640***	***1,216***	***100%***
Compensation excluded relating to land parcels of 744 acres where homebuyers' projects are situated and for which farmers have already received	*744*	*143*	

additional compensation			
Compensation excluded relating to land parcels already sold by Jaypee to Third Parties aggregating to 1,537 acres	*1,537*	*330*	
Total Additional Farmers' Compensation	***10,921***	***1,689***	

The above additional payment is subject to YEIDA and State Government facilitating effective Implementation of the Resolution Plan, In larger public Interest:

A. On payment of 10% of the total amount proposed, the farmers' dues get restructured as per above payment schedule. YEIDA will grant all requisite approvals, allows construction of stalled projects as per Resolution Plan, development and sale of the said land parcels, etc. In case of sale of land to third party, the proportionate dues of the particular land will be paid at time of transfer,

B. On payment of 10% of the total amount proposed, YEIDA and local administrative authority shall facilitate in handing over the physical possession of the land parcels from farmers in case of encroachment over the land parcels, if any and

C. While we are offering the above payment unconditionally in the interest of homebuyers and implementation of the Resolution Plan and not making it condition precedent, the request made/ relief sought under the settlement proposal dated 05.03.2024 shall be considered in bona fide and in time bound manner by YEIDA.

For Lakshdeep Investments and Finance Private Limited
As a Consortium member of Suraksha Group."

60. Additional Affidavit also provides for schedule for payment as contained in the offer dated 18.04.2024. When we look into the offer dated 18.04.2024, it is clear that the compensation of Rs.1216 Crores have been proposed for land parcels and in such compensation amount of Rs.330 Crores and Rs.143 Crores have been deducted.

61. Learned Counsel for the SRA has submitted that the Appellant is not entitled for payment of Rs.330 Crores which pertains to the land parcels which were already transferred by the corporate debtor to third party prior to initiation of the CIRP. The submission advanced by SRA- Suraksha is that Suraksha shall extend all co-operation for recovering the additional farmers' compensation from third party who were leased out the land prior to insolvency commencement. Counsel for the Appellant has objected to the aforesaid deduction of Rs.330 crores. It is useful to notice the reply of the appellant to the additional affidavit filed on behalf of Suraksha in paragraph 37(i) and (ii), following has been stated:-

> "37. The stated basis for reduction of the sum of-INR 330 crores is utterly untenable. Whether or not the said sum pertains to lands transferred to third parties by the Concessionaire is immaterial and of no consequence, and no reduction can be allowed from the Appellant's claim of additional compensation for this reason, because:
>
> (i) In the Jaypee Kensington Judgment, the Hon'ble Supreme Court held that even the responsibility of collection of the amount of additional compensation cannot be deflected onto the Appellant, as the Appellant was not going to be party to any sub-lease executed between the Concessionaire and its transferees. The relevant extract from the Jaypee Kensington Judgment is reproduced below:
>
> > "106.2 Similarly, the **resolution applicant, of its own, could not have decided that end-user would mean sub-lessee and thereby deflect even collection of the amount towards this liability on YEIDA** and that too when YEIDA was not going to be a party in creation of any sub-lease. The structuring of these propositions regarding contingent liability turns out to be wholly illogical, apart from being at loggerheads with the terms of the Concession Agreement.
> >
> > [emphasis supplied]
>
> (ii) In view of the above, even if it is assumed without admitting that the sum of-INR 330 crores does pertain to lands transferred to third parties by the Concessionaire, the same cannot be deducted from the Appellant's claim for additional compensation (totalling-INR 1689 crores), because the said amount must be paid by the

> Concessionaire (whether JIL or Suraksha, as the case may be) to the Appellant, after collecting the same from the concerned third parties."

62. The amount of Rs.330 Crores which is liable to be paid for the land which has been transferred to third party, liability of corporate debtor cannot be forsaken on the ground that it has sub-leased to third party. As per Concession Agreement, it was the liability of concessionaire to pay the acquisition cost. We, thus, are of the view that deduction of Rs.330 crores in the amount of claim of Rs.1689 Crores filed by the appellant cannot be permitted.

63. Now we come to another limb of submission with regard to Rs.143 crores in relation to land arranged from the Noida Authority. Counsel for the SRA submitted that Rs.143 crore is the amount which pertains to the land arranged from the Noida for which Noida has made the payment of additional compensation to the farmers, hence, the said amount cannot be recovered. Appellant in its reply has stated that Noida has demanded Rs.247 crores from the Appellant towards the amount of additional compensation. Reference of the letter dated 23.01.2014 has been made in reply filed by the appellant to the additional affidavit. We, thus, are of the view that even if the amount is paid by the Noida towards additional farmers compensation, the same can always be asked from the appellant to reimburse, hence, the amount of Rs.143 crores also cannot be deducted from the claim of Rs.1,689 crores. The amount proposed by the SRA of Rs.1216 Crores thus, cannot be held to be 100% payment of additional compensation to YEIDA towards additional farmers' compensation.

64. In view of the foregoing discussions, we answer Question Nos. (4) and (5) in following manner:-

(4) The entire claim of Rs.1,689 Crores submitted by YEIDA towards the additional farmers' compensation need consideration and amount of Rs.330 Crores pertaining to land parcels already sub-leased by the corporate debtor to third party and an amount of Rs.143 crores pertaining to land arranged from Noida need no deduction. Thus, appellant's claim of Rs.1689 crores towards additional farmers' compensation need consideration.

(5) Without 'prejudice offer' dated 18.04.2024 offering to make amount of Rs.1216 crores cannot be held to be 100% payment of additional compensation claim of YEIDA.

Question No.(6)

65. As noted above, the amount which was claimed towards EDC by the appellant was of Rs.624.6 crores out of which IRP has admitted Rs.409.6 crores. After filing of the additional affidavit dated 20.04.2024 by Suraksha, reply affidavit filed by Respondent Nos.2 and 3 as well as Respondent No.1 and additional affidavit filed by the appellant, the details regarding EDC claim has been clarified. The appellant by filing an additional affidavit dated 04.05.2024 itself has pleaded that upon completion of the process of review and reconciliation of account, the rectified statement of outstanding

towards EDCs is only Rs.525.91 Crores. It is useful to extract paragraphs 2, 3, 4, 5 and 6 of the additional affidavit, which are as follows:-

> "2. This Additional Affidavit is being filed to rectify errors (regarding payments received by the Appellant on account of EDCs) in the Reply dated 29 April 2024 filed by the Appellant. It is submitted that these errors were made inadvertently and they occurred due to the haste with which the Reply was filed, and due to paucity of time.
>
> 3. In the submissions dealing with the Appellant's claim of External Development Charges ("EDCs") in the said Reply, it was submitted that no amount had been received towards EDCs from Axis Bank. However, after Respondent No. 1 served its Rejoinder to the said Reply and pointed out certain discrepancies in the Appellant's computation, the Appellant immediately reviewed its books of accounts in relation to the EDCs claimed for land at Jaganpur and Mirzapur.
>
> 4. Upon completion of the process of review and reconciliation of accounts, the rectified statement of outstanding amounts of EDCs for land ceded under the Concession Agreement is as follows:

Particulars	***Jaganpur***	***Mirzapur***	***Total***
Amount claimed in Authority's Form B	*244.25*	*380.3*	*624.55*
(less) Amount received from Axis Bank, but not accounted in Authority's Form B	*19.26*	*42.79*	*62.05*
(less) Amount received from Gaursons, but not accounted in Authority's Form B	-	*36.59*	*36.59*
Amount Payable towards EDCs after reconciliation	***224.99***	***300.92***	***525.91***

It has also been submitted by Respondent No. I that a further amount of INR 114.21 crores paid by the Corporate Debtor towards EDCs is to be deducted from the aforesaid amount. However, the Appellant submits that the aforesaid amount (of INR 525.91 crores) does not include the payments already received from the Corporate Debtor and the sum of INR 114.21 crores cannot be deducted again.

5. The aforesaid computation is based on the records available with the Appellant. It is further submitted that the Appellant has always been. and continues to be, ready and willing to reconcile its accounts for rectification of any inadvertent errors and omissions and make adjustments in its claimed amounts.

6. In addition to the abovesaid amount, the EDCs for land parcels at Tappal and Agra (amounting to ~INR 572.89 crores) will be payable by Suraksha as per the provisions of the Concession Agreement and in terms of the undertaking given by it in its Rejoinder dated 03 May 2024."

66. From the additional affidavit filed by the appellant itself, it is clear that total EDCs claim of the appellant after reconciliation is Rs.529.91 crores whereas the IRP has admitted only Rs.409.6 crores. Insofar as EDCs claim as contained in the additional affidavit, there is no disagreement between the parties. In addition to the aforesaid Rs.529.91 crores, it has been pleaded by the appellant that EDCs for land parcels at Tappal and Agra may be payable by Suraksha as per the provisions of Concession Agreement and in terms of the undertaking given by it in the rejoinder dated 03.05.2024 as and when external development work is carried out at Tappal and Agra.

67. Noticing the aforesaid, we answer Question No.(6) as follows:-

Total amount of EDCs claimed as reviewed and reconciled by the appellant is Rs.529.91 crores subject to payment by EDCs towards land parcels at Tappal and Agra, as and when external development work is carried out at Tappal and Agra.

Question No.7

68. The submission advanced by the learned Counsel for the Appellant is that external development charges are also secured claim within the meaning of Section 13 and 13A of the 1976 Act. It is submitted that EDC charges are payable by the Concessionaire/ Corporate Debtor on account of the Concession Agreement dated 07.02.2003.

69. The external development charges are neither defined in Concession Agreement nor in the 1976 Act. Under Clause 7.2, which deals with obligation of Taj Expressway Authority, under sub-clause (j), external development including electric supply, water supply, drainage arrangements etc. have been dealt with. Clause 7.2.1 (j) is as follows:

> "**7.2.1(j**) External development including electric supply, water supply, drainage arrangements etc. in relation to land which are already developed specially in Noida or Greater Noida released by TEA in accordance with this Agreement, shall be by TEA without any cost to the concessionaire within a reasonable period of handing over of such land. For external development of other undeveloped land released by TEA in accordance with this Agreement, TEA shall assist the Concessionaire, on best effort basis, to arrange it through other authorities who may be involved in development of nearby lands, without any cost of TEA. However, internal development within such land shall be carried out by the Concessionaire at its own cost."

70. External development is defined in the Real Estate (Regulation and Development) Act, 2016 by Section 2(w), which definition is as follows:

> "**2(w)** "external development works" includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;"

71 It is the case of the Appellant that claim of EDC as filed by the Appellant in the CIRP of the Corporate Debtor, arises out of Concession Agreement. The question for consideration is as to whether EDC are charges in which Appellant has secured interest. The learned Counsel for the Appellant has referred to Section 13 and 13A of the 1976 Act to support his submission that EDC are secured charges. We need to first notice the provision of Section 13 and 13A of the 1976 Act, which are as follows:

> "**13.** Where any transferee makes any default in the payment of any consideration money or installment thereof or any other amount due on account of the transfer of any site or building by the Authority or any rent due to the Authority in respect of any lease, or where any transferee or "Occupier makes any default in payment of any amount of" in the payment of any fee or tax levied under this Act, the Chief Executive Officer may direct that in addition to the amount of arrears, a further sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.
>
> **13-A.** Any amount payable to the Authority under section 13 shall constitute a charge over the property and may be recovered as arrears of land revenue or by attachment and sale of property in the manner provided under sections 503, 504, 505, 506, 507, 508, 509,

510, 512, 513 and 514 of the Uttar Pradesh Municipal Corporations Act, 1959 (Act no. 2 of 1959) and such provisions of the said Act shall mutatis mutandis apply to the recovery of dues of an authority as they apply to the recovery of a tax due to a Municipal Corporation, so however, that references in the aforesaid sections of the said Act to 'Municipal Commissioner', 'Corporation Officer' and 'Corporation' shall be construed as references to 'Chief Executive Officer' and 'Authority' respectively;

Provided that more than one modes of recovery shall not be commenced or continued simultaneously."

72. As per Section 13-A any amount payable to the Authority under Section 13 shall constitute a charge over the property. Thus, the amount has to be covered by Section 13 for being a charge on the property. Section 13 gets attracted where any default is made in the payment of - (i) any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building by the Authority ; (ii) or any rent due to the Authority in respect of any lease, or where any transferee or occupier makes any default in payment of any amount; (iii) or in the payment of any fee or tax levied under the Act. The payment of consideration covered by any of above three instances, are payments, which shall constitute a charge over the property. We need to look into as to whether the claim of EDC by the Appellant falls in any of the category as noticed above as per Section 13 of the 1976 Act. The EDC are not any consideration of money or instalment or any amount due on account of transfer of any site or building. The amount due for transfer of any site are transfer of the lease land in favour of the Appellant are covered by Clause 4.1(d) and 4.3(c). The premium of the transferred land as per the

Concession Agreement, shall be equivalent to the acquisition cost plus lease rent of Rs.100 per hectare per year. The payment of EDC charge is not covered by any charges towards transfer of land in question. The second category as noticed above is wherein transferee or occupier makes any default in payment of any rent due to the Authority in respect of any lease. The EDC charges are not payment of any rent due to the Authority in respect of any lease. The third category, which falls under Section 13 is "where any transferee or occupier makes any default in payment of any fee or tax levied under the Act. Thus, any fee or tax, which are levied under the 1976 Act shall form a charge within the meaning of Section 13. There can be no doubt that EDC charges are not a tax or a fee under the 1976 Act. The expression **fee or tax levied under the 1976 Act** has to be given meaning. Because for non-payment of any fee or tax levied under the Act, imposition of penalty is contemplated. Section 13 contemplate imposition of penalty to the extent of sum not exceeding the amount that is to be recovered from the transferee or occupier. Section 13 being a penal provision has to be strictly construed. Thus penalty can be imposed only for any fee or tax levied under the 1976 Act. The Appellant has not brought any material on record to indicate that EDC are fee levied under the Act. Rather, the case of the Appellant is that EDC is payable as per the Concession Agreement. Any amount payable under the Concession Agreement, which falls under Section 13 alone has to be treated to be amount, for default of which proceedings under Section 13A can be initiated.

73. The learned Counsel for the Appellant has also placed reliance on judgment of the Hon'ble Supreme Court in **Jaypee Kensington** case especially paragraph 107. In paragraph 107, the Hon'ble Supreme Court had occasion to consider the reliefs and concessions as sought for by the Resolution Applicant in relation to YEIDA. The Hon'ble Supreme Court held that said reliefs and concessions could not be granted and the Authority/ Agency of the Government like YEIDA cannot withdraw from a pending litigation, nor any existing liability can be extinguished, which is not a relief that could be given to the Resolution Applicant for askance. Paragraph 107 of the judgment is as follows:

> "**107.** Apart from the aforesaid, the reliefs and concessions as sought for by the resolution applicant in relation to YEIDA in Clauses 4, 14 and 27 of Schedule 3 are also required to be disapproved. We are unable to countenance the proposition that by way of a resolution plan, it could be enjoined upon an agency of the government like YEIDA to give up or withdraw from a pending litigation. Similarly, extinguishment of existing liability qua YEIDA is not a relief that could be given to the resolution applicant for askance. For the same reason, the resolution applicant cannot seek extension of time period of the Concession Agreement by way of a clause of 'relief' in the resolution plan without the consent of a governmental body like YEIDA."

74. Learned Counsel for the Respondent, replying the above contention of the Appellant had submitted that observations made in paragraph 107 by the Hon'ble Supreme Court were not with respect to EDC. It is submitted that YEIDA did not argue before the Hon'ble Supreme Court for EDC, nor the Hon'ble Supreme Court expressed any opinion with regard to

nature of the EDC charges. The Hon'ble Supreme Court clearly in paragraph 107 has observed that reliefs and concessions sought by Resolution Applicant – NBCC in relation YEIDA in Clause 4, 14 and 27 of Schedule 3 required to be disapproved. The Appellant has come up in this Appeal challenging the Plan of Suraksha, which was under consideration before the Adjudicating Authority. No reliefs and concessions was granted for extinguishing the liability of EDC. Rather, the Adjudicating Authority dealt with claim as operational debt and held that liquidation value of the Operational Creditor being Nil, payment of amount of Rs.10 lakhs in the Plan towards EDC charges is not illegal, nor violates any provisions of the Code. We have already notice the observations of Adjudicating Authority with regard to provisions of Plan regarding EDC. In paragraph 74 of the impugned order, the Adjudicating Authority has made following observations:

> "74. Hence, we find no illegality in the Resolution Plan, so far as it relates to provisions of Rs.10 lakhs towards the operational claim relating to External Development Charges (EDC) of YEIDA."

75. In view of the foregoing discussions, we answer Question No.7 in following manner:

> **Claim towards EDC of the Appellant is not a secured claim under the provisions of 1976 Act and does not need to be dealt in the Resolution Plan as a secured claim.**

Question Nos.8 and 9

76. The question for consideration is as to whether for treatment of claims filed by YEIDA in CIRP of Corporate Debtor, the consent of YEIDA is *sine-qua-non* and without consent of the YEIDA no amount can be proposed by Successful Resolution Applicant with regard to claims filed by the Appellant in the CIRP of the Corporate Debtor; and whether for transfer of leasehold rights of Corporate Debtor to the SRA and Assenting Financial Creditor, in the Resolution Plan, consent of YEIDA is necessary. For answering these issues, we need to first notice statutory scheme under the Code and the Regulations framed thereunder as well as the judgment of **Jaypee Kensington**, which has been relied by the Appellant.

77. Under the CIRP Regulations 2016, after public announcement is made, under Regulation 6, claim by an Operational Creditor has to be filed in Form-B as per Regulation 7(1) of CIRP Regulations, which is as follows:

> "**7. Claims by operational creditors.**
>
> (1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall 13[submit claim with proof] to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule:
>
> *Provided* that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee."

78. There is no dispute between the parties that in response to the publication made under Regulation 6, the Appellant filed its claim in Form-

B as an Operational Creditor. Regulation further provides for verification of the claim. Regulation 37 deals with 'Resolution Plan', which is as follows:

> "**37.** Resolution plan. A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -
>
> (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
>
> (b) sale of all or part of the assets whether subject to any security interest or not;
>
> (ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;
>
> (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
>
> (ca) cancellation or delisting of any shares of the corporate debtor, if applicable;
>
> (d) satisfaction or modification of any security interest;
>
> (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
>
> (f) reduction in the amount payable to the creditors;
>
> (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
>
> (h) amendment of the constitutional documents of the corporate debtor;
>
> (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
>
> (j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change 38. Mandatory contents of the resolution plan. 58[(1) The amount payable under a resolution plan - (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.] 59[(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.] 60[(IB) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.] in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities."

79. Regulation 38 provides for 'Mandatory contents of the Resolution Plan'. Regulation 38, sub-clause (1) is as follows:

"**38. Mandatory contents of the resolution plan.**

(1) The amount payable under a resolution plan-

(a) to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(IB) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past."

80. When we look into Regulation 37, sub-clause (f), it contemplates a reduction in the amount payable to the creditors. In the scheme, which is reflected from the Code and the Regulations, the Creditors are required to file their claim, which claim is to be dealt by the Resolution Applicant in the Resolution Plan as per Regulation 37 and 38 and the Regulations do not require any consent of a creditor for giving its treatment in the Plan. We, however, in the present case are dealing with treatment of claim of an Authority, which is constituted under the 1976 Act. Whether the claim of the Appellant can be differently treated with regard to claims of other Creditors, which is as per the scheme of the Code, is a question to be answered.

81. The learned Counsel for the Appellant has placed much reliance on judgment of the Hon'ble Supreme Court in **Jaypee Kensington**'s case. Now, we come to the judgment of the Hon'ble Supreme Court in **Jaypee Kensington**'s case. The judgment of **Jaypee Kensington** emanated from an order of Adjudicating Authority approving the Resolution Plan of NBCC. The objections raised by the Appellant were with regard to its treatment in the Resolution Plan of NBCC. In the judgment, the Hon'ble Supreme Court considered the claim of the YEIDA from paragraph 86 to 109, which is under the heading 'Point C' – "Matters related with the land providing

agency YEIDA". While considering the claim of the YEIDA, nature of contract with Concessionaire also came to be examined. From paragraph 86 to 100, submission of parties were noticed. The Hon'ble Supreme Court observed that Concession Agreement is not a statutory one, is nevertheless a contract entered into between the Concessionaire and the statutory Authority, i.e., YEIDA. While considering the aforesaid question in paragraph 103, the Hon'ble Supreme Court held that Resolution Plan, which tinkers with the contract in question, i.e., Concession Agreement, could not have been dealt with without the approval and consent of the Authority concerned, i.e., YEIDA. In the above reference, Regulation 37 of CIRP Regulation has also been referred to. Paragraph 103 of the judgment is as follows:

> "**103.** The contract in question, the CA, even though not a statutory one, is nevertheless a contract entered into between the concessionaire and statutory authority, that is, YEIDA. It is needless to observe that even if in the scheme of IBC, a resolution plan could modify the terms of a contract, any tinkering with the contract in question, that is, the Concession Agreement, could not have been carried out without the approval and consent of the authority concerned, that is, YEIDA. Any doubt in that regard stands quelled with reference to Regulation 37 of CIRP Regulations that requires a resolution plan to provide for various measures including 'necessary approvals from the Central and State Governments and other authorities'. The authority concerned in the present case, YEIDA, is the one established by the State Government under the U.P. Act of 1976 and its approval remains sine qua non for validity of the resolution plan in question, particularly qua the terms related with YEIDA. The stipulations/assumptions in the resolution plan, that approval by the Adjudicating Authority shall dispense with all the

> requirements of seeking consent from YEIDA for any business transfer are too far beyond the entitlement of the resolution applicant. Neither any so-called deemed approval could be foisted upon the governmental authority like YEIDA nor such an assumption stands in conformity with Regulation 37 of the CIRP Regulations."

82. There can be no quarrel to the law laid down by the Hon'ble Supreme Court in the context of the Concession Agreement in question and observations made by the Hon'ble Supreme Court in context of NBCC Plan are fully attracted while considering the Resolution Plan of Suraksha. Hence, the Hon'ble Supreme Court has clearly laid down that there can be no tinkering in the contract without the approval of YEIDA. We have also noticed paragraph 106, where the Hon'ble Supreme Court had dealt with claim of additional amount of compensation. It was held that liability for compensation with reference to land is of Concessionaire and Resolution Applicant could not have itself decided on its own that it will have no liability towards the land in Expressway. In paragraph 106.1, it was again reiterated that alterations of the material terms of the Concession Agreement cannot be made without the consent of the YEIDA and further in paragraph 107 dealt with reliefs and concessions. It was held that existing liability qua YEIDA is not a relief that could be given to the Resolution Applicant for askance. The above observations have to be understood in the background that Hon'ble Supreme Court was examining the nature of the contract and it has held that no tinkering of contract is permissible in a Resolution Plan without the approval of the YEIDA, which is a law declared by the Hon'ble Supreme Court in reference to the contract

in question and is clearly applicable to the Resolution Plan of Suraksha also. The question, thus, is to be considered is as to whether provisions of the Resolution Plan provides for any tinkering of any clause of the contract. Since, when any clause of the contract is being tinkered by the Resolution Applicant, approval of the YEIDA is required. We, however, have noticed above that statutory scheme of Code and Regulation, i.e., insofar as amount to be paid against the claim of Creditors, no consent of Creditors are required. What is required by Creditor is filing of its claim and consideration of his claim in Resolution Plan.

83. The next argument of the Appellant is that while transferring of land to SRA in the Resolution Plan and to the Assenting Financial Creditors, consent of YEIDA is necessary. We need to notice certain clauses of Concession Agreement and those of Regulation 2016 to find the answer.

84. In the Concession Agreement, Clause 4.3, which is under the heading "Land", clearly contemplate that Concessionaire shall be entitled to further sub-lease developed/ undeveloped land to sub-lessees/ end-users in its sole discretion without any further consent or approval or payment of any charges/ fee etc. to Authority or any other relevant Authority. Clause 4.3 (d) and (e) are as follows:

> "**4.3.d.** The Concessionaire shall be entitled to further sub-lease developed/ undeveloped land to sub-lessees / end-users in its sole discretion without any further consent or approval or payment of any charges/ fee etc. to TEA or any other relevant authority.

e. After sub-lease of part of the land by the Concessionaire, the same can be transferred / assigned without requiring any consent or approval of or payment of any additional charges, transfer fee, premiums etc. to TEA or to any other relevant authority and/ or there can be subsequent multiple sub-leases of the land in smaller parts. The lease rent of the respective sub-leased portion of land shall be paid by the sub-lessees/ transferees to TEA directly on pro-rata basis @ Rs.100.00 (Rupees one hundred) per hectare per year. The Concessionaire shall be required to pay lease rent to TEA for the portion of land remaining in its possession after sub-lease, on pro-rata basis at the aforesaid prescribed rate. Total rent paid by the Concessionaire and various sub-lessees / transferees shall be Rs.100.00 (Rupees one hundred) per hectare per year."

85. We may also notice Clause 18.1 under heading "Transfer of Concessionaire's rights and obligations to SPV", which is as follows:

"18.1 In case the Concessionaire and the TEA consider it necessary to transfer Concessionaire's rights and obligations under this Agreement to a SPV, the Concessionaire shall, in a reasonable time, transfer all its rights and obligations under this Agreement to a SPV for which documents as may be required shall be executed between the Concessionaire, the TEA and the SPV without additional cost to the Concessionaire or the SPV."

86. Clause 18.1 contemplate a situation where Concessionaire and Authority deem it necessary to transfer Concessionaire's rights and obligations under the Agreement to a SPV. In the present case the said eventuality had taken place, when the Authority and Concessionaire assigned Concessionaire's rights in favour of JIL, whereas Agreement was

initially entered between Jaiprakash Industries (renamed as Jaiprakash Associates Limited).

87. We need to notice Regulation 37 of CIRP Regulations, 2016, which clearly contemplate transfer of all parts of the assets of the Corporate Debtor to one or more persons. Regulation 37 (a) is again noted, which is to the following effect:

> "**37. Resolution plan.--** A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -
>
> **(a)** transfer of all or part of the assets of the corporate debtor to one or more persons;"

88. The Resolution Plan in the present case, does not contemplate transfer of land to SRA and Assenting Financial Creditors. Information Memorandum clearly contemplate that Corporate Debtor has only lease hold rights in the land. Owner of the land is still the Appellant, whose ownership of land cannot be extinguished with in any manner in the Resolution Plan. Under the Resolution Plan only rights and assets of Corporate Debtor can be dealt with. The Corporate Debtor, who has only lease hold rights cannot transfer any higher rights to any other person, including the SRA and Financial Creditors.

89. In view of the foregoing discussions, we are of the view that in the present case, no clause of Concession Agreement is being tinkered with by the Resolution Applicant, so as to require consent of YEIDA. The Resolution

Plan deals with the claim of Creditors as per CIRP Regulations and Resolution Plan only deals with lease hold rights, which Corporate Debtor has in the land in question.

90. The learned Senior Counsel for the Appellant relied on two judgments of this Tribunal, i.e., ***Greater Noida Industrial Development Authority vs. Roma Unicon Designex Consortium, Successful Resolution Applicant – (2023) SCC OnLine NCLAT 1612*** as well as judgment of this Tribunal in ***SEL Manufacturing Company Ltd. vs. Punjab Small Industries & Export Corporation Limited - Company Appeal (AT) (Insolvency) No. 881/2022***.

91. The judgment of this Tribunal in **Roma Unicon** was a case where a Concession Agreement was executed by Greater Noida. Lease Deed was executed on 01.09.2010 in favour of M/s Earth Towne Infrastructure Ltd., who was to develop and market the project on demarcated Plot. After execution of the Lease Agreement an unregistered Development Agreement dated 09.09.2010 was entered between Earth Towne and Earth Infrastructure Ltd., where development rights were given to Earth Infrastructure Ltd. by the Development Agreement. There were two other leases, which were executed in favour of two other Companies namely – M/s Neo Multimedia Ltd. and M/s Nishtha Software Pvt. Ltd., which Companies have also executed a Development Agreement in favour of the Earth Infrastructure Pvt. Ltd. Against the Earth Infrastructure Pvt. Ltd., CIRP commenced vide order dated 06.06.2018, in which CIRP Resolution Plan was submitted, which included transfer of land, which was leased to

Earth Towne and further two Companies as noted above. Greater Noida has sent a letter to RP claiming dues on the subsidiary of the Corporate Debtor namely – Earth Towne. The Resolution Plan submitted by M/s Alpha Corp Development Pvt. Ltd. was approved by the CoC. Another Resolution Plan submitted by Roma Unicon Designex Consortium was approved. A direction was also issued to the Appellant to transfer lease land in favour of the SRA vide order dated 07.12.2021. Three Appeals were filed challenging the order approving the Resolution Plan as well as order dated 07.12.2021. In context of the aforesaid, this Tribunal found that approval of Resolution Plan erroneous and issued certain directions. It is relevant to notice paragraph 68, 69 and 70 of the judgment, which are as follows:

> "**68.** We have noticed the statutory provision, that Explanation to Section 18(1)(f) clearly contemplates that assets of subsidiary company are entirely different from assets of the holding company and principle of lifting of veil cannot be invoked contrary to statutory prescription as in the present case that is Section 18(1)(f).
>
> **69.** Now on the question as to whether the Resolution Plan could have contained the provision obligating the Appellant to transfer lease hold right in favour of SRA or any third entity. It is sufficient to notice the terms and conditions of the lease deed under wh ich land was leased out to the land holding company. For transfer of plot, lease deed contains following terms and conditions in lease dated 01.09.2010:
>
> *"TRANSFER OF PLOT*
>
> *1. Without obtaining the completion certificate the Lessee shall have the right to sub-divide the allotted plot into suitable smaller plots as per planning norms and to transfer the same to the interested parties up to 31.03.2010 or as decided by the*

Lessor, with the prior approval of LESSOR on payment of transfer charges @ 2% of allotment rate. However, the area of each of such sub-divided plots should not be less than 20,000 sq. mts. However, individual flat/plot will be transferable with prior approval of the LESSOR as per the following conditions: -

(i) The dues of LESSOR towards cost of land shall be paid in accordance with the payment schedule specified in the Lease Deed before executing of sub-lease deed of the flat.

(ii) The lease deed has been executed.

(iii) Transfer of flat will be allowed only after obtaining completion certificate for respective phase by the Lessee.

(iv) The sub-Lessee undertakes to put to use the premises for the residential use only

(*v) The Lessee has obtained building occupancy certificate from Building Cell/Planning Section, Greater NOIDA.*

(vi) First sale/transfer of a flat/plot to an allottee shall be through a Sub-lease/Lease Deed to be executed on the request of the Lessee to the Lessor in writing.

(vii) No transfer charges will be payable in case of first sale, including the built-up premises on the subdivided plot(s) as described above. However, on subsequent sale, transfer charges shall be applicable on the prevailing rates as fixed by the LESSOR.

(viii) Rs. 1000/- shall be paid as processing fee in each case of transfer of flat in addition to transfer charges."

70. The transfer of plot as per terms and conditions of the lease could not have been effected without approval of the Appellant. The Respondent themselves realized that without Appellant transferring the plot no right can be accrued in favour of allottees or SRA that is why the conditions was provided in the Resolution Plan asking the direction to the Appellant to transfer the project land in favour of the SRA or Special Purpose Entity. Thus, Resolution Plan could not have

> contained clause for transfer of land without there being any approval of the Appellant for such transfer. Further direction to the Appellant to transfer while waiving of its entitlement and charges is clearly contrary to the terms and conditions of the lease and not in a public interest."

92. In the above case, the assets belonged to the subsidiary company, which was not in the CIRP, whereas the Resolution Plan contained the provision obligating the Greater Noida to transfer lease hold right in favour of SRA. In paragraph 69, clauses of the Lease Deed regarding transfer of plot was noticed, which clearly contemplated approval of Authority for transfer. In the above context in paragraph 70, it was held as quoted above. In the above context it was observed that Greater Noida before granting any permission for transfer of the land shall require their dues pertaining to land premium, lease rent and other legal dues to be cleared. Following was observed in paragraph 89:

> "**89.** We have also held that without approval of the Appellant, subject land could not have been transferred in favour of the Resolution Applicants or any other entities. It is obvious that Appellant before granting any permission for transfer of the land shall require their dues pertaining to land premium, lease rent and other legal dues to be cleared"

93. Further, in paragraph 90, this Tribunal observed as follows:

> "**90.** We may also notice that during submissions, Learned Counsel appearing on behalf of Association of Flat Buyer Projects of Earth Sapphire Court and Earth TechOne submitted that they are ready to bear and pay the dues of the Appellant in the interest of the development of the projects. In the facts of the present case, we are of the view that the Appellant has not been diligent to take steps

towards recovery of dues and are not entitled to charge any penal interest. We thus direct the Appellant to waive the penal interest and recalculate the dues of the Appellant which was due on the respective land holding companies as on date as held above."

94. In the above context, in paragraph 92, following was directed:

> "**92.** The RP has to publish a fresh Form-G inviting fresh Resolution Plans with specific condition **that resolution plans shall be presented before the COC for consideration only when dues of the appellants are paid and permission of appellant is obtained for transfer of lease land**."

95. The directions in paragraph 92 and 95(iv), which are relied by learned Counsel for the Appellant were in reference to the facts of the said case. Whereas in the present case CIRP has commenced against the Corporate Debtor, who himself was a lessee of the land and lease hold rights of the lessee are dealt with in the Resolution Plan. Hence, the judgment of this Tribunal ***Greater Noida Industrial Development Authority vs. Roma Unicon Designex Consortium, Successful Resolution Applicant*** was in the facts of that case and is clearly distinguishable from the present case.

96. Next judgment, which is relied by the Appellant is **SEL Manufacturing Company Ltd.**, which was a case where after approval of Resolution Plan demand was raised by Punjab Small Industries & Export Corporation Limited, who had leased the land. The Punjab Small Industries and Export Corporation Limited did not file any claim in the CIRP of the Appellant. The Plan was approved by the Adjudicating Authority on 10.02.2021 and demand notice was issued on 05.03.2021, subsequent to the approval of Plan, which was challenged by the Appellant

by filing IA No.598 of 2021 before the NCLT seeking quashing of the demand. The Adjudicating Authority did not grant the relief prayed by the Appellant. Hence, the Appeal was filed, praying for quashing the demand notice dated 05.03.2021 and 27.06.2022 and direct the Respondent to issue No Objection Certificate for the said Plan. In the above case, this Tribunal ultimately dismissed the Appeal by not interfering the order of the Adjudicating Authority. In paragraphs 21, 22, 23, this Tribunal made following observations:

> "**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."

97. The facts of the above case are clearly different from the issues, which has arisen in the present case. In the above case, the Resolution Plan, which was approved in the CIRP was not under consideration, rather proceedings emanated from demand notice subsequent to approval of

Resolution Plan. Thus, observations made by this Tribunal in the above judgment were on different set of facts and has no application for consideration of Resolution Plan as per the provisions of the Code and Regulations framed thereunder.

98. The Adjudicating Authority in Part-X of the impugned order, dealt with 'Relief and Concessions', relevant claim in Sl. Nos.3 of Annexure 2, Sl. No.4 of Annexure II, Sl. No.5 of Annexure-II were denied. With regard to Sl. No.8 of Annexure II, the relief was declined in paragraph 139, which is as follows:

> "**139.** The next relief and concession listed at Serial No.8 of Annexure II is as follows:
>
> > *"8. Except those agreements/ letter of allotments, where the sub-lease deeds had been executed between the Corporate Debtor and the third parties, in relation to all the agreements/ letter of allotments, entered into between the Corporate Debtor and the third parties in relation to the transfer of the leasehold rights over the land situated in Agra and Tappal, the Resolution Applicant reserves the right to terminate/ cancel the same with concurrence of such third parties and with simultaneous repayment of the actual amount already paid by such third parties without any interest or further liabilities on the Corporate Debtor or the Resolution Applicant, Pursuant to such termination/ cancellation, such land parcels and rights attached thereto shall be fully vested in the Corporate Debtor."*
>
> Through this relief, the SRA is seeking blanket termination/ cancellation of agreements/letters of allotments executed between the Corporate Debtor and third parties. In the absence of specific details of such agreements/ letters of allotments being available before us and without affording an opportunity of hearing to the

third parties, **we are not inclined to interfere in the dealings of Corporate Debtor with third parties and therefore, this blanket relief is declined. However, the SRA would be at liberty to proceed in accordance with law.**"

99. From the reliefs and concessions as noted above, it is clear that no relief has been granted to meet its liabilities towards YEIDA. To the contrary in the Plan of NBCC such relief was considered.

100. In view of the foregoing, we answer Question Nos.8 and 9 in following manner:

Answer to Question No.8 : For treatment of claim of YEIDA in the CIRP of Corporate Debtor and for payment to YEIDA in the Resolution Plan, consent of YEIDA is not required.

Answer to Question No.9 : For transfer of lease hold rights of Corporate Debtor to SRA or Assenting Financial Creditors in the Resolution Plan, consent of YEIDA is not necessary.

101. Before we come to the last question, i.e. question of relief, we need to consider the different IAs filed in this Appeal, as has been noted in paragraph 17 to 26 of the judgment.

102. Coming to IA filed by NARCL, who claim to represent the 94.38% of the secured financial debt and 40.82% stake in the CoC. The submission advanced by learned Senior Counsel Shri Reddy was that financial payouts to Financial Creditor be not affected in any manner, which payouts have already been approved in the Resolution Plan. The learned Senior Counsel

appearing for the SRA has made a statement that 'without prejudice' offer made by SRA to make payment of the amount of Rs.1216 crores, is not to affect any payments as provided in the Resolution Plan. It is submitted that amount of additional farmers' compensation as proposed by the SRA is in addition to amount as has been proposed in the Plan and none of the payment to the Financial Creditors would be affected.

103. In view of the aforesaid statement made by the SRA, we see no reason to pass any order in the IA filed by NARCL.

104. Now, we come to the IA filed by Jayprakash Associates Limited seeking impleadment in the Appeal. Shri Krishnan Venugopal, learned Senior Counsel appearing for the Applicant, who are the Promoters/ Directors of the Corporate Debtor, submits that in Company Appeal (AT) (Insolvency) No.548 of 2023 filed by Jayprakash Associates Ltd. and Manoj Gaur, which was dismissed on 21.02.2024, Jayprakash Associates and the Manoj Gaur were not allowed by this Tribunal to submit grounds with regard to treatment of the claim of the YEIDA. Shri Venugopal has relied on paragraph 49 of the judgment in Jayprakash Associates (supra). In paragraph 49 of the judgment, we have made following observation:

> "**49.** As noted above with regard to the claim of YEIDA, Successful Resolution Applicant has already submitted a proposal which is under active consideration. In any view of the matter, the issues pertaining to YEIDA cannot be decided in this appeal, where YEIDA is not a party. Appellant has filed this appeal as Suspended Promoter and Director of the Corporate Debtor and the issues pertaining to claim of YEIDA need to be considered in Company Appeal (AT) (Ins.)

> No.493 of 2023 filed by YEIDA challenging the impugned order. In so far as submission of learned counsel for the Appellant that YEIDA is a Secured Creditor which has wrongly been treated as Operational Creditor, such issue is also needed to be considered in Company Appeal (AT) (Ins.) No.493 of 2023 filed by YEIDA. We, thus, are of the view that issues pertaining to the claim of YEIDA and their ground to challenge the impugned order approving Resolution Plan are best suited to be examined and decided in the appeal filed by YEIDA where impugned order is under challenge and grounds have been raised. We, thus, are of the view that the issues raised by the Appellant, as noted above, need to be examined and considered in the appeal filed by YEIDA i.e. Company Appeal (AT) (Ins.) No.493 of 2023 and there is no necessity to consider those issues in this appeal which is filed by the Suspended Promoter and Director of the Corporate Debtor. Answer to both the questions is recorded accordingly"

105. In the judgment dated 21.02.2024, we have noted that YEIDA has already filed its Appeal in Company Appeal (AT) (Insolvency) No.493 of 2023 challenging the treatment of its claim in the Resolution Plan. We have also in the aforesaid judgment noted the statement made on behalf of the Counsel for the parties in Company Appeal (AT) (Insolvency) No.493 of 2023 regarding settlement proposal between SRA and YEIDA. In paragraph-49 of the judgment of Jayprakash Associates, relied by Shri Venugopal, we have observed that issue pertaining the claim of the YEIDA having been separately raised in Company Appeal (AT) (Insolvency) No.493 of 2023 filed by the YEIDA, the said claims are required to be considered in the Company Appeal (AT) (Insolvency) No.493 of 2023 and the said claims need no consideration in the Company Appeal filed by Promoters/ Directors. We have noticed above the submissions of learned Counsel for the Homebuyers

as well as learned Counsel for the Implementation & Monitoring Committee that Promoters/ Directors by filing different Applications and Appeals have always tried to delay the resolution of the Corporate Debtor and the filing of the Application for impleadment in the Appeal by YEIDA, is another attempt by Promoters/ Directors to delay the disposal. In the present Appeal filed by YEIDA, the claim of YEIDA has already been considered and being decided by this judgment. We are of the view that it is not necessary for this Tribunal to consider any submission advanced on behalf of Promoters/ Directors of the Corporate Debtor with regard to claim of YEIDA. YEIDA having itself filed an Appeal and diligently prosecuting its claim in this Appeal, we are of the view that any submission advanced by Promoters/ Directors with regard to claim of the YEIDA, need no consideration. We also see no reason to implead Promoters/ Directors in this Appeal. However, we have permitted Promoters/ Directors to intervene in the matter. We, thus, are of the view that no consideration is required to the submissions raised by Promoters/ Directors with respect to the claim of YEIDA in the present Appeal.

106. As regards to other IAs, one filed by Authorized Representative of Homebuyers; two IAs are filed by Home Buyers and one IA was filed by JIL Real Estate Allottees Welfare Society (JILREAWS). We also heard submission on behalf of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Learned Counsel appearing for the Applicant(s) seeking intervention in the Appeal, raised their grievances of delay in completion of the Project undertaken by the Corporate Debtor. The

Homebuyers having paid substantial amount of their allotment money and the Homebuyers having also taken loan from the different Financial Institutions to make the payment and Homebuyers being unable to get their homes, are being forced to pay huge interest to the Banks, while paying their EMIs. The learned Counsel for the Intervenor(s) reiterated that the resolution of the Corporate Debtor have been delayed by the Promoters/ Directors, who have been intervening at every stage of the proceedings and creating hurdles in the progress of CIRP. It is submitted that due to related party contract, the Promoters/ Directors have been permitted to carry out certain construction works, which construction works are going on at a very slow speed and Promoters/ Directors intends to continue with construction and are not permitting the insolvency resolution process to complete. The Promoter/ Directors have not even handed over various Projects, which now have to be dealt with and carried out by the SRA. The learned Counsel for the Homebuyers submit that Homebuyers, who are more than 20000 in number in different Projects, are waiting for their homes for more than a decade and this Tribunal may direct the SRA to complete the Project as early as possible and handover the possession of units to the Homebuyers. Learned Counsel for the JILREAWS also sought direction to expedite the construction and delivery of homes to sufferer Homebuyers and to provide security to Suraksha for infusion of funds for the projects and deployment of 12000 labourers as envisaged in the Resolution Plan continuing the construction by Suraksha as there is no stay in implementation of the Plan.

107. In the Appeal we have already noticed and considered the grievances of Homebuyers while deciding the Appeal, we shall endeavour to take care of the interest of all stakeholders, including Creditors, Homebuyers, additional farmers' compensation, which is to be paid to the farmers, whose land were acquired.

108. Now coming to IA No.2650 of 2024 field by JIL Infratech Ltd., through its Implementation & Monitoring Committee, we are of the view that while implementing the plan, it is open for the JIL Infratech Ltd. to take all measures as per the Resolution Plan for implementation of the Plan. IA No.2650 of 2022 is disposed of with liberty to JIL Infratech Ltd., though its Implementation & Monitoring Committee to take all measures as permissible as per the Resolution Plan. It is further made clear that Resolution Plan having been approved is binding on all concerned, including erstwhile Promoters/ Directors. IA No.2650 of 2024 is disposed of accordingly.

109. In view of the above, all the IAs are disposed of accordingly.

Question No.10

110. Now we come to the last question, i.e., Question No.10 – What relief the Appellant is entitled in this Appeal.

111. The Hon'ble Supreme Court while delivering the judgment in **Jaypee Kensington** has noted the statements made by learned Counsel for the Appellant that despite stating its objection YEIDA has consistently

maintained before the NCLT and before the Hon'ble Supreme Court that it does not stand to oppose the Resolution Plan for the sake of opposing the Resolution Plan. In paragraph 108 of the judgment, following observation was made by Hon'ble Supreme Court:

> "**108.** Before concluding on this point for determination where we have accepted the major parts of the objections of YEIDA, we may, in fairness to all the parties concerned, reiterate that despite stating its objections, YEIDA has consistently maintained before the NCLT as also before this Court that it does not stand to oppose the resolution plan only for the sake of opposition; rather it would like the plan to succeed but, it has a public duty to ensure that the framework under CA is preserved and else it would be ready to do everything within its power to ensure that the plan is a success. Thus, it would not be out of place to add a sanguine hope that being the owner of the land in question and public authority, YEIDA, who had envisaged and promoted the entire project, would, in future dealing with the matter, act with caution and circumspection, while earnestly reflecting upon the practical impact of its propositions/decisions on various stakeholders, including the homebuyers."

112. Before us also, the learned Counsel for the Appellant repeated the same submission that YEIDA is not against the implementation of the Plan and it has filed the Appeal to protect interest of the Public Authority for the dues, which are payable to the YEIDA as per the Concession Agreement, which amount are to be utilized for public cause. We have also noticed above that CIRP of the Corporate Debtor commenced on 07.08.2017. More than six and a half years have elapsed from the commencement of the CIRP. The matter has travelled three rounds to the Hon'ble Supreme Court. There are more than 20,000 Homebuyers, who are awaiting for their homes for

last more than a decade. The farmers whose additional compensation has not yet been paid has also to be taken care of, whose claims are agitated by the YEIDA by means of the Appeal. We have noticed above that SRA on 18.04.2024 has submitted 'without prejudice' offer, offering to bear additional farmers' compensation to the extent of Rs.1216 crores, which according to the SRA was 100% payment towards additional farmers' compensation payable by the Corporate Debtor. We have already held while deciding Issue Nos.4 and 5 that payment proposed of Rs.1216 crores is not the 100% payment towards the additional farmers' compensation. We have already held that claim of additional farmers' compensation is to the extent of Rs.1689 crores was the claim by the Appellant in the CIRP. The Suraksha offer also provided a timeline for payment, which timeline as per Suraksha offer dated 18.04.2029, is as follows:

> "**WITHOUT PREJUDICE**
>
> **SURAKSHA OFFER**
>
> Without going into the merits of the matter and despite having provision in the CoC approved plan that Suraksha shall not bear additional liability, only with good intent and bona-fide, in order to bring this CIRP process to logical conclusion as per directions of Hon'ble SC, in line with larger objects of the Code of insolvency resolution and in larger public interest, Suraksha is willing to unconditionally pay additional amount of Rs.1216 crores to farmers by Jaypee for the land of 8,640 acres (excluding 1537 acres of land already sold to third parties by Jaypee before submission of the resolution plan and also excluding land of 744 acres at NOIDA where stuck project of homebuyers are situated for which farmers have already received additional compensation – *Refer page 28 of Information*

Memorandum) in 4 years (25% each year with 10% upfront in 90 days) committed schedule as under table below:

Timeline for payment	**Land Parcels (Acres)**	**Payment Proposed**	**% Payment Proposed**
Upfront payment within 90 days from the Approval date		122	10%
At the end of Year 1 from the Approval Date		182	15%
At the end of Year 2 from the Approval Date		304	25%
At the end of Year 3 from the Approval Date		304	25%
At the end of Year 4 from the Approval Date		304	25%
Total Compensation for land parcels aggregating to 9,384 acres	**8,640**	**1,216**	**100%**
Compensation excluded relating to land parcels of 744 acres where homebuyers' projects are situated and for which farmers have already received additional compensation	744	143	
Compensation excluded relating to land parcels already paid by Jaypee to Third Parties aggregating to 1,537 acres	1,537	330	
Total Additional Farmers' Compensation	10,921	1,689	

The above additional payment is subject to YEIDA and State Government facailitating effective implementation of the Resolution Plan, in larger public interest:

A. On payment 10% of the total amount proposed, the farmer's dues get restructures as per above payment schedule. YEIDA will grant all requisite approvals, allow construction of stalled projects as per Resolution Plan, development and sale of the said land parcels, etc. In case of sale of land to third party, the proportionate dues of the particular land will eb paid at the time of transfer;

B. On payment of 10% of the total amount proposed, YEIDA and local administrative authority shall facilitate in handing over the physical possession of the land parcels from farmers in case of encroachment over the land parcels, if any and

C. While we are offering the above payment unconditionally in the interest of homebuyers and implementation of the Resolution Plan and not making it condition precedent, the request made/ relief sought under the settlement proposal dated 05.03.2024 shall be considered in bona fide and in time bound manner by YEIDA."

113. Shri Venkataraman, learned ASG during his submission has already elaborated that Appellant is not in agreement to the timeline for payment as contemplated in Suraksha offer and further payment of Rs.1216 crores is not towards the 100% claim of additional farmers' compensation.

114. We have already held Appellant as secured Operational Creditor with respect to additional farmers' compensation of Rs.1689 crores. The Financial Creditors under Resolution Plan have been proposed the payment of 79% of their secured dues. The Appellant, who is also a secured Operational Creditor to the extent of Rs.1689 crores, is also entitled for payment of same percentage of amount, which has been offered to the Financial Creditors. We, thus, are of the view that towards additional farmers' compensation, the Appellant is entitled for 79% of its claim, i.e., 79% of Rs.1689 crores, which comes to Rs.1334.31 crores. The SRA has already offered to make payment of Rs.1216 crores. Thus, the SRA has to bear additional amount of Rs.118.31 crores. The entitlement of Appellant being secured creditor is thus, clearly to amount of Rs.1334.31 crores. The SRA has already given an offer to bear Rs.1216 crores, ends of justice will be served in issuing direction to SRA to make payment of Rs.118.31 crores in addition to Rs.1216 crores already offered by it.

115. Now, we come to the timeline, which has been proposed by the SRA for payment. As per Regulation 38, the Operational Creditors are entitled for payment of their dues in priority over Financial Creditor. The payment of priority to the Operational Creditor is not upfront payment of their claims. The timeline proposed for payment of Rs.1216 crores in the offer of SRA is payment in priority over Financial Creditor, since, Financial Creditors are not being paid the amount in priority to the Operational Creditor. The submission of the Appellant that entire payment should be paid at once by the SRA, cannot be accepted. We have already noticed that stakeholders are awaiting for their claims to be considered, including those Homebuyers and there has been prolonged litigations on different issues and the Resolution Plan could be approved only by impugned order dated 07.03.2023. To put finality to the process and by accepting the claim of Appellant as secured Operational Creditor towards amount of Rs.1689 crores and directing payment of amount equivalent, which has been given to the secured Financial Creditor, ends of justice will be served in paving a way forward for implementation of the Resolution Plan. We could have asked the SRA to move for an addendum to be submitted before the CoC, by including the aforesaid provisions, but it will delay the process. Hence, we have adopted second course, i.e., by issuing direction to the SRA to make payment of 79% of secured claim of the Appellant of Rs.1689 crores within the timeline as indicated above, which direction shall make the Resolution Plan of the SRA compliant deserving approval.

116. We may also refer to the judgment of this Tribunal in ***Jet Aircraft Maintenance Engineers Welfare Assocaition vs. Ashish Chhawachharia Resolution Professional of Jet Airways (India) Ltd. and Ors. – (2022) SCC OnLine NCLAT 418 dated 21.10.2022***, which was also an Appeal filed challenging the approval of Resolution Plan, claiming full payment of provident fund and gratuity. This Tribunal in the Jet Aircraft judgment held that SRA was liable to make the payment of entire amount of provident fund and gratuity and approved the Resolution Plan subject to direction to SRA to make payment and to bear additional payment of full provident fund and gratuity and the Appeal was partly allowed. In paragraph 134 of the judgment, following directions were issued:

> "**134.** In result, the Appeal(s) are decided in following manner:
>
> (I) The Appeal(s) of workmen and employees being Company Appeal (AT) (Insolvency) Nos. 643 of 2021, 752 of 2021, 801 of 2021, 915 of 2021, 771 of 2022 are partly allowed with following directions:
>
> (a) Successful Resolution Applicant is directed to make payment of unpaid provident fund to the workmen till date of insolvency commencement, after deducting the amount already paid towards provident fund in the Resolution Plan to the workmen.
>
> (b) The workmen are also entitled for payment of their gratuity dues as on insolvency commencement date, after adjusting any amount towards gratuity paid under the Resolution Plan.
>
> It is made clear that entitlement of those employees and workmen, who were demerged into AGSL shall not be there,

since demerger has not been treated as termination of their services.

(c) The employees are also entitled for the payment of their full provident fund, unpaid up to the date of insolvency commencement date. It is made clear that full payment of provident fund would be of that unpaid part of provident fund, which has not been deposited by the Corporate Debtor in the EPFO.

(d) Employees shall also be entitled for the gratuity, which fell due up to insolvency commencement date.

(e) The rest of the prayers of the workmen and employees are denied.

(f) The Chairman of the Monitoring Committee, erstwhile Resolution Professional is directed to compute the payments to be made to workmen and employees within one month from today and communicate the same to the Successful Resolution Applicant to take steps for payment.

(II) Company Appeal (AT) (Insolvency) No. 987 of 2022 - Regional P.F. Commissioner v. Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd. - is allowed. The Successful Resolution Applicant is directed to make payment to the Appellant of provident fund dues as admitted by the Resolution Professional.

(III) Company Appeal (AT) (Insolvency) No. 792 of 2021 and Company Appeal (AT) (Insolvency) No. 361 of 2022 are dismissed.

(IV) The order of the Adjudicating Authority dated 22.06.2021 approving the Resolution Plan is upheld subject to orders as above."

117. The above judgment of **Jet Aircraft** has also been approved by the Hon'ble Supreme Court vide its order dated 18.01.2024 in ***2024 SCC OnLine SC 727***.

118. We follow the course, which was followed by this Tribunal in **Jet Aircraft**. To obviate the further delay in implementation of the Resolution Plan and to take care of the interest of stakeholders, including Homebuyers and claim of the Appellant towards additional farmers' compensation, we dispose of this Appeal in following manner:

(1) The impugned order passed by Adjudicating Authority insofar as it deals with claim of the Appellant of Rs.1689 crores of additional farmers' compensation is set aside. The rest of the impugned order approving the Resolution Plan is upheld.

(2) The Successful Resolution Applicant, i.e., Respondent No.2 is directed to make payment to the Appellant of its secured operational debt of Rs.1689 crores in ratio of 79%, which have been paid to other secured creditors, which amount comes to Rs.1334.31 crores.

(3) The SRA in its offer dated 18.04.2024 has already undertaken to make payment of Rs.1216 crores towards additional farmers' compensation in the timeline as indicated in the offer dated 18.04.2024. Let the SRA make the payment of Rs.1216 crores as per its offer in the time line as indicated therein. Additional amount of Rs.118.31 crores, which is required to be paid to make its payment equivalent to the payment given to

other secured creditors, be also be paid as per timeline indicated in the offer. Meaning thereby that amount of Rs.1334.31 crores to be paid as per timeline and ratio indicated in the offer dated 18.04.2024.

(4) The Resolution Plan approved as above shall be implemented by SRA in accordance with law.

The parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

24th May, 2024

Ashwani/Anjali