

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 3991 OF 2025
IN
C.P. NO. (IB) 1059 (ND) OF 2018

IN THE MATTER OF:

SURENDER KUMAR SINGHAL

...Applicant No.1

SUNIL KUMAR AGARWAL

...Applicant No.2

Versus

ANAND SONBHADRA

...Respondent No.1

GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY

...Respondent No. 2

AND IN THE MATTER OF:

CONCORD INFRASTRUCTURE PVT. LTD

...Operational Creditor

Versus

SHUBHKAMNA BUILDTECH PVT. LTD.

...Corporate Debtor

Order Delivered on: 03.11.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Aditya Gauri, Mr. Amar Vivek, Ms. Damini Srestha,
Mr. Anant Jain, Mr. Aryan Chhabra, Advocates.

For the RP : Abhishek Anand, Mr. Karan Kohli, Ms. Vaishnavi,
Advocates.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Application has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") r/w rule 11 of NCLT Rules, 2016 on behalf of the Applicants seeking the following reliefs:

- i. *Direct the Chairman of the Interim Monitoring Committee to conduct Structural Audit of the project "SHUBHKAMNA CITY" commenced by M/s Shubhkamna Buildtech Pvt. Ltd situated at Gh-02, Sector 01, Greater Noida, the cost of which shall be born by the Applicants.*
- ii. *Allow the Applicants to place the "Structural Audit" same before this Hon'ble Bench.*
- iii. *Direct Greater Noida Industrial Development Authority, to provide necessary approvals required for construction of project "SHUBHKAMNA CITY" in terms of the Resolution Plan and allow the Applicants to proceed with implementation of the Plan.*
- iv. *Allow the Applicants herein to prefer an application seeking approval of the remedial cost incurred in retro-fitting of the structure, if any, on the basis of the Audit Report.*
- v. *Any other relief as deemed appropriate in the interests of equity, justice and fair play.*

2. This Adjudicating Authority vide order dated 22.08.2025 directed the Applicant to file an affidavit of maintainability of the present Application. Relevant extract of the order dated 22.08.2025 is reproduced herein below:

"Mr. Amar Vivek, Ld. Counsel for the applicant is present through VC. Mr. Karan Kohli, Ld. Counsel for the Resolution Professional is present physically. Heard the Ld. Counsel for the applicant. Applicant is directed to file an Affidavit on maintainability of the present application within 07 days."

3. SUBMISSIONS OF THE APPLICANT WITH REGARD TO MAINTAINABILITY OF THE PRESENT APPLICATION:

- i.** The Applicants are the Successful Resolution Applicants in the Corporate Insolvency Resolution Process of the Corporate Debtor. The Resolution Plan submitted by the Applicants was approved by the Committee of Creditors ("CoC") with a voting percentage of 85.57%.
- ii.** Pursuant to the approval of Resolution Plan by the CoC, an Application seeking approval of Resolution Plan was preferred before the Hon'ble National Company Law Tribunal. The Greater Noida Industrial Development Authority ("GNIDA/Respondent") had preferred objections to the said Resolution Plan claiming to be treated as a "Secured Creditor". However, the said Resolution Plan was approved by the NCLT vide the Order dated 12.09.2022.
- iii.** It was submitted that GNIDA has preferred an Appeal bearing CA(AT) (INS.) 183 of 2023 against the Order dated 12.09.2022 passed by the Hon'ble NCLT, seeking rejection/modification of the Resolution Plan.
- iv.** In terms of the Resolution Plan as submitted by the SRA:
 - a.** The "Effective Date" for effectuating the implementation of the Resolution Plan is yet to arrive.
 - b.** While the "Effective Date" is awaited as a result of the pendency of the Company Appeal bearing CA(AT)(ins.) 183/2023, the project of the Corporate Debtor remains in a state of severe jeopardy wherein, due to damage to the sewage pipeline, the project is adversely affected as a result of waterlogging.
 - c.** For the Plan to be successfully implemented, it is imperative that the project of the Corporate Debtor situated at Greater Noida, Uttar Pradesh continues to remain viable.
- v.** However, as on date, due to leakage in the sewage lines of the running parallel to the land of the Corporate Debtor, excessive structural damage has been caused to the assets. In the event the requisite repair work is not carried out, the costs for the completion of the structure of the Corporate Debtor shall

increase exponentially, unless urgent retrofitting and repairs are directed on the basis of the structural audit.

- vi.** As on date the Respondent has declined to co-operate in carrying on the necessary repair work. Therefore, the maintainability of the Application rests on whether, in exercise of its jurisdiction under Section 60(5) of the Code, the Adjudicating Authority is empowered to issue directions to secure the viability of the Corporate Debtor's project and preserve the implementability of the approved Resolution Plan, pending the arrival of the Effective date?"
- vii.** Reliance has been placed on the decision of the Hon'ble Supreme Court in ***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another (Civil Appeal No. 3224 of 2020)*** wherein it has been categorically held that a submitted resolution plan is binding and irrevocable as between the Committee of Creditors and the Successful Resolution Applicant in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations. It has further been held that once the Resolution Plan is approved by the CoC and submitted to the Adjudicating Authority, the Successful Resolution Applicant cannot withdraw or modify the Resolution Plan. In light of the settled position of law, the Applicants are placed in a peculiar situation wherein, despite the occurrence of excessive structural damage to the project assets of the Corporate Debtor, the Applicants are not legally permitted to seek modification of the financial terms of the approved Resolution Plan. Any additional burden of meeting the costs of urgent retrofitting and repairs shall therefore directly affect the financial viability of the Resolution Plan and impede its successful implementation.
- viii.** The present factual situation of the Corporate Debtor can be equated with the "clean-slate theory" as propounded by the Hon'ble Courts, whereby the Successful Resolution Applicant acquires the Corporate Debtor in a manner that the claims do not pop up post the approval of Resolution Plan in a "hydra-head fashion". It is submitted that unless urgent protective directions are issued by this Tribunal to conduct a structural audit and to allocate

responsibility for retrofitting charges, the Applicants will be compelled to bear an unforeseen liability, pending the "Effective Date" and the very object of Code which is to ensure the revival and continuation of the Corporate Debtor as a going concern shall stand defeated.

- ix.** The provision of Section 60(5) encompassed within it the jurisdiction to deal with any question arising out of and in relation to the Insolvency Process of the Corporate Debtor.
- x.** The ambit of Section 60(5) has been upheld by the Hon'ble Supreme Court in both the cases of ***M/s Embassy Property Developments Pvt. Ltd. v. State of Karnataka and Ors. Civil Appeal No. 9170 of 2019 with Civil Appeal Nos. 9171 and 9172 of 2019 and Gujarat Urja Vikas Nigam Limited v. Amit Kumar Gupta and Ors. Civil Appeal No. 9241 of 2019.***
- xi.** The Hon'ble Tribunal as submitted by the SRA in terms of the said judgment are only required to ensure the following:
 - a.** The question before the Bench is solely arising out of the Insolvency and as a result of the Insolvency Process. In the present case, the issue of structural damage to the Corporate Debtor's project due to sewage leakage directly threatens the financial viability and implementation of the approved Resolution Plan. Therefore, the relief sought (structural audit and retrofitting directions) arises solely out of and in relation to the CIRP and implementation of the Resolution Plan, without which the revival of the Corporate Debtor as a going concern will be frustrated.
 - b.** The jurisdiction of any other Court/Authority is not usurped. In the present case, the Applicants are not seeking adjudication of independent contractual, sovereign, or public law disputes. The prayer is limited to securing cooperation of GNIDA in carrying out repairs and ensuring the viability of the Resolution Plan. No claim of title, ownership, municipal regulation, or statutory dues is being adjudicated in this application. The issue does not fall under the jurisdiction of civil courts, consumer fora, municipal authorities, or writ courts; it falls squarely within the

Adjudicating Authority's jurisdiction to supervise and protect the CIRP process.

4. ANALYSIS AND FINDINGS:

- i.** We have carefully considered the averments made in the present Application, regarding the maintainability of the present Application and the submissions advanced.
- ii.** It is an admitted position that the Resolution Plan submitted by the present Applicants as Successful Resolution Applicants in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Shubhkamna Buildtech Pvt. Ltd. was approved by the Committee of Creditors with 85.57% voting share and subsequently approved by this Adjudicating Authority vide order dated 12.09.2022. It is also submitted that the said approval order is under challenge before the Hon’ble NCLAT preferred by *Greater Noida Industrial Development Authority*.
- iii.** The Applicants, through the present Application, seek permission to conduct a structural audit of the project and to subsequently carry out retrofitting/repairs on the basis of such audit, besides seeking directions to GNIDA to provide requisite approvals. The Applicants have contended that such measures are necessary to preserve the viability of the project and to ensure effective implementation of the approved Resolution Plan once the “Effective Date” arrives.
- iv.** The limited issue before this Bench is whether the present Application filed under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 is maintainable in view of the fact that the Resolution Plan of the Corporate Debtor has already been approved by this Adjudicating Authority.
- v.** At the outset, it is settled law that once a Resolution Plan has been approved by the Adjudicating Authority under Section 31 of the Code, it attains finality and becomes binding on the Corporate Debtor, its employees, members, creditors, guarantors, and other stakeholders. The Hon’ble Supreme Court in ***Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*** [(2022) 2 SCC 401] has categorically held that once a Resolution Plan

has been approved by the Committee of Creditors and submitted to the Adjudicating Authority for approval, it becomes irrevocable and cannot be withdrawn or modified either by the Resolution Applicant or any other stakeholder. The Court further held that permitting any post-approval modification would defeat the sanctity, predictability, and finality of the resolution process under the Code. The Hon'ble Supreme Court has in fact, in the same judgement, also discussed the residual powers of the Adjudicating Authority under the Code. Relevant extract has been reproduced herein below:

“202. The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency...”

- vi.** The reliefs sought by the Applicants, though framed as requests for protective directions and structural audit, would in substance amount to modification of the approved Resolution Plan. This is because any direction for carrying out audit or retrofitting works, and any consequential financial impact thereof, would necessarily alter the cost, timelines, and implementation structure envisaged under the approved Plan. Such directions, if granted, would effectively reopen a Plan that has attained finality under Section 31 and is pending appellate consideration before the Hon'ble NCLAT.
- vii.** The jurisdiction of this Adjudicating Authority under Section 60(5) cannot be invoked to revisit or vary the terms of an approved Resolution Plan under the guise of facilitating its implementation. It is a settled position of law that “what cannot be done directly can also not be done indirectly” being the doctrine of colourable legislation that will apply in the present case.

viii. At this stage it would be pertinent to again refer to Para 204 of the *Ebix Singapore Case (supra)* wherein the Hon'ble Supreme Court has further held the following:

“....

A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations.

....”

ix. The above mentioned principle has been reiterated by the **Hon'ble NCLAT in *Kalinga Allied Industries India Private Limited v. Committee of Creditors & Ors., (2022) SCC OnLine NCLAT 1618***. Relevant extract of the decision of the Hon'ble NCLAT is reproduced herein below:

“8. Though the main issue raised in ‘Ebix Singapore Pvt. Ltd.’ (Supra) is with respect to withdrawal/ modification of a Resolution Plan by an SRA, the Hon'ble Supreme Court has clearly laid down that ‘the NCLT is Residuary Jurisdiction [under Section 60(5)(c)] though vide, is nonetheless defined by the text of the Code. Specifically, the NCLT cannot do what the IBC consciously did not provide it the power to do’. Further, the Court observed that ‘this Court must adopt an interpretation of the NCLT is Residuary Jurisdiction which concurs with the broader goals of the Code’. ‘Ebix Singapore Pvt. Ltd.’ (Supra) has observed that strict timelines have to be adhered to and that the Adjudicating Authority lacks the authority to allow the withdrawal/ modification of the Resolution Plan by an SRA, as this would defeat the very objective of the statute. In the instant case, though it is not the SRA which is seeking withdrawal, the effect of the CoC seeking withdrawal of an already approved Resolution Plan would have identical repercussions with respect to ‘timelines’ as the

same would have the effect of restarting the CIRP Process from the valuation stage when all the statutory timelines have long since been exhausted. The principle with respect to 'timelines' is applicable to the facts of this case. At the cost of repetition, it is crystal clear that any modification or a withdrawal (by SRA or otherwise) after approval by the CoC and submission to the Adjudicating Authority, 'irrespective of the content' of the terms envisaged by the Resolution Plan, would only lead to further delay and defeat the very scope and objective of the Code. The existing framework does not provide any scope for effecting any further modifications or withdrawals of the CoC approved Resolution Plan by the SRA or the Creditors. The Adjudicating Authority can interfere only if the Plan is against the provisions of the Code. Once the Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code....."

- x.** Further, it is pertinent to note that the Plan approval order dated 12.09.2022 is sub judice before the Hon'ble NCLAT in Company Appeal (AT)(Ins)-184/ND/2023 titled **Greater Noida Industrial Development Authority versus Anand Sonbhadra** and entertaining fresh directions relating to implementation or financial obligations at this stage would not only be beyond jurisdiction but would also result in judicial overreach into a matter pending appellate scrutiny.
- xi.** Moreover, the Resolution Plan having been approved on 12.09.2022, a considerable period has already elapsed. If the Applicants were genuinely concerned about the viability or effective implementation of the Resolution Plan owing to issues such as seepage or structural damage, they ought to have approached this Adjudicating Authority in a timely manner. Having failed to do so for such a long duration, their belated approach cannot now be justified on grounds of urgency or viability concerns.
- xii.** Accordingly, this Adjudicating Authority is of the considered view that the reliefs sought by the Applicants, are beyond the permissible scope of Section

60(5) and cannot be granted without disturbing the finality of the Resolution Plan approved under Section 31 of the Code.

xiii. In light of the above discussion, the present Application bearing **I.A. 3991 OF 2025** is held to be not **maintainable** and is **dismissed** accordingly.

No order as to costs.

-SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

-SD/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**