

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.90/ALD/2022**

*In the matter of*

*(Company Application under 7 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 4 of the NCLT Rules, 2016)*

*In the matter of:*

**IN THE MATTER OF**

**Vistra ITCL (India) Limited**

Having its registered office at:

IL&FS Financial Centre

Plot No.C-22, G Block

Bandra Kurla Complex

Bandra East Mumbai- 400051

And branch office at:

805, Kailash Building, 26,

KG Marg, Connaught place, New Delhi, Delhi 110001

**..... Applicant/Financial Creditor**

***Versus***

**Wiztown Planners Private Limited**

Having its registered office at:

174 A, 7<sup>th</sup> Floor

Tower A, The Corenthum, Section 62

Noida, Gautam Buddha Nagar

Uttar Pradesh-201301

**.....Respondent/Corporate Debtor**

Order pronounced on 16<sup>th</sup> July, 2024

***Coram:***

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

**Appearances:**

Sh. Amit Saxena, Sr. Adv. With : *For the Financial Creditor*  
Sh. Ramji Srinivasan, Sr. Adv.  
assisted by Sh. Udit Mendiratta,  
Sh. Shivkrit Rai, Sh. Prithvi Sinha  
& Sh. Tanmay Sadh, Adv.

Sh. Anupam Lal Das Sr. Adv. : *For the Corporate Debtor*  
assisted by  
Sh. Ram Kaushik with  
Sh. Shrey Sinha, Adv.

**ORDER**

1. The Present Application/Petition has been filed on 31.08.2022 electronically and then refiled on 19.09.2022 along with hard copy (*as the earlier Application/Petition filed electronically , was not complete*) by Vistra ITCL (India) Ltd. (hereinafter referred to as “**Applicant/Financial Creditor/Vistra**”) seeking initiation of the Corporate Insolvency Proceedings (hereinafter referred as “**CIRP**”) against Wiztown Planners Private Limited (hereinafter referred as “**Respondent/Corporate Debtor/Wiztown**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**IBC**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

- 2.** The Financial Creditor i.e. Vistra ITCL (India) Ltd. (Id no: U66020MH1995PLC095507) acquired a company named IL&FS Trust Company Limited on 12.04.2016, which was earlier incorporated on 19.12.1995 as a company limited by shares under the Companies Act, 1956 having its registered office at IL&FS Financial Centre Plot No. C-22, G Block, Bandra Kurla Complex, Bandra East, Mumbai- 400051 and operating as a Financial Institution. Vistra has filed this petition in its capacity as the Debenture Trustee for and on behalf of the Debenture Holder- Assets Care & Reconstruction Enterprises Limited. (hereinafter referred as “**ACRE**”).
- 3.** The Corporate Debtor i.e. Wiztown Planners Private Limited (CIN: U70109UP2016PTC082739) was incorporated on 28.04.2016 as a private limited company limited by shares under the Companies Act, 2013 and registered as an MSME vide registration no. UDYAM-UP-28-0019034 having its registered office at 174 A, 7<sup>th</sup> Floor, Tower A, The Corenthum, Sector 62, Noida, Gautam Budha Nagar, Uttar Pradesh- 201301. The Corporate Debtor was incorporated as a wholly

owned subsidiary of Lotus Greens Constructions Private Limited (hereinafter referred to as "**Principal Borrower/LGCPL**"), as a project Special Purpose Vehicle (SPV) for developing a specific section of the Sports City/ Project land. This petition has been initiated against the Corporate Debtor in its capacity as Corporate Guarantor for the debts due from the Principal Borrower.

4. As submitted by the Applicant, following details of debt and default have been provided in Part IV of the Application with the details of supporting documents as specified in Part V of the Application.

(i) The LGCPL was allotted Plot No. SC-02, Sec-150, Noida, admeasuring 12,00,000 sq. mtrs. by New Okhla Industrial Development Authority ("**NOIDA**") by an allotment cum reservation letter dated 10.09.2014 and 17.10.2014, and additional land vide letter dated 16.03.2015, for developing a Sports City ("Project").

(ii) After the said allotment, LGCPL issued debentures aggregating to up to Rs. 450,00,00,000/- pursuant to a debenture trust deed dated 03.12.2014 (hereinafter

referred as “**DTD**”) comprising of 2250 Series B debentures and 2250 Series C rated, listed, taxable, secured, redeemable and non-convertible debentures with a face value of Rs. 10,00,000/- each. Subsequently, Altico Capital India Ltd (“Altico”) subscribed to the aforementioned Series B debentures and Asia Opportunities III (Mauritius) Limited subscribed to Series C Debentures. The Applicant was appointed as Debenture Trustee vide the Debenture Trust Agreement on 02.12.2014. In fact, at the time of subscription of these debentures by above mentioned debenture holders, M/s IL&FS Trust Ltd was Debenture Trustee and the same was later acquired by Vistara on 12.04.2016, the Financial Creditor in the present petition.

- (iii) The Series B debentures were later assigned by Altico to Asset Care & Reconstruction Enterprise Ltd. (“ACRE”) acting through India Real Estate 2021 Trust, and thereby ACRE is the holder of Section B Debentures.

- (iv) In the Application/Petition, it is specified that the instant application/petition has been preferred by the Applicant/Finance Creditor in its capacity as the Debenture Trustee, for and on behalf of Series B debenture holder and in respect of the Corporate Debtor's default in repayment in respect of the Corporate Debtor's default in repayment in respect of the Series B Debentures.
- (v) A certain land parcels were allotted by NOIDA to Principal Borrower on lease basis in Sector 150, Noida, Uttar Pradesh for the purposes of setting up Project relating to Sports City which was further subdivided into smaller parcels to be developed independently by the Borrower's subsidiaries. Since the Project land was mortgaged in favour of Financial Creditor to secure the Debentures issued to Principal Borrower, with the permission of Financial Creditor, the Principal Borrower subleased a part of the Project land, admeasuring 27,185 sq. mts., situated at Plot No. SC-02/A3, Sector 150, Noida, in favour of the Corporate Debtor.

(vi) The Corporate Debtor through an accession deed dated 04.07.2016 acceded to provide security in favour of the Applicant to secure the Debentures and simultaneously also executed:

- a. Corporate Guarantee securing the entire Facility amount of Rs. 450 Crores
- b. Deed of hypothecation on their receivables
- c. Share pledge agreement inter-alia, entered by and between the Borrower, Financial Creditor and the Corporate Debtor, pledging 100% of their shares
- d. Memorandum of entry and declaration of mortgage (dated 05.07.2016) in favour of the Applicant, mortgaging in favour of the Applicant the portion of the act land subleased in favour of the Corporate Debtor by the Borrower.

(vii) The Borrower and its subsidiaries including the Corporate Debtor entered into an amended and restated Debenture Trust Deed on 9.12.2017 which superseded the original Debenture Trust Deed wherein all the

obligors were bound by all the transaction documents, including those creating security interests in favour of the Applicant.

(viii) However, the Principal Borrower defaulted on 30.9.2019 in its payment obligations in respect of the Debentures, under the abovementioned amended Debenture Trust Deed, against which the Corporate Debtor had given a Corporate Guarantee, pledging 100% of its shares, hypothecated its assets and mortgaged the subleased land.

(ix) The Applicant submitted that the then Series B debenture holder issued a notice of default on 24.10.2019 to the Borrower and all the Obligors, including the Corporate Debtor, calling upon the parties to forthwith make payment of the defaulted total overdue amount of Rs. 17,28,38,941/- (against Series B Debentures) as per the terms of the Facility/ DTD. On the next date i.e. 25.10.2019, a notice of intimation of default was also issued to all obligors/guarantors



including the Corporate Debtor to make the payment of the defaulted overdue amount of Rs. 17,28,38,941/-.

- (x) The Applicant issued an acceleration and enforcement notice to the Principal Borrower, the Corporate Debtor and other Obligors/ Guarantors, recalling the entire outstanding amount of Rs.304,44,11,603/- as on 09.01.2020, in addition to any further applicable interests under the transaction documents. Subsequently on 07.02.2020, the Applicant issued yet another notice invoking the Corporate Guarantee dated 04.07.2016 issued by the Corporate Debtor and other Obligors/ Guarantors demanding the payment of the entire outstanding amount of Rs.304,44,11,603/- as on 01.09.2020, in respect of the Debentures, in addition to all applicable interests. However, due to the Covid- 19 pandemic, no further actions were taken until 2022.
- (xi) The Applicant issued a fresh acceleration and enforcement notice to the Principal Borrower on 05.08.2022 for the purposes of recalling and accelerating the Debentures/Facility and declaring that

the entire amount of Rs.10,62,28,73,773/- as on 30.6.2022, as due and payable, in respect to the Series B and Series C Debentures.

(xii) The Applicant has submitted a breakup of the dues owed by the Corporate Debtor in respect of Series B Debenture as of 31.7.2022:

<b>PARTICULARS</b>	<b>AMOUNT (In Rs.)</b>
Principal	2,11,84,58,250
Interest	2,81,42,39,194
Default Interest	43,94,96,547
Other Receivables	6,53,321
<b>Total</b>	<b>5,37,28,47,312/-</b>

The abovementioned breakup is based on the following references:

- a. Principal Borrower's financial statements (Note I(c) & (d), Pg. 260-261 and Sr. No. 34, Pg. 266 annexed as Annexure A-8, Vol. 2 of Company Petition)
- b. Ledgers maintained by the Applicant/ Series B Debenture Holder:

- Record of the principal amount due and payable [Pg. 272 annexed as Annexure A-10 (Colly), Vol. 2 of Company Petition].
  - Record of the interest amount due and payable [Pg. 274 annexed as Annexure A-10 (Colly), Vol. 2 of Company Petition).
  - Record of default interest amount due and payable [Pg. 275 annexed as Annexure A-10 (Colly), Vol. 2 of Company Petition).
  - Record of other receivables due and payable [Pg. 276, 282, 297, 306 annexed as Annexure A-10 (Colly). Vol. 2 of Company Petition).
- c. Working computation of outstanding amount, submitted by the Applicant [Table of working computation annexed as Annexure A-38, Pg. 1094-1097, Vol. 6 of Company Petition).
- d. Records of Information Utility - National E-Governance Service Limited [NESL Record annexed as Annexure A-40, Pg 1106-1107, Vol. 6 of Company Petition).

5. Against the above Application, the Corporate Debtor filed reply on 19.03.2023 pursuant to the order of this Tribunal dated 10.10.2022 countering all the details provided in the Application submitted by the Financial Creditor citing them as distorted and deliberately concealed. In this regard, following submissions have been made in the Reply

(i) The Respondent submitted that it underwent acquisition by its current Directors through the transfer of 100% of its equity shares, as documented in the Share Transfer Agreement dated 09.09.2019. Since the Respondent company's shares were pledged by the Principal Borrower in favour of the Applicant, pursuant to the Share Transfer Agreement, the new purchasers, namely the present Directors of the Respondent, also entered into a Share Pledge Agreement, pledging the transferred shares to the Applicant.

(ii) The said transfer was contingent upon the Principal Borrower seeking the Applicant's consent which was later granted vide letter dated 9.9.2019. According to the terms of this letter, the Respondent had to make a total

payment of Rs. 70.40 crores to the Applicant to be completely discharged from any debt, hence it was termed as 'Principal Release Amount'. An amount of Rs. 2.52 crores out of the Principal Release Amount stood paid by the Respondent followed by payment of Rs.15.40 crores. An amount of Rs 35 crores stood payable on or before 31.03.2020 with an IRR of 23% p.a., w.e.f 01.07.2019 as Component A and the balance Rs 20 crore was payable without any IRR/ interest as Component B. Further extensions were sought by the Respondent in this regard, consent for which was given by the Applicant vide Addendum Trustee Consent letter dated 18.05.2020 and a Second Addendum Trustee consent letter dated 29.10.2020. Pursuant to the second addendum trustee consent letter dated 29.10.2020, the Respondent made a payment of Rs. 4 crores towards Component A and Rs.6 crores towards Component B on 10.11.2020 and 12.11.2020 respectively.

- (iii) The Respondent submitted that the sanctioned map was found to be not in compliance of the NOIDA rules,

regulations and bylaws and therefore, the Respondent applied for revision of maps on 14.02.2020 before the NOIDA authority and also paid an amount of Rs. 1,34,78,040/- to NOIDA towards all pending dues till 14.02.2020 for clearing all the existing dues till the date of submission of the revised maps against which a challan was issued by the Authority. After a delay of four months, the authority vide letter no IV-1510/829 dated 22.06.2020 raised objection and demanded few documents which were duly submitted on 24.06.2020. The Respondent wrote many letters to the authority for their immediate intervention and deciding the revision of maps expeditiously but to no avail. Due to this, the Respondent approached Hon'ble Allahabad High Court by way of WP (C) No. 1940 of 2022 seeking approval of application for revision of maps by NOIDA and vide order dated 21.02.2022 the Court noted the statement of the counsel for NOIDA that the grievance of the Respondent shall be dealt in the next Board meeting. On 27.05.2022, the NOIDA in its Board meeting passed an

order whereby the permissible FAR of 31,326.09 sqr. mtrs. for land ad- measuring 27,185.00 sq. mtrs. sub-leased to the Respondent by LGCPL, be reduced to an FAR of 5136.70 sqr. mtrs.

- (iv) Since the FAR allocated to the Respondent by the Principal Borrower and consented to by the Applicant was reduced to approximately 1/6 of the original FAR by the order of an authority, the sum payable towards the Principal Release Amount in terms of the Trustee Consent Letter dated 09.09.2019 i.e., Rs. 70.40 crores automatically get proportionately reduced to Rs.11.5385 crores. Upon the reduction of FAR, the Respondent received a demand notice dated 07.06.2022 from the Applicant for payment of Rs.77.26 crores towards Component A, Component B and IRR. The Respondent communicated to the Applicant about the order dated 27.05.2022 passed by the Noida reducing the permissible FAR corresponding to the project land to 5136.70 sqr. mtrs. from 31,326.09 sqr. mtrs. and that the Principal Release Amount stands not only

discharged but over-paid. However, in response to this communication, the Applicant, issued an intimation of default cum demand notice dated 05.08.2022 in the form of guarantee invocation notice and demand certificate under the Debenture Trust Deed dated 03.12.2014.

- (v) As per the Respondent, he has already overpaid the Principal Release Amount by Rs.3.8615 crores, hence it should be discharged from all the Obligations as per para 9 of the Trustee Consent Letter. The computation showing overpayment as provided by the Respondent is as under:

FSI (in sqr. mtrs.)	31326.03 (as per share transfer agreement dated 09.09.2019)	5136.7 (as per order dated 27.5.2022 passed by the Noida Authority)
Total acquisition amount as per the Defendant no.1's original trustee consent letter (in crores)	70.44	11.5385 (as per the reduced permissible FAR)
Payments received by the Defendant No.1 in terms of the Original Trustee Consent letter dated 9.9.2019 (in crores)	15.4	
Excess payment made/overpayment (in crores)	3.8615 (Amount includes sums paid)	



	pursuant to the Original Trustee Consent Letter dated 9.9.2019 but excludes sums paid to Defendant No. 2)	
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(vi) Pursuant to the demand notice, the Respondent then instituted CS (Comm.) 609/2022 before the Hon'ble Delhi High Court seeking stay of the said notices in the interim and as a final relief seeking recovery of the over-paid sums. The Hon'ble Delhi High Court issued notice of summons to the Applicant along with the Principal Borrower vide order dated 09.09.2022 and referred the matter for mediation which eventually failed and the civil suit is listed for hearing on the injunction application.

**6.** The Applicant filed an additional affidavit on 22.10.2022 in compliance of the order dated 10.10.2022, passed by this Adjudicating Authority, for placing on record the fresh Form 2 of the proposed interim resolution professional wherein the Applicant proposed the name of Ajit Gyanchand Jain (Registration number: IBBI/IPA-001/IP-P00368/2017-

2018/10625) r/o 204, Wall Street-1, Ellis bridge, Near Gujarat College, Ahmadabad, Gujarat, 380006.

**7.** The Applicant filed a rejoinder on 13.03.2023 in response to the reply filed by the Respondent and submitted that:

- i. The present Petition has been filed in respect of the debts owed by Corporate Debtor in its capacity as a 'Corporate Guarantor' for the facility granted by Vistra to the Borrower and the Respondent in its reply has dealt with a separate transaction regarding the change of ownership and control of Corporate Debtor, wherein the default amount arises from the consideration to be paid by the directors/ promoters of Wiztown Purchasers, for the purchase of shares of Corporate Debtor. However, this default amount owed by the Wiztown Purchasers to Applicant is not the subject-matter of the present Petition filed by the Applicant.
- ii. In order to secure the debts under the Debentures, the Corporate Debtor executed a deed of guarantee dated 4.07.2016, a Hypothecation Deed dated 4.07.2016, a share pledge agreement dated 4.07.2016, a

Memorandum of Entry dated 5.07.2016 and a declaration of mortgage dated 5.07.2016. Separately, the Wiztown Purchasers sought to purchase Corporate Debtor from LGCPL and due to the fact that 100% shares of Corporate Debtor were pledged in favour of the Applicant by virtue of the Share Pledge Agreement, LGCPL and Wiztown Purchasers necessarily required Applicant's no-objection in order to proceed with the transfer of Corporate Debtor's ownership. LGCPL and the Wiztown Purchasers, by a letter dated 09.09.2019, requested Applicant to permit the release, transfer and repledge of Corporate Debtor's equity shares. The said letter proposed for the sale of 100% of Corporate Debtor's equity shares by LGCPL to the Wiztown Purchasers, for a total consideration of Rs. 70,40,00,000/-, which was to be paid into the LGCPL's Debt Service Account, to be appropriated by Applicant against payments due and payable under the Facility/ Debentures. The shares were then to be re-pledged in favour of Applicant in a phased manner. On 09.09.2019,

Applicant agreed to release the pledged shares of Corporate Debtor for transferring it to the Wiztown Purchasers, subject to the same being re-pledged upon transfer.

- iii. The Corporate Debtor requested the Financial Creditor for extension of time/restructuring the terms of payment of the release amount by the Wiztown Purchasers vide letters dated 19.03.2020 and 25.09.2020 and accordingly, the Financial Creditor obliged to the same. Thereafter, as per the terms of the Trustee Consent Letter, upon transfer of Wiztown's shares from LGCPL to the Wiztown Purchasers, the transferred shares were repledged in favour of Applicant vide the share pledge agreement dated 10.6.2020.
- iv. By a letter agreement dated 14.12.2020 (entered into at the request of the Wiztown Purchasers) LGCPL, Corporate Debtor, and Applicant agreed that the secured amount under the Memorandum of Entry and the Hypothecation Deed shall stand reduced to Rs. 45,00,00,000/- as opposed to the entire sums due and

payable under the Debentures. However, the secured amount under the Corporate Guarantee was not reduced/ modified or agreed to be reduced/modified at any time, and the Corporate Guarantee continues to secure the entire Facility amount.

- v. But even after repeated extensions of the payment schedule granted by the Financial Creditor, Wiztown Purchasers continued to be in default of the payments due to Financial Creditor against the release amount as agreed in the Trustee Consent Letter.
- vi. Subsequently, Financial Creditor issued a demand notice dated 07.06.2022, calling upon the Wiztown Purchasers to pay the entire outstanding amount of Rs. 77,26,00,000/- as per the terms of the Trustee Consent Letter. In response to the demand notice, the Wiztown Purchasers responded with an email dated 09.06.2022, stating that the Noida Authority had reduced the permissible FAR of the land sub-leased to Corporate Debtor from 31,326.09 sq. mtrs. to 5136.70 sq. mtrs., by an order dated 27.5.2022.

- vii. The Financial Creditor on 25.08.2022, exercised its rights to invoke the pledge in respect of Corporate Debtor's shares and issued an guarantee invocation notice to Corporate Debtor and the Wiztown Purchasers as per the Share Re-pledge Agreement.
- viii. The Corporate Debtor has already raised identical issues before the Hon'ble Delhi High Court, and sought an order of stay of the present proceedings, however the Delhi High Court has refused to grant any reliefs to the Corporate Debtor.
- ix. The issue of reduction of the permissible FAR of Corporate Debtor's subleased land is irrelevant for adjudication of the present petition.
- x. Pursuant to the failed mediation, the Corporate Debtor sought an injunction before Delhi High Court for an ad-interim stay on Financial Creditor's rights to enforce its security interests. Further, the Corporate Debtor also contended before the Hon'ble High Court that the Financial Creditor has preferred an application being I.A. No. 452 of 2022, seeking a direction to restrain the

Corporate Debtor to alienate/ create any third-party rights till pendency of the Section 7 Petition. However, the Hon'ble Delhi High Court did not find any merit in passing any order to grant an ad-interim stay on any of Financial Creditor's rights, including its rights to continue with the present proceeding.

8. The Applicant in pursuance to the order dated 05.12.2023 of this Tribunal filed a written submission on 15.12.2023 and submitted against an Application filed by New Okhla Industrial Development Authority (NOIDA) that intervention applications by third parties are not maintainable at the pre-admission stage in a Section 7 proceeding as initiation of CIRP envisaged under Sections 7, or 9 of the IBC is not in the nature of an adversarial litigation. The Adjudicating Authority, at the pre-admission stage, is only required to satisfy itself that there is a financial debt and a default on the part of the corporate debtor, therefore, warranting initiation of CIRP. The Applicant further placed reliance on the case of *Axis Bank Limited v. Lotus Three Developments Limited 2018 SCC Online NCLAT 914*, wherein the Hon'ble Appellate

Tribunal has categorically held that: “...the Adjudicating Authority is only to satisfy that the default has occurred and that the 'Corporate Debtor' is entitled to point out that the default has not been occurred in the sense that the debt is not due. No other person has a right to be heard at the stage admission of the application under Section 7 and 9 of the I & B Code.”

As further pointed out This point was observed again in the matter of Vekas Kumar Garg v DMI Finance Private Limited-Company Appeal (AT) (Ins) No. 113 of 2021 wherein the Hon'ble Appellate Tribunal held that:

*“...In an application under Section the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, of the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the 1&B Code and then pass an order of admission or rejection on merit ax mandated under sub action 14) of Section 7 within 14 days. No third-party intervention is contemplated at that stage. No lengthy hearing is warranted at the pre-admission stage nor can the dispute in regard to shareholding or inter se directorial issue be entertained.”*



- 9.** The Applicant further submitted that in the instant Company Petition, an application for intervention, bearing I.A. No. 469 of 2023 has been filed by the Noida Authority primarily on the grounds that it is an Operational Creditor of the Corporate Debtor, and that if the Corporate Debtor was to be admitted into insolvency, the dues owed by the Corporate Debtor would stand practically extinguished. The Applicant submitted in response that Noida is neither a necessary nor a proper party concerned in the instant proceedings and in any event, initiation of CIRP in respect of the Corporate Debtor shall in no way frustrate Noida's claim in respect of the Corporate Debtor. Noida, as an Operational Creditor, shall stand to realize its outstanding dues as per the provisions of the IBC.
- 10.** Furthermore, NOIDA seeks to intervene in both the Section 7 application as well as the Corporate Debtor's application under Section 65, IBC, bearing I.A. No. 266 of 2023. Noida has also filed an application bearing I.A. No. 601 of 2023, wherein it seeks rectification of the memo of parties to state that its application has been filed in the Section 65 Application. An intervention in the Section 65 Application

would effectively amount to an intervention in the Company Petition itself i.e. main application bearing CP (IB) No. 90/ALD/2022 which should not be permitted.

11. All these arguments of the Applicant have already been considered by us while passing order dated 16.07.2024 in IA No. 266/2023 filed by the Respondent Corporate Debtor u/s 65 and NOIDA has been admitted as intervener only in the matter relating to section 65 relying on the judgment of Hon'ble NCLAT in the case of ***SREI Infrastructure Finance Ltd vs Right Tower Pvt. Ltd. & Anr [Company Appeal (AT) (Insolvency) No. 38 of 2018] dated 20 February, 2018*** in which it has been held that any person may intervene and may bring the facts to the notice of the Adjudicating Authority in a proceeding of Insolvency Resolution Process in case, it appeared to that person that the said proceeding is initiated fraudulently or with malicious intent for any purpose other than for the resolution of insolvency. Now, right of third party to intervene in the proceedings of Section 7 through section 65 has been well recognized where it is necessary to draw attention of the Adjudicating Authority to collusive and

fraudulent initiation of the said proceeding. In that background, we have allowed NOIDA to be impleaded in this proceeding after giving opportunity to Respondent (Financial Creditor) to file reply on the facts and documents brought by NOIDA in its impleadment application, which it chose not to file objections though it opposed the impleadment raising the question of *locus standi* of NOIDA. After examining entire facts and circumstances of the case , as discussed in details in our order dated 16.07.2024 in respect of IA No. 266/2024, we found that facts presented by NOIDA in respect of the present proceeding would facilitate to deciding about the alleged collusive irregularity in the transaction done with respect to the land of Sports City project leased by NOIDA and accordingly, allowed the NOIDA to be impleaded in the application filed by Corporate Debtor i.e. Wiztown U/s 65 of the Code to the extent of submitting the necessary details and information about the transactions related to the present matter, so as to facilitate the Adjudicating Authority to take a conscious and reasoned decision in the context of the

malicious filing of petition U/s 7, as alleged by the Corporate Debtor.

- 12.** The Applicant has also pleaded that an application bearing I.A. No. 629 of 2023 filed in the Company Petition by one Mr. Ashmeet Bhatia, who is an aggrieved homebuyer in a project being developed by one M/s. Granite Gate Properties Pvt. Ltd. ("GGPL") in the Three C Group, is in no way connected to the Corporate Debtor or Financial Creditor and has no *locus standi* to intervene in the present proceedings. The remaining contentions submitted therein have been reiterated and therefore not repeated for the sake of brevity. After considering that the Applicant in IA No.629/2023 was neither a relevant nor a necessary party in the present proceedings initiated by the Financial Creditor U/s 7 as not connected with any transaction involving either Financial Creditor or Corporate Debtor in the present proceeding , and hence in view thereof without returning any findings on merits of the present application, we dismissed that application as the Applicant does not have a locus to maintain as held by us in a sperate order dated 16.07.2024 passed in IA No. 629/2023.

**13.** This bench vide a clarification order dated 25.04.2024 called upon both the Applicant and Respondent to clarify "*whether any permission was required to be taken by the principal borrower from Noida before executing sub-lease agreement with the Corporate Debtor after it has been transferred from the principal borrower to new management and if so, whether such permission was taken in respect of the Corporate Debtor or any other subsidiary of principal borrower acting as corporate guarantor in case any one of them was transferred by principal borrower to some other person subsequently*".

The Applicant submitted that no permission was required to be taken by the Principal Borrower from NOIDA pertaining to the sub-lease deed dated 15.06.2016 after the execution of the share transfer agreement dated 09.09.2019 and addendum to the share transfer agreement dated 08.06.2020 by and between LGCPL and the new management i.e., Mr. Abhay Kumar, Mr. Sanjay Kumar, Mr. Manish Kumar and Mr. Anchal Bohra.

**14.** The Applicant further submitted that vide communication dated 06.06.2016, issued by NOIDA to LGCPL, NOIDA

allowed LGCPL's request to sub-lease a part of the project land admeasuring 27,185 sq. mts. situated at Plot No. SC-02/A3, Sector 150 NOIDA, in favor of the Respondent. Accordingly, the Sub-lease Deed was executed by and between LGCPL and Wiztown. NOIDA issued communication to Wiztown on 10.02.2020 wherein NOIDA granted its consent for the transfer of Wiztown's shares, held by LGCPL to the New Management. Accordingly, the Share Transfer Agreement and the Addendum to Share Transfer Agreement were executed by and between LGCPL and New Management. In light of NOIDA's Consent Letter and thereafter, the execution of the Share Transfer Agreement and the Addendum to Share Transfer Agreement, the shareholding and management of Respondent changed, whereby 70% of Respondent's shares were acquired by the New Management. And since the Sub-lease Deed was held by Respondent, and only the management and shareholding of Respondent changed in light of the Share Transfer Agreement and the Addendum to the Share Transfer Agreement, no permission was required to be taken by LGCPL from NOIDA pertaining to

the Sub-lease Deed. All requisite permissions as required from NOIDA have been taken.

### **FINDINGS AND ORDER**

- 15.** We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor Vistra and Respondent Corporate Debtor Wiztown. All the documents and records as part of the pleadings along with exhibits/annexures marked thereto, and written submissions filed subsequently by both parties have been perused by us.
- 16.** During the course of the hearings of this proceeding to decide about the initiation of CIRP against the Corporate Debtor Wiztown, an IA No. 266/2023 was filed by it under section 65 of IBC alleging that this proceeding has been initiated by the Financial Creditor fraudulently and with malicious intent for the purpose other than insolvency resolution of the Corporate Debtor. The said contention of the Corporate Debtor in the above interlocutory application has been further supported by NOIDA by flinging two intervener applications one IA No. 469/2023 for being impleaded under section 7 proceeding initiated by Vistra, then the second one IA No. 601/2023 with

prayer to modify the ground for being impleaded in the application filed by the Corporate Debtor u/s 65.

- 17.** Both the applications filed by NOIDA for being impleaded under Section 7 proceeding as well as section 65 proceeding have been opposed by Vistra on the ground of locus as being a third party, however no written objections have been filed by it against various points raised by NOIDA in its submissions made in both interlocutory applications. As NOIDA not being connected with the Corporate Debtor, hence being outside the purview of the proceeding under section 7 filed by Vistra against Wiztown, its intervener application in proceeding under section 7 has not been considered, however, as held by Hon'ble NCLAT in case of ***Srei Infrastructure Finance Ltd vs Right Tower Pvt. Ltd. & Anr [Company Appeal (AT) (Insolvency) No. 38 of 2018] dated 20 February, 2018*** that any person may intervene and may bring the facts to the notice of the Adjudicating Authority in a proceeding of Insolvency Resolution Process in case it appeared to that person that the said proceeding is initiated fraudulently or with malicious intent for any



purpose other than for the resolution of insolvency, we have decided to allow the impleadment of NOIDA in the application filed by the Corporate Debtor under section 65.

**18.** Having heard and after considering arguments advanced by the Learned Senior Advocates and other Advocates appearing for the Financial Creditor, Vistra, Corporate Debtor, Wiztown and the intervener, NOIDA and on perusal of the records and exhibits/annexures attached thereto, we decided to first adjudicate on the issue whether the present Application/Petition filed u/s 7 by the Financial Creditor Vistra against the Corporate Debtor Wiztown after invoking the Corporate Guarantee for which it stood as Corporate Guarantor on the amount received by the Principal Borrower LGCPL through Debenture, is filed fraudulently and with malicious intent and for any purpose other than resolution or liquidation as the case may be, as alleged in the applications filed by the Corporate Debtor as well as NOIDA.

**19.** In this regard, in case of ***Embassy Property Developments Pvt Ltd vs State of Karnataka & Ors (Civil Appeal No. 9170 of 2019) dated 03.12.2019***, the

Hon'ble Supreme Court after considering Section 65 and certain other provision of the IBC held that the NCLT (Adjudicating Authority) and the NCLAT have jurisdiction to enquire into the allegations of fraud and fraudulent initiation of CIRP. Therefore, we after considering all materials on record passed a separate order dated 16.07.2024 in respect of IA No. 266/2023 filed by the Corporate Debtor Wiztown and IA No. 601/2023 read with IA No. 469/2023 filed by NOIDA after making a detailed analysis of all the materials on record , holding that the present application filed by Vistra under section 7 against Wiztown is in collusion with the Principal Borrower LGCPL with malicious intent for a purpose other than for the resolution of insolvency of Wiztown.

**20.** In ***Hytone Merchants Pvt Ltd vs Satabdi Investment Consultant Pvt Ltd. (Company Appeal (AT) (Insolvency) No. 258 of 2021 dated 30.06.2021***, the Hon'ble NCLAT has held that in the given situation where it appears that Application is filed collusively not with the purpose of Insolvency Resolution but otherwise, then despite fulfilling all

the conditions of Section 7(5) of the Code, the Adjudicating Authority can exercise its discretion in rejecting the Application relying on Section 65 of the Code. The relevant part of this decision is reproduced as below:-

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*“34. The use of the phrase 'it may' under Sub-section (5) of section 7 itself leaves the scope of discretion exercised by the Adjudicating Authority in admitting or rejecting the Application. Section 7 (5) (a) lays down parameters about general conditions to admit an Application. However, in the given situation where it appears that Application is filed collusively not with the purpose of Insolvency Resolution but otherwise, then despite fulfilling all the conditions of Section 7(5) of the Code, the Adjudicating Authority can exercise its discretion in rejecting the Application relying on Section 65 of the Code.*

*35. Hon'ble Supreme Court in **Swiss ribbons (P) Ltd v Union of India, (2019) 4 SCC 17 held;***

**Para 55. \*\*\*\*\***

***"A conjoint reading of all these Rules makes it clear that at the stage of the adjudicating authority's satisfaction under Section 7(5) of the Code, the corporate debtor is served with a copy of the Application filed with the adjudicating authority and***

***has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said Application.***

***59. What is also of relevance is that in order to protect the corporate debtor from being dragged into the corporate insolvency resolution process mala fide, the Code prescribes penalties. Thus, Section 65 of the Code reads as follows:***

*"65. Fraudulent or malicious initiation of proceedings.— (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of Insolvency, or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees. (2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees."*

*60. Also, punishment is prescribed under Section 75 for furnishing false information in an application made by a financial creditor which further deters a financial creditor from wrongly invoking the provisions of Section 7. Section 75 reads as under:*

*"75. Punishment for false information furnished in Application.—Where any person furnishes information in the Application made under Section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crore rupees."*

*36. In the above mentioned case Hon'ble Supreme Court in Para 59 has very clearly observed that "What is also of relevance is that in order to protect the Corporate Debtor from being dragged into the Corporate Insolvency Resolution Process mala fide, the Code prescribes penalties. Thus, Section 65 of the Code."*

*37. Based on the law laid down by Hon'ble Supreme Court in the abovementioned case, it is clear that even if the Application filed under Section 7 meets all the requirements, then also the Adjudicating Authority has exercise discretion carefully to prevent and protect the Corporate Debtor from being dragged into the Corporate Insolvency Resolution Process mala fide.*

*38. Therefore, the Code prescribes penalties under Section 65 and 75. Furthermore, Section 65 explicitly says that if any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for resolution of*

*Insolvency or liquidation, as the case may, the Adjudicating Authority may impose a penalty.*

39. *Thus, it is clear that the Adjudicating Authority should be very cautious in admitting the Application so that Corporate Debtor cannot be dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Therefore, to protect the Corporate Debtor from the mala fide Initiation of CIRP, the law has provided a penalty under sections 65 and 75 of the Code. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.*

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45. *Based on the above discussion, we believe that even if the petition complies with all requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016, it is filed collusively, not with the intention of Resolution of Insolvency but otherwise. Therefore, it is not mandatory to admit the Application to save the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process with mala fide.”*

**21.** As in our dated 16.07.2024 passed in respect of IA No. 266/2023 filed by the Corporate Debtor Wiztown and IA No. 601/2023 read with IA No. 469/2023 filed by NOIDA, we have

already held that the present application filed by Vistra under section 7 against Wiztown is in collusion with the Principal Borrower LGCPL with malicious intent for any purpose other than for the resolution of insolvency of Wiztown, the present Application/Petition filed u/s 7 by Vistra against Wiztown would not be maintainable and cannot be admitted so as to save the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process with mala fide. Accordingly, the Application/Petition filed u/s 7 by Vistra is dismissed.

- 22.** Without prejudice to our above decision, we have also found that an amount of Rs. 70.40 crores were required to paid to Vistra as “Release Amount” for transferring of shares of Wiztown in the name of present Directors/new Promoters and also, on payment of this Release Amount, Wiztwon shall be released from all its related obligation as provided in para 9 of the Trustee Consent Letter vide which the Financial Creditor Vistra allowed the transfer of shares of Wiztown from the Principal Borrower LGCPL to new promoters of Wiztown. The relevant para of the Trustee Consent Letter is reproduced as under:

*“9. Upon receipt of the entire Release Amount in the Designated Account we shall issue a release letter (“Release Letter”) releasing WPPL from the WPPL Related Obligations . Without prejudice to the foregoing paragraph of this letter, we shall release the WPPL Related Obligations and execute the Release Letter and co-operate with WPPL in making the filing for effecting such release only upon receiving a written confirmation from the Debenture Holders of the receipt of the entire Release Amount in the Designated Account to their full and complete satisfaction.*

**23.** Relying on the above para of the Trustee Consent Letter, it has been argued by the Corporate Debtor, Wiztown that after the Release Amount having been overpaid, the obligation casted upon the Respondent Corporate Debtor herein under the Corporate Guarantee Deed also stands extinguished making the section 7 petition filed by the Applicant not maintainable even on account of any default of not paying the debt amount after invocation of the Corporate Guarantee as alleged by the Applicant/Financial Creditor Vistra.

**24.** The issue of determining of the Release Amount is under dispute at present because of reduction of the FAR of the land subleased to Wiztown by the Principal Borrower LGCPL. The FAR of the land was reduced by NOIDA from 31,326 sq mtr. to 5136 sq mtr. and accordingly, it is claimed by Wiztown that



the original Release Amount fixed at Rs. 70.40 crore considering the FAR of 31,326 sqmtr should accordingly be reduced proportionately to be paid by it at Rs. 11.5385 crores because after reduction in FAR, the commercial exploitation of the land which is the only asset of the Company Wiztown as bought by the new management, has also got reduced.

**25.** Now, NOIDA has also submitted that shares of Wiztown were transferred to new management by apportioning the loan amount of Rs. 70.4 crores to be paid for acquisition of shares of Wiztown by new management, which is not in proportion to the land sub-leased to Wiztown. It is shown that Wiztown has been saddled with 15.64% of loan i.e. Rs. 70.40 crore (15.64% of Rs. 450 crores) on a land of 27,185 sqm. allotted to Wiztown, which comes to only 4.19% of the entire mortgaged land i.e. 647600 sqm.

**26.** On the basis of above information provided by NOIDA, the Applicant/Corporate Debtor Wiztown has argued before us that as per the Affidavit submitted by the Noida Authority, if the Respondent would have taken the required permission, then the apportionment of the loan would have been 4.19%

of Rs.450 crores, i.e., Rs.18.855 crores whereas the Respondent Corporate Debtor has already paid Rs.25.4 crores which is overpaid by Rs.6.545crores by the Applicant and therefore, no debt is outstanding towards Vistra.

**27.** The issue of determining the Release Amount to be paid by Wiztown after reduction of FAR by NOIDA is pending for adjudication before the Hon'ble Delhi Court in a commercial suit filed by Wiztown. In the Trustee Consent Letter, it is clearly provided that Vistra shall release Wiztown from its all related obligations after the said Release Amount is paid. Apparently, after considering the submission of NOIDA, prima facie we find that the Release Amount determined by LGCPL in consultation with Vistra is not proportionate to land allotted to Wiztown, which was the basis for determining the value of transferring of share and if proportionate area of land allotted to Wiztown is taken into consideration, the amount so far paid by Wiztown is much more than the amount that was required to be paid as discussed in para 24 to 26 above, thus Wiztown could have been released from its all related obligations including the Corporate Guarantee. We

are conscious that the issue of determining the amount of Release Amount to be paid by Wiztown is still pending for adjudication before Delhi High Court, however, till this issue is pending for adjudication by the Delhi High Cour, the action taken by Vistra against Wiztown under section 7 by invoking Corporate Guarantee is premature as the Corporate Guarantee of Wiztown has been found subject to payment of Release Amount which at present is in dispute.

**28.** In ***Innoventive Industries Ltd. vs ICICI Bank & Anr (Civil Appeal Nos. 8337-8338 of 2017) dated 31.08.2017***, the Hon’ble Supreme Court has held that :

*“It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that **the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due.** A debt may not be due if it is not payable in law or in fact.”*

*[ Emphasis Supplied]*

**29.** Here, it is demonstrated by the Corporate Debtor that till the amount of Release Amount is determined by the Hon’ble High Court in the commercial suit filed by it, it cannot be said that the amount payable by it under Corporate Guarantee has

become due in view of para 9 of the Trustee Consent Letter. If the Release Amount is determined as prayed by the Corporate Debtor keeping in view the details provided by NOIDA, there won't be any liability of the Corporate Debtor under Corporate Guarantee as the amount paid by the Corporate Debtor so far, would come to more than the Release Amount calculated on the basis of land allotted to it and the FAR allowed by NOIDA. It may arise only if the suit filed by the Corporate Debtor before the Delhi High Court is decided thereby creating the liability of paying Rs. 70.40 crore on the Corporate Debtor which so far has not been paid by the Corporate Debtor, hence would make it liable for Corporate Guarantee as per para 9 of the Trustee Consent Letter. Therefore, the liability of the Corporate Debtor under the Corporate Guarantee at present is premature to be determined and the same will depend on the decision of the Hon'ble Delhi High Court. In our considered opinion and also keeping in view the provision of section 7(5), it would not be in the interest of justice to admit the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process

for a debt which is not payable at present under law as well as on fact because of pendency of a commercial suit in this regard in Hon'ble Delhi High Court. Accordingly, the Petition u/s 7 on this count is also liable to be dismissed.

**30.** We thus hereby dismiss the petition CP (IB) No.90/ALD/2022.

**31.** The interim order dated 13.02.2023 passed in IA No.452/2022 also stand vacated.

**32.** Ordered accordingly.

**-Sd-**  
**(Ashish Verma)**  
**Member (Technical)**

**-Sd-**  
**(Praveen Gupta)**  
**Member (Judicial)**

**16<sup>th</sup> July, 2024**