

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

**IA NO.266 OF 2023, IA NO.601 OF 2023 AND IA NO.469
OF 2023 IN CP (IB) NO.90/ALD/2022**

In the matter of:

*Under the provision of Section 65(1) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules,
2016) in 7 IBC*

In the matter of:

WIZTOWN PLANNERS PRIVATE LIMITED

CIN:U70200DL2013PTC248919

Registered address:

174A, 7 Floor, The Corenthum, Tower-A,

Sector 62, Noida,

Gautam Budh Nagar, Uttar Pradesh-201301

.....APPLICANT

Versus

VISTRA ITCL(INDIA) LIMITED

CIN:U66020MH1995PLC095507

IL&FS Financial Centre, Plot No. C-22, G Block,

Bandra Kurla Complex, Bandra (East),

Mumbai-400051

Also At: 805, Kailash Building, 26,

Kasturba Gandhi Marg, Connaught Place,

New Delhi-110001

.....RESPONDENT

AND IN THE MATTER OF

**NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY
(NOIDA)**

Chief Administrative Building

Sector-6, Noida, District Gautam Budh Nagar,

U.P.-201301 through CEO

.....INTERVENER

Versus

VISTRA ITCL(INDIA) LIMITED

..... RESPONDENT

AND IN THE MATTER OF

VISTRA ITCL (INDIA) LIMITED AND ORS.

..... **FINANCIAL CREDITOR**

Versus

WIZTOWN PLANNERS PRIVATE LIMITED

.....**CORPORATE DEBTOR**

Order pronounced on 16th 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. & *Res. in IA No.266/2023*
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 & *Applicant in IA No.*
with Shrey Sinha, Adv. *266/2023*

Sh. Manish Goyal Sr. Adv. : *For the Intervener NOIDA*
assisted by Sh. Ankur *in IA No.469/2023 &*
Agarwal, Adv. with Ms Anjali *IA No. 601/2023*
And Ms. Ananya Shukla, Adv.

ORDER

1. The present Application (IA No.266/2023) has been filed on 30.05.2023 by the Applicant M/s Wiztown Planners Pvt Ltd. (herein after as “**Applicant/Wiztown**”) under

Section 65(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**IBC**”) against the Respondent M/s Vistra ITCL (India) Ltd. (herein after as “**Respondent/Vistra**”).

2. The Respondent Vistra in this Application had earlier preferred an Application/Petition under Section 7 of IBC, No.90/2022 before this Tribunal for initiation of Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against the Applicant Wiztown in this Application as being a Corporate Debtor for a Corporate Guarantee given by it resulting into an alleged default of outstanding debt of Rs. 5,37,28,47,312/-.
3. After filing of reply to the captioned petition no. 90/2022 alleging concealments and distorted presentation of facts by Vistra while initiating section 7 proceeding against the Applicant Wiztown with malicious intent, the present Application has been filed by Wiztown seeking appropriate action against the Vistra for fraudulently approaching to this Tribunal as Financial Creditor with malicious intent for initiating resolution process against

the Applicant Wiztown for any purpose other than for the resolution of insolvency of the Applicant.

FACTS OF THE CASE AS PRESENTED DURING THE PROCEEDING:

4. Facts of the case as stated in the Application in brief are as follows:

i. The Applicant is a private limited company incorporated on 28.04.2016 under the provisions of the Companies Act, 2013 having Authorised and Paid-up Share Capital of Rs. 1,00,000/-, and registered as an MSME vide registration no. UDYAM-UP-28-0019034. The Respondent has its business in the real estate sector having its registered office at 174A, 7th Floor, The Corenthum, Tower-A, Sector-62, Noida, Gautam Budh Nagar, Uttar Pradesh-201301.

ii. M/s Lotus Greens Constructions Pvt. Ltd. (hereinafter referred to as Principal Borrower/LGCPL) operating in real estate sector, was allotted Sports City Plot No. SC-02, Sector-150,

Noida ad measuring 12.00,000 sq. mtrs. by the Noida Authority vide allotment cum reservation letter no. Noida/Commercial/2014/1498 dated 10.09.2014.

- iii.** Subsequent to above allotment of land by Noida, LGCPL issued debentures aggregating to Rs. 450 crores, comprising of 2250 Series B and 2250 Series C rated, listed, taxable, secured, redeemable, non-convertible debentures with a face value of Rs. 10,00,000/-. Altico Capital India Ltd (hereinafter referred as “**Altico**”), subscribed to the Series B Debentures and Asia Opportunities III(Mauritius) Limited subscribed to series C Debentures.
- iv.** Thus, LGCPL became Principal Borrower with respect to the amount of Rs. 450 crores raised through above debentures subscribed pursuant to a debenture trust deed dated 03.12.2014(read along with the deed of accession dated 04.07.2016 and as amended and restated by the amended and restated debenture trust deed dated 09.12.2017, and as amended from time to time in accordance with its

terms) (hereinafter referred as “**Debenture Trust Deed**”).

v. For these debentures, IL&FS Trust Company Limited was appointed to act as the debenture trustee under the said Debenture Trust Deed, in order to safe guard the interest of the Debenture Holders and act as intermediary between the Principal Borrower and the Debenture Holders. On 11.04.2016, M/s IL&FS Trust Company Ltd. was acquired by M/s Vistra ITCL (India) Ltd., which has preferred the captioned petition u/s 7 of IBC against Wiztown and is Respondent in this Application.

vi. At present, Series B Debenture of Rs. 225 crores have been assigned by Altico to Asset Care & Reconstruction Enterprises Limited (“**ACRE**”) after Principal Borrower defaulted in repayment of dues arising out of Series B Debentures. The captioned petition u/s 7 presently under consideration before this tribunal has been preferred by Vistra, in its capacity as the Debenture Trustee, for and on behalf

of the Series B Debenture Holder and for alleged default of Wiztown as being Corporate Guarantor in repayment in respect of the Series B Debenture after invocation of Corporate Guarantee subsequent to default of Principal Borrower LGCPL in repayment of the said debenture.

- vii.** Out of the total land allotted by Noida Authority to LGCPL, a sub lease deed dated 15.06.2016 was executed by LGCPL in favour of the Wiztown w.r.t plot no. SC-02/A3, Sector 150 Noida (hereinafter referred as “***the Project Land***”) ad measuring 27,185 sq. mtrs. (with permissible FAR of 31,326.09 sqr. Mtr).
- viii.** Initially, at the time of its incorporation on 28.04.2016 and at the time of above subleasing of land, Wiztown was a wholly owned subsidiary of the Principal Borrower i.e. LGCPL.
- ix.** Later, Wiztown was acquired by its present Directors by way of transfer of 100% of its equity shares vide Share Transfer Agreement dated 09.09.2019 after

consent for transfer of shares was granted by Vistra vide Trustee Consent Letter reference no. 8782 dated 09.09.2019. However, by letter dated 10.02.2020, Noida Authority permitted transfer of only 70% of the equity shares of Wiztown to the present Directors, hence 30% of shares of Wiztown are still held by LGCPL.

- x.** Since shares of Wiztown were pledged by the Principal Borrower LGCPL in favour of the Vistra, pursuant to the Share Pledge Agreement, the new purchasers, namely the present Directors of Wiztown, also entered into a Share Pledge Agreement, repledging the transferred shares to the Respondent Vistra.
- xi.** As submitted by the Applicant Wiztown, this repledging was done based on the assurance and representation that Wiztown would have an FAR of 31,326.09 square meters for commercial exploitation.

- xii.** While explaining the terms of Trustee Consent Letter issued by Vistra allowing transfer of shares of Wiztown to present Directors, it has been submitted by the Applicant Wiztown that as per the terms of the Trustee Consent Letter dated 09.09.2019, the Applicant Wiztown was to make a payment of Rs.70.40 crores in order to be completely discharged from any debt whatsoever and thus, the same was termed to be “Principal Release Amount”.
- xiii.** Out of Rs. 70.4 crores, in terms of Clause 5.3 of the Share Transfer Agreement, a payment of Rs. 35 crores along with 23% IRR was to be paid to the Principal Borrower LGCPL for onward payment to the Respondent Vistra and in terms of Clause 6.1 of the Share Transfer Agreement, an amount of Rs. 35.4 crores were to be paid to LGCPL towards refundable Security Deposit for common infrastructure which could have only been deducted by LGCPL in case the Applicant Wiztown fails to develop the common infrastructure.

xiv. Out of the total amount of Rs. 70.4 crores, an amount of Rs.2.52 crores were paid by the Applicant Wiztown immediately, which brought down the payable amount to Rs. 67.88 crores. Thereafter, on 12.09.2019, the Applicant made a payment of a sum of Rs. 11 crores to the Respondent and further made a payment of a sum of Rs.1.88 crores on 16.09.2019, thereby making a total payment of Rs. 15.40 crores before 17.09.2019 as stipulated in the Trustee Consent Letter dated 09.09.2019.

xv. Due to Covid 19 Pandemic, fresh timelines for payment of the remaining sums were sought by Wiztown vide its letter dated 25.09.2020 to which the Respondent issued a Second Addendum Trustee Consent Letter dated 29.10.2020 allowing the internal transfer of shares and extension of timeline of payments. Vide this letter the Applicant Wiztown has been asked to pay first Component – A as Rs. 35 crores along with IRR of 23% from 01.07.2019 till the actual date of payment and second Component-B of Rs. 20 crores (after adjusting the payment of Rs. 15.4

crores out of Rs. 35.4 crores) along with IRR of 23% for the period between 01.01.2021 till the actual date of payment, which was actually supposed to be a refundable security deposit amount.

xvi. Subsequent to above Second Addendum Trustee Consent Letter dated 29.10.2020, the Applicant Wiztown further paid Rs. 4 crores towards Component A and Rs. 6 crores towards Component B on 10.11.2020 and 12.11.2020 respectively. Thus, total payment made so far against the Principal Release Amount of Rs. 70.4 crore is Rs. 25.4 crores.

xvii. As pointed out by the Applicant Wiztown further in its application that it later learnt that the sanctioned map of the sub leased plot (project land) was not in conformity with the original master plan and thus, applied for its revision 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. However, no response was received by the Applicant in this regard from NOIDA even after

making repeated following up with the higher authorities of NOIDA, as a result of which no development could be carried on the project land. Subsequently on filing of a writ petition to the Hon'ble Allahabad High Court, an order dated 21.02.2022 was passed by the Hon'ble High Court in compliance of which an order has been passed by NOIDA as per its Board meeting dated 27.05.2022 to the effect that the permissible FAR of 31,326.09 sqr. mtr. earlier permitted for land admeasuring 27,185 sq. mtr. (sub-leased to Wiztown) has been reduced to an FAR of 5136 sqr. mtr., which came to be 1/6th of the original FAR. Therefore, as contended by the Applicant Wiztown, 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 would get proportionately reduced and come to Rs. 11.5385 crores.

xviii. Immediately upon the reduction of FAR, the Applicant Wiztown received a demand notice dated

07.06.2022 from the Respondent Vistra for a sum of Rs. 77.26 crores towards Component A, Component B and IRR. In response to this demand letter, the Applicant sent an email dated 09.06.2022 to the Respondent informing about the order dated 27.05.2022 passed by NOIDA reducing the permissible FAR corresponding to project land to 5136.70 sq. mtrs. The Applicant Wiztown therefore, communicated to the Respondent Vistra that the Principal Release Amount is satisfied and overpaid after taking into account the proportionate reduction in the Principal Release Amount as computed in previous sub-para no. (xvii).

xix. On receipt of above email of the Applicant Wiztown, the Respondent Vistra proceeded to issue an intimation of default cum demand notice dated 05.08.2022 in form of the guarantee invocation notice and demand certificate under the Debenture Trust Deed dated 3.12.2014.

- xx.** On receipt of above guarantee invocation notice, Applicant instituted a suit no. CS (Comm.)609/2022 before the Hon'ble Delhi High Court for seeking stay of the demand notices in the interim as well as a final relief seeking recovery of the overpaid sums. This commercial suit, after being referred for mediation, failed and presently the civil suit is pending before the Hon'ble Delhi High Court.
- xxi.** As alleged by the Applicant Wiztown that it was only after the Applicant herein had instituted the commercial suit for recovery of overpaid sums that the Respondent Vistra approached this Tribunal for initiation of CIRP against the Applicant with sole intention of defeating the case of the Applicant before the Hon'ble Delhi High Court.
- xxii.** The Applicant Wiztown has also stated in the Application that it is a solvent company, hence it would be against the intent of the IBC to put a solvent company through the rigour of CIRP. The reduction of FAR and pending approvals from NOIDA are issues

which are beyond its control but the Respondent Vistra is using this as an opportunity and using this Tribunal as recovery forum on behalf of the Principal Borrower LGCPL without taking any action against LGCPL for the same default.

xxiii. This action of the Respondent in view of the Applicant as further alleged in this Application, shows that the Respondent and the Principal Borrower are hand in gloves wherein the Principal Borrower is using the Respondent as a front for recovery of sums to be paid by it as being actual borrower of the amount presently under default, and therefore filing of Section 7 petition by Vistra under these circumstances establishes that the Respondent Vistra had approached this Tribunal with malicious intent and therefore, the case of the Respondent in respect of CP(IB) 90/2022 for initiation of CIRP against the Applicant Wiztown deserves to be dismissed and be burdened with appropriate penalty.

xxiv. The GROUNDS taken in this Application to show the malicious intent of Vistra are discussed from pg. 15 to 18 of the said application by giving the details of various events leading to filing of Section 7 petition presently under consideration before us. It is also pointed out by the Applicant herein that the Respondent filed Section 7 Application/Petition as soon as the Commercial Suit got instituted by the present Applicant seeking recovery of overpaid sums, hence as further contended in the present Application that given the question that whether there is an overpayment by the Applicant (which includes in itself the question, whether any payment/debt is due and payable by the Applicant to Respondent) is already pending before the Hon'ble Delhi High Court, the section 7 Petition is nothing but a counter litigation and pressure tactics.

xxv. In view of the GROUNDS taken in this Application, the Applicant has made following prayers

- A. Hold and declare that the Respondent has approached this Tribunal against the Applicant by way of CP(IB) No. 90/2022 fraudulently and with malicious intent
- B. For the purpose of prayer Clause A, appoint an independent auditor /appropriate person to conduct forensic audit and look into the financial and commercial transactions and arrangements between the Respondents and the Principal Borrower.
- C. Dismiss the CP(IB) No. 90/2022 filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 by the Respondent as vitiated by fraud and malice
- D. Impose appropriate penalty on the Respondent as prescribed u/s 65 of the IBC
- E. Pass any such orders as this Hon'ble Tribunal deems fit.

REPLY BY THE RESPONDENT

5. The Respondent Vistra filed a Reply on 14.06.2023 contending that Wiztown has failed to make out any case to show that Vistra's Company petition has been filed "*fraudulently or with malicious intent*", hence failed to satisfy necessary ingredients of section 65 of IBC as in the application of Wiztown, it is not brought out that petition filed for initiation of CIRP by the Vistra is "*for any purpose other than for the resolution of insolvency*". In this regard, following submissions have been made against the points raised by Wiztown in its Application:

i. After referring to provision of section 65, it has been submitted that in order to satisfy the legal threshold for invoking Section 65, IBC, the following two requirements ought to be satisfied:

A. The person is seeking to/ has initiated resolution proceedings, and

B. The resolution proceeding is being sought to /has been initiated fraudulently or with malicious intent, for purposes other than the resolution of insolvency.

- (ii)** Therefore, by quoting the above two requirements for the initiation of Section 65, it is contended that the said provision categorically requires the NCLT to give *prima facie* finding as to how the person initiating the resolution is doing so for some purpose other than the purpose of resolving the insolvency of the Corporate Debtor.
- (iii)** In view of above requirements, as per Vistra, it is required for Wiztown to show the intention of Vistra in filing the Company Petition as being other than for the purpose of initiating the CIRP of Wiztown. However, as pointed out by Vistra that Wiztown has failed to put anything on record to show Vistra's fraudulent or malicious intention in filing the Company Petition and it is for any purpose other than initiating the CIRP of Wiztown, and has only made bald allegations without any evidence to support their claim.
- (iv)** Vistra raised another contention of filing of this Application belatedly, much after filing of reply to

the Vistra's Company Petition, only with a view to delay the proceedings in this petition. The present Section 65 Application has only been filed after a delay of 275 days of filing of Vistra's Company Petition. The Company Petition was filed on 31.08.2022. Wiztown filed its reply to the Company Petition on 01.02.2023, nearly 6 months after notice was issued in the Company Petition.

- (v)** As pointed out by Vistra that although Wiztown in its reply to Section 7 petition has referred to the same set of facts as in their Section 65 Application, it has not averred any allegations of fraudulent or malicious intention against Vistra in the said reply as it is made in the present Section 65 Application. It is only now that Wiztown has belatedly filed its Section 65 Application on 30.05.2023, where they have for the first time alleged any fraudulent or malicious intent against Vistra.
- (vi)** By giving the details in tabular form of various dates on which hearings in this matter have been held

and in continuation of these hearings, this Application has been filed by Wiztown after filing of a delayed reply, Vistra argued that the present application is filed only with a view to delay the proceeding.

(vii) It is also contended by Vistra that issues raised in the present Application u/s 65 pertains to separate transaction regarding change in ownership and control of Wiztown by the present directors/new promoters, which in view of the Respondent Vistra is wholly unrelated to the captioned Vistra's Company Petition under section 7 of IBC which pertains to obligation of Wiztown to pay under the Corporate Guarantee but it defaulted on the same.

(viii) As regard the issue arising out of change of ownership and control of Wiztown, Vistra has contended that the default has occurred on account of non-payment of the consideration to be paid by the present directors/new promoters of Wiztown for the purchase of shares of Wiztown. In the reply, it

is argued by Vistra that this default amount owed by the present directors/new promoters of Wiztown to Vistra is not subject matter of the captioned Company Petition u/s 7 filed by Vistra before this Tribunal, hence the issues pertaining to an unrelated transaction in Section 65 Application are merely with a view to obfuscate and conflate the issue

- (ix)** It is further pointed out in the Reply that in the present matter, two separate transactions are involved. In the first transaction, debt is owed by the present directors/new promoters of Wiztown to Vistra in respect of payment of Principal Release Amount to be paid for purchase of shares of Wiztown and in second transaction, debt is owed by Wiztown to Vistra in respect of the Facility /Corporate Guarantee.
- (x)** In respect of second transaction i.e. Debt owed by Wiztown in respect of the Facility/Corporate

Guarantee, following facts have been averred in reply filed by Vistra:

A. In order to secure the debts under the Facility/ Debentures, Wiztown executed the following documents in favour of Vistra:

- i.** A deed of guarantee dated July 4, 2016 (“**Corporate Guarantee**”), agreeing to irrevocably and unconditionally guarantee due and punctual payments in respect of the Facility granted to LGCPL as per the DTD.
- ii.** A deed of hypothecation dated July 4, 2016, creating a first ranking exclusive charge on the assets of WPPL, collectively called ‘Wiztown Hypothecated Properties’.
- iii.** A share pledge agreement dated July 4, 2016, whereby 100% of equity share capital of WPPL, free of all encumbrances, was pledged to Vistra by LGCPL and one, Mr. Ravi Shankar Nanda.

- iv.** A memorandum of entry dated July 5, 2016, recording the depositing of title deeds for creation of mortgage over Wiztown’s property as defined in Schedule 1 of the Memorandum of Entry.
- v.** Declaration of mortgage dated July 5, 2016, by the Wiztown for deposit of title deeds of its mortgaged property with Vistra. Separately, the present directors/ new promoters of Wiztown sought to purchase Wiztown. Because 100% shares of Wiztown were pledged in favour of Vistra by virtue of the Share Pledge Agreement, LGCPL and Wiztown’s present directors/new promoters necessarily required Vistra’s no-objection in order to go ahead with the transfer of Wiztown’s ownership. For this, LGCPL and Wiztown’s the then directors/ promoters, by a letter dated September 9, 2019 (“**Request letter**”), requested Vistra to permit the

release, transfer and re-pledge of Wiztown's equity shares. The Request letter proposed for the sale of 100% of Wiztown's equity shares by LGCPL (and Ms. Madhu Chandra, nominee of LGCPL) to the present directors/ new promoters of WPPL, for a total consideration of Rs.70,40,00,000/- (**"Release Amount**), which was to be paid into the LGCPL's Debt Service Account, to be appropriated by Vistra against payment due and payable under the Facility/Debentures. Accordingly, Vistra was requested to release the pledge shares for transfer to Wiztown's present directors/new promoters, which were then to be re-pledged in favour of Vistra in a phase manner as set out in paragraph no. 7 of the Request Letter.

B. Vistra by a letter dated September 9, 2019 (**"Trustee Consent Letter"**), agreed to release the pledge shares of Wiztown for transferring it to the present directors/ new promoters of

Wiztown, subject to the same being re-pledged upon transfer.

- C.** LGCPL and Wiztown also sought no-objections from the NOIDA to transfer the ownership of Wiztown in favour of the present directors/new promoters of Wiztown. By letter dated February 10, 2020, NOIDA permitted transfer of only 70% of the equity shares of Wiztown to its present directors/new promoters.
- D.** Subsequently, by letters of March 19, 2020 and September 25, 2020, Wiztown requested Vistra for extension of time/restructuring the terms of payment of the release Amount by Wiztown's present directors/new promoters as stated in the Trustee Consent Letter.
- E.** Accordingly, Vistra by its letters dated May 18, 2020, and October 29, 2020, obliged Wiztown and agreed to restructure the terms of payment of the Release Amount.

F. By an agreement dated December 14, 2020, the LGCPL, Wiztown, and Vistra 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 Facility/ DTD/ Debentures (defined in the Company Petition).

It is also pointed out that the secured amount under the Corporate Guarantee was not reduced, and the Corporate Guarantee continued to secure the entire facility amount.

G. However, despite repeated extensions of the payment schedule granted by Vistra, Wiztown's present directors/ new promoters continued to be in default of the payments due to Vistra against the Release Amount as agreed in the Trustee Consent Letter.

H. Subsequently, Vistra issued a demand noticed dated June 7, 2022, calling upon Wiztown's

present directors/ new promoters to pay the entire outstanding amount of Rs.77,26,00,000/- as per the terms of the Trustee Consent Letter.

I. In response to the above demand notice, Wiztown's present directors/ new promoters responded with an email dated June 9, 2022, stating that the Noida Authority had reduced the permissible FAR of the land sub-leased to WPPL from 31,326.09 sq. mtrs. To 5136.70 sq. mtrs., by an order dated May 27, 2022 ("**Noida Order**") and thus requested for a meeting with Vistra to 'amicably resolve' the issue.

J. It is pertinent to highlight that till date, Wiztown's present directors/ new promoters continue to be in default of the Release Amount due to Vistra under the Trustee Consent Letter.

K. From a reading of the above, along with the factual exposition mentioned by Vistra in Sr. No. IX, Pg. 18 of its Company Petition, Wiztown's present directors/ new promoters are still liable

to pay the Release Amount on account of change in ownership of WPPL.

(xi) After presenting the above facts in its Reply, it has been stressed by the Respondent Vistra that the payment obligations of the present directors/new promoters of Wiztown for the Release Amount is separate from the payment obligations of Wiztown under the Corporate Guarantee. While both amounts stand in default, for the purpose of deciding the captioned Company Petition u/s 7 of IBC, what stands relevant is the debt and default arising purely under the Corporate Guarantee. Nowhere in its reply to the Company Petition or the Section 65 Application, has the Wiztown refuted the fact that these payments to be made by Wiztown to Vistra, which remain unsatisfied. As further emphasised by Vistra that the entire amount due under the Corporate Guarantee continues to be due to Vistra and therefore, Wiztown stands in default of its payment obligations as a guarantor under the

Corporate Guarantee to Vistra, irrespective of and unrelated to the payment obligations of Wiztown's present directors/new promoters towards the Release Amount.

(xii) The Vistra has also emphasised that the contentions raised by Wiztown in this Section 65 Application have already been raised by it before the Hon'ble Delhi High Court in its suit being C.S. (Comm) No. 609 of 2022 and sought an order of stay of the proceeding in the captioned Company Petition but despite hearing the matter at length on several occasion, the Hon'ble Delhi High Court has not granted any interim relief sought by Wiztown.

(xiii) As regards the issue of reduction of Release Amount after reduction of FAR by Noida authority, the Vistra in its Reply submitted that this issue is irrelevant for the captioned Company Petition taking a plea that Wiztown's contentions regarding the FAR and the subsequent reduction in their payment obligations toward Vistra, had been raised time and

again by Wiztown and its directors/ promoters before the Hon'ble Delhi High Court in the Suit, however, the Court has found Wiztown's contentions to be devoid of any merit and has refused to grant a stay on Vistra's rights, including the present proceedings before this Authority. In this regard, following details of proceedings before the Hon'ble Delhi High Court have been presented.

A. After hearing the parties in WPPL's Suit at length, Hon'ble Delhi High Court on September 9, 2022 ("**September 9 Order**"), refused to pass any orders in DHC's Injunction Application restraining Vistra from exercising its rights under the DTD and other transaction documents, and instead remanded the parties to pre-institution mediation as mandated under law with respect to all commercial suits.

B. Pursuant to the September 9 Order, four sessions of mediation were held between Wiztown, LGCPL and Vistra, presided by

Justice (Retd.) A. K. Sikri, on September 15, 2022, September 28, 2022, October 9, 2022, and December 15, 2022. However, no viable settlement could be reached between Wiztown, and Vistra during the mediation, and accordingly, the mediation was closed as failed, on January 6, 2023.

- C.** Wiztown also filed an application, being I.A. NO. 21371/ 2022, for early hearing of the Suit. This Suit was heard and dismissed by the Hon'ble Delhi High Court on December 15, 2022. In this application, Wiztown prayed for a preponement of the next date of hearing of the Suit scheduled for January 9, 2023, on the grounds that Vistra is taking several actions to enforce its security interests during the pendency of the mediation and the Suit. Wiztown specifically cited the present proceedings in the Company Petition u/s 7 before this Hon'ble Adjudicating Authority, to request that the Suit seeking a

stay on Vistra's rights to enforce its security interests, be heard urgently. The Hon'ble Delhi High Court found no merit in WPPL's submissions and thus, dismissed this application.

- D.** Subsequent to the failure of the mediation, the Suit was listed again before the Delhi High Court on January 9, 2023, wherein Wiztown once again argued at length its injunction application to seek an ad-interim stay on Vistra's rights to enforce its security interests. Wiztown also stated that Vistra has preferred its Injunction Application, being I.A. No. 452 of 2022, seeking a direction to restrain Wiztown to alienate/ create any third-party rights till pendency of the Company Petition, and thus requested the Hon'ble Delhi High Court that a stay order against Vistra be granted immediately. Once again, the Hon'ble Delhi High Court did not find any merit in passing any

order to grant an *ad-interim* stay on any of Vistra's rights, including its rights to continue with the proceedings before this Hon'ble Adjudicating Authority, and thus listed the Suit and the applications therein to be heard on March 21, 2023.

(xiv) As argued by Vistra, it is well-settled that CIRP can be initiated against the Corporate Guarantor, without first proceeding against the principal borrower under Section 7 of the Code. Section 7 of the Code is an enabling provision permitting the financial creditor to exercise their commercial wisdom in proceeding against the Corporate Guarantor or the Principal Borrower, or both, so long as the Corporate Guarantor has undertaken to be jointly and severally liable for the default committed by the principal borrower. Further, reliance has been placed upon the case of **K Paramasivam v. Karur Vyaya Bank Ltd., (2022)**

SCC Online 1163 in which the Hon'ble Supreme

Court held: -

"16. The issues raised in this appeal are settled by this Court in Laxmi Pat Surana (supra). As held by this Court in Laxmi Pat Surana (supra), the liability of the guarantor is co-extensive with that of the Principal Borrower. The judgment in Laxmi Pat Surana (supra), rendered by a three- Judge Bench of this Court is binding on this Bench. It was open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower."

(xv) In the present case, Wiztown executed the Corporate Guarantee, agreeing to irrevocably and unconditionally guarantee due and punctual payments in respect of the Facility granted to LGCPL. Wiztown also agreed to be jointly and severally liable for any default on part of LGCPL, in making timely payments with respect to the Facility/ Debentures in accordance with clauses 2.1, 2.2, 2.4, 2.7 and 1.2.2 of the Corporate Guarantee executed by WPPL copy of which is annexed with the main petition.

6. The Applicant filed a Rejoinder Affidavit on 03.07.2023 in response to the Reply filed by the Respondent Vistra to the present Application submitting that,
- i. For showing that the present application meets both pre-requisites of the Section 65 against the application u/s 7 of the IBC preferred by the Respondent i.e. **first**, the application u/s 7 seeking CIRP has been filed with *mala fide* and fraudulent intention and the **second** that it is for the purpose other than seeking resolution/liquidation, the Applicant explained that the Respondent preferred the captioned application u/s 7 of IBC before this Tribunal in collusion with the Principal Borrower with the purpose of defeating the commercial suit filed against the Respondent and the Principal Borrower. In this regard, it is also pointed out that the Respondent approached this Tribunal immediately after the commercial suit was instituted by the present Applicant in the Hon'ble Delhi High Court seeking recovery of over-paid sums knowing very well that the complex nature of

issues involved demands trial proceedings by deposition of evidences etc. in suit before the Hon'ble Delhi High Court and therefore, to escape and bypass the rigours of such proceedings, the captioned application u/s 7 has been filed as this Tribunal is bound by the four walls of the Code in the insolvency proceedings.

- ii.** It is further pointed out that the Respondent and LGCPL have been in business dealings since 2014 and any action whatsoever the Principal Borrower LGCPL has taken since signing of the DTD, Share Pledge Agreements, mortgage deeds etc., has been with prior consent of the Respondent. This clearly means that sub-division of the entire land leased to LGCPL was carried out with the prior knowledge and consent of the Respondent and the very same action was held to be illegal and against the Brochure of the Sports City and despite of such knowledge, the Respondent, in collusion with LGCPL got the Applicant involved in the transaction

in question bringing the Applicant to a stage from where it couldn't possibly have returned.

- iii.** In order to show the *mala fide* intention on part of the Respondent, the Applicant has referred to the Trustee Consent Letter dated 09.09.2019, which prescribed for payment of Rs. 70.40 crore as settlement/release amount. Post Consent letter, Share Transfer Agreement was executed and payment of Rs.70.40 crore was subdivided into two parts, the first being the acquisition cost of Rs. 35 crores and another being the refundable security deposit of Rs. 35.40 crores. Later, when the development work in Sports City Project has been brought to hold due to the report/remark of the Comptroller and Auditor General (hereinafter referred as *CAG Report*), the Respondent started charging interest @23% on the refundable security deposit amount also in order to coerce the Applicant into giving up the project land earlier sub-leased to the Applicant Company, which came into the

control of the new directors/promoters on account of the Share Transfer Agreement and thus, the Respondent started acting as a recovery agent on behalf of LGCPL in which both the parties are gaining unjustly. In order to show the fraud perpetrated by the LGCPL under the guidance of Vistra, a copy of the CAG Report has also been annexed with the Rejoinder as **Annexure -A16**.

- iv.** As regards the contention of the Respondent about the present Application having been filed belatedly after almost 275 days from the date of filing of the captioned Section 7 Petition by the Respondent against the Applicant, only to delay the proceedings under the said section 7 Petition, it is submitted that Section 65 does not prescribe any time period for filing an Application. The Application may be filed at any stage pre or even post initiation of CIRP. It is also pointed out that several of the issues raised in this Application have already been raised in the Reply filed to the Section 7 Application and later

these issues have also been raised by filing this specific Application u/s 65 to exercise its rights granted by the Code as the provision of Section 65 enables in declining admission of section 7 application if fraud or *mala fide* is prima facie established.

- v. As regards the contention of the Respondent about transaction of payment of Release Amount of Rs. 70.40 crore in Trustee Consent Letter for acquisition of shares of Wiztown (i.e. the Applicant Company) by new directors/promoters raised in the present Application is different than the transaction of payment of Corporate Guarantee which is the basis for the Section 7 Petition filed by the Respondent against the Applicant due to default on payment of the Corporate Guarantee amount after invocation of the Corporate Guarantee and not related to default in payment of the Release Amount, the Applicant Wiztown submitted that the facts and contentions raised in the present application pertain to the same

transaction which is the subject matter of the Section 7 application. The only transaction is the transaction pertaining to acquisition of the Applicant company by way of transfer of 100% of its equity shares vide Share Transfer Agreement dated 09.09.2019 upon which all other transactions were dependent.

- vi.** In this regard, it is explained that for acquisition of shares of the Applicant Company by the present directors, a release amount of Rs. 67.88 crores (originally Rs. 70.40 crores out of which Rs. 2.52 crore stood paid by the Applicant) was required to be paid. As per the Applicant, the Release Amount is substantially reduced after reduction of FAR of the land subleased to it by LGCPL and more than the amount of revised Release Amount has already been paid as explained in the Application and also discussed in para 4(xvii and vxiii) of this order.
- vii.** It is further submitted that since the Release Amount stands over paid, no obligation or liability

under the Corporate Guarantee Deed dated 04.07.16 can now be fastened upon the Applicant. Explaining its liability under the Corporate Guarantee, the Applicant Wiztown stressed that the Respondent Vistra has tried to intentionally mislead this Tribunal by stating that the main transaction by which the Applicant Company was acquired, has no bearing on the Application u/s 7 filed by it for the default of the Corporate Guarantee Agreement but as explained by the Applicant, the fact is that every document executed by the Respondent or got executed by its consent contained that upon full and final payment, the Applicant shall be set free from any and all liabilities and obligations arising from any other agreement, including corporate guarantee deed dated 04.07.2016. By referring to Trustee Consent Letter dated 09.09.2019, the Applicant Wiztown emphasised that where the Applicant herein has made full and final payments (which as per the Applicant is overpaid) to the Respondent i.e. Vistra

and the Respondent is not performing its obligations including but not limited to release of pledged shares of the Applicant Company, delivering of all original documents, NoC etc., the rights of the Respondent contained under the Guaranteed Deed have ceased to exist and therefore, the entire application u/s 7 filed by the Respondent is not maintainable.

viii. As per the Applicant as explained in the rejoinder, the issue pertaining to reduction of FAR by Noida authority is a relevant issue for deciding the captioned company application u/s 7. The object of acquisition of the Applicant Company and execution of the Share Transfer Agreement (STA) along with other agreements/deeds was to be able to exploit the 31,326.09 sqr. mtrs. FAR (as represented and warranted in the STA and consented to by the Respondent). As pointed out by the Applicant Company, no amount from the sums received by LGCPL, was received by or into the account of the

Applicant Company. Despite the above, during the acquisition of the Applicant Company, the present directors agreed for payment of consolidated sum of Rs.70.40 crores as release sum to free the Applicant Company Wiztown from any encumbrances but again, the same was subject to availability of the represented FAR for commercial exploitation by the Applicant Company.

- ix.** As per clause 6.1, the refundable security deposit portion of Release Amount i.e. Rs. 35.40 crore was to be paid to LGCPL for developing the proportionate share of common infrastructure and facilities for the whole sports city project based on the FAR of land sub-leased to the Applicant Company. Therefore, as per the Applicant Wiztown, when the FAR was reduced by the Noida Authority to 5136.70 sqr. mtrs., it had a direct bearing on the adjustment of the release amount to be paid to the Respondent. The reduction of FAR calls for proportionate reduction of the release amount and thus, as

contended by the Applicant that in the present case, the release amount stands over paid and after the Release Amount having been overpaid, the obligation casted upon the Applicant Company herein under the Corporate Guarantee Deed also stands extinguished making the captioned section 7 petition filed by the Respondent not maintainable.

x. In respect of the ground raised before the Hon'ble Delhi Court on the issue of reduction of Release Amount after FAR has been reduced by the NOIDA, the Applicant contended that the Respondent has wrongly averred that the Hon'ble Delhi High Court did not grant any relief to the Applicant when the fact is that the application under Order 39 rule 1&2 of CPC filed by the Applicant seeking injunctive reliefs against the Respondent is still alive and ripe for hearing and adjudication.

xi. In view of these facts of the case, it has been pleaded by the Applicant that the consideration of this issue either by the Hon'ble Delhi High Court first or by

this Tribunal, is utmost importance to determine whether there was any debt payable by the Applicant to the Respondent for there to be a default.

xii. As regards the law relating to liability of the Principal Borrower and Guarantor being co-extensive and action against the guarantor can be taken independent of the principal borrower, the Applicant submitted that while the law is settled that a Creditor may choose to independently proceed against a guarantor without initiation of any proceedings against the principal borrower but in the present case, the institution of proceedings against the applicant herein is at the behest of the principal borrower LGCPL wherein the Respondent is acting as its enforcement and recovery agent.

7. After filing of above Rejoinder, the Applicant has further filed a short affidavit on 04.09.2023 vide diary no. 2383 making further submissions in support of and to supplement the application filed under section 65(1) and

showing that the Respondent has, with malicious intent, instituted the captioned Section 7 petition against the Applicant herein for initiation of its Corporate Insolvency, which are as under: -

- i. In order to show the collusion between the Principal Borrower LGCPL and the Respondent Vistra in making large scale violations while mis-utilising the Sports Facility Project Land allotted to LGCPL and thus, committing a large-scale scam, an audit report of the Comptroller and Auditor General of India (CAG) prepared on this project has been referred in this short affidavit. This report was presented on 17.12.2021 highlighting large-scale violations of the Sports City Brochure including specific mention of the master developer i.e. LGCPL (*who is also principal borrower in the present matter*).

The relevant paras of this audit report are as under:

"5.2.14.2 Allotment of the plot was made (September 2014) to Lotus Greens Constructions Pvt. Ltd. for 12,00,000 sqm (296.52 acre) valuing 2,263.80 crore. Experience criteria was submitted in case of projects developed by the holding company (Three C Universal Developers) of one of

the members (Three C Infrastructure Limited) and NOIDA considered the consortium eligibility on that basis."

"5.2.14.7 The brochure conditions entailed allotments to consortiums, wherein the role and responsibilities of each member in the consortium was to be defined in the MoA entered into by the consortium as per clause 8 (c) of the scheme brochure. The plot was allotted to a consortium of seven members with Lotus Greens Constructions Pvt Ltd as the lead member. In spite of clearly laid down condition, no SPC was formed after the plot was allotted to the consortium, though the intention to form an SPC was indicated in the MOA. However, NOIDA, instead of raising objections, facilitated the lead member to act as the allottee. It is pertinent to mention here that there was no shareholding of any of the members of the consortium in Lotus Greens Constructions Pvt. Ltd rather the entire shareholding was with Lotus Greens LLP. These not only resulted in non-compliance of MOA but also in undue favour as the plots were further subdivided in the name of subsidiaries of Lotus Greens Constructions Pvt. Ltd. Thus, the ownership of the plot was vested with the lead member only, whilst the relevant member who helped in qualifying the criteria were left out."

"5.2.17.2 The scheme provided for land use of minimum 70 per cent for recreational/ sporting use and the rest of the area was allowed for residential, commercial and recreational use. This translates into dedicating 559 acre out of the 798-acre proposed allotment in the four plots earmarked for the development of Sports City. The condition of the brochure also provided that 'without obtaining completion certificate, the lessee shall have the right to sub-divide the allotted plot into suitable smaller plots as per planning norms of NOIDA only for the area available for residential and commercial use'.

Audit observed that in spite of the condition of sub-dividing the plots into smaller plots for area available for residential and commercial use only, NOIDA approved during the period 2012 to 2017 sub-division of the entire plot which was in violation of the underlying theme as well as the approved conditions of the brochure. As such, any sub-division should have been approved for only 30 per cent of land which was to be used for residential and commercial development. Thus, against the area of 10,03,257.9 sqm (247.90 acre) eligible for sub-division, the entire area of 33,44,193 sqm (826.34 acre) was sub-divided into 81 parts against the conditions of the scheme. The 559 acres of land earmarked for sport infrastructure was in effect sub-divided into 34 sub-divisions."

- ii.** In the light of the above findings given in the CAG Report, the Applicant submitted that the master developer i.e., LGCPL is under complete control of the Respondent and admittedly cannot take any decision without the prior written consent of the Respondent (*due to a huge amount of debt facility availed by mortgaging the said project land and pledging all the shares of the company and its subsidiaries*) and cannot take decisions without the prior consent of the Respondent herein. Therefore, as contended by the Applicant, the Respondent therefore, had full knowledge of the said large scale

violations of NOIDA Sports City brochure and accordingly, the Respondent has very attentively chosen to exercise its legal rights against small sub-lessees like the present Applicant but hasn't proceeded or taken any coercive action against LGCPL establishing their collusive tactics.

- iii.** The Applicant further informed that in the light of the large-scale violations in the Noida Sports City, the Government of Uttar Pradesh vide letter reference no.4029/77-4-2023 dated 07.07.2023 requested the Public Accounts Committee (PAC) of the U.P State Legislative Assembly to look into the affairs of the Sports City and resolve the ongoing issues pursuant to which, the Noida Authority vide letter dated 19.07.2023 directed the Applicant herein to participate in the meetings of the PAC.
- iv.** In the meeting of PAC as found by the Applicant that Mr. Manish Jain, who is currently a Partner of Ares SSG capital management, a debenture holder/lender [who was earlier associated with the

SSG Group which was acquired by Ares Capital in 2020 and also with Clearwater Capital which was a major investor in Altico Capital, a firm which was later acquired by the Ares SSG Group] had marked his attendance/appearance as a representative of LGCPL. Manish Jain is also a Board member of ACRE (Asset Care and Reconstruction Enterprise Ltd. of which, 49% stake was acquired by Ares in the year 2014, the same year when the Non-convertible Debentures were issued to LGCPL) to which, Altico Capital, after its acquisition by Ares SSG Group had assigned its debt vide assignment deed dated 04.03.2021. Mr. Manish Jain is a representative of the lending group of which the Respondent herein is a representative. So, when Mr. Jain acts a representative of the principal borrower i.e., LGCPL, the Respondent too becomes a representative of LGCPL, therefore establishing a clear case of collusion and the fact that the attempt is only to somehow acquire the land sub-leased to

the Applicant herein and not the resolution of the company.

v. LGCPL was granted permission to mortgage (PTM) the land leased to it by Noida Authority (which has the first charge on the leased land) via a NoC dated 5.07.2016. Pursuant to this, it and its wholly owned subsidiaries had mortgaged the land in favour of the Respondent. However, the said mortgage deed, which the Respondent relies on to this date, became null and void as soon as the shares of the Applicant Company were acquired by its present Directors. This is because LGCPL, intentionally avoiding the payment of transfer charges/allied charges to the Noida Authority, hence did not seek a fresh PTM as mandated by the Noida Sports City brochure and master lease deed. Therefore, no mortgage exists on the land sub-leased to the present Applicant due to the absence of a valid PTM.

vi. The Respondent was aware of all the requirements in law with respect to seeking fresh PTM in case of

change of constitution/management of a wholly owned subsidiary of the principal borrower and went ahead with the transaction with the Applicant relying on earlier mortgage deed of June, 2016 to exert its rights on the project land and did not even notify the Noida Authority regarding the same or several other violations of the master lease deed.

- vii.** As per the Applicant, such violation by the Respondent of not taking a fresh PTM before entering into a mortgage agreement with the Applicant after sale of shares to present directors/new promoters and change in management, further establishes that the Respondent has been, all throughout working with and alongside the Principal Borrower i.e. LGCPL, safeguarding its interests to protect its investments and thus, cement the argument that the captioned company petition filed u/s 7 of the Code is nothing but an abuse of the process of law and the intention

of the Respondent has never been the resolution of the Applicant herein.

8. The Respondent filed a reply on 09.11.2023 in response to the above short affidavit of the Applicant and submitted that:

i. The contentions raised in the affidavit are frivolous and the affidavit has been filed by the Applicant to further delay initiation of CIRP in the instant case. The Applicant has not refuted in the affidavit its debt obligation owed to the Respondent under the Corporate Guarantee, which remains unsatisfied. There is no collusion between Respondent and LGCPL and the Applicant has not substantiated this allegation with any material or document. The Applicant instead is relying on certain observations of CAG Report and has also reproduced the purported relevant extract from the CAG Report allegedly citing collusion between the Respondent and LGCPL, however, the CAG Report does not have any reference to the Respondent whatsoever and

nowhere does the said Report highlights any collusion between Vistra and LGCPL.

- ii.** The Applicant has relied on a purported list of attendees in connection with the Public Accounts Committee ("PAC") meeting held on 24.7.2023, to assert that Mr. Manish Jain, Partner-Head of ARES Asia Limited, had in fact attended the PAC meeting as a representative of LGCPL, and thus alleged collusion between LGCPL and the Respondent. Specifically, WPPL has relied on a document dated 22.7.2023, wherein Mr. Manish Jain has been erroneously recorded as a representative of LGCPL.
- iii.** It is submitted that ARES Asia Limited (formerly known as ARES SSG Capital Management) is a shareholder of Assets Care & Reconstruction Enterprise Limited ("ACRE"), i.e., the Series B Debenture Holder. Mr. Manish Jain who is also a nominee director of ACRE attended the PAC meeting in his capacity as a representative of the lenders of LGCPL.

- iv.** As regards Mr Manish Jain attending the meeting of PAC, it is further submitted by the Respondent that he attended the meeting of the PAC to keep abreast of all updates with regard to Sports City Project to be developed by LGCPL. As a responsible lender, and given the status of the Sports City Project, Mr Manish Jain or other representative on behalf of the lender is constrained to attend in all proceedings with regard to LGCPL and its group entities. Therefore, in attending the meeting of the PAC, the representative of the lender is only attempting to be privy to any discussions which may impact the future of the Sports City project and thereby with a view to safeguard the Respondent's financial exposure in the said project.
- v.** As regards the PTM not being obtained from NOIDA after change in management of the Applicant Company, while maintaining that mortgage created in favour of Vistra to secure the Debenture/Facility granted to LGCPL is wholly valid, it is further

submitted by the Respondent that the status of mortgage in the present matter is irrelevant, since the present proceedings are only concerned with the corporate guarantee. The captioned Company Petition u/s 7 is filed against the Applicant by the Respondent in the capacity of a financial creditor of the Applicant and owing to Applicant's default in its payment obligation arising under the Corporate Guarantee and have nothing to do with the mortgage charges created in favour of the Respondent, to secure the Facility granted to LGCPL. Further, the invalidity of the said mortgage would have no effect on the Corporate Guarantee issued by Applicant in favour of the Respondent to secure the Debentures.

- 9.** In counter to the above reply of the Respondent, the Applicant filed a Rejoinder Affidavit on 01.12.2023 and submitted that:
 - i.** The Noida Authority has filed an affidavit stating that the Respondent and Principal Borrower have

acted collusively. As per the said 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 applicant company has already paid Rs.25.4 crores which is overpaid by Rs.6.545 crores by the Applicant.

- ii.** The Respondent deliberately invoked only 70% of the shares of the applicant company pledged with it while allowing the remaining 30% shares to be with LGCPL. During the acquisition of the Applicant company by its present Directors, LGCPL had transferred 70% of the shares of the company and the remaining 30% shares were to be transferred after obtaining the requisite permissions from the Noida Authority and therefore continued to be with LGCPL. All the shares were then re-pledged in favour of the Respondent. Further, when the Applicant approached the High Court, the

Respondent deliberately invoked only 70% of the pledged shares of the Applicant Company and did not invoke the remaining 30% with LGCPL.

- 10.** During the course of the proceedings going on in this matter in respect of the petition u/s 7 filed by Vistra for initiation of CIRP against Wiztown and further application filed by Wiztown against Vistra u/s 65 alleging the captioned petition filed fraudulently and with malicious intent for a purpose other than the resolution of insolvency, the New Okhla Industrial Development Authority (hereinafter referred as NOIDA) has also filed an interlocutory application 469/2023 on 26.09.2023. The prayer sought in the IA is for being impleaded as Respondent No.2 in the Section 7 petition CP (IB) No.90/ALD/2022 filed by Vistra as being a necessary party to the proceeding and then praying for dismissal of this Section 7 petition as not being maintainable and also, stating that any decree under section 7 of IBC will result in huge financial losses to the Govt. exchequer and will derail the developmental efforts of NOIDA in process.

Subsequently, another Interlocutory Application has been filed vide IA No.601/2023 on 21.11.2023 for being impleaded in the present Application U/s 65 of the Code, filed by Wiztown, praying that after paragraph 19 in the earlier interlocutory application 469/2023 filed on 26.09.2023 (termed as Civil Misc Intervenor Application), the following paras may be incorporated after paragraph 19

19A That Noida is a necessary party to the proceedings initiated by M/s Wiztown Planners P. Ltd. u/s 65 of IBC against Vistra (ITCL) India Ltd. as it is safe to contend that Noida is concerned with its unrealized dues from the lessee and if the Section 7 application of Vistra (ITCL) India Ltd. is decreed then it will result in extreme losses to Noida and will be tantamount to defrauding the public exchequer and the general public at large.

19B. That it is a categorical assertion that the aforesaid application has been filed in proceedings pending u/s 65 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') in IA No. 266/2023.

11. The above IA No. 469/2023 and 601/2023 have been considered by this Adjudicating Authority and orders dated 04.10.2023 and dated 05.12.2023 have been passed as reproduced below: -

I. ORDER IA No.469/2023 (04.10.2023)

1. This application has been filed on behalf of NOIDA seeking to become intervener in the main petition filed under Section 7 by the Financial Creditor. 2. Let the notice be issued in the said IA. Ld. Sr. Counsel representing the Financial Creditor accepts notice and vehemently opposes the application on the ground of the applicant having no locus in a petition filed under Section 7 of the Code. 3. Let the reply/objections, if any, be filed atleast three days before the next date of hearing with advance copy to be supplied to the Ld. Counsel representing the NOIDA. 4. The matter to come up on 31st October, 2023 at 2 pm for further arguments.

II. ORDER IA No.601/2023 (05.12.2023)

1. This application has been filed on behalf of NOIDA inter-alia praying as under:

It is, therefore, humbly prayed that the present Civil Misc. Amendment Application of the Applicant- Noida in the Civil Misc. Intervenor Application (IA No. 469/2023) may kindly be allowed by this Learned Tribunal and the necessary amendments may kindly be allowed to be incorporated in the aforesaid Intervenor Application by this Learned Tribunal, else, the Applicant shall suffer grave and irreparable loss

2. As stated in Para 4 of the present application two sub paras namely 19A & 19B are sought to be incorporated after paragraph 19 in the application namely IA No. 469/2023 as reproduced below:-

4. That after paragraph 19 in the aforesaid Civil Misc. Intervenor Application, the following, paras may be incorporated:

19A That Noida is a necessary party to the proceedings initiated by M/s Wiztown Planners P. Ltd. u/s 65 of IBC against Vistra (ITCL) India Ltd. as it is safe to contend that Noida is concerned with its unrealized dues from the lessee and if the Section 7 application of Vistra (ITCL) India Ltd. is decreed then it will result in extreme losses to Noida and will be tantamount to defrauding the public exchequer and the general public at large.

19B. That it is a categorical assertion that the aforesaid application has been filed in proceedings pending u/s 65 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') in IA No. 266/2023.

3. After arguing for some time Ld. Sr. Counsel representing the applicant states that he is not pressing for incorporation of sub para 19B. He confines his prayer only limited to incorporation of sub para 19A after paragraph 19 in IA No.469/2023.

4. Let the notice of the present application be issued. Ld. Sr. Counsel representing the Financial Creditor,

accepts notice, and therefore waives service. Ld. Sr. Counsel representing the Financial Creditor vehemently opposes the same on the ground of locus and is willing to make his oral submissions without filing any written objections thereto.

5. Let the matter to come up on 21st December, 2023 at 2:30 p.m.”

12. After filing of Civil Misc Intervenor Application i.e. IA No.469/2023 and subsequent amendments made vide IA No.601/2023, two affidavits were also filed by NOIDA, one as a 1st Supplementary Intervenor Application on 11.12.2023 and second as 2nd Supplementary Intervenor Application on 20.12.2023. All the facts pertaining to the present case as brought before this Tribunal by the NOIDA by filing these documents are as follows, -

- i. “On 07.06.2014, NOIDA invited sealed bids in a two-bid tender system from interested and eligible parties for development of a SPORTS CITY in SC- 02 in Sector 150 NOIDA, Gautam Budh Nagar with an area of approx. 12,00,000 Sq.mtrs being offered on lease for 90 years period.

ii. Certain important conditions stipulated in the said Tender/Scheme Document for the development of Sports City as enumerated below:

➤ Permissible broad break-up of the total area under the Sports City for different land uses shall be as under:

A.	Recreational use (Sports, Institutional & Other Facilities and open areas) Not less than	70%
B.	Commercial not more than	0.5%
C.	Residential including Group Housing (1650 persons per hect.)	29.5%

iii. Under Eligibility head, it is provided in clause 8(d) of the tender that the members shall submit a registered /notarized Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Company(ies) hereinafter called SPCs, that will subsequently carry out all its responsibilities as the allottee.

- iv. The registered MOA must specify the equity shareholding of each member of the Consortium in the proposed SPCs. The SPCs must necessarily be Firm(s)/Company(ies) registered in India with the appropriate statutory Authority.
- v. The allottee and in case of consortium under a MOA, the lead member and/or the relevant member and /or SPC(s) incorporated by them, put together, will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area and shall have the option to sub-lease 70% of the land allotted to them as per the arrangement specified by them in the MOA.
- vi. The 'General terms and Condition' head in the scheme document provided that after written approval of the Lessor/NOIDA Authority, the Lessee can implement/develop the project through its multiple subsidiary companies in which the allottee/lessee company shall have minimum 90% equity share holdings.

- vii. Further, under the 'Mortgage' head, it is provided that NOIDA shall have the first charge on the plot towards payment of all dues of NOIDA.
- viii. The Subsidiary Company(ies) in whose favour Sub-lease Deed is permitted, shall be entitled to mortgage the portion of land which is being developed by them as per the Rules of the Authority.
- ix. Mortgage permission shall be granted in favour of Scheduled Bank/ Government Organisation/ Financial Institution approved by RBI for the purpose of raising resources, for construction on the allotted plot within a specified time period as per the terms of Lease Deed/Sub-Lease Deed or have obtained valid extension of time for construction and should have cleared up to date dues of the plot premium and lease rent.
- x. NOIDA's right to recover all unearned increase and pre-emptive right to purchase the property as mentioned hereinbefore shall apply equally to

involuntary sale or transfer, be it bid or through execution of decree of insolvency from Court of law.

- xi. Thereafter, NOIDA awarded the aforesaid Sports City Plot admeasuring 12,00,000 sq. meters to M/s Lotus Greens Constructions Private Limited/LGCPL (Lead Member of a Consortium) vide allotment letter dated 10.09.2014, 17.10.2014 and 16.03.2015.
- xii. On the request of LGCPL, NOIDA vide its letter dated 06.01.2015 granted mortgage permission in respect of the aforesaid Sports City plot for construction of the project in favour of IL & FS Trust Company Ltd. for Rs. 450 crores with certain terms and conditions as mentioned in Lease Deed and specifically mentioning that the mortgage permission may be utilised within one year from the date of issue of the permission letter.
- xiii. Later, on 11.04.2016, M/s IL&FS Trust Company Ltd. was acquired by Vistra ITCL (India)Ltd. (Financial Creditor in the present matter) but NOIDA was not informed regarding change of the

incoming entity in place of whom project land was mortgaged with the permission of NOIDA.

- xiv. Further, through letter dated 05.07.2016, NOIDA issued an NOC to LGCPL stating that out of the 6,47,600 sqm area, 1,01,773 sqm was to be retained by LGCPL, and the balance was to be developed by its 100% owned subsidiaries.
- xv. NOIDA apprised LGCPL vide its letter dated 08.07.2016 that the bilateral lease deed executed in case of implementation of the project by the LGCPL through its 12 subsidiaries can be brought on record on the condition that in case the lessee is to develop the project through its 100 percent subsidiaries, the lessee and its subsidiaries will fully ensure compliance with the terms and conditions of the scheme, the terms of the lease agreement and the provisions of NOIDA Building Rules and the Master Plan. Moreover, the LGCPL's equity shares of 90% were to remain in its

subsidiaries as per the details available in the list attached with the office letter dated 06.06.2016.

xvi. M/s Wiztown is one of 12 wholly owned subsidiaries of LGCPL incorporated on 24.04.2016 to whom project land admeasuring 27,185 sq. meters was sub-leased. On 15.06.2016, Sub-Lease Deed was executed by LGCPL in favour of Wiztown with respect to Plot No. SC-02/A-3, Sector 150 NOIDA, Gautam Budh Nagar admeasuring 27,185 Sq Meters.

xvii. As on 08.07.2016, LGCPL held 9999 shares and Ravi Shankar Nanda, the nominee of LGCPL, held 1 share in M/s Wiztown Planners Ltd. Thereafter, the directorship and shareholding of M/s Wiztown Planners Ltd. had changed as under:

S. No.	Name	Status	% of shareholding
1.	Sri. Abhay Kumar	Director/Shareholder	32.20%
2.	Sri. Sanjay Kumar	Director/Shareholder	27.30%
3.	Sri. Manish Kumar	Director/Shareholder	7%
4.	Sri. Anchal Bohra	Director/Shareholder	3.5%
5.	M/s Lotus Greens Constructions Pvt. Ltd.	Shareholder	30%

- xviii. The shareholding of LGCPL was reduced to just 30% in M/s Wiztown Planners P. Ltd. as on 10.02.2020. This was in clear violation of conditions specified for Sub-lease to subsidiaries by NOIDA.
- xix. There have been some other violation also like, M/s Lotus Greens has also changed the constitution of its another fully owned subsidiary company i.e. M/s Land Kart Builders Pvt. Ltd. to a holding of 49% shareholding in control of M/s Lotus Greens Constructions Pvt. Ltd. (LGCPL) and divesting 51% shareholding to a third party i.e., M/s Tata Value Homes Ltd in violation of conditions specified for Sub-lease to subsidiaries by NOIDA.
- xx. As referred above, the IL & FS Trust Company was acquired by the Financial Creditor on 11.04.2016 but no information was provided to NOIDA of the said acquisition. The pre-emptive right of NOIDA to purchase the property as mentioned in the tender/scheme document shall apply equally to involuntary sale or transfer, be it bid or through

execution of decree of insolvency from a court of law and the initiation of Section 7 IBC proceedings by Financial Creditor against Corporate Debtor is in direct contravention with the tenets and specific contractual conditions/obligations as executed between NOIDA and LGCPL.

- xxi. The first charge on all the properties leased by NOIDA to the lessee/sub-lessee's is of NOIDA in respect of the recovery of dues of the property such as lease rent, taxes rate any other charges and interest thereon and in the condition precedent of the tender documents, the right of NOIDA has been expressly ingrained that the pre-emptive right to purchase the property shall equally apply to both involuntary sale/transfer, be it through a bid or through execution of decree of insolvency from a court of law shall be with NOIDA. Such purchase of property is to be done by NOIDA after the pending dues of the property such as lease rent, taxes rate

any other charges and interest thereon are adjusted on the aforesaid property by NOIDA.

xxii. Vide letter dated 06.01.2015, NOIDA gave Permission to Mortgage (PTM) for land measuring 6,47,600 Sq.mtr. to LGCPL for Plot No. SC- 02/A, Sector 150, Noida for implementation of the project in favour of IL & FS Trust Company Ltd. for Rs. 450 crores. Further, Plot Nos. SC- 02/A-1, A-3, A-7 were subdivided into portions consisting of 83,970/sq. mtr., 27,185 sq. mtr., 50970 sq. mtr. land respectively and the same have been carved out of 6,47,600 sq. mtr. land that was permitted to be mortgaged by NOIDA to LGCPL. Initially, all parcels of land carved out of 6,47,600 sq. mtr. land were subleased to 100% subsidiary companies of LGCPL but later on LGCPL diluted its shareholding in the three companies namely- Prateek Infra Projects India P. Ltd. (69.99%), M/s LGCPL (30%) and Sri. Prashant Kumar Tiwari (0.01%).

xxiii. NOIDA pointed out that the main purpose of developing the Sports City was to establish international sporting standards and provide recreational facilities. A total of Rs. 410 crores was allocated by NOIDA and agreed upon by the lessee, M/s Lotus Greens, for the development of these facilities. However, this has not been accomplished, and the status of the Rs. 450 crores received from IL & FS is unknown. The construction that has occurred on the site has primarily been for residential purposes, with only a cricket ground and one tennis court completed for sporting and recreational purposes.

xxiv. An amount of approximately Rs. 1771 crores is still pending to be paid by LGCPL to NOIDA as of 31.03.2023 as per the details provided by NOIDA given below :-

S.No.	Part of Plot (all in Sector-150)	Name of Sub-Lessee/Builder	Installment	Lease rent	Total Amount (in crores)

1.	SC-02/A	M/s Lotus Greens Construction s P. Ltd. (original lessee)	311,37,53,532	44,22,58,229	355,60,11,761
2.	SC-02A/A-1	M/s Land Kart Builders P. Ltd.	Up to Date	Up to Date	Up to Date
3.	SC-02A/A-2	M/s Buildwall Builders P. Ltd.	199,81,59,140	28,38,98,210	228,20,57,350
4.	SC-02A/A-3	M/s Wiztown Planners P. Ltd.	63,91,60,366	4,80,04,481	68,71,64,847
5.	SC-02A/A-4	M/s Graywall Developers P. 21 Ltd.	136,72,32,521	20,35,70,976	157,08,03,497
6.	SC-02A/A-5	M/s Graybrick Developers P. Ltd.	24,72,08,281	3,51,11,931	28,23,20,212
7.	SC-02A/A-6	M/s Bricktown Developers P. Ltd.	106,56,73,501	16,47,60,996	123,04,34,497
8.	SC-02A/A-7	M/s Strongbiz Propbuild P. Ltd.	136,83,39,396	13,56,55,186	150,39,94,582
9.	SC-02A/A-8	M/s Wishland Buildzone P. Ltd.	152,29,10,395	21,97,10,298	174,26,20,693
10.	SC-02A/A-9	M/s Wondrous Buildmart P. Ltd.	136,31,09,201	20,29,17,069	156,60,26,270
11.	SC-02A/A-10	M/s Excarpment Buildcraft P. Ltd.	288,49,02,300	40,97,53,616	329,46,55,916
Total – 1,771,60,89,625/-					
(approx. One Thousand Seven Hundred and Seventy One crores)					

- xxv. Moreover, the various sub-lessees of LGCPL have also not executed the intended works for developing recreational land usage in the respective land parcels allotted to them, which defeats the original purpose for which the Sports City was created.
- xxvi. As per the terms and conditions of the main lease deed dated 19.12.2014, LGCPL i.e., the Master developer was not supposed to change its role in the project in consonance with Clause 20 of the Lease Deed dated 19.12.2014. Whereas, M/s Lotus Greens Constructions Pvt Ltd. (LGCPL) was privately held by Lotus Green LLP through Mr. Nirmal Singh, Sureena Uppal and one Madhu Chandra at the time of grant of allotment in favour of LGCPL and while entering the lease deed but today it is held by Lotus Green LLP through one Mr. Harkaran Singh Uppal and Madhu Chandra.
- xxvii. LGCPL's promoters were changed without the express permission of NOIDA and all the shares of

LGCPL after the aforesaid mortgage, were pledged with Vistra. NOIDA contended that such change in shareholding could not have taken place without the approval as Vistra being lender to whom shares were pledged.

xxviii. Furthermore, in case of any change in constitution of Lesse or Sub-lesse takes place, then a fresh Permission to Mortgage (PTM) has to be sought from NOIDA and all the pending dues of the property such as lease rent, taxes rate any other charges and interest thereon have to be cleared and paid to NOIDA. However, in the present case, both Financial Creditor and LGCPL have deliberately concealed the changeover so as to avoid making requisite payments to NOIDA.

xxix. The Financial Creditor has thus, apportioned the amount of loan, i.e., Rs. 450 crores amongst LGCPL and subsequent sub- lessee(s) without seeking the required permission from NOIDA. It is to be noted that this entire issue of allotment and subsequent

development is under consideration before the Public Accounts Committee (PAC), Govt. of U.P. and a report to that effect has already been published by the Comptroller and Auditor General of India (CAG) whereby anomalies have been pointed out and NOIDA along with the State Government have taken cognizance of the wide scale irregularities in the development of the Sports City.

xxx. The said Public Account Committee has been constituted to enquire into the irregularities committed in the development of Sports City Project on the basis of an audit report of the Comptroller Auditor General of India published in 2021 highlighting large scale violations of the plan as proposed in the brochure.

xxxi. It has also been noticed that as per the Debenture Deed dated 03.12.2014 out of Rs.450 crores received as the mortgage amount, Rs.415 crores were to be paid to NOIDA towards the lease premium but this Rs. 415 crores were never paid to

the Lessor NOIDA and the total loan amount was siphoned off by the Lessee M/s Lotus Greens as alleged by NOIDA.

xxxii. There is also pending dues of Rs. 1771 crores to be paid to NOIDA as on 31.07.2023 on account of the Sub-Lease made by LGCL but no payment has been made even after issuing of notice of default by NOIDA.

13. After presenting the above facts to explain the background under which funds were raised by LGCPL by mortgaging the project land belonging to NOIDA, which was leased by to it to LGCPL and thereafter providing permission also to LGCPL to mortgage that project land for raising finance primarily to develop the Sport City Project, it is contended by NOIDA in its application that the entire modus operandi adopted by the Financial Institution Vistra (the Debenture Trustee monitoring the interest of Debenture Holders) and LGCPL (the lead member of the consortium to whom plot was originally allotted for Sport City Project) reflects a systematic

conspiracy intended to defraud and misappropriate funds from both public exchequer and NOIDA. This contention has been supported by NOIDA with the following facts: -

- (i) No SPC as stipulated in the Condition for Eligibility have been made by the members of promoter group of Lotus Group to whom project land was allotted.
- (ii) No information on taking over of the original Debenture Trustee M/s IL&FS Trust Company Ltd. on 11.04.2016 by M/s Vistra ITCL (India) Ltd. was provided to NOIDA, which as explained by NOIDA was necessary in view of the fact that acquisition included the loan facility extended by M/s IL&FS Trust Company Ltd. to LGCPL which was subject to the terms and conditions of the Permission to Mortgage (PTM) issued by NOIDA, wherein NOIDA had the first charge on the property.
- (iii) It is stressed by NOIDA that after acquisition, the period of validity of the PTM would have undergone a change based upon the acquisition exercise that

happened between M/s IL&FS Trust Company Ltd. and Vistra, hence NOIDA in order to safeguard its property may have withdrawn the PTM at that stage itself had it been informed about acquisition, which indicates that intention of Vistra was to defraud and blindsides NOIDA at that stage itself when it acquired IL&FS Trust Company.

- (iv) Thereafter on 24.04.2016, the Corporate Debtor, Wiztown (the Applicant in the Application IA No. 266/2023 under consideration in this Order) was incorporated as wholly owned subsidiary of the Principal Borrower LGCPL and subleased a part of project land along with executing multiple subleases with respect to the project land allotted to LGCPL by NOIDA for development of Sports City.
- (v) Despite subleasing the project lands to its 12 wholly owned subsidiaries including Wiztown, LGCPL as informed by NOIDA, has never brought on records the funds, details of works for development of the Sport City Project and later also, the liability for the

loan that were allocated to each of these sub-lessees. For such lapse on part of Principal Borrower LGCPL which was supposed to be under constant monitoring of the lender i.e. Vistra in respect of utilization of funds disbursed, NOIDA contended that this material concealment was a part of the systematic fraud that was set to be perpetuated by Vistra.

- (vi) As per the conditions stipulated in the Scheme document, the Lessee was allowed to develop the Project through its multiple Subsidiary Companies for which the Allottee/Lesse Company shall have minimum 90% Equity Share Holding and such shareholding was required to remain not only at the time of execution of the sub-lease but throughout the implementation of the Project. Thus, the Lead Member of the consortium was responsible for the development of the Sports City either directly or through its subsidiaries but as informed by NOIDA in its submission before us that once the land and

funds had been allotted to LGCPL, it unauthorizedly charged the land in favour of Vistra, misappropriated the funds and relinquished its shareholding in the subsidiaries, after having saddled them with unwarranted loan liabilities towards Vistra as part of systematic fraud perpetuated by LGCPL and Vistra.

- (vii) As per NOIDA, the terms and conditions of the main lease dated 19.12.2014 provided that LGCPL being Master Developer was not supposed to change its role in the project (clause 20 of the Lease Deed dated 19.12.2014). However, the unauthorized change in shareholding of LGCL in Wiztown and other sub-lessees, has effectively violated the conditions.
- (viii) The Vistra has apportioned the loan of Rs.450 crores amongst the original lessee LGCPL and subsequent sub-lessee without seeking the requisite permission of NOIDA and thus, this apportionment is void.

- (ix) In this regard, it has been presented before us that the loan apportioned to the present Corporate Debtor i.e. M/s Wiztown Planners P. Ltd. has been saddled with 15.64% of loan, i.e., Rs. 70.4 crores on a land parcel of 27,185 sqm., i.e., 4.19% of the entire mortgaged land, i.e., 6,47,600 Sqm. which is not only unilateral in nature but also done without express approval of NOIDA making it void ab-initio.
- (x) It is also pointed out that shareholding of LGCPL in Wiztown was reduced to just 30% by transferring 70% of its shares to new promoters of Wiztown in violation of the conditions of the Tender/Scheme documents. Such fraudulent pattern of relinquishing of shares by LGCPL in subsidiaries has been done in few other subsidiaries also in order to discharge itself from the burden of debt in which all necessary helps were provided by Vistra by giving consent for such transfer and repledging of shares after transfer.

- (xi) It is also specifically pointed out by NOIDA that dilution in shareholding of Principal Borrower in its subsidiaries below 90% though in normal circumstances was not allowed but if and when any change in the constitution takes place, a fresh PTM was required to be sought from NOIDA but no PTM was sought before mortgaging of land by Wiztown
- (xii) As regards the fund of Rs. 450 crore raised through Debentures (for which Vistra is Debenture Trustee) by mortgaging the project land belonging to NOIDA and leased to LGCPL for the development of project, it is specifically pointed out while alleging loss to exchequer that it is pertinent to question that as to where Rs 450 crore received through mortgage of the project land has been routed /spent/diverted/siphoned off by the Master Developer/Principal Borrower/LGCPL as Rs. 415 crores, which was required to be paid as lease premium to NOIDA out of it, was never paid.

In this regard, NOIDA specifically charged Vistra that Rs. 415 crores and interest thereon was to be paid by the Financial Creditor, now Vistra, to the account of NOIDA, which had a priority claim over the mortgage amount but Vistra fraudulently siphoned off the legally payable dues of NOIDA in a systematic manner particularly when it became the controlling hand behind LGCPL and was operating on its behalf requiring a forensic audit investigation of the accounts of Vistra.

(xiii) As regards huge outstanding amount due from LGCPL and its subsidiaries to NOIDA of Rs. 1771 crores, it has been informed that this amount is not paid even after serving notice of default.

(xiv) NOIDA has finally raised apprehension that the entire modus operandi as explained in its submissions before us, which led to filing of the present Company Petition u/s 7 indicates that Vistra, in collusion with Lotus Greens/LGCPL, is trying to get the dues of NOIDA categorised as

operational creditors under the IBC regime and in turn grab public land which is vested in the State and regulated by NOIDA, effectively robbing the public exchequer, hence terming the filing of the present company petition under section 7 of the IBC as being clearly collusive and fraudulent and is hit by the provision of section 65 of IBC.

14. As regard to the two interlocutory applications filed for impleadment by the NOIDA in the present proceeding and subsequent two supplementary affidavits filed, Ld. Sr. Counsel for the Respondent (Financial Creditor) though orally opposed impleadment of NOIDA vehemently in the present proceeding, especially in proceeding u/s 7 IBC on the ground of its locus as not being part of the Corporate Debtor Wiztown, no written Counter Affidavit was filed against the interlocutory application as well as two supplementary affidavits filed by NOIDA.

15. We have examined the pleadings made in the interlocutory applications as well as two supplementary

affidavits filed by NOIDA as discussed in foregoing paras. We find that NOIDA has given in details all the relevant information as regards to lease hold land allotted by NOIDA to Principal Borrowers LGCPL and further subleased to the Corporate Debtor/ Applicant herein, which is the basis for giving of the amount of Rs. 450 crores to Principal Borrower through Debentures issued to lender being represented by Vistra as Debenture Trustee in the capacity of Financial Creditor before us under the captioned petition u/s 7 and the Applicant has also been made Corporate Guarantor for this particular amount of money disbursed through Debenture on which it has defaulted, therefore, we find 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 leased by NOIDA. The present application thus filed by NOIDA in the facts and circumstances mentioned above, is allowed and NOIDA is impleaded in the present application filed by Corporate Debtor U/s 65 of the Code, 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.

- 16.** The Respondent filed a written submission in compliance of the order dated 05.12.2023 of this Bench and reiterated its previously mentioned averments and contentions which need not be repeated for the sake of brevity.
- 17.** The Applicant also, filed a written submission on 21.12.2023 and submitted that the Respondent (Financial Creditor) owing to its symbiotic relationship with LGCPL has till date chosen not to take any coercive action against it despite the fact that it is under default for huge amount of debt overdue to be paid. Another written submission has been filed on 26.02.2024 giving details of all remaining 11 subsidiaries against whom no action has been initiated by the present Financial Creditor and even no Corporate Guarantee was invoked against 5 subsidiaries despite the fact that land allotted to these five subsidiaries was much more than that

allotted to the Applicant herein. The subsidiaries against whom corporate guarantee was not invoked are informed to be as under:

	SUBSIDIARY NAME	TOTAL AREA ALLOTTED
1	Land Kart Builders Pvt Ltd (Joint Venture with Tata Group)	83,970 meter square
2	Wondrous Buildmart Pvt Ltd (Joint Venture with Eldeco Group)	80,857 meter square
3	Brick Rise Developers Pvt Ltd (Joint Venture with Godrej Group)	72,000 meter square
4	Strongbiz Propbuild Pvt Ltd	50,790 meter square
5	Brick Town Developers Pvt Ltd	37,915 meter square

It is also pointed out that the Respondent Financial Creditor in collusion with the Principal Borrower, LGCPL, has not only exempted the above mentioned big companies from the liability under the Corporate Guarantee but LGCPL has not been apportioned any loan liability to them as well. It is specifically pointed out that the mortgaged land subleased to them are more than the land sub-leased to present Applicant Corporate Debtor

but not a single penny of loan has been fastened on them or paid by them.

It is also pointed out that for remaining subsidiaries of LGCPL against which Corporate Guarantee was invoked, no action whatsoever has been taken against them. In respect of the present Applicant Wiztown only, the action under Section 7 of IBC is taken by the Respondent Financial Creditor knowing very well that the only asset with the Applicant is the parcel of land sub-leased to it and its entire value would not be sufficient to cover even half of the sums invoked under the Corporate Guarantee. Despite this fact, the Respondent chose to initiate proceedings only against the present Corporate Debtor, which indicate that such proceeding has not been done for resolution of the debt but at the instance of LGCPL to somehow acquire back the land parcel while bypassing other including that of the Noida Authority. The rest of the submissions are reiterated and therefore not repeated for the sake of brevity.

18. A written submission has also been filed by NOIDA on 26.02.2024 in which almost all the submissions made earlier are repeated, hence not discussed again for the sake of brevity.

FINDINGS AND ORDER

19. We have heard the arguments of Learned Counsels appearing for both Applicant Wiztown and Respondent Vistra and also the intervener NOIDA to whom we have allowed to be impleaded in this Application as already held by us in para no. 14 and 15 of this order. All the documents and records as part of the pleadings along with exhibits/annexures marked thereto, and written submissions filed subsequently by all the three parties have been perused by us.

20. Having heard and after considering arguments advanced by the Learned Senior Advocates and other Advocates appearing for the parties and on perusal of the records and exhibits/annexures with them, the main issues before us to be decided in this Application filed under the main Petition CP(IB)No.90/ALD/2022, is whether the

captioned main Petition filed u/s 7 by the Respondent Vistra as being a Financial Creditor against the Applicant Wiztown making it Corporate Debtor after invoking the corporate guarantee for which it stood as Corporate Guarantor on the amount received by the Principal Borrower LGCPL through Debenture, is with fraudulent and malicious intent and for any purpose other than resolution or liquidation as alleged by the Applicant Wiztown in this Application.

- 21.** The provision of Section 65 against the captioned petition u/s 7 pending before us in this matter, has been raised by the Applicant Wiztown in this Application by presenting the fact that the corporate guarantee was invoked against the Applicant Wiztown to initiate CIRP without taking any action by the Respondent/ Vistra against the defaulting Principal Borrower LGCPL and its other subsidiaries which also stood as Corporate Guarantor, despite the fact that after the Principal Release Amount was overpaid by the Corporate Debtor due to substantial reduction in FAR of the land

subleased to Wiztown by the Principal Borrower LGCPL and thus, it is discharged from its liability of corporate guarantee as per the Trustee Consent Letter dated 09.09.2019.

- 22.** Per contra, Respondent Vistra argued that the payment obligations of the present directors/new promoters of Wiztown for the Principal Release Amount are separate from the payment obligation of Wiztown itself under the Corporate Guarantee. While both amounts stand in default, what stands relevant for the purpose of deciding the captioned Company Petition u/s 7 is the debt and default arising purely under the Corporate Guarantee. Nowhere in its reply to the Company Petition or the Section 65 Application, has the Wiztown refuted the fact of paying the guarantee amount to Vistra, which remain unsatisfied. As further emphasized by Vistra that the entire amount due under the corporate guarantee continues to be due to be paid to Vistra and therefore, Wiztown stands in default of its payment obligations as a guarantor under the corporate guarantee to Vistra,

irrespective of and unrelated to the payment obligations of Wiztown's present directors/new promoters towards the Principal Release Amount.

- 23.** In order to appreciate the matter in this Application, we have to examine the applicability of the provisions of section 65 of IBC in the proceeding of insolvency resolution process initiated by Vistra against Wiztown vide main petition CP (IB) No.90/ALD/2022 because of the alleged default committed by Wiztown in not making the payment of debt which allegedly has become due on account of invoking of corporate guarantee given for the amount taken by the Principal Borrower LGCPL on issuing of Debentures. For this purpose, we have first examined the Section 65 of IBC as reproduced below: -

“ Section65:

(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.

24. As per the Section 65 reproduced above, there are two ingredients that must be fulfilled before taking a decision to reject admission of an Application/Petition filed u/s 7 of IBC -

- I.** Insolvency resolution process or liquidation process is initiated fraudulently or with malicious intent, and;
- II.** Such process is initiated for any purpose other than for resolution of insolvency, or liquidation.

25. However, Section 65 is silent on the issue as to who can raise objections under section 65 against the initiation of insolvency resolution process in respect of any particular Corporate Debtor. On this issue, Hon'ble NCLAT in its decision 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 has 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 already 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 objection though it opposed the impleadment raising the question of *locus standi* of NOIDA in the present proceeding, which we have already dealt with before allowing NOIDA to be intervener in this Application to the extent of submitting the necessary details and information about the transactions related to the present matter as have already been discussed in foregoing paras.

- 26.** Before we dwell into the validity of Section 65 proceeding initiated by Wiztown, we have examined all the facts brought before us by NOIDA in this regard along with the submissions made by the Applicant and Respondent, already discussed in details by us earlier in this order. They are in brief as under.
- 27.** Submissions made by NOIDA have been discussed in details in para no. 10 to 13 of this order. NOIDA has given the full details of the project allotted to the Master Developer being LGCPL named Sport City Project as a prestigious project, which got delayed due to irregularities committed by LGCPL by violating the conditions enumerated in the Scheme of the project as specified in the tender document and lease deed executed with NOIDA. It is also informed by NOIDA that out of Rs. 450 crores of fund raised by LGCPL through Debentures after mortgaging of the project land as per the permission granted by NOIDA for which Vistra is Debenture Trustee, Rs. 415 crores were required to be paid to NOIDA towards lease premium which has not

been paid so far, hence contended that this money has been siphoned off by LGCPL as there is no details available as to where this fund has been utilised by LGCPL. It is also informed by NOIDA that an amount of Rs. 1771 crore due for payment to NOIDA by LGCPL on account of permitting it to sub-lease the lands out of Project Land to its subsidiaries for faster development of facilities in Sport City, has still not been paid for which a demand notice has also been issued to LGCPL. This project was allotted to LGCPL in 2014 but till date not much work has been done to develop sports facility as per the tender document.

- 28.** NOIDA in its submission has pointed out that the main purpose of developing the Sports City was to establish sporting facilities of international standards and also to provide good recreational facilities. A total of Rs. 410 crores were allocated by NOIDA and agreed upon by the lessee, M/s Lotus Greens (LGCPL), for the development of these facilities. However, this has not been accomplished, and the status of the amount of Rs. 450

crores received from IL & FS (now Vistra) is unknown. The construction that has occurred on the site has primarily been for residential purposes, with only a cricket ground and one tennis court completed for sporting and recreational purposes so far.

- 29.** Because of such irregularities committed by LGCPL and not developing infrastructure for Sports City as per the requirements, an audit was conducted by CAG and in the audit report submitted by CAG, many lapses occurred during the implementation of this project on account of activities of LGCPL against the terms and conditions of the said project have been highlighted. Now, after taking cognisance of the CAG report, the PAC of UP State Legislative Assembly is examining the irregularities committed in the implementation of this project leading to such enormous delay at cost of exchequer.
- 30.** Holding both LGCPL and Vistra responsible for irregularities committed in the implementation of this project leading to enormous delay which now, being examined by PAC, it has been specifically submitted by

NOIDA that as per the conditions stipulated in the Scheme document, the Lessee i.e. LGCPL was allowed to develop the Project through its multiple Subsidiary Companies for which the Allottee/Lesse Company was allowed to have minimum 90% Equity Share Holding and such shareholding was required to remain not only at the time of execution of the sub-lease but throughout the implementation of the Project. Thus, the Lead Member of the consortium was responsible for the development of the Sports City either directly or through its subsidiaries but once the land and funds had been allotted to LGCPL, it unauthorizedly charged the land in favour of Vistra, misappropriated the funds and relinquished its shareholding in the subsidiaries, after having saddled them with unwarranted loan liabilities towards Vistra as part of systematic fraud perpetuated by LGCPL and Vistra. Details submitted by NOIDA with regard to the manner in which such irregularities have been committed by LGCPL in collusion with Vistra have already been discussed in para no. 13

31. NOIDA has also argued that the entire issue of allotment and subsequent development is a matter of consideration before the Public Accounts Committee of UP State Legislative Assembly and a report highlighting irregularities in the development of this Project has already been published by the Comptroller Auditor General of India in its Audit Report. NOIDA along with the U.P.State Government is in the process of resolving this issue to safe guard the public property and public exchequer keeping in view the fact that the project land sought to be subjected to CIRP does not belong to the Wiztown, the Sub-lessee and the Corporate Debtor in the present matter. The Project Land is a public property, vested in the State and regulated by NOIDA. The Project Land was subleased to Wiztown for a specific purpose i.e. for development of the proposed Sports City but later, shares of Wiztown were transferred to new management by apportioning the loan amount to Rs. 70.4 crore to be paid by new management for acquisition of shares of Wiztown, 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 27185 sqm. allotted to Wiztown, which comes to only 4.19% of the entire mortgaged land i.e. 647600 sqm. It is also informed that even the portion of land allotted to Wiztown has been mortgaged without any PTM sought from NOIDA and hence, the loan apportioned to Wiztown is not supported with any valid mortgage of land. NOIDA in its submission has stated that the mathematical apportionment of loan made by LGCPL towards its subsidiaries most particularly WIZTOWN against whom the petition u/s 7 has been brought by Vistra is beyond understanding and unilateral in nature and without express approval of NOIDA, thus it is void ab-initio and liable to be set aside.

- 32.** 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 applicant company 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.

- 33.** As regards the Corporate Guarantee which is being canvassed by Vistra as the basis for filing of the petition u/s 7 against Wiztown, it has been shown to us by Wiztown by referring to Trustee Consent Letter setting the terms for payment of Release Amount providing in its clause 9 that Wiztown shall be released from all its related obligations. This clause of Trustee Consent Letter is reproduced as below:

“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.

- 34.** Relying on the above clause of the Trustee Consent Letter, it has been argued by the Corporate Debtor herein i.e. Wiztown that after the Release Amount having been

overpaid, the obligation casted upon the Applicant herein under the Corporate Guarantee Deed also stands extinguished making the captioned section 7 petition filed by the Respondent not maintainable even on account of any default of not paying the debt amount after invoking the Corporate Guarantee as alleged by the Financial Creditor Vistra.

- 35.** The issue of determining of the Release Amount to be paid by Wiztown is pending for adjudication before the Hon'ble Delhi Court in a commercial suit filed by Wiztown after reduction in FAR. In this regard, in the submission made before us by NOIDA, it is averred that the Release Amount should be much less than the amount of Rs.70.4 crores as computed by LGCPL and also consented by Vistra in its Trustee Consent Letter. 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.
- 36.** 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 for transferring of shares 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 we have already discussed earlier in para 31 and 32 above, thus Wiztown could have been released from its all related obligations including the Corporate Guarantee.

- 37.** We are conscious that the issue of determining the amount of Release Amount to be paid by Wiztown is still pending for adjudication before the Hon'ble Delhi High Court, however, till this issue is pending for adjudication by the Delhi High Court, 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. If there is a default in payment of debt from Principal Borrower

LGCPL and there are 11 more subsidiaries against whom action could have been taken by Vistra for resolving of debt as there was no dispute whatsoever at least with respect to debt pending against the Principal Borrower but the hurry and urgency shown by Vistra in taking action only against Wiztown could not be explained looking to the fact that there was a dispute on the determination of the Release Amount which has bearing on Corporate Guarantee and that too when the suit with Hon'ble Delhi High Court was with regard to determining the Release Amount. Vistra's only justification for taking action against the Wiztown is that law is settled that action against Corporate Guarantor can be taken independent of the Principal Borrower but here, we find that Corporate Guarantee is not absolute but subject to payment of the Release Amount which is under dispute at present.

- 38.** Here, it is also pertinent to note that as per the submissions made by the Ld. Sr. Counsel for the Corporate Debtor, the Wiztown filed a commercial suit in

the Hon'ble Delhi High Court on 01.09.2022 and the Section 7 petition by Vistra though has been filed on 31.08.2022 electronically on DMS just one day before filing of the commercial suit but the same was not complete. It is also argued by the Ld. Sr. Counsel that the present petition U/s 7 has been filed in hurry only to counter the Commercial Suit pending with the Hon'ble Delhi High Court and it is thus premature for determination of debt and default in respect of Wiztown making it a Corporate Debtor on account of it being a corporate guarantor till the amount of Release Amount is not adjudicated upon by the Hon'ble Delhi High Court having bearing on determining of its liability of corporate guarantee and also, looking to the fact that for the same default, option was available with the Financial Creditor, Vistra to take action against the Principal Borrower, LGCPL. Such hurry shown by Vistra in taking action only against the present applicant Wiztown smacks of collusive and premature petition. We are in agreement with the submissions made by the Ld. Sr. Counsel for the Corporate Debtor to that extent.

39. Taking into account the facts of the case as explained in the previous paras leading to filing of the Company Petition u/s 7 by Vistra against Wiztown, NOIDA argued that it indicates that Vistra, in collusion with LGCPL has initiated this proceeding u/s 7 in a conspiracy to defraud NOIDA from recovering its pending dues from M/s Wiztown relating to lease rent on sub-leasing of land to Wiztown as once IRP is appointed by this Tribunal under CIRP, the entire outstanding dues payable to NOIDA by lessee/sub-lessee shall be categorised as operational creditor under IBC and in turn grab the public land which is vested in the State and regulated by NOIDA, effectively robbing the public exchequer. Thus, finally concluding that the filing of the present Company Petition u/s 7 of IBC is clearly collusive and fraudulent and is hit by the provisions of section 65 of IBC, 2016.

40. In support of its arguments, NOIDA relied upon a decision of Hon'ble Supreme Court in case of **Greater NOIDA Industrial Development Authority vs Prabhjit Singh Soni & Anr. (2024 SCC Online SC 122)** holding that Adjudicating Authority while entertaining an Application under section 7 of the IBC, 2016 to initiate the CIRP along with an Application under Section 65 of IBC, 2016, alleging fraud has to be particularly circumspect of the properties that stand to be brought under the CIRP. If the CIRP would affect the public property, then rigours adherence to the governing statute, lease deed and sub-lease deed on the part of the parties to the Application under section 7 is mandatory.

41. Against all the submissions made by NOIDA in its Application as well as in the Supplementary Affidavits filed during the proceeding, no written objections have been filed by Vistra countering any of the facts stated by NOIDA except challenging its locus in this

proceeding, which we have already decided admitting NOIDA as intervener in the proceeding u/s 65 as discussed in para 14 and 15 of this order. Therefore, we have considered the submissions made by NOIDA in respect of the present proceedings as discussed in preceding paras of this order.

- 42.** From the facts of the case as discussed in foregoing paras, it is clear that utilisation of funds taken through Debentures (*for which Vistra is Debenture Trustee to protect the interest of Debenture holder*) by LGCPL for development of Sports City was never monitored by Vistra to ensure that funds taken through Debentures are properly utilised and Sport City Project is being developed as per the conditions stipulated by NOIDA. It is not even ensured by Vistra that as per the Debenture Deed dated 03.12.2014, Rs. 415 crores are paid as towards lease premium to NOIDA out of Rs. 450 crores received as the mortgaged amount by mortgaging the project land with permission of NOIDA to whom the said land belonged. NOIDA has categorically stated in its

application that Rs. 415 crores were to be paid to NOIDA towards lease premium but this Rs. 415 crores were never paid to lessor NOIDA and total loan amount was siphoned off by the Lessee LGCPL.

- 43.** This project is undisputedly got delayed because of many irregularities committed by LGCPL as pointed out in CAG report and now being examined by Public Account Committee (PAC). Now, while justifying attending of meeting of the PAC by Mr. Manish Jain (*who belong to the lender group*) on behalf of the Principal Borrower, it is stated that Mr Manish Jain attended the meeting of PAC to keep abreast of all updates with regard to Sports City Project to be developed by LGCPL. As a responsible lender, and given the status of the Sports City Project, Mr Manish Jain or other repr esentative on behalf of the lender is constrained to attend in all proceedings with regard to LGCPL and its group entities. Therefore, in attending the meeting of the PAC, the representative of the lender is only attempting to be privy to any discussions which may impact the future of the Sports

City project and thereby with a view to safeguard its interest. If this argument of Vistra is accepted, it is quite surprising as to why such prudence being a responsible lender was not shown earlier to be privy to all the actions being taken by the Principal Borrower LGCPL post financing the Sports City Project to ensure that this project is completed in time bound manner as per the conditions stipulated by NOIDA by overseeing at least about the proper utilisation of funds borrowed through Debenture is issued by LGCPL.

Had such responsibility been shown earlier by Vistra, which now being shown by sending Mr Manish Jain to attend the meeting of PAC on behalf of the Principal Borrower, the present situation with respect to the Sport City Project would have not arisen in which CAG in its Audit Report has found it as has been mismanaged due to irregularities of LGCPL resulting into enormous delay and now being examined by PAC.

- 44.** Thus, we find that Vistra has failed to secure the funds disbursed to LGCPL by not taking any action against the

Principal Borrower LGCPL on mis-utilisation of fund raised through Debenture (*kept under the monitoring of Vistra being Debenture Trustee*) as alleged by NOIDA of not making payment towards lease premium of Rs. 415 crores to NOIDA and siphoning of the same despite raising such funds by mortgaging land of Sports City Project belonging to NOIDA.

- 45.** These facts demonstrate that despite LGCPL not using the borrowed funds raised through Debentures in proper manner in developing the Sports City Project of NOIDA and sub-leasing the lands for the purposes other than developing the Sports City Complex as per the norms laid down by NOIDA and earning money by such sub-leasing using for the purposes other than developing Sports City, which ultimately resulted into adverse reporting by CAG and setting up of PAC for further examination, Vistra instead of taking action against LGCPL to secure the funds disbursed through Debenture, focussed on taking action against a small company like Wiztown having share capital of Rs. 1,00,000 only and no assets except a

small piece of sub-leased land only (4.19% of total leased land) that too after it came out of the control of the promoters of LGCPL with share capital of Rs. 5,00,00,000/- and having entire leased Sports City land with it.

- 46.** It is noteworthy that despite default on payment of the debt arising due to default on account of non-payment of fund borrowed on Debenture, neither any action is taken against the Principal Borrower nor against any of remaining 11 subsidiaries which are still mostly under the control of the management of the LGCPL except four subsidiaries whose majority shares have been bought by big business houses like TATA and Godrej etc.
- 47.** Vistra not only ignored taking any action against the Principal Borrower as well as the subsidiaries under its control for the same default relying on the Judgment of the Hon'ble Supreme Court in case of ***Laxmi Pat Surana vs Union Bank of India (2021) 8 SCC 3821***, however, it is now representing Principal Borrower LGCPL in PAC meeting taking a plea of being a responsible lender but

such responsibility was never shown when the development of the same project was being defaulted by the Principal Borrower.

Such lackadaisical approach of Vistra towards the Sports City Project and not seriously monitoring the utilisation of funds raised by Principal Borrower LGCPL in responsible manner and showing ignorance on the irregularities committed by Principal Borrower LGCPL in this project and now, sending its official to represent the Principal Borrower in PAC meeting taking the plea of being responsible lender clearly demonstrate collusion between Vistra and LGCPL for taking action against a small company like Wiztown in the name of its insolvency resolution, which even after its resolution would not be able to ensure a fraction of borrowed funds to be repaid. Therefore, it is clear that purpose of initiating action u/s 7 against Wiztwon is other than initiating insolvency resolution process.

Even the facts and circumstances under which corporate guarantee was invoked and petition u/s 7 has

been filed against Wiztown are entirely different than the facts of the case of ***Laxmipat Surana(supra)***, hence respectfully considering this decision, we in our considered opinion in peculiar facts and circumstances of this case as discussed above, are of the view that this decision of the Hon'ble Supreme Court would not be applicable in the present case.

- 48.** Having considered all our findings discussed so far, we find that for initiation of CIRP against the Corporate Debtor, Wiztown under Section 7, the Financial Creditor's i.e. Vistra main argument is that debt of Rs. 537 crore is due and payable by Wiztown being Corporate Guarantor and it has defaulted on payment of this debt. However, it is also important to note that the same debt is due and payable by the borrower LGCPL that has more resources to pay than a small company like Wiztown which once was a subsidiary of the Principal Borrower LGCPL along with its other 11 subsidiaries that were also made guarantors along with Wiztown but neither any proceeding under IBC has been initiated against them or

any information has been provided about initiating any action against them at any other forum under any other Act for realisation of the said debt which is claimed to be under default. For the alleged default, action u/s 7 of IBC is taken only against one company i.e Wiztown after it was taken over by other persons by purchasing its shares from Principal Borrower LGCPL. After examination of all the details provided by NOIDA in respect of the Sports City Project, we have found that Principal Borrower LGCPL is working in collusion with the Financial Creditor Vistra, which as per NOIDA has resulted into many irregularities in implementation and also siphoning of funds raised through issue of debentures in which Vistra is debenture trustee, as out of such funds raised amounting to Rs. 450 crores, no payment is made to NOIDA required to be paid as lease premium of Rs. 415 crore and even lease/sub-lease rent of Rs. 1771 crore is due from LGCPL and no proper details of utilisation of funds in development of Sports City Project are made available resulting into submission of a CAG Report giving adverse findings against LGCPL for such

irregularities for which now, the matter relating to implementation of this project is being examined by PAC.

- 49.** All these facts as brought out by NOIDA very well explain as to why no action was taken by the Financial Creditor against the Principal Borrower LGCPL and those subsidiaries that are under its control for the same debt being in default for which the action has been initiated against the present Applicant Wiztown only treating it as Corporate Debtor in default. Because of not taking any action against the Principal Borrower and those entities that stood as guarantor in which principal borrower's interest still exists and taking action u/s 7 of IBC only against one entity i.e. the present Corporate Debtor in which interest of the Principal Borrower is discharged after sale of shares, clearly demonstrates that there is a collusion between the Financial Creditor i.e. *Vistra (the Respondent herein)* and the Principal Borrower LGCPL to initiate CIRP against the Corporate Debtor i.e. *Wiztown (the Applicant herein)* by filing of the present petition u/s 7 of IBC and it is with malicious intent for any purpose

other than for resolution of insolvency of the Corporate Debtor.

- 50.** We accordingly allow IA No.266/2023 filed by the Corporate Debtor Wiztown in terms of this order along with disposing off IA No.601/2023 read with IA No.469/2023 filed by NOIDA to the extent of holding that the present petition filed U/s 7 by the Financial Creditor, namely, VISTRA ITCL (INDIA) LIMITED has been initiated with malicious intents not connected in any manner with the objective of the IBC Code for insolvency resolution of the Corporate Debtor. The proceedings initiated therefore, evidently appear to be safeguarding the Principal Borrower LGCPL at the cost of the present Corporate Debtor and by deliberately keeping the NOIDA in dark with respect to the obligations cast upon the Financial Creditor to ensure seeking permission of NOIDA on mortgaging of land by LGCPL whenever there is change in the shareholdings of LGCPL in its subsidiaries below the holding limits as specified in the Scheme formulated by NOIDA for the Sports City Project.

The malicious initiation of the present proceedings is thus manifestly clear arising out of misutilization of the funds raised through debentures by mortgaging the leased project land, causing loss to NOIDA which is a statutory authority. The purpose of initiating the present petition is thus with oblique motives for the purpose other than resolution of insolvency or liquidation as the case may be of the Corporate Debtor as enumerated U/s 65 (1) of the Code.

- 51.** As we have held that the Financial Creditor i.e Vistra being Respondent herein has initiated the insolvency resolution process against the Corporate Debtor i.e. Wiztown being Applicant herein with malicious intent for any purpose other than for the resolution of insolvency, a penalty of Rs.1,00,000/- is imposed on the Vistra as contemplated under Section 65(1).
- 52.** As far as Prayer B in the Application regarding appointing an independent auditor/CA/appropriate person to conduct audit and look into the financial and commercial transactions and arrangement between Respondent

(Vistra) and Principal Borrower (LGCPL) is concerned, we are not inclined to consider the same in view of the fact that the said arrangement between the Financial Creditor and the principal borrower is an arrangement privy to them and also, we do not have jurisdiction on both companies. In the present matter we are primarily focused to deal with the factual and legal aspects as propounded in the present application filed by the Corporate Debtor under Section 65 of the Code, in that background we have considered and passed a separate order with respect to the petition filed by the Financial Creditor under Section 7 of the Code.

53. Ordered accordingly.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Date: 16th July, 2024