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Reserved

Court No. - 21

Case :- WRIT - C No. - 6049 of 2020

Petitioner :- M/s Jai Prakash Associates Ltd
Respondent :- State of U.P. and another
Counsel for petitioner :- Navin Sinha (Senior Adv.),Rahul Agarwal,Rohan Gupta
Counsel for respondent :- Abhinav Gaur,Ami Tandon,Arvind Srivastava,Ashish Kumar Singh,C.S.C.,Gaurav Tripathi,Kartikeya Saran,Rahul Agarwal,Rohit Nandan Pandey,Sandeep Arora,Shreesh Srivastava,Sujan Singh,Syed Imran Ibrahim

with

Case :- WRIT - C No. - 21532 of 2021

Petitioner :- Jaypee Sports City Welfare Society and another
Respondent :- State of U.P. and 2 others
Counsel for Petitioner :- Girish Chandra Yadav,Kartikeya Saran
Counsel for Respondent :- Aditya Bhushan Singhal,C.S.C.,Praveen Kumar,Rohan Gupta

with

Case :- WRIT - C No. - 8909 of 2021

Petitioner :- Suraksha Asset Reconstruction Limited
Respondent :- State of U.P. and another
Counsel for Petitioner :- Priyanka Midha,Ram M. Kaushik
Counsel for Respondent :- C.S.C.,Kamaljeet Singh,Praveen Kumar,Pravin Kumar

with

Case :- WRIT - C No. - 47262 of 2017

Petitioner :- Jaiprakash Associates Limited
Respondent :- State Government though Principal Secretary and another
Counsel for Petitioner :- Bhavya Tewari,Prashant Shukla,Sr. Advocate
Counsel for Respondent :- Aditya Bhushan Singhal,C.S.C.,Pramod Jain(Senior Adv.)

Hon'ble Manoj Kumar Gupta,J.
Hon'ble Kshitij Shailendra,J.

1. For ease of discussion, the judgment has been structured according to the following table of contents: -

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2. Writ – C No. 6049 of 2020 has been treated to be leading petition and the facts narrated in the judgment, except where stated explicitly, would be from the pleadings of the parties in the leading petition.

INTRODUCTION :

3. M/S Jai Prakash Associates Limited (in short 'JAL' or 'the petitioner'), is a Company incorporated under the provisions of Companies Act, 1956. Initially, the writ petition was filed against two

respondents, i.e. the State of U.P. and Yamuna Expressway Industrial Development Authority (in short 'YEA' or 'Authority'), later on, around 258 home-buyers were impleaded pursuant to order dated 19.09.2023 passed by this Court. The petitioner-company was facing winding up proceedings in the form of CP (IB) No.330/ALD/2018 (ICICI Bank Vs. Jai Prakash Associates Limited) and one Mr. Bhuvan Madan was appointed as Interim Resolution Professional (in short 'IRP'). For this subsequent development, the petitioner was permitted to be represented through the said IRP and, consequently, the cause title was amended pursuant to the order dated 26.07.2024.

4. The prayer made in the writ petition is to quash the order dated 12.02.2020 passed by respondent no.2 (YEA) whereby the allotment of land made by the said respondent in favour of the petitioner has been cancelled. Further, a mandamus has been sought restraining the respondents from interfering with the peaceful possession of the petitioner over the land in question and from taking any other coercive action pursuant to the order impugned; further direction to respondent no.2 to provide requisite amenities such as water, sewer and drainage and to take all other requisite steps for effective implementation of the Escrow Agreement dated 24.09.2018. The writ petition was amended and further prayers were added to quash the resolution dated 28.6.2021 (Annexure No.37-B) passed by the Board of YEA in its 70th Board Meeting in so far as YEA sought to levy restoration charges upon the petitioner and limited the

proposed re-schedulement and re-computation of the dues to the year 2023. Another relief claimed is for quashing the consequential letter dated 05.07.2021 (Annexure No.37-C) whereby the decision taken by the Board in its 70th Meeting along with other decisions was communicated to the petitioner. A prayer commanding YEA to re-schedule and re-compute the balance dues and to decide the representation dated 02.03.2021 has also been made.

CASE OF THE PETITIONER (JAL) :

5. The Government of Uttar Pradesh constituted Taj Express Industrial Development Authority (in short 'TEA') vide notification dated 24.04.2001 under the U.P. Industrial Area Development Act, 1976 (in short 'the Act, 1976') for implementing the Yamuna Expressway Project and allied developments in the region. The responsibilities of the erstwhile TEA, inter alia, include execution of Yamuna Expressway, acquisition of land for construction of the expressway area, development and preparation of zonal plan/ master plan for planned development along the expressway, development of drainage, feeder roads, electrification etc. In exercise of powers conferred upon TEA under the Act of 1976 and in furtherance of discharge of its essential functions, YEA brought a policy of Special Development Zone (in short 'SDZ') contemplating setting up of SDZs with a particular core activity chosen by the entrepreneur out of the options specified. On 29.02.2008, YEA invited applications from the interested parties by widely publishing the SDZ policy through

circulation of a detailed brochure containing various terms and conditions. The petitioner applied in response to the notice for setting up of the SDZ with “sports” as its core activity. At the time of applying, it was JPSK Sports Pvt Ltd which was, later on, named as Jaypee Sports International Ltd (JPSI) which subsequently merged into the petitioner-company in the year 2014 pursuant to a scheme of merger. YEA, vide letter dated 11.06.2008, issued an allocation letter to the petitioner communicating the latter that YEA had decided to allocate an area of 1000 hectares of land for setting up SDZ with “Sports” as the core activity.

6. On 28.08.2008, YEA informed the petitioner that it had reserved land measuring approximately 1000 hectares in Sector 25, Noida for the petitioner to develop SDZ with sports as the core activity. It was informed that the land had been reserved in anticipation of respondent no.2 taking possession over the land for which acquisition proceedings were in progress. In between years 2009 and 2011, YEA issued six allotment letters dated 24.02.2009, 20.03.2009, 10.08.2009, 27.01.2010, 23.06.2010 and 07.12.2010 to the petitioner and the land measuring 1085.3327 hectares, inclusive of 98.9862 hectares for village development and abadi extension, and 14.6673 hectares was allotted to it. All the allotment letters, being similar in nature, contained a payment schedule, the area of the land allotted and installments fixed for payment of the premium .

7. In between the same period of time, subsequent to the six

allotment letters and payment of 20% advance allotment money by the petitioner, 32 lease deeds were executed by which approximately 965.7390 hectares of land was leased. All the lease deeds contained detailed terms and conditions under which right in the land was transferred to the petitioner, specifying the mode of recovery of any amounts payable by the petitioner, as arrears of land revenue. Various clauses contained in the allotment letters which were contemplated to be a part of the lease deeds, were expressly incorporated therein without adopting the allotment letters as a whole. Lease deeds do not contain any clause which may enable the respondents to cancel/ terminate the lease deeds. According to the terms and conditions contained in the lease deeds, YEA was to extend full cooperation and render such assistance to the petitioner as might be necessary, such as obtaining requisite permits, sanctions, approvals, clearances etc for achievement of the objectives under the SDZ Scheme, however, according to the petitioner, YEA continuously acted in a lackadaisical manner and did not approve drawings of Real Estate Development under process. This conduct was not only detrimental to the interest of the allottees of such residential areas but also caused undue loss to the petitioner.

8. After having applied for the aforementioned approvals, the petitioner began construction of such buildings as was permitted by the Regulations and had constructed a good portion of the structures. The petitioner had started the housing projects over the demised land,

but the projects were not given the requisite sanctions causing grave financial hardship to the petitioner. The projects were stuck up on account of failure on the part of YEA to grant requisite approvals, without any explanation, which constitutes a breach of the terms of the lease deeds.

9. According to the petitioner, it completed the core activities as required and applied for being granted the completion certificate after depositing fees in that regard in the year 2011 and 2012, but the same rermained pending before the Authority without any explanation or just cause. Due to huge delays beyond the petitioner's control and due to subdued economic environment, the petitioner was unable to follow the payment mechanism agreed as per the lease deeds. It is submitted that a payment of Rs.2,379.74 crores had been duly made by the petitioner till 31.07.2017 to YEA and the total outstanding amount aggregated to only a sum of Rs.359.81 crores. YEA duly recognized such hardships faced by various builders and hence, vide its office order dated 16.06.2017, proposed a scheme that permitted all YEA's allottees to seek re-schedulement of the defaulted amount (premium and lease rent) under their respective leases by filing a written application (the "Re-Schedulement Scheme"). Further, as per the Re-schedulement Scheme, the applicant was to deposit 5% of the defaulted amount by 31.07.2017 and 10% defaulted amount within a period of 30 days from the date of Re-schedulement Demand Letter to be issued by YEA. The balance was to be deposited in installments

fixed through the Re-schedulement Demand Letter.

10. The petitioner applied for re-schedulement scheme vide letter dated 24.07.2017 and the matter was discussed with the Chief Executive Officer of YEA on 24.07.2017 and he assured the petitioner that on payment of Rs.300 Three hundred) crores, the matter would be taken up with Board for considering reduction of the rate of interest and re-schedulement of the balance amount. After discussion between the parties, the petitioner requested ICICI bank to release Rs.300 (Three hundred) crores from the Escrow Account on 31.07.2017 and deposited the said amount through Bank Draft No.551184 issued by ICICI bank. According to the petitioner, the sum so deposited amounts to more than 50% of the amount overdue that was further more than the required 15% amount contemplated under the Re-schedulement Scheme. YEA, instead of approving the petitioner's application under the Re-schedulement Schement, as per the petitioner, threatened it to cancel the allotment which led the petitioner to file Writ-C No.47262 of 2017 seeking quashing of the letter dated 04.08.2017 with a writ of mandamus commanding the YEA to forthwith issue a re-schedulement demand letter specified in the scheme. The said writ petition was connected with the leading petition by order dated 02.08.2017. YEA, vide letter dated 16.02.2018, directed the petitioner to deposit Rs.170.78 crores by 31.03.2018 for availing the Re-schedulement of the overdue amounts. In reply thereto, the petitioner, vide its letter dated 08.03.2018, duly

clarified that it had already paid Rs.410 (four hundred and ten) crores during 29.03.2017 to 31.07.2017 to YEA which amounts to 83% of the principal amount of installments towards land dues and to consider re-schedulement of total amount due as on 31.03.2018 in twelve half yearly installments.

11. Pursuant to approval of the re-schedulement plan, the payment mechanism was altered from the payment terms stipulated under the six allotment letters and the balance payments were to be made in twelve half yearly installments, starting from 30.09.2018 till 31.12.2023. However, the petitioner found some discrepancy and unmatched figures and noticed arbitrarily imposed additional penalty of 1% to 3% while preparing the re-schedulement letter more than the prescribed penal interest which was 3% over and above the prime lending rate fixed by SBI. The petitioner made request to correct the mistake by letter dated 04.07.2018. It is further pleaded that in Writ-C No.744 of 2017 (Chitra Sharma Vs. Union of India) regarding the corporate insolvency resolution process of Jaypee Infratech Ltd, a subsidiary of the petitioner-company, the Supreme Court, vide order dated 09.08.2018, directed the petitioner to deposit requisite amount from time to time and in compliance of such directions, the petitioner deposited Rs.750 crores before the Supreme Court. The said amount was, later on, transferred to the National Company Law Tribunal, Allahabad (NCLT) vide order dated 09.08.2019 passed by the Supreme Court and the amount lies in the custody of NCLT.

12. The petitioner was facing financial crisis due to deposit of Rs.750 crores and for making interest payment to YEA at a very high rate since financial year 2011, varying between 14% to 14.75% along with the penal interest at the rate of 3% against the average bank interest rate of about 12%. Therefore, it requested the YEA to rectify the additional penal interest, reduce the rate of interest and defer first two installments, which were due on 30.09.2018 and 30.03.2019 to 31.12.2018 and 20.06.2019 respectively. YEA, however, continued to hammer upon making deposit of the balance amount and repeated requests made by the petitioner went in vain. Due to subdued economic environment and the fact that even after payment of land dues to the extent of 87%, the building drawings were not approved by YEA resulting into Real Estate Projects becoming unviable and causing huge losses to the petitioner. However, despite such repeated requests, YEA did not take bonafide action and even threatened the petitioner, *inter alia*, with cancellation/ termination of the lease deeds.

13. The petitioner presented a cheque of rupees 10 (ten) crores towards the overdue installments and promised to deposit the balance amount by 15.02.2019 and submitted letters requesting YEA to grant further extension of time to deposit the balance amount of first installment, reduction in rate of interest and sought rectification in respect of additional penal interest. YEA, vide its letter dated 04.06.2019, informed the petitioner that in 65th Board Meeting, it had been decided that change in payment mechanism to Escrow Account

might be considered only after the petitioner would make the default good in pursuance of re-schedulement letter dated 28.05.2018. It directed the petitioner to deposit rupees ninety eight crores for execution of proposed Escrow Agreement for the balance amount. The petitioner, vide letter dated 18.06.2019, *inter alia*, advised YEA to invoke the performance bank guarantee of rupees hundred crores issued by Punjab and Sindh Bank, which was duly invoked by YEA vide its letter dated 02.07.2019 issued to the said bank and, accordingly, rupees hundred crores were transferred to YEA's account held with said bank on 03.07.2019; pursuant whereof, the petitioner, vide its letter dated 13.08.2019, submitted the Escrow Agreement for getting the same executed by the authorized signatories of the authority and to facilitate implementation of the same by ICICI Bank.

14. Later on, the petitioner, vide letter dated 21.12.2019, informed YEA that bank guarantee of rupees hundred crores was to be maintained for a period of 10 years which period had already expired and that drawings of core activity area, submitted long back, had not been approved. Accordingly, the petitioner requested the YEA to dispense with the requirement of bank guarantee in view of completion of core area and also asked for approval of pending real estate development as proceeds from sale of said projects was a must for the petitioner to ensure payment of balance dues in respect of land. Despite compliance of the terms as agreed between the parties, YEA passed the order impugned dated 12.02.2020 cancelling the allotment

of entire land in Sector-25 on the pretext that the petitioner had defaulted in making payment of installments in accordance with the re-schedulement plan dated 28.05.2018 without considering that the same stood superseded by the Escrow Agreement dated 24.09.2019. The petitioner contends that YEA's actions are illegal, arbitrary, and financially oppressive. Despite substantial compliance and investments, YEA's unjustified demands and failure to approve crucial infrastructure had jeopardized the SDZ project. The petitioner seeks judicial intervention to rectify these issues and prevent undue financial burdens.

CASE OF YEA :

15. The petitioner entered a commercial agreement to develop SDZ Project but defaulted on payments and failed to complete the required development. The cancellation order followed due process and was in accordance with contractual clauses governing non-payment. Clause 5.2 of the allotment letter allowed three default notices, beyond which the Authority had the right to terminate the lease. The petitioner was required to develop 35% of the total area for core activities, but failed to do so.

16. The dispute is contractual, arising from allotment letters and lease deeds, making a writ petition under Article 226 inappropriate. The Supreme Court has consistently ruled that judicial review in contractual matters is limited and should not be done unless arbitrariness or violation of fundamental rights is involved. The

cancellation was effected as per Clause 4.2 of the allotment letters, and the petitioner has not disputed its payment defaults.

17. The lease deed is not a standalone document; it is directly linked to the allotment letters. Since the allotment letter was canceled, the lease deed also ceases to exist.

18. Despite multiple opportunities for restructuring payments, the petitioner failed to adhere to the new schedules. The Authority granted multiple extensions but still did not receive timely payments. The Escrow Agreement of 24.09.2019 was meant to facilitate payments, yet the petitioner deposited only ₹47.09 lakh, while the due amount was significantly higher.

19. A survey conducted in year 2024 found that the petitioner developed only 5.46% of the required 40% covered area. Several essential sports and infrastructure projects (e.g., stadiums, training institutes, gymnasiums, hostels, etc.) were not developed. The petitioner also failed to complete housing projects, causing severe hardship to homebuyers.

20. The doctrine of proportionality does not apply to contractual agreements. The cancellation order was issued after multiple warnings, making it a last resort, not a disproportionate response.

21. The cancellation was necessary to protect homebuyers, who suffered due to project delays. The Authority has plans to ensure homebuyers are not impacted, either by re-auctioning the project with

the condition that the new developer completes it, or the Authority undertaking the development itself.

22. The petitioner was admitted into insolvency on 03.06.2024, proving financial mismanagement. Over ₹64,552 crores in claims were filed against the petitioner, with ₹51,512 crores admitted. The insolvency proceedings show that the petitioner's financial troubles were not caused by the cancellation but by years of defaults.

EVENTS TAKING PLACE DURING PENDENCY OF THE PETITIONS :

23. An interim order was passed in the leading writ petition on 25.02.2020 directing the parties to maintain status quo provided the petitioner deposits rupees hundred crores with YEA within one month, but in two parts, i.e. Rs. 50 crores by 10.03.2020 and another Rs. 50 crores by 25.03.2020. The petitioner complied with the first direction/ part of the order dated 25.02.2020 by depositing Rs. 50 crores in the account of YEA on 09.03.2020 and made further deposit of Rs. 5 crores on 16.03.2020. However, the petitioner failed to deposit the remaining amount of Rs. 45 crores. Petitioner's application dated 04.01.2021 seeking extension of time to comply with the order was disposed of on 08.02.2021 granting a week's time to the petitioner. The Court, by order dated 08.02.2021, (corrected/ modified on 01.03.2021) permitted the petitioner to deposit Rs.52,50,26,551/- within a week with a further direction to YEA to

consider re-structuring and re-computing of the dues after the petitioner makes compliance of the order. Thereafter, by order dated 29.09.2022, the petitioner was directed to deposit a sum of Rs.100 crores. This amount was deposited by the petitioner and an affidavit dated 02.11.2022 was filed to that effect. Accordingly, the petitioner has deposited Rs.50 crores + Rs.5 crores + Rs.52,50,26,551/- + Rs.100 crores (Total Rs.207,50,26,551/-).

24. The Board of YEA, considered the proposal of the petitioner company for restructuring and vide letter dated 05.07.2021, demanded a lump sum payment of Rs.425.10 crores towards "restoration charges" as a pre-condition. The petitioner challenged the aforesaid demand of YEA by filing Writ-C No.17785 of 2021 which was dismissed as withdrawn with liberty to the petitioner to seek amendment in the present writ petition. Accordingly, amendment was sought and was allowed.

SPOT INSPECTION DURING COURSE OF HEARING:

25. During the course of hearing, the Court, vide order dated 09.05.2024, directed for survey of the site by YEA in presence of representative of the petitioner. Site survey was, accordingly, conducted on different dates. The inspection report and photographs of the site have been filed.

26. Whereas the emphasis of the respondent-Authority has throughout been to the effect that the petitioner failed to carry out

construction activity as per the stipulations contained in the allotment letters, the stand of the petitioner has been that in the core and non-core areas of the subject land, adequate constructions have been raised and whatever could not be raised, it was on account of lapses on the part of the respondent-Authority. A tabulated depiction of the construction raised is contained in 7th supplementary affidavit as well as affidavit dated 25.07.2024 filed after joint survey was carried out. According to the petitioner, following is the position with regard to constructions done on the spot:-

Sl. No.	**CORE AREA**	**TOTAL LAND AREA**	**LAND AREA DEVELOPED**	**LAND AREA UNDER DEVELOPMENT**	**LAND AREA FOR FUTURE DEVELOPMENT**
		(HECT.)	**(HECT.)**	**(HECT.)**	**(HECT.)**
1	FI RACE TRACK + SERVICES (STP, WTP, ESS &PONDS FOR RAIN WATER HARVESTING	80.61	80.61	0.00	0.00
2	CRICKET STADIUM &ASSOCIATES FACILITIES	14.66	9.57	0.00	5.09
3	HOCKEY &MULTI-PURPOSE SPORTS HALL	11.09	0.00	0.00	11.09
4	ROAD	55.45	44.36	0.00	11.09
5	GREENS	57.34	54.79	0.00	2.55
6	OTHER SERVICES (LAKE FOR RAIN WATER HARVESTING)	10.21	0.00	0.00	10.21
7	OTHERS	121.76	0.00	11.33	110.43

	SPORTS &SUPPORT ACTIVITIES				
A	**TOTAL**	**351.12**	**189.33**	**11.33**	**150.46**
			Total= 200.66		

Sl. No.	**NON CORE AREA**	**TOTAL LAND AREA**	**LAND AREA D EVELOPED**	**LAND AREA UNDER DEVELO PMENT**	**LAND AREA FOR FUTURE DEVELOPM ENT**
		(HECT.)	**(HECT.)**	**(HECT.)**	**(HECT.)**
1	SUB-LEASE (INCLUDING ROAD &GREENS)	64.07	0.00	64.07	0.00
2	PROJECTS	138.61	115.30	23.31	0.00
3	OTHER LAND (RESIDENTIAL, COMMERCIAL &INSTITUTIONAL)	284.29	0.00	2.82	281.47
4	OTHER ROADS	85.03	29.76	38.26	17.01
5	OTHER GREENS	76.88	26.91	34.60	15.38
B	**TOTAL**	**648.88**	**171.96**	**163.06**	**313.86**
			Total= 335.02		

A+B	**GRAND TOTAL**	**1000.00**	**361.29**	**174.39**	**464.32**
			Total= 535.68		

<u>Proceedings under Insolvency and Bankruptcy Code, 2016</u> :

27. By order of NCLT dated 3.6.2024, the application of ICICI Bank filed in the year 2018 under Section 7 of the Insolvency and

Bankruptcy Code was admitted by NCLT. The petitioner challenged the order dated 3.6.2024 before NCLAT vide Company Appeal (80) (Insolvency) No. 1185 - 1162 of 2024. The NCLAT dismissed the appeal by judgment dated 6.12.2024. Thereafter, Civil Appeals bearing number 98 - 102 of 2025 and 2011 - 2012 of 2025, along with various intervention applications, were filed before the Supreme Court assailing the aforesaid orders. The same were dismissed by the Supreme Court by order dated 10.1.2025. We are informed that at present, the resolution professional is functioning and so far there is no approved resolution plan.

PARTIES HEARD :

28. We have heard Mr. Jayant Bhushan, learned Senior Advocate, assisted by advocates Mr. Vishal Gupta, Mr. Rohan Gupta, Mr. Amartya Bhushan, Mr. Aditya Marwah, Mr. Anoop Rawat, Mr. Sagar Dhawan, Mr. Ahkam Khan, Ms. Shikha Gupta, Ms. Kirti Gupta, Mr. Pranay Kumar, Mr. Jatin Kumar Mishra for the petitioner (JAL), Mr. Bhuvan Madan, Resolution professional (in person), Mr. Manish Goyal, learned Senior Advocate, assisted by Mr. Praveen Kumar, Mr. Syed Imran Ibrahim and Mr. Pranav Tanwar for respondent no. 2 (YEA), Mr. Amit Saxena, learned Senior Advocate, Mr. Rahul Agarwal, Advocate, Ms. Upasana Agarwal, Advocate and Ms. Aishwarya Gupta, Advocate on behalf of lenders/financial creditors, mortagees and sub-lessees and Mr. Anoop Trivedi, learned Senior Advocate assisted by Mr. Abhinav Gaur, Advocate for the

homebuyers.

ISSUES:

29. The submissions made by learned counsel for the parties range from issues pertaining to maintainability of the writ petition; challenge to the impugned cancellation order on various grounds; interest of various stakeholders, sub-lessees, homebuyers and financial institutions and ancillary issues pertaining to quantification of the amount payable by the petitioner, in case the challenge to the cancellation succeeds and the remedies open to YEA to realize the same. The main issues which would arise are: -

1. Whether the writ petition is maintainable?

2. Whether the terms of the allotment letter, except those, specifically referred to and incorporated by reference in the lease dead, survive after the execution of the lease deed?

3. Whether the impugned cancellation of the allotment letter by letter dated 12.02.2020 has the consequent effect of cancelling the lease deed, in absence of specific reference to the lease deed?

4. Whether the petitioner's earlier Writ C- No. 47262/2017 challenging the decision taken by the respondent in its meeting dated 04.09.2017 for cancelling proportionate land would disentitle the petitioner from challenging present cancellation on the ground of proportionality?

5. Whether the cancellation of the entire allotment for non-payment of some dues is excessive administrative action and hit by the doctrine of proportionality?

6. Whether the cancellation of the entire allotment was only on account of non-payment of dues or also on the account of purported defaults in development/construction?

7. Whether, if the cancellation of allotment was on account

of purported defaults in development/ constructions, the cancellation is illegal?

8. Whether homebuyers and banks' sub-leases can subsist without validity of lease?

30. The ancillary issues which may arise for consideration in the event the impugned cancellation order is quashed are as follows: -

A. Whether the fact that the company is in Corporate Insolvency Resolution Process (CIRP) should deprive the company of relief even if it is found that the cancellation was illegal where the Insolvency and Bankruptcy Code (IBC) specifically envisages continuation of the operations of the company as a going concern?

B. What could be the broad principles to be applied in determining the legality/ appropriateness of YEA's demands i.e. as regards its dues?

C. Whether the purported dues of YEA are now required to be resolved as per the provisions of the IBC in light of the statutory provisions of IBC and YEA submitting its claim with the resolution professional of the company?

D. Whether YEA's claims are protected under IBC in view of fact that a claim under Section 13 and Section 13A of the UP Industrial Area Development Act, 1976 would make YEA a secured creditor and at par with entitlement of secured financial creditors under Section 30(2)(b) read with Section 53 of the IBC?

31. We proceed to note the submissions of learned counsel for the parties in relation to the main issues and if the cancellation order is held to be illegal, we will also deal in detail the submissions made by them on the ancillary issues.

CONTENTIONS RAISED ON BEHALF OF THE PETITIONER

ISSUE NO. 1:

32. It is contented by Shri Jayant Bhushan, learned senior

counsel for the petitioner, that although the counsel for the respondent argued that the Writ Petition is not maintainable, in the counter affidavit filed by YEA, no such objection has been taken. The only objection taken is that the scope of judicial review while dealing with the policy decision is narrow. In fact, the respondent admits that an executive order is not beyond the scope of judicial review, but only states that the scope of challenge to policy decision is limited. Reliance has been placed on the judgment of the Supreme Court in **ABL International v. Export Credit Guarantee Corporation: (2004) 3 SCC 553**; **Rajasthan Industrial Development and Investment Corporation vs. Diamond and Gem Development Corporation: (2013) 5 SCC 470** and **Teri Oats Estates Pvt. Ltd. vs. U.T. Chandigarh & Others: (2004) 2 SCC 130** in contending that even writ petition against the State or an instrumentality of the State arising out of the contractual obligations is maintainable.

ISSUE NO. 2:

33. The allotment letter initially granted in favour of the petitioner on 11.06.2008 itself envisaged that after payment of 20% of the premium within 90 days of the allotment letters, the lease deed would be executed for a period of 90 years. It further stated that the date of execution of the lease deed will be treated as date of handing over of actual possession of the land. Pursuant to the 6 (six) allotment letters, payment of 20% of the premium was made by the petitioner and pursuant thereto, 32 (thirty two) lease deeds were executed.

Pertinently, the paragraph 2 of the recitals of the lease deed refers to the allotment letter and, thereafter, para 3 of the recitals states that lease was being granted "on terms and conditions contained in these presents". Thus, it was made clear that the terms governing the transactions between the petitioner and the respondent were laid down comprehensively in the lease deed itself. Clauses 3.1, 3.6 to 3.8, 3.9 and 11 of the allotment letter have been incorporated vide Clauses 3, 15 and 16 of the lease deed. There are several clauses in the allotment letter which are more or less identically reproduced in the lease deed. If the interpretation given by the respondent is correct, namely, that the allotment letter and lease deed were to be read together and that all the clauses of the allotment letter still hold good even after execution of the lease deed, there was no purpose in repeating the clauses of the allotment letter in the lease deed. Further, several clauses in the allotment letter were substantially changed in the lease deed. This again points to the fact that the terms of the allotment letter were no longer in operation after the execution of the lease deed. If this were not so, there would be a complete confusion as to which of the two different clauses would be applicable after the lease deed had been executed. Still further, some of the clauses in the allotment letter were completely removed, or removed and replaced by different clauses in the lease deed. One such example is Clause 4.2 in the allotment letter which is the cancellation clause. Such a clause is conspicuously absent in the lease deed and instead there is Clause 38 which provides

for recovery of amounts due as arrears of land revenue. Again, if both allotment letter and lease deed were simultaneously in existence, there would be complete confusion as to which clause will prevail. Further, there would be no reason why some clauses in the allotment letter were deleted from the lease deed.

34. The respondent's submission that because the allotment letter is annexed to the lease deed, therefore, it becomes part of the lease deed, is erroneous. The allotment letter has been annexed only to show the chronology of events since it is referred to in clause 2 of the recitals of the lease deed and also because certain clauses of the allotment letter are incorporated by reference in the lease deed. It is submitted that after the lease deed has been executed, the allotment letter ceases to be effective for the land parcels for which lease deeds have been executed since it has been superseded by the lease deed which is the essential contract between the parties. The allotment letters have been superseded by the lease deeds executed subsequently and it is the lease deeds that confer right over the land to the petitioner and prevails over the allotment letter, except to the extent expressly saved by the lease deeds and, therefore, the only legitimate recourse would have been to invoke clause 38 of the lease deed for the recovery as arrears of land revenue and there was no occasion to cancel the allotment, which anyway stood superseded by the terms of the lease deeds. The lease deeds being the definitive agreement between the parties conferring title upon the petitioner of the lands

covered under the lease deeds, any power to cancel/ terminate the said lease deeds was necessarily to be expressly provided in the said lease deed. Since YEA is well aware that there is no provision in the lease deed for cancellation of the same, it has resorted to cancelling the allotment of land rather than the cancellation of the lease deeds, which is clearly misconceived. Reliance was placed in this regard on the judgments of the Supreme Court in **H.R. Basavaraj & another Vs. Canara Bank & others: (2010) 12 SCC 458** and **Andhra Pradesh Industrial Infrastructure Corporation Limited: AIR 2018 SC 1981.**

ISSUE NO. 3:

35. As submitted in issue no. 2 above, the allotment letter did not survive after the execution of the lease deed as it stood superseded by the lease deed. Thus, the cancellation of the superseded allotment letter is of no consequence whatsoever. It does not have the effect of the cancellation of the lease deed which is a subsequent, totally independent and separate document which has already superseded the allotment letter.

ISSUE NO. 4:

36. The challenge in the earlier Writ Petition was essentially based on the ground that there was no occasion even to proportionately cancel the land in view of the fact that the default in payment was due to various actions of YEA itself such as not

approving building plans, etc. However, by way of the impugned cancellation order, YEA has arbitrarily cancelled the entire allotment of land. The earlier Writ Petition is infructuous insofar as the challenge to the proportionate cancellation is concerned and the petitioner shall withdraw it with liberty to approach the Court for other prayers relating to sanctioning of plans, etc., in case the present Writ Petition is allowed.

ISSUE NO. 5:

37. The lease deeds gave the petitioner the unfettered right to create third party rights including the power to sub-lease without permission of the Lessor i.e. the respondent No. 2 (Clause 5 of the Lease Deed), the permission to mortgage in favour of banks/financial institutions/lenders (Clause 14 of the Lease Deed), etc. It also gives the power to develop the land (Clause 4 of the Lease Deed), and, in fact, the petitioner has spent a large amount of money in excess of Rs.2,500 crores in developing the whole SDZ land including construction of the Formula One Racetrack (Buddha International Circuit). Moreover, around the date of cancellation order, the petitioner had paid an amount of Rs 2294.49 crores (including interest) against allotment amount of Rs 1659.25 crores towards land premium and Rs. 195.73 crores (including interest) towards lease rent against Rs 264.42 crores (including interest). Hence, most of the payments had already been made and outstanding land premium was only to the tune of Rs. 547.77 crores including interest and lease rent

was only to the tune of Rs 68.69 crores including interest. Further, the default in the present case was clearly not wilful or dishonest and, at various stages, the default ranged between 9% to 25% (total amount payable) when the cancellation was made. Pertinently, on the date when the cancellation was made, according to the petitioner, of the total amounts due as on that date, 91% had already been paid by the petitioner and there was a default only of 9%.

38. The cancellation of the entire allotment at that stage was, therefore, totally disproportionate. In 2017, in YEA's 61st Board Meeting dated 04.09.2017, it had been decided to take back land proportionate to the unpaid dues. This was, in fact, in addition to Clause 38 of the Lease Deed which provided for arrears being recoverable as arrears of land revenue. However, on 12.02.2020 instead of cancelling only proportionate land, the entire allotment of 1000 hectares was cancelled by YEA. The petitioner has already shown its bona fide by depositing more than Rs.200 crores towards principal amount in pursuance of the interim orders of this Hon'ble Court dated 25.02.2020, 08.02.2021 & 29.09.2022. The petitioner relies upon the judgment of the Hon'ble Supreme Court in **Teri Oats** (supra), particularly paragraphs 42 to 46 and 49.

39. It is submitted that although the statutory power to cancel is there in Section 14 of the Act of 1976, the reasonableness and proportionality of the action of the respondent is still subject to judicial review. This is exactly what has been held by the Supreme

Court in the **Teri Oats** (supra). The principle of proportionality has also been referred to in the judgment of the Supreme Court in **Andhra Pradesh Industrial Infrastructure Corporation (supra).**

40. The cancellation not only affects the petitioner but various third parties such as home buyers and lenders (banks). Prior permission for mortgage was given by the respondent as per Clause 14 of the Lease Deed. The cancellation, apart from being contrary to the Lease Deed, would also affect the banks and is totally arbitrary and disproportionate. YEA could have recovered its arrears by resorting to Clause 38 of the Lease Deed, under which they could have sold assets of the petitioner sufficient to recover their dues. Thus, a small portion of the lease land could have been cancelled, the value of which was equal to the amount of dues payable to YEA. It was, therefore, incumbent on the respondent to choose the least restrictive measure to achieve fulfilment of its outstanding dues. This would have envisaged attachment of only that portion of the property and sale thereafter which would have been sufficient to recover the outstanding dues. In the present case, that would have meant less than 10% of the allotted land. The default in the present case was clearly not willful or dishonest and at various stages, the default ranged between 9% to 25% (total amount payable) when the cancellation was made. In fact, on the date when the cancellation was made, according to the petitioner, of the total amounts due as on that date, 91% had already been paid by the petitioner and there was a default only of 9%.

ISSUE NO. 6 & 7:

41. It was never YEA's case in its Counter Affidavit that the cancellation had been made on account of defaults in development/construction. A perusal of paras 97-99 of the Counter Affidavit of YEA would make it clear that the cancellation was on account of default in payments and the alleged non-providing of performance security of Rs. 100 crores and not on account of any alleged default in development. The cancellation letter itself makes it clear that the cancellation is on account of non-payment of certain dues. A perusal of the operative portion of the cancellation order would make this clear. The references to certain non-development in the cancellation letter are only on account of reiteration of the facts leading up to the defaults and cancellation and not setting them out as grounds for cancellation. Moreover, the cancellation, if made on the said ground, would be illegal.

ISSUE NO. 8:

42. In response to the query from this Hon'ble Court, the respondents said that they would protect the interest of the homebuyers by treating the homebuyers as direct sub-lessees and continuing with them as sub-lessees. The respondents have presumed that despite the lease itself having been cancelled, the sub-leases would still be valid, and the sub-lessees would become direct sub-lessees of YEA. This submission/understanding of the respondents is faulty. There is no privity of contract between YEA and the

homebuyers/sub-lessees. Once the lease itself goes, there is no question of the sub-lease surviving. Thus, YEA's note as set out in its supplementary counter affidavit dated 26.7.2024 is legally flawed.

43. On behalf of the petitioner, reliance was placed upon following authorities:-

(i) Andhra Pradesh Industrial Infrastructure Corporation & others Vs. S.N. Raj Kumar & another: (2018) 6 SCC 410;

(ii) Teri Oats (P) Ltd. Vs. U.T., Chandigarh & others: (2004) 2 SCC 130;

(iii) Bharti Cellular Ltd. Vs. Union of India and others: (2010) 10 SCC 174;

(iv) M. Sham Vs. State of Mysore: (1973) 2 SCC 303;

(v) State of Rajasthan and another Vs. Ferro Concrete Construction Private Ltd.: (2009) 12 SCC 1;

(vi) H.R. Basavaraj Vs. Canara Bank: (2010) 12 SCC 458;

(vii) Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla & others: (1992) 3 SCC 285;

(viii) Consumer Online Foundation & others Vs. Union of India & others: (2011) 5 SCC 360;

(ix) Style (Dress Land) Vs. Union Territory, Chandigarh: (1999) 7 SCC 89;

(x) Indian Explosives Ltd. and others Vs Coal India Limited and others: (2019) 16 SCC 258;

(xi) Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi: (2007) 9 SCC 490;

(xii) State of Jharkhand & others Vs. Ambay Cements & another: (2005) 1 SCC 368;

(xiii) State of M.P. Vs. Thakur Bharat Singh: (1697) 2

SCR 454;

(xiv) Kranti Associates Pvt. Ltd. & another Vs. Masood Ahmed Khan & others: (2010) 9 SCC 496; and

(xv) Ahmad Ullah Vs. Union of India & others: 2019 SCC Online All 5904.

CONTENTIONS RAISED ON BEHALF OF YEA (RESPONDENT NO. 2):

44. Sri Manish Goyal, learned Senior Counsel, appearing for the respondent no.2-YEA, submits that the present Writ Petition is not maintainable. The dispute raised is purely contractual, and the petitioner is seeking reliefs arising out of the terms of contracts (Allotment Letters and Lease Deeds), the interpretation and enforcement of the provisions therein. The Supreme Court has consistently held that the scope of judicial review under Article 226 is limited in contractual disputes. Contractual actions cannot be questioned on the grounds of equity, equality and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case, wherein the Authority terminated the petitioner's allotment and the lease deeds under Clause 4.2 of the Allotment Letters. In commercial transactions, the rights and obligations of the parties are determined by the contract, and the courts must refrain from adjudicating on purely contractual issues. The petitioner was seeking extensions for payment and the re-schedulement of its dues solely on commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract. A writ court cannot be a forum to seek any relief based

on terms and conditions incorporated in the agreement between the parties (**Re: Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond & Gem Development Corporation Limited and Another: (2013) 5 SCC 470**).

45. In **Joshi Technologies International Inc. v. Union of India: (2015) 7 SCC 728**, the Hon'ble Supreme Court set aside the judgment passed by the High Court on the ground that it should not have exercised its power under Article 226, since the matter pertained to pure contract. The Supreme Court laid down the circumstances in which the High Court would not normally exercise its discretion under Article 226. The petitioner had been in continuous and wilful breach of the material terms of the Allotment Letters and the Lease Deeds, and there was no arbitrariness or lapse in procedure on part of the Authority in passing the Cancellation Order. The petitioner has admittedly failed to make the payments towards the allotment and is, therefore, not entitled to maintain the present Writ Petition. There are various questions of facts raised by the petitioner which cannot be adjudicated before this Hon'ble Court under its writ jurisdiction. In **State of Bihar v. Jain Plastics and Chemicals Ltd: (2002) 1 SCC 216**, the Hon'ble Supreme Court held that disputed questions of facts cannot be determined in the exercise of writ jurisdiction.

Re: Concept of Proportionality

46. At the outset, the Authority submits that the 'proportionality', in all its facets, has no application in the present case, which arises from a commercial and contractual relationship between the petitioner and the Authority. Contractual actions cannot be questioned on the grounds of equity and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case, wherein the Authority terminated the petitioner's Allotments and the Lease Deeds in accordance with Clause 4.2 of the Allotment Letters. The Authority had the power of cancellation of the Allotment and the Lease Deeds on the petitioner's defaults. The petitioner defaulted, which it does not dispute. Further, the petitioner failed to develop the SDZ Project including housing projects and maintain the Performance Bank Guarantee. Thus, there were valid grounds for cancellation and the Authority, in valid exercise of its contractual rights, terminated the Allotment and the Lease Deeds.

47. The primary submission is that the doctrine of proportionality has no application in the present case. YEA was compelled to pass the Cancellation Order in view of the petitioner's persistent and consistent defaults, failure to develop the SDZ Project including the housing projects, harm to the homebuyers, and loss to the public interest. The Authority had, from time to time, taken least restrictive measures against the petitioner. Despite such measures and

opportunities, the petitioner continued to default on its financial and development obligations. The Authority, in public interest and as a last resort, passed the Cancellation Order. The Cancellation Order had a proper purpose and rational connection with the aim it sought to achieve. The primary objective of the Cancellation Order was to protect public interest and uphold the contractual integrity essential for the development of the SDZ Project. The petitioner's persistent defaults (fiscal and infrastructural) over a decade reflect a blatant disregard for its obligations, which has led to severe consequences for homebuyers and the Authority. The Authority exercised utmost restraint by granting multiple opportunities to the petitioner before resorting to cancellation. The failure to rectify its defaults and develop the SDZ Project resulted in public distress. The doctrine of proportionality, when applied to the facts of this case, underscores that the Authority's actions were proportionate, necessary, and aimed at serving a legitimate public interest. Therefore, the petitioner's claims of excessiveness and harshness ought to be dismissed as unfounded.

48. Shri Goyal, with vehemence, referred to para 79 of the writ petition in which the petitioner has raised following assertion:

> "79. Because it may further be noted there was no occasion for the respondent no. 2 to have cancelled the entire allotment of land when admittedly clause 38 could have been invoked by applying the doctrine of proportionality, on the requisite part of the leased land and therefore the impugned order is also in violation to the well recognized doctrine of proportionality."

49. In its rejoinder affidavit as well, the petitioner has raised the

following similar assertion:

> "It was very much within YEA's powers to appropriate all the monies deposited by JAL in a manner that all the outstanding dues towards some of the Lease Deeds stood paid and YEA could have terminated only the balance lease deeds."

50. The petitioner has admitted that it has defaulted in complying with the terms of the contracts. The petitioner has also not disputed the liability to pay. The only argument by the petitioner is that the respondent ought not to have chosen to cancel the entire allotment but ought to have taken back only the proportional land. The petitioner has raised the said argument in order to further its nefarious designs and enjoy the use of the beneficial land without having to pay for the same. The petitioner is trying to blow hot and cold. The Authority took a decision of taking back of proportionate land in its 61st Board Meeting dated 04 September 2017. The same was also informed to the petitioner. The petitioner challenged the said decision before this Hon'ble Court in the connected Writ Petition No. 47262 of 2017 raising a specific ground that the Authority's said decision cannot override the terms and conditions of the Allotment Letter, Reservation Letter and the Lease Deeds and the Authority has no right under the Lease Deeds to take back lands belonging to the petitioner. The petitioner has also disputed the taking back of the proportionate land by letter dated 03 November 2017. In this backdrop and under these circumstances, the Re-Schedulement Plan of the dues was agreed in the 62nd Board Meeting of the Authority and communicated

to the petitioner on 28th May 2018. However, the petitioner even failed to make payment of the first and second instalment of the Re-Schedulement letter. It is clear that after having challenged the decision of taking back of the proportionate land in the connected Writ Petition No. 47262/2017, the petitioner is making contrary submissions in the present Writ Petition.

51. The Authority also places reliance on the judgments where the Hon'ble Supreme Court held that parties cannot 'blow hot and cold' since it is a pure abuse of process of law, vide-**Uttar Haryana Bijli Vitran Nigam Ltd. And Ors. v. Adani Power (Mundra) Limited And Ors.: 2023 SCC OnLine SC 461, Shivali Enterprises v. Godawari (Deceased) through LRs and Ors.: 2022 SCC OnLine SC 1211, Alcon Electronics Pvt. Ltd. v. Celem S.A. of FOS 34320 Roujan, France and Ors.: (2017) 2 SCC 253.** Further, the contract between the parties was for the entire land with the purpose of planned development. The petitioner, therefore, cannot be allowed to evade its liability to make payment for the entire portion of the land. The Authority submits that the development of the Yamuna Expressway is an integrated and time-bound project [**Nand Kishore Gupta v. State of U.P., (2010) 10 SCC 282**]. Initially, the land was acquired for the Yamuna Expressway and subsequently for creating land parcels alongside the Expressway, designated as special development zones and townships. These land parcels were strategically planned to maximize the utilization of the Expressway.

The Expressway Project and the development of the surrounding land parcels are interdependent components of a unified scheme.

52. The petitioner's reliance on the judgment in **Teri Oats v. UT of Chandigarh: (2004) 2 SCC 130 ("Teri Oats")** was said to be misplaced by pointing out various distinctive features of two cases and it was argued that the petitioner's attempt to raise issues of equity and proportionality does not hold water, as the Authority's actions were in accordance with the terms of the Allotment Letters and the Lease Deeds. The petitioner's default arises from contractual obligations under the Allotment Letters and Lease Deeds, and there is no arbitrariness that warrants interference by this Hon'ble Court under Article 226. The Authority acted within its rights under the contract and followed due process in issuing the Cancellation Order. It is contended by the petitioner that when substantial developments have already taken place, respondents could not have cancelled the entire allotment and, default is in respect to some part of amount, but entire allotment has been cancelled, which is arbitrary and only proportional cancellation in respect of land in question at the best could have been made. Submission of Shri Goyal in this regard is that the Board of the Authority, at its 70th Board Meeting, passed a resolution (70/39), to restore the petitioner's allotment and lease deeds subject to payment of restoration charges at the rate of 10% of the prevailing rates of the allotted project ("Restoration Charges"). The Authority informed the petitioner about the said decision of the Board and, accordingly,

directed the petitioner to deposit Restoration Charges for enabling the Authority to take further steps for restoring the allotment. The petitioner filed a writ petition bearing no. 17785 of 2021 challenging the levy of restoration charges. The said writ was "dismissed as withdrawn" by the High Court on 17.08.2021, and the petitioner was granted liberty to amend the present Writ Petition for the relief against restoration charges.

53. The petitioner has failed to demonstrate any public law element or arbitrariness in the Authority's decision to cancel the allotment. The petitioner’s contention that the Cancellation Order only terminated the Allotment Letters and it does not have the consequent effect of cancelling the Lease is fallacious and has no basis in the facts or in the law. The Allotment Letters continued to subsist along with the Lease Deeds. The Allotment Letters were issued as the principal agreement and the Lease Deeds were ancillary and for implementation of the Allotment Letters. The same is evident from the terms of the Allotment Letters and Lease Deeds, as well as from the correspondences between the parties, which clearly reflect a common understanding that the Allotment Letters subsist along with the Lease Deeds. In case of default of payment, Clause 4.2 of the Allotment Letters was to be invoked. The Authority also had the statutory power to cancel the Allotment and the Lease Deeds on breach of terms therein under Section 14 of the 1976 Act. The Allotment Letters and the Lease Deeds were executed for a common purpose and they

subsist together. Lease Deeds are an integral part of the allotment and have no independent existence. The Lease Deeds were executed for implementation and carrying out the objects of the Allotment Letters. As such the Lease Deeds in favour of the petitioner are coterminous with the Allotment Letters and have no life or existence once the allotment is cancelled.

54. It is settled law that the parties to a contract, by their course of dealing, put a particular interpretation on the terms of it and they will be bound by the interpretation. Further, the correspondences exchanged by the parties can be taken into consideration thereof and for the purpose of construction of a contract. In **Transmission Corpn. of Andhra Pradesh Ltd. v. GMR Vemagiri Power Generation Ltd., (2018): 3 SCC 716,** the Supreme Court held that "the terms of the contract will have to be interpreted by taking into consideration all surrounding facts and circumstances, including correspondence exchanged, to arrive at the real intendment of the parties, and not what one of the parties may contend subsequently to have been the intendment or to say as included afterwards"

55. The Allotment Letters and Lease Deeds were intended to coexist and govern the parties' obligations together. The Lease Deeds explicitly refer to the Allotment Letters, which were annexed as integral schedules and were not superseded. The petitioner's own conduct further confirms this understanding, as it continued to rely on the Allotment Letters for key terms like payment schedules and

extensions even after the Lease Deeds were executed. Thus, the petitioner's claim that the Lease Deeds supersede the Allotment Letters is factually incorrect and legally untenable. The argument of the petitioner that the defaulted amount can be recovered only as arrears of land revenue in terms of Clause 38 of the Lease Deeds and hence, to such an extent Clause 4.2 of the Allotment Letters stood eclipsed is flawed understanding of the composite transaction. The aforesaid clause in the Lease Deeds does not supersede the Allotment Letters in as much as at no stage the Allotment Letters were superseded by the execution of the Lease Deeds. The said clause was in addition to the already existing Clause 4.2 of the Allotment Letters. Clause 4.2 of the Allotment Letters explicitly grants the Authority a contractual right to cancel both the allotment and the lease deeds in response to defaults committed by the petitioner. Consequently, it is submitted that the Authority acted within its rights when it terminated the petitioner's allotment (including Lease Deeds) due to the petitioner's admitted defaults.

56. Reliance has been placed upon the following authorities:-

(i) Commissioner of Rural Development and others Vs. A.S. Jagannathan: (1999) 2 SCC 313;

(ii) Super Poly Fabriks Limited Vs. Commissioner of Central Excise, Punjab: (2008) 11 SCC 398;

(iii) Orissa Power Transmission Corporation Limited and others Vs. Asian School of Business Management Trust and others: (2013) 8 SCC 738;

(iv) Forward Constructions Co. and others Vs. Prabhat

Mandal (Regd.), Andheri and others: (1986) 1 SCC 100;

(v) Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra and others: (1990) 2 SCC 715; and

(vi) Shiv Chander More and others Vs. Lieutenant Governor and others: (2014) 11 SCC 744.

(vii) Manks Vs. Whiteley: (1912) 1 Ch. 735;

(viii) Infrastructure Leasing & Financial Services Ltd. Vs. HDFC Bank Ltd. and another: 2023 SCC Online 1371;

(ix) MTNL Vs. Canara Bank and others: (2020) 12 SCC 767;

(x) Cox & Kings Ltd. Vs. SAP India (P) Ltd.: (2024) 4 SCC 1;

(xi) Innoventive Industries Ltd. Vs. ICICI Bank and another: (2018) 1 SCC 407; and

(xii) Dilip B. Jiwrajka Vs. Union of India and others: (2024) 5 S435.

57. Placing reliance upon the judgment of **Manks v. Whiteley (supra)** it was argued that where several deeds form part of one transaction and are contemporaneously executed, they have the same effect for all purposes such as are relevant to the case in hand as if they were one deed. It was contended that in the present case allotment letters and lease deeds cannot be treated as separate deeds or documents and they would represent a single and whole transaction. **Manks (supra)** was reconsidered in **S. Chattanatha Karayalar Vs. the Central Bank of India: (1965) 3 SCR 318**. Placing reliance upon judgment in **MTNL (supra)**, it was contended that a composite transaction would refer to a transaction which is interlinked in nature;

or, where the performance of the agreement may not be feasible without the aid, execution and performance of the supplementary or the ancillary agreement, for achieving the common objects, and collectively having a bearing on the dispute. It was contended that in case of a composite transaction involving multiple agreements, it would be incumbent for the courts to assess whether the agreements are consequential or in the nature of follow up to the principal agreement.

58. Submission is that the Authority, in exercise of its contractual rights and statutory power, was compelled to cancel the allotment and the lease deeds due to the petitioner's consistent and persistent breach of the terms of the allotment letters and the lease deeds. It is not in dispute that the petitioner is a persistent and consistent defaulter. The petitioner has admitted its defaults and that it failed to pay its outstanding dues arising out from the allotment and lease deeds executed for the SDZ Project. Despite the grant of various extensions for payment by the Authority, the petitioner failed to adhere to agree upon payment schedule. The petitioner's repeated requests for re-scheduling of payments were accepted by the Authority on multiple occasions, yet the petitioner continued to breach its payment obligations under the allotment letters, lease deeds, and the re-scheduled payment plan. As elaborated below, various accommodations were granted to the petitioner at its requests (least restrictive measures), however, the petitioner failed to pay its dues.

The petitioner also failed to undertake the development of the SDZ Project, including the housing projects. The petitioner's violation of its development obligations resulted in regular complaints from the homebuyers, who suffered due to the petitioner's failure and misappropriation of funds. The petitioner's misconduct frustrated the very purpose of the allotment and the lease deeds, causing irreparable harm to the public interest, the homebuyers, and the Authority. In the end and as a last resort, the Authority had no option but to terminate the allotment and the lease deeds. The petitioner consistently and persistently defaulted in complying with payment schedule in terms of the allotment. 21 default notice were issued by the Authority (from 13 September 2011 to 25 August 2015) demanding payment from the petitioner in terms of the payment schedule as revised (or extended) from time to time. On three separate occasions, by its letters dated 18 February 2014, 07 August 2014, and 01 December 2014, the petitioner sought extension of time for payment of its dues. The Authority, in terms of the allotment (Clause 3.6 of the Allotment Letter) and as a least restrictive measure, granted three extensions for payment on 21 February 2014, 13 August 2014 and 29 December 2014. However, the petitioner still failed to pay its dues in extended time. On three separate occasions, by letters dated 22 August 2017, 08 March 2018 and 12 April 2018, the petitioner sought time for re-scheduling the outstanding dues on account of financial constraints. Last re-schedulement: By letter dated 28 May 2018" (in response to

08 March 2018 request), the Authority agreed for re-schedulement. However, petitioner did not make payments, and the Authority issued a default notice dated 16 October 2018. Instead of curing the default, the petitioner continued to seek extensions for payment even under the Re-schedulement vide letters dated 19 September 2018 and 27 October 2018. The Authority granted extension till 31 December 2018 for depositing the first instalment of the re-scheduled payment plan. On 31 December 2018, the petitioner deposited only Rs. 10 Crore (against the first re-scheduled instalment amount of approximately Rs. 108 Crore) and requested further extension until 15 February 2019. Performance Bank Guarantee was invoked to meet the defaults. On 31 October 2019, the Authority directed the petitioner to restore the performance bank guarantee since the earlier one had been adjusted towards the outstanding. However, the petitioner failed to do so.

Escrow Arrangement:

59. In order to facilitate the payment of the outstanding dues from the petitioner, the parties entered into an Escrow Agreement on 24 September 2019. The escrow arrangement was a mechanism for ensuring that the proceeds from the housing project are collected in the escrow account and appropriated towards payment of outstanding dues from the petitioner. The petitioner once again failed to honour its commitment and until 28 February 2020, mere Rs. 47.09 lakh (approx.) was deposited in the escrow account. In these circumstances, huge outstanding had accumulated, and the petitioner

was entirely responsible therefor. The Authority, vide a letter to the Punjab and Sindh Bank, invoked the Bank Guarantee and adjusted the amount recovered towards the outstanding dues. The petitioner requested the Authority to execute the escrow agreement. The Authority sent a default notice to the petitioner and directed it to pay the amount due under the re- scheduled payment plan. For the purpose of escrow agreement, the petitioner submitted the details of amount received and receivables from the real estate schemes. The petitioner stated that it has received Rs. 1900.78 Crores out of Rs. 2433.41 Crores from the home buyers of 10 housing projects. The Authority approved the opening for the Escrow Account subject to the conditions mentioned therein. The Escrow Agreement was signed among the petitioner, the Authority and the ICICI Bank stating that the petitioner made an application for re-schedulement of its installments and it was agreed that an escrow account will be opened for settling the land dues owed to the Authority. The petitioner authorized ICICI Bank to transfer 20% of the receivables received from the allottees of the housing projects in the Authority's bank account till the receipt of the "no dues certificate" from the Authority. The petitioner did not dispute its liability to make the payment and expressed its commercial difficulty or hardship in performance of the conditions to meet the contractual obligations. A summary of the petitioner's outstanding is as follows:

S. No.	Head	Amount due as on 12 February 2020 (date of the Cancellation Order) (including interest)	Amount due as on 12 September 2024 (date when the judgment was reserved in the present case) (including interest)
1.	Land Premium	8,15,23,41,447	14,12,24,67,031
2.	Lease Rent	1,03,50,15,204	5,58,87,88,809
3.	Additional compensation	14,93,44,99,056	30,64,56,52,563
4.	Total	INR 24,12,18,55,707	INR 50,35,69,08,403

Failure to develop the SDZ Project:

60. The petitioner also failed to develop the SDZ Project. Despite repeated notices and opportunities by the Authority, the petitioner never properly submitted all the documents required along with the application for part completion of the core area in terms of the building bye laws and the requirements under the allotment letters and the lease deeds. The Authority's survey report concludes that the petitioner has only managed to develop 5.46% of "permissible covered area" in the core area (19.2 Hec.), falling significantly short of its obligation to develop 40% of the "permissible covered area" in the core area (148 Hec.). On 20 October 2011, the petitioner applied for part completion of 148 Hec. of the core area. Also, on 15 October 2011, the petitioner had applied for completion of main grandstand in the core area. Six notices (from 08 December 2011 to 12 July 2018) were issued by the Authority to the petitioner specifying the defects in the application for part completion of the core area and the lapse of the same in terms of the Building Regulations. However, the

petitioner failed to rectify the defects or file a fresh application for the part completion of the core area in the SDZ Project. Three separate notices (from 07 December 2011 to 22 August 2012) were issued by the Authority to the petitioner specifying the defects in the application for part completion of the Main Grandstand in core area and the lapse of the same in terms of the Building Regulations but to no avail. On 13 December 2018, the Authority sent a final notice to the petitioner for its failure to comply with the Building Regulations and proceed in terms thereof. In view of the above ie, the petitioner's persistent and consistent defaults, failure to undertake development of the SDZ Project including housing projects, grievances of the homebuyers and continued non-compliance with the terms of the allotment and lease deeds, the Authority was left with no choice but to issue the Cancellation Order in the end as the last resort.

61. In 2024, the Authority conducted a survey of the SDZ land allotted to the petitioner. Based on the said survey, the Authority prepared a survey report ("Survey Report") verifying the extent of development work undertaken by the petitioner. The Survey Report demonstrates that the development obligations have not been met by the petitioner at all. The development on site is far short of milestones that the petitioner was required to achieve within the prescribed time as per the Allotment Letters. The Survey Report concludes that the petitioner has only managed to develop 5.46% of covered area in the core area, falling significantly short of its obligation to develop 40%

of the "permissible covered area" in the core activity. Further, the petitioner failed to develop numerous facilities in the core area, including a cricket stadium, football stadium, hockey stadium, sports academy, sports training institutes, karting recreation area, gym and health clubs, sports person housing, golf course, basketball/badminton facilities, wrestling facilities, open-air theatre, hostels, transit hostels, guest houses, archery/lake-related activities, pro shops, cultural information centre, museum, auditoriums, staff housing, and sports theme park.

62. The petitioner also failed to develop the non-core area including group housing projects, hospital, college, shopping centres, fire station etc. In the cancellation order, the Authority has particularly noted the petitioner's failure to complete the housing and residential work. The cancellation order also notes the plight of the homebuyers and their complaints to the Authority against the petitioner for the inordinate delay in completion of the housing and residential work. The petitioner's non-development of the housing and residential work, therefore, weighed in as one of the primary factors for the passing of the cancellation order. Non-development of the SDZ Project and failure to obtain necessary approvals (in terms of the Allotment Letters/Lease Deeds and the Building Regulations) constitutes a material breach of the Allotment Letters/Lease Deeds and a valid ground for the Cancellation Order. Nevertheless, the Authority had the independent statutory power of cancellation under Section 14,

which provides for termination "in case of breach of any condition of such transfer or breach of any rules or regulations made under this Act". As demonstrated above, the petitioner's actions breached Clauses 6.1, 8.1, 8.11, 10.1, and 15.1 of the Allotment Letters and the Building Regulations. Thus, the Authority was within its rights to terminate the Allotment Letters and Lease Deeds.

Grievance of the homebuyers:

63. In terms of the SDZ Policy, the Allotment Letters and the Lease Deeds, the petitioner was required to develop the allotted land for various purposes, including residential and group housing projects. However, the petitioner failed to complete even a single housing project. The Cancellation Order was essential in public interest as the petitioner failed to develop the residential and group housing projects, and the homebuyers were suffering due to long delays caused by the petitioner. Further, the petitioner has been admitted into insolvency and its constant poor financial condition is a matter of record. As such, letting the petitioner continue with the SDZ Project would only further prejudice the homebuyers, the Authority and the public at large. The homebuyers of the petitioner were aggrieved by the delaying tactics and the inactions of the petitioner. The Cancellation Order notes the plight of the homebuyers and their complaints to the Authority against the petitioner for the inordinate delay in completion of the housing and residential work. The petitioner's non-development of the housing and residential work, therefore, weighed in as one of

the primary grounds for the passing of the Cancellation Order. In an attempt to mislead this Court, the petitioner has included the development work carried out by the sub-lessees as its own. On the petitioner's showing, it collected an amount of Rs. 1900.78 Crores from the homebuyers of ten (10) housing projects. However, the petitioner has only undertaken three housing projects, as admitted in its writ petition. In the connected writ petition filed by a homebuyers' association [Jaypee Sports City Welfare Society & Anr. v. State of U.P. & Ors., Writ C No. 21532 of 2021), similar allegation has been raised. The Cancellation Order not only addresses the petitioner's breach of contract, but also the homebuyers' difficulties. The Cancellation Order, therefore, was just, fair and reasonable.

Other litigation by the petitioner:

64. The petitioner has a history of litigation, having challenged similar issues multiple times in different proceedings before different courts including the Supreme Court and this Court. Further, the petitioner has failed to disclose about its previous litigations in the present proceedings, wherein it had either raised the issues identical to the ones raised herein or had taken completely contrary stand. The petitioner filed Writ C No. 40702 of 2017 praying for quashing of the minutes of the 51st Board Meeting of respondent No. 2. Letters written by respondent no. 2 to the petitioner dated 15 December 2014, 4 August 2015, 25 August 2015, 26 May 2016, the Show Cause Notice dated 28 March 2017 and finally demand letter dated

17.08.2017 all being acts that are in consequence of the order dated 29th August 2014 passed by the Under Secretary, Government of Uttar Pradesh, to the extent to which demand has been raised for the payment of 64.7% additional compensation as no litigation incentive. This Court passed an interim order staying the demand of additional compensation. The petitioner filed another writ petition No. 47262 of 2017 inter alia challenging the Authority's board decision (in 61st meeting) regarding proportionate taking back of the land. The petitioner's 1st Writ Petition was connected with batch of other matters challenging the demand of additional compensation. The writ petition filed by M/s Shakuntla Educational and Welfare Society (Writ-C No. 28968 of 2018) was the lead petition in this batch. This Court allowed the petitioner's 1st Writ Petition and quashed the Authority's demand for additional compensation including the demand letter dated 15.12.2014. The Authority challenged the High Court's decision setting aside the demand of additional compensation including the demand letters before the Hon'ble Supreme Court. The Supreme Court has set aside this Court's judgment and upheld the demand of additional compensation including the demand letters ("Shakuntla-I"). The Supreme Court held that the demand for additional compensation is in larger public interest. The petitioner filed a miscellaneous application before the Supreme Court seeking modification of the judgment in Shakuntala-1. The petitioner inter alia raised the grounds that the Authority is imposing interest on delayed

payment of additional compensation, and it is recovering additional compensation qua the LMC land (resumed land). The Supreme Court dismissed the petitioner's Modification Application. The petitioner, thereafter, filed a review petition against Shakuntla-I. The Supreme Court dismissed the review petition as well.

Independent statutory power of cancellation under Section 14 of the 1976 Act:

65. Without prejudice to the above, the Authority submits that it has an independent statutory right of cancellation under Section 14 of the 1976 Act. The allocation of land to the petitioner is governed by the 1976 Act. Both the Allotment Letters and Lease Deeds were executed under the powers conferred by this Act. Further, Clause 20.3 of the Allotment Letters states that the terms of both the allotment and lease deeds shall be governed by the provisions of the 1976 Act, along with the applicable rules and regulations. Section 14 empowers the Chief Executive Officer of the Authority to resume a site or building which had been transferred by the Authority and forfeit the whole or part of the money paid in regard to such transfer.

Re: The Cancellation Order protects the interests of the homebuyers and the sub-lessees:

66. The Cancellation Order was essential in public interest as the petitioner failed to develop the residential and group housing projects, and the homebuyers were suffering due to long delays caused by the petitioner. The Authority is fully sympathetic towards the problems faced by home buyers/allottees due to delays in the

possession of flats by the petitioner. As a public authority, the respondent Authority is fully committed to the rehabilitation of the group housing projects where the said homebuyers/ allottees have made bookings. It is also committed towards protecting the interests of the sub- allottees. As demonstrated in the Authority's Supplementary Counter Affidavit dated 26 July 2024, it is willing and ready to safeguard the interest of the third parties created in the land allotted to the petitioner, specifically concerning the homebuyers and sub- lessees of the petitioner. It is submitted that if the Cancellation Order is upheld and the lands allotted to the petitioner become free from the legal encumbrance, the following options are available for rehabilitation of the entire project including the incomplete group housing project undertaken by the petitioner (not sub-lessees, whose rights remain protected under the Cancellation Order). One option is to re-auction the whole land including the group housing projects inter alia with the conditions that the bidder shall pay the outstanding dues of the Authority as on the date of submission of the bid, and, the bidder shall be required to complete the incomplete housing projects of the homebuyers on priority basis and deliver the units booked/ allotted to them expeditiously on the same terms and conditions already entered by homebuyers with the petitioner. Given the appreciation in the value of land, the project will not only be viable, but it will also be economically lucrative to prospective bidders. Such rehabilitation will ensure that the homeowners in the group housing

projects receive their housing units as expeditiously as possible. Alternatively, the other option for the Authority is to undertake the development of the housing projects by itself, complete the construction of the housing units and deliver the same to the homebuyers/ allottees. The Cancellation Order ensures that the allotment of any sub-lease would not be cancelled so long as the dues are regularly and timely paid to the Authority, thus ensuring continuation of sub-leases. The sub-lessees interests under the sub-lease are thus fully protected and they will be able to enjoy the same without any disruption so long as they continue to comply with the obligations under the sub-lease and also those under the relevant lease with the Authority under which the sub-lease has been granted, so far as they are applicable to them. It is also pertinent to note that after passing of the Cancellation Order, the sub-lessees have been making payments directly to the Authority, and their sub-leases have not been cancelled.

Re: The petitioner's challenge to the quantum of dues is frivolous and has no basis:

67. In the present case, the Writ Petition was filed to challenge the Authority's Cancellation Order and raise substantive issues. On the other hand, the petitioner's reconciliation proposal (dated 09 May 2023) was raised in the context of an interim arrangement, which was rejected. The nature and scope of these two types of pleadings differ. Since the grounds raised in the context of interim arrangement are evaluated under a different lens by the court, raising identical grounds

to challenge the substantive order (such as the Cancellation Order) is impermissible. The petitioner cannot reintroduce issues that were part of rejected interim arrangement in a legal challenge to the Cancellation Order. The Writ Petition must stand on its own merits. The Authority is entitled to charge additional penal interest (1%+1% +1%= 3%) on the land premium and lease rent. The Authority denies that it is charging any excess interest on the land premium and the lease rent contrary to the contractual terms. The allotment of the land in the favour of the petitioner was made through the Reservation Letter and the Allotment Letters. They form integral part of the Lease Deeds. In terms of the Reservation Letter, in case of default in the payment of any dues to the Authority, the Allottees would be required to pay penal interest @ prevailing SBI PLR+3% p.a. on defaulted amount compounded half yearly, for the defaulted period. Similarly, in terms of the Allotment Letters in case of any default by the petitioner in payment of any dues, the petitioner would be required to pay additional interest @ prevailing SBI PLR + 3% p.a. on defaulted amount, compounded half yearly for the defaulted period. Clause 3.6 of the Allotment Letters allows for extension in time for depositing the amount by Chief Executive Officer ("CEO") of the Authority in special circumstances for a maximum period of 30 days subject to payment of additional interest @ prevalent SBI PLR+3% p.a. for the extended period. The Authority submits that the imposition of additional penal interest was a reasonable condition for re-scheduling/

extension of the payment under the payment schedule, which the petitioner had itself sought and obtained. The petitioner also made payments pursuant to levy of additional penal interest. The petitioner is not entitled to now turn around and dispute the conditions for extension. In terms of the Allotment, the Authority had the power to cancel the petitioner's allotments and the lease deed due to its defaults. Due to the petitioner's persistent defaults, it had fallen under the category of a 'defaulter' and the Authority could have cancelled the petitioner's allotments and lease deeds. However, the Authority took a reasonable and least restrictive measure by levying an additional 1% penal interest and granted extension of payment to the petitioner. However, despite such reasonable extension, the petitioner failed to make complete payment under the Extension Letters as well. The Authority submits that the additional interest was levied for a proper purpose, rationally connected to the object to be achieved, necessary to fulfil the intended objective, and proportionate in balancing the interests of both parties.

ANALYSIS OF RIVAL CONTENTIONS AND FINDINGS

Issue No. 1: Whether Writ-C No. 6049 of 2020, against cancellation of allotment, is maintainable?

68. Learned Senior Counsel for YEA submitted that the dispute raised by the petitioner is purely contractual and the petitioner is seeking relief arising out of the terms of contract. It involves interpretation of different clauses of the allotment letters and lease

deeds and, hence, the matter being purely contractual, the writ petition is not maintainable. It has consistently been held that the scope of judicial review under Article 226 is limited in contractual disputes; contractual actions cannot be questioned on the grounds of equity, equality and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case. In commercial transactions, the rights and obligations of the parties are determined by the contract, and the courts must refrain from adjudicating on purely contractual issues. A writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement between the parties. Reliance has been placed on the judgements of the Supreme Court in **(i) Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another: (2013) 5 SCC 470 (ii) Joshi Technologies International INC. Vs. Union of India: (2015) 7 SCC 728 (iii) Jagdish Mandal Vs. State of Orissa and others: (2007) 14 SCC 517 (iv) Uflex Limited Vs. government of Tamil Nadu and others: (2022) 1 SCC 165 (v) State of Bihar Vs. Jain Plastics and Chemicals Ltd.: (2002) 1 SCC 210 and (vi) ABL International v. Export Credit Guarantee Corporation: (2004) 3 SCC 553.**

69. On the other hand, learned Senior Counsel for the petitioner submitted that the YEA, in its counter affidavit did not raise any issue regarding maintainability but the only objection taken is that the scope

of judicial review when dealing with the policy decision is narrow. It was submitted that judgement of the Supreme Court in **Rajasthan State Industrial Development** (supra), relied on by the respondent, laid down that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The writ can be granted if there was already an existing legal right of the applicant which is being infringed. However, the writ does not create or establish a legal right. In other words, a writ cannot lie in a situation where a suit for specific performance would have to be filed. However, if the right already exists and is being infringed, a writ petition would lie.

70. The Supreme Court, in **ABL International v. Export Credit Guarantee Corporation (2004) 3 SCC 553**, held as under:

> "The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirement of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirement of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirement of Article 14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Therefore, total exclusion of Article 14- non- arbitrariness which is basic to rule of law-from State actions in contractual field is not justified.

> This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals. …….. Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. **The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.** This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. **However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14**. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions. x x x
>
> From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution…….”.

71. **In M.P. Power Management Company Ltd, Jabalpur vs SKY Power Southeast Solar India Private Ltd and others, (2023) 2 SCC 703**, the Supreme Court extensively dealt with maintainability of a Writ petition arising out of contractual obligations between a private entity and an instrumentality of State and held as under:-

……..**The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.**

xxxxxx

…….Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. **Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its**

> **constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.**
>
> …...**In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible.** However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. **The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.**

72. It is firmly established that the power under Article 226 of the Constitution is plenary in nature and extends even to contractual matters against State or its instrumentality. However, the Court has imposed upon itself certain restrictions in exercise of this power. Thus, while there is no absolute bar to maintainability of writ petition even in contractual matters but it is a matter of judicial discretion whether to interfere in a particular case or not. These principles have been summarised by the Supreme Court in **Joshi Technologies International INC. Vs. Union of India, (2015) 7 SCC 728, Para 69**

and 70, as follows:-

> "**69.1. The Court may not examine the issue unless the action has some public law character attached to it.**
>
> 69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.
>
> 69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.
>
> 69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.
>
> 70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:
>
> 70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.
>
> **70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.**
>
> 70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.
>
> 70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilicate avoidance of obligation voluntarily incurred.
>
> 70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions

under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. **Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.**

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more

> limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."
>
> (emphasis supplied)

73. It has thus, been held that the issues arising out of contract should not be normally examined by the Court as the party has remedy of seeking relief by way of damages unless the action under challenge has public law character attached to it. Once, on the facts of a particular case, it is found that nature of activity or controversy involves public law elements, then the matter can be examined under Article 226 of the Constitution of India.

74. **Rajasthan State Industrial Development** (supra) cited by learned Senior Counsel for YEA laid down that generally the Court should not exercise its writ jurisdiction to enforce a contractual obligation. The writ can be granted if there was already an existing legal right and which is being infringed. The writ petition would not lie for establishment of a legal right, as the remedy in such a situation, would be a suit for specific performance.

75. **Jagdish Mandal** and **Uflex Limited** dealt with power of judicial review concerning evaluation of tenders. It was held that in such matters if the decision relating to award of contract is bonafide and in public interest, the Courts would not interfere even if there was some procedural aberration or error nor on the ground of equity. These judgments, in our considered opinion, would not apply to the facts of the present case.

76. The impugned order of cancellation is being challenged as an illegal, arbitrary and disproportionate executive fiat. The petitioner is not seeking to establish any new right but attempting to safeguard its rights under the allotment made in its favour. The impugned order itself recites that it was passed not only to protect the interest of YEA but also the sub-lessees and homebuyers. It thus seeks to subserve larger public interest. As such, it cannot be said that the writ petition is liable to be thrown out on the ground of maintainability. However, the exercise of power of judicial review shall have to be within the well established parameters.

77. **Issue No. 1 is, thus, answered against YEA and in favour of the petitioner holding the writ petition as maintainable.**

ISSUE NO. 2 and 3:

Whether the terms of the allotment letter, except those, specifically referred to and incorporated by reference in the lease dead, survive after the execution of the lease deed vis-a-vis the land parcels which are leased under the lease deeds?

And

Whether the impugned cancellation of the allotment letter by letter dated 12.02.2020 has the consequent effect of cancelling the lease deed, in the absence of specific cancellation of the lease deed?

78. As these issues are inter-connected, they are being addressed simultaneously.

(A) Salient Features of Allotment, Lease and SDZ Policy:

79. A comparison of the terms of the lease deed with the allotment letter reveals that several clauses in the two documents are

similar or more or less identical; some clauses have been modified; some clauses have been incorporated by reference and some have been substantially changed.

Clauses which are similar:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
1. Clauses that are nearly identical in both, the allotment letter and the lease deed.	1. Clause 3.2, 3.5, 3.9 2. Clause 3.10 3. Clause 3.11 4. Clause 5.2 5. Clause 6.1 + 8.12 6. Clause 8.4 7. Clause 8.5 8. Clause 8.10 9. Clause 8.3 10. Clause 9.1	1. Clause 3 2. Clause 11(a) 3. Clause 11(b) 4. Part of Clause 2 5. Clause 4 6. Part of Clause 8 7. Clause 10(i) and (iii) 8. Clause 9 9. Clause 6 10. Clause 14

Clauses which have been incorporated by reference:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
Clauses in the Allotment Letter which are included in the Lease Deed by reference and incorporation.	1. Clause 3.1, 3.6- 3.8 2. Clause 3.9 3. Clause 10 4. Clause 11	1. Clause 3 2. Clause 15 3. Clause 10(ii) 4. Clause 16

Clauses which have been modified or replaced:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
Clauses in the Allotment Letter that were removed and/ or replaced in the Lease Deed.	1. Clause 2 2. Clause 3.4 3. Clause 4.2 4. Clause 5.1 5. Clause 8.1 6. Clause 8.2	1. Removed 2. Removed 3. Removed + Clause 38 added 4. Removed 5. Removed

		6. Removed

Clauses which have been substantially changed:

Particulars.	Clauses in Allotment Letter.	Clauses in Lease Deed
Clauses in the allotment letter that were substantially changed in the lease deed.	1. Clause 5.3 2. Clause 8.9 3. Clause 16.1 4. Clause 19 5. Clause 20.2 6. Clause 20.3	1. Clause 23(iv) 2. Clause 8 3. Clause 30 4. Clause 28 5. Clause 37 6. Clause 27.

80. The lease deeds are all identical. It begins with Preamble setting out the background facts leading to execution of the same. The petitioner applied in response to notice inviting application by the lessor for development of SDZ in the development area of YEA with SPORTS as core activity. It discloses the nature of right created i.e., lease, with a specific reference to the allotment letter in pursuance of which the lease was executed. The period of lease, the area of land demised, the description of land in Schedule-II attached to the lease and also the premium i.e., consideration were clearly stated. Paragraph 3 of Preamble stating that the parties had agreed to the demise on '*terms and conditions contained in these presents'* is crucial. It reveals that rights and obligations of the parties in respect of lease hold right would be governed by the terms and conditions set out therein. One of the lease deeds, executed on 25.09.2009, in pursuance of allotment letter dated 20.03.2009 is reproduced below:

"**LEASE DEED**

This Deed of Lease is made on this 25th day of Sept 2009

Between

Yamuna Expressway Industrial Development Authority (YEA) (Name changed from Taj Expressway Industrial Development Authority vide GoUP Notification No. 1165/77-4-08-65 N/08 Lucknow dated 11th July 2008), a statutory body constituted under the U.P. Industrial Area Development Act, 1976 and having its principal office at A-1, First Floor Commercial Complex, Sector-Beta-II, Greater Noida, District Gautam Budh Nagar, Uttar Pradesh (India) (hereinafter referred to as "Lessor" which expression shall, unless repugnant to the context mean and include its administrators, successors and assigns) of One Part.

And

M/s JPSK Sports Pvt. Ltd. a company incorporated under the Companies Act, 1956, having its Registered Office at Sector-128, Noida 201304, District Gautam Budh Nagar (U.P.). (hereinafter referred to as the "Lessee", which expression shall, unless repugnant to the context mean and include its successors and assigns) of Second Part.

WHEREAS

1. The Lessee, in response to Notice Inviting Application by the Lessor, for development of Special Development Zone (SDZ) in the development area of Yamuna Expressway Industrial Development Authority (YEA) had applied for development of SDZ with SPORTS as Core Activity, and

2. The Lessor, allotted to the Lessee SDZ Sector No. 25 with SPORTS as Core Activity for development of the SDZ vide letter No. YEA-32/2009 dated 20.03.2009 (the Allotment Letter attached hereto of SCHEDULE-I) on the terms and conditions contained in the said Allotment Letter which interalia, include allotment of approx. 646.7530 Hectares land in Villages-Salarpur, Munjkheda, Falehpur Atta, Gunpura, Jaganpur, Afjalpur, Dankaur and Aurangpur in Tehsil Sadar, District Gautam Budh Nagar (U.P.) for a period of 90 years on lease at premium al Rs. 241.86 per sq.m. excluding External Development charges plus lease rent @ 2.5% per annum of premium.

3. The Lessor in part discharge of its obligations under the said Allotment Letter, hereby agrees to provide on lease and the Lessee hereby agrees to take on lease, 175.3639 hectares of land in Village Gunpura, Tehsil Sadar, Distt. Gautam Budh Nagar (U.P.) (Hereinafter referred to as the Demised Land) for development of SDZ, more particularly detailed in SCHEDULE-II attached hereto, on terms and conditions contained in these presents.

I. NOW THEREFORE THIS LEASE DEED WITNESSETH AS UNDER AND THE PARTIES THERETO AGREE AS FOLLOWS:

(1) The Lessor is the lawful owner of the Demised Land and has a valid right, title and interest therein and is competent to lease the some to the Lessee. Detailed description of the Demised Land and a plan thereof (delineated and marked in the Map) is attached as SCHEDULE-III hereto.

(2) In consideration of the payment of the rent hereunder reserved and of the covenants and conditions on the part of the Lessee hereinafter contained, The Lessor doth hereby demise unto the lessee all that piece and parcel of the Demised Land containing by admeasurement 175.3639 Hectares in Village Gunpura, Tehsil Sadar, Distt. Gautam Budh Nagar (U.P.) more particularly described in SCHEDULE-II hereto together with all and singular liberties, privileges, rights, easements and appurtenances thereto AND also the structure and buildings hereafter to be erected thereon TO HOLD the Demised Land unto the Lessee for the term of 90 (ninety) years (the "Term") commencing from the date of possession of Demised Land.

(3) During the term of the lease, the Lessee shall pay to the Lessor, lease rent @ 2.5% of premium per annum in advance (the "Rent Amount") commencing from the month of Sept. 2009. The Lessee has paid to the Lessor Rs. 1,21,83,01,561.00 (Rupees one hundred twenty one crores eighty three lacs one thousand five hundred sixty one only) towards 20% of premium amount in Lessor's Current Account No. 30767210435 IFSC Code SBIN0004324 with Bank of India, Lagerstromia Shopping Complex, Greater Noida (U.P.), through RTGS, for 646.7530 Hectares land which includes 175.3639 Hectares of the Demised Land details of which are set out in the SCHEDULE-II hereto, the receipt whereof the Lessor doth hereby acknowledges. The balance 80% of the Premium shall be paid in 20 half yearly installments alongwith interest on reducing balance @ prevailing SBI PLR. The first half yearly installment mentioned above shall fall due after 180 days from the date of issue of Allotment Letter, in accordance with the provisions of Allotment letter dated 20.03.2009.

(4) The Lessee shall plan the development of SDZ by adhering to land use percentages mentioned herein below:-

	% of total area of SDZ
A. **Core Activity** (including road & open space)	not less than 35%
B. **Other Activities**	
i) Commercial	not more than 20%
ii) Institutional and amenities	not less than 5%
iii) Roads, open and other circulation areas	not less than 25%
iv) Residential including group housing and plotted Development area	not less than 15%

Subject to the above provisions, the Lessee shall have exclusive right to determine the purpose for which the Demised Land will be used and also the allocation of area of such Demised Land for different uses. The Lessee shall also be free to decide whether the portion of Demised Land decided by the Lessee to be sub-leased/given on leave and licence basis should be in the form of plots or constructed properties. No permission of the Lessor

shall be required either for the use of the Demised Land or for sub-leasing/ multiple sub-leasing/giving on leave and license basis. The Lessee shall be entitled to modify the Demised Land or part thereof as per the layout plan(s) approved by the relevant authorities. In case land for development of SDZ is allotted to the Lessee in parts, the Lessee shall be entitled to amalgamate/merge the said parts of the allotted land at one location.

(5) The Lessee shall have unfettered right to sub-lease the whole or any part of the Demised Land, whether developed or undeveloped, and whether by way of plots or constructed properties or give on leave and license or otherwise dispose of its interest in the Demised Land or part thereof/permit to any person in any manner whatsoever, without requiring any consent or approval of the lessor or of any other relevant authority. The sub-Lessee(s) of the Demised land shall also be entitled to provide the Demised Land on sub-lease and hence there can be subsequent multiple sub-leases of the Demised Land in small parts. The Lessee/sub-Lessee/licensee, as the case may be, shall however notify to the Lessor the details of all such sub-lease(s) /leave and license(s)/disposals. Till the time such notification is made to the Lessor, the Lessor/sub-Lessor/Licensor, as the case may be, shall continue to remain liable to pay the Rent Amount along with the Lessee. The quantum of Rent Amount payable to the Lessor shall remain unaffected by any such sub lease(s)/leave and license(s). It is hereby further clarified that the total Rent Amount payable by the Lessee and various sub-Lessees/transferees shall be to the maximum extent of @ 2.5% of the premium of land being leased per year (various sub-Lessees/transferees paying pro rata rent for the portion of land held by them). Each sub-lease and/or transfer shall after the execution thereof be notified by the transferor or the sub-Lessor/sub-Lessee to Lessor and till such time, it is so notified, the transferor/sub-Lessor shall remain jointly and severally liable along with the transferee/sub-Lessee for payment of lease rent to Lessor. However, for sub-lease of Core Activity land, prior permission of Lessor shall be required.

(6) For the first transfer of land through sub-lease, no additional charges or transfer premium shall be payable by the Lessee to the Lessor or any authority. However, for subsequent transfers, additional payment shall be made to the Lessor at the rates specified by the Lessor.

(7) Multiple renting shall be admissible to the Lessee and to the sub-lessee(s).

(8) Admissible overall FAR on gross area of land, FAR, ground coverage, permissible height and set back etc. for various uses of land viz. residential, commercial, recreational, institutional etc. shall be as per the policy of Govt. of U.P. for Special Development Zone (SDZ) under development of Yamuna Expressway Industrial Development Authority (earlier known as Taj Expressway Industrial Development Authority) and Zoning Regulations & Building Regulations of Yamuna Expressway Industrial Development Authority as applicable from time to time.

(9) The height of buildings will be governed by the regulations/standards of relevant Airport Authority, as applicable.

(10) The Lessee shall carry out the entire development in the allotted area adhering to :-

(i) Standards and specifications laid down in the building and other regulations of the Lessor/relevant Indian Standards/National Code etc.

(ii) Master Plans and Rules & Regulations of the Lessor and other relevant authorities.

(iii) Government policies and relevant Codes of BIS/IS relating to disaster management in land use planning and construction work.

(11)

a. the annual lease rent may be enhanced on expiry of every 30 years by an amount not exceeding 50% of the lease rent last fixed.

b. The Allottee shall have an option to pay a lump-sum amount equivalent to 11 times of the annual lease rent i.e. 27.5% of total Premium before execution of lease deed, as ONE TIME LEASE RENT.

Note: If the Allottee chooses the option to pay least rent annually at the time of execution of lease deed, he can subsequently exercise his option to pay one time lease rent indicated above with the prior written permission of the YEA/Lessor. In such a case the Allottee shall have to pay lease rent @ 2.5% p.a. of the total Premium till the date of exercising the option and in addition, shall pay 27.5% of the total Premium as One Time Lease Rent.

(12) The land being transferred on lease basis can be converted in free hold in future as per the terms and conditions specified by the Lessor.

(13) The Lessee shall have a right of way to all the lands and premises and roads adjoining the Demised Land and shall be entitled to enter upon such lands and premises and roads for the purpose of accessing the Demised Land without detriment to the Lessor or public interest.

(14) The Allottee can mortgage the land in favour of banks/financial institutions/lenders for arranging funds for implementation of project, on such terms as may be mutually agreed between lessee, Lessor and Lendors.

(15) Lessor shall carryout external development of the area of SDZs as expeditiously as possible. External Development Charges shall be payable by the Lessee in accordance with the provision of Allotment Letter dated 20.03.2009. Internal development of the area of SDZ shall be carried out by the Lessee.

(16) Lessor shall identify and implement village development scheme and Abadi Extension in the area of SDZ in accordance with the terms of Allotment letter dated 20.03.2009.

(17) The Lessor shall endeavor to help the Lessee in obtaining applicable permits, sanctions, approvals, clearances, etc. for effective enjoyment of the Demised Land.

(18) Maintenance of External Development works for the SDZ shall be carried out by the Lessor and maintenance of works within the SDZ shall be corned out by the Lessee respectively at their own cost.

(19) Upon written request from the Lessee, Lessor shall assist the Lessee in obtaining access to all necessary infrastructure facilities and utilities. including water, electricity, telecommunication facilities etc. at rates and on terms not less favourable to the Lessee than those generally available to the commercial customers.

(20) Various incentives/concessions etc. shall be admissible to the Lessee as per the State Govt. policy/in law from time to time.

(21) That the Lessee/sub-lessee(s) hereby covenants to pay all rates, taxes, charges and taxes already levied or to be levied in future by the Lessor or any local or other authority/Central or State Govt. The Lessee/sub-lessee(s) shall have to take independent connection in his name at his cost for water supply/drainage/sewerage on payment of required charges to local authority for construction purpose and later on for regular drinking water supply etc. The Lessee/sub-lessee(s) shall, it required by the Lessee, also have to take in his own name and at his own cost temporary electric/power connection for construction purposes and later on for regular supply on payment of required charges to the authority as may be responsible for giving such electric/power connection.

(22) The Lessee covenants and warrants that:

i) The Lessee shall follow all laws and bye-laws, rules, building regulation and direction of Lessor and the local municipal or other authority now existing or hereinafter to exist so far as the same relate to the immovable property and so far as they affect the health, safety and convenience of other inhabitant of the place.

ii) The Lessee shall bear legal expenses of execution of this Lease Deed including the registration charges as may be applicable.

iii) The Lessee will permit the members, officers and subordinates of the Lessor and workmen and other persons employed by the Lessor at all reasonable time of the day with 7 days prior notice in writing to enter into and upon the Demised Land and building to be erected thereupon in order to inspect the Demised Land and carry on necessary works and the Lessee will give notice of the provision of this sub-clause to its sub-lessee(s).

(23) The Lessor covenants and warrants that:

(i) The Lessor has the full right and authority to execute this Deed and to grant the lease of the Demised Land, and that the Lessee, upon payment of the rent and performance of the covenants herein contained, shall peaceably and quietly hold, possess and enjoy the Demised Land during the full term of this lease without any interruption, disturbance, claims or demands whatsoever by the Lessor or by any person/s claiming for and on behalf of the Lessor as per the covenants and provisions of this Lease Deed.

(ii) The Lessor shall grant, transfer, convey and assure, from time to time, all its reversionary rights, title and interests in respect of such part of the Demised Land as may be required by the Lessee/sub-lessee for land use as per applicable Master Plan and other

regulations of the local authorities.

(iii) The Lessor hereby covenants that the Lessee/sub-lessee(s) shall enjoy quiet possession of the Demised Land without disturbance by it or its successor in interest or any person claiming title paramount thereto in any manner.

(iv) The Lessor warrants that the Demised Land is free from all encumbrances, claims disputes, encroachments, occupations, litigations, injunctions, mortgages, charges, pledges, lien, hypothecation, security interest, assignment, privilege, or priority of any kind having the effect of security or other such obligations. The Lessor further warrants that if any compensation remains outstanding and payable in respect of the Demised land the same shall be paid and settled directly by the Lessor without in any way affecting the Lessee's enjoyment of the Demised Land.

(24) The Lessee/sub-lessee(s) shall make such arrangements as are necessary for maintenance of the building(s) and common services situated on the Demised Land and if the buildings are not maintained properly, the Chief Executive Office or any officer authorized by Chief Executive Officer of the Lessor will have the power to get the maintenance done through the authority and recover the amount so spent from the Lessee/sub-lessee(s). The Lessee/sub-lessee(s) will be individually liable for payment of the maintenance amount related to its property. No objection on the amount spent on maintenance of the building by the Lessor shall be entertained and the decision of the Lessor shall be final.

(25) The Lessor shall have full rights and title to all mines and minerals, cools, gold washing, earth oils and quarries in and under the Demised Land of any part thereof and to do all acts and things, which may be reasonably necessary or expedient for the purpose of searching removing and enjoying the same, without affecting the Lessee's/sub-lessee(s) right to peaceful possession and enjoyment.

(26) The Lessor has the right to receive the lease rent annually in advance without having to issue any demand notice therefore.

(27) Any building constructed on any portion of Demised Land (except for Core Activity) may be sub-let, by the Lessee/sub-lessee(s) subject to the terms and conditions as laid down in the bye-laws from time to time. However, the sub-lessee(s) shall follow the statutory laws/bye-laws Master Plan, Building regulations and directions framed under U.P. Industrial Area Development Act, 1976 for the land use and also shall be bound by all covenants and condition contained herein and be answerable in all respect thereof.

(28) That the Chief Executive Officer of the Lessor in consultation with the Lessee may make such amendments, additions and alternations or modifications in these terms and conditions as may be mutually agreed between Chief Executive Officer and the Lessee.

(29) The Lessee shall indemnify the Lessor against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by the Lessor on account of anything done or omitted to be

done by the Lessee in connection with the development of the SDZ.

(30) The Lessor shall indemnify, defend and hold harmless to the Lessee against any and all proceedings, actions, 3rd party claims for loss, damages and expenses of whatever kind and nature arising out of defect in title and/or the rights of the Lessor in the land transferred to the Lessee.

(31) That the Lessee shall keep the Lessor indemnified against any claims for damages which may be caused to any property belonging to the Lessor/ others in consequence of the execution of the works and also against claims for damages arising from the actions of the Lessee or his workmen or representatives which :-

a. Injures or destroys any building or part thereof or other structure contiguous or adjacent to the Demised Land.

b. Keeps the foundation, tunnels or other pits on the Demised Land open or exposed to weather causing any injury to contiguous or adjacent building.

c. Digs any pit near the foundation of any building thereby causing any injury or damages to such building.

(32) That the damages shall be assessed by the Lessor whose decision as to The extent of injury or damages or the amount payable shall be final and binding on the Lessee.

(33) That the Lessee/sub-lessee(s) shall not display or exhibit any picture posters statuses other articles which are repugnant to the morals or are indecent or immortal. The Lessee/sub-lessee(s) shall also not display or exhibit any advertisement or placard in any part of the exterior wall of the building, which shall be constructed over the Demised Land except at places specified for the purpose by the Authority.

(34) All powers exercised by the Lessor under this Lease Deed may be exercised by the Chief Executive Officer of the Lessor, who may also authorize any of its other officers to exercise all or any of the power exercisable by it under his Lease Deed. A copy of such authorization shall be handed over by the Lessor to the Lessee immediately upon such authorization.

(35) Any relaxation or indulgence granted by the Lessor to the Lessee under this Deed shall not in any way prejudice the legal rights of the Lessor.

(36) The Lessor and the Lessee hereby agree that all notices hereunder to any Party hereto shall be delivered personally or sent by registered or registered mail with acknowledgement due or facsimile to such Party at the address set forth below or such other address as may hereafter be designated in writing by such Party to the other Party. Notices delivered personally shall be deemed to have been received on the date of receipt, notices sent by registered mail shall be deemed to have been received on the tenth day following mailing, and notices sent by facsimile shall be deemed to have been received one (1) business day after transmission provided (i) receipt is verbally confirmed and (ii) an original copy is mailed promptly within five (5) Business Days thereafter:

(a) Notices to the Lessor to:

Yamuna Expressway Industrial Development Authority (YEA),

A-1, First Floor Commercial Complex,

Sector-Beta-II,

Greater Noida,

Distt. Gautam Budh Nagar, Uttar Pradesh, India.

Attention: Chief Executive Officer

Telephone No. 0120-4291361, Fax: No. 0120-4291360.

(b) Notices to the Lessee to:

JPSK Sports Pvt. Ltd.

Sector-128, Noida 201304,

Distt. Gautam Budh Nagar Uttar Pradesh

Attention: Shri Sameer Gaur (MD & CEO)

Telephone No.: 0120-4609000, Fax No.: 0120-4609025

All notices, orders and other documents required under the terms of the Lease or under U.P. Industrial Area Development Act 1976 (U.P. Act No. 6 of 1976) or any rules or regulations made thereunder shall be deemed to be duly served as provided under section 43 of the U.P. Urban Planning and Development Act 1973 as re-enacted and modified by the U.P. President's Act (re-enactment with modification) Act 74 (U.P. Act No. 30 of 1974).

(37) This Lease Deed shall be subject to the jurisdiction of District Court at Gautam Budh Nagar or the High Court of Judicature of Allahabad.

(38) All arrears payable to Lessor shall be recoverable as arrears of land revenue without prejudice to its other rights under any other law for the time being in force, subject however to the terms of this Deed.

(39) The stamp duty chargeable in respect of instruments of transfer of land for the SDZ, by Lessor to Lessee has been waived vide Govt. of Uttar Pradesh Notification No. KN. 5-3279/XI-2009-500 (54)-2009 dated Lucknow August 17, 2009, attached herewith as SCHEDULE-IV read with letter No. 2922/77-3-09-50 (अवस्थापना)/09 टी. सी. dated 26 August, 2009, issued by the Special Secretary, IDC-3 Govt. of Uttar Pradesh attached herewith as SCHEDULE-V and accordingly, no stamp duty is payable on this Lease Deed.

IN WITNESS WHEREOF THE Lessor and the Lessee have caused these present to be executed on their respective behalf on the day, month and year first hereinabove written in the manner hereinafter appearing."

81. The real bone of contention between the parties is whether as a result of execution of lease deed, Clause 4.2 of the allotment letter which conferred right in favour of YEA to cancel lease in case of default in payment of the premium or the installments would still survive. The said question assumes importance in view of the fact that there was no similar provision in the lease deed. Interlinked with it is the question as to whether cancellation of the allotment would result in forfeiture of the lease and the rights conferred thereunder in favour of the petitioner or not. The contention of learned Senior Counsel appearing for the petitioner is that after the lease deed has been executed, the allotment letter ceases to be effective for the land parcels for which lease deeds have been executed since it has been superseded by the lease deed which is the essential contract between the parties. On the other hand, submission of learned Senior Counsel for the YEA is that the allotment letters and the lease deed were executed for a common purpose and they subsist together. It is submitted that every contract is to be considered with reference to its object and all of its terms and accordingly, the whole context must be considered to discern the true intent of the parties [**Bihar State Electricity Board Vs. Green Rubber Industries: (1990) 1 SCC 731**]. It is also submitted that where the transaction is not the subject of one document, but several, which referred to each other, or a reading of all, describe the entire contract, then it is open to the Court to consider all of them together. Reliance has been placed on **Manks**

vs. Whiteley: (1912) 1 Ch. 735; Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd. and Anr: 2023 SCC OnLine SC 1371; MTNL v. Canara Bank: (2020) 12 SCC 767 and Cox & Kings Ltd. v. SAP India (P) Ltd.: (2024) 4 SCC 1. It is further submitted that lease deeds were executed in furtherance of the allotment letters and the SDZ policy and since this serves a common purpose, their terms coexist without any inconsistency. The real intent of the parties is to be gathered from the manner in which they understood the contract and which reveals that the petitioner even after execution of lease deed continued to take recourse to various stipulations in the allotment letters to seek benefits in terms of the same and which were also granted to the petitioner. This further reveals that the parties also understood the contract in the manner that the allotment letters and lease deeds would subsist together. The petitioner cannot be permitted to blow hot and cold and contend that the allotment letters stood completely superseded having taken benefits of the stipulations in the allotment letter even after execution of lease deeds.

82. In **Manks vs. Whiteley,** the Chancery Division laid down the law relating to interpretation of a transaction contained in multiple documents as follows:

> ".....where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is executed on the faith of all the others being executed also and is intended to speak only as part of the one transaction, and if

> one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole. It is not open to third parties to treat each one of them as a deed representing a separate and independent transaction for the purpose of claiming rights which would only accrue to them if the transaction represented by the selected deed was operative separately. In other words, the principles of equity deal with the substance of things, which in such a case is the whole transaction, and not with unrealities such as the hypothetical operation of one of the deeds by itself without the others."

83. In **Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd. (supra),** the ratio in **Manks v. Whiteley** (supra), has been applied by the Hon'ble Supreme Court in interpreting a 'Master Facility Agreement' executed between the respondent-Bank and the appellant for providing financial assistance to the appellant and an 'Assignment Agreement' executed between them. The Hon'ble Supreme Court held that "**where the transaction is not the subject of one document, but several, which refer to each other, or a reading of all, describe the entire contract, then, it is open to the court to consider all of them together."**

84. The above principles of interpretation have been laid down as noted above in respect of multiple documents arising out of a single transaction. These multiple documents were contemporaneously executed. Nonetheless, the principles of interpretation laid down in these judgements in relation to multiple documents arising out of a single transaction is of great relevance. Here we may usefully refer to a judgement of Gujarat High Court in **Creative Infocity Limited vs. Gujarat Informatics Limited (MANU/GJ/0516/2009).** In the said

case, a Concession Agreement dated 01.08.2000 was executed by the respondent, a wholly owned Government of Gujarat Company, incorporated by the State of Gujarat as a 'Government Agency' within the meaning of Section 2(e) of the Gujarat Infrastructure Development Act, 1999 with the object of encouraging private sector participation in various infrastructure projects in favour of the petitioner, a joint venture company. Thereunder, the petitioner was given task of development of Infocity near Gandhinagar. The said concession agreement contemplated execution of lease in favour of the petitioner. In pursuance thereof, a Lease Agreement dated 26.02.2001 was executed. Question arose, as to whether dispute between the parties, could be referred to arbitration, as there was such a clause in the Concession Agreement but not in the Lease Agreement executed in pursuance of the Concession Agreement. In the said backdrop, having regard to the entire scheme and its object and the correspondence exchanged between the parties, it is held as follows:

> "17. As stated above, the Master Lease Agreement was entered into between the defendant and the plaintiff and 116 acres of the land came to be leased to the plaintiff as per Concession Agreement. **Therefore, it can be said that the Master Lease Agreement is in furtherance of Concession Agreement and the parties were to act as provided in Concession Agreement as well as in Master Lease Agreement. Therefore, it can be said that the Concession Agreement can be said to be the main agreement, and therefore, as such both the agreements, Concession Agreement and Master Lease Agreement are required to be read together and cannot be read in isolation,** as sought to be contended on behalf of the plaintiff .... **Even considering various correspondences between the plaintiff and the**

> **defendant i.e. documents which are produced at Exh. 39/1 to 39/9, all throughout the case of the plaintiff is that both the agreements, Concession Agreement and Master Lease Agreement exist and in fact even the plaintiff has admitted the shelter of the Arbitration Clause provided in Concession Agreement. Therefore, the contention on behalf of the plaintiff that on execution of the Master Lease Agreement, Concession Agreement does not exist and/or has come to an end cannot be accepted."**

(emphasis supplied)

85. Indisputably, the land was allotted to the petitioner in pursuance of and to effectuate the objectives of SDZ Policy of the State. The contentions, therefore, cannot be answered, only on basis of stipulations in the Allotment Letters and the lease deed, divorced from the context and objects of the SDZ Policy and multiple documents executed between the parties, in furtherance of the same, from time to time. We, therefore, proceed to examine in same detail the SDZ Policy and the stipulations in the allocation letter, the reservation letter and the allotment letters. The question of prime importance as noted is whether after execution of 32 lease deeds for different parcels of land in pursuance of 6 allotment letters, the allotment letters stood superseded altogether and what would be the effect of cancelling allotments only and not the leases.

86. The Special Development Zone Project (‘SDZ/SDZ Project’) in Sector 25, Gautam Budh Nagar was conceived for the planned industrial development of Taj Expressway Industrial Development Area by a policy document contained in Government Order dated 29.12.2007. It is primarily the area along the banks of

river Yamuna. The Taj Expressway Industrial Development Authority (for short 'TEA'), later renamed as 'Yamuna Expressway Industrial Development Authority' (for short 'YEA') vide notification dated 11.07.2008 was identified as nodal agency to implement the SDZ Project in the development area falling under its jurisdiction. Every SDZ would have one main activity as 'core activity' apart from other activities. The core activity could be industrial information technology, bio-technology, institutional sports, recreation or service industry. In order to ensure accelerated high quality development, the allotment of land was divided under two heads: (a) less than 1000 ft. and (b) 1000 ft. or more. The area falling in category (b) was categorized as SDZ. The core activity in any SDZ would cover at least 35% of the total area. The other permissible activities were commercial not exceeding 20%; institutional and services not exceeding at least to the extent of 25%; road and other open areas not less than 25% and housing not less than 15%. Under the policy, applications were to be invited from the public through advertisement in newspapers and electronic media. The eligibility of the applicants which *inter alia* includes their financial capacity, experience etc. was specified. The selection was to be made by a Committee constituted by the Authority. The proposal of the Committee would be subject to approval by the Board and further approval by the Government. The allotment would be on lease hold basis for a period of 90 years for which execution of lease deed was contemplated between the allottee

and TEA. The land would be given on prescribed lease rent and acquisition cost plus external development charges. The acquisition cost, development fee and lease rent would be as prescribed by TEA from time to time. Those aspects which were not provided in the policy/regulations of the Development Authority shall be decided by 'TEA'. The allottee shall have right to sub-lease except the land of core area without any permission or approval of TEA. In respect of sub-lease of core area, prior permission of TEA was required. Multiple sub-leases were permissible for separate small parcels of land. Multiple tenancies and sub-leases were also permissible. In due course the allottee could obtain free hold right on fulfilment of prescribed conditions. The allottee would present a detailed project report laying down the outlines of the project, land use, essential services, management, implementation and maintenance details etc. The entire development after handing over of possession to the allottee would be under supervision and control of TEA and its Rules and Regulations, as prescribed, from time to time, would be applicable.

87. On 11.06.2008, the petitioner was informed that pursuant to its application dated 19 March 2008 received in the office of TEA on 24.03.2008, registered at Serial No. 3, one SDZ with an area approximately 1000 hectare has been allocated to it for development of 'SPORTS' as core activity. Allotment letter specifying the terms and conditions for allotment of SDZ was to be issued in due course.

On 28.08.2008, a reservation letter was issued by YEA in favour of the petitioner reserving 1000 hectare of land in Sector No. 25 for development of SDZ with 'SPORTS' as the 'core activity' on the terms and conditions stipulated therein. Clause 1.1 of the Reservation letter indicates that the reservation was made in anticipation of YEA taking possession of the land in respect of which acquisition proceedings were stated to be in progress. Allotment Letters/(s) for the said land in full or parts would be issued in due course of time. Clause 1.1 of the Reservation letter is as follows:

> "1.1 The reservation of the above land is being made in your favour in anticipation of YEA taking possession of land for which acquisition proceedings are already in progress. The Allotment Letter/(s) for the said land in full or parts, shall be issued in due course of time."

88. The petitioner was required to furnish performance security of Rupees one hundred crores in favour of YEA within sixty days of receipt of Letter of Allotment. The performance security was to be maintained till core activity becomes functional. YEA reserved right in its favour to recover from the performance security any outstanding amount required to be paid by the allottee to YEA in accordance with the terms of allotment, if such amount is not paid within thirty days of service of notice by YEA upon the allottee. The allottee was to replenish the performance security to its full extent. The consideration for allotted land as per Clause 3.2 was classified into two categories, one provisional premium and second final premium. The provisional

premium would mean the premium to be fixed in the allotment letter. The final premium would mean the premium which may finally be determined by YEA under the Karar Niyamawali of the Land Acquisition Act or as fixed by any court of law. The premium for the allotted land was to consist of actual acquisition cost including interest which was to be determined subsequently plus external development cost @ 721 per square meter. In addition the allottee was required to pay lease rent @ 2.5% per annum of the premium amount with effect from the date of delivery of possession. The allottee was under obligation to deposit 20% of the provisional premium as mentioned in the allotment letter together with the provisional lease rent after adjusting the earnest money if not already adjusted against performance security within 90 days from the date of issue of the allotment letter. In special circumstances, power to extend time in depositing the above amount was conferred upon the Chief Executive Officer of YEA upon payment of such charges as are determined by YEA. The balance 80% of the provisional premium was payable in 20 half yearly installments along with interest on reducing balance and prevailing SBI PLR. The provisional premium was liable to be revised from time to time. Rs.725/- per square meter fixed as external development cost was provisional and subject to final computation of the development cost. Clause 5.2 conferred power upon YEA to cancel allotment of land and lease deeds executed in pursuance thereof without any liability on YEA if the default persists even after

three notices to the allottee to rectify the defects. Clause 5.2 is reproduced below for convenience of reference :

> "5.2 In case of default, the YEA shall issue notice to the Allottee giving a maximum of 30 days time to rectify the default. Not more than three such notices shall be issued and if the default persists, even after expiry of the said notices, YEA may cancel the Allotment of land and lease deeds executed thereof without any liability on YEA."

89. The provisions relating to sub-lease as contained in the letter of allotment also find mention in the reservation letter (vide Clauses 9.12, 9.13, 9.14). The allottee was also given right to mortgage the property for arranging funds for implementation of the project subject to certain conditions. The allottee was required to complete minimum 40% of the permissible covered area earmarked for core activity within five years from the date of execution of lease deed. In special circumstances, the said period could be extended. The provisions of U.P. Industrial Area Development Act, 1976 and regulations framed thereunder were made applicable.

90. On 24.02.2009, YEA issued a letter of allotment of first lot of land admeasuring 311.2641 hectares in villages Mathurapur, Mustafabad, Atta Guzaran, Bela Kalan, Aurangpur, Tehsil Sadar, District Gautam Buddh Nagar, as a part of 1000 hectare of land, on terms and conditions laid down in 'Annexure-1' appended thereto. The terms and conditions were almost identical as contained in reservation letter except for specifying the premium of allotted land as

Rs.941.59/- per square meter excluding external development charges estimated at Rs.574/- per square meter excluding any levy for metro in future. The allottee was required to deposit 20% of the external development cost within ninety days from issue of allotment letter and balance 80% of external development cost in twenty half yearly installments along with the interest on reducing balance at SBI PLR as per the schedule fixed for payment of the premium. Clause 4 of the Allotment letter provided for the consequences of default in payment as follows:

> "4. **Default in payment:**
>
> 4.1 In case of default in the payment of any dues (except the performance security) to the Authority, the Allottee would be required to pay additional interest @ prevailing SBI PLR + 3% p.a. on defaulted amount, compounded half yearly for the defaulted period.
>
> 4.2 In case of default, the YEA shall issue notice to the Allottee giving a maximum of 30 days time to rectify the default. Not more than three such notices shall be issued and if the default persists, even after expiry of the said notices, YEA may cancel the Allotment of land and lease deeds executed thereof without any liability on YEA.
>
> 4.3 Any payment made by Allottee shall first be adjusted towards the interest due, if any, and thereafter the balance shall be adjusted towards the installment or any other amount due.
>
> 4.4 SBI PLR, whereever mentioned in this letter, shall be taken as applicable on the due date of payment."

91. The allottee was required to execute lease deed and take physical possession within ninety days from the date of issue of the allotment letter. The date of execution of lease deed was to be treated

as the date of handing over of actual possession of the land. Clause 7 laid down the mechanism for preparation of DPR by the allottee which is as follows:

> "**7. <u>Detailed Project Report:</u>**
>
> 7.1 The Allottee shall prepare and submit a detailed project report (DPR) of the Project to the YEA within a period of 6 months from the date of issue of this allotment letter which may be suitably extended by YEA if circumstances so desire. The report shall comprise details of the proposed Core Activity, land use, implementation schedule and financial arrangements etc.
>
> 7.2 However, since the land has to be transferred to the Allottee in parts, therefore, a concept plan for the complete site shall be submitted and detailed plan for the part land being handed over to the Allottee shall be submitted within six months from the date of possession of land."

92. Clause 9.1 relates to mortgage of property which is as under:

> **"9. <u>Mortgage of property:</u>**
>
> 9.1 The allottee can mortgage the land in favour of banks/ financial institutions/ lenders for arranging funds for implementation of project, on such terms as may be mutually agreed between the Allottee, YEA and the Lenders."

93. The period for completion of 40% of the permissible covered area of core activity was ten years from the date of execution of lease deed. The Chief Executive Officer was given power to grant reasonable extensions in this regard. Clause 10.1 is as follows:

> "10.1 The Allottee shall be required to complete minimum 40% of the permissible covered area of Core Activity within a period of 10 years from the date of execution of last Lease Deed for the land falling in the

> Core Activity area of SDZ land. However, in special circumstances Chief Executive Officer or any other officer authorized in this behalf, may grant reasonable extension for completion of the project."

94. In all, six allotment letters with similar provisions were issued, the details of which are as follows:

S.	Letter No. &Date	Area (Ha) Allotted
1.	YEA Letter No. YEA/48/2009 dated 24.02.2009	311.2641
2.	YEA Letter No. YEA/82/2009 dated 20.03.2009	646.7530
3.	YEA Letter No. YEA/206/2009 dated 10.08.2009	58.4182
4.	YEA Letter No. YEA/393/2010 dated 27.01.2010	20.2960
5.	YEA Letter No. YEA/459/2009 dated 23.06.2010	20.5098
6.	YEA Letter No. YEA/497/2009 dated 07.12.2010	28.0916
TOTAL		**1,085.3327**

95. Clause 21 provided for the payment schedule of twenty bi-annual installments starting from 23.08.2009 to 23.02.2019.

96. On 25 September, 2009, a lease deed was executed between the Authority and M/s J.P.S.K. Sports Private Limited (merged with petitioner-company) in respect of part of the land comprised in allotment letter dated 20 March, 2009. The allotment letter was annexed with the lease deed as Schedule-1. For ease of reference, Clauses 2 and 3 of the lease deed are reproduced below:-

> "2. The Lessor, allotted to the Lessee SDZ Sector No. 25 with SPORTS as Core Activity for development of the SDZ vide letter No. YEA/32/2009 dated 20.03.2009 (the Allotment Letter attached hereto as SCHEDULE-I) on the terms and conditions contained in the said Allotment Letter, which interalia, include allotment of approx. 646.7530 Hectares land in Village- Salarpur, Munjkheda, Fatehur Atta, Gunpura, Jaganpur, Afjalpur, Dankaur and Aurangpur in Tehsil Sadar, District Gautam Budh Nagar (U.P.) for a period of 90 years on lease at premium of Rs. 941.86 per sq.m. excluding External

> Development charges plus lease rent @ 2.5% per annum of premium.
>
> 3. The Lessor in part discharge of its obligations under the said Allotment Letter, hereby agrees to provide on lease and the Lessee hereby agrees to take on lease, 175.3639 hectares of land in Village Gunpura, Tehsil Sadar, Distt. Gautam Budh Nagar (U.P.) (Hereinafter referred to as the Demised Land) for development of SDZ, more particularly detailed in SCHEDULE-II attached hereto, on terms and conditions contained in these presents."

97. The details of demised land are mentioned in Schedule-II and the payment of premium was to be made in accordance with the provision contained in this behalf in the Allotment Letter dated 20.03.2009. Clause-3 which relates to the manner in which premium was to be paid is as follows:

> "(3) During the term of the lease, the Lessee shall pay to the Lessor lease rent @ 2.5% of premium per annum in advance (the "Rent Amount") commencing from the month of Sept., 2009. The Lessee has paid to the Lessor Rs. 1,21,83,01,561.00 (Rupees one hundred twenty one crores eighty three lacs one thousand five hundred sixty one only) towards 20% of premium amount in Lessor's Current Account No. 30767210435 IFSC Code SBIN0004324 with Bank of India, Lagerstromia Shopping Complex, Greater Noida (U.P.) through RTGS for 646.7530 Hectares land which includes 175.3639 Hectares of the Demised Land details of which are set out in the SCHEDULE-II hereto, the receipt whereof the Lessor doth hereby acknowledges. The balance 80% of the Premium shall be paid in 20 half years installments along with interest on reducing balance @ prevailing SBI PLR. The first half yearly installment mentioned above shall fall due after 180 days from the date of issue of Allotment Letter, in accordance with the provisions of Allotment letter dated 20.03.2009."

98. The proportion in which development of various activities over the demised land was to be done, remained the same, as was in the reservation and allotment letters. Thus, minimum of not less than 35%

of the total area of SDZ was to be developed for core activity i.e. sports, including roads and open spaces. The lease further provided that subject to land use percentages specified, the lessee shall have exclusive right to determine the purpose for which the demised land will be used and also the allocation of area of demised land for different uses. The allottee had to determine the usage: sub-lease or give on leave and license any part of demised land without seeking permission from the lessor. Clause-5 conferred right to sub-lease any part of the demised land without permission of the authority and core area with permission of the authority. The allottee was also given right to mortgage the land on such terms, as may be mutually agreed between lessee, lessor and the lendors.

99. Clause 38 of the lease deed provided for recovery of arrears payable to the lessor as arrears of land revenue without prejudice to its other rights under any other law for the time being in force subject to the terms of lease deed. Clause 38 is as follows:-

> "All arrears payable to Lessor shall be recoverable as arrear of land revenue without prejudice to its other rights under any other law for the time being in force, subject however to the terms of this Deed."

(B) <u>How the parties understood the contract:</u>

100. The essential feature of any binding contract is the meeting of minds i.e., consensus *ad idem*. How the parties acted pursuant to the contract is a significant indicia to their common understanding of

the contract. It thus constitutes an important tool in interpretation of the terms of the contract. The Supreme Court in **Transmission Corporation of Andhra Pradesh Limited Vs. GMR Vemagiri Power General Ltd.: (2018) 3 SCC 716,** held that the real intendment of the parties to a contract has to be gathered from the manner in which the parties understood the same and for that purpose the correspondence exchanged between them could be taken into consideration. The relevant portion of the judgement is extracted below:-

> "25. In the facts and circumstances of the present case, there can be no manner of doubt that the parties by their conduct and dealings right up to the institution of proceedings by the respondent before the Commission were clear in their understanding that RLNG was not to be included within the term "Natural Gas" under the PPA. The observations in Gedela Satchidananda Murthy [Gedela Satchidananda Murthy v. Commr., Deptt. of Endowments, (2007) 5 SCC 677] are considered apposite in the facts of the present case: (SCC pp. 688-89, para 32)
>
> "32. ... 'The principle on which Miss Rich relies is that formulated by Lord Denning, M.R. in Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank Ltd. [Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank Ltd., 1982 QB 84: (1981) 3 WLR 565 (CA)], QB at p. 121:
>
> "... **If parties to a contract, by their course of dealing, put a particular interpretation on the terms of it- on the faith of which each of them- to the knowledge of the other- acts and conducts their mutual affairs- they are bound by that interpretation just as much as if they had written it down as being a variation of the contract. There is no need to inquire whether their particular interpretation is correct or not- or whether they were mistaken or not- or whether they had in mind the original terms or not. Suffice it that they have, by their course of dealing, put their own**

> **interpretation on their contract, and cannot be allowed to go back on it.**""""
>
> (emphasis supplied)

101. Again in **McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181**, the Supreme Court held that:

> "112. **It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract.** The construction of the contract agreement, is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot, be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. **It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract.....**.."
>
> (emphasis supplied)

102. Clause 3.6 of the Allotment Letter conferred power in the Chief Executive Officer of YEA in special circumstances to extend by 30 days, the period prescribed for payment of installments subject to payment of additional interest at prevalent SBI PLR + 3% per annum for the extended period. There was no corresponding provision in the lease deeds. However, the petitioner requested for extension of time invoking the said provision from time to time and extensions were also granted. The details of the extensions granted by the authority at the request of petitioner is as follows:-

S. No.	**Date of the Petitioner's request**	**Date of grant of extension**
1.	18 February 2014	21 February2014 @ *Pg. 21, the Authority's reply to the Petitioner's*

		6th Supp. Affidavit
2.	07 August 2014	13 August 2014 @ *Pg. 22, the Authority's reply to the Petitioner's 6th Supp. Affidavit*
3.	01 December 2014	29 December 2014 @ *Pg. 23, the Authority's reply to the Petitioner's 6th Supp. Affidavit*

103. Again there was similar provision for payment of additional interest on defaulted amount vide Clause 4.1 in the allotment letters.

To wit –

> "In case of default, the YEA shall issue notice to the Allottee giving a maximum of 30 days time to rectify the default. Not more than three such notices shall be issued and if the default persists, even after expiry of the said notices, YEA may cancel the Allotment of land and lease deeds executed thereof without any liability on YEA."

104. The petitioner applied for re-schedulement of overdue amounts and installments falling due till terminal date vide letters dated 08.03.2018 and 12.04.2018. Therein, the petitioner itself relied on various stipulations in the allotment letters. The said request was accepted by the Chief Executive Officer, YEA vide approval dated 25.01.2018 and the petitioner was provided with a re-schedulement plan. The petitioner, relying on the allotment letters, represented to the Chief Executive Officer, YEA vide letters dated 04.07.2018, 20.09.2018, 03.12.2018, 13.12.2018 and 31.12.2018 that it should be charged only 3% as penalty over and above SBI PLR as stipulated under Clause 4.1 of the allotment letters. It tried to impress upon YEA that it had charged additional penal interest ranging between 1 to 3% over and above 3% stipulated under Clause 4.1 of the allotment letters

and therefore, it should recalculate the amount payable by the petitioner under re-schedulement plan.

105. Repeatedly, the petitioner had taken recourse to allotment letters, for seeking various benefits, even after execution of lease deeds. It reveals that there was common understanding that the allotment letters would subsist along with the lease deed for limited purposes, in respect of which there was no contradictory provision in the lease deed and which could co-exist. The execution of lease deeds resulted in *de jure* conferment of lease hold rights in favour of the petitioner company, but not complete annihilation of the allotment letter.

(C) <u>Independent Statutory Power of cancellation and resumption</u>:

106. Section 111 of the Transfer of Property Act, 1882 which regulates the right of forfeiture of lease is as follows: -

> "**111. Determination of lease. -** A lease of immoveable property determines-
>
> (a) by efflux of the time limited thereby;
>
> (b) where such time is limited conditionally on the happening of some event-by the happening of such event;
>
> (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event;
>
> (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
>
> (e) by express surrender; that is to say, in case the lessee

> yields up his interest under the lease to the lessor, by mutual agreement between them;
>
> (f) by implied surrender;
>
> (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;
>
> (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

107. Clause (g) inter alia invests the lessor with power of forfeiture in case of breach of an express condition which provides that, on breach thereof, the lessor may re-enter. The right of forfeiture is to be exercised by giving notice in writing to the lessee of his intention to determine the lease.

108. In the instant case, both the allotment letters and lease deeds were executed by YEA in favour of the petitioner in exercise of powers conferred by Section 7 of the U.P. Industrial Area Development Act, 1976 (the Act, 1976), which is as follows: -

> "**7. Power to the Authority in respect of transfer of land. -** The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose."

109. Section 14 of the Act, 1976 provides for forfeiture for

breach of conditions of transfer and reads thus: -

> "**14. Forfeiture for breach of conditions of transfer. -** (1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority of any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money if any paid in respect thereof.
>
> (2) Where the Chief Executive Officer orders resumption of any site or building under sub-section (1) the Collector may, on his requisition, cause possession thereof to be delivered to him and may for that purpose use or cause to be used such force as may be necessary."

110. The lease deed specifically provided that the right of recovery of dues as arrears of land revenue was without prejudice to the right of the Authority under any other law. For ease of reference, Clause 38 is extracted below:

> "(38) All arrears payable to Lessor shall be recoverable as arrears of land revenue without prejudice to its other rights under any other law for the time being in force, subject however to the terms of this Deed."

111. The scope of power of an Industrial Development Authority under the Act, 1976 has been explained by the Supreme Court in **ITC Ltd. v. State of UP: (2016) 7 SCC 493**, as follows:

> "30. A lease governed exclusively by the provisions of the Transfer of Property Act, 1882 ("the TP Act", for short) could be cancelled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void and for the consequential relief of delivery back of possession. Unless and until a court of competent jurisdiction grants such a decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither

terminate the lease nor entitle a lessor to seek possession. This is the position under private law. **But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute.**

31. Noida Authority is an authority constituted for the development of an industrial and urban township (also known as Noida) in Uttar Pradesh under the provisions of the Act. Section 7 empowers the Authority to sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it in the industrial development area, on such terms and conditions as it may think fit to impose, on such terms and conditions and subject to any rules that may be made.

32. Section 14 provides for forfeiture for breach of conditions of transfer. The said section empowers the Chief Executive Officer of the Authority to resume a site or building which had been transferred by the Authority and forfeit the whole or part of the money paid in regard to such transfer, in the following two circumstances: (a) non-payment by the lessee, of consideration money or any instalment thereof due by the lessee on account of the transfer of any site or building by the Authority; or (b) breach of any condition of such transfer or breach of any rules or regulations made under the Act by the lessee.

33. Sub-section (2) provides that where the Chief Executive Officer of the Authority resumes any site or building under sub-section (1) of Section 14, on his requisition, the Collector may cause the possession thereof to be taken from the transferee by use of such force as may be necessary and deliver the same to the Authority. This makes it clear that **if a lessee commits default in paying either the premium or the lease rent or other dues, or commits breach of any term of the lease deed or breach of any rules or regulations under the Act, the Chief Executive Officer of Noida Authority can resume the leased plot or building in the manner provided in the statute, without filing a civil suit. The Authority to resume implies and includes the Authority to unilaterally cancel the lease.**

36. Therefore, **Noida Authority has the authority, having been empowered by the statute, to cancel the lease and resume possession, without recourse to a civil court by a suit, in two circumstances: (i) non-payment of the premium/rent/other dues; (ii) breach of conditions of transfer or breach of rules or regulations under the Act (the conditions referred to would include any suppression of fact**

> **or misstatement or misrepresentation or fraud on the part of the lessee in obtaining the lease)."**
>
> (emphasis supplied)

112. In **New Okhla Industrial Development Authority, Ghaziabad vs. M/s Dabur Containers Private Limited, New Delhi: (2004) 1 SAC 426**, a Division Bench of this Court held that the Act, 1976 is a special law and hence it will prevail over the Transfer of Property Act, 1882, which is a general law, in case of any inconsistency. Accordingly, the contention that forfeiture of lease effected by exercising power under Section 14 of the Act, 1976 was liable to be condoned as per Section 114-A of the Transfer of Property Act was repelled. Relevant observations are extracted :-

> "29. **We are of the opinion that the U.P. Industrial Area Development Act, 1976 is a special law, and hence it will prevail over the Transfer of Property Act, which is a general law in case of any inconsistency. Hence, even assuming that any provision of the Transfer of Property Act was violated that would still not help the plaintiff-respondent as in our opinion the action of NOIDA was clearly in accordance with section 14 of the U.P. Industrial Area Development Act, 1976, which Act is a special law for NOIDA area and will prevail over the provisions of the Transfer of Property Act."**
>
> (emphasis supplied)

113. The power under Section 14 of the Act, 1976 is not confined to transfer by lease only. It also applies to transfer by other modes contemplated under Section 7 of the Act, 1976, i.e., sale, auction, allotment or otherwise. Therefore, the legislation has not provided any specific procedure for exercise of the power of

resumption of the site or building (except implicit requirement of compliance of the principles of natural justice) unlike Section 111(g) of the Transfer of Property Act, 1882. All that is required is that the order should reveal that the building site is being resumed for breach of any express condition of the lease/transfer.

114. The impugned order, not once, but at several places, mentions about breach of conditions of the lease, and the consequent action to resume the site. This is clear from the following recitals in the impugned order: -

> "(a) The Authority in its 64th Board Meeting dated 27.11.2018 at Item No. 64/09, turned down the request of the petitioner made vide letter dated 30.10.2018 and decided that in case the arrears were not paid by 31.12.2018, action be taken against the petitioner for cancellation/recovery. (second paragraph of internal page 5 of the impugned order)
>
> (b) The petitioner having defaulted in complying with the conditions of allotment and lease deed by not paying arrears by 31.12.2018, permitted by the decision taken in the 64th Board Meeting, the lease deed and allotments are liable to be cancelled with immediate effect. (Clause 1 at internal page no. 7 of the impugned order)
>
> (c) Even after re-schedulement of loan, there was default in payment of second and third installments and replenishment of bank guarantee and even after issuance of defaulter notice, Rs. 225,46,22,814/- was not paid and consequently, proceedings for cancellation of allotment/lease deed are being held. (para 1 of internal page no. 7 of the impugned order)
>
> (d) The petitioner has not paid heed to the grievance of the homebuyers, leading to great resentment amongst them and thus, it had become necessary for the Authority to take over all incomplete housing schemes in their own hands and get the same completed and hand over possession to the homebuyers and thereby resolve their grievances. (1st para of internal page no. 10 of the impugned order)
>
> (e) The petitioner-company had repeatedly committed breach of allotment order and lease deed. (1st paragraph of internal page no. 11 of the impugned order)

> (f) In order to ensure completion of incomplete projects and non-payment of dues of 943.92 crores and non-replenishment of bank guarantee of Rs. 100 crores, the allotment of land in Sector 25 is cancelled. (second last paragraph of internal page no. 11 of the impugned order)"

115. The aforesaid recitals in the impugned order unequivocally lead to the conclusion that the site, i.e. the land demised to the petitioner by thirty two different lease deeds (details mentioned at internal page nos. 2 and 3 of the impugned order), was resumed thereby on the ground of non-payment of consideration money and installments and non-completion of residential projects. Any other interpretation would undermine the statutory power conferred upon the Authority by Section 14 of the Act, 1976.

116. **A.P. Industrial Infrastructure Corporation Limited** (supra), on which great emphasis has been placed by learned Senior Counsel for the petitioner, is clearly distinguishable. Therein, the appellant-Corporation allotted industrial plots for construction of transport office and godown to the respondents. Clause 17 of the Allotment Orders provided that within two years from the date of *'final allotment and taking possession of the land/plot/shed, the project is not implemented, the allotment will be cancelled'*. The allotment was followed by the sale agreements during which period, the appellant-Corporation received full sale consideration for the plot and, thereafter, executed sale deeds in favour of the respondents and wherein there was no such stipulation. Almost six years after execution of the sale deeds, the appellant-Corporation issued show-

cause notices seeking explanation with regard to alleged failure on part of the respondents in utilizing the land for the purpose of godowns. On 20.01.2006, the appellant-Corporation itself approved building plans and in pursuance whereof the respondents commenced construction. The respondent-Corporation replied to the show-cause notices stating that the facilities of roads, water and electricity were provided only in the year 2006 when show-cause notice was issued. On 28.03.2006, the appellant-Corporation cancelled the allotments on the ground that the respondents had failed to establish industrial/business units within the time specified in the allotment letters. The respondents questioned the cancellation of the allotments *inter alia* on the ground that after execution of sale deeds, the appellant-Corporation was not left with any power to cancel the allotments and the sale-deeds did not contain any such stipulation. The High Court allowed the writ petitions filed by the respondents and quashed the order of cancellation of allotments *inter alia* on the ground that ordinarily after execution of sale deeds a concluded contract came into existence. The allotment conditions and covenants of agreement of sale did not survive. The findings of the High Court have been noted in Para 11 of the judgement, thus–

> "11. It was further held that the appellant Corporation offered industrial plots and the respondents/entrepreneurs gave counter-offer which was accepted by it. At that stage, the conditions of offer, counter-offer and acceptance found expression in the allotment letter (acceptance of offer subject to conditions) and in the agreement of sale (contract of sale) in terms of Section 54 of the Transfer of Property

> Act, 1882 (hereinafter referred to as "the Act"). **This ultimately resulted in the conclusion of contract by way of execution of the sale deed by vendor in favour of the vendee. Once the contract is concluded, the allotment conditions or covenants of agreement of sale ordinarily cannot be enforced having regard to the various provisions of the Transfer of Property Act, Contract Act, 1872, the Registration Act, 1908 and the Specific Relief Act, 1963, which constitute the Civil Code of India and govern the transfer of immovable property from one person to another. The allotment letter or the sale agreement does not survive once the contract is concluded-on-execution of the registered sale deed resulting in alienation, conveyance, assignment and transfer of title."**
>
> (emphasis supplied)

116(i). The view of the High Court was approved and the contention of the appellant-Corporation that it was a sale coupled with condition was repelled. The prominent distinguishable feature is that, in the said case, there was conferment of absolute ownership in favour of the respondents with execution of the sale deeds in their favour after accepting the full sale consideration and there was no condition 'super added' in the sale deeds that construction would be completed in two years. In substance, it was held that the appellant had no right to cancel the sale, as the allotment orders would not survive. Thus, the Supreme Court noted in the judgement that :–

> "15. We do not find any merit in any of the aforesaid arguments. **In the first instance, it needs to be emphasised that there is no such condition of completion of construction within a period of two years in the sale deed. Such a condition was only in the allotment letter. However, after the said allotment, the appellant Corporation not only received entire consideration but executed the sale deeds as well. In the sale deeds no such condition was stipulated. Therefore, the High Court is right in holding that after the sale of the property by the**

> **appellant Corporation to the respondents, whereby the respondents acquired absolute marketable title to the property, the appellant Corporation had no right to insist on the conditions mentioned in the allotment letter, which cease to have any effect after the execution of the sale deed."**
>
> (emphasis supplied)

116(ii). It is noteworthy that the Supreme Court while coming to the said conclusion relied on various provisions of the Transfer of Property Act, which related to absolute transfer of interest in the property i.e., by sale and not in case of limited transfer of interest like lease. This is evident from the discussions in paragraph nos.16 and 17 of the judgement, which are extracted below for ready reference:

> "16. Section 5 of the Act defines "transfer" as conveyance of property from one living person to one or more living persons. Sections 8, 10 and 11 thereof attach sanctity and solemnity to a transfer of immovable property. These provisions read as under:
>
> > **"8. Operation of transfer.–** Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.
> >
> > Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;
> >
> > and, where the property is machinery attached to the earth, the movable parts thereof;
> >
> > and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;
> >
> > and, where the property is a debt or other actionable claim, the securities therefor (except where they are

also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer,

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

10. Condition restraining alienation.– Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same for her beneficial interest therein.

11. Restriction repugnant to interest created.– Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

17. Section 55 of the Act deals with rights and liabilities of buyer and seller. As per this provision, when the buyer discharges obligations and seller passes/conveys the ownership of the property, the contract is concluded. Thereafter. the liabilities, obligations and rights, if any, between the buyer and seller would be governed by other provisions of the Contract Act and the Specific Relief Act, on the execution of the sale deed. The seller cannot unilaterally cancel the conveyance or sale."

116(iii). The said aspect becomes more clear from the discussion

made in paragraph no.18 wherein the Supreme Court distinguished its earlier judgement in **Indu Kakkar vs. Haryana SIDC Limited, 1999 (2) SCC 37** solely on the ground that in the said case there was a specific condition in the agreement. Accordingly, Clause 7 of the agreement stipulating that the industrial unit was to be set-up within a specified period failing which the Corporation shall have right to resume the plot was held to be valid and enforceable by placing reliance on Section 31 of the Transfer of Property Act. The submission based on Section 11 of the Transfer of Property Act that any such restriction would be repugnant to interest created was repelled, holding that it applied solely to cases of transfer of 'absolute interest' and not to all kind of transfers. Relevant discussion in this behalf in the said judgement is noted below:

> "18. Insofar as the judgment in *Indu Kakkar case* is concerned, the High Court has rightly held that that would not apply to the facts of this case. On the facts of that case, the Court, in the first instance, came to the conclusion that Clause 7 of the agreement, which was entered into between the parties, was binding. As per Clause 7, construction of the building for setting up the industry, in respect of which land was given to the appellant in that case, was to start within a period of six months and the construction had to be completed within two years from the date of issue of the allotment letters. Since the appellant had failed to commence or build the construction within the stipulated time, show-cause notice has been issued as to why the plot be not resumed as per Clause 7 of the agreement. In this backdrop, the appellant had challenged the enforceability of Clause 7 of the agreement taking aid of Section 11 of the Act. This contention was repelled in the following manner: (SCC p. 43, paras 16 & 17)
>
> > "16. However, the allottee has contended before the trial court that Clause 7 of the Agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled, according to us,

> rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, **the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act.** The section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, Section 31 of the TP Act is enough to meet the aforesaid contention. The section provides that-
>
> > 'on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.'

Illustration (b) to the section makes the position clear, and it reads:

> '(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.'
>
> 17. All that Section 32 of the Transfer of Property Act provides is that 'in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest'. If the condition is invalid, it cannot be set up as a condition precedent for crystallisation of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the Agreement between the parties is, therefore, valid and is binding on the parties thereto."

19. This legal position is not disputed. However, in the instant case, there was no such stipulation in the agreement to sell or the sale deed. It was in the allotment letter. On the contrary, insofar as Clause 7 of the sale deeds executed is concerned, the only condition imposed is that the purchaser shall use the land for the purpose of putting up a factory or factories duly

> permitted by the competent authority and for no other purpose. This makes all the difference between the two cases. Here, the undisputed fact is that the agreements/sale deeds entered into between the appellant Corporation and the respondents do not contain any clause which can be construed as "condition super-added"."

117. In **Indu Kakkar**, the Supreme Court, relying on Section 31 of the Transfer of Property Act, held that Section 11 is applicable only when an absolute interest is created in favour of the transferee. However, in the said case, industrial site was allotted by State Industrial Development Corporation in favour of the respondents with the condition super-added that it shall cease to exist in case the respondents failed to utilize the land for industrial purposes by constructing the industrial unit and such a condition was enforceable under Sections 31 and 32 of the Transfer of Property Act.

118. As noted above, the instant case is not a case of absolute transfer by sale and, therefore, Sections 10 and 11 of the Transfer of Property Act on which **A.P. Industrial Infrastructure Corporation Limited** (supra) was grounded are not applicable. Moreover, it was a case based on sole interpretation of the terms of contract. In the instant case, as already discussed, the respondent-Corporation, even independent of Clause 4.2 of the Allotment letter, continued to have power to cancel the lease in view of Clause 38 of the lease deed which saved all rights conferred on YEA under any law for the time being in force including Section 14 of the Act, 1976. The statutory power under Section 14 to resume the site was not whittled down in any

manner. The judgment in **A.P. Industrial Infrastructure Corporation Limited** (supra), is distinguishable and would be of no help to the petitioner.

(D) <u>Findings</u>:

119. **Issue nos. 2 and 3 are answered by holding that the allotment letters existed for limited purposes alongwith the lease deeds and, irrespective of Clause 4.2 of the Allotment letters, the YEA had the power to resume the site by virtue of Section 14 of UPIAD Act, independent of, and read with Clause 38 of the lease deeds. The impugned order, thus, has the effect of cancelling the lease deeds.**

<u>Issue No.4:</u> <u>Whether the petitioner's earlier Writ C- 47262/2017 challenging the decision taken by the respondent in its meeting dated 04.09.2017 for cancelling proportionate land would disentitle the petitioner from challenging present cancellation on the ground of proportionality?</u>

120. From perusal of the record, we find that the challenge in the earlier Writ Petition No. 47262 of 2017 was essentially based on the ground that there was no occasion even to proportionately cancel the land in view of the fact that the default in payment was due to various actions of the respondents themselves such as not approving building plans, etc.

121. During its pendency, the allotment of entire land was cancelled, which is under challenge in fresh writ petition. Sri Jayant

Bhushan, learned Senior Counsel for the petitioner, stated that in view of subsequent development, the challenge to proportionate cancellation has been rendered infructuous. He submitted that in case challenge to the entire cancellation succeeds, the petitioner will avail appropriate remedy for other reliefs. We are also of the view that the previous writ petition has lost its significance in view of subsequent challenge made to the order of 2020 whereby the entire allotment has been cancelled. The previously raised issues merged into subsequent writ petition and, hence, it cannot be said that the earlier writ petition would dis-entitle the petitioner from challenging the present cancellation order on any ground including the ground of proportionality.

122. **Issue No.4 is answered in favour of the petitioner and is decided accordingly but, simultaneously, we dispose of the Writ Petition No. 47262 of 2017 as infructuous.**

Issue No. 5: Whether the cancellation of the entire allotment for non-payment of some dues is excessive administrative action and hit by the doctrine of proportionality?

And

Issue No. 6: Whether the cancellation of the entire allotment was only on account of non-payment of dues or also on the account of purported defaults in development/construction?

And

Issue No. 7: Whether if the cancellation of allotment was on account of purported defaults in development/constructions, the cancellation is illegal?

123. While deciding issues No.2 and 3, we have held that it was within the power of YEA to pass the impugned order dated

12.02.2020 and resume the site of demise land in its entirety. However, submission of learned Senior Counsel for the JAL is that action of YEA in taking drastic action of cancelling the entire lease was inappropriate, unreasonable and violative of Article 14 of the Constitution and YEA should have taken least restrictive measures to recover its dues. Thus, it could have exercised power under Clause 38 of the lease which permitted YEA to recover its dues as arrears of land revenue. It would have subserved the ultimate purpose of recovering public money, while at the same time, causing minimal harm to JAL, the homebuyer and the financial institutions.

124. Elaborating the submission, it was urged that the lease deeds gave the petitioner the unfettered right to create third party rights including the power to sub-lease without permission of the Lessor i.e. the respondent No. 2; the permission to mortgage in favour of banks/financial institutions/lenders, etc.; it also gave the power to develop the land and the petitioner has spent a large amount of money in excess of Rs. 2,500 crores in developing the whole SDZ land including construction of the Formula One Racetrack (Buddha International Circuit); moreover, around the date of cancellation order, the petitioner had paid an amount of Rs. 2294.49 crores (including interest) against allotment amount of Rs. 1659.25 crores towards land premium and Rs. 195.73 crores (including interest) towards lease rent against Rs. 264.42 crores (including interest); the default in the present case was clearly not wilful or dishonest and at various stages,

the default ranged between 9% to 25% (total amount payable) when the cancellation was made; on the date when the cancellation was made, the cancellation of the entire allotment at that stage was, therefore, totally disproportionate. It was suggested that present value of the land is much higher than the dues of YEA. The dues of YEA, in case of recovery as arrears of land revenue, could have been satisfied by sale of only some part of the land or other assets of JAL and cancellation of entire allotment of 1000 hectares was per se illegal and arbitrary. It was urged that petitioner has already shown its *bona fide* by depositing more than Rs.200 crores towards principal amount in pursuance of the interim orders of this Court dated 25.02.2020, 08.02.2021 & 29.09.2022. Considering the amounts deposited by the petitioner and the development undertaken by it, the Cancellation Order is harsh, excessive and unreasonable and does not pass the test of proportionality. Reliance has been placed on the judgement of Supreme Court in **Teri Oats Estates (P) Ltd.**

125. Per contra, the contention of YEA is that the 'proportionality', in all its facets, has no application in the present case, which arises from a commercial and contractual relationship between the petitioner and the Authority; contractual actions cannot be questioned on the grounds of equity and proportionality if it can be shown that the action of the Authority was in terms of the contract, such as the present case, wherein the Authority terminated the petitioner's Allotments and the Lease Deeds in accordance with

Clause 4.2 of the Allotment Letters; the Authority had the power of cancellation of the Allotment and the Lease Deeds on the petitioner's defaults. The petitioner defaulted, which it does not dispute. Further, the petitioner failed to develop the SDZ Project including housing projects and maintain the Performance Bank Guarantee. Thus, there were valid grounds for cancellation and the Authority, in valid exercise of its contractual rights, terminated the Allotment and the Lease Deeds. The Authority took a decision of taking back of proportionate land in its 61st Board Meeting dated 04.09.2017. The same was also informed to the petitioner. The petitioner challenged the said decision before this Hon'ble Court in the connected Writ Petition No. 47262 of 2017 raising a specific ground that the Authority's said decision cannot override the terms and conditions of the Allotment Letter, Reservation Letter and the Lease Deeds and the Authority has no right under the Lease Deeds to take back lands belonging to the petitioner. The petitioner has also disputed the taking back of the proportionate land by letter dated 03.11.2017. In this backdrop and under these circumstances, the Re-Schedulement Plan of the dues was agreed in the 62nd Board Meeting of the Authority and communicated to the petitioner on 28.05.2018. However, the petitioner, even failed to make payment of the first and second installments of the Re-Schedulement letter. It is clear that after having challenged the decision of taking back of the proportionate land in the connected Writ Petition No. 47262/2017, the petitioner is making

contrary submissions in the present Writ Petition.

(A) <u>PROPORTIONALITY</u>:

(i) Precedents:

126. In **Teri Oats Estates (P) Ltd.,** on which much emphasis has been placed by Learned Senior Counsel for the petitioner, the Supreme Court explaining the doctrine observed that it is a test of reasonableness to adjudge the validity of any legislative or administrative action. It ensures that government actions are fair, just and not excessive. It requires that any action taken by the State or any administrative authority must be proportionate to the objective it seeks to achieve. Where several choices are available, the least restrictive measure should be taken. The origination of the doctrine in the 19th Century and the guiding principles for its application has been laid down in paras 40 to 53 of the judgement, the relevant parts of which are extracted for ease of reference:

> "**45.** The said doctrine originated as far back as in the 19th century in Russia and was later adopted by Germany, France and other European countries as has been noticed by this Court in *Om Kumar v. Union of India*.
>
> **46.** By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority
>
> > "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve".
>
> **47.** This Court as far back as in 1952 in *State of Madras v. V.G. Row*

observed: (AIR p. 200, para 15)

> "The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

48. The principle started gaining momentum in other countries and it was applied and developed in England as noticed by Lord Diplock in *R. v. Secy. of State for the Home Deptt., ex p Brind*. This Court in *Tata Cellular v. Union of India* while opining in concurrence with the judgment of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* that the extent of judicial review should ordinarily be limited to illegality, irrationality and procedural impropriety, observed that they are only the broad grounds but did not rule out addition of further grounds in the course of time and also noticed "*Brind*".

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. **Administrative action in India affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years**

> **even though it has not been expressly stated that the principle that is applied is the proportionality principle. (See Om Kumar)"**
>
> (emphasis supplied)

127. In **A.P. Industrial Infrastructure Corporation Limited**, the doctrine of proportionality has been explained by the Supreme Court as follows:

> "**20.** We do not agree with the contention of the appellant Corporation that the doctrine of proportionality is not applicable in these cases. In the realm of Administrative Law "proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities and reached a conclusion or arrived at a decision. **The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise — the elaboration of a rule of permissible priorities. *De Smith* also states that "proportionality" involves "balancing test" and "necessity test". The "balancing test" permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations."**
>
> (emphasis supplied)

128. In **Modern Dental College and Research Centre and Others v. State of M.P. and Others, (2016) 7 SCC 353,** the Constitution Bench of Supreme Court applied the doctrine of proportionality to ascertain the reasonableness of the restrictions imposed by legislation. The relevant portion, is extracted -

> "**63.** In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of "*proportionality*", which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are

necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in *R. v. Oakes*, in the following words (at p. 138):

> "To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom … Second ... the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test..." Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."

64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression "*reasonable restriction*" seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression "*reasonable*" connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see *P.P. Enterprises v. Union of India*). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the

restrictions are imposed or upon abstract considerations (see *Mohd. Hanif Quareshi v. State of Bihar*). In *M.R.F. Ltd. v. State of Kerala*, this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

> (1) The directive principles of State policy.
>
> (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
>
> (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
>
> (4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).
>
> (5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.
>
> (6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

(ii) Key Principles of Proportionality :

129. The following principles, therefore, emerge:

(a) The administrative action must have a lawful objective;

(b) The action taken must be appropriate to achieve the intended goal;

(c) The doctrine of proportionality is applied to test an administrative action to find out whether it is just and reasonable and not excessive;

(d) It ensures that discretionary powers are not exercised arbitrarily but reasonably and do not infringe on fundamental rights disproportionately;

(e) The measure adopted must be least restrictive or least burdensome for achieving the purpose; and

(f) The test of reasonableness is to be examined from the stand point of the interest of the general public and not from the point of view of the person against whom action is taken.

(iii) Restrictive Measures taken in terms of the Allotment letter and lease deeds :

130. Undoubtedly, the petitioner had committed default in payment of the sums required to be deposited in terms of Paragraph 3 of the lease deed read with Clause 3 of the Allotment letter. As one of the main grounds of defence is that the impugned order was passed as a last resort and after the Authority had exhausted several other restrictive choices, we first proceed to examine the steps taken in this regard -

(a) Issuance of Default Notices:

Between September 13, 2011, and August 25, 2015, the Authority sent a total of 21 default notices to the petitioner, requesting payment as per the terms of the Allotment Letters and Lease Deeds.

(b) Requests for Extension of Payment Deadlines:

On three separate occasions—via letters dated February 18, 2014, August 7, 2014, and December 1, 2014—the petitioner sought an extension for clearing its dues. In accordance with Clause 3.6 of the Allotment Letter, the Authority granted three extensions on February 21, 2014, August 13, 2014, and December 29, 2014, as a least

restrictive measure. Despite this, the petitioner failed to make timely payments.

(c) Rescheduling of Dues:

As of March 31, 2018, the petitioner had an outstanding balance of approximately INR 718 crores. Citing financial constraints, the petitioner requested a rescheduling of payments through letters dated August 22, 2017, March 8, 2018, and April 12, 2018. In response, the Authority agreed to a revised payment plan through a letter issued on May 28, 2018.

(d) Repeated Defaults Despite Rescheduling:

Even after agreeing to a rescheduled plan, the petitioner failed to make payments for the first two installments for over one and a half years. Specifically, payments for the first installment (approximately Rs.125 crores) and the third installment (approximately Rs.100 crores) were not made. In response, the Authority issued six additional Default Notices on October 16, 2018, December 3, 2018, December 13, 2018, August 19, 2019, October 31, 2019, and December 9, 2019. Instead of paying the overdue amounts, the petitioner continued seeking further extensions under the rescheduled plan.

(e) Final Extension and Non-Compliance:

As another least restrictive measure, the Authority granted an extension until December 31, 2018, for the petitioner to deposit the first installment under the revised plan. However, by the deadline, the petitioner deposited only Rs.10 crores, far below the expected first

installment amount of approximately Rs.108 crores. The petitioner, then, requested another extension until February 15, 2019.

(f) Invocation of Performance Bank Guarantee to Cover Defaults:

On June 18, 2019, the petitioner requested the Authority to encash a performance bank guarantee worth Rs. 100 crores to settle outstanding dues. Subsequently, on July 2, 2019, the Authority invoked the bank guarantee and applied the amount toward the unpaid dues. This action was supposedly based on Clause 2.3 of both the Reservation Letter and the Allotment Letter. On 31st October 2019, the Authority directed the petitioner to restore the performance bank guarantee since the earlier one had been adjusted towards the outstanding. However, the petitioner failed to do so.

(g) Escrow Agreement:

To facilitate payments, both parties entered into an Escrow Agreement on September 24, 2019. However, despite this arrangement, the petitioner failed to fulfill its obligations. By February 28, 2020, only approximately Rs. 47.09 lakh had been deposited in the escrow account.

(h) Final Opportunity to Rectify Defaults:

Despite multiple attempts by the Authority to resolve the situation and provide ample opportunities for the petitioner to clear its defaults, the petitioner failed to comply. As a result, the Authority issued a Show Cause Notice on December 9, 2019, offering a final chance to rectify the defaults.

(iv) Other restrictive measures taken :

131. The record further reveals that when the petitioner insisted upon not cancelling the entire allotment and to act in proportion to the default committed by it, the Board took up the matter in its meeting dated 04.09.2017 at item No.61/2016 in which decision was taken to resume land proportionate to the default committed by the petitioner. The exact decision is quoted herein-under:-

> "संचालक मण्डल द्वारा प्रस्ताव पर विचारोपरान्त निम्न निर्णय लिये गयेः–
>
> . प्रस्ताव–1 जो कि विदेश बैंक के पक्ष में बन्धक – अनुमति से सम्बन्धित है को संचालक मण्डल द्वारा अस्वीकार कर दिया गया।
>
> प्रस्ताव–2 प्रस्ताव पर चर्चा के दौरान संचालक मण्डल द्वारा मैं, जेपीएसआई को सैक्टर–25 में आवंटित एस.डी.जेड. योजना के अंतर्गत दिनांक 31.08.2017 तक कुल बकाया धनराशि का संज्ञान लिया गया। तद्क्रम में देनदारी के सम्बंध में निर्णय लिया गया कि चूँकि जे०पी० द्वारा प्राधिकरण को दिनांक 31.08.2017 तक एस०डी०जेड० परियोजना की मूल धनराशि, लीज रेन्ट तथा 64.7 प्रतिशत अतिरिक्त प्रतिकर के सापेक्ष कुल रू,1453.40 करोड़ की देनदारियों का भुगतान नहीं किया गया है अतः ऐसी स्थिति में उक्त धनराशि के सापेक्ष समानुपातिक भूमि प्राधिकरण द्वारा जे०पी० से वापिस ली जाये। यह भी सुनिश्चित कर लिया जाये कि वापिस ली जाने वाली भूमि जे०पी० द्वारा किसी को सब–लीज, आवंटित अथवा जे०पी० द्वारा आवंटित किसी योजना का भाग न हो।
>
> भविष्य में भी जब–2 जे०पी० द्वारा समय पर किश्तों का भुगतान न किया जाये तो डिफाल्टिड धनराशि के सापेक्ष समानुपातिक भूमि समय–2 पर जे०पी० से वापिस ली जाये।
>
> एस.डी.जेड. सैक्टर–25, यमुना एक्सप्रेसवे क्षेत्र में जे०पी० द्वारा स्कैप की गई विभिन्न परियोजनाओं यथा बुद्धा सर्किट–1 आदि के सब–आवंटियों के हितों को सुरक्षित रखते हुये यह निर्णय लिया गया कि जे०पी० द्वारा 31 अक्टूबर, 2017 तक पूर्व निर्णय के आधार पर सभी सब–आपंटियों को वापिस नही किया जाता तो समस्त धनराशि के विपरीत समानुपातिक भूमि वापिस ले ली जाए तथा उक्त संस्तुति के साथ प्रस्ताव शासन को इस अनुरोध के साथ प्रेषित किया जाये कि शासन उक्त भूमि के निस्तारण हेतु भूमि को विक्रय कर आवंटियों को धनराशि वापिस कराने के

सम्बन्ध में समुचित व्यवस्था करा दे।"

132. The petitioner challenged the said decision before this Court through Writ Petition No. 47262 of 2017 raising a specific ground that the Authority's said decision cannot override the terms and conditions of the Allotment Letter, Reservation Letter and the Lease Deeds and the Authority has no right under the Lease Deeds to take back lands belonging to the petitioner. The petitioner also disputed the taking back of the proportionate land by letter dated 03rd November 2017. In this backdrop and under these circumstances, the Re-Schedulement Plan of the dues was agreed in the 62nd Board Meeting of the Authority and communicated to the petitioner on 28th May 2018. However, the petitioner even failed to make payment of the first and second instalment of the Re-Schedulement letter. Ultimately, cancellation order was passed.

133. The chain of events establishes beyond doubt that at every stage since after issuance of allotment letters vis-a-vis execution of lease deeds, YEA continued to not only ask the petitioner to act according to contractual stipulations but also restrained itself from taking any strict action which was in fact contemplated by the terms of agreements/lease deeds. YEA accepted request of the petitioner made from time to time, may it be as regards granting further time to make deposits by re-schedulement or otherwise.

(v) Factors considered :

Default in payment of dues :

134. The lease deeds were executed in favour of the petitioner between 2009-11. The last lease deed is dated 28.3.2011. The petitioner had paid 20% of the premium amount in terms of the allotment letter and the balance 80% of the premium was to be paid in twenty half yearly instalments along with interest on reducing balance @ prevailing SBI PLR. The first half yearly instalment had fallen due after 180 days from the date of issue of the allotment letter. The petitioner started making default right from the year 2011. It was served with first default notice on 13.09.2011 followed by twenty more default notices upto August, 2015.

135. As per the terms of agreement between the parties apart from the amount specified towards premium and lease rent, which was payable in twenty half yearly instalments, the petitioner was also liable to pay the cost of land acquisition. It is not in dispute that consequently the petitioner was also liable to pay additional compensation, which constituted a component of the land acquisition cost. The demand in this regard was raised by YEA by letter dated 15.12.2014 for a sum of Rs. 759,19,02,236.54 and the petitioner was permitted to deposit the same in four half yearly instalments.

136. The petitioner in its affidavit dated 12.10.2023 (6th Supplementary Affidavit) disputed the amounts being claimed by

YEA towards balance loan premium, lease rent, additional compensation and in paragraph-13 disclosed the amount due according to it as sum of Rs.10,67,78,65,669. Paragraph-13 is extracted below:

> "13. That in view of the above submissions it is clear that the petitioner is only liable to pay a total of Rs.1067,78,65,669/- under the following heads:
>
> (a) Balance Land Premium as on 12.02.2020 i.e. the date of cancellation order - Rs. 547,77,22,591/-),
>
> (b) Lease Rent up to 12.02.2020 i.e. the date cancellation order- 68,68,93,823/-
>
> (c) Additional Compensation 451,40,40,275/-."

137. In paragraphs 14 & 15 of the same affidavit, the petitioner has stated as follows:

> "14. The Petitioner is willing and ready to pay to YEIDA and undertakes to pay the balance amount of Rs. 1067,78,65,669/- as under:-
>
> i) 75% within 6 months from the date of final order of Hon'ble High Court.
>
> ii) Balance 25% within 9 months from the date of final order of Hon'ble High Court
>
> 15. That the Petitioner also submits that it will undertake the construction of the housing projects launched by it and shall complete the same within a period of 06 months to 30 months from the date YEIDA approves its building plans."

138. In response to the said affidavit, the respondent-Authority, has come up with its own stand in paragraph-4 of its affidavit dated 25.10.2023. Paragraph-4 is extracted below:

> "4. At the outset, the Authority submits that a total amount of approximately Rs. 36,21,50,48,491/- [INR 3621 Crores] is pending and due from the Petitioner as of 30 November 2022 under

the following heads:

Sl. No.	Head	Amount [INR]
1.	Premium	9,981,785,782.21 [approx. 998 Crores]
2.	Lease Rent	3,580,201,571.85 [approx. 358 Crores]
3.	Additional Compensation	22,653,061,136.90 [approx. 2265 Crores]
	Total	36,21,50,48,491 [INR 3621 Crores]

139. At this stage, even if we go by the figures given by the petitioner, we find that the sum which was due against the petitioner was a much higher sum and not merely 9% to 25% of the total amount. The submission in respect of amount due based only on premium and lease rent, does not have any force, in view of the admitted liability to pay a heavy sum towards additional compensation, as well.

Assessment of financial health of the petitioner and failure to fulfill obligations towards homebuyers:

140. Admittedly, the home buyers of various projects of JIL, a Special Purpose Vehicle (SPV) created by the petitioner, approached the Supreme Court in Writ Petition (Civil) No. 744 of 2017 (Chitra Sharma and others vs. Union of India and others) seeking various directions for protection of their interest. In the said case, the Supreme Court has taken notice of the fact that the RBI constituted a Internal Advisory Committee (IAC). It took up for consideration accounts which were classified either partly or wholly non-performing from amongst the top 500 exposures in the banking system as on 31 March

2017. As a first step, the IAC recommended all such non-performing asset accounts with fund and non-fund based outstandings exceeding Rs 5,000 crores. JIL was one of the twelve accounts in respect of which directions have been issued to banks for initiating insolvency resolution. Subsequently, the IAC recommended that in respect of those accounts where 60% or more had been classified as NPAs as on 30 June 2017, banks may be directed to implement a viable resolution plan within six months failing which the accounts may be directed for a reference under the IBC by 31 December 2017. The petitioner company was one such entity. No viable resolution plan could be found as a result of which it is also required to be referred for CIRP. The judgment also takes note of the fact that JAL was classified under the SMA – II category (demands overdue for more than 60 days) by banks as early as on 3 October 2014 and as an NPA since 31 March 2015. Further observation in the said judgment is that "*The facts which have emerged before the Court from the application filed by the RBI clearly indicate the financial distress of JAL and JIL. .. ……. Accordingly, we accede to the request made on behalf of the RBI to allow it to follow the recommendations of the IAC to initiate a CIRP against JAL under the IBC"*.

141. According to the petitioner, it has paid a total sum of Rs.2294.48 Crores under various heads to the respondent-Authority, and had invested Rs.2500 Crores in carrying out development of core and non core areas, thus, it had spent Rs.4794.48 Crores. The

petitioner, in the written note supplied to the Court, admitted that it had so far sold 2500 residential plots between 2011-2016. The petitioner has taken stand that in four of its group housing schemes there is provision for 2750 units out of which 2155 have been sold while 595 remained unsold. The petitioner is stated to have taken huge amount as financial assistance from financial institutions and other lenders against mortgage of different parcels of land of SDZ. It had also created sub-lease in favour of financial institutions to secure financial assistance. However, the exact amount obtained by it as financial assistance by monetizing the land has not been disclosed.

142. In Writ Petition No. 8909 of 2021 filed by Suraksha Asset Reconstruction Limited, it is stated that the petitioner company took financial assistance from different banks and as a consequece of default, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 dated 21.05.2019 was given to it demanding outstanding amount of Rs.692,54,27,494.92 as on March 31, 2019.

143. Here, we may note that according to Clause 10.1 of the allotment letters, the petitioner had to complete minimum 40 per cent of the permissible covered area of core activity within a period of ten years from the date of execution of last lease deed for the land falling in the core activity area of SDZ land. Vide Clause 15.1 of the allotment letters, it was the obligation of the petitioner to obtain applicable sanctions, approvals and clearances from the Authority.

The petitioner also had to develop non-core area including group housing projects.

144. In the connected writ petition filed by a homebuyers' association [Jaypee Sports City Welfare Society & Anr. v. State of U.P. & Ors., Writ C No. 21532 of 2021], it is stated that most of the flats/plots were allotted by the petitioner from year 2011 onward and at the time of allotment, substantial amount of money was taken from the allottees as per terms of allotment. The petitioner undertook to deliver possession within 18 to 24 months from the date of allotment. Thus, the possession was to be given around the year 2014-15. However, even after lapse of ten years, the petitioner company had failed to complete the projects. Most of the projects have not even started of and the others are partially complete with only skeleton structure in place. The details of the projects of the petitioner company registered with Real Estate Regulatory Authority (RERA) along with status of construction prevailing at the relevant time has been given in paragraph10 which is as follows:

Status of Projects

Name of Project	**Project Type**	**RERA Registration No.**	**Original Launce Date**	**RERA Registration Date**	**RERA Completion Date**	**Current Status**
Jaypee Greens Bougainvilleas, SDZ, YEW	Large Residential Plots	UPRERAPRJ5436	30-08-2012	29-07-2017	31-12-2014	No Infrastructure present on this plotted development, no proper roads, no water supply,

						no sewage connection, no parks, club or any other amenities available.
Jaypee Greens Country Homes-I, SDZ, YEW	Residential Plots	UPRERAPRJ5440	16-01-2010	29-07-2017	30-11-2011	No Infrastructure present on this plotted development, no proper roads, only kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Country Homes-II, SDZ, YEW	Residential Plots	UPRERAPRJ5443	08-05-2012	29-07-2017	30-11-2014	No Infrastructure present on this plotted development, no proper roads, only kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Greencrest Homes, SDZ, YEW	Residential Plots	UPRERAPRJ5446	18-09-2012	29-07-2017	31-01-2015	No Infrastructure present on this plotted development, no proper roads, only

						kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Krowns, SDZ, YEW	Residential Plots	UPRERAPRJ5445	22-10-2010	29-07-2017	28-02-2012	No Infrastructure present on this plotted development, no proper roads, only kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Buddh Circuit Studios-I, SDZ, YEW	Residential Apartments	UPRERAPRJ4818	22-04-2013	29-07-2017	31-03-2021	No actual work is done, all is in planning stage only, no approvals available. Site is an empty plot.
Jaypee Greens Kassia I, SDZ, YEW	Residential Apartments	UPRERAPRJ4716	19-02-2011	29-07-2017	31-12-2019	Outside brick structure work is done and rest all the works are stopped since 2012 and no construction has been done since then.

Jaypee Greens Kassia II, III, SDZ, YEW	Residential Apartments	UPRERAPRJ4751	09-02-2011	29-07-2017	31-12-2020	Various towers on different stages only brick structure walls are done and rest all the works are stopped since 2012 and no construction has been done since then.
Jaypee Greens Kove, SDZ, YEW	Residential Apartments	UPRERAPRJ4777	29-06-2011	29-07-2017	30-06-2022	Few towers on different stages only brick structure walls are done and rest all the works are stopped since 2012 and no construction has been done since then. Construction site is covered from all around but when looking inside one can see that whole site is submerged in water for a floor or two in depth and can be seen as if underground water has come out on site.
Jaypee Greens Sportsville, SDZ, YEW	Independent Houses	UPRERAPRJ5424	15-01-2015	29-07-2017	30-06-2020	No Infrastructure present on this plotted development, no proper

						roads, only kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Villa Expanza Country Homes-II, SDZ,	Independent Houses	UPRERAPRJ5415	05-10-2013	29-07-2017	31-03-2020	No Infrastructure present on this plotted development, no proper roads, only kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.
Jaypee Greens Villa Expanza Greencrest Homes, SDZ, YEW	Independent Houses	UPRERAPRJ5048	14-09-2013	29-07-2017	30-06-2020	No Infrastructure present on this plotted development, no proper roads, only kaccha road is built with few electric poles with no light, no water supply, no sewage connections, no parks, club or any other amenities available.

145. It is also asserted that in ten residential projects, out of total receivable of Rs.2433.41 Crores, the petitioner company had recovered around Rs.1900 Crores which comes to 80% of the dues and only Rs.532.64 Crores was left to be paid at the time of handing over possession. The said petition also makes a specific reference to the observations made by the Supreme Court in **Chitra Sharma** regarding financial incapacity of the petitioner and loan of around Rs.30,000 Crores, making it bankrupt for all practical purposes. It is pleaded in various paragraphs of the writ petition that the petitioner company is financially incapable of completing the projects and delivering the same to the home buyers. Although, in the said writ petition no counter affidavit was invited and therefore, the petitioner did not reply to the pleadings made in the writ petition but it has filed several affidavits in Writ Petition No. 6049 of 2020 specifically pertaining to the issues involving the allottees and home buyers and therein, it had failed to offer any satisfactory explanation in relation to its commitment to the homebuyers but only limited its pleadings to the amount spent by it for development of core and non core areas. When the petitioner tried to set up plea of bonafides and equity, it was expected from it to have furnished specific details of the amount raised by it by monetization of land whether by way of sale, allotment, mortgage, charge, collateral security, sub-lease, or any other manner.

146. In fact, we find considerable force in the case set up by the home buyers as well as the Authority, that the petitioner had realized

almost 80% of the total receivables from allottees/home buyers and it is for the said reason that escrow arrangement made on 24 September 2019 to facilitate liquidation of dues of YEA, could fetch a meagre sum of Rs.47.09 Lakh approximately and failed to achieve the purpose.

147. According to YEA, a total 61 group housing projects were proposed to be developed by the petitioner in the non core areas. All these 13 housing projects were sub-leased. No development work was undertaken by the petitioner on the remaining projects despite completion of dead line. The petitioner had collected large amounts of the money from home buyers for these projects and it was receiving repeated complaints from the home buyers against the petitioner for its failure to develop the housing projects. Therefore, the YEA, while cancelling the allotment has also considered the grievance of the home buyers and cancellation order is also intended to protect the interest of the home buyers.

148. We have already noted the facts stated in the impugned cancellation order and it makes a specific reference to the default committed by the petitioner in failing to develop the SDZ project and fulfilling its obligations towards homebuyers. It also specifically mentions about various complaints received from the homebuyers and a meeting convened by the Authority between the representatives of the petitioner-Company and the Homebuyers Association. It also mentions about assurance given by the representative of the

petitioner-Company to redress all the grievances of the homebuyers and take steps for completion and delivery of possession to them but that the petitioner-Company failed to abide by its commitment.

149. A close reading of the cancellation order reveals that the basic ground for cancellation was default on part of the petitioner-Company in failing to pay the dues of the Development Authority. Even, last show-cause notice dated 09.12.2019 was for alleged non-payment of the dues of the Authority and not on account of non-development and, therefore, we agree with the submission of learned Senior Counsel for the petitioner that non-development could not be a ground for cancellation. At the same time, we are not inclined to accept the submission that the reference to certain non-development in the cancellation letter is only on account of reiteration of the facts leading to the defaults and cancellation. While holding that the recital regarding non-development was not ground for cancellation it was a relevant consideration while cancelling the allotment in entirety, even, on ground of non-payment of dues. Likewise, the obligation of the petitioner-Company to the homebuyers, another important stakeholder of the SDZ policy, was also duly kept in mind. It shows that the Authority consciously took into consideration different factors, which were necessary for attaining the goal of planned development of the area and objectives of the SDZ policy. This, in fact, is a strong countervailing factor in favour of the Authority to repel the contention that its action was arbitrary and taken in undue haste.

150. The Authority on basis of these facts came to the conclusion that the only re-course, which was left with it was to cancel the lease. Apart from non-developmental aspect of core and non-core areas and interest of homebuyers, the Authority must have had in mind the looming insolvency of the petitioner evident from its past repeated and consistent defaults. It would be worthwhile to notice at this stage the reply given by the petitioner on 10.01.2020 in response to the last show-cause notice dated 09.12.2019 wherein the petitioner-Company admitted its obligations towards various stakeholders and stated that it had already taken steps to liquidate its hydro and cement plants which had outlived their commercial life of fifty years, worth Rs.50,000 crores, to meet its liabilities towards the lenders. However, the situation did not improve but rather worsened.

151. As elaborated above, the sole and primary objective of the allotment under the SDZ policy was to ensure planned development along the Yamuna Expressway. The respondent being the nodal agency to oversee proper implementation of SDZ project and as a Development Authority for the area while deciding what action was to be taken in the facts of the instant case should be given sufficient leeway to decide what specific measure would be in larger public interest. For the said purpose, it was competent to, and had rightly, considered different aspects regarding non-development, interest of homebuyers and sub-lessees.

Tests to decide proportionality:

152. In ***Subramanian Swamy Vs. Union of India, Ministry of Law & others, 2016(7) SCC 221***, the Supreme Court has held that the test for ascertaining reasonableness in the context of the doctrine of proportionality has to be examined in an objective manner from the standpoint of the interest of general public and not from the point of view of the person upon whom the restrictions are imposed or abstract consideration. The relevant part of the judgement wherein these observations have been made is extracted below:-

> "When a law limits a constitutional right which many laws do, such limitation is constitutional if it is proportional. The law imposing restriction is proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. Such limitations should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. **Reasonableness is judged with reference to the objective which the legislation seeks to achieve, and must not be in excess of that objective. Further, the reasonableness is examined in an objective manner from the standpoint of the interest of the general public and not from the point of view of the person upon whom the restrictions are imposed or abstract considerations."**
>
> (emphasis supplied)

153. The Supreme Court, in **State of Madras v. V.G. Row: AIR 1952 SC 196** held that test of reasonableness has to be applied on a fact to fact basis and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.

154. If we apply the above tests, we are of the view that it was necessary for the Authority to have kept in mind the interest of all the stakeholders and larger public interest and not the point of view of

petitioner only against whom the action was directed. Similarly, if the Authority had taken into account only the aspect of realisation of its dues, its action would have been rendered vulnerable.

Teri Oats:

155. As regards proportionality, the petitioner placed very heavy reliance on the judgment in **Teri Oats v. UT of Chandigarh: (2004) 2 SCC 130 ("Teri Oats").** However, we find that the said judgment is not applicable to the facts of the present case. In the said case, the allottee had completed the construction of the building but could not immediately let out the same because area was underdeveloped. Again in **Teri Oats**, the lessee had paid the entire principal amount due towards installments and lease rent during the pendency of its writ petition. The lessee therein even paid penalty on the forfeited amount of entire consideration money. However, in the present case, the petitioner has a large outstanding towards the principal amount of land premium, lease rent and additional compensation. In **Teri Oats**, there was no issue of public interest and the harm to the homebuyers. However, the present case involves significant public interest issues, particularly concerning homebuyers who have suffered due to the petitioner's inaction. The Authority's obligation to protect public interest and ensure the planned development of the SDZ project justifies its decision to cancel the allotment.

156. **Teri Oats** was passed in peculiar facts and circumstances of that case. The judgement itself notes that the

question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will be dependent upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard and fast rule can be laid down therefor. In the present case, the Cancellation Order has not been found to be arbitrary but a necessary response to the petitioner's material breaches, which have been well-documented through a series of notices and opportunities granted to the petitioner to comply.

157. Further, the judgment in **Teri Oats** has been distinguished and not relied upon by the Hon'ble Supreme Court in **HUDA v. Des Raj Chawla, (2018) 16 SCC 30** (paragraph 7) which is extracted for ease of reference:

> "7. The learned counsel appearing on behalf of the respondents has placed reliance on the decision of this Court in Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh) in which it has been laid down that the power of resumption and forfeiture of money deposited by the lessee in case of default in making due payment should be exercised sparingly. However, we find that the said case is totally on different factual matrix. Whereas the plot was to be transferred, there was delay in making payment. As such, the case referred to, has no application to the instant case. Though, power to resumed allotment was not to be on trivial breach buy on material breach, we find that the case at hand was the one in which blatant misuse was there. Thus, the power of resumption was rightly exercised."

158. Again in **State (UT of Chandigarh) Vs. Hari Ram,** the judgment in **Teri Oats** was distinguished on facts. The relevant observations are:-

> "8. For holding that the cancellation of allotment would cause hardship to the respondent and that one more opportunity has to be given to him to pay the outstanding dues, the High Court has relied upon in *Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh)*. In *Teri Oat Estates*, the respondent thereon earlier paid the instalment amount and during the pendency of the matter before the Court the respondent thereon paid a substantial amount towards the dues payable together with interest at the rate of 12%. It is in those facts and circumstances, in *Teri Oat Estates*, the Supreme Court held that resumption of the land and the building would cause extreme hardship which may be faced by the parties and the same shall not ordinarily be resorted to. In order to maintain an appropriate balance, in Teri Oat Estates, the Supreme Court observed that the matter warrants application of the doctrine of proportionality.
>
> 9. In the present case, after the allotment, the respondent has paid only the initial payment and has not paid the first, second and third instalments and the ground rent which fell due on 25-12-1997, 21-12-1998 and 25-12-1999 and in spite of several opportunities, the respondent has not paid the amount. When the respondent has consistently defaulted in payment of the premium/instalments, it is open to the competent authority to take action in accordance with the law."

159. We also find substance in the submission of the Authority based on **Uttar Haryana Bijli Vitran Nigam Ltd. (supra), Shivali Enterprises (supra), Alcon Electronics Pvt. Ltd. (supra)** to the effect that the contract between the parties was for the entire land for the purposes of planned development and once we are satisfied that the petitioner failed to adhere to the terms of the allotment and lease deeds, the Authority was justified in cancelling the entire allotment in public interest and as a last resort keeping in view of the purpose for which SDZ project had been set into motion.

(vi) Attempts made towards amicable settlement but failed:

160. During pendency of the proceedings before this Court a

proposal was submitted by the petitioner - company for revival of the project and to liquidate its liabilities towards the Authority as well as homebuyers/allottees. Several attempts were made by the Court to get the dispute resolved amicably. Initially, the Authority, pursuant to resolution dated 02.06.2021 at its 70th Board Meeting, agreed to restore the allotment subject to payment of 10% towards restoration charges. However, the petitioner did not agree to the same. It challenged the same by amendment, but at the time of hearing, no submission was made regarding the validity of the charges except that in case the cancellation is quashed, there would be no question of paying restoration charges. Vide order dated 29.09.2022, this Court again required the petitioner to disclose how it intends to revive the projects and liquidate all its liabilities towards Authority as well as homebuyers. In pursuance thereof, a revised composite settlement proposal was submitted by the petitioner. It was considered by the Board of the Authority at its 75th meeting dated 02 December, 2022 and again the parties failed to resolve the matter amicably. The aforesaid facts are recorded in the order dated 13.07.2023 passed on the application filed by the petitioner to allow it one year time to sell 150 acres of land in the core area Sector 25 under SDZ scheme to raise funds to liquidate the dues of YEA. The order also records the claim and counter claim of the parties in respect of the sum due and payable by the petitioner to YEA, which are extracted below:-

> "7. Relying on the chart dated 09.5.2023 submitted by him, Sri Bhushan would submit, at most YEIDA is claiming Rs.

3621,50,48,489/-. It is inclusive of all demands being made by it from the petitioner (both disputed and undisputed).

8. Referring to its right to contest the cancellation of allotment of land, for the interim, it has been strenuously urged by him that the petitioner is willing to go along with YEIDA and deposit a reasonable amount of money as may be enough to discharge the just dues of YEIDA, as also to secure the disputed amounts, pending this petition.

9. Thus, relying on the counter proposal submitted by YEIDA, it has been submitted, even according to the best case of YEIDA, it has not paid and has yet not incurred any liability to pay interest on additional compensation that may have been paid to any of the original tenure holders/land owners. That notional interest (on additional compensation), has been quantified at Rs. 1506,11,58,900/-. If that be excluded (for the time being) from Rs.3621,50,48,489/-(the total amount being demanded by YEIDA), balance amount would come to about Rs.2115,38,89,589/-.

10. In the first place, to secure that amount, the petitioner has offered to dispose of 150 acres of land in the "Core Area" of Sector-25 such that it may generate enough revenue (to pay off the above noted amount), being roughly Rs. 2715,00,00,000/-. It would be more than enough to discharge the liability of about Rs. 2115 crores, noted above. As to the balance amount of about Rs. 600 crores, he would submit, the same may be retained in an escrow account that may abide by the final outcome of the writ petition.

11. As to the amount of Rs. 1506 crores and odd being claimed towards interest on additional compensation, Sri Bhushan has urged, that demand has yet not crystalised. In fact, it has no legal basis. In absence of any liability incurred in law and in absence of any computation shown to exist, that demand may be stayed in entirety, during the pendency of writ petition.

12. As to the mode and method to deposit Rs. 2715 crores, as noted above, 150 acres of land in the Core Area has been proposed to be sold. As to the time period, after much deliberation held over the last more than three hearings, it has emerged, not less than one year time would be required to make good that deposit. Here, it may be noted, at one stage petitioner had also proposed that it may give up about 100 acres of land in the Core Area to YEIDA against the demand of Rs. 2115 crores (approximately). However, that proposal was stoutly rejected by YEIDA."

(vii) Insolvency established:

161. It is not in dispute that after the impugned cancellation order

was passed, the petitioner, due to its defaults, was admitted to insolvency proceedings before NCLT. The Tribunal, by order dated 03.06.2024 (Annexure no.1 to the petitioner's 8th supplementary affidavit), disposed of the proceedings. The operative portion of the order of NCLT reads as under:-

> "102. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
>
> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
>
> (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
>
> (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002;
>
> (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
>
> (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
>
> (f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
>
> (g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

> 103. We direct the Financial Creditor to deposit a sum of Rs.3 lakh with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
>
> 104. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
>
> 105. I.A. No. 263 of 2024 is disposed off and IA No. 406 of 2023 is dismissed as infructuous accordingly.
>
> 106. List the matter on 08.07.2024 for filing of the progress report/further proceeding."

162. The petitioner challenged the order dated 03.06.2024 before the NCLAT vide Company Appeal (AT) (Insolvency) No.1158-1162 of 2024. NCLAT dismissed the appeal by judgment dated 06.12.2024, Annexure no.2 to Civil Misc. Application No.77 of 2024 filed on behalf of the respondent no.2 that was taken on record by this Court's order dated 03.01.2025 that reads as under:-

> "1. Application placed before us as per roster.
>
> 2. Ms. Gunjan Jadwani, appearing on behalf of the Resolution Professional, states that she does not intend to make any submission, as the order of NCLAT sought to be brought on record, is a matter of record.
>
> 3. Consequently, the application be kept on record."

163. Various Civil Appeals bearing Nos.98-102 of 2025 and 211-212 of 2025 along with various intervention applications were filed before the Apex Court assailing the aforesaid orders. The same were dismissed by the Supreme Court by order dated 10.01.2025,

which reads as under:-

"ORDER

> We do not find any good ground and reason to interfere with the impugned judgment(s)/order(s); hence, the appeals are dismissed.
>
> Pending application(s), if any, shall stand disposed of."

164. It is noteworthy that NCLAT, while dismissing the appeal, has duly noted the submission of SBI that more than Rupees Fifty Thousand Crores had been waiting for resolution since 2016.

165. Thus, the apprehension of respondent - Development Authority regarding impending insolvency of the petitioner, while deciding what action it should take in relation to continued defaults committed by the petitioner also stood established. The SDZ policy provided for various parameters to assess solvency of applicants applying for development of SDZ. Although, the petitioner qualified the said criteria and succeeded in procuring allotment but after some time it started committing defaults and progressed to a stage where its ability to complete the project came under serious doubt. The Authority, therefore, while deciding the course of action to be taken, had rightly considered the financial health of the petitioner and its ability to complete the same and once it was in doubt it cannot be said that the authority acted unreasonably and arbitrarily in not taking recourse to further restrictive measures.

B – <u>FINDINGS</u>:

166. **Thus, Issue no.5 is decided by holding that the cancellation of entire allotment is not hit by doctrine of proportionality nor was illegal for any other reason.**

167. **Issues no.6 and 7 are decided by holding that while passing the cancellation order, the Authority had considered several factors including default in development/construction but the cancellation was primarily on ground of non-payment of the dues of the Authority.**

<u>The fate of money paid by the petitioner so far to YEA in pursuance of allocation/allotment/lease:</u>

168. We may note that by order dated 25.02.2020, the petitioner was directed to deposit a sum of Rs.100 crores in two parts, i.e. Rs.50 crores by 10.03.2020 and another Rs.50 crores by 25.03.2020. The petitioner deposited a sum of Rs.50 crores on 09.03.2020 and due to various reasons, it could not deposit remaining Rs.50 crores by 25.03.2020 but deposited only Rs.5 crores on 16.03.2020. Recording these facts and the undertaking give by the petitioner, this Court passed an order dated 08.02.2021 directing the petitioner to deposit Rs.52,50,26,551/- with an observation that after such deposit, in case the petitioner moves an application for re-structuring and re-computing the dues payable by it, the same shall be considered by the respondent authority in accordance with law. The said amount was deposited. Thereafter, by order dated 29.09.2022, the petitioner was

directed to deposit a sum of Rs.100 crores. This amount was deposited by the petitioner and an affidavit dated 02.11.2022 was filed to that effect. Accordingly, the petitioner has deposited Rs.50 crores + Rs.5 crores + Rs.52,50,26,551/- + Rs.100 crores (Total Rs.207,50,26,551/-).

169. Although, Shri Manish Goyal submits that, in the facts of the case, the amount deposited by the petitioner is liable to be forfeited by YEA, we are not inclined to accept the said submission of Sri Goyal. The reason lies in the specific language incorporated in Section 14 of the Act of 1976, which is again quoted as under:-

> "**14. Forfeiture for breach of conditions of transfer.-** (1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority or any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, **the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money if any paid in respect thereof.**
>
> (2) ……

170. A bare perusal of Section 14 (1) would reveal that two powers are vested in the Chief Executive Officer under the said provision. The first power is to resume the site or building transferred by the Authority and the second power is to forfeit either the whole or any part of the money, if any, paid by the transferee. In case of forfeiture for breach of conditions of transfer, the Authority is vested with power to resume the site or building and "**may further forfeit**

the whole or any part of the money, if any, paid in respect thereof". Thus, every case of forfeiture of the site does not automatically entail forfeiture of the money paid to the Authority. The Authority is given discretion to forfeit **in whole or any part** of the money paid to it. Undoubtedly, if such power is exercised, it has to be based on consideration of all relevant facts and circumstances. The impugned order does not record that the Authority while resuming the site has forfeited the money paid to it by JAL. JAL claims that it had invested in excess of Rs.2500 crores in developing SDZ land so far. The total sum deposited by JAL, in relation to which there is no serious dispute, was Rs.2294.49 crores (including interest) towards land premium and Rs.195.73 crores (including interest) towards lease rent. Undoubtedly, the Authority must have had in its mind the fact that despite default, a huge sum was spent over the years in development of the site, and upon resumption it would get partially developed site. Moreover, the plea of proportionality has been repelled treating the impugned order as an order of cancellation of lease simplicitor and not an order of forfeiture of the money paid to the Authority. The Court cannot add words to the order impugned that is to say that it cannot read the order impugned going beyond what it actually recites, particularly when the Court is examining all the aspects relating to the action of the Authority. While we find no error as regards exercise of power of resumption of the site or building, we are satisfied that the second power vested in the Authority, i.e. to

forfeit either whole or any part of the money deposited by the petitioner, has not been exercised by YEA. Therefore, we are of the view that the order impugned does not result in either express or implied forfeiture of the amount deposited by the petitioner so far. As a corollary to the same, the Authority shall be obliged to refund to JAL the money received by it till the time lease was cancelled, except to the extent permitted vide paragraph 187(D).

171. As insolvency of YEA has been admitted and proceedings as per IBC are pending before NCLT, therefore, we are of the opinion that the entire money paid by the petitioner to YEA should be placed at the disposal of NCLT for being dealt with as per provisions of **Insolvency and Bankruptcy Code, 2016** as the order passed by NCLT admitting the petitioner to insolvency process, has already been upheld by NCLAT and, then, by the Supreme Court. The amount shall be dealt with as per the directions of Resolution Professional (RP). This is being done so as to take care of the interest of the financial institutions also as the public money is involved in facilitating funds to the petitioner. Though it is urged on behalf of the respondent YEA that it has first charge over assets of the petitioner-company which include cement plants, engineering and constructions division, various five star hotels and certain other plant machinery, we refrain ourselves from expressing any opinion on the said aspect in view of pendency of insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) before NCLT **[vide Mohammed Enterprises (Tanzania)**

Ltd vs. Farooq Ali Khan and others: 2025 SCC Online SC 23; Committee of Creditors of KSK Mahanadi Power Co. Ltd. vs. Uttar Pradesh Power Corporation Ltd. and others: 2024 SCC Online SC 4013; Chitra Sharma Vs. Union of India; AIR Online 2018 SC 1215].

Issue No. 8: Effect of cancellation on sub-lessees in favour of homebuyers and financial institutions

172. The cancellation order specifically mentions that it does not take in its fold the sub-leases. The sub-leases were between JAL and third parties. YEA was not privy to the contract. Sub-leases would not survive, unless appropriate directions are issued to make the same binding upon YEA. The interests of various stakeholders are diverse and sometimes conflicting, while at other times they align. We recognize that achieving a perfect balance is not possible, but we have made every effort to strike a fair balance in the given situation.

172(i). During course of hearing of the writ petitions, the respondent-Authority was required to clarify its stand in relation to sub-lessees of JAL and the homebuyers. In compliance, an affidavit dated 26.7.2024 was filed on behalf of the Authority by Manager (Admin)/General, YEA disclosing the manner in which YEA would protect the interest of the sub-lessees and homebuyers in case the impugned order is upheld. In respect of homebuyers, the stand taken is as follows: -

Interest of Homebuyers:-

"11. While the present proceedings are pending, and the interim order of status quo (order dated 25 February 2020) remains in operation, the Respondent Authority cannot take any steps for rehabilitation of the incomplete group housing which effects homebuyers/allottees.

12. If the Cancellation Order is upheld and the lands allotted to the Petitioner become free from the legal encumbrance, the following options are available for rehabilitation of the entire project including the incomplete group housing project undertaken by the Petitioner (not sub-lessees, whose rights remain protected under the Cancellation Order).

13. One option is to re-auction the whole land including the group housing projects inter alia with the following conditions:

i. the bidder shall pay the outstanding dues of the Respondent Authority as on the date of submission of the bid; and,

ii. the bidder shall be required to complete the incomplete housing projects of the homebuyers on priority basis and deliver the units booked/allotted to them expeditiously on the same terms and conditions already entered by homebuyers with the Petitioner.

14. Given the appreciation in the value of land, the project will not only be viable, but it will also be economically lucrative to prospective bidders. Such rehabilitation will ensure that the homeowners in the group housing projects receive their housing units as expeditiously as possible, and the project is developed anew.

15. **Alternatively**, the other option for the Respondent Authority is to undertake the development of the housing projects by itself, complete the construction of the housing units and deliver the same to the homebuyers/allottees."

173. Since interest of the homebuyers is vitally involved, therefore vide order dated 26.7.2024, notice was issued to the Authorized Representative (Mr Amar Pal) for the purpose of representation of the homebuyers in the instant litigation. Pursuant thereto, on his behalf, an affidavit dated 28.8.2024 has been filed, listing the issues concerning the homebuyers and the directions which should be passed to protect their interest in case the impugned order is upheld. Thus, it has been prayed on behalf of the homebuyers that

direction be issued to YEA to submit an updated fresh proposal containing detailed mechanism and timelines to ensure completion of the housing projects; authorized representative for the homebuyers be made part of the decision making process/construction committee related to the said project and the views of the homebuyers presented through authorized representative should be considered while taking any decision; existing agreement between the homebuyers and JAL should be honoured by YEA; amount agreed to be paid, amount already paid and the amount payable, should be as per the agreement entered into with JAL and the record maintained in this behalf by YEA and YEA/new developer should honour the same; orders obtained by homebuyers from various courts should be honoured by YEA/new developer in the same manner as it was supposed to be honoured by YEA; homebuyers should not be required to pay any extra charge to YEA/new developer; sale/auction money should be deposited in an Escrow account and the same should be used exclusively for completion of the pending projects; U.P. Real Estate Regulatory Authority be directed to ensure compliance of directions of this Court.

174. In continuation, another affidavit dated 30.8.2024 was filed stating that the Authorized Representative has received a list of homebuyers from the team of Resolution Professional (RP) on 6.8.2024, containing details of 4,638 homebuyers of the Sport City Project of JAL. The same has been enclosed along with the affidavit.

It is also stated that Jaypee Sport City Welfare Society, through its representative, participated in a joint audio-video meeting held by the Authorized Representative of the homebuyers. In the said meeting, 284 individual homebuyers also participated. Thereafter, the Vice President of JPSCWS sent an e-mail (dated 25.8.2024), reflecting the sentiments of the homebuyers and on that basis submissions have been made.

175. Undoubtedly, the homebuyers are one of the major stakeholders in the present dispute. In fact, the main ground which impelled YEA to resort to the extreme step of resumption of the leased land is inordinate delay on part of JAL in abiding by the timelines prescribed for completing the constructions, resulting in immense difficulties to the homebuyers. Further, as noted, YEA has also filed affidavit reiterating its commitment to safeguard the interest of the homebuyers and the steps it would take in this respect. It is therefore necessary to issue directions to ensure that YEA fulfills its commitment and interest of the allottees/homebuyers is protected.

176. The first concern, as noted above, is regarding timely completion of the housing projects. As per pleadings in Writ – C No. 21532 of 2021, JAL was under obligation to deliver the flats/plots to the allottees within 18 – 24 months from the date of allotment. It was around the year 2014 – 2015. Almost five years has elapsed since then. Undoubtedly, a time schedule has to be framed for completion of the housing projects. Accordingly, the following directions are

issued: -

176(a). "Interest of the homebuyers of various projects of the petitioner shall not be affected in any manner on account of the impugned order. YEA, as per its commitments, will take over the projects and will ensure completion of the same on same terms and conditions, as agreed to between the petitioner company and the homebuyers in the following time frame--

(i) Projects, which are at least 75% complete -- 1 year

(ii) Projects, which are at least 50 % complete -- 18 months

(iii) Projects, which are at least 25 % complete -- 30 months

(iv) others -- 36 months"

176(b). For timely completion of the housing projects, YEA shall ensure that the plan regarding completion of the housing projects and other formalities including selection of developer, is finalized positively within three months from today.

176(c). A Committee comprising of (i) Principal Secretary, Housing and Industrial Development; (ii) Chairman of UPRERA; (iii) CEO, YEA or his nominee and (iv) Authorized Representative for Class of Creditors, i.e. Homebuyers (hereinafter referred to as 'Committee') shall be formed by the State Government within four weeks from today. The said Committee will oversee compliance of timelines regarding completion of the housing projects.

176(d). As noted, an order of status quo has operated in favour of JAL since 25.2.2020 and on account of which, no construction could be made. The homebuyers cannot be made to suffer on account of default on part of JAL as well as the order of status quo. Therefore, we are of the opinion that the period starting from the date of passing

of the impugned order, i.e. 11.2.2020 till today should be declared as zero period (dies-non). The position of the homebuyers would be restored to the date as immediately preceding the date of passing of the impugned order, i.e. 11.2.2020. Accordingly, they would not be charged any interest or penalty or any other amount for the said period. This direction, in our opinion, would to a great extent, nullify the effect of passing of the impugned order and the order of status quo.

176(e). YEA will, within four weeks, appoint a Nodal Officer, who should be a gazetted officer (or equivalent) to decide any issue regarding remaining amount payable by homebuyers. The homebuyers will be at liberty to raise grievance regarding the same before him and it shall be decided within four weeks from the date the dispute in writing is received. While taking decision, the Nodal Officer shall have regard to the terms of allotment/agreement and other relevant factors and the documents/records maintained in this regard by JAL or those filed by the allottee.

176(f). For timely execution and completion of the housing projects, YEA shall at all times make available necessary funds irrespective of the sum collected by it from the allottees. This direction is being issued keeping in mind the own stand of YEA that the value of land has appreciated several times and the housing projects would be economically lucrative and viable.

176(g). Any claim of homebuyers against JAL coming within the

purview of pending insolvency proceedings before NCLT, including recovery of any sum from JAL in pursuance of any order or direction against JAL will remain protected.

176(h). Any right or remedy available to the homebuyers under the Real Estate (Regulation and Development) Act, 2016 and the Consumer Protection Act, 2019, or under any other law, shall also remain protected.

176(i). In **Chitra Sharma** (supra) it has been noted in paragraph 44 of the judgment that only 8% of the homebuyers have opted for refund, while 92% have chosen not to claim refund. It has been highlighted by the Authorized Representative of the Homebuyers that due to the loss of income, retirement, or the death of the original allottee or the family's primary breadwinner, some allottees may be unable to meet the criteria for obtaining additional bank loans. Furthermore, the physical and financial health of homebuyers may have deteriorated due to old age, illness, or infirmity, making it impractical for them to continue their prolonged struggle to secure a home that has long been denied to them. Therefore, an exit policy should be framed for such allottees.

Given the considerable time that has passed since the project's scheduled completion, we acknowledge that some allottees may wish to opt out and seek a refund. Therefore, a well-defined exit policy must be formulated. This policy should strike a balance between the interests of the authority and the homebuyers.

Accordingly, we leave it open to the Committees, which includes homebuyer's representative, to frame the same.

If any allottee chooses to withdraw from the project, the corresponding unit shall become available for sale by YEA. Consequently, all refund claims shall be borne by YEA.

The exit policy, in our opinion, should provide for payment of a reasonable sum as interest on the investments made by any individual allottee. Keeping in mind the structure of interest during last ten years and to balance the interest of both the sides, we provide that the policy should inter alia provide for refund along with simple interest @ 9% per annum.

The exit policy shall be given wide publicity in press and electronic media.

Interest of sub-lessees :

177. The impugned cancellation order itself provides that interest of the sub-lessees is protected, as sub-lease in their favour has not been terminated. The YEA in supplementary counter affidavit dated 26.07.2024 has clarified its stand in respect of the same as follows:-

> "7. As evident from the Cancellation Order itself, the interests of the Petitioner's sub-lessees are protected as the sub-lease in their favour has not been terminated. The Cancellation Order ensures that the allotment of any sub-lease would not be cancelled so long as the dues are regularly and timely paid to the Respondent Authority, thus ensuring continuation of sub-leases.
>
> 8. The sub-lessees' interests under the sub-lease are thus fully protected and they will be able to enjoy the same without any disruption so long as they continue to comply with the obligations under the sub-lease and also those under the relevant lease with the

> Respondent Authority under which the sub-lease has been granted, so far as they are applicable to them. This is evident from the correspondence with the sub-lessees. By way of illustration, the correspondence with one such sub-lessee is annexed herewith as Annexure 1.
>
> 9. After passing of the Cancellation Order, the sub-lessees have been making payments directly to the Authority, and their sub-leases have not been cancelled."

177(a). Protection of the rights of sub-lessees of JAL is possible only when YEA recognises them as its lessees. For said purpose, YEA shall have to enter into lease agreement with the sub-lessees. Undoubtedly, the terms and conditions should be the same, as between JAL and the sub-lessees subject to right of YEA to recover its dues. As a necessary corollary to the above exercise, YEA would be entitled to retain proportionate sum realised from the petitioner till the passing of the impugned cancellation order.

177(b). The necessary documentation work would be carried out in this regard within twelve weeks from today. The YEA shall give individual notices to the sub-lessees within four weeks from today and shall also issue public notice. The sub-lessees will complete the formalities for entering into the lease agreement with YEA within next eight weeks. All expenses in this behalf shall be borne by YEA.

177(c). The above direction is without prejudice to the rights under sub-lease deeds between the sub-lessees and JAL. Upon execution of lease-deed, YEA will stand substituted in place of JAL on same terms and conditions as contained in sub-lease deeds between JAL and sub-lessees.

Interest of Financial Institutions :

178. We cannot ignore the fact that huge interest of financial institutions is also involved in the present case. M/s Suraksha Asset Reconstruction Company Ltd. (Writ – C No. 8909 of 2021) as 'asset reconstruction company', claiming security interest, in leasehold rights of some part of the leased land, has also challenged the cancellation order, to protect its security interest.

179. ICICI Bank Limited ("**ICICI Bank**") had filed Civil Misc. Impleadment Application No.5 of 2020, in its individual capacity for its exclusive facility, to protect its interest as (i) a mortgagee and (ii) a sub-lessee, which was allowed vide order dated February 8, 2021. Furthermore, ICICI Bank had also filed an Impleadment Application bearing I.A. No. 6 of 2020 on behalf of the consortium of lenders, i.e. State Bank of India, Union Bank of India (erstwhile Corporation Bank), Punjab National Bank (erstwhile Oriental Bank of Commerce), The Lakshmi Vilas Bank Limited, IFCI Limited, Axis Bank Limited, ICICI Bank, Assets Care and Reconstruction Enterprise Limited (acting in its capacity as trustee of ACRE-86-Trust and assignee of loans of Yes Bank Ltd), LIC of India, Bank of Maharashtra, IDBI Bank, J&K Bank, Bank of India, South Indian Bank Assets Care and Reconstruction Enterprise Limited (acting its capacity as trustee of ACRE-98-Trust and assignee of loans of Karnataka Bank Ltd), Asset Reconstruction Company (India) Limited (assignee of loans of L&T Infrastructure Finance Company Ltd.) and Canara Bank (collectively

referred hereinafter as "**Consortium of Lenders**"), which were allowed vide different orders.

179(a). It may be noted that Axis Bank and Standard Chartered Bank have also filed impleadment applications on behalf of their respective consortiums and have also been impleaded in the Writ Petition.

179(b). It has been submitted on behalf of the Consortium of Lenders/Financial Institutions that in order to arrange funds for the purpose of, inter alia, meeting the cost of development and operation of the sports infrastructure project of JAL and payment of other liabilities owed by JAL, JAL approached multiple lenders, including ICICI Bank and the Consortium of Lenders, which extended multiple credit facilities to JAL. The credit facilities were secured inter alia:

> (a) in case of ICICI Bank as the sole lender, by an exclusive mortgage/charge over a part of the leasehold property to the extent of 25 acres, in favour of IDBI Trusteeship Services Limited (acting as Security Trustee to ICICI Bank), vide a deed of mortgage dated July 07, 2014. The land parcels admeasuring 23.5 acres were subsequently released by the security trustee (IDBI Trusteeship Services Limited) in favour of JAL vide a deed of re-conveyance dated June 30, 2017. Thus, at present, land admeasuring 1.5 acres of leasehold land (which forms part of land parcels allotted to JAL under the SDZ) continues to be exclusively mortgaged ("**Exclusive Mortgage**") for the benefit of ICICI Bank. The Exclusive Mortgage was duly registered and was validly created in favour/ for the benefit of ICICI Bank; and
>
> (b) in case of Consortium of Lenders, by the common security created for the benefit of the Consortium of Lenders on *pari passu* basis vide mortgage over a part of certain leasehold land parcels allotted to JAL under the SDZ, to the extent of 588.42 acres, in favour of Axis Trustee Services Limited, i.e. the security trustee acting for the benefit of the Consortium of Lenders. The aforesaid security creation was done by way of the registered mortgage vide Indenture of Mortgage dated September 1, 2015. The aforementioned mortgage was re-mortgaged by JAL by way of a registered mortgage vide Indenture of Mortgage dated December 30,

2016 to re-align the constitution of the consortium of lenders of JAL, thus, securing a total loan of INR 23,490.75 crores.

179(c). It is stated that the Lenders, with a bona-fide intent, disbursed enormous amounts of loans to JAL basis inter alia the strength of the security interest created in favour of/ for the benefit of Lenders. Furthermore, the aforesaid mortgage was validly created in favour/ for the benefit of the Lenders.

179(d). The said cancellation of the allotted plots/ lands by YEA has directly affected the interests of the Lenders in as much as certain parts of the said allotted plots/ lands were mortgaged in favour of/ for the benefit of the Lenders to secure the loan facilities sanctioned by Lenders in favour of JAL.

179(e). As per the Cancellation Order, the cancellation would not have an adverse impact on the lands that have been sub-leased in favour of various parties so long as YEA's dues are satisfied. Pertinently, YEA in its Supplementary Affidavit dated July 26, 2024 ("**Supplementary Affidavit**") filed in this Writ Petition, has also acknowledged that the interest of sub-lessees are protected as the sub-lease in their favour has not been terminated.

179(f). However, despite the same, YEA has proceeded to issue ten letters dated July 12, 2024 ("**YEA Letters**") threatening to cancel the Sub-Lease Deeds on the alleged ground that ICICI Bank is not willing to carry out construction work on the lands sub-leased under the Sub-Lease Deeds, by obtaining the map approvals for the same. While ICICI Bank has made detailed representations in reply to the YEIDA

Letters, narrating the challenges in undertaking the construction/ obtaining map approvals, till date ICICI Bank has not received any response/acknowledgement to the response to YEA Letters.

179(g). It is contended that YEA, while it has made submissions on record to protect the interest of sub-lessees, in complete contravention to the same, it has also issued letters threatening to cancel the rights of financial institutions under the Sub-Lease Deeds. Therefore it is submitted that YEA should not be permitted to act in such high-handed manner.

179(h). On the other hand, Shri Manish Goyal, learned Senior Counsel for YEA submitted that JAL being the principal debtor is liable for the loans given by the financial institutions to it. The financial institutions had and will continue to have right to recourse against JAL, the principal debtor, and financial institutions will be entitled to recover their outstanding loans from it. Moreover, JAL besides the leasehold interest in the land, which is the subject matter of the present litigation, has several other assets of its own and that of its subsidiary companies including cement plants, engineering and construction division assets, heavy construction equipment and machinery, various five-star hotels.

179(i). The financial institutions did not have any interest in the land, which is and continues to be, owned by the Authority. The financial institutions have, however, acquired security interest in the leasehold right that the petitioner has acquired under the lease deeds

in its favour through mortgage. Such security interest ceases to subsist once the lease is cancelled due to default of the petitioner in payment of dues under the terms of the Lease.

179(j). Without prejudice to the above, it is submitted that in any event the Authority has the first charge, which has priority over the claims of the Financial Institution.

180. Indisputably, from 09 July 2013 till 15 January 2015, the Authority permitted the petitioner to mortgage the land in core and non-core area from time to time. Around 660 Hec. of land had been mortgaged by the petitioner to its lenders. Four permissions were granted on 09 July 2013, two permissions were granted on 18 November 2013, one each on 22 August 2014, 25 August 2014 and 15 January 2015.

181. These permissions were subject to the condition that the Authority would have first charge over all interests in the land and its claim will have priority over the claims of the banks and financial institutions in whose favour the mortgage is being created. The said permissions also provide as follows:

> "2....The YEIDA's charge on the property shall be Superior first charge over and above first charge of all the lender banks to the extent of the amount payable to YEIDA by JPSI towards installment, interest, penal interest, lease rent, penalties & other dues, if any, in terms of letters of allotment of land and lease deeds executed between YEIDA and JPSI. The mortgage deed to be executed between JPSI and the lender banks/financial institution shall include that the Authority's charge on the land shall always be superior and prior to all other charges created and/or to be created in others favours and shall be subservient to the charge of the Authority by whatever name or nomenclature it may have.
>
> 3. JPSI has to ensure the payments to the Authority as envisaged in

> the lease deeds of the said land in time and in case project financing from bank/financial institutions in the said land contains the cost of land then period payments to the authority shall be made before entering into the mortgage deed and or utilizing this mortgage permission, otherwise authority shall be free to take actions considering as a defaulter in payment as stipulated in the lease deed to recover such amounts."

182. The main crux of the argument of learned counsel appearing on behalf of the Financial Institutions and Consortium of Lenders is that the lease, if cancelled, would result in great prejudice to the Financial Institutions. Learned counsel do not dispute that the security interest of the Financial Institutions in the land would come to end by operation of law consequent upon resumption of the site. The same is also admitted in paragraph 32 of the writ petition filed by Suraksha Asset Reconstruction Co. Ltd. (Writ-C No. 8909 of 2021). Thus, the remedy of the Financial Institutions would be against the principal borrower as provided by Section 68 of the Transfer of Property Act, 1882. Further, in view of insolvency proceedings before NCLT, we refrain from making any comment in respect of the claim of the lenders or priority of charge of the parties. We clarify that any incidental observation made in the instant order touching upon the claim of lenders/financial institutions except to the extent of sub-lesees in their favour, shall have no effect, nor influence the proceedings pending before NCLT.

183. It is noteworthy that while considering effect of resumption order, it has been held that YEA would be liable to refund the entire money deposited by JAL with the Authority and the same shall be

placed at the disposal of NCLT. The said amount would be part of the corpus of JAL to be dealt with as per the provisions of IBC. This will, to some extent, also take care of the interest of the Financial Institutions. More over, the sub-leases in favour of the Financial Institutions as stated in the impugned order and also in the stand taken by YEA in the supplementary counter affidavit dated 26.07.2024 stand protected.

184. One of the concerns of the Financial Institutions is that while on one hand YEA has taken the stand that it will safeguard the interest of the sub-lesees but in complete contravention to the same, it had issued letters threatening the Financial Institutions to cancel their sub-lease deeds on the ground of breach of condition of lease relating to raising of constructions over the demised land. It is submitted that the Financial Institutions are engaged in banking activities and are forbidden in law to undertake development of land and allied activities. The sub-lease in favour of the Financial Institutions were created with consent of YEA by way of security for the money advanced to JAL.

185. We find considerable force in the submission. Undoubtedly, the Financial Institutions cannot be expected to engage in development of land and construction activity. The sub-lease was obtained by the Financial Institutions to protect the money advanced to JAL. The same was admittedly with the consent of YEA and in terms of the provisions of the allotment orders/lease deeds, YEA is

committed to protect interest of the sub-lessees, which would apply to all sub-leases including the lease in favour of financial institutions. We are, therefore, of the opinion that the Financial Institutions should be permitted to assign their interest in favour of third party. Accordingly, we issue the following directions in respect of sub-leases in favour of the financial institutions :-

(a) Sub-leases in favour of the financial institutions will stand protected in terms of the impugned order.

(b) YEA in order to give effect to its commitment that sub-leases would not get affected, would give option to the financial institutions to obtain lease on same terms and conditions, as between the financial institutions and YEA in their own favour or in favour of their assignee, subject to its right of recovery of dues.

(c) The documentation work shall be completed within four weeks from the date, request is made in this behalf by the Financial Institutions for which the outer limit would be twelve weeks from the date of the passing of the instant order.

(d) YEA would be entitled to retain sum realized from JAL till the passing of the cancellation order on pro-rata basis.

Further Directions:

186. The following amounts shall, within six weeks, be returned by YEA to JAL by transferring the same to the account of RP appointed by NCLT.

(1) Any amount deposited by JAL in pursuance of orders passed in the present litigation along with the prevailing interest (SBI PLR) from the date of deposit till the date of refund.

(2) All other amounts received by YEA so far from JAL in furtherance of the allotment and lease whether prior to cancellation or thereafter in proportion of the area of land resumed. Thus, YEA shall be entitled to retain proportionate amount received for the area covered by sub-leases, which stand excluded from the purview of impugned order.

CONCLUSION:

187. In view of the discussion made above, Writ - C No. 47562 of 2017 is disposed of as infructuous, whereas Writ – C No. 6049 of 2020, Writ – C No. 21532 of 2021 and Writ – C No. 8909 of 2021 and various intervention applications by home-buyers, sub-lessees, and Financial Institutions stand disposed of with the following directions:-

(A) Homebuyers:

(a) Interest of the homebuyers of various projects of the petitioner shall not be affected in any manner on account of the impugned order. YEA, as per its commitments, will take over the projects and will ensure completion of the same on same terms and conditions, as agreed to between the petitioner company and the homebuyers in the following time frame--

(i) Projects, which are at least 75% complete -- 1 year
(ii) Projects, which are at least 50 % complete -- 18 months
(iii) Projects, which are at least 25 % complete -- 30 months
(iv) others -- 36 months"

(b) For timely completion of the housing projects, YEA shall ensure that the plan regarding completion of the housing projects and other formalities including selection of developer, is finalized positively within three months from today.

(c) A Committee comprising of (i) Principal Secretary, Housing and Industrial Development; (ii) Chairman of UPRERA; (iii) CEO, YEA or his nominee and (iv) Authorized Representative for Class of Creditors, i.e. Homebuyers (hereinafter referred to as 'Committee') shall be formed by the State Government within four weeks from today. The said Committee will oversee compliance of timelines regarding completion of the housing projects.

(d) The period starting from the date of passing of the impugned order, i.e. 11.2.2020 till today should be declared as zero period (dies-non). The position of the homebuyers would be restored to the date as immediately preceding the date of passing of the impugned order, i.e. 11.2.2020. Accordingly, they would not be charged any interest or penalty or any other amount for the said period.

(e) YEA will, within four weeks, appoint a Nodal Officer, who should be a gazetted officer (or equivalent) to decide any issue regarding remaining amount payable by homebuyers. The homebuyers will be at liberty to raise grievance regarding the same before him and it shall be decided within four weeks from the date the

dispute in writing is received. While taking decision, the Nodal Officer shall have regard to the terms of allotment/agreement and other relevant factors and the documents/records maintained in this regard by JAL or those filed by the allottee.

(f) For timely execution and completion of the housing projects, YEA shall at all times make available necessary funds irrespective of the sum collected by it from the allottees. This direction is being issued keeping in mind the own stand of YEA that the value of land has appreciated several times and the housing projects would be economically lucrative and viable.

(g) Any claim of homebuyers against JAL coming within the purview of pending insolvency proceedings before NCLT, including recovery of any sum from JAL in pursuance of any order or direction against JAL will remain protected.

(h) Any right or remedy available to the homebuyers under the Real Estate (Regulation and Development) Act, 2016 and the Consumer Protection Act, 2019, or under any other law, shall also remain protected.

(i) A well defined exit policy, keeping in mind the observations in paragraph 176(i) shall be framed by the Committee.

(B) Sub-lessees:

(a) YEA shall enter into lease agreement with the sub-lessees. Undoubtedly, the terms and conditions would be the same, as between

JAL and the sub-lessees subject to right of YEA to recover its dues. As a necessary corollary to the above exercise, YEA would be entitled to retain proportionate sum realised from the petitioner till the passing of the impugned cancellation order.

(b) The necessary documentation work would be carried out in this regard within twelve weeks from today. The YEA shall give individual notices to the sub-lessees within four weeks from today and shall also issue public notice. The sub-lessees will complete the formalities for entering into the lease agreement with YEA within next eight weeks. All expenses in this behalf shall be borne by YEA.

(c) The above direction is without prejudice to the rights under sub-lease deeds between the sub-lessees and JAL. Upon execution of lease-deed, YEA will stand substituted in place of JAL on same terms and conditions as contained in sub-lease deeds between JAL and sub-lessees.

(C) Financial Institutions:

(a) Sub-leases in favour of the financial institutions will stand protected in terms of the impugned order.

(b) YEA in order to give effect to its commitment that sub-leases would not get affected, would give option to the financial institutions to obtain lease on same terms and conditions, as between the financial institutions and YEA in their own favour or in favour of their assignee, subject to its right of recovery of dues.

(c) The documentation work shall be completed within four

weeks from the date, request is made in this behalf by the Financial Institutions for which the outer limit would be twelve weeks from the date of the passing of the instant order.

(d) YEA would be entitled to retain sum realized from JAL till the passing of the cancellation order on pro-rata basis.

(D) The following amounts shall, within six weeks, be returned by YEA to JAL by transferring the same to the account of RP appointed by NCLT: -

(i) Any amount deposited by JAL in pursuance of orders passed in the present litigation along with the prevailing interest (SBI PLR) from the date of deposit till the date of refund.

(ii) All other amounts received by YEA so far from JAL in furtherance of the allotment and lease whether prior to cancellation or thereafter in proportion of the area of land resumed. Thus, YEA shall be entitled to retain proportionate amount received for the area covered by sub-leases, which stand excluded from the purview of impugned order.

188. Subject to the above directions, the impugned cancellation order dated 12.02.2020 is upheld.

189. No order as to costs.

Order Date :- 10.03.2025
Jaideep/AKShukla/Ankit./-

(Kshitij Shailendra, J.) **(Manoj Kumar Gupta, J.)**