

The Supreme Court of India upholds inclusion of subsidiary assets in resolution plans through lifting of the corporate veil

In an important decision involving the role of industrial development authorities in the Corporate Insolvency Resolution Process (“CIRP”) of its lessees/ allottees, the Supreme Court of India (“Supreme Court”) in *Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority*¹ has overturned a decision of the National Company Law Appellate Tribunal (“NCLAT”) dated January 30, 2023 (“Impugned Order”), filed by Greater Noida Industrial Development Authority (“GNIDA”).

By way of the Impugned Order, the NCLAT had set aside the National Company Law Tribunal’s (“NCLT”) approval of 3 (three) project-wise resolution plans of Earth Infrastructures Limited (“CD”). The NCLAT held that the said plans erroneously included the assets of the CD’s subsidiaries, without seeking permission for transfer from GNIDA, being the principal lessor/owner of the said assets. Accordingly, the NCLAT made GNIDA part of the CIRP, and issued directions to the Resolution Professional (“RP”) to invite fresh resolution plans which may be considered only after payment of GNIDA’s dues and obtaining necessary permissions for transfer of assets to the CD.

The Supreme Court allowed the appeals filed by the successful resolution applicants, namely Alpha Corp Development (“Alpha”) and Roma Unicon (“Roma”) against the Impugned Order. In doing so, the Supreme Court lifted the corporate veil to permit the inclusion of the assets of the CD’s subsidiary in the project-wise resolution plans, and accordingly upheld the said plans. The Supreme Court also highlighted the continuous inaction of GNIDA to pursue its claims under CIRP, and reiterated the strict timelines contemplated by the Insolvency and Bankruptcy Code, 2016 (“IBC”).

Brief facts

- GNIDA had executed lease deeds for 3 (three) separate plots with Earth Towne Infrastructures Private Limited (“ETIPL”), Neo Multimedia Limited (“NML”), and Nishtha Software Private Limited (“NSPL”). ETIPL, NML, and NSPL were all subsidiaries of the CD, and in effect, the CD was undertaking the development of all 3 (three) plots.
- At the instance of a financial creditor, CIRP was initiated against the CD, *vide* an order dated June 6, 2018, passed by the NCLT.
- During the insolvency process, GNIDA did not submit its claim in respect of the leased plots, despite the RP informing GNIDA about the ongoing CIRP against the CD.

¹ Civil Appeal No. 1526 of 2023 (decided on May 05, 2026)

4. Pursuant to issuance of Form G by the RP, Roma and Alpha submitted respective project-wise resolution plans of the CD, which were approved by the NCLT *vide* separate orders. The said resolution plans dealt with the plots leased to the CD's subsidiaries and treated them as the assets of the CD.
5. Despite GNIDA's failure to submit its claim in a timely manner, both Roma and Alpha undertook to satisfy the estimated dues of GNIDA, without transferring the burden to the homebuyers. Roma and Alpha also undertook to complete construction and deliver the pending projects.
6. In January 2022, GNIDA filed an appeal against the NCLT's approval of the resolution plans. The NCLAT issued the Impugned Order, allowing GNIDA's appeals on the ground that the resolution plans dealt with third party assets of the CD, and the same had been included without seeking permission of GNIDA. The NCLAT also observed that GNIDA was required to be made party to the CIRP by the RP before approval of the resolution plans.
7. The successful resolution applicants, Roma and Alpha, along with the CD, approached the Supreme Court in the present civil appeal(s). GNIDA also filed a cross-appeal against the Impugned Order, on the grounds that the NCLAT had restrained it from levying penal interest due to delay and inaction on its part.

Issues

The main issues for consideration were the following:

1. whether Roma and Alpha could have treated the assets of ETIPL, NML, and NSPL as the CD's assets in their resolution plans; and
2. whether GNIDA erred in not raising its claim in a timely manner during CIRP and not monitoring the progress of the various projects being developed by the CD on its leased plots?

Findings and analysis

On conduct of GNIDA

1. The Supreme Court observed that GNIDA was duly informed about the initiation of CIRP by the RP but failed to intimate its dues in time or respond to the RP satisfactorily. GNIDA failed to proactively pursue its claims and filed them either belatedly or after the approval of the resolution plans by the NCLT.
2. Despite the operation of a *status quo* order in respect of the plots, GNIDA cancelled the allotment of NML and NSPL, which it later withdrew and apologised for.
3. GNIDA cannot approbate and reprobate, claiming that the CD does not have any right over the leased plots, while simultaneously insisting on repayment of its dues under the CIRP.
4. GNIDA was well aware that the development rights over the leased plots controlled by EIL were included in the CIRP, as was correctly mentioned in the Information Memorandum.
5. GNIDA merely sent 'intermittent and sporadic' default notices without following up on a regular basis. Crucially, most notices were issued after the commencement of the CIRP.
6. GNIDA cannot feign ignorance of the fact that the CD was executing development of the projects, which is borne out from its own communications. GNIDA failed to keep track of and monitor the development of the projects, displaying persistent inaction and ineptitude.

On inclusion of assets of CD's subsidiaries in the resolution plan

1. Relying on decisions in *Life Insurance Corporation of India vs. Escorts Limited and Ors.*², and *ArcelorMittal India Private Limited vs. Satish Kumar Gupta and Ors.*³, the Supreme Court observed that the CD and its subsidiaries (i.e., ETIPL, NML, and NSPL) were inextricably connected so as to form part of one concern, thus a fit case to lift the corporate veil.
2. The Supreme Court observed that EIL was the 'main driving force' in the development of the projects as well as payment of GNIDA's dues, and the subsidiary companies were merely a front. Accordingly, the Supreme Court deemed it unnecessary to deal with the issue raised under Sections 18⁴ and 25⁵ of the IBC *re* the scope of the term 'assets'.
3. Accordingly, the Supreme Court upheld the inclusion of development rights held by the CD's subsidiaries in the resolution plans approved in respect of the CD.

Limited adoption of legacy stalled projects policy

1. The Supreme Court took note of the Government of Uttar Pradesh's policy dated December 21, 2023 ("**2023 GO**"), by way of which stalled real estate projects were proposed to be rehabilitated by offering concessionary measures to allottees regarding terms of payment.
2. The Supreme Court observed that while the 2023 GO is applicable only to group housing projects, the principles underlying the policy, i.e. to secure completion of stalled development projects, may be applied to commercial projects "*to some extent to suit the present situation*".
3. Accordingly, the Supreme Court applied the 2023 GO to Roma and Alpha, and directed that no penal interest, time-extension charges, and other penal charges may be levied by GNIDA in the recovery of its pending dues.

Final order and directions issued

1. The Supreme Court granted a 24 (twenty-four) month extension to Roma and Alpha (commencing from June 1, 2026), during which they are directed to clear the pending dues of GNIDA, sans any penal/time-extension charges, as mentioned above. For this extended 24 (twenty-four) month period, owing to its material lapses, GNIDA would also not be entitled to any interest on the principal amount of its dues.
2. Subject to these conditions, the Supreme Court restored the resolution plans of Alpha and Roma. The Supreme Court also directed Alpha and Roma to complete their respective pending projects within the timeframes indicated in their resolution plans.
3. The Supreme Court also directed Roma and Alpha to satisfy GNIDA's dues without burdening the homebuyers/allottees of units.
4. Accordingly, the Supreme Court allowed the civil appeals filed by Roma and Alpha against the Impugned Order, and dismissed the appeal filed by GNIDA.

The judgment thus reinstated the resolution plans of Roma and Alpha, overturning the Impugned Order passed by the NCLAT, and passed detailed directions to both GNIDA and the successful resolution applicants regarding the completion of pending projects and delivery of units to homebuyers.

² (1986) 1 SCC 264

³ (2019) 2 SCC 1

⁴ Section 18 of the IBC deals with the duties of the Interim Resolution Professional which includes taking over of the 'assets' of the corporate debtor under CIRP.

⁵ Section 25 of the IBC deals with the duties of the Resolution Professional, including taking custody and control over the 'assets' of the corporate debtor under CIRP.

Conclusion

1. The present judgment contains important directions for creditors under the IBC framework, and industrial development authorities in particular. Interestingly, the judgement does not contain detailed legal analysis of the issues raised in the proceedings before the NCLAT, but rather, is largely influenced by the conduct of GNIDA in its failure to pursue its claims and to monitor its ongoing projects.
2. Thus, it is important for creditors to adhere to the strict timeline contemplated by the IBC, and to pursue their claims throughout the CIRP at every juncture. Even before the CIRP is initiated, authorities must actively monitor the progress of ongoing projects, and issue regular communications notifying allottees of their default/non-development. Such a preventive and proactive approach will ensure that the claims of authorities under the IBC are seen as genuine and not perceived as being influenced by the CIRP.
3. The present judgment demonstrates that failure to actively pursue claims at every juncture and subsequently raising a belated challenge to an approved resolution plan can lead to situations where it is impractical to unscramble the material developments that have occurred and rewind the clock. In such scenario, courts may be reluctant to accept challenge to a resolution plan (regardless of the merit of the challenge) purely because of inaction by the creditor.

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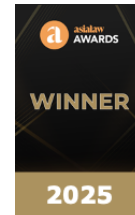
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