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AFR

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Court No. 42

Case :- WRIT - C No. - 31823 of 2019

Petitioner :- M/S Three C Green Developers Pvt. Ltd. And 8 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Monika Vaish

Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

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1. Heard Sri Sanjeev Kumar Rai, learned counsel for the petitioners; Sri Mohan Srivastava, learned Standing Counsel for the State-respondents and Shri Manish Goyal, learned Senior Counsel assisted by Sri Kaushalendra Nath Singh and Ms. Anjali Gokhlani, learned counsel for respondent-NOIDA.

**A. FACTUAL MATRIX AND HISTORY OF THE DEVELOPMENT OF THE SPORTS CITY**

2. The Board of Noida Authority took a decision on 16.8.2004, to develop sports facilities of international standards in Noida. In the meeting held on 25.6.2007 the Board came to a conclusion that there are no sports facilities available in Noida, hence, an area of 311.60 hectares was marked for development of the sports city. In the next Board meeting held on 8.4.2008, it was resolved, keeping in mind of the upcoming Commonwealth Games in 2010, that the land use of sector 76, 78, 79, 101, 102, 104 and 107 be changed for the development of the sports city. However, the area earmarked to develop sports city was increased to 346 hectares. Accordingly, Grant Thornton was appointed to formulate the scheme and also formulate conditions for the allotment of the land. In the next Board meetings held on 18.9.2008, the amended Masterplan - 2031 of Noida was considered. It was for the first time that the details as to what was expected in the sports city were mentioned. Clause 5.9.3 of the master plan laid down the details of the sports city. On 1.10.2008, and 4.11.2008, the brochure for the sports city was finalised and the process for the change of the land use was initiated. The scheme seems to have been launched and was extended upto 12.1.2009, but was not finalised. Thereafter, in September 2010, the area of the Sports City was changed from 311 hectares to 150 hectares. Grant Thornton was asked to give a fresh detailed project report and thereafter

the reserved price was fixed. From 2010-11 to 2015-16, four sports city projects were launched on a total area of 798 acres, in which 3 golf courses, one cricket stadium of international standards, and other sports facilities of international standards were planned. This case pertains to one of those four projects where no development on the sports facility has taken place but the allottees/ builders have already monetized the part of the project that was meant for recovery of cost incurred to build the sports facilities.

#### **B. SPORTS CITY SCHEME 2010-2011**

3. As per the formulated scheme, New Okhla Industrial Development Authority<sup>1</sup> sometime in the year 2011 launched the project of “Sports City” which was to be developed in Sectors 78, 79 and 150 of NOIDA. The scheme was launched on 03.03.2011 and closed on 24.03.2011. As per the scheme, a Sports City was to be developed on a land parcel of 72.75 hectare (7,27,500 sqm) in Sector 78 and 79 and another sports city in Sector 150.

4. The reserve price for the scheme was set at Rs.11,500/- per square metre. The developer was supposed to create sports facilities over 70% of the entire land area, which was not marketable, and to set off this expense in developing the sports city, the developer was allowed to construct group housing on 28% and commercial on 2% of the total land with FAR of 1.5. The scheme clearly stated that the population density in this Sports City would be 1650 people per hectare. The open/green area of the recreational component (i.e. sports activities such as Golf course, stadium etc. and open spaces) was to be considered as open green areas

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<sup>1</sup> NOIDA

for the entire land. The relevant conditions in the Brochure were as follows:-

*\* The shareholding of the lead member in the consortium shall remain at least 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Noida.*

*\* SPCs that will subsequently carry out all its responsibilities as the allottee, and will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.*

***\*The “Lead Member” shall continue to hold at least 30% of the shareholding in the SPC till the temporary occupancy/completion certificate at least one phase of the project is obtained from the NOIDA***

*\*In case of default in depositing the instalments or any payment, interest @ 14% compounded half yearly shall be leviable for defaulted period on the defaulted amount.*

*\*The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional and other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. However, the residential and commercial development/construction may be completed in phases within 7 years.*

*\*Further more, the lessee has to develop residential and commercial component in the project in proportion to area earmarked for recreational uses.*

*\* The ‘Completion Certificate’ will be issued by the NOIDA on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof.*

*\*The lessee shall execute an Indemnity bond Indemnifying the NOIDA against all disputes arising out of non-completion of the project.*

*\* Without obtaining the completion certificate the lessee shall have the right to sub-divide the allotted plot into suitable smaller plot as per the planning norms of the NOIDA only for the area available for residential and commercial use and to transfer the same to the interested parties, if any, with the prior approval of the NOIDA on payment of transfer charges at the rate prevailing on the date of transfer.*

*\*After the written approval of the Lessor/NOIDA Authority, the lessee can implement/develop the project through its multiple subsidiary*

*companies in which the allottee/lessee company shall have minimum 90% equity share holdings Choose an account*

*\* Sub lease of land/built-up area shall be allowed on the basis of approved layout and building plans by NOIDA.*

*\* NOIDA will monitor the implementation of the project. Applicants who do not have a firm commitment to implement the project within the time limits prescribed are advised not to avail the allotment.*

*(Emphasis supplied)*

5. In response to the application only two companies applied for the allotment of Sports City, first being M/s Wave Pvt. Ltd., which had applied at the reserve price and the second was a consortium of companies led by one M/s Xanadu Estates Pvt. Ltd. (being the Lead Member) along with 8 other companies (being the Relevant Members). The bid of the consortium of M/s Xanadu Estates Pvt. Ltd. being the highest was allotted the sports city project (SC-01 sector 78-79).

6. The Noida Authority issued an Acceptance Letter on 28.03.2011 and informed the lead member about the allotment, thereafter, Noida Authority issued Allotment-cum-Reservation Letter dated 04.05.2011 and called upon the Consortium to deposit reservation money. It was informed to the Consortium that total land parcel ad-measuring 7,27,500 square metres as Plot No. SC-01, Sector 78 & 79 was reserved in favour of the Consortium as per the terms and conditions of the Scheme.

7. Vide letter dated 11.10.2011, the Consortium requested the authorities to make sub division of the allotted plot in favour of the Consortium members, who have together applied as a Consortium. This request of the Consortium was approved by Noida Authority on 24.10.2011 and the entire sports city project was divided as under:-

- (1) SC-01/A sector 79 1,00,000 Sqm. M/s Sequel Buildcon Pvt. Ltd

- (2) SC-01/B sector 79 48,000 Sqm. M/s Sequel Buildcon Pvt. Ltd
- (3) SC-01/Csector 79 2,50,027 Sqm. M/s Three C Green Developers Pvt. Ltd
- (4) SC-01/D sector 79 1,00,000 Sqm. M/s Kindle Developers Pvt. Ltd
- (5) SC-01/E sector 79 80,000 Sqm. M/s Xanadu Realcon Pvt. Ltd
- (6) SC-01 Sector-78 14,272.50 Sqm. which is the part allotted area total 14,519.00 sq mts of plot no.SC-01 Sector -78 Noida.

8. Curiously, the said entity i.e. M/s Xanadu Estate Pvt. Ltd. being the lead member of the consortium, whose eligibility was considered for award of the project, was not even a party to the consortium to which the project was allotted.

9. As per the request of the lead member of the consortium, separate lease deeds were executed between Noida Authority and different members of the Consortium on 24<sup>th</sup> October 2011. The relevant provisions of the lease deed were as follows:-

### **C. LAND USE OF SPORTS CITY**

*The permissible broad break up of the total area under SPORTS CITY for different land uses shall be as under :*

*A. Recreational(Sports, Institutional & Other Facilities and open areas) not less than 70%*

*B. Commercial not more than 2 %*

*C. Residential including Group Housing (1650 persons per hect. On residential/group housing area only) 28% Considering the above land use pattern following planning norms shall be applicable:-*

*1. Maximum permissible ground coverage of the entire land shall be 30%*

2. Maximum permissible FAR on total land shall be 1.5

3. FAR & Ground Coverage in recreational land uses shall be as per prevailing bye-laws.

*That in consideration of the total premium 10% was to be paid at the time of allotment and the balance was to be paid by the Lessee in instalments on dates specified along with interest @ 11% per annum compounded every half yearly from the date of allotment, on the balance outstanding on timely payment. Schedule of payment of instalments was also give, the first instalments starting from 4.11.2011 and the entire payment was to be made by 4.5.2020*

*No separate notices for deposit of the instalment/lease rent was to be issued by Lessor. **The LESSEE was under the strict obligation that the due instalments along with interest were to be deposited on the due date.***

***In case of failure to deposit the due instalment by the due date, the LESSOR may cancel the allotment. However, in exceptional circumstances, an extension of time for payment of an instalment could be permitted subject to payment of interest @ 14% p.a. (11% normal interest + 3% penal interest) compounded half yearly on the defaulted amount and for the defaulted period.***

*A lease of Ninety years on “AS IS WHERE IS BASIS” was granted on the terms and conditions as given below:-*

*(a)....*

*(iii) In case of failure to deposit the due lease rent by the due date, interest will be charged @ 14% p.a. (11% normal interest + 3% penal interest) compounded half yearly, on the defaulted amount and for the defaulted period.*

*(iv) For the purposes of this document, the date of issue of the allotment letter shall be treated as the date of allotment and the date of execution of the lease deed shall be treated as the date of taking over of possession.*

**II. ....**

***(a) The lead member should be the single largest shareholder having at least 30% shares in the consortium. The percentage of shareholding of the lead member shall remain minimum of 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Lessor.***

***(h) The construction of the building and development on the plot shall have to be done as per development norms, controls prescribed under the scheme/building regulations & directions of the Lessor and only after the prior approval of the building plans by the Lessor.***

(a) *All the infrastructural services shall have to be provided by the lessee within the plot area only.*

(i) *The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional & other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. However, the residential and commercial development/construction may be completed in phases within 7 years. Further more, the lessee has to develop residential and commercial component in the project in proportion to area earmarked for recreational uses. However, **extension in exceptional circumstances can be granted** by NOIDA, on payment of extension charges applicable as per prevailing policy at the time of granting such extension. **Delays due to encroachment, force majeure, legal issues like stay orders etc. shall be considered for extension.** The construction on the land shall have to be done as per the controls prescribed under these Terms and Conditions and the building regulations and directions of the NOIDA.*

(j) *The lessee shall be wholly and solely responsible for the implementation of the Project and also for ensuring the quality of development/constructions, subsequent maintenance of the building and services, till such time as the alternate agency for such work is identified and legally appointed by the Lessee after prior written approval of the LESSOR. The project may be implemented by lessee through Special Purpose Company and/or through its subsidiaries. The relationship between Special Purpose Company & its subsidiaries would be governed by the prevailing law, rules and regulations. However, mortgage permission can be accorded to Special Purpose Company for implementation of project as per prevailing rules & regulations of Lessor.*

(l) *The lessee can transfer the whole plot and the buildings constructed thereon with the prior permission of the LESSOR, after payment of transfer charges as the prevailing policy of the LESSOR. However, the lessor reserves the right to reject any such transfer application without assigning any reason whatsoever. In addition to the transfer charges as per prevailing policy of the LESSOR, the lessee shall also pay an amount of Rs.10,000/- towards the processing fees.*

***All the terms and conditions of the brochure, the allotment, the permission for grant of transfer, lease deed etc. shall be binding on the lessee, as well as the transferee(s).***

*Change in Constitution will be permitted as per prevailing policy of the Lessor and as per terms and conditions of the brochure of the scheme.*

*No transfer charges shall be applicable if built up space of commercial plot is transferred within two years from the date of issuing of*



*the completion certificate by the LESSOR. Thereafter, the transfer charges shall be payable on a pro-rata basis as applicable. In addition to the transfer charges, an amount of Rs.10,000/- shall also be payable against the processing fee. **The lessee will be permitted to transfer the built-up space on the fulfillment of the following conditions :-***

*(i) **The lessee has made full payment of the plot premium along with interest thereon and the up-to-date lease rent alongwith interest, if any, due thereon.***

*(ii) **The lease deed as per rules has been duly executed.***

*(iii) **The lessee has obtained the building completion certificate from the LESSOR.***

*(iv) **The sub-lessees/transferees undertake to put to use the premises for the original permissible use only and the premises being transferred are as per completion certificate and are not part of any common area.***

*(v) **The lessee shall also execute a sub-lease deed between lessor, lessee and proposed transferees (sub-lessees). The lessee/sub-lessees shall also ensure adherence to the building regulations and directions. All the terms and conditions of the allotment and lease deed shall be applicable and binding on transferee/sub-lessees as well.***

*(vi) **The transferees/sub-lessees shall also be required to pay pro-rata lease rent as applicable. The transferees/sub-lessees shall be required to make the built-up space functional within one year from the date of sub-lease and submit sufficient documents to the LESSOR in proof thereof. Thereafter, extension charges, as applicable, shall be payable.***

*(vii) **All the terms and conditions of the brochure, allotment, permission for grant of transfer, lease deed etc. shall be applicable on the lessee as well as the transferees(sub-lessees).***

*(viii) **The lessee, sub-lessee are not eligible for any preferential allotment of the residential plot or house under various scheme of NOIDA.***

*(m) **The lessee and sub-lessees (transferees) shall not use the Sports City plot for any purpose other than for which the plot is allotted. In case of violation of any allotment condition, the allotment shall be liable to be cancelled and the possession of the premises along with the structures thereon, if any, shall be resumed by the LESSOR.***

*(n) **The lessee and sub-lessee(s)/Transferee(s) will be liable to pay all rates, taxes, charges and assessment of every description imposed by any authority empowered in this behalf from time to time, in respect of the plot and the buildings constructed thereon.***

*(o) If the lessee and/or sub-lessee(s)/Transferee(s) fail to deposit the due money/installment within the given time or such extended period as is allowed by the LESSOR or commit any breach of the terms and conditions as laid down in this brochure, allotment letter, lease deed, the allotment/lease may be cancelled/determined and 30% of the total premium of the plot or the premium/installments deposited till then along with lease rent, interest, extension charges etc. deposited, whichever is less, shall be forfeited in favour of the LESSOR. Balance amount, if any, after forfeiting the amount as indicated above, will be refunded without interest. Possession of the plot, along with the structures, if any, thereon, shall be resumed in favour of the LESSOR and the lessee shall not be entitled to claim any compensation for the same.*

*(p) The allotment is found to be obtained by any misrepresentation, concealment, suppression of any material facts by the lessee, the allotment of plot will be cancelled and/or lease will be determined, as the case may be. In addition, the entire money deposited by the lessee and sub-lessee(s)/Transferee(s) shall be forfeited and legal action for such misrepresentation, concealment, suppression of material facts shall be taken.*

*(Emphasis supplied)*

10. Since the possession of the entire allotted land could not being given, the allottee made a representation for granting the benefit of Zero Period from the date of allotment to the date on which the actual physical possession has been given. After deliberation, Noida Authority came to a conclusion on 16-07-2012, that as per Clause 42 of the lease deed, the sports city is an integrated project and unless the possession of the entire land is given, it is not possible to start the integrated project of Sports City. Hence, it agreed to grant the benefit of Zero Period.

11. The Noida Authority vide letter dated 09-08-2012, informed the allottees that the Board of NOIDA has taken a further decision in its meeting held on 25th July, 2012 that on handing over of possession of 80% of allotted land (80% of 7,25,500 Sq. mtrs .i.e. 5,82,000 Sq. mtrs.), the issue will be treated as closed since the original terms of allotment provides variation of 20% of the allotted land and the allottees have

consented to this condition. And, thereafter, allotted the balance land in the adjacent sector which was abutting to the already allotted plot.

12. The Noida Authority vide its letter dated 16-09-2014 permitted subdivision of Plot No.SC-01/C, Sector 79, allotted to. M/s Three C Green Developers Pvt. Ltd. which had only 2,50,027 Sqm, as per the following:

Name of the Company		Area (Sq.mtrs)	Plot No.	Date	Title Document
M/S Three C Green Developers Pvt Ltd	SPC	1,66,459.30	SC-01/C	17.11.14	Balance land
Piyush IT Solutions P Ltd. ( Sub-lessee)		28,000.00	SC-01/C3	17.11.14	Sub Lease Deed
Three C Infra Creations Pvt Ltd. ( Sub-lessee)		24,000.00	SC-01/C4	17.11.14	Sub Lease Deed
Three C City Developers Pvt Ltd ( Sub-lessee)		20,000.00	SC-01/C5	11.12.14	Sub Lease Deed
Water-ePearl-infotech Pvt Ltd. ( Sub-lessee)		24,000.00	SC-01/C6	17.11.14	Sub Lease Deed
Three C Builders Pvt Ltd ( Sub-lessee)		16,000.00	SC-01/C7	11.12.14	Sub Lease Deed
Three C Builders Pvt Ltd (Sub-lessee)		25,750.00	SC-01/C8	11.12.14	Sub Lease Deed

13. Soon thereafter the petitioner No.1 again requested the Noida Authority to sub divide the plot No. SC-1/C2 into 2 parts in favour of its 100% subsidiary company M/s Robust Innovations Pvt. Ltd. This request was accepted vide letter dated 03-10-2012 on the same terms and conditions of brochure of the scheme and lease deed, and the allotment letter. Accordingly, a correction deed was executed between the Noida

Authority and the petitioner on 19-10-2012, giving a fresh payment of Schedule. According to which the entire instalments were to be paid by the allottees in between 4.11.2011 to 4.5.2021.

14. The petitioner on behalf of the consortium applied for sanction of the integrated map for the development of the sports city SC-01, Sector-78, and 79, which was approved on 16.11.2012, wherein the allottees themselves divided the responsibilities, and assigned themselves their parts for the development of residential, commercial and sports facility.

15. The Noida Authority in its 179th meeting on 27-05-2013 resolved that the balance land where possession could not be given, in lieu thereof 48,520 square meters of land of the adjacent sector be allotted. Accordingly, for the balance land a letter was issued on 21-06-2013, allotting the 48,520 square meters of land. With the allotment of this land, the mark of 80 per cent of the area for the sports city was achieved.

16. Noida Authority by now had divided the entire sports city of sector 78 & 79 into various plots and executed a lease deed to various companies who were 100% subsidiaries of the allottee companies. A revised integrated plan for development of the sports city was filed by the petitioner as well as on behalf of the other consortium partners, as per which they divided amongst themselves the responsibility of developing the entire sports city (which included sports facilities, residential and commercial part of the project). This map was approved by the Noida authority on 16.06.2014 wherein each sub lessee had separately taken up the responsibility of developing residential, commercial as well as sports facilities. The obligation of various companies for completion of residential, commercial and sports facilities were earmarked in the approved map and were as follows:-

**Plot No. SC-01, 01, Sector 78, 79 & SC -01/A&B, Sector-101, NOIDA (U.P.)**

S.No.	Company, Their Plot No. & (Plot area given to each company in sq. mtr.)	FAR to be developed each company in sq. mt.	PROPOSED GROUND COVERAGE (SQ.M.)				PROPOSED FAR (SQM)		
			SPORTS (IN SQM)	RESIDENTIAL (IN SQM) (A)	COMMERCIAL (IN SQM) (B)	SPORTS (IN SQM) (C)	RESIDENTIAL (IN SQM) (P)	COMMERCIAL (IN SQM) (Q)	SPORTS (IN SQM) (R)
1	M/S SEQUEL BUILDCON PVT. LTD. SC-01/A1, SEC-79 (50,000.00)	1,37,500.00	35000.00	15000.00	0.00	0.00	137500.00	0.00	0.00
3	M/S ARENA SUPERSTRUCTURES PVT. LTD. SC-01/A2, SEC-79, (50,000.00)	1,37,500.00	35000.00	15000.00	0.00	0.00	137500.00	0.00	0.00
4	M/S SEQUEL BUILDING CONCEPT Pvt. Ltd. SC-01/B1, SEC-79, (24,000.00)	66,000.00	16800.00	6735.00	465.00	0.00	65340.00	680.00	0.00
5	M/S GOLFGREEN BUILDCON PVT.LTD. SC-01/B2, SEC-79, (24,000.00)	0.00	16800.00	7200.00	0.00	0.00	0.00	0.00	0.00
6	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/C1, SEC-79, (3,04,209.30)	2,57,256.95	198390.51	101101.78	417.01	4300.00	250856.95	400.00	6000.00
9	M/S ROBUST INNOVATIONS PVT.LTD. SC-01/C2, SEC-79, (8000.00)	12,000.00	5600.00	2400.00	0.00	0.00	12000.00	0.00	0.00
10	M/S KINDLE DEVELOPERS PVT.LTD. SC-01/D1, SEC-79, (40,000.00)	78,714.00	28000.00	11740.00	260.00	0.00	77814.00	900.00	0.00
11	M/S GOLFGREEN RESIDENCY PVT. LTD. SC-01/D2, SEC-79, (10,000.00)	22,500.00	7000.00	2830.00	170.00	0.00	22330.00	170.00	0.00
12	A/S GOLFGREEN ESTATES PVT. LTD. SC-01/D3, SEC-79, (25,000.00)	56,250.00	17500.00	7250.00	250.00	0.00	55750.00	500.00	0.00
13	M/S GOLFGREEN MANSIONS PVT. LTD. SC-01/D4, SEC-79, (25,000.00)	62,500.00	17500.00	7175.00	325.00	0.00	61812.50	687.50	0.00
14	M/S XANADU REALCON PVT. LTD. SC-01/E1, SEC-79, (40,000.00)	1,10,000.00	28000.00	11680.00	300.00	0.00	108998.00	1002.00	0.00
15	M/S GOLF GREEN INFRA PVT.LTD. SC-01/E2, SEC-79, (20,000.00)	55,000.00	14000.00	5795.00	205.00	0.00	54795.00	205.50	0.00
16	M/S GOLFGREEN SUPERSTRUCTURES PVT. LTD. SC-01/E3, SEC-79,	55,000.00	14000.00	5000.00	400.00	0.00	54450.00	550.00	0.00

	(20,000.00)								
17	M/S XANADU INFRATECH PVT. LTD. SC-01, SEC-78, (14,272.50)	4,281.75	9990.75	0.00	0.00	4781.75	0.00	0.00	4281.75
18	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/A, SEC-101, (19,170.00)	0.00	19170.00	0.00	0.00	0.00	0.00	0.00	0.00
19	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/B, SEC-101, (29,350.00)	0.00	29330.00	0.00	0.00	0.00	0.00	0.00	0.00
	PROPOSED DEVELOPMENT 7,03,001.80	10,54,502.70	----	-----	----	28.38	----	5074.00	----
	PERMISSIBLE DEVELOPMENT 7,03,001.80	10,54,502.70	492161.26	198840.50	14060.01	5881.75	852038.18	5624.01	-----

### SPORTS FACILITIES

SUBSIDIARIES	PLOT NO.	FACILITIES TO BE IN LAND PARCEL	MIN. AMOUNT TO BE SPENT (IN CRORE)
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	GOLF COURSE (9 HOLE)	40.00
M/S ARENA SUPER STRUCTURE PVT. LTD.	SC-01/A2	MULTIPURPOSE PLAYFIELD	10.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	TENNIS CENTRE	35.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	SWIMMING CENTRE	50.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	PRO-SHOPS/FOOD AND BEVERAGE	30.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	IT CENTRE/ADMINISTRATION/MEDIA CENTRE	65.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	INDOOR MULTIPURPOSE HALL, SPORTS HALL INCLUDING GYMNASTIC, TABLE TENNIS, SQUASH, BASKET BALL, VOLLEY BALL, BADMINTON, ROCK CLIMBING	30.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	CRICKET ACADEMY	50.00
ALL	-	INTERNAL ROADS AND PARKS	25.00
M/S XANADU INFRATECH PVT. LTD.	SC-01, SEC-78	HOSPITAL/SENIOR LIVING/MEDICINE CENTRE	60.00
ALL	-	CIRCULATION SPACES, CARPETING, UTILITIES ETC.	15.00

17. The petitioner again sought benefit of Zero Period, which was granted vide letter dated 30.12.2026 on 5,50,729.30 square meters of land parcel up to 31-01-2017. The petitioner further submitted that even after the additional land 48,520 square meters was allotted, still there were certain encroachments and the actual physical possession of the plots were not handed over free from all encumbrances.

18. After this Zero Period Order, vide its letter dated 13-01-2017, the Noida Authority issued a revised payment plan for the petitioner's subleased plot according to which the liability of the allottee for payment to Noida Authority was shifted to start from six months of Zero Period i.e. from 31st January 2017, thus the revised payment plan started payment from 31st July 2017 to 31st January 2025. This fixation of zero period and the payment plan given by Noida Authority was not contemporaneously challenged.

19. The Noida Authority, vide letter dated 08-01-2018, further allotted 24,408 square meters extra land. With that the total area allotted to the Petitioner became 7,27,500 square meters.

20. The petitioner made a representation claiming that the entire land for the sports city was not allotted free from encumbrances, and the possession of the allotted land was also not given. And hence the Noida authority should also not ask for the payment of the due instalments. Since no decision was taken by the Noida authority on this representation, hence, the petitioner has filed the instant writ petition seeking following reliefs:-

*“i. To issue a writ order or direction in the nature of mandamus commanding the respondent no.3 to hand over the encumbrance free Land comprising of Plot Nos. SC-01/A2, SC-01/B1, SC-01/C1, SC-01/C3, SC-01/C4, SC-01/C5, SC-01/C6, SC-01/C7, SC-01/C8, Sec 79*

*and Plot No. 01/A and Plot No. 01/B, Sector 101, and Plot no. SC-01, Sector 78, Noida, as allotted and leased to the petitioner by the Respondent No. 3 which was acquired under the land Acquisition Act and already handed over by the Additional District Magistrate (Land Acquisition) to the respondent no.3.*

*i (a) To issue a writ order or direction in the nature of certiorari calling for record and quashing the impugned notice dated 21-08-2019 and 12-09-2019.*

*ii. To issue an appropriate writ, order or direction in the nature of mandamus to restrain the Respondent No.3 from levying or collecting any lease rent from 01.02.2017 till date.*

*iii. To issue an appropriate writ, order or direction in the nature of mandamus to restrain Respondent No.3 to levy or collect any interest or penal interest on the land premium from 01.02.2017 till date*

*iv. To issue any other order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case.*

*V. To award the cost of the petition to this petitioner.”*

21. It seems the petitioner No.1 had raised some loan by way of issuing of debentures. Petitioner has not been able to service this debt. As a result, the Debenture trustee has filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016<sup>2</sup> during the pendency of this writ petition. The application under Section 7 of the IB Code, 2016 has been admitted by NCLT and an IRP has been appointed, who stepped into the shoes of the petitioner.

#### **D. ARGUMENTS ON BEHALF OF THE PETITIONERS**

22. Learned counsel for the petitioner submitted that the Consortium was allotted 7,27,500 square meters of land vide Allotment letter dated 04-05-2011 for the development of Sports City and the possession was given for 5,92,300 square meters only.

23. Learned counsel for the petitioner further submitted that Noida has issued a scheme and entered into contractual obligations with various

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<sup>2</sup> IB Code 2016



parties without having requisite land under the said allotment. The Scheme was launched in 2011 which was required to be developed 100% by 2017/ 2019. But the fact is that the work could not be initiated due to non-availability of land. The entire land has still not been made available by Noida. Noida has facilitated sub-lease and sub-divisions of the total project area. However, the Sports City being an integrated and joint obligation of all the lessees, subsidiaries and sub-divided land owners should be viewed as one holistic project from the development view point. All the stakeholders viz. allottees of Noida Sports City -79, sub- allottees, sub lessees / subsidiaries should be directed to contribute for the amount required for development of Sports in ratio of FAR being developed by them. Noida should agree for a conciliatory process under the aegis of senior mediator/conciliator considering the scheme of Sports City and contributions to be taken by interested parties so that Sports City under the scheme of 2011 can be given full effect.

24. Learned counsel for the petitioner argued that the Noida Authority, till today, has not been able to provide contiguous land parcel to the petitioner. The sports city, as envisaged in the Sports city scheme, cannot be developed in a piecemeal.

25. Learned counsel for the petitioner further submitted that the Noida was obligated to provide possession of the entire land, construct, develop and provide the required infrastructure, access and approach road to the Sports City, which has not yet been developed by Noida.

26. Learned counsel for the petitioner further asserted that certain land parcels, specially Khasra No. 770, over which such infrastructure, access and approach road for the Sports City is to be constructed by the Authority is yet to be acquired by the Noida Authority. The Authority

has not taken any action for acquisition, construction and development of any such infrastructure, access and approach road to the Sports City Project.

27. Learned counsel for the petitioner also submitted that the possession of contiguous land could not be given to the petitioner till date. Khasra Nos. 765, 764, 124, 51, 49, 760, 755, 757, 758, 754, 746, 747, 70, 759, 753, 767, 770, 55, 67, 50 & 68 at Village Sohrakha Zahidabad, Pargana, Tehsil Dadri, District Gautam Budh Nagar (forming Plot No SC-01-01, Sector 78, 79 & 101, Noida, District Gautam Budh Nagar, UP) are land belonging to other persons which is spreading in between and across the land parcel leased to the petitioner. The non-availability of the contiguous land parcel is seriously affecting the development of sports facilities specially the development of mandatory Golf Course.

28. In this backdrop, learned counsel for the petitioner vehemently submitted that the Noida authority should immediately provide the possession of the entire land earmarked for the sports city project to the petitioner and till then should not ask for the payment of the instalments and the interest due on it as the Noida authority has failed to fulfil their part of obligations.

#### **E. ARGUMENTS ON BEHALF OF THE NOIDA AUTHORITY**

29. Sri Manish Goyal, learned Senior Advocate assisted by Sri Kaushalendra Nath Singh, learned counsel for the Noida authority emphasized the scheme of Sports City and made the following submissions.

30. Under this scheme, the project proponent was required to develop a state-of-the-art Sports City meeting international standards. To set off the costs associated with its development, 30 percent of the total project area was allocated for development of residential and commercial part, with an FAR of 1.5.

31. The project was allotted to a consortium headed by M/S Xanadu Estates Private Limited. M/S Xanadu Estate being a leading member ought to have 30 percent share in the consortium and rest of the consortium was divided by eight of the companies, which included M/s Three C Green Developers Pvt. Ltd, M/S Meriton Infotech Pvt. Ltd., M/S Sulej Agro Products Ltd., M/S Xanadu Infradevelopers Pvt. Ltd., M/S Xanadu Infotech Pvt. Ltd., M/S Xanadu Realcon Pvt. Ltd, M/S Sequel Buildcon Pvt. Ltd, M/S Sequel Building concept Pvt. Ltd. and M/S Kindle Developers Pvt. Ltd.

32. The 100 per cent share of M/S Xanadu Estates Private Limited was held by company called M/S Three C Universal Developers((99.99 percent share and Mr. Supreet Singh Suri who was the nominee of M/S Three C Universal Developers held 0.01%shares ).

33. The consortium members and their shareholdings in the consortium were as follows-

Sl.No.	Members	Status	% of share holding of lead and relevant member in the consortium
1	M/S Xanadu Estates Pvt. Ltd.	Lead	30%
2	M/S Meriton Infotech Pvt. Ltd	Relevant	5%
3	M/S Sulej Agro Products Ltd	Relevant	5%
4	M/S Xanadu Infradevelopers Pvt. Ltd.	Relevant	10%

5	M/S Xanadu Infatech Pvt. Ltd.	Relevant	10%
6	M/S Xanadu Realcon Pvt. Ltd	Relevant	10%
7	M/S Sequel Buildcon Pvt. Ltd	Relevant	10%
8	M/S Sequel Building concept Pvt. Ltd.	Relevant	10%
9	M/S Kindle Developers Pvt. Ltd	Relevant	10%
	Total:		100%

34. The original allotment on 04-05-2011 for this Sports City was for 7,27,500 sqm. However, only 5,92,300 sq. mtrs. of land was handed over to the consortium members. The balance of 1,07,595.20 sq. meters of land was still not in possession of Noida Authority and hence the possession could not be given and 80% of project land was not allotted to the project proponent.

35. Out of 5,92,300 sq. meters. only 5,33,528.80 sq. meters were given possession, hence, in the Board Meeting (177<sup>th</sup> meeting) held on 16-07-2012 a benefit of Zero Period was awarded to the allottees. This zero period was from the date of allotment till the date on which the actual physical possession of 80 percent of land was to be awarded to the project proponent.

36. Thereafter, a correction deed was executed on 19-10-2012 between the Noida Authority and the allottees granting benefits of Zero Period and the payment schedule was also resheduled.

37. On 5,33,528.80 sq. mtrs of land, which was made available to the project proponent, the project proponent made an application to the Noida Authority, for the approval of the master lay-out plan, which was approved by the authority on 16-11-2012.

38. The Board of Noida Authority in its 179<sup>th</sup> meeting held on 27-05-2013 resolved that 48,520 sq.mtrs. land which was in the adjacent Sector 101 may be carved out and handed over to the project proponent so that the minimum 80% requirement of the project land is completed and thereafter the benefit of Zero Period would come to an end. Accordingly, the Noida Authority issued a letter to the petitioner no.1 on 21-06-2013 allotting the additional land, along with the possession, and with this allocation, the total land allotted to the project proponent in the Sports City exceeded the 80% threshold, resulting in the termination of the Zero Period benefit.

39. The original allottee representing the entire group filed a Master Plan for development in the entire Sports City. In this, they themselves had assigned the role of each individual company /member of the Consortium and the developments they were supposed to carry out. The map was approved on 16.06.2014, in which the roles and obligations of each of the companies were earmarked and was approved by Noida Authority. The chart, which is part of the map shows the role of each company and their obligations, which they as an internal arrangement had assigned themselves along with the cost as per the brochure, which was as follows:-

<b>SPORTS FACILITIES</b>			
<b>SUBSIDIARIES</b>	<b>PLOT NO.</b>	<b>FACILITIES TO BE IN LAND PARCEL</b>	<b>MIN. AMOUNT TO BE SPENT (IN CRORE)</b>
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	GOLF COURSE (9 HOLE)	40.00
M/S ARENA SUPER STRUCTURE PVT. LTD.	SC-01/A2	MULTIPURPOSE PLAYFIELD	10.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	TENNIS CENTRE	35.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	SWIMMING CENTRE	50.00
M/S THREE C GREEN DEVELOPERS PVT.	SC-01/C1	PRO-SHOPS/FOOD AND BEVERAGE	30.00

LTD.			
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	IT CENTRE/ADMINISTRATION/MEDIA CENTRE	65.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	INDOOR MULTIPURPOSE HALL, SPORTS HALL INCLUDING GYMNAS TIC, TABLE TENNIS, SQUASH, BASKET BALL, VOLLEY BALL BADMINTON, ROCK CLIMBING	30.00
M/S THREE C GREEN DEVELOPERS PVT. LTD.	SC-01/C1	CRICKET ACADEMY	50.00
ALL	-	INTERNAL ROADS AND PARKS	25.00
M/S XANADU INFRATECH PVT. LTD.	SC-01, SEC-78	HOSPITAL/SENIOR LIVING/MEDICINE CENTRE	60.00
ALL	-	CIRCULATION SPACES, CARPETING, UTILITIES ETC.	15.00

40. However, the Noida Authority once again granted benefit of Zero Period to the project proponent and the benefit of Zero Period was extended till 31-01-2017.

41. In the meanwhile, some other members had individually applied for constructions of residential and commercial part of their project which were approved. While doing so, none of the sub-lessee/ allottees ever raised an issue that the possession of land was not with them. In fact, some of the members started advertising and booking flat, and started construction on their land.

42. In spite of availing the benefit of the zero period and after execution of the fresh payment plan, the petitioner company still did not pay the due instalments and a notice for payment of the dues was issued on 24.02.2015, 24.07.2023 and 30.08.2024. The petitioners herein have defaulted in making payment for the lease premium and when the Noida Authority asked them to pay the money the instant petition was filed only to ensure that no coercive action may be taken against them by the authority for non-payment of the outstanding dues.

43. He further submitted that the way things were modified/changed by the Noida authority were quite questionable. It is only after change of the government, the scam was unearthed, and the Audit was referred to Comptroller and Auditor General. (hereinafter referred as CAG). The State Government took a very proactive stand and did not grant any extension or revalidation of map because of the illegality done by the allottees.

44. The Comptroller and Auditor General evaluated the matter and gave a report, which was tabled in September 2020. The report given by the CAG was shocking and revealed a huge scam. It mentions as to how the Noida Authority and the State Government had suffered an enormous loss amounting to approximately Rs.9000 crores. Some of the glaring deficiencies pointed by CAG are as follows:-

- i. Noida Authority had done a wrong pricing of the Sports City.**
- ii. As per the brochure only residential and commercial plots could have only been divided but the Noida Authority sub-divided entire plots, which were earmarked for Sports City.**
- iii. Bids of the allottee were not screened and the turnover of the candidates were also not considered before allotting the plot.**
- iv. The Lead Member having the highest share were ousted from the project completely.**
- v. The allotment was done to various other companies, who individually could not have qualified in the financial bid evaluation with the result, by adopting such dubious methodology, the Noida Authority had allotted the plots to those, who were not even entitled to apply individually.**
- vi. The Noida Authority did not even bother to collect the installments dues and no effort was ever made by them giving an undue and illegal advantage to the allottees.**
- vii. The finance department has issued a fresh payment plan considering each allottee company as a fresh allottee. The transfer charges for second and third transfer were not even collected.**
- viii. The lease rent was also not recovered.**
- ix. Separate payment plans were issued to all the allottees treating them as individual allottees.”**

(emphasis supplied)

45. The learned Senior Counsel further submitted that the entire allotment was nothing but a scam wherein the then officers went out of the way to extend undue benefits to the builders/ allottees. The entire gamut of implementation of the project was contrary to the scheme, conditions of the sports city brochure, terms of the allotment letter and the lease deeds.

46. In complete contravention of the policy, scheme and brochure, the allottees were allowed to carry out construction on the said allotted land. The CAG report reveals the impropriety done in connivance with the builders which resulted in such a huge scam.

47. Thereafter, the Board Meeting of NOIDA was held on 18.01.2021 (201<sup>st</sup> Board Meeting) in which it was resolved that recommendation should be made to Public Accounts Committee to look into the deficiencies pointed out by CAG and give a report. As an interim measure, it was further resolved that no action should be taken towards development of sports city nor any maps should be revalidated. Further, on the basis of the report submitted, in the next Board meeting (202<sup>nd</sup>) held on 25.06.2021, it was resolved that the matter may be referred to the State Government for necessary guidance and direction.

48. Learned Senior Counsel submitted that it was on the request of Lead Member of the Consortium that the individual lease deeds were executed in favour of its members or its subsidiaries, and the same was in pursuance of letter of allotment as well as Sports City Scheme. Further, the sports city was to be developed as an integrated project. Since, sub-lessees were all 100% subsidiaries of regular members of the Consortium and were bound by the terms and conditions in the brochure,



allotment letter and lease, hence all the subsidiaries were under an obligation to develop the Sports City Project and they are bound by the original terms and conditions mentioned in the Lease Deed. This subdivision was mere allocation on the request of allottees for proper implementation of the project and does not constitute a fresh transaction/allotment.

49. Noida Authority has been castigated for sanctioning the layout plan in favour of the Sub-lessees individually. He further submitted that on the basis of aforesaid analysis it can be concluded that the subdivision in favour of the subsidiary is independently binding on the subsidiary company. The subsidiary company is to perform the obligations as contained in the original terms of the lease and to develop the Sports City Project and cannot claim any independent existence for an independent project.

50. The sanction plan explicitly contains the clause that Sports facilities are to be developed by the Sub-lessee. The Master Layout Plan was submitted by the petitioner M/s Three C Green Developers Pvt. Ltd., which is a Special Purpose Company for only 2.5 lacs sqm of land out of 7.27 lacs sqm of land. However, it proceeded to provide a Master Layout Plan for the entire 7.27 lacs sqm of land. No indefeasible right can be claimed by the petitioner on the basis that a plan has been sanctioned in their favour. The submission of the plan was the own wrong doing of the petitioner for which they cannot take advantage.

51. The petitioner cannot claim right unfairly, particularly when, the layout plan was not prepared by the Noida Authority, but was prepared by the petitioner himself and deliberately taken the responsibility of

developing the sports facility, though the petitioner had no intention of doing the same.

52. Sanction of the map, even if it exists, has to be read along with the scheme and the lease deed as well as the statutory provisions. Any sanction contrary to the provisions of the Act, brochure, allotment and lease deed will by itself be a deviation and this deviation being not recognized under the law. Hence, the Grundnorm Principle would be applicable.

53. In the last 10 years, the petitioner, (M/s Three C Green Developer Pvt. Ltd.), or any other member of the Consortium or their sub-lessee had not developed any sports facility in the entire Sports City Project which was due to the ill motive of the petitioner, who had no intention to develop the sports facility right from the beginning.

54. The learned Senior Counsel further submitted that it is a perfect case of piercing the corporate veil and to see whether the companies were incorporated out of well-designed nefarious scheme/scam, or was done in the normal course of business.

55. Mr. Manish Goyal, Senior Counsel next submitted that here the corporate insolvency process initiated against the petitioner was tailor made and is nothing but outcome of a nefarious design, of the petitioner and the fraud committed to keep away from the entire responsibility of development of the sports facility of the sports city project. Here the promoters of the petitioner had made a web of companies and they requested to execute various lease deeds with the other member/subsidiary companies, which were wholly owned and controlled by the

promoters (namely, Nirmal Singh, Surpreet Singh Suri and Vidur Bhardwaj). On their request, Noida Authority had executed various sub-leases but it seems over a period of time they have sold off the companies/transferred the shares to third party/entities even without taking permission from Noida Authority as well as without completing the first milestone of the project, which was pre-condition of such transfer.

56. Since in this case there has been a web of companies incorporated by the same promoters and all of his newly incorporated companies applied as a consortium, and there after the share holdings have changed in certain companies without the permission of the authority, contrary to the provisions of the sports city scheme. Hence it is necessary to pierce the corporate veil and see who are the people/entity responsible for the debacle.

57. However, in the present case, the separate legal identity of the companies constituting the Consortium has been used to facilitate the evasion of legal obligations of the members held, jointly and severally, towards the development of the Sports City as an integrated whole. It is only by piercing the corporate veil, it would reveal the true nature of the companies and identify the individuals exercising real control over them to hold such persons directly liable.

58. A comprehensive and inclusive analysis of the present situation reveals that virtually the same set of individuals floated multiple companies to procure leases from the Authority for the development of the Sports City Project as an integrated whole. However instead of discharging their obligation towards integrated development of the

Project, the aforementioned set of individuals who were effectively behind all the members of the Consortium, under the garb of being independent companies, only focussed on selling the smaller companies at a very high premium and still not pay the Noida authority its dues, and later got themselves in Insolvency.

59. Since the line of distinction between the companies and their Directors (who apparently were the same set of individuals who floated multiple companies) is blurred and the companies merely function as an ‘alter ego’ of the owners evading their legal responsibility, the theory of ‘alter ego’ for piercing the corporate veil becomes applicable.

60. Additionally, since the same set of Directors behind all the individual companies are using the separate corporate entities for their own benefit instead of using it for discharging the obligations undertaken by the companies, the theory of ‘instrumentality’ for piercing the corporate veil also applies.

61. Learned Senior Counsel further submitted that the reason for piercing the corporate veil in the instant case is to prevent evasion of dues of Noida Authority and the State and to prevent the other Associated Companies, which are inextricably connected and form as one entity, from being used as a front for illegal purposes, and to identify true nature of transactions involved and to prevent fraud being perpetrated and to secure the public interest as well as the interest of homebuyers. To buttress his argument, he has placed reliance on following judgments passed by Hon’ble Supreme Court:

- (i) **State of U.P. and others v. Renusagar Power Company and others<sup>3</sup>**
- (ii) **Delhi Development Authority v. Skipper Construction Company and another<sup>4</sup>**
- (iii) **Shubhra Mukherjee v. Bharat Coking Coal Ltd.<sup>5</sup>**
- (iv) **State of Rajasthan v. Gotan Limestone Khanij Udyog Pvt. Ltd. and another<sup>6</sup>**

62. The project of Sports City is to be completed by the Consortium as a lessee and any member of the Consortium cannot, therefore, run away by alleging that it has disintegrated through a statutory process of insolvency. To buttress his argument, he has placed reliance on following judgments passed by Hon'ble Supreme Court and NCLAT:-

- (i) **Asia Foundations and Constructions Ltd. v. State of Gujarat and another<sup>7</sup>**
- (ii) **Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd.<sup>8</sup>**
- (iii) **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.<sup>9</sup>**
- (iv) **Raster Images Pvt. Ltd. v. State of U.P.<sup>10</sup>**

63. Though as per the Brochure, the implementation of the project was the duty of Noida Authority, but since development was not carried out and sports facilities were not developed as obligated under the scheme and the lease deed. Shockingly nothing was done to oversee the implementation. On the contrary their action were completely contrary to the brochure, and the scheme of the sports city project and also contrary to the terms and conditions of the allotment letter and the lease

3 1988(4) SCC 59 (Paras 17, 52 to 61, 65 to 70)

4 1996(4) SCC 622 (Paras 24 to 28)

5 2000(3) SCC 312 (Paras 10, 11 & 12)

6 2016(4) SCC 469 (Paras 23 to 31)

7 1985 SCC Online Guj 93 (Para 47)

8 Company Appeal (AT)(Insolvency) No.258 of 2021 (NCLAT) (Paras 34, 38 to 42, 44 & 45)

9 (2022) 8 SCC 352

10 2023 SCC Online 3594

deed. The entire scam which costed the State and Noida authority a sum of about Rs.9000 crores were done in connivance of the builders / allottees and the then officials of the Noida authority.

64. As per the ROC the share holdings of the allottee/ sub allottee companies has changed after the allotment, though the same was not permissible in the scheme and the brochure. This was done without the permission of the Noida authority. The chart showing name of allotted companies, directors, shareholdings at the time of allotment, and the present shareholdings as per ROC is as follows:-

S.No.	Plot No.	Name of Allottee	Date of sub-division	Director and Shareholder at the time of allotment	Present Directors as per record of ROC	Present shareholders as per record of ROC
1.	SC-01-01/78	M/S XANADU INFRA TECH PVT. LTD.	24.10.2011	M/s Xanadu Infratech Pvt. Ltd. (100% share holding company of M/s Three C Universal Developers Pvt. Ltd.)- Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri	Additional Directors- 1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishth	Shareholders (as on 31.3.2017)
2.	SC-01/A-ALPHA/79	M/S SEQUEL BUILDCON PVT. LTD.	16.06.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri	Directors- 1. Anoop Kumar Srivastav 2. Manoj Kumar Singh 3. Dilip Kumar	Shareholders:(as on 31.03.2020) M/s Ajnara India Ltd. (99.94%) Sh. Pramod Kumar Gupta(0.01%) Sh. Ashok Kumar Gupta (0.01%) Sh. Vinod Kumar Gupta (0.01%) Smt. Mamta Gupta (0.01%) Smt. Padma Gupta (0.01%) Smt. Geeta Gupta (0.01%)
3.	SC-01/A-I(BETA0/79	M/S PINNACLE SUPER STRUCTURES PVT. LTD.	16.06.2014	<b>Director :-</b> 1. Sh. Deepak Khurana 2. Dinesh Kumar Pahwa  <b>Shareholders</b> 1. M/s Sequel Buildcon Pvt. Ltd. Through Sh. Nirmal Singh (99.99 share) 2. Mr. Deepk Khurana(nominee Sequel Buildcon Pvt. Ltd.) (00.01)	Directors:- 1. Gurinder Singh Sikka 2. Akhil Gupta	Shareholders:-(as on 31.3.2019) 1. Sara Buildcon Pvt. Ltd.(75%) 2. Sikka Promoters Pvt. Ltd.(25%)
4.	SC-01/A-2/79	M/S ARENA SUPER STRUCTURE PVT. LTD.	16.06.2014	<b>Director :-</b> 1. Sh. Deepak Khurana 2. Dinesh Kumar Pahwa  <b>Shareholders</b> 1. M/s Sequel Buildcon Pvt.	Directors:- 1. Shah Alam 2. Jagat Singh Thakur 3. Niraj Kumar Sinha	Shareholders (as on 12.08.2023) 1. Shah Alam-(9%) 2. Purvanchal Projects Pvt. Ltd. (91%)

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**vs. State of U.P. & Ors.**

				Ltd. Through Sh. Nirmal Singh (99.99 share) 2. Mr. Deepk Khurana(nominee Sequel Buildcon Pvt. Ltd.) (00.01)	4. Joy George	Arena Superstructure went insolvency process
5.	SC-01/B-1/79	M/S SEQUEL BUILDING CONCEPT PVT. LTD.	03.10.2012	Director:- 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri  Shareholders 1. M/s Three C Universal Developers Pvt. Ltd. (99.99 share) 2. Mr. Surpreet Singh Suri (as nominee on behalf of Three C Universal Developers Pvt. Ltd.) (00.01)	Directors:- 1. Bhupinder Singh Kochar 2. Ajay Khetrapal 3. Anand Goel 4. Prashant Agarwal 5. Pradeep Jain 6. Munish Kher	Shareholders (as on 31.3.2024) Sh. Pradeep Jain (22%) Sh. Bhupinder Singh Kochchar (22%) Sh. Ajay Khetrapal Singh Sh. Anand Goel(12%) Sh. Munish Kher(6%) Mrs. Meenu Kher(5%) Sh. Prashant Agarwal(6%) Sh. Pooja Agarwal (5%)
6.	SC-01/B-2/79	M/S GOLF GREEN BUILDCON PVT. LTD.	03.10.2012	Shareholders	Directors:- 1. Bablu Kumar 2. Deena Ram	Shareholders (as on 31.3.2014) 1. Silver Sands Buildmart Pvt. Ltd. (25%) 2. Zephyr Projects Pvt. Ltd.-(25%) 3. Arun Kumar Ghai-(50%)
7.	SC-01/C-1/79	M/S THREE C GREEN DEVELOPERS PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri  Shareholders- 1.M/s Three C Green Developers Pvt. Ltd.(99.99 share) through Sh. Nirmal Singh 2. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors:- 1. Anand Ram 2. Girish Chand Joshi	Shareholders (as on 31.3.2018) M/s Xanadu Estates Pvt. Ltd. (75%) M/s Xanadu Infradevelopers Pvt. Ltd. (25%)
8.	SC-01/C-2/79	M/S ROBUST INNOVAEION S PVT. LTD.	16.09.2014	Director 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri  Shareholders:- 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share)	Directors:- 1. Ashwani Kumar Gupta 2. Karan Sagar Agarwal	Shareholders:- (as on 31.3.2024) Sh. Arvind Goel (50%) Sh. Aswani Kumar Gupta (50%)
9.	SC-01/C-3/79	M/S PIYUSH IT SOLUTION PVT. LTD.	16.09.2014	<b>Director</b> 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri  <b>Shareholders:-</b> 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri	<b>Directors:</b> 1. Naveen 2. Gopal Singh	<b>Shareholders-(as on 31.3.2020)</b> M/s Eminent Homes Pvt. Ltd. (99.99%) Sh. Nirmal Singh (nominee of M/s Eminent Homes Pvt. Ltd.(0.01%)

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				(Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))		
10.	SC-01/C-4/79	M/S THREE C INFRACREATION PVT. LTD.	16.09.2014	<p><b>Director</b></p> <p>1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri</p> <p><b>Shareholders:-</b></p> <p>1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors:</b></p> <p>1. Deepak Malhotra 2. Harshit Singh 3. Akhilesh Mishra</p>	<p><b>Shareholders-</b></p> <p>M/s Abhi Corporation Pvt. Ltd. (99.99%) Deepak Malhotra (nominee of M/s APCL Pvt. Ltd. (0.01%))</p>
11.	SC-01/C-5/79	M/S THREE C CITY DEVELOPERS PVT. LTD.	16.09.2014	<p><b>Director</b></p> <p>1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri</p> <p><b>Shareholders:-</b></p> <p>1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors:</b></p> <p>1. Jagdeep Singh Gill 2. Pradeep Singh Rathi</p>	<p><b>Shareholders-(2023-2024)</b></p> <p>Sh. Ajay Kumar (70%) Sh. Pratap Singh Rathi (10%) Sh. Praveen Kurele (20%)</p>
12.	SC-01/C-6/79	M/S WATER EPEARL INFORSOFTECH PVT. LTD.	16.09.2014	<p><b>Director</b></p> <p>1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri</p> <p><b>Shareholders:-</b></p> <p>1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors:</b></p> <p>1. Rakesh Kumar Agarwal 2. Pankaj Kumar Garg 3. Madhur Garg 4. Sumit Garg 5. Sachin Goyal 6. Sunny Agarwal 7. Nikunj Garg 8. Khooshbu Agarwal 9. Aakash Garg</p>	<p><b>Shareholders-(as on 31.3.2024)</b></p> <p>Sh. Dhanesh Chand Agarwal (9%) Sh. Dhanesh Chand Agarwal &amp; Sons (HUF)(6%) Mrs. Aparna Agarwal (5%) Sh. Mahesh Chand Goel (HUF) (5%) Sh. Mahesh Chand Goel (8%) Sh. Abhinav Goel (75) Sh. Sachin Goel (20%) Sh. Dinesh Garg (20%) Mrs. Nutan Garg (2.5%) Sh. Sumit Garg (2.5%) Sh. Madhur Garg (2.5%) Mrs. Shikha Garg (2.5%) Sh. Rakesh Kumar Agarwal (10%)</p>
13.	SC-01/C-7/79	M/S THREE C BUILDER PVT. LTD.	16.09.2014	<p><b>Director</b></p> <p>1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri</p> <p><b>Shareholders:-</b></p> <p>1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri</p>	<p><b>Additional Directors:</b></p> <p>1. Vinay Kumer Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishith</p>	<p><b>Shareholders-(as on 31.3.2017)</b></p> <p>M/s Lotus Green Developers Pvt. Ltd. (25%) M/s Yashali Developers Pvt. Ltd. (25%) M/s Laurel Residency Pvt. Ltd. (25%)</p>



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				(Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))		M/s Infracore Projects Pvt. Ltd. (25%)
14.	SC-01/C-8/79	M/S THREE C BUILDER PVT. LTD.	16.09.2014	<p><b>Director</b></p> <p>1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri</p> <p><b>Shareholders:-</b></p> <p>1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors:</b></p> <p>1. Vinay Kumar Mishra 2. Satish Kumar Tiwari 3. Sameer Sagar Vashishith</p>	<p><b>Shareholders-(as on 31.3.2017)</b></p> <p>M/s Lotus Greens Developers Pvt. Ltd. (25%) M/s Yashali Developers Pvt. Ltd. (25%) M/s Laurel Residency Pvt. Ltd.(25%) M/s Infracore Projects Pvt. Ltd. (25%)</p>
15.	SC-01/D-1/79	M/S KINDLE DEVELOPERS PVT. LTD.	03.10.2012	<p><b>Director</b></p> <p>1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri</p> <p><b>Shareholders:-</b></p> <p>1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors:</b></p> <p>1. Piyush Tiwari 2. Shikha Tiwari 3. Astha Gupta 4. Harshdeep Gandhi</p>	<p><b>Shareholders-(as on 30.9.2014)</b></p> <p>1. Sh. Piyush Tiwari (55%) 2. Ms. Shikha Tiwari (5%) 3. M/s Sunwhite Infrastructure Pvt. Ltd. (40%)</p>
16.	SC-01/D-2/79	M/S GOLF GREEN RESIDENCE PVT. LTD.	03.10.2012	<p><b>Director</b></p> <p>1. Sh. Deepak Khurana 2. Dinesh Pahwa</p> <p><b>Shareholder:-</b></p> <p>1. M/s Kindle Developers Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana(Nominee of M/s Kindle Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Additional Directors:</b></p> <p>1. Anil Prakash Sharma 2. Krishan Kumar 3. Rahul Yadav 4. Usha Saraf</p>	<p><b>Shareholders-(as on 31.3.2020)</b></p> <p>M/s Sunshine Infracore Pvt. Ltd. (99.99%) Sunshine Infracores Pvt. Ltd. (0.01%)</p>
17.	SC-01/D-3/79	M/S GOLF GREEN ESTATE PVT. LTD.	03.10.2012	<p><b>Director</b></p> <p>1. Sh. Deepak Khurana 2. Dinesh Pahwa</p> <p><b>Shareholder:-</b></p> <p>1. M/s Kindle Developers Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana(Nominee of M/s Kindle Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors:</b></p> <p>1. Dinesh Kumar Jain 2. Rakesh Kumar Jain</p>	<p><b>Shareholders-(as on 31.3.2023)</b></p> <p>1. Exotica Housing &amp; Infrastructure Projects Private Ltde.- (99.99%) 2. Mr. Dinesh Kumar Jain (as a nominee of Exotica Housing &amp; Infrastructure Projects Pvt. Ltd.) (0.01%)</p>
18.	SC-01/D-4/79	M/S GOLF GREEN MANSIONS PVT. LTD.	03.10.2012	<p><b>Director</b></p> <p>1. Sh. Deepak Khurana 2. Dinesh Pahwa</p> <p><b>Shareholder:-</b></p> <p>1. M/s Three C Universal Developers Pvt. Ltd. (99.99% share) through Sh. Vidur Bhardwaj 2. Mr. Surpreet Singh Suri (Nominee of M/s Three C Universal Developers Pvt. Ltd. (0.01% share))</p>	<p><b>Directors-</b></p> <p>1. Vinod Bahl 2. Pramod Bahl 3. Vikas Gupta 4. Uma Shanker</p>	<p><b>Shareholders (as on 31.3.2024)</b></p> <p>Sh. Vinod Bahl (25%) Sh. Pramod Bahl (25%) Sh. Uma Shanker (25%) Sh. Amitabh Gupta (25%)</p>

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19.	SC-01/E-1/79	M/S GAURSONS SPORTSWOOD PVT. LTD.	03.10.2012	<b>Director</b> 1. Sh. Deepak Khurana 2. Dinesh Pahwa  <b>Shareholder:-</b> 1. M/s Three C Universal Developers Pvt. Ltd. (99.99% share) through Sh. Vidur Bhardwaj 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Universal Developers Pvt. Ltd. (0.01% share))	<b>Directors:</b> 1. Manoj Gaur 2. Sarthak Gaur	<b>Shareholders-(as on 31.3.2024)</b> 1. Manoj Kumar Gaur-(4.65%) 2. Mrs. Manju Gaur - 4.66% 3. Gaursons India Private Limited-(41.92%) 4. Shri Shayam Buildcon Private Ltd.-(41.92%) 5. Mr. Pradeep Kumar Agrawalla-(6.85%)
20.	SC-01/E-2/79	M/S GOLF GREEN INFRA PVT. LTD.	03.10.2012	<b>Director</b> 1. Sh. Deepak Khurana 2. Dinesh Pahwa  <b>Shareholder:-</b> 1. M/s Xanadu Realcon Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana (as a nominee of M/s Xanadu Realcon Pvt. Ltd. (0.01% share))	<b>Directors:</b> 1. Dheeraj Jain 2. Shruti Jain 3. Divya Jain 4. Amit Jain	<b>Shareholders-(as on 31.3.2023)</b> M/s Mahagun India Pvt. Ltd. (9.99%) ICICI Prudential Venture Capital Fund Real Estates (.01%) Gaur Sons Sports Wood Pvt. Ltd.(90%)
21.	SC-01/E-3/79	M/S GOLF GREEN SUPERSTRUCTURE PVT. LTD.	03.10.2012	<b>Shareholder:-</b> 1. M/s Xanadu Realcon Pvt. Ltd. (99.99% share) 2. Mr. Deepak Khurana (as a nominee of M/s Xanadu Realcon Pvt. Ltd. (0.01% share))	<b>Directors:</b> 1. Jai Prakash Gupta 2. Alka Goel	<b>Shareholders-(as on 31.3.2023)</b> 1. Civitech Housing India Pvt. Ltd. (85.71%) 2. Subodh Goel (7.14%) 3. Alka Goel (7.14%)
22.	SC-01/A/101	M/S THREE C GREEN DEVELOPERS PVT. LTD.	03.07.2013	<b>Director</b> 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri  <b>Shareholders:-</b> 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))	<b>Directors-</b> 1. Anand Ram 2. Girish Chandra Joshi	Shareholders: M/s Xanadu Estates Pvt. Ltd.(75%) M/s Xanadu Infradevelopers Pvt. Ltd. (25%)
23.	SC-01/B/101	M/S GOLF GREEN BUILDCON PVT. LTD.	03.07.2013	<b>Director</b> 1. Sh. Nirmal Singh 2. Sh. Vidur Bhardwaj 3. Sh. Surpreet Singh Suri  <b>Shareholders:-</b> 1. M/s Three C Greens Developers Pvt. Ltd. (99.99% share) through Sh. Nirmal Singh 2. Sh. Surpreet Singh Suri (Nominee of M/s Three C Greens Developers Pvt. Ltd. (0.01% share))	Directors- 1. Anand Ram 2. Girish Chandra Joshi	Shareholders:- M/s Xanadu Estates Pvt. Ltd. (75%) M/s Xanadu Infrastructure Pvt. Ltd. (25%)

65. This chart shows how the allottees have sold the land/ project to other builders in complete contravention to the scheme/ terms of the

lease deed, without taking permission from the noida authority, at a high premium and made a huge profit out of it, at the cost of Noida authority. In fact it shows that the original promoters have got the project allotted by paying 10% of the allotment money and then divided and subdivided, and thereafter, sold the entire sports city to various small builders and pocketed the entire sale considerations.

66. Learned Senior Counsel vehemently asserted that the instant writ petition is nothing but an effort to prevent the Noida Authority from taking any serious action against the petitioners for non-payment of the outstanding dues and also for not completing sports facilities before completion of residential and commercial facilities.

#### **F. ANALYSIS**

67. We have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, we have proceeded to peruse the pleadings, grounds taken in the petition and annexures appended thereto.

68. This case exposes a significant nexus of corruption between builders and Noida Authority officials, resulting in gross violations of public trust, fraudulent practices, and possible financial losses amounting to around ₹9000 crores to the Noida Authority as per the CAG report. In that context, this case requires us to address past actions and their consequences as well as future recourse.

#### **G. EFFECT OF PAST CONDUCT**

69. We would be remiss in our duty if we ignore the illegalities committed by the Builders (sub-lessees) in connivance with the officials

of Noida Authority which has snow-balled into a major land scam and which, according to CAG, has led to significant loss to the Noida Authority and the State Government and to the public at large. We are constrained to note the total lack of concern shown by the Authority on the report of the CAG and we wonder why no action has been taken against the Builders/ allottees / sub-lessees and the officers of the Noida Authority who were involved in this large-scale scam.

70. The timeline of events, the total inaction of the NOIDA Authority and the apathy of the State Government, in the face of the CAG report compels us to pass suitable orders in the matter. A Court, much less a Constitutional Court, cannot sit helpless in the face of blatant illegalities and apparent collusion. This Court, under Article 226 of the Constitution, has the power to pass appropriate orders in the face of inexplicable illegality and loss of public money. This Court can, and does in these glaring facts, take cognizance of what seems like a glaring case of collusion between builders and officers of NOIDA Authority to grant undue benefit to them and cause loss to State exchequer and consciously turn a blind eye to a report of the CAG. In so doing, they have also created a difficult situation for the homebuyers, which is compounding the problem even further.

71. The following analysis, conclusions and our subsequent directions are aimed to address the malfeasance and provide relief to the affected stakeholders:

**H. SCHEME-2010-2011 FOR DEVELOPMENT OF SPORT CITY IN NOIDA AND ITS VIOLATION:-**

72. Noida having been declared to be an Industrial Township is obligated to not only develop industries but also to develop a complete

township by virtue of Article 243Q of the Constitution of India. The sports city scheme having been widely publicized on 03.03.2011 was to fulfil a laudable object. This is evident that the object of the scheme was to develop state-of-the-art sports facilities to be enjoyed by the public at large. This scheme was launched for developing Sports City at two different places in Noida, first of which is in Sector-78 & 79, admeasuring about 7,27,500 square metre and the other sports city in sector 150 in Noida. This case pertains to the former Sports City in Sector 78 & 79.

73. The reasons of allotting a huge parcel of land was for developing an international standard Sports facility. Looking at the size and the cost of the project it may not have been feasible for an individual company to complete the project. So a Consortium of companies were allowed to participate and develop the sports city project. It was never the intention of the Scheme to bifurcate the project of Sports City into a smaller plots and allow small builders to make group housing society in the sports city. But looking at the way the Authority allowed the haphazard development of the group housing, the entire concept and the scheme of sports city has been frustrated.

74. As per the scheme, a Brochure was issued which had several conditions, which conditions were breached by the allottees / sub-lessee in material respects disentitling them from being allotted the project, but which were brushed under the carpet in connivance with the officers of the Noida Authority.

75. Some of the conditions and their glaring breaches are as follows :-

***“Members of consortium will have to specify one Lead Member who alone shall be authorized to correspond with the NOIDA. Lead member should be the single largest shareholder having at least 30% share in the consortium.”***

***(emphasis supplied)***

On the request of the allottees, individual sub leases were executed by the Noida authority first in favor of the individual members of the consortium, and separate payment schedule was fixed. Subsequently these members started corresponding with the Noida authority and sending request contrary to the scheme and that same were accepted erroneously. The lead member was supposed to be the single largest shareholder having at least 30% share in the consortium. However in this case the lead member was completely ousted by the allottees and the officials of the Noida authority (together hereinafter referred as conniving parties) while executing the lease deeds with the members of the consortium.

**76. The shareholding of the lead member in the consortium shall remain at least 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Noida.**

***(emphasis supplied)***

This condition was also brazenly violated. The lead member was completely ousted by the allottees in connivance with the conniving parties, even much prior of getting a temporary occupancy/ completion certificate of first phase of the project

***77. In case of Consortium, the members shall submit a Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme(s), and in case the plot is allotted to them, the MOA shall clearly define the role and***

*responsibility of each member in the consortium, particularly with regard to arranging debt and equity for the project and its implementation.*

*(emphasis supplied)*

No such MOA was executed which defined role and responsibility of each of the members, neither the same was ever asked by the Noida Authority.

**78. *The members shall submit a registered/notarized Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Company(ies), hereinafter called SPCs that will subsequently carry out all its responsibilities as the allottee.***

*(emphasis supplied)*

Though the SPC was there but was never taken any such responsibility, the officials of the Noida Authority never even asked for the same. On the contrary the entire project was divided in a number of plots and allotted to different companies. Each of these companies took on themselves with specific roles of developing the project, the division was such all the cream of the project were assigned to smaller companies. In all 21 companies got the advantage of developing the residential/ commercial project, and the entire responsibility of completing the sports facilities was assigned to petitioner no. 1 and one another company. These smaller companies were later on sold to other builders (who were not even qualified to apply), by transferring the shares of the sub-lessee companies. All the profits were siphoned off, and nothing was ploughed or held back for the development of the sports facilities. This also created a channel for back-door allotment to ineligible persons.

**79. The allottee and in the case of consortium, the lead member and/or the relevant member and/or SPC(s) incorporated by them, put together, will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.**

*(emphasis supplied)*

In this case neither the lead member nor the relevant member constructed on their own the 30% of the total permissible FAR on allotted area. The lead member was ousted right in the beginning;

**80. The “Lead Member” (on the date of submission of the tender) shall continue to hold at least 30% of the shareholding in the SPC till the temporary occupancy/completion certificate at least one phase of the project is obtained from the NOIDA.**

*(emphasis supplied)*

In this case the lead member was not holding 30% of the share in the SPC and till date they have not completed the first phase of the project. But the officials of the Noida authority kept their eyes closed and allowed the allottees to continue the way they wanted.

**81. In case of default in depositing the instalments or any payment, interest @ 14% compounded half yearly shall be leviable for defaulted period on the defaulted amount.**

*(emphasis supplied)*

The allottees kept on defaulting in payment of the dues of the Noida authority but no efforts were ever made to recover the principal with the contractual interest from the allottee. In more than a decade only 3 or 4 stray notices have been sent. Even those were nothing but just an eyewash. The officials of the Noida authority have miserably failed to recover the dues. This was nothing but an outcome of the conniving parties, which led to a huge loss to the state exchequer.



***82. The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional and other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. However, the residential and commercial development/construction may be completed in phases within 7 years.***

***(emphasis supplied)***

Though the Lessee were obligated to complete the construction of minimum 15% of the permissible area earmarked for sports, etc within a period of 3 years from the date of execution of Lease Deed, no part of this has been done till date. Further, a perusal of the provision also shows that the residential portion was to be developed as a quid pro quo for development of the sports facilities. However, by alienating the allotted land to third parties, money has been siphoned off by the allottees while no such development of the sports facilities has ever been carried out. Noida Authority never asked to complete the sports facilities part of the project either.

***83. The 'Completion Certificate' will be issued by the NOIDA on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof.***

***(emphasis supplied)***

This condition was also diluted by the conniving officials.

***84. Without obtaining the completion certificate the lessee shall have the right to sub-divide the allotted plot into suitable smaller plot as per the planning norms of the NOIDA only for the area available for residential and commercial use and to transfer the same to the interested parties, if any, with the prior approval of the NOIDA on payment of transfer charges at the rate prevailing on the date of transfer.***

***(emphasis supplied)***

Here the lessee had the right to sub-divide the allotted plot into suitable smaller plot only for the area available for residential and commercial use, and that too after getting the completion certificate. But here the entire project of sports city was subdivided, and further it was illegally transferred to third parties, without the prior approval of the NOIDA, neither the transfer charges were paid.

**85. *The NOIDA will monitor the implementation of the project.***

***(emphasis supplied)***

The NOIDA Authority has miserably failed to monitor the implementation of the project.

86. In the scheme the allotment price was kept far below the the market price of that point of time, as the scheme was for development of the sports facility and for this purpose, the price was purposely kept low so the cost of developing the sports facilities could be set off by developing the residential apartments/commercial area. However, the allottees took the undue benefit of the low price, and after the allotment, without paying the further instalments (which was 90% of the allotment cost) sold it off to smaller builders, by making a huge profit at the cost of Noida authority and the public at large. It was clear from the policy and brochure, that the lead member should be the single largest shareholder having at least 30% share in the Consortium and he was supposed to hold back his 30% shares till they get temporary occupancy or completion certificate of at least the first phase of the project. However, soon after the allotment of project to the Consortium, the Noida authority in complete violation of the policy and the scheme, went on dividing/ sub dividing the plots.

87. The intent of the consortium members was evident from the inception, as the subdivision of plots was clearly part of a calculated

scheme. Their aim was to distribute all the advantages and assets of the Sports City among various smaller entities while concentrating the liabilities specifically, the obligation to develop sports facilities into two companies, of which one was the petitioner. The petitioner company claims to have taken a financial assistance by issuing debenture. Since the petitioner had not developed any thing one wonders where has the money been spent. The petitioner company, was pushed into insolvency as part of a broader strategy with the sole intention of defrauding the Noida authority and the State. The persons behind the said companies utilized the land earmarked for recovery of cost to build the sports facilities to third parties in connivance with Noida Authority officials, effectively putting these funds which were earmarked for public use outside the scope of recovery. These lands were meant for generation of revenue to complete the sports facilities, which was required to be put into the intended use.

88. No doubt, the sub division of the plot was allowed but it had certain riders and condition attached to it, which were never followed in its true sense and spirit. In this case, the officers of the NOIDA Authority purposely chose to be blind to the attached condition and merely went on bifurcating the entire sports city, with the sole intention of extending undue advantage to the allottees/ Builders.

89. Sanction of the map, even if it exists, has to be read along with the scheme and the lease deed as well as the statutory provisions. Any sanction contrary to the provisions of the Act, brochure, allotment and lease deed will by itself be a deviation and this deviation being not recognized under the law, hence, the Grundnorm Principle would be applicable.

90. Therefore, the petitioner cannot claim right unfairly, particularly when, the layout plan was not prepared by the Noida Authority, but was prepared by the petitioner himself and deliberately taken the responsibility of developing the sports facility, though the petitioner had no intention of doing the same.

91. From the material on record, it transpires that the promoter of the petitioner company are the same as that of 7 out of 9 consortium members companies, the internal division of the responsibilities, were made in a way that all the cream of the project was parked in smaller entities, and all the liabilities of completing the project into two companies. The intention of the petitioner right from the beginning was not to develop the sports city but just to sell of the smaller creamy portion of the project, and to make money.

92. Since in this case there has been a web of companies incorporated by the same promoters and all of his newly incorporated companies applied as a consortium, and there after the share holdings have changed in certain companies without the permission of the authority, contrary to the provisions of the sports city scheme. Hence it is necessary to pierce the corporate veil and see who are the people/entity responsible for the fraud/ scam.

#### **I. INSOLVENCY –LIFTING OF CORPORATE VEIL**

93. In this case the project was allotted to a consortium, surprisingly all the members of the consortium companies were incorporated after the scheme was launched and the promoters of all the companies were same, which goes to show the consortium was not a genuine consortium but was made of a group of companies owned by same set of people, who

after getting the allotment, got it sub-divided and a development plan was applied and approved in such a way, that all the assets of the Sports City were kept in by various small companies and the liability of developing the sports facility was kept with two companies.

94. Few of the companies in this consortium have gone into insolvency. The insolvencies of these companies were designed only to avoid payment to Noida Authority, banks/ financial institutions, State of U.P. to find out the actual accused person who was involved in this bungling/fraud, which resulted into the insolvency, it is necessary to lift the corporate veil of the web of these companies. And to see whether they are trying to hide their fraudulent activities and themselves under the mask of the company being a separate juristic personality.

95. Out of all the companies, who are involved in the development of the Sports City following four companies have gone into insolvency, which are M/s Sequel Buidcon Pvt. Ltd., M/s Arena Super Structure Pvt. Ltd., M/s Kindle Developers Pvt. Ltd. M/s Three C Green Developers Pvt. Ltd. (petitioner herein). The first three companies named above were assigned the task of developing residential part of sports city. They were the original members of the consortium or their 100% subsidiary companies of the allottees and had only one business of developing the sports city. Surprisingly in all these companies the original promoters were the same (i.e. Niramal Singh, Surpreet Singh Suri and Vidur Bharadwaj). They have collected huge amount of money by selling part of the project to various other entities (by share transfer of various small holding companies). Obviously, this would have been sold at a price. The money would have come in the vendor company/ or any other of its concern or in personal accounts of the promoters (i.e Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri). Now the question is where

did the sale consideration go. This money was for the land which was to be used for generating the revenue to construct the sports facilities. No such facility has been made. The entire sale proceeds were syphoned off and thereafter allowed the petitioner company to slip into insolvency. Definitely, this insolvency is a tailor-made insolvency just to avoid civil and criminal liabilities and to avoid payment of the dues and completing the obligation of developing the Sports City. This is nothing but just a fraud played on Noida Authority as well as on the State and other stakeholders/ creditors.

96. Due to the occurrence of the above instances of fraud and irregularities, the law has taken change with its earlier exception that, a company is a separate juristic personality and the liability of the company cannot be recovered from the property of directors. In due course of time, certain exceptions have been carved out in the doctrine of separate juristic personality of the company. The doctrine of ‘piercing of corporate veil’ was initially crystallized in *In Salomon v. Salomon & Co. Ltd.* [*Salomon v. Salomon and Co. Ltd.*<sup>11</sup>, , the House of Lords had observed, the company is at law, a different person altogether from the subscriber. However, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is ‘when the corporate personality is being blatantly used as a cloak for fraud or improper conduct’.

97. This doctrine of lifting corporate veil was carved out to be used whenever and wherever the situation so warranted. Lord Denning in *Littlewoods Stores v. I.R.C.*<sup>12</sup>, held:-

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11 1897 AC 22 : (1895-99) All ER Rep 33 (HL)

12 1969 (1) WLR 1241

*“The doctrine laid down in Salomon’s case has to be watched very carefully. It has been supposed to cast a veil over the personality of a limited company through which the Courts cannot see. But that is not true. The Courts can, and often do, draw aside the veil. They can, and often do, pull off the mask. The way with group accounts and the rest. And the Courts should follow suit.....”*

98. On the doctrine of ‘piercing of corporate veil’ the Hon’ble Supreme Court in the matter of **State of U.P. v. Renusagar Power Co**<sup>13</sup> has held that, in the expanding horizon of modern jurisprudence, the lifting of the corporate veil is not only permissible, its frontiers are unlimited and ever expanding. It further significantly observed that the lifting of the corporate veil was a changing concept and of expanding horizons.

99. The Hon’ble Supreme Court in **State of Rajasthan and others vs. Gotan Lime Stone Khanij Udyog Private Limited and another**<sup>14</sup> has held as under:-

*“The principle of lifting the corporate veil as an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion[7] but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation[8]. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”*

100. The principle of lifting the veil of corporate personality has been upheld in **Subhra Mukharjee & another v. Bharat Cooking Coal Ltd. & another**<sup>15</sup>; **Calcutta Chromotype Ltd. vs. Collector of Central Excise Kolkata**<sup>16</sup>, **New Horizon Ltd. & another vs. Union of India and others**<sup>17</sup>,

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13 (1988) 4 SCC 59  
14 (2016) 4 SCC 469  
15 (2003) 3 SCC 312  
16 AIR 1998 SC 1631  
17 1995(1) SCC 478

**C.I.T. vs. Meenakshi Mills Ltd. Madura<sup>18</sup>; Telco & ors vs. State of Bihar<sup>19</sup>; Juggi Lal Kamalpat vs. Commissioner of Income Tax, U.P.<sup>20</sup>.**

101. Hon'ble Supreme Court in the matter of **Delhi Development Authority v. Skipper Construction Company (P) Ltd. & Another<sup>21</sup>** has been pleased to hold that lifting the corporate veil of the companies, forfeiture and attachment of property acquired by illegal and corrupt means by the builder behind the corporate veil as also properties of the family members can also be ordered by the Court.

102. The modus operandi of the promoters of the petitioner company is consistent. They get the plot allotted from Noida, do not pay the dues of Noida Authority, syphon of the money from the company and then push the company, which is to execute the public facilities part of the project into insolvency to avoid implementing the project and to avoid payment to the creditors and also to avoid civil and criminal liabilities. The High Court, in the matter of **Nirmal Singh Vs State of U.P.** bearing **Writ C no 41110 of 2019**, had noticed the same trend by the same set of promoters in the judgment and order dated 29.02.2024.

103. This Court also finds that though it was a mandate given to the Noida Authority and it was their duty to ensure proper implementation of the Sports City, the Noida Authority has failed to oversee the implementation of the Sports City. For the past so many years the construction of group housing was being carried out and no sports facility was being developed. Still, the Noida Authority kept its eyes closed and allowed the builders to continue with the group housing project without even developing the sports facilities.

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18 AIR 1967 SC 819  
19 AIR 1965 SC 40  
20 AIR 1969 SC 932  
21 1996(4) SCC 622



104. It is quite surprising to note that if the petitioner and other consortium members had no physical possession of the land, how could they apply for the sanction of map which were approved by the Noida Authority. There are two other things worth noticing. Firstly, the land on which the residential/commercial development is to take place is contiguous to the plot for sports facilities, therefore, to say that approach road is not made available for sports facilities is thus just an attempt to mislead the court. Secondly, the brochure clearly gives a breakdown of different facilities to be constructed in the sports facility, hence, some of these facilities could have been developed by the petitioner to demonstrate its bonafide. But apparently no sports facilities in the Sports City was constructed.

105. The intention of the sports city scheme was not to allot small plots to small builders / fly by night operators, then why did Noida Authority divided the plots into smaller holdings and allotted to various companies. The sub division of the sports city was carried out and Sub leases were granted to companies who were not even eligible to bid for the project. Noida Authority allowed to do thing indirectly what could not have been done directly.

106. Undoubtedly, the petitioners had failed to pay the premium as per the term of the lease deed for paying the instalments. The officials of the Noida Authority never asked for the payment. The record shows that a notice was sent in 2015, another in 2019 and a third one in 2023 asking the petitioners to pay the instalments. These notices were nothing but an eyewash. We are shocked to see the conduct of the Noida Authority that in spite of the repeated failures, no action has been taken by the Noida Authority to recover its dues, neither they took any action for the

cancellation of allotment nor any action was taken against the officials, who were involved in this scam.

107. The action of the officials of the Noida Authority is highly questionable. In fact, the entire process of allotting Sports City to the petitioners and in the implementation of the Sports City, there were large scale bungling and a huge benefit was extended to the builders by the conniving officials of the Noida Authority. Shockingly, no action is taken against the builders and the conniving officials whose deeds have resulted in such a huge scam.

#### **J. ZERO PERIOD**

108. The most surprising thing is that on 70% of the land area sports facility was to be developed and on the remaining 30% residential/commercial activity was permitted. Every builder is seeking benefit of zero period on the ground of encroachment. The question arises, as to how the encroachment were on an area where he was supposed to develop sports facility and there was no encroachment on the area where residential/commercial structure had to come up. When there was an opportunity to collect money by launching residential/commercial tower there was no encroachment or unavailability of infrastructure by Noida Authority, but when it came to develop sports facility, there was an excuse of encroachments. This theory set up by the builder are not at all believable. If there was no infrastructure available or there was encroachment, then they ought not have sold/booked the flats and if they were doing so without informing the homebuyers, then that amounts to committing a fraud on the homebuyers.

109. Further the affidavit filed by the Noida Authority shows the date on which each of the allottee were given possession and the same was clear of any encroachment only in few cases there were very small encroachments. Had the builders started construction of sports facility on other areas and had they come to the Court with clean hands, this Court would have certainly treated the cases of the builders sympathetically. But, this is not a case here, the builders are raising this ground just to buy further time. Their conduct right from the day one was to deceive the homebuyers, banks, Noida Authority and not to pay them and not to carry out their obligations and for that they are playing every possible tricks.

110. As per the scheme, three years' time was granted for developing the first phase and five years for the development of the entire sports facility. This delay could not be explained. Even assuming there were some encroachments still major portion of the sports city project land were handed over to the allottees and the allottees, who had bifurcated the land amongst themselves, could have started development of project on the land over which there was no encroachment. However, they chose not to do so and Noida Authority also did not ask them to do so.

#### **K. SCAM**

110. This is a case where every action of the Noida Authority smacks of corruption and scam in collusion with the builders since inception of the Sports City Project. The entire process of development of the Sports City including conceiving the scheme, allotment, execution of the lease deed, sanction of map/ plan, and implementation of just one part of the sports city was all an outcome of malafide intentions. The allottees

/builder in connivance with the NOIDA official had played a huge fraud and victims are Noida Authority, State of U.P. and the Home buyers.

111. The most shocking part is the entire scam and fraud were carried under the aegis of the Noida Authority and, one after another, the officials kept mum and allowed the scam to continue. The allotment was made in the year 2011 and for the first time it was unearthed sometime in the year 2020, when the CAG carried out an audit. Shockingly for the last 9 years, the senior officials of the Noida Authority and the State were well aware of the scam and fraud and they allowed the affairs to continue and no action has been taken against them. They failed to see that the allottees were doing nothing towards the development of the sports facility, whereby the group company of the petitioner kept on selling to the subsidiary companies, which made huge amount by way of sale of land (by transferring the shareholdings of the subsidiary companies), but did not pay the dues of the Noida authority.

112. Even after the Master Plan was sanctioned on 16.06.2014, neither there was development of any sports facility over the project land nor the officers of Noida Authority even bothered to insist for the same from the allottees/builders. When the entire land was given, then why the allottee did not complete the sports facility within the stipulated time. Nothing has been done for development of sports facilities and the officers of Noida Authority kept their eyes closed and none of them ever made any serious and sincere effort to get the sports facilities developed. At the same time they chose to be mute spectators and allowed the builders/sub-lessees to start construction of ancillary part of the project (residential). Construction of multi-storey buildings commenced right under their nose and still they did not make any effort to ensure

development of the sports facilities which was the main part of the project.

## L. FRAUD

113. The corporate frauds specially in the insolvency case happens when the management /individuals within or associated with the company are engaged in illegal practices and had failed to fulfil their fiduciary duty, which ultimately leads to insolvency and in such a case the stakeholders affected by such fraud including creditors and consumers become the victim of such fraud. Addressing this issue requires multifaceted approach.

114. It is apparent from the scheme that when it was formulated and allotment was made it was pre meditated design, wherein allottee wanted to get the land allotted only by paying 10% then get the benefit of zero period, in the meanwhile collect money from various financial institutions and without even developing the project go into insolvency. The officers of Noida Authority were completely hand in glove to this sinister design. They were part of fraud. They had approved the first consolidated lay out Plan wherein they have individually recognized the role of different companies and knowingly kept the development of all sports facilities in two companies, never followed on the development of the sports facilities in the sports city, never asked the allottees to pay their dues, and allowed the haphazard constructions which were completely contrary to the scheme, brochure conditions, and the conditions of the allotment and lease deed.

115. **Fraus Omnia Vitiat- Fraud vitiates everything:-**The corporate fraud, which includes malpractices, breach of financial duty, financial

manipulation, asset diversion siphoning off funds and the government failure, which results into undue advantage and illegal gains to the people calling the sort in the company would come under the ambit of corporate fraud.

116. The Hon'ble Supreme Court in the matter of **Udgar Gagan Properties Limited v. Sant Singh and others**<sup>22</sup> wherein it has been held that the petition under Article 226 of the Constitution of India is maintainable as it is only a rule of practice based on sound and proper exercise of discretion and not a jurisdictional bar. The Court can quash an illegal action based on fraud or abuse of process of law. Ref; **Madhukar Sadbha Shivarkar (D) by Lrs. v. State of Maharashtra & ors**<sup>23</sup>.

117. In the **Law Lexicon, Second Edition (Reprint) 2001 by Sri P. Ramanatha Aiyer**, it is observed that 'abuse of process of court generally applies to proceeding wanting in bona fides and is frivolous, vexatious or oppressive wherein a person abuses the process of law for his personal advantage'. Such kind of proceedings would fall under the ambit of fraud.

118. The fraudulent actions of builders and the connivance of Noida Authority officials resulted in significant financial losses to the State Exchequer and particularly the Noida Authority, along with severe exploitation of homebuyers. The key elements of this fraud are as follows:

***a) Manipulation of Allotment Process***

*Builders secured large land parcels by paying only 10% of the premium, gaining allotments at undervalued rates.*

*Despite failing to pay the remaining installments, builders were allowed to get maps sanctioned and proceed with collecting money from homebuyers.*

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22 2016 (11) SCC 378

23 2015(6) SCC 557

*Officials of Noida Authority deliberately ignored these violations and provided undue leniency to builders, allowing them to exploit the scheme without fulfilling their obligations.*

***(b) Failure to Develop Sports Facilities***

*Builders made no effort to initiate the construction of sports facilities, which were the primary objective of the Sports City project.*

*Claims of encroachments were used as excuses to delay sports facility construction.*

*Obligation to construct sports facilities was entrusted to dummy companies which were pre-destined to fail.*

***(c) Active Connivance of Noida Authority Officials***

*Officials at all levels of the Noida Authority knowingly allowed these fraudulent practices to continue.*

*They failed to monitor project implementation, recover outstanding dues, or enforce compliance with the terms of the scheme.*

*Their inaction, even after repeated violations, enabled the systematic defrauding of the State Exchequer and homebuyers.*

***Sub-Division and Sale of Plots***

*Builders subdivided the allotted plots and sold them to other business houses or developers at a premium, making substantial profits while avoiding payment of full premiums to Noida Authority.*

*This practice not only violated the terms of the allotment but also caused significant losses to the State Exchequer.*

## **M. PIERCING OF ADMINISTRATIVE VEIL**

119. It is just not a case of piercing corporate veil containing of purchasers behind the scam but also a case where there should be piercing of administrative veil and see who were the officers/officials involved who had bent all the rules and regulations and allowed these scamsters to scam Noida Authority. Piercing the administrative veil is also important in order to see, who were the officers on top, who were involved in this, and on whose behest everything was carried out. If we just go by the person who has approved the map or took no action to get the instalments paid, then it will be like catching up small fish and

allowing big ones who are actually responsible for such a big scam to go scot free. Each and every person, who was involved in decision making, and implementation, or keeping his eyes closed and allowed the scam to happen should be held accountable and suitable action should be taken against them. To utter shock of this Court, there is not even an FIR against such officers/officials. The Government's valuable resource has been lost.

120. Even till date, no effort has been made by Noida Authority to recover its outstanding dues or the instalments from the date when it became due and it is a matter of enquiry as to why no action was taken against these companies for payment of dues. One would wonder what was the reason why for such a long period all the officers posted/connected with the instant matter kept silent and nobody ever asked payment of the installments which fell due. Or pursued the development of the sports city. When this question was asked by Noida Authority, no plausible reasons were given by them.

121. The first scam was done by the NOIDA Authority in allowing bifurcation of the plots into small plots and sold it to other small builders, who independently were not even qualified to make a bid, which caused loss to the State exchequer, as the fresh allotment was made treating it to be a Group Housing Plot, and also no stamp duty was paid for the transfer which caused further loss to the State exchequer. The plot was allotted at a very low price. Sale thereof would definitely have been at a premium.

122. The Hon'ble Supreme Court in the matter of **Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others**<sup>24</sup> has held

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24 (1997) 1 SCC 35



that when a Government in office misuses its powers figuratively, we refer to the individual Minister/Council of Ministers who are constituents of the Government. The Government acts through its bureaucrats, who shapes its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government.

123. The Noida Authority's failure to enforce compliance, recover dues, and monitor project implementation demonstrates gross negligence despite the Comptroller and Auditor General's (CAG) report highlighting irregularities and no action has been initiated against delinquent officials makes Noida Authority accountable for the same. The Supreme Court in *Union of India v. Hindustan Development Corporation*<sup>25</sup> held that public authorities can be held accountable for creating legitimate expectations that are later breached. The project facility has not been constructed or delivered to the public despite advertisement.

#### **N. SCOPE OF JUDICIAL INTERFERENCE**

124. One of the points that falls for determination is the scope of judicial interference in matters of administrative decisions, administrative action of the State and its instrumentalities. What we have to ascertain now is whether the decision of the authority in allotment, implementation and development of the project was exercised in good faith or was done with *malafide* intentions to grant undue benefits to the builders.

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25 (1993) 3 SCC 499

125. The Hon'ble Supreme Court in the matter of **Udgar Gagan Properties Limited Vs. Sant Singh**<sup>26</sup> has been held that the petition under Article 226 of the Constitution of India is maintainable as it is only a rule of practice based on sound and proper exercise of discretion and not a jurisdictional bar. The Court can quash an illegal action based on fraud or abuse of process of law.

126. Normally the court would not have intervened in the administrative decisions, nor gone beyond the prayer made in the writ petition going **through the facts as taken in the pleadings** it is clear that the action of the Noida authority, right from the inception of the sports city project was marred with unfairness, irrationality and illegality and fraud. The administrative decision taken were completely contrary to the scheme of the project, contrary to the terms of the brochure, terms of the lease and the allotment letter, which had caused a huge loss to the state exchequer, hence we had no option but to intervene in the instant matter.

127. Looking into the public interest involved, the court is escalating the limits of this writ petition, and going beyond the prayer made in the writ petition. Court has the power to pass orders and to go beyond the prayer for substantial justice, and to take judicial notice of facts that are presented during the course of a case and pass appropriate directions. These facts show that not only is the Petitioner approaching the Court with unclean hands, the hands of officers of the Noida Authority are equally sullied. This has caused loss of resources (land on which development was permitted as quid pro quo for the development of the sports facilities), loss of revenue (payment of lease rent, interest and penalty) and loss of public facilities (as the sports facilities have not been made).

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26 2016 (11) SCC 378

128. The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

129. The so-called public policy cannot be a camouflaged for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder of a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done.

### **O. CBI INQUIRY**

130. This case can be a case study of the dirty nexus of the builders and the officials of the Noida Authority, where benefits after benefit were doled out to the builders, which was completely contrary to the Scheme, MOA and the implementation of the Sports City Scheme. In last so many years in the Noida Authority a number of officers would have come and gone and surprisingly no one blowed a whistle to the scam, or took any action against them, and did no efforts to recover the outstanding dues, and continued to extend undue benefits / favors to all the allottee / sub-lessees of the sports city, which was contrary to the interest of Noida Authority/Bank and the State Government.

131. What is most shocking is CAG unearthed the scam in 2021, but till date Noida Authority or the State Government have not lodged a single FIR against any of the officials, who were involved in the scam. No effort has been made to retrieve the losses, only a notice was sent in 24.07.2023 asking the builders to pay the outstanding premium. However, no action has been taken to recover the dues. This shows how influential the builder lobby is, and how well entrenched there are in the government system.

132. The Court will not be wrong to say that the efforts are made to shield the corrupt officers and also the builders who had made huge amount of money by defrauding the State Government, Noida Authority.

133. The court also realises that all investigations cannot be entrusted to the CBI. The courts should infact be reluctant in straight away referring the matters to CBI. However, in view of the possibility of involvement of high functionaries, a CBI enquiry is more desirable.

134. The Hon'ble Supreme Court has, in **Disha v State of Gujarat**<sup>27</sup>, found justification in transferring matters to CBI or other Special Agencies when powerful and influential persons or State Authority are involved in the investigation and in cases where an investigation is not likely to go in the proper direction or be biased. This resort, the Hon'ble Court holds, is to lend credibility to the final outcome. Considering that successive officers on various key positions in an institution like Noida Authority and State Government have turned the blind eye to monumental failure on the part of the allottees, and several of these officers are in important and high positions now, a direction to an independent agency to investigate the matter at hand would be

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<sup>27</sup> (2011) 13 SCC 337

appropriate. This is more so in view of the report of the CAG, on which no action has been taken either by the State or Noida Authority.

135. The Hon'ble Supreme Court in the matter of **State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal**<sup>28</sup>, has held as follows-

*“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”*

136. The Hon'ble Supreme Court in the matter of **Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram**<sup>29</sup>, has held that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.

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28 2010 SCC OnLine SC 297

29 (2002) 5 SCC 521

137. The Hon'ble Supreme Court in the matter **K.V. Rajendran v. Superintendent of Police, CBCID**<sup>30</sup> has held as follows-

*“13. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.”*

138. The Hon'ble Supreme Court in the matter of **Sakiri Vasu v. State of U.P.**<sup>31</sup> has held as follows:-:

*“31.... this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI. That, however, should be done only in some rare and exceptional case, otherwise, CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.”*

139. The Hon'ble Supreme Court in the matter of **Rubabbuddin Sheikh v. State of Gujarat**<sup>32</sup>, has held that when the accused are very senior officers of the state then, the investigation by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Then the investigation should be handed over to any other independent investigating agency.

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30 (2013) 12 SCC 480

31 (2008) 2 SCC 409

32 (2010) 2 SCC 200

140. In view of the above, this Court has no other recourse but to refer the investigation to the CBI. The CBI would also investigate the role of all the persons involved in this scam. We hope and trust that the investigation would be carried out and completed expeditiously.

#### **P. CORPORATE INSOLVENCY**

141. In the case of the petitioner the corporate insolvency process initiated seem to be tailor made, and is nothing but outcome of a nefarious design, of the petitioner and the fraud committed by the promoter/management of the petitioner company, to keep away from the entire responsibility of development of the sports facility of the sports city project. Here the promoters of the petitioner had made a web of companies and they requested to execute various lease deeds with the other member/ subsidiary companies, which were wholly owned and controlled by the promoters (namely, Nirmal Singh, Surpreet Singh Suri and Vidur Bhardwaj). On their request, Noida Authority had executed various sub-leases but it seems over a period of time they have sold off the companies/transferred the shares to third party/entities even without taking permission from Noida Authority as well as without completing the first milestone of the project, which was pre-condition of such transfer.

142. The insolvency was a strategic manoeuvre designed solely to evade liabilities and shirk the responsibility of providing the promised sports facilities.

143. The question now is, as to whether the company which has gone into insolvency can be prosecuted for the offences done by the company

in defrauding Noida Authority as well as the state and other stake holders / creditors.

144. The intention of Insolvency and Bankruptcy Code was not to allow the unscrupulous promoters to siphon away the money and then take the illegal advantage of the law and initiate, insolvency proceeding just to avoid to fulfil their obligations and also to avoid civil and criminal liabilities. Creation of companies for short periods and specific purposes leads to the futility of their resolution and even insolvency. It only carries liabilities which will extinguish or greatly diminish with the resolution/ liquidation process. This cannot have been the intention behind IBC.

145. The progress of law is seldom able to keep up with devices of misuse or provide for every eventuality. As such, in Common Law jurisdictions, the judiciary has the power, and the duty, to fill the gaps that are exposed on a case-to-case basis, keeping the object of the statute in mind. The object of the Insolvency and Bankruptcy Code, 2016 (IBC) is, inter alia maximization of value of assets of a corporate debtor, promotion of entrepreneurship, availability of credit and to balance interest of all stakeholders including the government. It is not the intent of IBC to allow parking and obliteration of loss or liability by resorting to CIRP. Such course of action would be an act of fraud on the statute. The intent of IBC is never to hamper the project of national importance.

146. The IBC is still evolving both in India and abroad. In fact, the United Nations Commission on International Trade Law<sup>33</sup> has set up a Working Group V to fill up the void in Insolvency Law pertaining to insolvency of enterprise groups, on this issue the inter-dependence of

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33 UNCITRAL



(corporate) group members across different countries to provide for cross-border insolvency law guidelines. This need to fill up the void in the I.B. Code has also been recognized by the Government of India, Ministry of Corporate Affairs vide public notice dated 18.06.2018.

**Q. EFFECT ON CONSORTIUM WHEN A MEMBER OF THE CONSORTIUM GOES INTO THE INSOLVENCY**

147. As far as the insolvency of a member of a consortium is concerned, very few jurisdictions have any laws on the said subject matter. No significant development has come in the international law pertaining to the same which would give guidance in such situations. The present case thus presents a very interesting, and novel, legal question.

**148. What will be the effect on a Consortium when a Member of the Consortium goes into insolvency under the Insolvency and Bankruptcy Code, 2016?**

149. We are constrained to pass guidelines in the instant case as the Insolvency and Bankruptcy Code, 2016 is silent qua the rights of other consortium members, in case one of the members goes into insolvency. Since the companies of consortiums apply in development of mega projects and if this vacuum is not filled, even solvent companies, which are members of the consortium might be pulled into insolvency because of insolvency of one of the consortium members. As the insolvent member would not be able to complete its part of the project and non completion of the project will definitely impact the other companies, who are the Members of the Consortium. The object of IB Code, 2016 is not to pull a solvent company into insolvency.

## R. RECOMMENDATIONS

150. On the basis of analysis of law made in the foregoing paragraphs, we consider it appropriate to lay down the following recommendations in response to the question framed in Para 148:-

*“(a) As a measure of first recourse, the IRP shall communicate to the company and the Authority for seeking Company’s willingness to continue to perform its functions/ obligations in the contract awarded to the consortium of which the said company is a member. This would be in furtherance of the functions of the IRP under Section 20 of the IBC. This communication shall be done within a maximum period of 4 weeks of commencement of CIRP and shall be independent of the constitution of CoC. If no such intention is communicated within the said period, it will be presumed that the company is unwilling to participate in the subject project.*

*(b) If the IRP, on an assessment of the capabilities of the Company (consortium member facing CIRP), is of the opinion that the said company cannot usefully or meaningfully participate in the business of the consortium, he shall so communicate to the other consortium members and the Authority (for the said project) within the period provided in para (a) above. The other consortium members (jointly or severally) shall then have an option to undertake the remaining project on their own and complete the same. The exercise of the option by the consortium members to complete the project shall be done within a period of 4 weeks, which shall commence either from the expiry of the 4 week period mentioned in para (a) above (in the event no communication is received from the IRP) or within 4 weeks from the communication of the IRP to the effect that the said company is not in a position to participate in the business of the consortium.*

*(c) If the consortium members fail to communicate their willingness to complete the project on their own and without the participation of the member facing CIRP or express their inability to complete the said project, the Authority shall make alternate arrangements to ensure timely completion of the project.”*

151. These guidelines have been laid down bearing in mind the completion of the project and also to secure the interest of all the stakeholders.

## **S. DIRECTIONS**

152. In view of the aforementioned facts and circumstances, this Court issues the following directions:-

- (a) The parties hereto are directed to take steps in accordance with the recommendations made in para 150 of this judgment in the interest of expeditious completion of the subject project; and
- (b) The Central Bureau of Investigation (CBI) is hereby directed to lodge a complaint against all the conniving officials of the Noida Authority and the allottees/ builders involved in allotment, development, sanction of Sports City Project and any other person who may be involved in the present scam.
- (c) However, considering the overall conduct of the parties, we refuse to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to accord any relief prayed for in the instant writ petition.
- (d) With the aforementioned directions, this petition stands disposed of.
- (e) Parties to bear their own costs.

**Order date:- 24.02.2025**

**Manish Himwan**

**(Prashant Kumar, J.) (M.C. Tripathi, J.)**