

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 868 of 2021 & I.A No. 2316, 2317
of 2021

IN THE MATTER OF:

Greater Noida Industrial Development ...Appellant
Authority

Versus

Anand Sonbhadra

...Respondents

Present:

For Appellants : Mr. U. N Singh, Adv.

For Respondent : Mr. Abhishek Anand, Mr. Nipun Gautam
with RP in person for R1

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the Greater Noida Industrial Development Authority (GNIDA), a statutory Authority, constituted under the provisions of the U.P. Industrial Area Development Act, 1976, being aggrieved against the order dated 09.03.2021 by which an application filed by the Appellant bearing I.A. No. 2002 of 2020 in CP (IB) No. 1059/ND/2018, under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 for upholding the Applicant as Financial Creditor, has been dismissed.

2. The Appellant filed the application bearing I.A No. 2002 of 2020 seeking the following relief:-

“(a) Call for the record of the case.

(b) Pass appropriate orders against the impugned orders/ decision/ action of the Resolution professional for converting and considering the applicant/GNIDA as Operational Creditor and not informing for participating in a meeting of committee of creditors and necessary orders/directions be issued for upholding and continuing the applicant/GNIDA as 'Financial Creditor' and for participation in a meeting of committee of creditors.

(c) Quash and set aside the all actions/ decisions/ taken by the Resolution Professional and Committee of Creditors against the applicant/ GNIDA and allow the applicant to participate in all the proceedings as Financial Creditor.

(d) In exercise of the Powers under Section 98, 204 and 208 and all other applicable provisions of the IBC, 2016, direct replacement of the present Resolution Professional Mr. Anand Sonbhadra and direct further action against the said Resolution Professional for his misconduct in not informing and allowing to participate in COC and allegedly converting and considering the status of the applicant GNIDA from financial creditor to operational creditor, without adjudication, reasons and justification, resulting in financial loss to a Govt. Authority GNIDA and dealing with the owner of the land to its detriment and resulting in unlawful financial gain to the corporate debtor and other creditor at the expenses of the applicant.

(e) Any other relief or order(s) which this Hon'ble Tribunal may deems fit and proper be also passed in favour of the applicant/ GNIDA.”

3. The Tribunal has rejected the application with the following observations:-

“28. We have perused the relevant documents and submissions made by the counsels and find force in the contention of the Respondent. The similar application filed by the Noida (New Okhla Industrial Development Authority) before the same bench raising the same issue

was rejected with the observation that lease deed referred in that application is not a financial lease. The present applicant also contends that they should be declared as Financial Creditor as the debt is a financial debt. The lease deed which is the only document relied upon doesn't bring the applicant under the umbrella of financial creditors as the said document is not a financial lease. Moreover, the argument placed by the applicant is that the amount is recoverable as land revenue further substantiates that the dues fall under the category of dues of statutory body/authority. Hence, they stand alongwith the other Operational creditors like tax authorities, etc.”

4. Although, the Appellant has prayed that he should be treated as Financial Creditor and not the Operational Creditor but it has been argued by the Appellant orally as well as in his written submissions it is mentioned that the Appellant is a secured creditor. In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of GNIDA Vs. Prabhjit Singh Soni & Anr., CA Nos. 7590-7591 of 2023 decided on 12.02.2024 to contend that the Appellant is a secured creditor but in the said case the Hon'ble Supreme Court framed the following issues which read as “(i) Whether in exercise of powers under sub-section (5) of Section 60, the Adjudicating Authority (i.e., NCLT) can recall an order of approval passed under sub-section (1) of Section 31 of the IBC?. (ii) Whether the application for recall of the order was barred by time? (iii) Whether the resolution plan put forth by the

resolution applicant did not meet the requirements of sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016? (iv) As to what relief, if any, the appellant is entitled to?” and granted the following relief which read as under:-

“55. As we have found that neither NCLT nor NCLAT while deciding the application / appeal of the appellant took note of the fact that,- (a) the appellant had not been served notice of the meeting of the COC; (b) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant; (c) the appellant had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and (d) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016, we are of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned order dated 24.11.2022 is set aside. The order dated 04.08.2020 passed by the NCLT approving the resolution plan is set aside. The resolution plan shall be sent back to the COC for re-submission after satisfying the parameters set out by the Code as expounded above. There shall be no order as to costs.”

5. On the other hand, Counsel for the Respondent has submitted that in the case of Noida Vs. Anand Sonbhadra, CA No. 2222 of 2021 decided on 17.07.2022, on the same ground, which are raised by the Appellant and were raised by the Noida Authority,

it has been held by the Hon'ble Supreme Court that Noida authority is an Operational Creditor.

6. Thus, in view of the aforesaid facts and circumstances, there is no error in the impugned order because the secured creditor can be both operational creditor as well as the financial creditor but financial creditor is altogether different from the operational creditor and since it has been held that a similar authority, namely, Noida Authority is an operational creditor, claiming the same relief on the basis of the lease deed, the Appellant, namely, GNIDA cannot be held to be a Financial Creditor on the same facts and has rightly been held to be an operational creditor.

7. In view of the aforesaid facts and circumstances, there is hardly any merit in this appeal for the interference and hence, the same is hereby dismissed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi
08th August, 2024

Sheetal