



INSOLVENCY & BANKRUPTCY

REAL ESTATE

Piercing The Corporate Veil In Real Estate Insolvency: Supreme Court Restores Resolution Plans and Curtails Gnida's Penal Claims

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Introduction

In a judgment of considerable significance for real estate insolvency law, the Supreme Court of India has, in *Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority*, restored project-specific resolution plans that had been set aside by the National Company Law Appellate Tribunal (NCLAT). The Court applied the doctrine of lifting the corporate veil, held that a public authority's persistent inaction disentitles it from levying penal charges, and reaffirmed that the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) must, as a rule, proceed on a project-specific basis in real estate matters.

Table of contents

- [Introduction](#)
- [Background and Genesis of the Dispute](#)
- [GNIDA's Conduct: Inaction, Delay, and Inconsistency](#)
- [The NCLAT Judgment and the Issues Before the Supreme Court](#)
- [The Supreme Court's Analysis: Lifting the Corporate Veil](#)
- [Disentitlement of GNIDA from Penal Charges](#)
- [Minority Homebuyers and Representation Under Section 25A\(3A\)](#)
- [Final Decision](#)
- [Significance for Insolvency and Real Estate Practice](#)

Background and Genesis of the Dispute

Earth Infrastructures Limited (EIL), the corporate debtor, was the holding company engaged in developing multiple real estate projects in Greater Noida and Gurugram. Three projects Earth Towne, Earth TechOne, and Earth Sapphire Court were developed by EIL on lands leased by the Greater Noida Industrial Development Authority (GNIDA) to EIL's subsidiary companies, namely Earth Towne Infrastructures Private Limited (ETIPL), Neo Multimedia Limited, and Nishtha Software Private Limited respectively. EIL held a dominant shareholding in all three subsidiaries (up to 98% in ETIPL), executed development agreements vesting actual construction rights in itself, and paid GNIDA's lease dues on the subsidiaries' behalf. Despite these arrangements, the subsidiaries' paid-up capital was negligible and they had no independent business activity whatsoever.

CIRP against EIL was admitted by the National Company Law Tribunal (NCLT) in June 2018. The Resolution Professional (RP) received resolution plans from two applicants: Roma Unicon Designex Consortium (Roma) for Earth Towne, approved by the Committee of Creditors (CoC) in August 2019 and by the NCLT in April 2021; and Alpha Corp Development Private Limited (Alpha) for Earth TechOne, Earth Sapphire Court, and Earth Copia (a separate freehold project in Gurugram), approved by 91.39% of the CoC in November 2019 and by the NCLT in June 2021.

GNIDA's Conduct: Inaction, Delay, and Inconsistency

GNIDA's conduct throughout the proceedings was characterised by persistent inaction and ineptitude. Though informed of the CIRP commencement by the Interim Resolution Professional in December 2018 and by the RP in May 2019 with a specific request to disclose its dues GNIDA failed to participate in the proceedings or submit claims within time. Its claim for Earth Towne was filed only after the CoC had already approved Roma's resolution plan. It never filed any claim for Earth Sapphire Court at all. Its eventual claim for Earth TechOne was submitted not to the RP but to the long-displaced Interim Resolution Professional. GNIDA also failed in its contractual obligation under the lease deeds to monitor project development, notwithstanding repeated complaints by thousands of homebuyers about stalled construction since 2016. In brazen disregard of a status quo order passed by the Supreme Court in April 2023, GNIDA even cancelled land allotments in June 2023, only withdrawing the cancellation after the RP moved a formal application before the Court.

The NCLAT Judgment and the Issues Before the Supreme Court

By judgment dated January 30, 2023, the NCLAT set aside all three NCLT orders, holding that the project lands belonged to EIL's subsidiary companies and could not be treated as EIL's assets under the IBC, that GNIDA ought to have been made a party to the CIRP, and that the resolution plans could not compel transfer of leasehold rights without GNIDA's prior consent. The principal questions before the Supreme Court were: whether the corporate veil should be lifted to treat the subsidiary companies' assets as EIL's assets for the purpose of the resolution plans; whether GNIDA's inaction disentitled it from levying penal interest and penalties; whether minority homebuyers could challenge a resolution plan approved by the majority of their class; and whether unduly delayed appeals could be entertained.

The Supreme Court's Analysis: Lifting the Corporate Veil

The Supreme Court firmly held that this was an eminently fit case for lifting the corporate veil. Relying upon the Constitution Bench decision in *Life Insurance Corporation of India v. Escorts Ltd.* (1986) and *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2019), the Court held that where associated or group companies are inextricably connected as to form part of one economic concern particularly where public interest is at stake the corporate veil must be disregarded. EIL was the main driving force behind the development of all three projects and the payment of GNIDA's dues, while the subsidiary companies served merely as conduits. Given that EIL held dominant shareholding in all three, that the subsidiaries had no independent business, and that GNIDA itself had acknowledged EIL's role in official correspondence, the Court found that the NCLAT had erred in applying the corporate separateness principle without adequate appreciation of the economic reality.

Disentitlement of GNIDA from Penal Charges

Invoking the public trust doctrine affirmed in *Noida Entrepreneurs Association v. Noida* (2011), the Court held that a public authority's powers must be exercised in larger public and social interest and cannot be wielded to the detriment of innocent citizens. GNIDA's failure to monitor projects, its sporadic and belated enforcement of defaults, its refusal to participate in CIRP proceedings despite due notice, and its approbation and reprobation before multiple forums collectively demonstrated a failure of institutional responsibility. The Court accordingly held that GNIDA was clearly disentitled from levying penal interest, penal charges, and time-extension penalties, affirming the NCLAT's finding on this aspect.

Minority Homebuyers and Representation Under Section 25A(3A)

Addressing the attempt by a small group of dissenting homebuyers to challenge Alpha's resolution plan, the Court reiterated that under Section 25A(3A) of the IBC, an authorised representative casts a vote on behalf of an entire class of financial creditors in accordance with the decision of the majority of that class. Once such a vote is cast, individual minority dissenters within the class cannot maintain a separate voice of dissent. Relying on *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.* (2022), the Court held that allottees vote as a class, and divergence of views within the class does not affect the validity of the class vote. Accordingly, the intervenor association representing dissentient buyers was held to have no locus to challenge the resolution plan.

Final Decision

The Supreme Court allowed the appeals filed by Alpha, Roma, EIL, and the homebuyers' associations, and dismissed GNIDA's appeals. The resolution plans of Alpha and Roma were restored. GNIDA was directed to recalculate its dues strictly on principal amounts, excluding all penal charges, and communicate the same within two weeks. Alpha and Roma were directed to clear such dues in equated monthly instalments over 24 months commencing July 7, 2026 entirely at their own cost, without burdening the homebuyers. GNIDA was held disentitled to any interest on the principal for the 24-month payment period. Project completion timelines were directed to commence from June 1, 2026. Registration of units in favour of allottees was to be undertaken only after full payment of GNIDA's dues and with its active participation. Appeals filed with a delay of 34 days were dismissed at the threshold, the Court confirming that Section 62(2) of the IBC permits condonation of delay up to 15 days only.

Significance for Insolvency and Real Estate Practice

This judgment makes several significant contributions to Indian insolvency and real estate law. It confirms that project-specific CIRP is the preferred approach in real estate insolvency, limiting the process to defaulting projects so as to protect homebuyers in viable ones. It establishes that the corporate veil doctrine applies in IBC proceedings, enabling courts to look through group

structures where subsidiaries serve no independent purpose. It holds public authorities to account for institutional negligence by disentitling them from capitalising on their own inaction through the imposition of penal charges. And it reaffirms the sanctity of the class-voting mechanism for homebuyers under the IBC, thereby protecting the finality of CoC decisions from challenge by minority dissenters.

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