A.F.R.

Court No. - 03

Reserved on: 21.04.2022

Delivered on: 27.05.2022

IN THE HIGH COURT OF ALLAHABAD

CIVIL MISC. WRIT (C) PETITION No. - 10123 of 2021

Palika Towns LLP Vs. State Of U P And 2 Others

Counsel for Petitioner :- Manu Khare

Counsel for Respondent :- C.S.C.,Anjali Upadhya,Ramendra Pratap Singh

Contents

Hon’ble Surya Prakash Kesarwani,J.

Hon'ble Vikas Budhwar,J.

(Per Hon’ble Vikas Budhwar,J.)

1. Heard Sri Navin Sinha, learned Senior Counsel assisted by Sri Manu Khare, learned counsel for the petitioner, Sri Ramendra Pratap Singh, learned counsel for the respondent no. 2 (Greater Noida

Industrial Development Authority) and Smt. Subhash Rathi, learned Standing Counsel who appears for the State.

EPILOGUE

"The extent and the scope of judicial intervention in writ jurisdiction in the matter of contractual obligation embodied in the commercial contract is a subject matter of present petition."

2. Factual matrix of the case as worded in the present petition are that the petitioner claims itself to be a Partnership firm registered u/s 12 (I) of Limited Liability Partnership Act 2008 with Government of India Ministry of Corporate Affairs having its registered office at D.S.C.- 319 DLF South Court Saket New Delhi 110017. As per the pleadings set forth in the petition one Moser Baer India Private Ltd. (hereinafter referred as Corporate Debtor) was allotted a commercial plot no. 66 admeasuring 2,70,201 square meters at Udyog Vihar Greater NOIDA, District Gautam Budh Nagar by the respondent no. 2 Greater NOIDA Industrial Development Authority (hereinafter referred as GNIDA) for a period 90 years. Record further reveals that initially the lease deed was executed on 26.06.2001 between GNIDA on one part and Corporate Debtor on the other part setting out the terms and the conditions (covenants) of the leased land in question. It is further pleaded in the petition that an application purported to be u/ s 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as IBC Code) was instituted by a Financial Creditor being M/s Alchemist Assets Reconstruction Company Limited bearing no. I.B.378 (P.B.) 2017 for initiating Insolvency Resolution Process against Carporate Debtor. The said application was admitted on 14.11.2017 by National Company Law Tribunal (NCLT) and one Mr. Debendra Singh was appointed as Interim Resolution Professional (hereinafter referred to as IRP).

3. Eventually, NCLT by virtue of its order dated 20.09.2018 allowed the application preferred by IRP u/s 33(2) IBC Code while orderding Liquidation of Coroprate Debtor. In furthrance thereof the Liquidator made a public announcement on 24.09.2018 under Regulation 12 of the Insolvency and Bankruptcy (Lilquidation Process) Regulation 2016 (hereinafter referred as to 2016 Regulation) inviting claims owed and due to Corporate Debtor giving details and description of the assets of Corporate Debtor such as location of the land and buildings so constructed thereon along with the plant and machinery embodied thereon. An advertisement/sale notice of the assets of the Corporate Debtor was published on 08.03.2019 by the Liquidator wherein not only details and description of the assets including the land and the buildings was mentioned which was put to auction but reserve price of auction being bieng 145.67 crores and the earnest money to be deposited being 14.57 crores was also reflected. The petitioner as per its own showing, participated in the auction so conducted and the bid of the petitioner was found to be commensurate to the expectation of the Liquidator. Consequently, the NCLT accepted the offer of the petitioner on 16.07.2019 and the petitioner thereafter received the acceptance letter dated 16.07.2019 of the Liquidator. According to the petitioner, full and final payment of Rs. 145.75 crores was made by it and on 11.09.2019 and a Certificate of Sale under Regulation 33 of 2016 Regulation was issued in favour of the petitioner. Consequent to the issuence of the sale certificate on 11.09.2019 the petitioner approached GNIDA on 30.01.2020 followed on 11.09.2020 for issuance of Transfer Memorandum. It has come on record that on 11.09.2020 GNIDA corresponded with the Liquidator claming arrears of past lease rentals of Rs. 4,71,40,620/- as principal dues and interest towards lease rentals of Rs. 6,26,86,769/-. Record further reveals that the liquidator replied to the said letter on 08.10.2020 coming with the stand that as the demised land had

already been subject matter of public auction as per the IBC Code-2016, objections were invited to file claims for getting registered by the creditors and as GNIDA did not get registered its claim so, the auction proceedings were concluded and the same was also confirmed by NCLT hence the request so acceded by the GNIDA cannot be accepted. It has been further averred in para 14 of the writ petition that the petitioner wanted to start with its project and thus under extreme pressure of the GNIDA, the petitioner deposited the arrears of lease rent and interest thereon beng Rs. 5,80,28,025/- for issuance of Transfer Memorandum on 27.10.2020 under protest. In support of the said contention petitioner has appended as annexure- 10 a letter sent by it addressed to GNIDA which is being termed as protest letter along with details of the deposits so sought to be made by it.

4. According to the petitioner finally the Transfer Memorandum was issued by GNIDA on 24.12.2020, a copy whereof has been appended at page 79 of the writ petition.

5. Lamenting quiescent demeanor in non refund of the amount which has been deposited under protest the petitoner is before this court by means of the present writ petiton seeking following reliefs:-

> *"I. issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to refund the amount of Rs. 5,80,28,025/- along with intrest @ 18% per annum from the date of deposition till date of refund.*
>
> *II. issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.*
>
> *III. Award cost of the petition to the petitioner."*

6. Contesting the claim of the petitioner, a counter affidavit has been filed on behalf of GNIDA sworn by respondent no. 3 on

13.06.2021 wherein following averments have been made in paragraph nos. 12, 13, 14, 15 which are quoted as under:-

> *"12. That the contents of para 10 of the writ petition are not admitted hence specifically denied. The petitioner has not annexed the lease deed which was executed between Greater Noida Authority and M/s Moser Bear. Without prior permission of the Greater Noida Autority M/s Moser Baer cannot sale the leae property. The M/s Moser Baer should have informed the Aurthority that they have become bankrupt and they cannot pay the lease rent of the plot allotted to them. No information has been given to the Greater Noida Authority by the M/s Moser Baer. Moreover lease rent has not been paid and the Greater Noida Authority will charge transfer charges as per policy of the Greater Noida Authority from the petitioner company, then only name of the company can be recorded in the Authority's record.*
>
> *13. That the contents of para 11, 12 and 13 of the writ petition are not admitted hence specifically denied. As per the liquidation of the company of M/s Moser Baer and petitioner compoany that was between them and not with the Greater Noida Authority. In case, any amount due against the plot, the Greater Noida Authority is liable to realize it from the lesee/allottee/purchaser. The Greater Noida Authority has nothing to do with the letter dated 30.09.2020. The company has to pay the transfer charges and all the dues including lease rent of the plot. It is further stated that the dues which are pending against, the Greater Noida Authority is laible to realize from the allottee/purchaser. Moreover, the petitioner company and M/s Moser Baer have flouted the terms and condition of the lease deed.*

14. That the contents of para 14 and 15 of the writ petition are not admitted hence specifically denied. The petitionr company was require to deposit lease rent and transfer charges of the polot. The Greater Noida Authority has transfer the plot in the name of the petitioner company by issuing the transfer memorandum dated 24.12.2020. 11 conditions have been given in the transfer memorandum.

15. That the contents of para 16, 17, 18, 19 and 20 of the writ petition are not admitted hence specifically denied. The M/s Moser Baer shojld have taken prior permission from the Greater Noida Authority and they should have informed that the company has becomebankrupt and they are going to insolvency. Since the petitioner company purchased the plot should have also inquire from the Authority what are the dues are pending agianst the plot. Since the petitioner compay has entered in the shoes of M/s Moser Baer, hence they have to clear all the deus. It is specifically denied that petitioner is not entitle for any refund of the amount of Rs. 5,80,33,025/-."

7. In nutshell, the stand taken by the GNIDA in their counter affidavit is that GNIDA was at no point of time apprised of the fact that Corporate Debtor lessee became bankrupt and proceedings were drawn under IBC Code- 2016 against it culminating into auction of the demised land and transfer of the same, therefore, auction in favour of the petitioner is illegal. It has been further alleged in the counter affidavit that once the petitioner stepped into the shoes of the Corporate Debtor lessee then as per the covenant contained in lease deed so executed from time to time and Transfer Memorandum the petitioner is liable to make good the arrears of the lease rentals and interest thereon.

8. Rejoiner affidavit has also been filed by the petitioner in reply to the counter affidvit so filed by the GNIDA retereating their stand in the writ petition.

9. A supplementary counter affidavit has been filed by GNIDA on 10.11.2021 sworn by respondent no. 3 annexing copy of the lease deed dated 26.06.2001 so executed between GNIDA on one part and the Corporate Debtor on the other part.

10. A supplementary rejoinder affidavit has been filed in reply of the supplementary counter affidavit. An impleadment application has been filed by the petitioner on 10.2.2022 seeking impleadment on M/s Moser Baer India Private Limited Company in Liquadation for making him as a party respondent no. 4. A supplementary affidavit and compilation of judgments have been filed by petitioner.

RELEVANT EXTRACT OF DOCUMENTS AND INSTRUMENTS EXECUTED BETWEEN THE PARTIES:-

11. THE LEASE DEED MADE on the 26th day of June in the year TWO THOUSAND ONE between Greater Noida Industrial Development Authority, a body corporate constituted under Section 3 read with Section 2(d) of the U.P. Industrial Area Development Act, 1976 (U.P. Act 6 of 1976) (hereinafter called the 'Lessor which expression shall, unless the context does not so admit, include its successor and assigns) of the one part AND

1.Sri…….aged……..Years……..

S/o……...R/o……..

2. Sri…….aged……..Years…….

S/o……...R/o……..

3.
Sri…….aged……..Years……
…..

S/o……...R/
o……..

4.Sri…….aged……..Years……
……..

S/o……...R/
o……..

5.Sri…….aged……..Years……
……..

S/o……...R/
o……..

hereinafter called the lessee which expression shall unless the context does not admit, include his/her/their/it's heirs, executors, administrators, representatives and permitted assigns/it's successors and permitted assigns of the other part.

A. Partnership Firm /Proprietorship Firm/Company functioning in the name of M/s. Moser Baer Indi Ltd.- Having its Registered Office Situated at 63, Ring Rutid. Through its Director Sri N.K. Chaudhary aged.48 years S/O Sri Raj Mangal Chaudhary I-11 Sector 27 Noida he reinafter called the lessee which expression shall, unless the context does not admit, include his/he:/their/it's heirs, executors, administrators, representatives and permitted assigns/it's successors and permitted assigns) of the other part.

II (a)……...

Provided that the interest shall be computed at the rate mentioned above on the total amount of the balance outstanding from time to time from the date of allotment and shall be payable half yearly (As per payment plan enclosed with allotment latter) on the schedule mentioned above. Provided that if the installments together with the interest accruing thereon are not paid by tor on the due date. Interest at the rate of 15% compounded at six monthly shall be charged for delayed payment for delayed period.

(b) The payments made by the Lessee shall be first adjusted towards the interest due. If any, and thereafter towards the premium. If any, and the balance. If any, shall be appropriated towards the lease rent not withstanding any directions/request of the lessee to the countrary.

(c) If Lessee makes default in payment of premium and interest for two consecutive installments the Lessor shall have a right to determine the Lease and to resume possession.

(9) (i) That the lessee, may transfer, relinquish, mortgage or assign its interest in the demised premises or the building constructed thereon or both provided that no transfer shall be allowed/permitted in respect of a unit where a functional certificate has not been obtained.

Provided also that the lessee may with the previous permission in writing of the lessor (whose decision shall be binding on the lessee and which permission shall not be unreasonably withheld) relinquish mortgage or assign its interest in the demised premises or the building constructed thereon or both.

(ii) Every transfer, assignment, relinquishment, mortgage or subletting as referred to above shall be subject to and the beneficiary thereof shall be bound by all the covenants and conditions contained in this deed and be answerable to the lessor in all respect in the same manner as the original lessee.

10 (a) Whenever the title of the Lessee in the demised premises is transferred in any manner whatsoever the transferor and the transferee shall within one month of such transfer, give notice of such transfer in writing to the Lessor.

(b) In the event of the death of the Lessee the person on whom the titles of the deceased devolves shall within three months of such devolution give notice of such devolution to the Lessor.

(c) The transferee or the person on whom the titles devolves as the case may be shall supply to the Lessor certified copies or the document evidencing the transfer or devolution.

15…….

The Lessor may require the successor in interest of the Lessee to abide by and faithful carry out the terms, conditions, stipulations provisions and agreements herein contained.

IV. AND IT IS HEREBY FURTHER AGREED AND DECLARED BY AND BETWEEN THE PARTIES TO THESE PRESENTS AS FOLLOWS

(A) Upon the happening of any one or more of the under mentioned contingencies.

(a) If the lessee or any other person(s) claiming through or under such lessee commits breach of any of the covenants or conditions contained in this Deed and such breach is not remedied following receipt of a written notice from the lessor specifying the nature of breach and providing the lessee reasonable opportunity to remedy the breach:

(b) If the lessee or any other person(s) claiming through or under such lessee fails and/or neglects to observe punctuality and/or perform any of their/its/his/her obligations stipulated under this Deed:

(c) If the lessee or any other person(s) claiming through or under such lessee whether actually or purportedly transfers, creates, alienates, extinguishes, relinquishes, mortgages or assigns the whole or any part of his right, title or interest whether in whole or any part thereof, except in the manner stipulated in this Lease Deed.

(3) (a) That the Lessor and the Lessee hereby agree that all sums due under this deed from the Lessee on account of premium rent, interest or damages for use and occupation or any other account whatsoever shall on the certificate of the Lessor which shall be final, conclusive and binding on the Lessee be recoverable as arrears of land revenue.

(b) That the lessor shall have first charge upon the demised premises for the amount of unpaid lease rent and interest thereon and other dues of Authority.

SALE CERTIFICATE DATED 30.07.2021

AND WHEREAS the official Liquidator within his ambit and powers conferred under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, In view of NCLT's order dated 16-07-2019, has sold the leasehold rights of plot no 66 admeasuring 270201.16 sqm, Greater Noida, Distt Gautam Budh Nagar, UP along with buildings constructed (Map Enclosed) thereupon (hereinafter referred to as "PROPERTY") as per terms

contained in e-auction process document dated 08-03-2019.and as per order of Honble NCLT order dated 16-07-2019. The Liquidator issued the sale certificate dated 11-09-2019 in respect of the captioned property which is an integral part of this document and is also attached herewith. Consequently, the Transferor has transferred the fease hold rights for the said Property unto) the TRANSFEREE by virtue of the aforesaid sale certificate and the TRANSFEREE has also agreed to acquire the same for the sale consideration of Rs. 1,45,75,00,000/-(Rupees One Hundred Forty Five Crores and Seventy Five Lakh Only).

AND WHEREAS the Transferor has already applied and obtained the TRANSFER MEMORANDUM from the Greater Noida Industrial Development Authority, vide TRANSFER MEMORANDUM No. GNIDA/2020/1750dated 24-12-2020 in favour of the Transferee, in respect of the lease hold rights for the said property l.e. Plot No. 66, Greater Noida, U.P. having total area admeasuring 2,70,201 Sq. Mtrs.

4. That the Transferor has assured and undertakes the Transferee that the said property is free from all sorts of encumbrances such as mortgage, sale, gift, lien, agreement, dispute, tigation injunctions, banks or private loans, securities, guarantees, attachment with any decree of any Hon'ble court of law from lower to higher jurisdiction in the all over India or abroad being sale as per the provisions of the IBC Codeand NCLT Orders.

7. That the Transferee shall be bound by the terms and conditions of the earlier Lease Deeds executed between the Transferor and the Greater Noida specifically the original lease deeds in respect of the said property and the supplementary lease deed dated 28th November 2007 subject to the changes mentioned in the transfer memorandum and otherwise from time to time.

11. That if the Transferee does not abide by the terms and conditions of allotment/leases and building regulation and direction or any other rules framedby the authority, the lease may be cancelled by the GNIDA and possession of the demised premises may be taken over by the GNIDA and the Transfereein such an event will not be entitled to claim any compensation in respect thereof.

ग्रेटर नोएडा औद्योगिक विकास प्राधिकरण

भूखण्ड संख्या-01, सैक्टर-के० पी०-4, ग्रेटर नोएडा सिटी,

जिला गौतमबुद्ध नगर

पत्रांकः ग्रेनो/उद्योग/हस्तांतरण पत्र/2020/1760
दिनांक 24/12/2020

अन्तरण ज्ञापन

Transfer Memorandum.

आवंटन Ind	भूखण्ड संख्या 66
क्षेत्रफल 270201 वर्गमीटर	ब्लाक- Udyog Vihar
वास्तविक क्षेत्रफल- 270201 वर्गमीटर	सैक्टर- Ecotech-II,
अंतरक के पक्ष में M/s. Moser Baer India Ltd	अंतरिकी के पक्ष में M/s. Palika Towns LLP
authorised- Anil Kohli पिता/पति का नाम- Ramesh Chandra Kohli अंतरक का पता K. G. Marg Cannaught place New Delhi	authorised -Ashish Jain पिता / पति का नाम Dileep Kumar Jain अंतरिकी का पता A-3 SF House No 66 Bihari Nagar Ghaziabad

उपरोक्त अंतरण हस्तांतरण प्रपन्न दिनांक 18.12.2020 के क्रम में विशेष कार्याधिकारी महोदय के अनुमोदन के उपरांत निम्नलिखित नियम व शर्तों के साथ अनुमोदित किया जाता है

1. अंतरक / अंतरिकी को यह सुनिश्चित करना होगा कि उपरोक्त सम्पत्ति सभी प्रकार के भार से मुक्त है तथा कही बन्धक नहीं है । बन्धक पाये जाने की दशा में अंतरण अनुमति स्वतः निरस्त मानी जायेगी

2. अंतरिकी द्वारा इस पत्र के जारी होने की तिथि से 90 दिन के अन्दर निबन्धित अंतरण प्रलेख का निबन्धन सम्बन्धित उपनिबन्धक कार्यालय सेक्टर गामा चितवन एस्टेट) ग्रेटर नोएडा सिटी में सुनिश्चित किया जाना चाहिए जिसकी प्रति ग्रेटर नोएडा कार्यालय में देनी होगी। अंतरण प्रलेख न कराने कि स्थिति में वर्तमान औद्योगिक नीति के अनुसार कार्यवाही की जायेगी।

3. अंतरण ज्ञापन अंतरण प्रलेख का अनिवार्य अंग होगा तथा अंतरण के साथ परिशिष्ट के रूप में निबन्धित किया जायेगा।

4. अंतरक एवं ग्रेटर नोएडा के मध्य निष्पादित पटटा प्रलेख दिनांक 28-08-2001 एवं अनुपूरक पटय प्रलेख दिनांक शून्य में वर्णित शर्तें एवं नियम एवं अंतरण ज्ञापन की शत अंतरिकी पर बाध्यकारी होगीं।

5 अंतरिकी उपरोक्त औद्योगिक भवन का उपयोग दिनांक 28-08-2001 से केवल 90 वर्ष की अवधि के शेष भाग के लिये पटटे के रूप में करेगा। 5.

6. प्राधिकरण के अनुमोदित भवन नियमावली के नियम निदेशों उपबन्धी के विरुद्ध किये गये निर्माण कार्य के फलस्वरूप समस्त वयित्व स्वत: ही अंतरिकी में निहित समझे जायेंगे।

7. भूखण्ड हस्तान्तरण के बाद भी कोई देयता (जैसे प्रीमियम / लीज/ अतिरिक्त प्रतिकर आदि की गणना सम्परीक्षा के अधीन है) बनती है तो अंतरिकी को व्याज सहित देना होगा तथा अंतरिकी को भविष्य में देय पट्टा किराये का भुगतान निर्धारित तिथि को करना होगा।

8. टी०एम० जारी होने की तिथि से इकाई को एक वर्ष की अवधि में पुन: इकाई क्रियाशील घोषित किया जाना अनिवार्य होगा। उपरोक्त अवधि के पश्चात प्राधिकरण के नियमानुसार विलम्ब शुल्क के साथ समय विस्तरण अनुमन्य होगा।

9. इकाई द्वारा उक्त भूखण्ड का एकमुश्त लीजरेन्ट जमा करा दिया गया है। यदि प्राधिकरण द्वारा भविष्य में लीज रेन्ट की दरों में कोई परिवर्तन किया जाता है तो अंतरिकी बढी हुयी धनराशि को जमा करने हेतु बाध्यकारी होगा।

10. अंतरिकी द्वारा उक्त औद्योगिक भूखण्ड का उपयोग औद्योगिक योजना के अन्य प्रचलित नियम निर्देशों के अनुसार न करने की दशा में आवंटन निरस्तीकरण हेतु वाँछित कार्यवाही की जायेगी तथा अंतरिकी कोई अनुतोष पाने का अधिकारी न होगा। हस्तांतरण इस प्रतिबंध के साथ किया जा रहा है कि प्राधिकरण बोर्ड की स्वीकृति की

11. प्रत्याशा में लीजरेण्ट में देय ब्याज के सम्बन्ध में जो भी निर्णय लिया जाएगा हस्तान्तारी को मान्य होगा।

ARGUMENT OF PETITIONER

12. Sri Navin Sinha, learned Senior Counsel assisted by Sri Manu Khare, learned counsels for the petitioner have made manifolds submissions namely:-

(a). The petitioner being a bonafide auction purchaser, purchased immovable asscets consequent to the auction/sale held in pursuance of the orders of NCLT after paying the bid amount cannot be fastened with any monetory liability which was attached with Corporare Debtor under Liquidation.

(b). Once under the provisions of the IBC Code- 2016 claims were invited by Resolution Professional and GNIDA did not get his claim registered then it is estopped to claim the said amount as the same is hit by the doctrine of waiver and acquiescence.

(c). Even otherwise, the petitioner is liable to pay lease rentals and interest thereon and honour the contractual obligation and commitments so set out in the lease deed only from the date of the issuance of acceptance letter confirming the auction/execution of the Transfer Memorandum dated 24.12.2020 and not from a date anterior to it.

(d). Deposit of an amount of Rs. 5,80,28,025 was under protest and thus, the petitioner is entitled to refund of the same and the GNIDA being the instrumentality of the said State cannot withhold the said amount on the pretext that though the amount is not liable to be paid but was paid under protest.

13. Elaborating the said submissions, learned Senior Counsel has argued that the status of the petitioner is of a bonafide purchaser as

the petitioner has participated in the bid which was conducted pursuant to the order passed by NCLT on 20.09.2018 wherey Corporate Debtor was declared as insolvant and the petitioner under bonafide belief that there was neither any latent or patent defect in the immovable property, which was to be put to auction participated in the same and thus once the petitioners bid had been approved and it had deposited the entire amount, then the petitioner is not liable to clear the arrears of the lease rentals and the interest thereon which is being claimed by the GNIDA. Sri Sinha, has further invited the attention towards correspondence of the Liquidator to the GNIDA wherein it has been recited that despite due publication of invitation of the claims relatable to the dues owed to the Corporate Debtor, GNIDA did not either lodge or got registered its claim and thus, according to learned Senior Counsel GNIDA has forgone its right to claim the said amount as once the proceedings under the Code came to an end and the Corporate Debtor got liquidated then the dues so sought to be claimed by the GNIDA is not only unjustified besides being not backed by any of the provision of law.

14. Sri Navin Sinha, learned Senior Counsel in order to buttress his submission has relied to and referred to the several judgments so as to contened that the condition mentioned in the Certificate of Sale dated 11.09.2019 being “AS IS WHERE IS”, ”AS IS WHAT IS”, “WHATEVER THERE IS” AND “NO RECOURSE” cannot be stretched so far as to include within its encompass a situation that the petitioner is liable to pay past dues of the company in liquidation. According to the learned Senior Counsel who appears for the petitioner harmonious interpretation is to be given so as to give literal meaning while personifying that only those dues which are legal and payable, are to be included and not those dues and liabilities which are not to be paid or discharged particularly when there was latent and

patent defects in the property which is being put to auction and the liabilies so attached to it, was at no point of time apprised or confornted to the petitioner who is a bonafide auction purchaser. Learned Senior Counsel in support of the said submission has relied upon the following judgments:-

"1. Al Champdandy Industries Limited vs. Official Liquidator and Another reported in (2009) 4 SCC 486

2. Rana Girders Limited vs. Union of India and Others reported in (2013) 10 SCC 746

3. Haryana State Electricity Board vs. Hanuman Rice Mills Dhanauri and Others reported in (2010) 9 SCC 145

4. State of Karnataka and Another vs. Shreyas Papers (P) Ltd. and Others reported in (2006) 1 SCC 615

5. Telangana State Southern Power Distribution Company Limited and Another vs. Srigdhaa Beverages reported in (2020) 6 SCC 404

6. Raman Roadways Private Limited vs. State of Maharashtra and Others 2021 SCC Online Bom 534

7. Sales Tax Officer, Banaras and Others vs. Kanhaiya Lal Makund Lal Saraf AIR 1959 SC 135"

15. Learned Senior Counsel has further argued that the petitioner is not shying away from discharging the contractual obligation as engrafted in the lease deed so executed between the GNIDA on one part and Corporate Debtor on other part as though the petitioner has stepped into the shoes of the Corporate Debtor in pursuance of the Transfer Memorandum dated 24.12.2020 but the conditions are to be tailored in such a manner so as to give logical meaning as the petitioner is bound to honour the commitment so made either from the

date of acceptance of auction or from the date of execution of Transfer Memorandum.

16. Sri Sinha has invited the attention of the Court towards paragraph no. 14 of the writ petition so as to further contend that not only specific averments about deposit of past lease rentals along with interests under protest were made but the letter dated 27.10.2020 was also annexed giving details of the paymens made by it under protest. According to learned Senior Counsel even if assuming that the amount in question has been deposited voluntarily then to GNIDA being the instrumentality of the State, had no occassion or justification to retain the said amont on the guise that the petitioner has deposited the said amount for executation of Transfer Memorandum. The argument of the learned Senior Counsel is that once the amount is not liable to be paid and the GNIDA has received the same without any legal justification then in that contingency the amount is liable to paid back to the person who had extended the same.

ARGUMENT OF RESPONDENTS (ANSWERERS)

17. Sri Ramendra Pratap Singh, who appears for GNIDA has countered the submission of learned Senior Counsel while arguing that the petitioner is not entitled to any relief particularly in view of the fact that, might be the petitioner claims itself to be a bonafide auction purchaser but in view of the fact that the present case relates to auction of an immovable property being a lease land of which the GNIDA is the lessor then without there being any communication about the bankruptcy of the Creditor Debtor and the fact that insolvency proceeding got initiated culminating into passing of an order of 20.09.2018, the GNIDA is not only necessary party but also has substantial interest therein as according to the term and covenant

contained in the lease deed not only the lease rentals has to be paid but also in case of subletting or assigning of the lease in favor of the third person concurrence and approval of GNIDA is/was necessary. Sri Singh in order to buttress his contention has sought to argue that the petitioner being auction purchaser and claiming interest over the lease land premises is liable to make the payment of the past lease rentals and interest of late payment and also honour the commitments so engrafted in the lease deed and Transfer Memorandum and petitioner cannot wriggle out from the contractual obligation and the dues so attached with the lease deed as the petitioner herein has stepped into the shoes of Corporate Debtor. It has been further argued that contractual obligation cannot be a subject matter of adjudication in the present proceedings particularly when the present petition is being sought to be filed for getting a judicial seal in resiling and wriggling from contractual obligation. Sri Singh further argued that in view of the contractual obligation set out in the lease deed in question executed with Corporate Debtor and by virtue of the Transfer Memorandum dated 24.12.2020 now the petitioner is bound by the covenants of lease deed of erstwhile lessee and thus, the petitioner cannot evade payment of arrears of lease rentals as well as of the interest thereon.

18. Smt. Shubhash Rathi, learned Additional Chief Standing Counsel who appears for respondent no. 1 has though not filed any counter affidavit but according to her the main contesting party is the respondent nos. 2, 3 and thus according to her she is adopting the argument of the counsel for the respondent nos. 2 and 3 and she has nothing to add except the fact that the writ petition so preferred by the petitioner is not maintainable as it tantamount to insisting the Court to give it a licence to wriggle out from the contractual obligation.

REPLICATION OF THE PETITIONER (SUITOR)

19. The learned counsel for the petitioner in rejoinder affidavit had reiterated the argument, which he had made at the first instance while arguing the writ petition. However, the same is not being repeated, as the same is nothing but repetition of the argument, made at the time of arguing the petition.

QUESTION OF DETERMINATION

"(i) Whether under the the facts and circumstances of the case, the petitioner has any lawful right to claim refund of Rs. 05,80,28,025/- along with interest @ 18% per annum, deposited by him to get the lease of the disputed plot transferred in its name as per Transfer Memorandum dated 24.12.2020?

(ii) Whether payment of the dues attached to the disputed property can be questioned by the petitioner when as per sale certificate dated 11.09.2012, the disputed plot was sold on "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS", AND "NO RECOURSE" basis and accepting the conditions, and the petitioner deposited the amount to get the lease transferred in its name?

(iii) Whether the claim of refund of the disputed amount is hit by the principle of approbate and reprobate?

(iv) Whether under the IBC, the petitioner as an auction purchaser of lease hold rights of the disputed plot, has protection under the IBC from payment of lease rent and other dues attached to the property, particularly when the right of the liquidated company in the disputed property was purchased by the petitioner on "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS", AND "NO RECOURSE" basis?"

SYMPOSIUM

20. We have heard the submissions of learned counsel for the parties and perused the record.

21. Undisputedly, the petitioner herein is an auction purchaser who had purchased the lease hold rights of the Creditor Debtor through public bidding pursuant to a judicial order passed by NCLT in liquidation proceedings purported to be under IBC Code-2016. It is further not in dispute that GNIDA is the lessor and Creditor Debtor is/ was a lessee. None of the parties have disputed the fact that the Creditor Debtor was in-dues with respect to lease rentals which also exposed it to penal interest. The only question which is to be decided in the present proceeding is as to whether the petitioner being the auction purchaser is liable to pay the arrears of rentals and interest thereon from a date anterior to the acceptance and confirming of bid by the NCLT/Execution of Transfer Memorandum on 24.12.2020. These questions are to be answered in the light of the question so framed by this Court for determination of the issue as extracted hereinabove. Ancillary and Incidental questions are to be answered which are interwoven with each other which are relatable to the import and the impact of the Transfer Memorandum dated 24.12.2020 viz a viz conduct of the petitioner and the scope of the writ petition in altering the covenants of the lease deed and the Transfer Memorandum in question.

22. To begin with the answer of **question no. (ii)** is to be first analyzed.

23. As per the lease deed so executed on 26.06.2001 between the GNIDA one part and the Corporate Debtor on the other part, the word lessee has been defined in such a manner that the expression shall unless the context does not admit include his/her/their/its heirs, executors, administrator, representative and permitted assignees.

Further the lease deed itself provides that the same is for 90 years and the lessee has to pay 50% of the premium of the plot at the time of execution of the lease deed and residue 50% of the premium of the plot for the period from 30.12.2001 to 30.06.2006 and further nonpayment thereof within the stipulated period attracts interest @ 15% compounded six monthly.

24. Sub-clause (I) of Clause 9 itself provides that the lessee may transfer, relinquish, mortgage or assign its interest in the demise premises or building constructed thereon or both, however, the same is subject to prior permission/concurrence to be given by lessor by GNIDA. Clause 15 itself stipulates that the GNIDA being the lessor may require successor in the interest of the lessee to abide by and faithfully carry out the terms and conditions, stipulation, provisions and agreements therein contained.

25. Clause (a),(b) of Clause 3 under heading no. (IV) commencing with the word "AND IT IS HERE BY FURTHER AGREED AND DECLARED BY AND BETWEEN THE PARTIES TO THESE PRESENTS AND FOLLOWS" itself stipulates that lessee agrees that the sums dues under the deed on account of premium, rent interest or damage for use and occupation shall be paid by the lessee and the lessor shall have first charge upon the demise premises for the amount of unpaid lease rent and interest. Conjoint reading of the said covenants itself shows that the expression lessee itself encompasses to it the legal heirs, assignee, representative etc and the land being the lease land can only be transferred with prior permission to be accorded by the lessor for transfer. Nonetheless, by virtue of the lease deed the lessee is under obligation to pay the unpaid rentals and in case of delay the lessee gets automatically exposed to penal interest. Learned counsel for the parties have not disputed the fact that the lease deed dated 26.06.2001 executed between GNIDA and Corporate

Debtor is in existence though subsequently other lease deeds were executed on 22.03.2002, 05.09.2002 and supplementary lease deed on 28.11.2007 wherein the terms and the conditions so mentioned in the lease deed dated 26.06.2001 stood intact and applicable.

26. Now the question arises how the words “AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER THERE IS”, AND “NO RECOURSE” as stipulated in certificate of sale issued by Liquidator on 11.09.2019 is to be interpreted. It is further not in dispute that the petitioner itself approached the GNIDA for grant of Transfer Memorandum and when the GNIDA insisted for payment of past rentals and interest thereon the same was paid by the petitioner under protest (though disputed by GNIDA) and eventually, on 24.12.2020 Transfer Memorandum was executed wherein in Clause 4 of the same the petitioner accepted the fact that he is bound by the terms and condition (covenant) as contained in the lease deed dated 26.06.2001 and further in Clause 7 of the same the fact that after transfer of the demise land in favour of the petitioner if there are any dues like premium/lease/additional possession then the petitioner being a lessee is bound by it. Under Clause 11 the petitioner has also accepted the condition that in case of the Resolution of the Board, any liability with respect to interest on lease rent is being fastened then the petitioner is bound to pay it. Notably, the conditions mentioned in the Transfer Memorandum dated 24.12.2020 became the part and parcel of the Sale Certificate so executed and registered on 30.07.2021 in between Creditor Debtor (Transferor) and the petitioner (Transferee) wherein not only the reference of the lease deed so executed between GNIDA and the Creditor Debtor was taken into account but also the Transfer Memorandum dated 24.12.2020 issued by GNIDA in favour of the petitioner was also taken note of and was made basis for issuance of the sale certificate as apparent from internal page 3 of the

sale certificate dated 30.07.2021. Clause 4 of the sale certificate dated 30.07.2021 itself reveals that the transferor being the Corporate Debtor has assured and undertook that the demised land is free from all sorts of encumbrances land as mortgage, sale, gift, lien, agreement, dispute, litigation, injunctions, banks or private loans, securities, guarantees, attachment with any decree of court of law.

27. In the light of the abovenoted instrument so executed from time to time, the present case is to be decided. The words “as is where is basis” has been subject matter of interpretation and consideration before the Hon’ble Apex Court umpty number of times in following decision:-

28. The Hon’ble Apex Court in the case of **U.T. Chandigarh Administration And Another Vs. Amarjeet Singh And Others** reported in **2009 (4) SCC 660** in paragraph nos. 19 and 20 observed as under:-

> *“19. In Lucknow Development Authority, it was held that where a developer carries on the activity of development of land and invites applications for allotment of sites in a developed layout, it will amount to `service', that when possession of the allotted site is not delivered within the stipulated period, the delay may amount to a deficiency or denial of service, and that any claim in regard to such delay is not in regard to the immovable property but in regard to the deficiency in rendering service of a particular standard, quality or grade. The activity of a developer, that is development of land into layout of sites, inviting applications for allotment by assuring formation of a lay out with amenities and delivery of the allotted sites within a stipulated time at a particular price, is completely different from the auction of existing sites either on sale or lease. In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual development of the lay out or formation of sites. Further the development scheme casts an obligation on the development authority to provide specified amenities. Alternatively the*

developer represents that he would provide certain amenities, in the Brochure or advertisement. In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on `as is where is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price. When the sites auctioned are existing sites, without any assurance/representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise even by applying the tests laid down in Lucknow Development Authority or Balbir Singh.

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided."

29. Following the said judgment the Hon'be Apex Court in the case of **Punjab Urban Planning and Development Authority And Others Vs. Raghu Nath Gupta And Others** reported in **2012 (8) SCC 197** in para 14 observed as under:-

"14. We notice that the respondents had accepted the commercial plots with the open eyes, subject to the above mentioned conditions. Evidently, the commercial plots were allotted on "as is where is" basis. The allottees would have ascertained the facilities available at the time of auction and after having accepted the commercial plots on "as is where is" basis, they cannot be heard to contend that PUDA had not provided the basic amenities like parking, lights, roads, water, sewerage etc. If the allottees were not interested in

> *taking the commercial plots on "as is where is" basis, they should not have accepted the allotment and after having accepted the allotment on "as is where is" basis, they are estopped from contending that the basic amenities like parking, lights, roads, water, sewerage etc. were not provided by PUDA when the plots were allotted. Over and above, the facts would clearly indicate that there was not much delay on the part of PUDA to provide those facilities as well. As noted, the electrical works and health works were completed by 24.12.2002 and 22.11.2002 respectively and all the facilities like parking, lights, roads, water, sewerage etc. were also provided."*

30. Yet in the case of **Rajasthan State Industrial Development And Investment Corporation And Another Vs. Diamond & Gem Development Corporation Limited And Another** reported in **2013 (5) SCC 470** in para 30 has observed as under:-

> "*The terms and conditions incorporated in the lease deed reveal that, the allotment was made on "as-is- where-is" basis. The same was accepted by the respondent-company without any protest, whatsoever. The lease deed further enabled the appellant to collect charges, in case it decided to provide the approach road. Otherwise, it would be the responsibility of the respondent-company to use its own means to develop such road, and there was absolutely no obligation placed upon the appellant to provide to the respondent the access road. As the respondent-company was responsible for the creation of its own infrastructure, it has no legal right to maintain the writ petition, and courts cannot grant relief on the basis of an implied obligation. The order of the High Court is in contravention of clause 2(g) of the lease deed."*

31. Apparently the words "AS IS WHERE IS" finds its root in the common law doctrine of "Caveat Emptor" which means 'let the buyer beware'. This doctrine puts the duty on the purchaser to carry out all necessary inspection of the property before entering into an agreement. If the purchaser fails to conduct such an inspection, then later, on identification of defects in the property may not be a ground to revoke or claim damages under the contract. In such cases it is presumed that the purchaser had the notice of defects, if any.

32. Section 3 of the Transfer of Property Act 1882 incorporates the doctrine of constructive notice under Section 3 which is read as under:-

> *"A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have know it.*
>
> *Explanation II: Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."*

33. Nonetheless the Transfer of Property Act, 1882, also envisages the duty of the seller to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. This is, however, subject to the presence of contract to contrary between the parties.

34. Now, another facet needs to be examined as to what are the types of defects which a buyer is expected to inquire into before purchasing the property. There are two types of defects namely latent defects and patent defects. Latent defects are such type of defects which are unlikely to be discovered by a purchaser during investigation. On the other hand, the second category is patent defects which are discoverable if the buyer would have carried out inspection. Here in the present case the defects falls under the second category, being patent defects as Court finds that on 24.09.2018 the public announcement was made by Liquidator inviting claims due from the Corporate Debtor wherein in item no. 5 the details of the demised premises in question was given. Further the sale notice for assets of the Corporate Debtor was also published which is annexure- 4 at page no. 45 wherein again description of the land was given. It is a matter of common knowledge that whenever a property is being sought to be

sold through auction and the reserve price runs into crores of rupees (which in the present case is 145.67 crores) then it is clearly expected that purchaser might have got carried out inspection of the title deed as well as of the liabilities attached to it. The petitioner herein is a registered liability partnership company duly registered with Government of India Ministry of Corporate Affairs and thus, it becomes highly implorable and inconceivable that the petitioner was not having knowledge about the liability of the Corporate Debtor. The present case can also be analyzed from another point of angle that the petitioner is not a illiterate person but the presumption is that legal option is freely accessible to it. It is not a case wherein the demised premises which is being put to auction is in remote part of the country or there is no via media of getting internal details of the Corporate Debtor and its liabilities particularly when it is a matter of common knowledge that once the demised land is leasehold then obviously an intending party would approach the lessor to get the details with respect to title and position of lease rentals. In other words, this Court cannot peep into mind of the petitioner so as to perceive as to whether any investigation was conducted at the level of intending party or to what extent.

35. This Court further finds that the defect, if any, falls under the category of patent defect which could have been easily discovered in case proper investigation of the property in question would have been done at the end of the petitioner. Moreover, an additional fact to be noticed at the stage is that the petitioner on 24.12.2020 itself became a signatory to the Transfer Memorandum clearly accepting the terms and conditions/covenant of lease deed in question which was executed on 26.06.2021 along with subsequent lease deeds and also the supplementary lease deed executed between the GNIDA and Corporate Debtor while stepping into the shoes of the Corporate

Debtor. Transfer Memorandum dated 24.12.2020 as discussed above in particular clause 4, 5, 7 and 11 itself depicts that the petitioner is liable to pay the arrears of lease rentals and interest thereon. The terms and conditions of the Transfer Memorandum dated 24.12.2020 itself became a basis of the sale certificate executed between corporate debtor and the petitioner on 30.07.2021 as internal page 3 itself shows that the sale certificate was being issued in pursuance of the Transfer Memorandum dated 24.12.2020. Moreover, clause 4 of the sale certificate dated 30.07.2021 which is internal page 4 shows that after execution of the transfer memorandum dated 24.12.2020 the transferee being the corporate debtor has assured and undertaken that the demise premises in question is free from all encumbrance meaning thereby that even in fact the liabilities and the obligation so contained in the lease deed dated 26.06.2021 followed by subsequent lease deed so executed there on between the GNIDA and the Corporate Debtor was accepted by the petitioner while undertaking to comply with the terms and conditions and the obligations set out therein and the same became the basis of the sale certificate.

36. This Court finds that the words so employed in the sale certificate being “AS IS WHERE IS”, ”AS IS WHAT IS”, “WHATEVER THERE IS” AND “NO RECOURSE” are to be interpreted in such a manner so as to give with a logical conclusion in the light of the instrument so executed between the parties while bounding the petitioner to clear the unpaid arrears of lease rentals as well as interest on delayed payment.

37. Answering to the **question no. (iv)** this Court has to bear in the mind the fact that the demise premise in question which has been put to auction is a lease land as already discussed earlier and the contractual obligation so set out and settled between the GNIDA and the Corporate Debtor which has not been disputed by any of the

parties. More so, the petitioner being an auction purchaser by virtue of Transfer Memorandum dated 24.12.2020 coupled with the sale certificate dated 30.07.2021 got itself bound with the contractual obligation as set out in the lease deed. The IBC Code-2016 may grant protection to the petitioner with respect to the purchase and the transfer of the demised land through auction, however, so far as the contractual obligations are concerned, they are governed by the underline agreements which are in the shape of lease deed so executed from time to time. The view of the Court further stands amplified from the execution of the Transfer Memorandum dated 24.12.2020 wherein the petitioner not only stepped into the shoes of the Corporate Debtor but also agreed to comply with the terms and conditions and covenant contained in the lease deed.

38. Nonetheless, the sale certificate dated 30.07.2021 itself pressed into service the contractual obligation as set out in the lease deed and Transfer Memorandum as these are the instruments which not only delivered the possession of the lease land but also created relationship of lessor and lessee. In the opinion of the Court the IBC Code 2016 only grants limited protection to the petitioner to be inducted by mode of stepping into the shoes of Corporate Debtor, however, in order to be a lessee the conditions so provided in the lease deed and the Transfer Memorandum are to be adhered to. This Court has also to bear in mind the fact that the petitioner rights as a lessee has not been created by any fiction of law, however, the same is to be governed by the obligation so contained in the lease deed. Thus, this Court is of the firm opinion that IBC Code-2016 does not grant any protection to the petitioner for possessing the status of an auction purchaser in such a manner so as to wriggle out from the contractual obligation of nonpayment of lease rents in the light of doctrine of “AS IS WHERE

IS", "AS IS WHAT IS", "WHATEVER THERE IS" AND "NO RECOURSE"

39. The Hon'ble Apex Court in the case of **Union Bank Of India Vs. Official Liquidator and Others** reported in **1994 (1) SCC 575** had the occasion to consider the aspect relating to the guarantee or warranty of the official liquidator with regard to the title and encumbrances of the immovable property which are put to auction. The Hon'ble Apex Court in paragraph no. 14 has held as under:-

> *"14.When the Official Liquidator sells the property and assets of a companyin liquidation under the orders of the Court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property. The case of the Official Liquidator selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs 1 crore 98 lakhs. "*

40. The right of the lessor over the land leased out which is being put to liquidation, has also been matter of consideration before the Hon'ble Apex Court in the case of **Phatu Rochiram Mulchandani Vs. Karnataka Industrial Area** reported in **2015 (5) SCC 244** wherein the

Hon'ble Apex Court in paragraph nos. 31, 32, 33, 34, 35, 36, 37, 38 has observed as under:-

> *"31. As the Company had gone into liquidation and there was an order of winding up when the notice of cancelling the lease was given, the next question is as to whether prior permission of the Company Court was necessary before terminating the lease. Case of the appellant is that such prior permission is required under Section 537 of the Companies Act and the appellant has relied upon the judgment of Karnataka High Court in the case of Karnataka State Electronics Development Corporation Ltd. v. The Official Liquidator OSA No. 31 of 2004, decided on 21.06.2005. On the other hand, respondent stated that before terminating the lease no prior permission under the aforesaid provision of the Companies Act was needed and it was only for resuming the land that such a permission was required which led the Board to file an application for this very purpose. The respondents have relied upon the judgment of the Karnataka High Court in the case of Hanuman Silks Vs. Karnataka Industrial Areas Development Board, AIR 1997 Kar 134. It, therefore, becomes necessary to discuss these two judgments in the first instance.*
>
> *32. In Karnataka State Electronics Development Corpn. Ltd. v. Official Liquidator OSA No. 31 of 2004, decided on 21.06.2005 (KAR) there was an allotment of industrial plot in favour of Anco by the Karnataka State Electronics Development Corporation (Corporation) on lease-cum-sale basis for which an agreement was executed. As per the said agreement, the Company was to establish its manufacturing unit within two years from the date of allotment of the Industrial Plot. In the meantime, the said Anco went into liquidation and winding up orders dated 8.6.2000 were passed. Much after the winding up orders, the corporation cancelled the lease-cum- sale deed on 28.6.2003 and took "paper possession" of the industrial plot. Thereafter, the Corporation filed the application in the Company Petition requesting the Company Judge to declare the Cancellation Order passed by the Corporation to be valid and direct the O.L. not to interfere with its paper possession. The Company Judge rejected the said application keeping in view the language employed in Section 537 of the Companies Act. The Corporation filed appeal which came to be dismissed by the Division Bench. The Division Bench was*

not impressed with the arguments that the Corporation was not aware of the winding up proceedings and for this reason it had resumed the possession of the industrial plot, after cancellation thereof, without obtaining the leave of the Court. Once the plea of ignorance was denounced, the court addressed the question as to whether the Corporation could have cancelled the allotment of industrial plot made in favour of the Company in liquidation and answered the same in the negative with the following observations:-

> *"11. Now the only question before us is, whether after an order was made by this Court in winding up the respondent Company (Company in liquidation), the applicant Corporation could have ventured to cancel the allotment of industrial plot made in favour of the Company in liquidation? This could be answered only after noticing the provisions of Sec. 537 of the Act.*
>
> *12. Section 537 of the Act, provides for avoidance of certain attachments, executions, etc. in winding up by or subject to supervision of Court. The winding up proceedings would commence from the date of presentation of the petition before this Court for winding up of the Company as envisaged under Section 433 of the Act and other similar provisions under the Act. Once such proceedings are initiated, any assets of the Company cannot be meddled without the leave of the Court. This settled legal proceedings, time and again is stated by various High Courts and also the highest Court. An elaboration of this settled legal principle, in our view, is wholly unnecessary.*
>
> *In the present case, an order of cancellation of the lease- cum-sale agreement is passed by the applicant Corporation, after presentation of the Company Petition and after passing the winding up order, but without the leave of the Court, and in our opinion, any such action is void. A void order cannot be regularised and, therefore, rightly the learned Company Judge has not acceded to the request made by the applicant Corporation. We do not see any error in the order passed by the learned Company Judge and, therefore, no interference with the said order is called for. Accordingly, appeal*

> *requires to be rejected and is rejected. No order as to costs. Ordered accordingly."*

33. Though the aforesaid observations give the impression that there cannot even be a cancellation of the allotment of industrial plot in respect of a Company in liquidation without the prior permission of the Company court, we are of the view that these observations are to be read in the factual context of the aforesaid case. As noted above, the Corporation had not only cancelled the lease but had even resumed the land by taking "paper possession". Further, in the application filed before the Company Court, it did not pray for permission to take possession. On the contrary, the Corporation took up the stand that it already had the possession which should be declared as validly taken and the prayer made was to direct the Official Liquidator not to interfere with the possession. It is in this context that the High Court held that same could not be done without the leave of the court. We are of the opinion that the observations are to be read giving restricted meaning that possession could not be taken without the prior leave of the court. It may not be correct to hold that the law requires that prior permission of the Company Judge is mandated even for cancellation of the lease. In fact, question of resumption of land or taking possession thereof could have arisen only after the cancellation of the lease. We will dilate on this aspect further after discussing the judgment in M/s. Hanuman Silks[10.]

34. In M/s. Hanuman Silks v. Karnataka Industrial Areas Development Board, AIR 1997 Kar 134 the said Company was allotted plots by the Board for which lease-cum-sale agreements were entered into on 18.8.1993 and 19.8.1993. The Company was to erect the factory within 12 months and to commence the production within 24 months (same conditions as in the instant case). The Company failed to commence the civil construction work and did not complete the construction nor commenced production by these stipulated dates. Show cause notices were given by the Board and after that the plots allotted to the Company were resumed on 25.7.1995. The Company filed the petitions for quashing of the letters of resumption. The High Court formulated two questions which arose for consideration. We are concerned only with the first question which was couched in the following terms:- (AIR p. 137, para 10)

> *"10. (a) Whether the Board can take possession of the plots in the possession of its lessees, without having recourse to a civil suit for possession or to an eviction proceedings under the provisions of the Karnataka Public Premises (Eviction of unauthorized occupants Act), 1974".*

35. After taking note of various provisions of the Act and discussing case law cited by both the parties, the Court concluded that no where does the Act provide for the Board taking back possession of leased plots from the lessee, without recourse to eviction proceedings, whatever be the circumstances. On the other hand, the Act contains a specific provision (Section 25) providing for application of Public Premises Act to premises leased by the Board. The absence of any provision enabling the Board to take possession from lessees and the express provision for making Public Premises Act applicable to the premises leased by the Board, leads to inescapable conclusion that termination of leases and eviction of lessees are left to be governed by contract and general law. Therefore, any act of forcible dispossession of a lessee by the Board will be an act otherwise than in accordance with law. The court further held that the power of re-entry and 'resumption' that is reserved by the Board in the lease-cum-sale agreement, does not authorize the Board to directly or forcibly resume possession of the leased land, on termination of the lease. It only authorizes the Board to take possession of the leased land in accordance with law. It could be either by having recourse to the provisions of the Public Premises Act or by filing a Civil Suit for possession and not otherwise.

36. It, thus, becomes clear that even though order of re-entry or resumption can be passed by the Board, but for taking possession the Board is supposed to have recourse to legal proceedings act in accordance with law. However, this was a case where the Company had not gone into liquidation and, therefore, the question of applicability of Section 537 of the Companies Act could not arise.

37. In the present case, we are confronted with a situation where Company is in liquidation. Thereafter, we have to understand the implication of the provisions of Section 537, which reads as under:

> *"537. Avoidance of certain attachments, executions, etc., in winding up by Tribunal.*
>
> *(i) Where any Company is being wound up by Tribunal-*
>
> *(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the Company, after the commencement of the winding up; or*

> *(b) any sale held, without leave of the Tribunal of any of the properties or effects of the Company after such commencement shall be void.*
>
> *(2) Nothing in this Section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.*

> *38. It is clear from the above that prior permission of the Court is required in respect of any attachment, distress or execution put in force or for sale of the properties or effects of the Company. We are of the opinion that the serving of cancellation notice simplicitor would not come within the mischief of this section as that by itself does not amount to attachment, distress or execution etc. No doubt, after the commencement of the winding up, possession of the land could not be taken without the leave of the Court. Precisely for this reason the Board had filed the application seeking permission. But according to us no such prior permission was required before cancelling the lease. In fact, it is only after the cancellation of the leases that the Board would become entitled to file such an application under Section 537 of the Act. Had the Board gone ahead further and taken the possession, after the cancellation and then approached the Company Judge, the situation which occurred in Karnataka State Electronics Development Corpn.Ltd. v. Official Liquidator OSA No. 31 of 2004, decided on 21.06.2005 (KAR) would have prevailed. On the other hand, it would have been premature on the part of the Board to approach the Company Judge for permission to resume the land without cancelling the lease in the first instance. "*

41. The judgment in the case of Phatu Rochiram (Supra) has been followed recently in the case of **Stressed Assets Stabilization Fund Vs. West Bengal Small Industries Development Corporation** reported in **2019 (10) SCC 148** in paragraph nos. 12 and 13 has observed as under:-

> *"12. This Court is of the opinion that the reasoning and conclusion of the High Court do not call for interference. The finding that since the exercise by the lessor (WBSIDC) of its right to determine the lease attained finality. the mortgagee (represented by the appellant) could not claim rights superior to that of the lessee, is in consonance with settled law.*

13. There can be no dispute, nor was it contended that a donee or a grantee (as the status of the lessee company in liquidation as in this case) can have no rights in excess of that possessed by the donor or the grantor. The mortgagee (whose shoes SASF has stepped into) of the lessee (Wellman) can have no right greater or better than that of the lessee in terms of the deed of lease. The observations in Phatu Rochiram Mulchandani[3] apply to the facts of this case. The appeal, therefore fails and is dismissed, without order as to costs."

42. The Hon'ble Apex Court in case of **State of Uttar Pradesh Vs. Union Bank of India** reported in **2016 (2) SCC 757** in paragraph no. 23 has observed as under:-

"23. It is pertinent to mention here that the land in dispute being a Government property, the appellant-Bank cannot get any right over it. Moreover, neither the appellant-Bank is a lessee of the land in question nor any lease has ever been sanctioned by the Govt, of U.P. in its favour. Hence, the appellant is not entitled to get any right or to keep possession of the properties in question situated at 19, Clive Road and 10, Edmoston Road."

43. Applying the above judgments in the facts of the present case an inescapable conclusion stands drawn that lessor has a paramount interest over the property so sought to be leased to the lessee as there is a marked difference between leasehold and freehold as in the case of former only possession is transferred and not the ownership or title, however, in the later ownership and possession stands transferred.

44. Recently in the case of **Delhi Development Authority Vs. Karam Department of Finance Investment (India) Private Limited and Others** reported in **2020 (4) SCC 136** the Hon'ble Apex Court in paragraph no. 13, 14, 15, 16, 20, 21, 22, 23, 24 and 25 has observed as under:-

"13. In Perpetual Lease, granted to Shri Trilochan Singh Rana and Mrs. Rani Rana, one of the conditions provided that lessor may impose conditions to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being percent of the unearned increase. The relevant clause (4)(a) of the Perpetual Lease is as follows:-

> *"(4)(a) The Lessee shall not sell, transfer assign or otherwise part with the possession of the whole or any part of the residential plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute direction.*
>
> *Provided that such consent shall not be given for a period of ten years, from the commencement of the Lease unless, in the opinion of the Lessor, exceptional circumstances exist for the grant of such consent.*
>
> *Provided further that in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty percent of the unearned increase and the decision of the Lessor in respect of the market value shall be final binding."*

14. We have already noticed above that original lessee Trilochan Singh Rana entered into agreement of sale with M/s. Ocean Construction Industries Pvt. Ltd. dated 29.09.1988 to transfer the rights for a of Rs.76,00,000/-. Exercising power under Section 269UD of Income Tax Act, 1961, appropriate authority passed a purchase order dated 13.12.1988 of the property in question. After the aforesaid purchase order an amount of Rs.17,86,240/- towards payment of unearned increase was paid to the DDA by Income Tax Department. After the aforesaid purchase order, auction

notice dated 20.03.1989 was issued giving details of the properties, which included the property in question.

15. In pursuance of the auction notice, the writ petitioner gave highest bid and was declared auction purchaser for an amount of Rs.1,08,05,000/-. The writ petitioner paid the full amount and was delivered the possession on 25.04.1989. Sale Deed was also executed in favour of writ petitioner on 25.09.1997. The petitioner made an application to the DDA for grant of freehold rights and also deposited amount of Rs.3,45,729/-. While processing the application for conversion of leasehold rights to free hold rights, DDA made a demand of Rs.1,43,90,348/- towards unearned increase, which was challenged by the writ petitioner. Whether writ petitioner was liable to pay unearned increase payment is the question to be answered.

16. We have already noticed the clause (4)(a) of the Perpetual Lease Deed dated 18.03.1970, which provided that in event sanction is given by lessor to the lessee for sale, transfer or assignment, lessor shall be entitled to claim and recover a portion of the unearned increase in the value. The unearned increase being the difference between the premium paid and the market value. The object behind the said clause was that a lessee when is permitted to transfer the leasehold rights, the lessor should not be deprived of the difference between the premium paid and the market value. The clause was inserted in the Perpetual Lease to compensate the lessor. The present is not a case where lessee is making any transfer or seeking any permission from the lessor to give his consent.

20. Learned counsel for the petitioner has relied on Clauses 1 and 2 of the Sale Deed, which are to the following effect:-

> *"1. That in pursuance of the said auction and consideration of the sum of Rs. 1,08,05,000/- (Rs. One Crore Eight Lakh and Five Thousand only) already paid by the Vendor/Auction Purchaser to the Vendor as aforesaid, the receipt of which the Vendor hereby acknowledged, the Vendor hereby transfers, conveys and sells to the Auction Purchaser, the Vendee, by way of sale of that plot of land measuring 725 sq. yds. bearing No. 14 in Block A-2 in the lay out plan of Safdarjung Development Scheme, Ring Road, South Delhi (Villages Mohammadpur Munirka and Humayunpur Revenue Estate, together with all rights, titles, interests, appurtenances, easements, privileges in and pertaining to the aforesaid property in favour of the Vendee absolutely and forever, with the provisions of Section 269UE(1) of the Income Tax Act, 1961*

> *and all the powers rights and interests vested in the Vendor with regard to the sale, transfer and conveyances of the aforesaid property to the Vendee hereto.*
>
> *2. That on the execution of this sale deed, the Vendee has become the absolute and exclusive owner of the property hereby sold, conveyed and transferred to it and that the Vendee shall have absolute rights and title to the same and to deal with the property in any manner it likes. It is made clear that the Vendor has no right and is left with no interest, claim or title of any nature whatsoever into on upon the aforesaid property."*

21. A plain reading of the above clauses does give impression that what was sold to the writ petitioner was all rights, titles, interests and appurtenances but when we read Clause 3 of the same Sale Deed, the said clause gives a different impression. Clause 3 of the Sale Deed is as follows:-

> *"3. That the Vendor hereby represents and assures to the Vendee that his right in the property hereby sold, transferred and conveyed is in terms of agreement for transfer dated 29-9-1988 between Mr. Trilochan Singh Rana and Mis, Rani Rana transferor and M/s. Ocean Construction Industries Pvt. Ltd. (through its Director Shri Jugal Kishore Malhan) transferee."*

22. The principles of construction of documents are well settled. While construing the documents/intention of the parties have to be ascertained. In this context, reference is made to judgment of this Court in Sahebzada Mohammad Kamgarh Shah Vs. Jagdish Chandra Deo Dhabal Deb and Others, AIR 1960 SC 953. In Paragraph Nos. 12 and 13, following was laid down:-

> *"12. In his attempt to establish that by this later lease the lessor granted a lease even of these minerals which had been excluded specifically by Clause 16 of the earlier lease, Mr Jha has arrayed in his several well established principles of construction. The first of these is that the intention of the parties to a document of grant must be ascertained first and foremost from the words used in the disposition clause, understanding the words used in their strict, natural grammatical sense and that once the intention can be clearly understood from the words in the disposition clause thus*

interpreted it is no business of the courts to examine what the parties may have said in other portions of the document. Next it is urged that if it does appear that the later clauses of the document purport to restrict or cut down in any way the effect of the earlier clause disposing of property the earlier clause must prevail. Thirdly it is said that if there be any ambiguity in the disposition clause taken by itself, the benefit of that ambiguity must be given to the grantee, the rule being that all documents of grants must be interpreted strictly as against the grantor. Lastly it was urged that where the operative portion of the document can be interpreted without the aid of the preamble, the preamble ought not and must not be looked into.

13. The correctness of these principles is too well established by authorities to justify any detailed discussion. The task being to ascertain the intention of the parties, the cases have laid down that that intention has to be gathered by the words used by the parties themselves. In doing so the parties must be presumed to have used the words in their strict grammatical sense. If and when the parties have first expressed themselves in one way and then go on saying something, which is irreconcilable with what has gone before, the courts have evolved the principle on the theory that what once had been granted next be taken away, that the clear disposition by an earlier clause will not be allowed to be cut down by a later clause. Where there is ambiguity it is the duty of the Court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee."

23. This Court further in Paragraph No.14 has held that in cases of ambiguity, several parts of the document have to be examined to find out what was really intended by the parties. In Paragraph No. 14, following was laid down:-

"14. ……In cases of ambiguity it is necessary and proper that the court whose task is to construe the document should examine the several parts of the document in order to ascertain what was really intended by the parties. In this much assistance can

be derived from the fourth condition of the conditions which were imposed by the lease as regards the grant of sub-leases. This condition provided inter alia that all such under- leases to be granted by the lessee shall be subject to the provisions of Clause 16 of the principal lease"

24. Before we construe the document, we need to first notice the auction notice by which the property was to auction. Auction notice, which has been brought on the record as Annexure-R1 indicate that details of four properties were given in the auction notice. It is useful to look into the details given as follows:-

	Details of Properties	*Reserve Price*
1.	*Property No. B-6, Friends Colony Mathura Road, New Delhi. This is a lease hold residential plot measuring 195.097 sq. Mt. together with buildings and structure thereon and fixtures and fitting therein*	*34.20 lacs*
2.	*Property No. 14, Block A-2, Safdarjung Development Area, New Delhi.* *This is a lease hold residential plot measuring (725 sq. yds.) with a double storeyed building. The Ground Floor consists of drawing dining bed room, kitchen and a garage. The First Floor consists of 3 bed rooms, 3 bath rooms, store and a lobby over the garage. There are 2 floors each having a servant room W.O. and a cocking verandah.*	*1.08 crores*
3.	*Property No. A-8/23, Vasant Vihar, New Delhi.* *This is a lease hold residential plot N. 23 in Street No. A-8 in the lay out plan of Vasant Vihar of the Servants Cooperative. House Building Society Ltd., and measuring 150 Sq. yds alongwith the super structure build thereon. (Covered area 1350 Sq. Ft).*	*36.60 Lacs*
4.	*Property bearing House No. E- 444 (Ground Floor), Greater Kailash Part-II, New Delhi- 110048.* *All rights, titles and Interests in the dwelling unit on ground floor, and mazanine floor of House No. E-444, Greater Kailash, Part-II, New Delhi, together with undivided. Indivisible and impartible ownership right of 35% in the land underneath of the said building and*	*25.60 lacs*

	including the followings :- *1. One drawing-cum-dining hall, three bed rooms with attached bath rooms, balcony, kitchen, storage space (servants Quarters) and servant's bath rooms on ground floor.* *2. Front lawn and back courtyard on the ground floor.* *Parking space for a Maruti Car in the Driveway.* *Ingress and Egress from the main gate to the dwelling unit.*	

25. A perusal of the details of the properties indicate that property in question is included as Item No. 2, which is mentioned as "This is a lease hold residential plot". It is to be noticed that in so far as properties at Sl. Nos. 1, 2 and 3, the words mentioned are "leasehold residential plots" whereas with regard to property details given at Sl. No.4, it has been mentioned that "all rights, titles and interests in the dwelling unit", which, if contrasted with details of properties given at Sl. Nos. 1, 2 and 3 contains the intendment. Thus, there cannot be any doubt that property in question, which was put in auction was a property as lease hold rights residential plots. When property is auctioned, the terms and conditions of auction are binding on both the parties. When petitioner submitted his bid in pursuance of the auction notice, he was bidding for lease hold residential plot with a double storied building. While interpreting the Sale Deed, the auction notice has to be looked into to find out the nature of transaction. The Sale Deed cannot be read divorced to the auction notice or to auction notice. Auction of a leasehold residential plot and auction of freehold residential plot carries different connotations. Leasehold rights are limited rights, which are subservient to freehold rights of a property. In giving bid for leasehold rights and freehold rights, different considerations are there. Clause 3 as noted above indicate that the property sold and transferred is in terms of the agreement dated 29.09.1988 between Trilochan Singh Rana and Mrs. Rani Rana to M/s. Ocean Construction Industries Pvt. Ltd. Trilochan Singh Rana and Mrs. Rani Rana were only lease holders. Thus, they could best transfer their right, which was conferred to them by the Indenture dated 18.03.1970."

45. Another aspect which needs to be considered is with respect to the fact that whether the claim so set up by the GNIDA can be negated on the ground that it had not lodged and got registered its

claim in the proceeding under IBC Code. It has come on record that GNIDA did not get registered its claims in the proceedings purported to be under IBC Code-2016, however, this Court finds that merely because the claim has not been registered by GNIDA under IBC Code cannot be a ground to negate their claim particularly when the demised premises in question is leasehold and one of the condition for recognizing the petitioner being an auction purchaser as a lessee is making good the deficiency in the payment of lease rentals along with interest thereon. Learned Senior Counsel could not point out any of the provisions so as to fortify the legal submission that mere non-registration of the claim before the competent authority under IBC Code coupled with the fact that Transfer Memorandum and sale certificate has been executed therein denuded the GNIDA from claiming the arrears and interest thereon.

46. Nonetheless, Section 55 1 (g) of the Transfer of Property Act, 1882 reads as under:-

> *"(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing."*

47. According to Section 55 1 (g) of the Transfer of Property Act, 1882 in absence of a contract to the contrary the buyer and the seller of immovable property respectively are subject to liabilities, and have the rights and the seller is bound to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing. The determining factors are the words employed in Section 55 of the

Transfer of Property Act being " in absence of a contract to the contrary".

48. Applying the said provision in the facts of the present case, this Court finds that there exist not only lease deed but also a Transfer Memorandum and sale certificate which excludes the general principle as enshrined in section 55 1(g) of the Transfer of Property Act.

49. The High Court of Madras in the case of **K. Madhu and Ors. Vs. Dugar Finance India Ltd. and Ors.** reported in (**2008) 145 CompCase 277 (Mad)** in paragraph no. 33 has observed as under:-

> *"23. A reading of the above judgments clearly shows that Section 55 (1) (g) of the Transfer of Property Act is absolute in its character, where there exists a covenant guaranteeing the non-existence of encumbrances irrespective of the fact that the same was discovered after the sale, the liability is that of the seller only. The purchaser making the payment on behalf of the vendor is entitled to the recoupment of the same. However, where there existed no such covenant to the contrary, there could arise no automatic invoking of Section 55(1)(g), to the benefit of the purchaser that there existed an implied condition that there was no encumbrance."*

50. Learned Senior Counsel in support of the argument relatable to the question nos. (ii) and (iv) had relied upon the judgment in the case of **A.I. Champdany** (supra) so as to contend that the petitioner is not liable to pay lease rentals and interest thereon despite the stipulation contained "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS" AND "NO RECOURSE". The said judgment is not of any aid or help as the said judgment relates to dues of the municipality which the Hon'ble Apex Court found not having charge over the property put to auction as even otherwise it did not come

within the purview of the Crown Debt. The Hon'ble Apex Court in paragraph no. 27, 29 has observed as under:-

> *"27. Once the property is sold, the assets of the company are required to be distributed to the creditors in order of preference. As the respondent- Municipality was not a secured creditor, the impugned Judgment cannot be sustained.*
>
> *29. Dues of the Municipality would also not even otherwise come within the purview of the crown debt. Even a crown debt could be discharged only after the secured creditors stand discharged. "*

51. Sri Sinha next relied upon the judgment in the case of **Rana Girders Limited** (supra) in order to contend that the excise duty dues are not liable to be paid by the auction purchaser of the erstwhile company which was put to auction. The Hon'ble Apex Court in paragraph no. 23 observed as under:-

> *"23. We may notice that in the first instance it was mentioned not only in the public notice but there is a specific clause inserted in the Sale Deed/Agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that "all these statutory liabilities arising out of the land shall be borne by purchaser in the sale deed" and "all these statutory liabilities arising out of the said properties shall be borne by the vendee and vendor shall not be held responsible in the Agreement of Sale." As per the High Court, these statutory liabilities would include excise dues. We find that the High Court has missed the true intent and purport of this clause. The expressions in the Sale Deed as well as in the Agreement for purchase of plant and machinery talks of statutory liabilities "arising out of the*

land" or statutory liabilities "arising out of the said properties" (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note at all by the High Court. "

52. The afore noted judgment is clearly distinguishable as the Excise dues does not create charge upon the property put to auction.

53. The next judgment as sought to be relied to and referred to by the learned Senior Counsel who appears for the petitioner is the case of **Haryana State Electricity Board Vs.** (supra) The said judgment is also of no assistance to the petitioner in view of the fact that the Hon'ble Apex Court had held that electricity arrears do not constitute a charge over the property and that is why a transferee of the premise cannot be made liable for payment of dues of the previous owner/occupier. The relevant extract of the judgment in paragraph nos. 10, 11, 12, 13 are quoted hereinunder:-

"10. The appellant relies on the subsequent decision of this court in Paramount Polymers (supra) to distinguish the decision in Isha Marbles. In Paramount Polymers (supra), the terms and conditions of supply contained a provision (clause 21A) providing that reconnection or new connection shall not be given to any premises where there are arrears on any account, unless the arrears are cleared. In view of the said express provision, this Court distinguished Isha Marbles on the following reasoning:

> *"15...This Court in Hyderabad Vanaspati Ltd. v. A.P. SEB [1998] 2 SCR 620 has held that the Terms and Conditions for Supply of Electricity notified by the Electricity Board under Section 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the terms and conditions for supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot ex facie be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise.*
>
> *16. The position obtaining in Isha Marbles (supra) was akin to the position that was available in the case on hand in view of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970. There was no insertion of a clause like Clause 21A as in the present case, in the Terms and Conditions of Supply involved in that case. The decision proceeded on the basis that the contract for supply was only with the previous consumer and the obligation or liability was enforceable only against that consumer and since there was no contractual relationship with the*

subsequent purchaser and he was not a consumer within the meaning of the Electricity Act, the dues of the previous consumer could not be recovered from the purchaser. This Court had no occasion to consider the effect of clause like Clause 21A in the Terms and Conditions of Supply. We are therefore of the view that the decision in Isha Marbles (supra) cannot be applied to strike down the condition imposed and the first respondent has to make out a case independent on the ratio of Isha Marbles (supra), though it can rely on its ratio if it is helpful, for attacking the insertion of such a condition for supply of electrical energy. This Court was essentially dealing with the construction of Section 24 of the Electricity Act in arriving at its conclusion. The question of correctness or otherwise of the decision in Isha Marbles (supra) therefore does not arise in this case especially in view of the fact that the High Court has not considered the question whether Clause 21A of the terms and conditions incorporated is invalid for any reason."

11. In Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels & Alloys Pvt.Ltd. [2009 (1) SCC 210] this court held, while reiterating the principle that the electricity dues did not constitute a charge on the premises, that where the applicable rules requires such payment, the same will be binding on the purchaser. This court held:

"11...A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a `charge' on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises....

12….When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears

due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

13...A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Provisions similar to Clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor."

12. The position therefore can may be summarized thus :

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

Position in this case

13. The appellant did not plead in its defence that any statutory rule or terms and conditions of supply, authorized it to demand the dues of previous owner, from the first respondent. Though the appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first respondent, the appellant did not specify the statutory provision which enabled it to make such a claim. The decision in Paramount Polymers shows that such an enabling term was introduced in the terms and conditions of electricity supply in Haryana, only in the year 2001."

54. Another judgment so cited is the case of **Shreyas Papers (P) Ltd.** (supra), however, the said judgment is of no help to the petitioner as in the said case there was only transfer of individual assets of the defaulting company rather than the defaulting company being sold as a going concern and the Hon'ble Apex Court while interpreting Section 15 (1) of the Karnataka Sales Tax Act (1957) in paragraph nos. 17 and 22 observed as under:-

"17. In the present case, since it is not a matter of dispute that there was only the transfer of individual assets of the Defaulting Company, rather than the Defaulting Company being sold as a going concern, in light of our expressed views, Section 15 of the KST Act is not attracted. The first limb of Mr. Hegde's arguments must, therefore, fail.

22. In the present case, firstly, no provision of law has been cited before us that exempts the requirement of notice of the charge for its enforcement against a transferee who had no notice of the same. It remains to be seen, therefore, if in the facts of the present case, the First Respondent had noticeactual or constructiveof the charge. At the outset, in the advertisement/notice dated 17.3.1992 issued by the Corporation, mention is only made of the sale of the Defaulting Company's assets and there is no indication,

whatsoever, of any sales tax arrears. Further, the bid offer made on behalf of the First Respondent on 5.6.1992 specifically excludes any statutory liabilities, including sales tax. This offer was accepted by the Corporation on 15.7.1992. Even at that stage, there was no mention of any sales tax arrears. The sale of the assets took place pursuant to the agreement dated 12.8.1992 in which a specific clause was inserted that the First Respondent would be liable to pay all property taxes, other taxes, electricity bills, water taxes and rents from the date of the agreement (i.e. 12.8.1992). For the first time, by letter dated 8.1.1993 of the Second Appellant to the Mandal Panchayath, Aloor Taluk, the issue of sales tax dues of the Defaulting Company was brought to the surface. This is further borne out by the correspondence between the First Respondent and the Corporation. Thus, it is evident that the First Respondent had no actual notice of the charge prior to the transfer. As to whether the First Respondent had constructive notice of the charge, no substantive argument on this issue was made, either before the High Court or at any rate before us. Hence, we cannot hold that the First Appellant had constructive notice of the charge. "

55. Similarly, so far as the case of **Telangana State Southern Power Distribution Company Ltd.** (supra) the Hon'ble Apex Court in paragraph nos. 16, 16.1, 16.2 has observed as under:-

"16. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:

16.1 . That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the

provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

16.2 . Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser)."

56. Perusal of the above noted paragraphs itself shows that the Hon'ble Apex Court has held that electricity dues are statutory in nature and as per terms and the condition of supply the same cannot be waved of. Infact the said judgment goes against the petitioner.

57. The next judgment cited is the case of **Raman Roadways Private Limited** (supra) the said judgment no where supports the case of the petitioner as the said judgment holds that property tax was merely a statutory dues without creating any encumbrances over the property and the same is not liable to be paid.

58. The judgments so cited by the learned Senior Counsel as referred to above are clearly distinguishable and do not apply in the present facts of the case particularly when there already exists specific Clause 3(b) under Chapter No. (IV) of the lease deed dated 26.06.2001 providing that the lessor shall have first charge upon the demise premises for the amount of unpaid lease rents and interest thereon and other dues of authority. Moreover, as discussed above the petitioner herein has accepted the terms and covenant contained in the lease deed and also signatory to the Transfer Memorandum date 24.12.2020 which even in fact became the basis of the sale certificate dated 30.07.2021.

59. Addressing the question of refund of the amount so paid by the petitioner **being (i) and (iii)** they are interlinked and they are decided compositely.

60. In order to be entitled to be refunded the amount so deposited under protest the petitioner has to place relevant facts before the court as to how and by which manner it had been pressurized to deposit the amount and it deposited the same under protest. The Court finds that the petitioner himself was a signatory of Transfer Memorandum dated 24.12.2020 and the same became a basis of issuance of sale certificate on 30.07.2021. Further the petitioner stepped into the shoes of the Creditor Debtor and also got itself bound to honor the contractual obligation. Barring the allegations made in paragraph no. 14 of the writ petition and a letter so appended marked to the GNIDA dated 27.10.2020, there is nothing on record to show that any challenge/protest was made to the Transfer Memorandum dated 24.12.2020. As already noticed the petitioner was bound to honor the commitments as laid down in the lease deed and the petitioner paid the arrears of lease rentals and interest and thereafter, it became the lessee. More so, the conduct of the petitioner itself shows that it approbated and reprobated at the same time as though it on the basis of the Transfer Memorandum dated 24.12.2020 it, became a lessee while holding interest over the leased land but the petitioner is avoiding performance of contractual obligation while playing hot and cold at the same time.

61. The Hon'ble Apex Court in the case of **R.N. Gosain vs. Yashpal Dhir** reported in **(1992) 4 SCC 683** has observed as under:-

> "*10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the*

> *purpose of securing some other advantage". [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury's Laws of England, 4th Edn.,Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).*"

62. The Hon'ble Apex Court in the case of **Shyam Telelink Limited vs. Union of India**, reported in **(2010) 10 SCC 165** has observed as under:

> "23. *The maxim qui approbat non reprobat (one who approbates cannot reprobate) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument*."

63. The Hon'ble Apex Court in the case of **Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Limited**, reported in **(2011) 10 SCC 420** has held as under:

> *"34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide: Nagubai Ammal & Ors. v. B. Shama Rao & Ors., AIR 1956 SC 593; C.I.T. Vs. MR. P. Firm Maur, AIR 1965 SC 1216; Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati & Ors., AIR 1969 SC 329; P.R.*
>
> *Deshpande v. Maruti Balaram Haibatti, AIR 1998 SC 2979; Babu Ram v. Indrapal Singh, AIR 1998 SC 3021;* Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors, *AIR 2004 SC 1330; Ramesh Chandra Sankla & Ors. v. Vikram Cement & Ors., AIR 2009 SC 713; and Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr., (2011) 5 SCC 270).*
>
> *35. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."*

64. The Hon'ble Apex Court in the case of **Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others**, reported in **(2015) 3 SCC 624** has observed as under:

> "*16.2. Secondly, on a proper perusal of the plaint, it ought to have been palpably evident that the Plaintiff/Tenant in O.S.5/78 feared dispossession from the demised premises because of what they considered to be an illegal transfer; but since all the Defendants had averred in their Written Statement that they had no intention of doing so, the suit ought not to have been dismissed but ought to have been decreed without more ado solely so far as the prayer of injunction was concerned. But, in the Trial Court the title to the leased land had become the fulcrum of the fight, owing to the pleadings of the Tenant in which it had repeatedly and steadfastly challenged the title of the Trust as well as the Transferees. The Tenant should not be permitted to approbate and reprobate, as per its whim or convenience, by disowning or abandoning a controversy it has sought to have adjudicated.*"

65. Proposition of law as culled out by the Hon'ble Supreme Court in the above noted decisions draws irresistible conclusion that a party cannot approbate and reprobate at the same time as once it becomes beneficiaries of certain documents/instruments then the said party cannot elect to honor the commitments of certain parts which are beneficial to it and wriggle out of those conditions which puts liability upon it.

66. Nevertheless, Transfer Memorandum was executed on 24.12.2020 and the petitioner signed the same and in absence of the any challenge to the same the petitioner is bound by it and it has to comply with the contractual obligation in-toto. The Hon'ble Apex Court in the case of **R. K. Mittal and Others vs. State of U.P. and Others** reported in **2012 (2) SCC 232** in paragraph no. 53 has observed as under:-

> *"53. Reverting to the case in hand, we may notice that the lease deed executed in favour of the predecessor-in-interest of R.K. Mittal and the other appellants had contained specific stipulations that the lessee will obey and submit to all directions issued, existing or thereafter to exist, as obeyed by the lessor. The erection of the structure was also to be in accordance with the approved plans. Clause (h) of the lease deed specifically provides that the constructed building shall be used only for the purpose of residential, residential-cum- or surgical clinic and for no other purpose, that too subject to such terms as are imposed by the lessor. The transfer deed*

> *which was executed in favour of the present appellants, with the approval of the Development Authority, also contained similar clauses and also provided that the terms and conditions imposed by Development Authority from time to time shall be binding on the transferee. Clause 15 of the transfer deed stipulated that the transferee shall put the property to use exclusively for residential purpose and shall not use it for any purpose other than residential. After raising the construction on the plot in question, admittedly, the appellants have put the property to a different use other than residential. The property was rented out to two different commercial undertakings, i.e., Andhra Bank and a company by the name `Akariti Infotech'. It is not even the case of the appellants before us that the Development Authority had granted any specific permission to them to use the property for any purpose other than residential."*

67. Perusal of the above noted paragraph of the judgment itself shows that the transfer deed is an instrument which is normally executed in case of transfer of lease land in favour of any third party which sets out with the terms and conditions of the transfer. Applying the said judgment this Court finds that the petitioner being a beneficiary of a transfer is bound to honor the contractual obligation as contained in the Transfer Memorandum.

68. Admittedly, the petitioner is seeking refunds of certain amount which he claims to have deposited under protest for discharge the contractual obligation. Now the question arises as to whether this Court can in exercise of the jurisdiction under Article 226 of the Constitution of India by virtue of judicial fiat grant relief to the petitioner which tantamount to resiling and wriggling away from a contractual obligation.

69. The Hon'ble Apex Court in the case of **Har Shankar and Others vs. The Dy. Excise and Taxation Commercial and Others** reported in **1975 (1) SCC 737** in paragraph no. 22 observed as under:-

> *"The writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred."*

70. In the Case of **M/s Radhakrishna Agarwal and Others vs. State of Bihar and Others** reported in 1977 (3) SCC 457 in paragraph nos. 12, 13, 14 and 15 observed as under:-

> *"12. The Patna High Court had, very rightly divided the types of cases 'in which breaches of alleged obligation by the State units agents can be set up into three types. These were stated as follows :--*
>
> > *"(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where an assurance or promise made by the State he has acted to his prejudice and predicament, but the agree- ment is short of a contract within the meaning of article 299 of the Constitution;*
> >
> > *(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the pan of State; and*
> >
> > *(iii) Where the contract entered into between the State, and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."*
>
> *13. It rightly held that the cases such as Union of India v. M/ s. AngloAfghan Agencies,(1) and Century Spinning & Manu- facturing Co. Ltd. v. Ulhasnagar Municipal Council(2); and Robertson v. Minister of Pensions,(3) belong to the first category where it could be held that public bodies or the State are as much bound as private individual are to carry out obligations incurred by them because parties seeking to bind the authorities have altered their position to their disadvantage or have acted to their detriment on the strength of the representations made by these authorities. The High Court thought that in such cases the obligation could sometimes be appropriately enforced on a Writ Petition even though the obligation was equitable only. We do not propose to express an opinion here on the question whether such an obligation could be enforced in proceedings under* Article

226 *of the Constitution now. It. is enough to observe that the cases before us do not belong to this category.*

14. The Patna High Court also distinguished cases which belong to the second category, such as K.N. Guruswami v. The State of Mysore*;(4) '* *D.F. South Kheri v. Ram Sanehi Singh;(5) and M/s. Shree Krishna Gyanoday Sugar Ltd. v. The State of Bihar,(6) where the breach complained of was of a statutory obligation. It correctly pointed out that the cases before us do not belong to this class either.*

15. It then, very rightly, held that the cases now before us should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of Umakant Saran v. The State of Bihar;(7) and Lekhrai Sathram Das v.N.M. Shah;(8) and B.K. Sinha v. State of Bihar(9) that no writ order can issue under Article 226 of the Constitution in such cases "to compel the authorities to remedy are a breach of contract pure and simple".”

71. The Hon’ble Apex Court in **Premji Bhai Parmar and Others vs. Delhi Development Authority and Others** reported in **1980 (2) SCC 129** in paragraph no. 8 observed as under:-

“8. Though we are not inclined to reject the petitions on this preliminary objection as we have heard them on merits it is undeniable that camouflage of Art. 14 cannot conceal the real purpose motivating these petitions, namely, to get back a part of the purchase price of flats paid by the petitioners with wide open eyes after flats have been securely obtained and petition to this Court under Art. 32 is not a proper remedy nor is this Court a proper forum for re-opening the concluded contracts with a view to getting back a part of the purchase price paid and the benefit taken. The undisputed facts are that petitioners offered themselves for registration for allotment of flats that may be constructed by the, Authority for MIG scheme. After the registration and when the flats were constructed and ready for occupation brochures were issued by the Authority. One such brochure for ', allotment of MIG flats in Lawrence Road residential scheme is Annexure R-1. This brochure specifies the terms and conditions including price on which flat will be offered. It also reserved the right to surrender or cancel the

registration, the mode and method of paying the price and handing over the possession. There is an application form annexed to the brochure. Annexure 'A' to the brochure sets out the price of flat on the ground floor, first floor and second floor respectively. It sets out the premium amount payable for land as also the total cost in respect of the flats on the ground floor, first floor and second floor. The statement also shows the earnest money deposited at the time of the registration and the balance payable. It is on the basis of these brochures that the applicants applied for the flats in Lawrence Road and other MIG schemes. They knew and are presumed to know the contents of the brochure and particularly the price payable. They offered to purchase the flats at the price on which the Authority offered to sell the same. After the lots were drawn and they were lucky enough to be found eligible for allotment of flats, each one of them paid the price set out in the brochure and took possession of the flat, and thus sale became complete. There is no suggestion that there was a mis-statement or incorrect statement or any fraudulent concealment in the information supplied in the brochure published by the Authority on the strength of which they applied and obtained flats. How the seller works out his price is a matter of his own choice unless it is subject to statutory control. Price of property is in the realm of contract between a seller and buyer. There is no obligation on the purchaser to purchase the flat at the price offered. Even afar registration the registered applicants may opt for other schemes. His light to enter into-other scheme opting out of present offer is not thereby jeopardised or negatived and applicants so outnumbered the available flats that lots had to be drawn. With this background the petitioners now contend that the Authority has collected surcharge as component of price which the Authority was not authorised or entitled to collect. Even if there may be any merit in this contention, though there is none, such a relief of refund cannot be the subject-matter of a petition under Art. 32. And Art. 14 cannot camouflage the real bone of contention. Conceding for this submission that the Authority has the trappings of a State or would be comprehended in 'other authority' for the purpose of Art. 12, while determining price of flats constructed by it, it acts purely in its executive capacity and "is bound by the obligations which dealings of the State with the individual citizens import into every

transacting entered into the exercise of its constitutional powers But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the Constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the. terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract" (see Radhakrishna Agarwal & Ors. v. State of Bihar & Ors.) Petitioners were under no obligation to seek allotment of flats even after they had registered themselves. They looked at the price and flats and applied for the flats. This they did voluntarily. hey were advised by the brochures to look at the flats before going in for the same. They were lucky enough to get allotment when the lots were drawn. Each one of them was allotted a flat and he paid the price voluntarily. They are now trying to wriggle out by an invidious method so as to get back a part of the purchase price not offering to return the benefit under the contract, namely, surrender of flat. I The Authority in its affidavit in reply in terms stated that it is. willing to take back the fiats and to repay them the full price. The transaction is complete, viz., possession of the flat is taken and price is paid. At a later stage when they are secure in possession with title, petitioners are trying to get back a part of the purchase price and thus trying to re-open and wriggle out of a concluded contract only partially. In a similar and identical situation a Constitution Bench of this Court in Har Shankar & ors. etc. etc. v. The Dy. Excise & Taxation Commr. & ors. has observed that those who contract with open eyes must accept the burdens of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract would ever have a binding force. The jurisdiction of this Court under Art. 32 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. It would thus appear that petitions ought not to have been entertained. However, as the

petitions were heard on merits, the contentions canvassed on behalf of the petitioners may as well be examined."

72. In the case of **Divisional Forest Officer vs. Bishwanath Tea Co. Ltd.** reported in **1981 (3) SCC 238** the Hon'ble Apex Court in paragraph nos. 8 and 9 has observed as under:-

"8. It is undoubtedly true that High Court can entertain in its extraordinary jurisdiction a petition to issue any of the prerogative writs for any other purpose. But such writ can be issued where there is executive action unsupported by law or even in respect of a Corporation where there is a denial of equality before law or equal protection of law. The Corporation can also file a writ petition for enforcement of a right under a statute. As pointed out earlier, the respondent (Company) was merely trying to enforce a contractual obligation. To clear the ground let it be stated that obligation to pay royalty for timber cut and felled and removed is prescribed by the relevant regulations. The validity of regulations is not challenged. Therefore, the demand for royalty is unsupported by law. What the respondent claims is an exception that in view of a certain term in the indenture of lease, to wit, Clause 2, the appellant is not entitled to demand and collect royalty from the respondent. This is nothing but enforcement of a term of a contract of lease. Hence, the question whether such contractual obligation can be enforced by the High Court in its writ jurisdiction.

9. Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the Civil Court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a civil court where a suit for specific performance of contract or for damages could be filed. This is so well settled that no authority is needed. However, we may refer to a recent decision bearing on the subject. In Har Shankar and Ors. etc. etc. v. The Deputy Excise and Taxation Commissioner and Ors., the petitioners offered their bids in the auctions held for granting licences for the sale of liquor. Subsequently, the

petitioners moved to invalidate the auctions challenging the power of the Financial Commissioner to grant liquor licence. Rejecting this contention, Chandrachud J., as he than was speaking for the Constitution Bench at page 263 observed as under:

> *"Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force."*
>
> *Again at page 265 there is a pertinent observation which may be extracted.*
>
> *Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."*

This apart, it also appears that in a later decision, the Assam High Court itself took an exactly opposite view in almost identical circumstances. In Woodcrafts Assam v. Chief Conservator of Forests, Assam, a writ petition was filed challenging the revision of rates of royalty for two different periods. Rejecting this petition as not maintainable, a Division Bench of the High Court held that the complaint of the petitioner is that there is violation of his rights under the contract and that such violation of contractual obligation cannot be remedied by a writ petition. That exactly is the position in the case before us. Therefore, the High Court was in error in entertaining the writ petition and it should have been dismissed at the threshold."

73. In the case of **Barielly Development Authority and Another vs. Ajay Pal Singh and Others** reported in **1989 (2) SCC 116** the Hon'ble Apex Court in paragraph nos. 20, 21 and 22 observed as under:-

> *"20. Thus the factual position in this case clearly and unambiguously reveals that the respondents after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence the respondents can only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. In the case before us, the contract between the respondents and the BDA does not contain any statutory terms and/or conditions. When the factual position is so, the High Court placing reliance on the decision in Ramana Dayaram Shetty case (AIR 1979 SC 1628) has erroneously held:*
>
> > *"It has not been disputed that the contesting opposite party is included within the term 'other authority' mentioned under Article 12 of the Constitution. Therefore, the contesting opposite parties cannot be permitted to act arbitrarily with the principle which meets the test of reason and relevance. Where an author- ity appears acting unreasonably this Court is not powerless and a writ of mandamus can be issued for performing its duty free from arbitrariness or unreasonableness."*
>
> *21. This finding, in our view, is not correct in the light of the facts and circumstances of this case because in Ramana Dayaram Shetty case there was no concluded contract as in this case. Even conceding that the BDA has the trap- pings of a State or would be comprehended in 'other authori- ty' for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the 'authority' or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere, they can only claim rights conferred upon them by the contract in the*

absence of any statutory obligations on the part of the authority (i.e. B.D.A. in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple Radhakrishna Agarwal & Ors. v. State of Bihar & Ors., [1977] 3 SCR 249; Premji Bhai Parmar & Ors. etc. v. Delhi Development Authority & Ors, [1980] 2 SCR 704 and D.F.O. v. Biswanath Tea Company Ltd., [1981] 3 SCR 662."

74. In **Noida Entrepreneur Association vs. U.P. Financial Corporation and Another** reported in **1994 Supp (2) SCC 108** the Hon'ble Apex Court in paragraph nos. 2, 3 and 4 has observed as under:-

"2. The Association filed a writ petition before the Allahabad High Court seeking a direction to the Corporation to adhere to the guidelines laid down by the IDBI in respect of interest and the penal interest. The High Court dismissed the writ petition. This appeal by the Association is against the judgment of the High Court.

3. According to the Association the Corporation is charging from them the interest at higher rate than the ceiling provided under the guidelines issued by the IDBI. It is further alleged that the penal interest in the event of default in repayment, provided in the agreement was also over and above the norms laid down by the IDBI.

4. WE have heard learned counsel for the appellant. He has taken us through the judgment of the High Court and the other material on record. The High Court declined to exercise its jurisdiction under Article 226 of the Constitution of lndia on the short ground that the appellant-petitioner was disputing the contractual obligations entered into by the parties under the ordinary law of contract. While dismissing the writ petition the High Court observed as under:

> *"We feel on the facts and circumstances of this case that since only the petitioner has come before us,*

> *the proper remedy for the petitioner even otherwise is to go to the civil court and get the matter adjudicated in the suit. This is, nowever, without prejudice to the right of the petitioner to approach the IDBI by means of representation if they really have power to take action they can take necessary action if it is so desirable under that power against respondent 1."*

75. In the Case of **Improvement Trust Ropar Through Its Chairman vs. Tejinder Singh Gujral And Others** reported in **1995 Supp (4) SCC 577** the Hon'ble Apex Court in paragraph no. 3 has observed as under:-

> *"3. No writ petition can lie for recovery of an amount under a contract The High Court was clearly wrong in entertaining and allowing the petition There is no separate law for the advocates"*

76. Yet in the case of **State of Orissa vs. Narain Prasad and Others** reported in **AIR 1997 S.C. 1493** the Hon'ble Apex Court in paragraph no. 35 observed as under:-

> *"35. Lastly we may also invoke the holding in Har Shankar and Jageram that the writ petitioners, having entered into agreements voluntarily,containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extra-ordinary discretionary jurisdiction under Article 226 of the Constitution in aid of such licencees."*

77. **Orissa State Financial Corporation vs. Narsingh Ch. Nayak And Others** reported in **2003 (10) SCC 261** the Hon'ble Apex Court in paragraph no. 6 has observed as under:-

> *"6. The said order is under challenge in this appeal. On a plain reading of the impugned order it is manifest that the High Court, while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction sale and for other consequential reliefs, has passed order drawing up a fresh contract between the parties and has issued certain further directions in the matter; the corporation has been directed to advance a fresh loan to the*

writ petitioner to enable him to purchase a new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to write off the remaining amount of Rs. 16,500/-and to order waiving of the interest till date etc. The order to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place."

78. Yet in the case of **Rajasthan State Industrial Development** (supra) the Hon'ble Apex Court in paragraph nos. 19, 20, 21, 22, 23, 24 has observed as under:-

"19. There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties. (Vide: Bareilly Development Authority & Anr. v. Ajay Pal Singh & Ors., AIR 1989 SC 1076; and State of U.P. & Ors. v. Bridge & Roof Co. (India) Ltd., AIR 1996 SC 3515).

20. In Kerala State Electricity Board & Anr. v. Kurien E. Kalathil & Ors., AIR 2000 SC 2573, this Court held that a writ cannot lie to resolve a disputed question of fact, particularly to interpret the disputed terms of a contract observing as under: (SCC pp. 298-99, paras 10-11)

> *"10…..The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. ….If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of*

> *the High Court that the contractor was seeking enforcement of a statutory contract…..*
>
> *11……The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract…. The contractor should have relegated to other remedies."*

21. It is evident from the above, that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justiceiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith.

Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

IV. Interpretation of terms of contract

23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. (Vide: United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, AIR 2004 SC 4794; Polymat India P. Ltd. & Anr. v. National Insurance Co. Ltd. & Ors., AIR 2005 SC 286).

24. In DLF Universal Ltd. & Anr. v. Director, T. and C. Planning Department Haryana & Ors., AIR 2011 SC 1463, this court held:

> *"It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. ?It comprises joint intent*

> *of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation. As is stated in Anson's Law of Contract, "a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept...Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large."*
>
> *The Court assumes "that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency...In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly."*

79. Applying the said judgments in the present case this Court finds that the petitioner is seeking a judicial intervention for resiling and wriggling from contractual obligations which are not within the realm of the present proceedings.

80. Another issue which needs to be taken note of is the fact as to whether a writ petition under Article 226 of the Constitution would lie seeking mandamus for only refund of money when the same is

disputed. The said issue is no more res integra as in the case of **Suganmal Vs. State of Madhya Pradesh reported in AIR 1965 Supreme Court page 1740** wherein the Hon'ble Apex Court observed as under:-

> *"6. On the first point, we are of opinion that though the High Court have power to pass any appropriate order in the exercise of the powers conferred under article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. We have been referred to cases in which orders had been issued directing the state to refund taxes illegally collected, but all such had been those in which the petitions challenged the validity of the assessment and for consequential relief for the return of the tax illgally collected. We have not been referred to any case in which the courts were moved by a petition under article 226 simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend the principle justifying the consequential order directing the refund of amounts illegally realised, when the order under which the amounts had been collected has been set aside, to cases in which only orders for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and, therefore, could take action under Art. 226 for the protection of their fundamental right and the Courts, on setting aside the assessment orders exercised their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right. "*

81. The judgment in the case of Suganmal (supra) was followed in the case of **Salonah Tea Company Ltd. And Others vs. Superintendent of Taxes Nowgong And Others** reported in **1988 (1) SCC 401**

wherein in paragraph no. 6 and 7 the Hon'ble Apex Court has observed as under:-

> *"6. In this case indisputably it appears that tax was collected without the authority of law. Indeed the appellant had to pay the tax in view of the notices which were without jurisdiction. It appears that the assessment was made under section 9(3) of the Act. Therefore, it was with out jurisdiction. In the premises it is manifest that the respondents had no authority to retain the money collected without the authority of law and as such the money was liable to refund. The only question that falls for consideration here is whether in an application under Article 226 of the Constitution the Court should have directed refund. It is the case of the appellant that it was after the judgment in the case of Loong Soong Tea Estate the cause of action arose. That judgment was passed in July 1973. It appears thus that the High Court was in error in coming to the conclusion that it was possible for the appellant to know about the legality of the tax sought to be imposed as early as 1963, when the Act in question was declared ultra vires as mentioned hereinbefore. Thereafter the taxes were paid in 1968. Therefore the claim in November, 1973 was belated. We are unable to agree with this conclusion. As mentioned hereinbefore the question that arises in this case is whether the Court should direct refund of the amount in question. Courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down of the order of assessment etc. Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally, as a corollary of the said statement of law it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realised from citizens without the authority of law.*
>
> *7. In Suganmal v. State of Madhya Pradesh and others, AIR 1965 SC 1740, this Court held that the High Courts have power to pass any appropriate order in the exercise of the powers conferred on them under Article 226 of the Constitution. A petition solely praying for the issue of a writ of mandamus directing the State to refund the money alleged*

> *to have been illegally collected by the State as tax was not ordinarily maintainable for the simple reason that a claim for such refund can always be made in a suit against the authority which had illegally collected the money as a tax and in such a suit it was open to the State to raise all possible defences to the claim, defences which cannot in most cases,, be appropriately raised and considered in the exercise of writ jurisdiction. It appears that Section 23 of the Act deals with refund. In the facts of this case, the case did not come within section 23 of the Act. But in the instant appeal, it is clear as the High Court found in our opinion rightly that the claim for refund was a consequential relief."*

82. In the case in hand the Court finds that only a solitary relief has been sought in the nature of mandamus directing the GNIDA to refund the amount so deposited by the petitioner along with 18% per annum. The judgment in the case of **Suganmal** and **Salonah Tea Company Ltd.** (supra) are squarely applicable in the facts of the present case particularly when refund is being sought on the basis of certain deposits so made by the petitioner for discharging the contractual obligation. This Court is of the firm opinion that the present writ petition so instituted, seeking the solitary relief of mandamus without assailing any order, is not maintainable.

83. Learned Senior Counsel for the petitioner has lastly argued that the amount in dispute was deposited under protest and thus, the GNIDA is under legal obligation to refund the same. Sri Ramendra Pratap Singh, who appears for GNIDA has argued that for discharge of the contractual obligations the petitioner has deposited the said amount and the same cannot be refunded. The Court notices the fact that there is a marked difference between the deposit of amount under protest and protest against the very instruments which occasioned deposit of the said amount. In the present case in hand, the entire pleadings centers around the deposit of amount under protest but there has been no attempt made by the petitioner to raise protest or challenge the Transfer Memorandum dated 24.12.2020, which became instrumental in deposit of the lease rentals and interest thereon. Hence, in the firm opinion of the Court, the interpretation so sought to be suggested by the petitioner that since the amount was deposited under protest, the petitioner is entitled to refund of the same is out of context besides being misconceived and misplaced.

84. Meticulously, analyzing the facts of the case in hand from the four corners of law this Court cannot subscribe to the argument of the learned Senior Counsel who appears for the petitioner as the controversy sought to raked up by the petitioner devolves around factual issues relating to the contractual obligation so embodied in the underline instruments be that the lease deed so executed from time to time or the Transfer Memorandum so executed between the parties. More so, the sale certificate itself has been issued after noticing the fact that the petitioner transferee (auction purchaser) is bound by the covenants contained in the lease deed as well as the Transfer Memorandum. Writ jurisdiction cannot be expanded in an elastic manner so as to stretch it to such a position which tantamounts to giving its judicial seal while delving into the factual issue as to whether pressure/coercion so adopted was practiced upon the petitioner. Nonetheless, to put the nail in the coffin the above noted instruments being sale deed certificate, Transfer Memorandum had not been put to challenge before any Court of law. More so, the conduct of the petitioner itself explicitly makes it clear that the petitioner has approbated and reprobated at the same time just in order to get the benefits and to wriggle out from obligations.

85. An impleadment application for impleading M/s Moser Baer India Private Limited Company in Liquadation for making it as fourth respondent, is not required to be allowed in view of the judgment/order so passed today.

SUMMATION

86. In summation of the discussion made herein above, we hold: -

(a). Merely because the petitioner is a bonafide auction purchaser who had purchased assets Corporate Debtor through auction/bidding so conducted by orders of NCLT, will not absolve it from paying arrears of lease rental and interest thereon.

(b). The Insolvency Bankruptcy Code- 2016 grants limited protection to the petitioner (auction purchaser) while allowing it to step into the shoes of the Corporate Debtor but in order to the lessee of the principle lessor (GNIDA) the petitioner has to honor the

commitments and discharge its contractual obligation as embodied in the lease deeds, Transfer Memorandum and Sale Certificate.

(c). The conduct of the petitioner also dis-entitles it to be granted relief under the equitable jurisdiction as the petitioner has approbated and reprobated at the same time as on one hand it seeks to become a lessee while being put in possession for enjoying the immovable assets of Corporate Debtor but on the other hand it wriggles and resiles from the contractual obligation.

(d). The words so employed in the Certificate of Sale Deed dated 11.09.2019 being "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS" AND "NO RECOURSE" read with the Transfer Memorandum dated 24.12.2020 so executed between the petitioner (auction purchaser) and GNIDA as well as the Sale Certificate dated 30.07.2021 itself creates contractual obligation upon the petitioner to honor the commitments and to discharge the obligations so embodied in the lease deed dated 26.06.2021 and the subsequent lease deeds for the payment of past lease rentals and interest thereon.

(e). GNIDA being the principal lessor has paramount interest over the demised land put to auction and it has legal as well as contractual right to raise demand of out standing arrears of lease rentals and interest thereon.

(f). High Court under Article 226 of the Constitution of India cannot by a judicial fiat creates a podium to facilitate avoidance of agreements while wriggling out from contractual obligations so embodied therein.

(g). A writ petition containing solitary relief of refund of the amount deposited for fulfilling contractual obligation, is not maintainable.

(h). Even otherwise, in absence of any challenge being made to the covenants of the Transfer Memorandum dated 24.12.2020 and the

Sale Certificate dated 30.07.2021, the petitioner is not entitled to refund of the amount so deposited by him claiming it to be under protest.

CONCLUSION

87. In view of the forgoing discussions, the writ petition is devoid of merit and thus, liable to be dismissed. It is, therefore, dismissed.

88. All pending applications stands disposed of.

89. Interim order, if any, stands vacated.

90. No order as to costs.

Order Date:- 27.05.2022
Nisha