

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS APPLICATION NO.2054/2020

IN

CIVIL APPEAL NO.1674/2020

SHAKTI NATH & ORS.

PETITIONER(S)

VERSUS

ALPHA TIGER CYPRUS INVESTMENT NO.3
LTD.DIRECTOR & ORS.

RESPONDENT(S)

O R D E R

Civil Appeal No.1674 of 2020 was disposed of by this Court vide its Judgment dated 18.02.2020¹. The facts leading to the filing of the appeal were set out in detail in the Judgment and some of the developments referred to in paragraphs 3.4 to 3.7 were as under:

“3.4. The Appellants filed an affidavit dated 05.12.2019 stating that the Project Land was free from any and all encumbrances, and was not subject to any pre-existing mortgage or charge.

It was further submitted that the Appellants were able to identify a party which was interested to acquire the sub-lease of the Project Land, viz. M/s. Good Living Infrastructure Pvt. Ltd. (“Bhutani group”). The Bhutani group had submitted their Expression of Interest to acquire the sub-lease of the Project Land from NOIDA by acquisition of shares of Respondent No. 3 for a total

¹ Hereinafter referred to as ‘the Judgment’

consideration of Rs.99,44,55,000/-. The Bhutani group was willing to deposit the sale consideration in the Registry of this Court, after deducting the dues payable to NOIDA. A copy of the Expression of Interest dated 26.11.2019 was placed on the record of this Court.

The Appellants further submitted that the balance amount would be raised by mortgaging the property situated at Industrial Plots No. 4 and 5, Block A, Sector 716, NOIDA, owned by Appellant No. 4, which is being used as the Corporate Office.

The CEO of M/s Good Living Infrastructure Pvt Ltd. who was present in Court confirmed that his Company stands by the offer of Rs 99,44,55,000/-made by him before the Court. M/s Good Living Infrastructure Pvt. Ltd. was directed to file a Board Resolution along with an affidavit to confirm the offer before the next date of hearing.

3.5. M/s Good Living Infrastructure Pvt. Ltd. through its CEO/ Additional Director, duly authorized by a Board Resolution dated 20.12.2019, filed an Affidavit dated 06.01.2020 before this Court to place on record its Interest to acquire the sub-lease of the property bearing Plot No.001B situated Sector 140A in NODIA district Guatam Budh Nagar, U.P. admeasuring 45,202.50 sq. mts. held by M/s IT Infrastructure Park Ltd. (Respondent No.3) for a consideration of Rs. 99,44,55,000/-. This would be effectuated by acquisition of shares of Respondent No.3 which holds 8the aforesaid property under a sub-lease executed between NOIDA–the Lessor, M/s Sarv Mangal Real Tech Pvt. Ltd.–the Lessee, and Respondent No.3–the sub-lessee under Sub Lease dated 21.10.2009.

In the said Affidavit, Bhutani Group stated that it is aware of the pending litigation before this Court, and is willing to deposit the entire sale consideration with the Registry of this Court, including the dues payable to NOIDA.

3.6. With respect to the dues of NODIA, we requested the Counsel for NOIDA to ascertain whether penal interest on land rent and interest could be waived.

3.7. During the course of hearing on 22.1.2020, the dues payable to NOIDA were crystallised as follows :-

(i)	Pending Instalment amounts with Simple Interest @ 14% p.a.	Rs.23,21,00,000
(ii)	Lease Rent dues with Simple Interest@ 14% p.a.	Rs.11,93,00,000
(iii)	Time Extension charges	Rs. 6,57,38,900
(iv)	Additional amount payable to land owners as compensation @ 64.7%	Rs. 93,36,577
	TOTAL	<u>Rs.42,64,75,477</u>

It must be stated that pursuant to notice issued by this Court, Mr. Ravindra Kumar, learned Advocate representing NOIDA had submitted that the interest at the enhanced rate and on compound basis would be chargeable. However, this Court was of the view that on proper construction, the dues of NOIDA would be in the region of calculations mentioned in paragraph 3.7 of the Judgment, which paragraph then crystalised the dues of NOIDA as in January, 2020.

The further developments in the matter and the resultant steps that would be undertaken were mentioned in paragraph 4 of the Judgment as under:

“After having heard the Counsel appearing for all the parties, the challenge to the ICC award is hereby rejected.

With respect to the amount awarded towards Interest and Penal Interest under the award, the same has been modified by consent of parties, as a prudent

commercial decision, in the following terms :-

i) The Appellants agree to make a total payment of Rs.107.50 Crores (Rupees One Hundred and Seven Crores and Fifty Lacs) to Respondents No. 1 and 2 as full and final settlement of their dues under the award dated 20.01.2005.

ii) Out of the total amount of Rs.107.50 crores, Respondents No.1 and 2 have already received an amount of Rs.21,53,00,000/- (Rupees Twenty One Crore Fifty Three Lacs) pursuant to the Interim Orders dated 01.05.2018 and 14.11.2019 passed by this Court.

The balance amount payable to Respondents No.1 and 2 would be Rs.85,97,00,000/- (Rupees Eighty Five Crore Ninety Seven Lacs).

iii) M/s. Good Living Infrastructure Private Ltd. of the Bhutani Group agreed and undertook to pay Rs.99,44,55,000/- for the purchase of the entire shareholding of Respondent No.3 - IT Infrastructure Park Pvt. Ltd. from the Appellants and Respondents No.1 and 2.

Out of this amount, Rs. 42,64,75,477/- would be paid directly towards the dues of NOIDA. The Bhutani Group would be at liberty to make a representation to NOIDA within one week for re-schedulement as per its prevailing policy, which would be decided within a further period of one week.

iv) The balance sale consideration of Rs.56,79,79,523/- (99,44,55,000 minus 42,64,75,477) would be deposited by M/s Good Living Infrastructure in the Registry of this Court. The deposit by M/s Good Living Infrastructure would be made in 2 tranches :-

	Upfront payment to be deposited within 10 days of the passing of this Order.
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Rs.56,79,79,523/-	To be deposited within 6 months from the date of this Order.
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The aforesaid amounts would be made over to Respondent Nos.1 and 2 towards payment of the balance sale consideration.

v) The balance amount of Rs.29,17,20,477/- payable by the Appellants to Respondents Nos.1 and 2 would be carried out within a period of 3 months from the passing of this Order.

vi) The orders of injunction dated 24.03.2017 and 17.08.2017 passed by the Delhi High Court restraining the Appellants from alienating Industrial Plots No.4 and 5, Block A, Sector-16, NOIDA is hereby lifted, to enable the Appellants to raise funds for payment of the balance amount as stated in para (ii) hereinabove.”

Thus, the dues of NOIDA having been crystallized and relevant directions having been issued in the Judgment, the matter would have taken a concrete shape in the light of those directions. However, the Uttar Pradesh Industrial Area Development (Amendment) Ordinance, 2020 (U.P. Ordinance No.16 of 2020) was promulgated by the Governor of the State inserting following proviso in Section 7 of the Uttar Pradesh Industrial Area Development Act, 1976. The Ordinance has since then been replaced by an Act and the proviso is now part of the Statute.

Section 7 after the insertion of the proviso, reads as under:

“Section 7 – Power to the Authority in respect of transfer of land.- The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the

Authority in the industrial development area, on such terms and condition as it may, subject to any rules that may be made under this Act, think fit to impose.

Provided that where any land so allotted is not utilized for the purpose for which it was allotted within the period of five years from the date of possession or within the period fixed for such utilization in the conditions of allotment whichever is longer, the lease deed will stand cancelled and the land shall vest with the Authority. Provided further where the aforesaid period has already lapsed before the commencement of this Ordinance, the Authority shall give a notice to the allottee to use the land for the purpose for which it was allotted within a period of one year and if within the above period of one year the allottee does not use the land, then the allotment and lease deed shall stand automatically cancelled.”

The instant application i.e. Miscellaneous Application No.2054 of 2020, placed certain developments on record and sought following directions:-

(I) Permit M/s Chandgi Ram Real Estate Consultants Private Limited to deposit a sum of Rs.29 crores directly with the Registry of the Hon’ble Supreme Court through electronic mode via RTGS on or before 18.11.2020, subject to Applicant’s depositing the remainder amount of Rs. 14,79,79,523/- and consequently direct transfer of 50% shareholding of M/s IT Infrastructure Park Pvt. Ltd. to M/s Chandgi Ram Real Estate Consultants Private Limited; and

(ii) Direct that the RTGS transfers of Rs.3 crores on 27.10.2020 by the applicant inter alia vide UTR No. SIBLR52020102700429213, SIBLR52020102700466 050 be appropriated against the total amount required to be deposited by the Applicant under the Final Order dated 18.02.2020.

(iii) Direct that proviso inserted in Section 7 of the

Uttar Pradesh Industrial Area Development Act, 1976 vide the Uttar Pradesh Industrial Area Development (Amendment) Ordinance, 2020 and/or its subsequent enactment, if done, shall not be applicable to the present case and that the Applicant and Investors be granted a minimum period of five years from date of transfer of shareholding of M/s IT Infrastructure Park Pvt. Ltd. in their favour to complete developmental work on the Project land;”

We are presently concerned with the prayer touching upon the issue pertaining to the proviso inserted in Section 7.

In response to certain queries, Mr. Ravindra Kumar, learned Advocate appearing for NOIDA filed an affidavit indicating the stand of NOIDA taken in the 199th and 200th meeting of NOIDA and also placed letter dated 28.01.2021 on record.

In the light of these developments, by orders dated 12.2.2021 and 19.02.2021, this Court called upon the learned Standing Counsel for the State to place on record the stand of the State Government.

Pursuant to these directions, an affidavit sworn by the Under Secretary, Industrial Development Department of Government of U.P. has been filed and for facility, the relevant part of the affidavit is quoted hereunder:

“(B) That as per the facts of the present case, the period of completion of the project, as per the lease deed, expired on 15.01.2013. Neither extension of time was applied for nor extension charges paid as per policy. Therefore, no extension came to be granted by the authority. It is respectfully submitted that as per the

proviso, the time for completion of the project had already expired prior to the date of ordinance and the only benefit admissible in the present case is a period of one year from the date of amendment.

Thus, in the respectful submission of the State, the applicant is not entitled to a period of five years, as is being claimed by it, under the Government's communication dated 28.01.2021. Such communication is applicable only to those cases where transfer had actually been effected prior to the coming into force of the Ordinance and the same was done with prior permission of the Authority. The aforesaid ingredients are absent in the present case.

(C) That it is also respectfully submitted that the period of five years contemplated in the proviso is not applicable to the facts of the present case and all that is contemplated by the proviso is that when the allotted land is not utilised within a period of five years from the date of possession or within the extended period, whichever is longer, the lease deed shall stand cancelled. In the present case, possession of the allotted plot was handed over in the year 2008. The original period as per the lease deed for completion was five years while 40% had to be completed in three years' time. No construction whatever was carried out. The original period for construction, based on the date of possession expired on 15.01.2013. It is very pertinent to mention that no extension was requested from the Authority. Hence, the total period availed by the Respondent No.3- IT Infrastructure Park Pvt Ltd. has been over 12 years which is far more than five years. The interpretation of the amendment is not that the limitation starts afresh with every transfer from one company to another or upon transfer of shares in the existing lease company.

That it is also respectfully submitted that allotment/Lease continues to remain in the name of the Lessee Company i.e. Respondent No.3 – IT Infrastructure Pvt. Ltd. The change in its shareholding which does not mean that the date of handing over possession gets changed to the date of acquisition of shareholding and hence the period of five years would start afresh.

(D) That it is also respectfully submitted that the

judgment dated 18.02.2020 did not contemplate that M/s Good Living Infrastructure Pvt. Ltd. (“Bhutani group”) would bring in further investors and therefore there would be a demand for an extension. The investment by M/s Chandgi Ram Real Estate Consultants Pvt. Ltd. is not contemplated by the judgment dated 18.02.2020.

(E) That it is also respectfully submitted that the intent of MA No. 1422 of 2020 was to seek an extension of time to make payment on account of covid pandemic. Only a passing reference was made with regard to some understanding between the applicant and M/s Chandgi Ram Real Estate Consultants Pvt. Ltd. without disclosing the terms of such agreement or an understanding. The said agreement or understanding is not binding upon either the authority or the state and cannot be a basis of extension of time or further concessions. It is also pertinent to mention that by the time this Hon’ble Court passed the order dated 25.08.2020 the ordinance had already been issued but no such challenge or prayer for extension of time was made in MA No. 1422 of 2020.

(F) That is also respectfully submitted that the interpretation of the applicant that it would be entitled to a further period of five years from the date of transfer does not flow from a plain reading of the Ordinance.

(G) That, the applicant shall have to play either the transfer charges in case they wish to become the transferee OR pay the charges for change in shareholding as the case may. Further, in either case the applicant shall also be liable to pay the stamp duty charges to the State.

(H) That the applicant may kindly be directed to clear all dues of NOIDA and pay the stamp duty charges to the State, as may be quantified by this Hon’ble Court and that which become due on account of transfer/change in shareholding.”

We heard Mr. Vinod Diwakar, learned AAG for the State. It was submitted by him that the period of completion for the project in terms of the lease deed had expired on 15.01.2013 (though according to the learned

counsel the period expired on 21.10.2014) and at no stage any extension of time was applied for before such expiry; and that the maximum benefit admissible, in the present case, would be extension of period one year from the date of the amendment. He submitted that paragraphs (G) & (H), as quoted hereinabove, must be read in the light of submissions advanced in paragraph (B) as quoted above.

To a pointed query, whether it would be permissible for the State Government to consider any extension beyond the period of one year as delineated in paragraph (B) as quote above, Mr. Diwakar agreed that the State Government would be within its rights to take an appropriate decision and grant extension.

Mr. V. Giri, learned Senior Advocate, appearing for Good Living Infrastructure Pvt. Ltd. submitted that the period of one year must be reckoned from the notice contemplated in the latter part of the proviso and not from the date of the amendment as suggested by Mr. Diwakar. Mr. Giri stated that his client would be willing to pay all the dues in terms of the lease deed, the extant policies and the provisions of any enactment such as Stamp Duty Act, etc.

Mr. Dhruv Mehta, learned Senior Advocate appearing for the Original Appellant stressed that the dues of NOIDA having been crystallized in the Judgment and the appropriate directions having been issued therein by this Court in paragraph 4 onwards, the matter stood concluded on 18.02.2020

itself. In his submission, the matter having attained finality and the controversy having been set at rest by the Judgment, the requirement as stated in paragraph (B) of the affidavit filed on behalf of the State as quoted above, stood satisfied and therefore, the parties would be entitled to a period of five years as against what was being projected in the affidavit filed on behalf of the State Government.

Mr. Sachin Datta, learned Senior Advocate, appearing on behalf of Chandgi Ram Estate Consultants Pvt. Ltd. submitted that the money was deposited by his client on the premise that his client would get sufficient time to develop the property and that in case the extension of time could only be upto one year as suggested by the State Government, it would not be possible for anybody to develop the property.

Mr. Sanjiv Puri, learned Senior Advocate appearing for the original decree holder submitted that whatever be the arrangements, as decree-holder seeking execution of Commercial Arbitration Award, his client would be looking forward to early disposal and resolution to the dispute.

Since the present matter arises out of a disposed of civil appeal, we do not wish to go into the issues stated above and into the rival submissions of the parties.

However, in order to see that the instant controversy is set at rest at the earliest, and there is prompt resolution to the dispute in question, we direct:

- (a) All the relevant papers concerning this Miscellaneous

Application including all affidavits and the orders passed by this Court as well as copy of the Judgment shall be placed by way of a compilation by Good Living Infrastructure Pvt. Ltd. before the Principal Secretary, Ministry of Industrial Development, Govt. of U.P., within seven days from today.

(b) The parties shall appear before the Principal Secretary on such date or dates as the Principal Secretary may deem appropriate.

(c) The Principal Secretary shall conclude the proceedings as early as possible and render his decision on the issue whether in the instant case the extension of time upto five years or such other period can be granted or not.

(d) The decision in that behalf shall be arrived at as early as possible and preferably within two months from today.

We make it clear that we have simply narrated the facts and circumstances for facility and we shall not be taken to have reflected on the merits or demerits of the contentions advanced by any of the counsel and the matter shall be considered by the Principal Secretary purely on its own merits without being influenced by the stand taken by either NOIDA or State in any of their affidavits in this Court.

It must be stated that certain amounts were deposited in the Registry of this Court from time to time. The disbursal of said amounts shall await the decision of the Principal Secretary and only for that purpose, the instant matter shall be listed before this Court on 10.05.2021.

In the meantime, the Registry shall keep those amounts invested in

fixed deposit(s) in a Nationalized Bank fetching highest possible rate of interest for a short term deposit, with auto renewal facility.

Miscellaneous Application No.2054 of 2020 stands disposed of in aforementioned terms.

.....J.
(UDAY UMESH LALIT)

.....J.
(INDU MALHOTRA)

New Delhi,
February 26, 2021.

ITEM NO.301 Court 4 (Video Conferencing)

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No. 2054/2020 in C.A. No. 1674/2020

(Arising out of impugned final judgment and order dated 18-02-2020 in C.A. No.1674/2020 passed by the Supreme Court Of India)

SHAKTI NATH & ORS.

Petitioner(s)

VERSUS

ALPHA TIGER CYPRUS INVESTMENT NO. 3 LTD
DIRECTOR & ORS.

Respondent(s)

(IA No. 131303/2020 - APPLICATION FOR PERMISSION
IA No. 131367/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 131366/2020 - EXEMPTION FROM FILING O.T.)

Date : 26-02-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. V. Giri, Sr. Adv.
Ms. Ankita Gupta, Adv.
Mr. Rajat Mittal, AOR

Mr. Sachin Dutta, Sr. Adv.
Dr.Farrukh Khan, Adv.
Ms.Akansha Singh, Adv.
Mr.Rajat Mittal, AOR

Mr. Dhruv Mehta, Sr. Adv.
Mr.Pradyuman Dubey, Adv.
Mr.Arpita Bishnoi, Adv.
Mr.Saurabh Mishra, Adv.
Mr.Abhay Kumar, AOR
Mr. Vijay Kumar, Adv.
Mr. Saurabh Mishra, Adv.
MR. KUMAR MILIND, (ADV.)

Mr. Ravindra Kumar, AOR

Mr. Sanjeev Puri, Senior Advocate
Mr. Priyank Ladoia, Advocate

Mr. Sanjeev Puri, Senior Advocate
Mr. Paresh , Advocate
Mr. Mayank Pandey, AOR

Mr. Vinod Diwakar, AAG for State of U. P.
Ms. Alka Sinha, Adv.
Mr. Amit Sharma, Adv.
Mr. Anuvrat Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Miscellaneous Application No.2054 of 2020 is
disposed of in terms of the signed order with following
direction:

"It must be stated that certain amounts were
deposited in the Registry of this Court from time to
time. The disbursal of said amounts shall await the
decision of the Principal Secretary and only for that
purpose, the instant matter shall be listed before this
Court on 10.05.2021."

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(SIGNED ORDER IS PLACED ON THE FILE)

(VIRENDER SINGH)
BRANCH OFFICER