

MANU/DE/0473/2021

IN THE HIGH COURT OF DELHI

CO. Pet. 455/1997

Decided On: 09.03.2021

Appellants: **In Re: Gwalior Transmissions System Ltd.**

Hon'ble Judges/Coram:

Jyoti Singh, J.

Counsels:

For Appearing Parties: Ravi Gupta, Sr. Advocate, Abhay Kumar Tayal, Nishant Prateek, Sachin Jain, Sarbjit Sharma, Yamini Nijhawan, Priyanka Deo, D. Bhattacharya, Shubham Gaur, Advocates and Nardev Singh, Law Officer

Case Category:

COMPANY LAW, MRTP AND ALLIED MATTERS

Case Note:

Civil - Review - Consent Order - Recovery of balance dues - Review
Petitioner sought terms of lease to be followed and order thus to be
recalled - Petition opposed by Auction Purchaser contending consent order
cannot be recalled - Whether consent order can be reviewed or recalled? -
Held, if Parties/ Counsels permitted to resile from the consents without
there being sufficient cause of fraud, sanctity of Court proceedings would
be lost - In the present case, order in question a consent order - There was
no mention of Lease Deed nor was any copy of the Lease Deed produced
during the hearing - Parties by their consent and conduct mutually decided
to follow a path at variance with lease terms - Property was not fetching
good price and after several hearings, it was agreed that dues of the
Authority would be scaled down - Affidavit was filed to that effect - When
Parties wilfully agree to be bound by terms and conditions at variance with
lease terms in writing, Court cannot be said to rewriting the terms - Petition
dismissed[27], [28], [40],[42], [43]

DECISION

Jyoti Singh, J.

Co. Appl. 133/2020 (Seeking review of order dt 16.09.2019)

1 . Present application has been filed by the Applicant/New Okhla Industrial Development Authority (hereinafter referred to as the 'Authority') seeking review of the order dated 16.09.2019 as well as a direction to M/s. Gwalior Transmissions Systems Ltd. to pay a total amount of Rs. 6,07,45,312/- towards the balance installments and the interest thereon as agreed between the parties. The said order was challenged by the Authority before the Division Bench in Co. Appeal No. 05/2020 and the Appeal was disposed of by the Division Bench vide order dated 19.02.2020, granting liberty to the Authority to move an application seeking review of the order dated 16.09.2019 before this Court.

2 . It needs to be noted that on 16.09.2019, counsel appearing on behalf of the

Authority, on instructions from the Accounts Officer, had submitted that in terms of their valuation, in the event prior rental was discharged simultaneously with rental for an equal period towards future rent, the Authority would not charge any interest thereon. Insofar as the installments towards total consideration of the subject plot is concerned, it was submitted that the Authority shall abide by the directions of this Court, including determination of rate of interest which they are entitled to receive, in the event the ownership of the Company in liquidation, qua the subject plot, is restored. Based on the submission made, by a consent order, the application was disposed of directing the counsel for the Authority to indicate to the Applicant therein, who was the auction purchaser, the exact amount that was payable, including water, electricity charges etc. and the interest, which the Court had determined @ 5% simple interest. Upon the Applicant therein paying the outstanding amount, 'No Dues Certificate' was to be issued by the Authority.

3. In order to understand the controversy involved in the present review petition, a brief background of facts would be necessary. A Lease Deed dated 06.03.1993 was executed by and between M/s. Gwalior Transmissions Systems Ltd. (hereinafter referred to as the 'Company') and the Authority with respect to Plot No. A-6, Phase-II, Noida, Uttar Pradesh. As per the Authority, the relevant clauses of the Lease Deed provided that the lease rent may be enhanced every 10 years from the date of execution, by an amount not exceeding 50% of the annual lease rent payable. At the time of enhancement, in case of default in payment of lease rent, interest @ 24% per annum compounded half yearly was chargeable for the delayed period. This was in terms of Clause 1(b), relevant part of which is as follows:

"1. (b) The lease rent may be enhanced after every 10 years, from the date of execution of the deed by an amount not exceeding 50% of the annual lease rent payable. At the time such enhancement, in case of default in payment of lease rent, interest @:24% p.a. compounded every half yearly would be chargeable for the delayed period".

4. By virtue of Clause II(a), Company was required to pay Rs. 7,14,000/- in ten/half yearly installments along with interest @16.5% per annum towards premium from the date of issue of allotment letter. Out of a total premium of Rs. 10,20,000/-, an amount of Rs. 3,60,000/- stood paid. It was further provided that if the installments together with the interest accruing thereon are not paid by or on the date due, interest @ 24% compounded six-monthly shall be charged for delayed payment for delayed period. It was provided further that if any installment or interest accruing thereon was not paid on the due date, compound interest @ 24% per annum shall be chargeable with six-monthly rests on the premium due.

5. According to the Authority, Company has not paid the installments since 1994 and only the first installment dated 30.06.1993 was paid. The Company had to pay further interest @ 24% per annum compounded half-yearly upto the last date of the payment as per the installments schedule i.e. by 31.12.1997, upon the unpaid installments, but no payment was made. After the expiry of the scheduled plan i.e. after 31.12.1997, interest @ 24% per annum compounded half yearly was agreed to be paid upon the defaulted premium and/or interest and the same was also not paid.

6. For the sake of completeness, certain other facts and the proceedings of the Court need to be taken note of. Despite several sale notices, bids were not received for the plot in question along with another plot bearing No. A-5 in the same area and this is reflected in various Court orders from 2013. Court was undertaking the herculean

task of selling the property of the Company, to realise the best possible value so that the creditors could be paid off as a liquidation order had been passed on 22.07.2005.

7. On 21.08.2018, pursuant to the bidding with respect to the two plots, 3 bids were received in the auction through the Court. The highest bid was by Mr. Satpal Nagar for Rs. 5,90,00,000/- and the second highest bid was by Mr. Rajeev Jain of Rs. 5,87,00,000/-. The bid of Mr. Nagar was accepted and the earnest deposit of the third bidder was returned. The highest bidder, however, defaulted and the bid of Mr. Jain was accepted and he was called upon to complete the transaction vide order dated 13.12.2018. 25% of the bid amount was to be paid within 30 days and the balance amount within three months thereafter. Authority was represented on the said date as reflected from the order.

8. The auction purchaser namely Mr. Jain made the entire payment within the stipulated time and also deposited Rs. 65.49 Lacs, as according to him, the amount payable towards other charges etc. outstanding towards the Authority were approximately Rs. 60 Lacs. Thereafter the auction purchaser filed an application being Co. Appl. No. 956/2019 stating therein that dues to the tune of approximately Rs. 60 Lacs as prescribed in the Sale Notice were payable to the Authority. The auction purchaser had paid the entire consideration amount to the Official Liquidator and received the possession along with the title documents. Two earlier applications dated 28.05.2019 and 26.07.2019 made to the Authority for providing the details of the exact amount, to be deposited, elicited no response. The auction purchaser had purchased the plot for Rs. 5.87 Crores but the same cannot be transferred in his name till the outstanding dues are cleared and that can only happen when a letter of demand is issued. Thus, it was prayed that directions be issued to the Authority to issue the demand letter in respect of the amount specified as Rs. 60 Lacs approximately in the Sale Notice, entitling the auction purchaser to get the property transferred in his name. Both the applications made to the Authority were appended to the said application.

9. The said application being Co. Appl. 956/2019 was listed before this Court on 16.09.2019. On the said date, the attention of the Court was drawn to an earlier order dated 28.03.2017 passed by the Court. The order dated 28.03.2017 reads as under:

"At request of Mr. Patnaik, in order to enable him to examine the case before addressing this court on the proposal for revival of the company in liquidation, the hearing of the petition is adjourned.

Mr. Mittal, learned counsel appearing on behalf of Noida Authority, on instructions from Mr. A.K. Sharma, Accounts Officer, Noida Authority, submits that in terms of their valuation, in the event, the prior rental is discharged simultaneously with the rental for an equal period towards the future rental, they would not charge any interest thereon. It is further submitted that, insofar as the instalments towards the total consideration of the subject plot is concerned, the Noida Authority shall abide by the directions of this Court, including determination of the rate of interest which they would be entitled to receive, in the event, the ownership of the company in provisional liquidation qua the subject plot is restored.

In the meantime, the Official Liquidator is directed to obtain a fresh valuation report qua the subject property from valuer--Haripriya Associates (P) Ltd.,

43, Dayananda Block, U.G., 1st Floor, Shakarpur, Delhi-92, and file a report in this behalf before the next date of hearing.

Renotify on 24th August, 2017."

10. Once the order was pointed out to the Court by the counsel for the auction purchaser and the Official Liquidator, counsel for the Authority categorically stated that the Authority shall abide by the rate of interest as determined by the Court and also undertook that a letter shall be issued to the auction purchaser, detailing the exact amount payable including water, electricity and other charges including the interest determined by the Court. The order dated 16.09.2019 being a short order, is extracted hereunder for ready reference:

"CO. APPL. 956/2019

On 28.03.2017, Mr. Mittal, learned counsel appearing on behalf of Noida Authority, on instructions from the Accounts Officer, had submitted that in terms of their valuation, in the event, the prior rental was discharged simultaneously with the rental for an equal period towards the future rental, they would not charge any interest thereon. Insofar as the installments towards the total consideration of the subject plot is concerned, it was submitted that the Noida Authority shall abide by the directions of this Court, including determination of the rate of interest which they would be entitled to receive, in the event, the ownership of the company in provisional liquidation qua the subject plot is restored.

The present application has been moved by the applicant seeking necessary directions directing the Noida Authority to issue a demand letter in respect of the amount specified at Rs. 60 Lacs approximately which was mentioned in the Auction Notice for entitling the applicant to get the property in question i.e. Industrial plot Nos. A-5 and A-6, Phase II, Noida measuring 4080 sq. meters., transferred in his name.

Mr. Mittal submits that as per the order dated 28.03.2017, the Noida Authority will abide by the rate of interest which is fixed by this Court.

Having heard learned counsels for the parties, this Court is of the view that simple interest at the rate of 5% be paid by the applicant from the date of default till the date of actual payment.

Mr. Mittal submits that a letter will be issued to the petitioner detailing the exact amount that is now payable by the petitioner including water, electricity or other charges that may be due towards the Noida Authority as well as the interest which is fixed by the Court today.

Mr. Sharma undertakes to pay the said amount within two weeks from the date of the said letter. On receipt of the amount and being satisfied with the payment, the Noida Authority will issue the 'No Dues Certificate' for transfer of the property aforementioned.

It is made clear that this order is passed in the peculiar facts of this case.

The application stands disposed of in the above terms."

11. Instead of complying with the order, the Authority assailed the said order on the

ground that as per the Lease Deed between the Authority and the Company, a much higher amount was payable to the Authority including the interest component. Reading of the order of the Division Bench indicates that a submission was made before the Division Bench that though the Lease Deed was not a part of the record, the same was produced before this Court during the hearing. The order dated 16.09.2019 is sought to be recalled on the basis of the terms of the Lease Deed and it is asserted that only after the amount as prayed for in the review petition is paid, the Authority would be in a position to issue 'No Dues Certificate' to the auction purchaser.

12. Mr. Ravi Gupta Learned Senior Counsel for the Authority/Review Petitioner, submits that while he does not dispute that the order dated 16.09.2019 is a consent order, but submits that the terms and conditions of the Lease Deed will govern the parties and the order deserves to be recalled. It is argued that a Lease Deed was executed between the Authority and the Company on 06.03.1993 with regard to plot No. A-6, Phase-II, Noida, Uttar Pradesh. As per Clause II(a), the total premium of the plot in question was Rs. 10,20,000/- out of which Rs. 3,06,000/- had been paid and the balance sum of Rs. 7,14,000/- was payable in ten/half yearly installments along with 16.5% interest per annum to be compounded half yearly. Attention is drawn to the breakup of the installments as per which the amount of each equal installment was Rs. 71,400/- and the last installment was payable on 31.12.1997. It is argued that as per the first Proviso interest was payable on the unpaid installments along with interest accrued thereon @ 24% per annum compounded six monthly and thereafter, if any installment or interest was unpaid on the due date, compound interest @ 24% per annum was chargeable with six-monthly rests on the premium due.

13. It is contended that in view of the clauses of the Lease Deed as aforesaid, the contract price is the premium plus interest @ 16.5% compounded half yearly plus interest @ 24% compounded half yearly on delayed installments upto 31.12.1997 and being the price agreed upon between the parties, cannot be interfered with and the Court cannot rewrite the terms of the Lease Deed.

14. It was further argued that while under the Lease Deed, the Authority is entitled to charge interest @ 24% compounded, however, it has only charged reducing rate of interest and that too at Government rates for the period post 31.12.1997. It is clear that the transaction between the parties is not a loan or a commercial transaction but is a sale/purchase of property and the rate of interest towards sale consideration being a part of the cost of the property has to be paid. Admittedly, the Company has not paid the premium or the interest accrued thereon except for the first installment dated 30.06.1993 for a long period of 26 years. On the other hand, it has availed the benefits of the Scheme issued by the Board of the Authority vide Notification dated 05.12.2013, on account of which the Authority has waived the interest on the rental.

15. Mr. Gupta further argues that if the amounts payable towards the Authority on account of the premium and the interest is not paid in terms of the Lease Deed, loss to the tune of Rs. 6 Crores approximately shall be caused to the public. Mr. Gupta also submits that while it is true that the copy of the Lease Deed was not placed on record, however, a calculation sheet showing the exact amounts payable, being Rs. 6,21,59,312.18/- as on 31.01.2020 was placed on record and has also been appended to the present petition for a ready reference, as Annexure P/5.

16. Mr. Gupta drawing the attention of the Court to the Sale Notice, which is

appended to the reply of the Official Liquidator, submits that it was clearly provided in Clause 2 thereto that property in question could be inspected on 30.07.2018 and 31.07.2018. Clause 8 prescribed that detailed information and copy of the terms and conditions of sale could be downloaded from the website of the Official Liquidator. The terms and conditions (which are not filed but were shared on the screen during the hearing) provided that before submitting the bid, the bidder should satisfy itself about the area, title etc. with respect to the property in question from the concerned Authority and no objection of any kind in this regard shall be entertained subsequently. The order passed by the Court on 13.12.2018 in para 6 took note of the said 'terms and conditions'.

17. Mr. Gupta further argues that the bidder was thus put to notice that it should satisfy itself with regard to the liabilities and charges etc. on the subject property and it was incumbent on the auction purchaser to exercise due diligence before bidding. Had the auction purchaser exercised due diligence, he would have become aware of the liability of the Company to clear the outstanding installments along with the interest thereon. Having failed to do so, it is not open to the auction purchaser to claim that only an approximate amount of Rs. 60 Lacs mentioned in the Sale Notice is payable. Mr. Gupta in support of the proposition relies on the following judgments:

(i) In *United Bank of India v. Official Liquidator*, MANU/SC/0592/1994 : (1994) 1 SCC 575, the Supreme Court held as under:

"14. When the Official Liquidator sells the property and assets of a company in 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."

(ii) In CWP 18872/2014 titled *Atul Modi vs. State Bank of India* decided on 11.09.2014, the High Court of Punjab & Haryana held as under:

"4. We have heard learned counsel for the petitioner and find no merit in the present writ petition. In the auction notice there was specific condition that the Bank will not be answerable for any error, mis-statement or omission. The property is being sold on "As is where is basis" and "As is GULATI DIWAKER 2014.09.22 10:19 I attest to the accuracy and integrity of this document No. 10587 of 2013 what is basis". There was specific condition that all statutory dues payable and "other dues" will be paid by the auction purchasers. The petitioner has participated in the auction in pursuance of such auction notice (Annexure P-1). Having participated

in the auction, the petitioner cannot rely upon a communication addressed to the borrower (Annexure P-6) and not to the petitioner or the Bank. In fact, condition No. 3 of such No Objection Certificate specifies that dues of HSIIDC shall be "first charge". As per condition No. 4, in the event of sale, it is responsibility of the purchaser to discharge all such financial obligations towards the price of the plot as may arise subsequently to the sale of the plot. Condition No. 5 is that the financial institution shall confirm from HSIIDC regarding its outstanding against the plot before putting it to sale. The Bank shall also inform the HSIIDC about the sale transaction and request HSIIDC for issue of letter of re-allotment. It is condition No. 5 which is pressed by the auction purchaser in support of the contention that the claim of enhanced compensation cannot be claimed from the petitioner.

5. We find that such condition cannot be used by the petitioner for avoiding the amount payable by the petitioner to HSIIDC when condition in the advertisement was specific that all dues shall be payable by the auction purchaser. The dues of the HSIIDC have "first charge" even in terms of communication (Annexure P-6). As a participant of auction, the petitioner was expected to do due diligence before participating in the auction. It could be found out the plot is subject matter of charge of HSIIDC and that the amounts which are due and payable by the auction purchaser. Once the petitioner has accepted the auction conditions while participating in the auction, the petitioner cannot be permitted to dispute the claim of enhanced compensation claimed by the HSIIDC, who has charge over the property as well."

(iii) In TCI Distribution Centers Ltd. v. Official Liquidator, High Court, the High Court of Madras held as under:

"38. Law is clear that in cases of either making of a false statement of fact or deliberate concealment of a material fact, with the knowledge of its falsity, there is possibility for award of damages and the contract may be made either void or voidable as per Sections 17 or 18 of the Indian Contract Act. In view of the categorical legal position of the Official Liquidator in law and applying the same to the facts of the present case, it is not possible to accept the contention of the learned Counsel for the Applicant in this regard, especially in the circumstances that there is absolutely no reason to believe that the Official Liquidator has made any wilful false statement or fraudulent misrepresentation about the properties of the Company in liquidation. In any event, the sale, as it is notified in the earlier Notification effected by the Official Liquidator, as per the directions of this Court, is on "as is where is and whatever there is basis". The Applicant having got sufficient time to investigate the title ought to have been more vigilant while participating in the auction. In the absence of any wilful misstatement about the description of the properties by the Official Liquidator, it can never be said that the sale effected, as per the order of this Court, would be vitiated."

18. Dr. Sarbjit Sharma learned counsel for the auction purchaser has vehemently opposed the review petition. It is firstly contended that the order dated 16.09.2019 is a consent order and the Authority has no right in law to seek recall/review of a consent order. It is submitted that the consent given by the counsel for the Authority on 16.09.2019 was in fact a reiteration of the consent given to the Court on an earlier occasion, when the matter was listed on 28.03.2017, wherein, on instructions from the Accounts Officer, it was clearly stated that the Authority shall abide by the directions of the Court with regard to the installments towards the total sale consideration of the plot including determination of the rate of interest. It is pointed out that in fact an affidavit dated 08.11.2017 was also filed by the Authority wherein submission was made for passing appropriate orders by the Court. The Official Liquidator was appointed in the Company Petition on 12.02.1998 and winding up order was passed against the Company on 22.07.2005. Thereafter the property in question was put to auction several times by publishing Auction Notices but no bids were received. Finally, pursuant to the Auction Notice dated 13.07.2018, an open bidding was done in the Court and the bid of Mr. Jain being the second highest bidder was accepted as the first bidder did not come forward. The auction purchase made payment within the stipulated time towards the sale consideration and also paid Rs. 60 Lacs which was the approximate amount indicated towards the outstanding dues to the Authority in the Sale Notice. Thereafter, the auction purchaser had approached this Court seeking a direction to the Authority to issue a demand letter so that the property could be transferred in his name on clearing the outstanding amounts, if any. It is argued that when the matter was heard on 16.09.2019, learned counsel for the Authority raised no objection on the basis of the terms of the Lease Deed, as is now sought to be argued. No Lease Deed was produced during the course of hearing and per contra consent was given, as recorded in the order. Not only are the grounds raised in the review petition an afterthought and a delaying tactic, but are even otherwise untenable in law as the auction purchaser is not bound by the terms of the Lease Deed executed between the Company and the Authority and is only bound and governed by the terms and conditions of the auction, as prescribed and stipulated in the Auction Notice. It is thus prayed that the review petition be dismissed and the Authority be directed to comply with the order dated 16.09.2019.

19. Mr. Bhattacharya learned counsel for the Official Liquidator has also vehemently opposed the petition. It is submitted that the order dated 16.09.2019 is a consent order and the Authority cannot seek its review/recall and on this ground itself the petition deserves to be dismissed. To support the submission, learned counsel for the Official Liquidator relies on the following judgments:

(i) CS(OS) 2400/2011 titled Rajesh Kumar Nagpal & Ors. vs. M/s. Silver Grand Services & Ors. decided on 30.09.2013

(ii) Kama Vati vs. Chander Bhan & Ors. MANU/DE/7063/2007 : 2007 (93) DRJ 560

(iii) FAO 2/1992 titled Krishan Mohan Singh vs. Sri Chand Gupta & Ors. decided on 17.03.1993

20. Mr. Bhattacharya supports the argument of the auction purchaser with respect to (a) auction purchaser is not bound by the terms of the Lease Deed and would only be governed by the terms and conditions set out in the Auction Notice; (b) the consent given by the counsel for the Authority on 16.09.2019 was a reiteration of the consent given on 28.03.2017 as recorded in the said order and in the affidavit filed by the

Authority.

21. It is argued that the subject property was not fetching appropriate price even after multiple Sale Notices published by the Official Liquidator, despite reduction of reserve price, from time to time. As an illustration, the reserve price in the Sale Notice dated 28.09.2017 was approximately Rs. 6.20 Crores, in contrast to, the reserve price of Rs. 5.30 Crores in the Sale Notice dated 13.07.2018. Keeping in background this repeated phenomenon from the year 2013, efforts were made to see if the Authority could scale down the rate of interest.

22. Taking the Court through the chronology of proceedings in the Court, Mr. Bhattacharya points out that on 21.08.2014, the Authority was directed to file an affidavit setting down the breakup and calculations of its dues from the Company. The affidavit was filed thereafter as recorded in the order dated 19.02.2015. On 11.02.2016, the Court directed the Authority to take instructions as to whether it would agree to scaling down the rate of interest to a reasonable rate between the period 12.02.1998 and 22.07.2005 and qua the period commencing after 22.07.2005, i.e. the date on which the winding up order was passed. On 19.10.2016, the Court recorded that while the counsel for the Authority had obtained instructions but directed a competent officer of the Authority to remain present on the next date of hearing to assist the Court by way of abundant precaution. On 06.02.2017, counsel for the Authority handed over a copy of the Notification dated 05.12.2013 and finally on 28.03.2017, the counsel for the Authority, on instructions from the Accounts Officer, consented to abide by the order of the Court as noted above.

23. Mr. Bhattacharya also points to an order dated 26.10.2017 and an affidavit filed pursuant thereto vide which the Authority presented a breakup of the dues in relation to the subject property and according to which the outstandings were approximately Rs. 60 Lacs and an undertaking was given that the Authority would abide by the rate of interest awarded by the Court. It is thus strenuously argued that having agreed to scale down the interest and indicating dues to the tune of approximately Rs. 60 Lacs and accepting to abide by the interest awarded by the Court, it is not open to the Authority to seek any further dues from the auction purchaser and the petition should be dismissed with exemplary costs.

24. I have heard Learned Senior Counsel for the Authority and the counsels for the Official Liquidator and the auction purchaser.

25. In my view, the first and foremost issue that arises for consideration before this Court is whether the Authority can seek a review of the order dated 16.09.2019 considering the undisputed fact that it was a consent order. Counsels for the Official Liquidator and the auction purchaser have taken pains to argue that being a consent order, the same cannot be reviewed or assailed by the Authority, more particularly, when the Authority was represented throughout the proceedings in the Company Petition and the consent that was given on 16.09.2019 was a reiteration of the consent given before the Court on 28.03.2017 that the Authority will abide by the directions of the Court insofar as the installments were concerned, including the rate of interest. The law with respect to recall of a consent order is no longer *res integra*. In *Rajesh Kumar Nagpal (supra)*, a Coordinate Bench of this Court relying on a judgment of the Supreme Court in the case of *Union Carbide Corporation vs. Union of India*, MANU/SC/0058/1992 : AIR 1992 SC 248 held that a consent order can be impeached only on the ground of fraud or any other ground which invalidate the agreement. Relevant para is as follows:

"39. Reference may also be had to the judgment of Supreme Court in the case of Union Carbide Corporation v. Union of India, MANU/SC/0058/1992 : AIR 1992 SC 248, where observations were made that a consent order is wholly dependent upon the legal validity of the agreement on which it rests. The consent order can be impeached only on the ground of fraud or any other grounds which invalidates the agreement. In the present case, the defendants have failed to establish any ground of fraud or any other ground which would justify the invalidating of agreement in the consent order."

26. In Kama Vati (supra), the Court was dealing with an application for review of a consent order. In the said case, an ex-parte decree was obtained by mentioning a wrong name i.e. Smt. Sharda Tyagi as defendant No. 3 instead of Shri Sardar Singh Tyagi, apparently to obtain an ex-parte decree and dispossess the non-applicant widow knowing that service would not be effected on a non-existing person. At that juncture, the widow of Late Sardar Singh Tyagi moved an application for setting aside the ex-parte decree. Perusal of the file revealed that not only the wrong name of her husband was mentioned in the suit but interpolations were made in the Vakalatnama. The applicant in the application under Order IX Rule 13 CPC highlighted the fraud and misrepresentations. Faced with this situation, counsel for the plaintiff, on instructions from the plaintiff, gave a statement to the Court that he had no objection if the application under Order IX Rule 13 CPC was allowed. Accordingly an order was passed and the widow was impleaded and an amended memo was also filed. However, subsequently, the said lawyer was changed and an application was filed for review of the consent order. The Court dealing with the review application observed as follows:

"11. As usual, the previous learned counsel who had made the above statement was changed and the application dated 10.2.2003 was moved for review of the consent order dated 28.3.2001 which was passed for setting aside the ex. parte decree. In my view more often than not a false blame is put on the lawyers with a view to get the proceedings already completed re-opened, which practice has to be discouraged unless there is a gross failure of justice or mala fide or some ulterior motive on the part of the earlier counsel and action has also been taken by the party against such counsel. In the present case rights of the parties are still to be decided on merits."

27. It is evident that the reason and rationale behind the development of law that can be discerned from the two judgments alluded to above, with respect to recall of consent orders, is to preserve the sanctity of consents given by the counsels on behalf of the parties or the parties themselves. In case the parties/counsels are permitted to resile from the consents without there being sufficient cause of fraud, the sanctity of Court proceedings would be lost.

28. In the present case, the order dated 16.09.2019 passed by this Court is clearly a consent order. Despite the arguments of Mr. Gupta on the merits of the order, it needs to be noted that he consistently did not dispute the fact that the order was a consent order wherein the counsel appearing for the Authority had consented to abide by the Court order with respect to installments and rate of interest. Though this itself would be sufficient for this Court to dismiss the review petition as the Authority cannot be permitted at this stage to resile or wriggle out of the consent, however, for the sake of completeness, certain other issues are being dealt with as the same have been argued by Mr. Gupta.

29. Before proceeding to the other arguments, it needs to be noted that the consent was not given to the Court only on 16.09.2019, but has its genesis in various orders previously passed by the predecessor Courts including an Affidavit filed by the Authority before this Court on solemn affirmation. In order to connect the dots, Mr. Bhattacharya has painstakingly taken the Court to the previous orders which according to him highlight how efforts were being made by the Court and the Authority along with the Official Liquidator to sell the property in question which was not fetching appropriate price despite multiple sale notices. Some of the orders in this regard have been placed on record by the Official Liquidator along with its reply to the present application and I may usefully allude to a few which are relevant to the controversy. On 30.08.2013, Court has recorded that no bids were received pursuant to the publication of the Sale Notice and had directed a corrigendum to be issued extending the time limit for receipt of the bids. On 31.10.2013, the Court noted that no bids were received pursuant to the publication despite the time being extended till 22.10.2013. On 15.04.2014, counsel for the propounder of the Scheme stated that the only impediment in implementing the Scheme was the sale of the subject property. In this view, the propounder was given an opportunity to locate a buyer within four weeks. By a subsequent order, further time was given to do so. Thereafter, an application being Co. Appl. 1781/2014 was filed by the propounder of the Settlement Scheme for directions under Rules 6 and 9 for a direction to the Authority to explain its stance and make its position clear with regard to the dues payable to it by the Company as the Authority was a statutory creditor of the Company and lessor for the two plots A-5 and A-6, out of which plot No. A-6 is the subject matter of the present petition. Notice was issued on the application on 11.08.2014 and on 21.08.2014 and the counsel appearing for the Authority sought time to file a response. Authority was directed to file a complete breakup of calculation of the amount claimed to be pending and indicate separately the amount towards principal and interest. On 11.02.2016, counsel for the Authority was directed to take instructions as to whether the Authority would agree to scaling down the rate of interest to a reasonable rate for the period between 12.02.1998 and 22.07.2005 and the period commencing after 22.07.2005. The order reads as follows:

"CA Nos. 1478/2014, 1781/2014 & 2307/2015

Learned counsel for the New Okhla Industrial Development Authority (Authority) is directed to take instructions as to whether the said Authority would agree to scaling down of the rate of interest to a reasonable rate between the period 12.02.1998 and 22.07.2005 and, qua the period commencing after 22.07.2005. These dates have been indicated as PL was appointed on 12.02.1998, while the winding up order was passed on 22.07.2005.

List on 02.05.2016."

30. On 19.10.2016, the Court recorded that although counsel had obtained instructions but a competent officer should remain present in Court on the next date of hearing to assist on the issue of scaling down.

31. The order dated 28.03.2017 needs a special reference in the narrative of facts. On the said date, counsel for the Authority, on instructions from the Accounts Officer, had submitted that insofar as the rental was concerned, in the event the prior rental is discharged simultaneously with the rental for an equal period towards future rental, no interest shall be charged. It was further submitted that for the installments

towards total sale consideration, the Authority shall abide by the directions of the Court including the determination of the rate of interest. The Official Liquidator was directed to obtain fresh valuation report in the meantime. The entire order has been extracted hereinabove.

32. On 12.09.2017, the Court approved the draft Sale Notice for the two plots and permitted the Official Liquidator to publish the same. Order dated 26.10.2017, notes that no bid was received, however, counsel appearing for Info Power Technologies Ltd., neighbour of the property in question had appeared and expressed his interest in buying the property at the distress value. A clarification was, however, required as to the exact dues payable to the Authority. Based on this, the Court directed the Authority to file a calculation in the form of an affidavit of the up-to-date dues. The order reads as under:

"Pursuant to the sale notice issued in this case for the property at Noida, no bid has been received. However, the learned counsel has appeared for Info Power Technologies Ltd., who is the neighbour of the property which was sought to be auctioned. He submits that his client would be interested in buying the said property at the distress value. However, he seeks clarification of the exact dues payable to the Noida Authority.

Let the Noida Authority file a calculation in the form of an affidavit of the up-to-date dues for the plot in question within two weeks from today. Ex-Directors are present in person and submits that they have no objection to the sale as is being proposed in this court today.

List this matter on 23.11.2017."

33. On 23.11.2017, recording that Info Power Technologies Ltd. did not appear interested in buying the property on the stated terms, the Court directed issuance of fresh Sale Notice at a reduced price by 10%. On 15.12.2017, the draft Sale Notice was approved.

34. On 01.02.2018, the Court records that no bids were received despite four attempts to sell the property. The dues towards the secured creditors are also mentioned in the said order. Vide order dated 12.04.2018, Court directed the Official Liquidator to issue fresh Sale Notice reducing the above price by 5% and directing that in the proposed sale notice, the Official Liquidator shall also mention the dues of the Authority. It was recorded that as in 2018, a sum of Rs. 60 Lacs approximately was payable to the Authority. The order is as under:

"The learned counsel enters appearance on behalf of the Central Bank of India. He makes a technical objection that the bank should not bear the cost of the publication.

*I am told that there are funds available with the company. Let the OL take out fresh sale notice after reducing the reserve price by 5%. In the proposed sale notice, the OL will also mention the dues of the Noida Authority. **It is stated that as of today in 2018, a sum of Rs. 60 lakhs approximately is payable to the Noida Authority.***

List on 21.08.2018."

(Emphasis supplied)

35. To be noted that the counsel for the Authority was present in Court when the order was passed and there is no challenge to the said order. Thereafter a Court auction was conducted and as narrated above, the bid of Mr. Rajiv Jain was accepted and approved.

36. What is thus clearly discernible from the orders is that at various junctures, there was a categorical reference to a sum of Rs. 60 Lacs as outstanding dues and on each occasion, the Authority had consented to abide by the Court's direction, not only with respect to the rate of interest but also the installments towards the sale consideration. There is no challenge to any of the earlier orders, albeit each of these orders were passed in the presence of the counsel for the Authority. At this stage, I may refer to the affidavit dated 09.11.2017 filed by the Authority pursuant to the order dated 26.10.2017. Relevant part of the affidavit with respect to plot No. A-6 is as under:

"5. That the details of the lease rent without interest calculation as per office order dated 05.12.2013 for Plot No. A-5, Phase-II are as under:

DEFAULTED LEASE RENT:

<i>Lease Rent from 1994 to 2003 (Rs. 25,500 x 9)</i>	<i>Rs. 2,29,500/-</i>
<i>Lease Rent from 2003 to 2013 (Rs. 38,250 x 10)</i>	<i>Rs. 3,82,500/-</i>
<i>Lease Rent from 2013 to 2018 (Rs. 57,375 x 5)</i>	<i>Rs. 2,86,875/-</i>
<i>Total</i>	<i>Rs. 8,98,875/-</i>

ADVANCE LEASE RENT:

<i>Lease Rent from 2018 to 2023 (Rs. 57,375 x 6)</i>	<i>Rs. 2,86,875/-</i>
<i>Lease Rent from 2023 to 2033 (Rs. 86,063 x 10)</i>	<i>Rs. 8,60,630/-</i>
<i>Lease Rent from 2033 to 2042 (Rs. 1,29,095 x 9)</i>	<i>Rs. 11,61,855/-</i>
<i>Total</i>	<i>Rs. 23,09,360/-</i>

Total amount payable towards lease rent in terms of office order dated 05.12.2013 is Rs. 8,98,875/- + Rs. 23,09,360/- = Rs. 32,08,235/-.

(Thirty Two Lacs Eight Thousand Two Hundred and Thirty Five Rupees)

6. Apart from the lease rent, the principal amount for the installments due on Plot No. A-6, Phase-II is Rs. 7,14,000/-. **The rate of interest as would be awarded would be acceptable in terms of the undertaking dated 28.03.2017.**

A copy of the breakup and computation of plot nos. A-5 and A-6 is annexed and marked as ANNEXURE-A-1 to this affidavit.

7. That it is most respectfully submitted that in view of the facts and

circumstances of the instant case, this Hon'ble Court may be pleased to pass the appropriate orders as this Hon'ble Court deems fit and proper in the interest of justice."

(Emphasis supplied)

37. After giving the breakup towards the lease rent due, Authority had categorically stated in para 6 that the principal amount due towards the installments of the plot was only Rs. 7,14,000/- and that the rate of interest as would be awarded would be acceptable in terms of the undertaking dated 28.03.2017. In para 7, the Court was called upon to pass appropriate orders as it deemed fit and proper in the interest of justice.

38. On 16.09.2019, when the matter was listed before this Court, counsel for the Authority, on instructions, reiterated the undertaking and consent given to the Court on 28.03.2017 and for this reason, the order dated 28.03.2017 was alluded to in the first part of the order dated 16.09.2019. The consent of the Authority to abide by the rate of interest, as determined by the Court, in accordance with the order dated 28.03.2017 was also recorded. The Court thereafter determined the interest @ 5% simple interest exercising the discretion. Relevant would it be to note that the order was passed in open Court and in the presence of counsel for the Authority. Court had specifically referred to the application filed by the auction purchaser seeking a direction to the Authority to issue a demand letter in respect of the amount specified at Rs. 60 Lacs approximately, which was also mentioned in the Sale Notice. Copy of the Application was served on the Authority and it was completely aware of its contents. No objection of any kind was raised once the order was passed. Hence, in my view, it is not open to the Authority to contest at this late stage the dues payable by the auction purchaser, more particularly, when the order dated 28.03.2017, wherein an undertaking was given to the Court is admittedly unassailed till date and has attained finality.

39. The order sheets indicate that efforts were made to scale down the interest and consequently the dues of the Authority and at no stage, a distinction was carved by the Authority between the interest component payable on the installments or the interest payable in default/delayed payment of the installments and/or the interest thereon. Today, as an afterthought, it is argued by the Authority that the interest payable on the installments together with the interest payable on default in payment cannot be reduced or waived. In my view, this distinction is not borne out from either the order sheets or the affidavit filed by the Authority. Per contra, the order sheet dated 28.03.2017 together with the affidavit dated 09.11.2017 supports the stand of the auction purchaser and the Official Liquidator i.e. the settlement was being worked out to scale down all the interest components. The argument of Mr. Gupta Learned Senior Counsel for the Authority on this aspect therefore failed and cannot be accepted.

40. For the sake of record, I may only note that when the matter was being heard on 16.09.2019, counsel for the Authority, on instructions, had only reiterated the stand taken before the Court on 28.03.2017, leading to the order being passed by this Court in terms of the undertaking. There was no mention of the Lease Deed nor was any copy of the Lease Deed produced during the hearing. Reading of the order of the Division Bench, before which the order dated 16.09.2019 was taken up in appeal, however, shows that a categorical stand was taken by the Authority before the Division Bench that although the Lease Deed was not on record, a copy was produced before this Court, which is an incorrect stand.

41. Insofar as the argument of due diligence is concerned, I find merit in the contention of Dr. Sharma and the Official Liquidator that once the matter was before the Court and efforts were being made to scale down the interest and finally a figure of Rs. 60 Lacs was given by the Authority towards its outstanding dues on account of the fact that the property was not fetching a good price, there was no need of exercising any further due diligence and the Court orders were sufficient to indicate the dues required to be paid by a bidder.

42. Ordinarily the stand of the Authority would have been justified and accepted that the terms of the Lease Deed would govern the parties insofar as the installments and interest is concerned. However, in the present case, the parties by their consent and conduct had mutually decided to follow a path at variance with the terms of the Lease Deed. The property was not fetching a good price and after several hearings, finally it was agreed that the dues of the Authority would be scaled down and affidavit was filed to that effect. Pertinent would it be to note at this stage that on one occasion when a Company by the name of Info Power Technologies Ltd. had approached the Court as a prospective buyer and sought clarification of the dues of the Authority, the stand of the Authority again reflected an amount which was scaled down to approximately Rs. 60 Lacs. When the parties wilfully agree to be bound by terms and conditions which are at variance with the terms of the Lease Deed, and that too in writing, it can hardly be argued that it is the Court which is rewriting the terms and thus this argument of the Review Petitioner also has no merit.

43. For all the aforesaid reasons, I find no merit in the review petition and the same is accordingly dismissed.

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