



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 04 | Number 19

(May 13, 2021)

**NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY (NOIDA) VS. MR. ANAND SONBHADRA,  
RESOLUTION PROFESSIONAL  
COMPANY APPEAL (AT) (INS) NO. 1183 OF 2019  
DATE OF JUDGEMENT: APRIL 16<sup>TH</sup>, 2021**

**“There is no substance in the argument that when land is leased out, if premium is fixed and instalments are given, it should be treated as a financial lease.”**

### Facts of the Case: -

This appeal was filed by the Appellant – New Okhla Industrial Development Authority (NOIDA) against the Respondent – Resolution Professional (RP) of Corporate Debtor (CD) – M/s. Shubhkamna Buildtech Pvt. Ltd. In the Corporate Insolvency Resolution Process (CIRP) started against the CD, the Appellant a Statutory Authority filed Form ‘B’ as Operational Creditor (OC) for dues outstanding against lease of plot granted in favor of the CD which amount was of Rs.99,32,55,183. The Representative of the Appellant even attended Committee of Creditors (COC) meeting as OC. Later, the Appellant filed claim in Form ‘C’ seeking status as Financial Creditor (FC). As the Appellant did not receive any response from the RP, he moved Adjudicating Authority (AA) which passed Orders to treat Appellant as FC and sent matter to the RP but still when the Appellant was not treated as FC, an Application was filed claiming that RP had disobeyed earlier directions and that Appellant deserved to be treated as FC and should be permitted to participate in COC with voting rights. The matter was taken up before the AA and the AA after hearing both sides held that the lease deed concerned was not a financial lease as per the terms laid down under the guidelines of Indian Accounting Standards (IAS).

### NCLAT’s Observations: -

The Appellate Tribunal stated that it had gone through the Lease Deed and found that the lease deed in question cannot be said to be a finance lease. Keeping in view the IAS, what appears broadly is that when lease involves real estate (like land in present matter) with a fair value different from its carrying



## INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



amount, the lease can be classified as a finance lease if the lease transfers ownership of the property to the lessee by the end of the lease term or there is bargain purchase option. The lease must transfer substantially all the risks and rewards incidental to ownership of the asset. The argument of the Appellant trying to mix up transfer of ownership of the asset which is land with right to transfer flats to be constructed has no substance. Merely, because the lessee was given right to fix the price of the dwelling units to be constructed, that by itself is not sufficient to say that the lease of the land is a finance lease. The argument of the Appellant that lessee has an option to pay onetime lease rent and if it were exercised lessee would not be required to pay further rent and it shows that present value of the lease payment amounts to at least substantially all of the fair value of the asset, is also baseless. No material is brought to show as to what is and would be the fair value. Further, the right to cancel lease is reserved with lessor and not lessee. The Appellant further argued that the question of cancellation of lease deed by lessee would not arise as lessee would build and transfer dwelling units. The Tribunal Stated that this is speculative and cannot be helpful in construing the document.

Further, in the present matter, there is no sale of land. It is lease, for premium/rent with almost all rights controlled by the Lessor. Hence, the tribunal stated that it was unable to accept the submission that when land is leased out, if premium is fixed and instalments are given, it should be treated as a financial lease.

### **Order: -**

The Appellate Tribunal did not find any substance in appeal. However, the Bench clarified that it was not finding fault with the various terms and conditions in the Lease Deed. It is a Lease Deed from a development authority which has the object of developing the township and thus wants to control the manner in which the constructions of housing come up. That purpose is alright. However, such lease does not fit in with the requirements of Indian Accounting Standards. Just to be part of COC, the lease of land between developing authority and the builders cannot be considered or treated as a financial lease.

**Case Review: - Appeal Dismissed.**