IN THE HON'BLE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

I.A. No. 211548 OF 2023

IN

Civil Appeal No. 4947 of 2017

IN THE MATTER OF:

Technology Park Limited ...Petitioner

Versus

The State of Uttar Pradesh & Others ...Respondents

AND IN THE MATTER OF:

Alchemist Township India Limited.,
Through Mr. Devendra Singh,
Resolution Professional,
ATS Greens Paradiso,
Flat No.: 02054, Tower-2
Plot No.: Gh-03, Sector-Chi-04,
Greater Noida, Uttar Pradesh-201308.

...Applicant/Respondent

WITH

I.A. NO. 211548 OF 2023

AN APPLICATION FOR IMPLEADMENT

PAPER BOOK

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ADVOCATE FOR THE APPLICANT: NISHANT BISHNOI

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IN THE HON'BLE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

I.A. No. 211578 OF 2023

IN

Civil Appeal No. 4947 of 2017

IN THE MATTER OF:

Technology Park Limited ...Petitioner

Versus

The State of Uttar Pradesh & Others ...Respondents

AND IN THE MATTER OF:

Alchemist Township India Limited.,
Through Mr. Devendra Singh,
Resolution Professional,
ATS Greens Paradiso,
Flat No.: 02054, Tower-2
Plot No.: Gh-03, Sector-Chi-04,
Greater Noida, Uttar Pradesh-201308.

...Applicant/Respondent

AN APPLICATION FOR IMPLEADMENT

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS LORDSHIP'S COMPANION JUSTICES OF THE SUPREME COURT OF INDIA AT NEW DELHI.

THE HUMBLE PETITION OF THE APPLICANT ABOVE-NAMED.

MOST RESPECTFULLY SHOWETH AS UNDER:

1. That the present application is being filed on behalf of the Applicant, through the Resolution Professional i.e., Mr. Devender Singh, seeking impleadment in the captioned matter.

2. That the captioned Civil Appeal has been filed by the Petitioner against the impugned judgement and final Order dated 06.04.2010 passed by the Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 65654 of 2006, Civil Misc. Writ Petition No. 65656 of 2006 and Civil Misc. Writ Petition No. 4812 of 2007.

3. That a brief factual backdrop culminating into the filing of the present application is as under: -

   (a) In the year 2014, the Petitioner (Technology Parks Limited) entered into a loan agreement dated 31.12.2014 with the Applicant for an amount of Rs. 8,03,98,00,000/- (Rupees Eight Hundred Three Crore Ninety-Eight Lakhs only). As agreed by the Petitioner and the Applicant, the tenure of the loan was at a maximum of ten years from 31.05.2015 with a Call Option to convert the loan into equity in lieu of payment of interest. Therein, in furtherance of the same, the Applicant extended an additional loan facility to the Petitioner, thereby aggregating the total outstanding loan amount to Rs. 13,09,35,23,232/- (Rupees Thirteen Thousand Nine Crore Thirty-Five Lakhs Twenty-Three Thousand Two Hundred and Thirty-Two only)

A true copy of the loan agreement dated 31.12.2014 is hereto annexed and marked as **ANNEXURE A/1(14-15)**

(b) That in the meantime, a Section 7 petition being C.P. No. 1B-1082 (PB)/2018 was filed before National Company Law Tribunal, New Delhi, against the Applicant, wherein vide judgment dated 25.01.2019 of the Ld. National Company Law Tribunal, New Delhi, Corporate Insolvency Resolution proceedings ("CIRP") were initiated against the Applicant. Further, an appeal was preferred by a shareholder of the Applicant company, before the Ld. National Company Law Appellate Tribunal, New Delhi, wherein the Ld. National Company Law Appellate Tribunal, New Delhi, directed CIRP not to proceed in view of the settlement between the Applicant and the Financial Creditor in C.P. No. 1B-1082 (PB)/2018. Subsequently, due to failure of the settlement, the said Section 7 petition being C.P. No. 1B-1082 (PB)/2018 was again revived and the CIRP proceedings commenced against the Applicant. Thereafter, in view of an application filed by the Committee of Creditors, the present Resolution Professional was appointed and took over the management and custody of the Applicant Company.

(c) Thereafter, due to the Petitioner defaulting on payments of interest on its outstanding liability with respect to the said loan agreement, the Applicant through the Resolution Professional in order to protect the rights and interest of the creditors, filed a petition under Section 7 of the Insolvency and

Bankruptcy Code, 2016 bearing C.P. (IB) No. 270/ND/2021 before the Ld. National Company Law Tribunal, New Delhi. The said petition was dismissed by the Ld. NCLT, New Delhi, vide Order dated 30.09.2022.

A true copy of the Order dated 30.09.2022 passed in C.P. (IB) No. 270/ND/2021 by the Ld. NCLT, New Delhi, is hereto annexed and marked as **ANNEXURE A/2** (15-25)

(d) The Applicant aggrieved by the aforesaid order of Ld. NCLT, New Delhi, preferred a Company Appeal (AT) (Insolvency) being 1393 of 2022 before the Ld. National Company Law Appellate Tribunal, New Delhi against the Order dated 30.09.2022 passed in C.P. (IB) No. 270/ND/2021 by the Ld. NCLT, New Delhi.

(e) During the pendency of the aforesaid appeal, a settlement agreement dated 21.09.2023 was entered between the Petitioner herein and the Applicant wherein with a view to settle the rights, claims and outstanding dues of the Applicant, Petitioner offered to settle the dues/ claims of the Applicant within one year form the withdrawal/ disposal of the aforementioned appeal bearing Company Appeal (AT) (Insolvency) being 1393 of 2022 pending before the Ld. National Company Law Appellate Tribunal, New Delhi, and further mortgage the land admeasuring 54.9858 hectare situated at village Tushyana, district Dadri, Gautam Buddha

Nagar, Uttar Pradesh, to secure the interest of the Applicant with respect to the outstanding loan amount.

A true copy of the settlement agreement dated 21.09.2023 is hereto annexed and marked as **ANNEXURE A/3** (26-78)

(f) That the relevant clauses of the said agreement are reproduced as under:

Xxxx

1. *TPL hereby acknowledge that ATIL has extended loan facility of amount Rs. 8,03,98,00,000/- (Rupees Eight Hundred Three Crore Ninety Eight Lakhs only) vide Loan Agreement dated December 31, 2014. TPL further acknowledge that ATIL has extended additional loan facility as recorded in account ledger, thereby aggregating the total outstanding loan amount to Rs. 13,09,35,23,232/- (Rupees Thirteen Thousand Nine Crore Thirty Five Lakhs Twenty Three Thousand Two Hundred and Thirty Two only).*

2. *Subject to the terms and conditions of this Agreement and as approved by the Committee of Creditors ("COC"), TPL hereby unconditionally agree to pay to ATIL, a total amount of Rs. 13,09,35,23,232/- (Rupees Thirteen Thousand Nine Crore Thirty Five Lakhs Twenty Three Thousand Two Hundred and Thirty Two only) along with G Sec interest calculated since 31.03.2018 at 8% as on date of payment (i.e within one year from the dismissal of NCLAT Appeal bearing no. 1393/2022) and mortgage the Mortgaged Land*

admeasuring 54.9858 Hectare in favour of ATIL by way of deposit of title document to secure the rights and interest of ATIL in the event of non-payment of the outstanding Loan Amount on the Due Date.

3. The subject land of 54.9858 Hectare was subject to acquisition by the Greater Noida Industrial Development Authority (GNIDA) which was not acquired and presently this land is with the TPL and matter for replacing the subject land to some other developed area in Greater Noida is pending before the Hon'ble Supreme Court vide Special Leave Appeal (Civil) No. 21430/2010. As per the various orders passed by Hon'ble Supreme Court, the GNIDA agreed to substitute the instant land for some other land in developed area equal to 40% of 54.9858 Hectare which was not agreed by TPL and instead demanded for 65% of 54.9858 Hectare. In the eventuality that the TPL gets another land in replacement of existing land of 54.9858 Hectare subject to the order of Hon'ble Supreme Court, TPL also agreed and consented to provide that land to A TIL in lieu of existing land. ATIL will have absolute right to deal with such replaced land by virtue of this agreement. After the execution of this agreement, ATIL would also have the right to become the party and represent before the Hon'ble Supreme Court in Special Leave Appeal (Civil) No. 21430/2010 and any other forum/ courts/ tribunals/ GNIDA I Local Authority etc. in the capacity of beneficial owner.

4. *TPL shall file CHG 1 and other applicable forms with ROC and update the record on the portal of Ne SL subsequent to creation of charge of ATIL on the Mortgaged land.*

5. *In the event of default/ delay by TPL to make payment of the outstanding Loan Amount along with applicable interest, ATIL shall have the right to enforce the security and recall/ demand all the outstanding Loan Amount and the applicable interest thereon.*

6. *The Parties agree that the time is the essence ofthis Agreement and default in payment of outstanding Loan Amount on the Due Date, shall entitle ATIL to terminate this Agreement with immediate effect and adjust the payment made under this Agreement against the interest amount payable first then from principal amount as on the agreement date, till such date without being obliged to return/ refund the same.*

7. *TPL agree that they shall be solely responsible for all the dues, liabilities, claims, other levies, charges or taxes in respect of TPL, and TPL shall indemnify and hold harmless ATIL and its directors, employees, officers and representatives from and against any losses, claims, liabilities, expenses or damages whether by way of costs, charges, expenses, litigation penalty or howsoever sustained or incurred by them as a result of, or in connection with, or arising out of such dues, liabilities, claims, other levies, charges or taxes in respect of TPL. Further, TPL shall hereafter have no claims or rights*

whatsoever against ATIL in respect of the past dues, liabilities, claims, other levies, charges or taxes of TPL.

(g) On a bare perusal of the above reproduced clauses of the settlement agreement, it is evident that Petitioner, in order to settle the outstanding dues of the Applicant, has unconditionally agreed to pay a total of Rs. 13,09,35,23,232/- (Rupees Thirteen Thousand Nine Crore Thirty Five Lakhs Twenty Three Thousand Two Hundred and Thirty Two only) along with G Sec interest calculated since 31.03.2018 at 8% interest as on date of payment and have further mortgaged the land admeasuring 54.9858 hectare situated at village Tushyana, district Dadri, Gautam Buddha Nagar, Uttar Pradesh, in favour of the Applicant by way of deposit of title document to secure the rights and interest of Applicant in the event of non-payment of outstanding loan amount. Further, it has categorically been agreed that in the eventuality, if the Petitioner gets any replacement of the existing land of 54,9858 Hectare subject to the orders of this Hon'ble Court, then the Applicant shall have the absolute right to deal with such replaced land by virtue of the said settlement agreement.

(h) In furtherance of the said settlement agreement, the Company Appeal (AT) (Insolvency) 1393 of 2022 before the Ld. National Company Law Appellate Tribunal, New Delhi, came to be disposed vide Order dated 26.09.2023 passed by the Ld. National Company Law Appellate Tribunal, New Delhi.

A true copy of the Order dated 26.09.2023 passed in Company Appeal (AT) (Insolvency) 1393 of 2022 by the Ld. National Company Law Appellate Tribunal, New Delhi is hereto annexed and marked as **ANNEXURE A/4.** (79)

4. The present application is necessitated by the fact that the Applicant has become the mortgagee of the land admeasuring 54.9858 hectare situated at village Tushyana, district Dadri, Gautam Buddha Nagar, Uttar Pradesh, in favour of the Applicant by way of deposit of title document to secure the rights and interest of Applicant in the event of non-payment of outstanding loan amount. Therefore, the issues involved in the captioned Appeal will have a direct bearing on the rights and interest of the Applicant and the creditors as the said land is the only security given by the Petitioner in securing the rights and interest of the Applicant in the event of non-payment of the outstanding loan amount.

5. Further, it is important that the Applicant be heard before this Hon'ble Court, as the Resolution Professional has been appointed to look after the interest of the creditors and the money of the general public involved/ invested with the Applicant. Moreover, admittedly, the Petitioner has been in a continuous default in paying the admitted dues of the Applicant, therefore it is important that the Resolution Professional of the Applicant be heard to protect the interest of the creditors.

6. Therefore, in view of the aforesaid, the Applicant being the mortgagee of the above said land mortgaged by the Petitioner, is necessary and proper party to the present proceedings. The Applicant is constrained to prefer the present application, most respectfully prays for impleadment in the present matter for effectual and complete adjudication of the questions involved in the present proceedings. The same is necessary for fair and complete adjudication by this Hon'ble Court of the present matter which the Applicant are entitled.

7. That the present application has been filed with bona fide intention and in the interest of justice. No prejudice will be caused to the other parties if the present application is allowed. However, grave prejudice will be caused to the Applicant if the present application is dismissed.

3. That irreparable loss and injury would be caused to the Applicant, if the relief prayed through this application are not granted in favour of the Applicant.

PRAYER

In view of the submissions made hereinabove, it is most respectfully and humbly prayed that this Hon'ble Court may kindly be pleased to:

(a) Allow the present Application and implead the Applicant (Alchemist Township India Limited) as Party-Respondents;

(b) Pass any such further order/s as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

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AND FOR THIS ACT OF KINDNESS THE HUMBLE APPLICANT, AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY:

(NISHANT BISHNOI)

(ADVOCATE FOR THE APPLICANT)

FILED ON: 10.10.2023

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IN THE HON'BLE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

I.A. No. _____ of 2023

IN

Civil Appeal (C) No. 4947 of 2017

IN THE MATTER OF:

Technology Park Limited ...Petitioner

Versus

The State of Uttar Pradesh & Others ...Respondents

AFFIDAVIT

I, Devendra Singh, S/o Daryao Singh R/o 2054, ATS Green Paradiso, Sector CHI IV, Kasana, Greater Noida do hereby solemnly affirm and state as under:-

1. That I am the Applicant in the accompanying application, and I am well conversant with the facts and circumstance thereof hence competent to swear this affidavit.
2. That the contents of the accompanying application have been explained to me in my vernacular and I have understood the same and state that the averments made therein are true and correct to my best of my knowledge and belief.
3. That the factual contents of the accompanying application are drafted by my counsel upon my instructions which are true to my knowledge and belief and legal submissions are based on the basis of legal advice received which in turn is relied upon.
4. That the annexures along with the accompanying application are true copies of its respective originals.

DEVENDRA SINGH * IBBI/IPA-002/IP-N00001/2016-17/10004 * INSOLVENCY PROFESSIONAL

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DEPONENT

VERIFICATION: Verified at New Delhi on this 09 day of October 2023 and that the contents of the affidavit are true and correct to the best of my knowledge and belief and nothing material, has been concealed thereof and no part thereof is false.

DEPONENT

ATTESTED

DIPANKAR DAS
ADVOCATE
NOTARY PUBLIC
REGD. NO. 916
GOVT. OF INDIA
LAWYERS CHAMBER
SUPREME COURT OF INDIA
NEW DELHI

09.10.23