

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Comp. App. (AT) (Ins.) No. 1472 of 2022

In the matter of:

IIRF India Realty XII Ltd. & Anr.

....Appellants

Vs.

**Mr. Srigopal Choudhary, IRP of Shree Ram Urban
Infrastructure Ltd. & Ors.**

...Respondents

For Appellants: Mr. Abhijeet Sinha, Mr. Shahan Ulla, Mr. Akash Chatterjee, Mr. Nikunj Mahajan, Mr. Varun Kalra, Advocates.

For Respondents: Mr. Gaurav Mitra, Ms. Honey Satpal, Mr. Ishan Roy Chowdhury, Mr. Sunil Singh, Advocates for R1.
Mr. Vikram Nankani, Sr. Advocate with Mr. Nikhil Apte, Mr. Parth Sarthy Bose, Mrs. Apoorva Kaushik, Mr. Rahul Kumar, Advocates for R2.
Mr. K. Dutta, Sr. Advocate with Mr. Anirban Bhattacharya, Mr. S. Buxy, Ms. P. Vora, Mr. Ativ Patel, Mr. Harshad R Vyas, Mr. Krishna S., Ms. Neha Agarwal, Advocates for R3

WITH

Comp. App. (AT) (Ins.) No. 1519 of 2022

In the matter of:

IIRF India Realty XII Ltd. & Anr.

....Appellants

Vs.

**Srigopal Choudhary, IRP of Shree Ram Urban
Infrastructure Ltd.**

...Respondent

For Appellants: Mr. Abhijeet Sinha, Mr. Shahan Ulla, Mr. Akash Chatterjee, Mr. Nikunj Mahajan, Mr. Varun Kalra, Advocates.

For Respondent: Mr. Gaurav Mitra, Ms. Honey Satpal, Mr. Ishan Roy Chowdhury, Mr. Sunil Singh, Advocates for R1.
Mr. Vikram Nankani, Sr. Advocate with Mr. Nikhil Apte, Mr. Parth Sarthy Bose, Mrs. Apoorva Kaushik, Mr. Rahul Kumar, Advocates for R2.

WITH**Comp. App. (AT) (Ins.) No. 1520 of 2022****In the matter of:****SREI Equipment Finance Ltd.****....Appellant****Vs.****Shree Ram Urban Infrastructure Ltd. & Ors.****...Respondents****For Appellant:**

Mr. K. Dutta, Sr. Advocate with Mr. Anirban Bhattacharya, Mr. S. Buxy, Ms. P. Vora, Mr. Ativ Patel, Mr. Harshad R Vyas, Mr. Krishna S., Ms. Neha Agarwal, Advocates

For Respondents:Mr. Vikram Nankani, Sr. Advocate with Mr. Nikhil Apte, Mr. Parth Sarthy Bose, Mrs. Apoorva Kaushik, Mr. Rahul Kumar, Advocates.
Mr. Gaurav Mitra, Ms. Honey Satpal, Mr. Ishan Roy Chowdhury, Mr. Sunil Singh, Advocates for Srigopal Choudhary.**WITH****Comp. App. (AT) (Ins.) No. 1521 of 2022****In the matter of:****SREI Equipment Finance Ltd.****....Appellant****Vs.****Shree Ram Urban Finance Infrastructure Ltd. & Ors.****...Respondents****For Appellant:**

Mr. K. Dutta, Sr. Advocate with Mr. Anirban Bhattacharya, Mr. S. Buxy, Ms. P. Vora, Mr. Ativ Patel, Mr. Harshad R Vyas, Mr. Krishna S., Ms. Neha Agarwal, Advocates

For Respondents:Mr. Vikram Nankani, Sr. Advocate with Mr. Nikhil Apte, Mr. Parth Sarthy Bose, Mrs. Apoorva Kaushik, Mr. Rahul Kumar, Advocates.
Mr. Gaurav Mitra, Ms. Honey Satpal, Mr. Ishan Roy Chowdhury, Mr. Sunil Singh, Advocates for Srigopal Choudhary.

JUDGMENT
(21st December, 2022)

Ashok Bhushan, J.

Two orders dated 28.11.2022 (in order sheet) and 05.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Court-1, Mumbai Bench in C.P.(IB) No. 494(MB)2019 have been challenged by separate Appeals by 'SREI Equipment Finance Ltd.' and 'IIRF India Realty XII Ltd.'. All the Appeals have been heard together and are being decided by this common order.

2. We need to notice only the brief facts of the case which are necessary for deciding these Appeals.

2.1. C.P.(IB) No. 494(MB)2019 was filed by 'SREI Equipment Finance Ltd.' (one of the Appellants before us) against the Corporate Debtor- 'Shree Ram Urban Infrastructure Limited' under Section 7. By an order dated 06.11.2019, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor by the Adjudicating Authority and Srigopal Choudhary, the Respondent No.1 was appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. On 06.01.2022, the appointment of Srigopal Choudhary was confirmed as the Resolution Professional (RP) by the Adjudicating Authority. The Appellants- 'IIRF India Realty XII Ltd.' as well as 'SREI Equipment Finance Limited' claims to be the Financial Creditors of the Corporate Debtor. The Respondent- 'Indiabulls Housing Finance Ltd.' also claims to be the Financial Creditor. The

Resolution Professional after his appointment took few decisions which were challenged before the Adjudicating Authority by different parties including 'Indiabulls Housing Finance Ltd.'. The Adjudicating Authority has passed an order which was challenged in this Appellate Tribunal. The Appeals were filed by the Resolution Professional against the order of the Adjudicating Authority being Company Appeal (AT) (Ins.) No. 982 of 2021 with other connected Appeals in which order was passed by this Tribunal on 17.12.2021 which Appeals are pending consideration. In this group of Appeals, no issue pertaining to any vote share of any member of the Committee of Creditors (CoC) is for consideration nor any *inter se* dispute regarding different claims to be in the CoC is for consideration before us.

2.2. IA 2621 of 2021 in CP (IB) No. 494(MB)2019 was filed by 'SREI Equipment Finance Ltd.' seeking replacement of IRP. During pendency of IA 2621 of 2021, IRP was appointed as Resolution Professional (RP) by order dated 06.01.2022. 'IIRF India Realty XII Ltd.' also filed an Application being IA No.1304 of 2022 before the Adjudicating Authority seeking removal of RP-Srigopal Choudhary. IA No. 3537 of 2022 was filed by 'Indiabulls Housing Finance Ltd.' for removal of the Resolution Professional. 'Indiabulls Housing Finance Ltd.' has also filed a Company Appeal (AT) (Ins.) No. 1237 of 2022 before this Tribunal challenging the order dated 06.01.2022 of the Adjudicating Authority confirming Srigopal Choudhary as Resolution Professional which Appeal was disposed of by this Tribunal on 22.11.2022 with request to the Adjudicating Authority to hear the parties afresh and pass appropriate orders.

2.3. On 24.11.2022, IA 2621 of 2021, IA No.1304 of 2022 and IA No. 3537 of 2022 seeking removal of Srigopal Choudhary as Resolution Professional were heard by the Adjudicating Authority and the matter was reserved for orders. On 28.11.2022, the Adjudicating Authority by common order passed in IA 2621 of 2021, IA No.1304 of 2022 and IA No. 3537 of 2022 disposed of the Applications by removing the Resolution Professional- Srigopal Choudhary. After pronouncing the order dated 28.11.2022, disposing of the above three Applications, the Adjudicating Authority directed the counsel present for three Applicants to decide the name of Resolution Professional mutually, and submit the same by way of Affidavit/Memo during the course of the day, failing which the Bench was to appoint suitable Resolution Professional.

2.4. A Joint Memo on behalf of 'SREI Equipment Finance Ltd.'- Applicant in IA 2621 of 2021 and 'IIRF India Realty XII Ltd.'- Applicant in IA No.1304 of 2022 was filed praying that one Mr. Avil Jerome Menezes be appointed by Tribunal as the new Resolution Professional. A written consent in Form AA by Mr. Avil Jerome Menezes was also submitted along with the Memo. A Memo was also filed by 'Indiabulls Housing Finance Ltd.' and 'UV Asset Reconstruction Company Limited' suggesting three names of the Resolution Professionals, including the name of Mr. Sapan Mohan Garg, the said Memo was signed by Advocate appearing for 'Indiabulls Housing Finance Ltd.' and 'UV Asset Reconstruction Company Limited' whereas in the heading of the Memo IA No. 3537/2022 and IA No. 2621/2021 was also mentioned. The Adjudicating Authority on the same date 28.11.2022 (in order sheet) passed an order appointing Mr. Sapan Mohan Garg as the Resolution Professional.

‘SREI Equipment Finance Ltd.’, after passing of the order dated 28.11.2022 (in order sheet), filed IA No. 3675 of 2022 seeking rectification of the order dated 28.11.2022 to the extent that it had wrongly recorded that candidature of Mr. Sapan Mohan Garg has been endorsed by both ‘Indiabulls Housing Finance Ltd.’ and ‘SREI Equipment Finance Ltd.’. It was further prayed that Mr. Avil Jerome Menezes be appointed as the Resolution Professional.

2.5. On 05.12.2022, the Adjudicating Authority passed an order in IA No. 3675/2022 partly allowing the Application. The Company Appeal (AT) (Ins.) No. 1472 of 2022 and Company Appeal (AT) (Ins.) No. 1520 of 2022 have been filed challenging the order dated 28.11.2022 (in order sheet) whereas Company Appeal (AT) (Ins.) No. 1519 of 2022 as well as Company Appeal (AT) (Ins.) No. 1521 of 2022 have been filed challenging the order dated 05.12.2022 passed in I.A No. 3675 of 2022.

3. We have heard Shri Abhijeet Sinha, Learned Counsel appearing for Appellant in Company Appeal (AT) (Ins.) No. 1472 of 2022 and Company Appeal (AT) (Ins.) No. 1519 of 2022; Shri Krishnendu Datta, Learned Senior Counsel has appeared in Company Appeal (AT) (Ins.) No. 1520 of 2022 and Company Appeal (AT) (Ins.) No. 1521 of 2022; Shri Vikram Nankani, Learned Senior Counsel appearing for ‘Indiabulls Housing Finance Ltd.’ and Shri Gaurav Mitra, Learned Counsel appearing for Srigopal Choudhary. With the consent of the parties, we proceed to dispose of these Appeals finally.

4. Shri Abhijeet Sinha, Learned Counsel appearing for 'IIRF India Realty XII Ltd.' submits that order passed by the Adjudicating Authority on 28.11.2022 (in order sheet) clearly contemplated Learned Counsel appearing for the Applicants to mutually decide the name of the Resolution Professional and submit the same by way of Affidavit/ Memo during the course of the day, failing which Bench was to appoint suitable Resolution Professional. It is submitted that a Joint Memo was filed by 'SREI Equipment Finance Ltd.' and 'IIRF India Realty XII Ltd.' praying that one Mr. Avil Jerome Menezes be appointed as new Resolution Professional. It is submitted that a Memo was also filed by 'Indiabulls Housing Finance Ltd.' praying that Resolution Professional be appointed out of three persons mentioned in the Memo. The Memo was on behalf of 'Indiabulls Housing Finance Ltd.' and 'UV Asset Reconstruction Company Limited', although in the heading of the Application it was wrongly claimed that it was on behalf of 'SREI Equipment Finance Ltd.'- Applicant in IA No. 2621 of 2021. There being no mutual name agreed by Applicants, the Adjudicating Authority committed error in appointing Mr. Sapan Mohan Garg who was requested to be appointed by 'Indiabulls Housing Finance Ltd.'. It is submitted that the Adjudicating Authority has incorrectly observed in the order that Applicants in IA No. 3537 of 2022 and I.A. No. 2621 of 2021 have jointly mentioned the name which mistake has subsequently corrected by the Adjudicating Authority itself by order dated 05.12.2022. The Adjudicating Authority having noticed that there was no consensus in the Applicants, the Adjudicating Authority ought to have appointed Resolution Professional as requested by Applicants of IA No. 2621/2021 and IA No. 1304/2022 who

claim to be having vote share of more than 69%. It is submitted that there was no occasion for accepting the name recommended by 'Indiabulls Housing Finance Ltd.'.

5. Shri Krishnendu Datta, Learned Senior Counsel appearing for 'SREI Equipment Finance Ltd.' also submits that a Joint Memo was filed along with 'IIRF India Realty XII Ltd.' for appointment of Mr. Avil Jerome Menezes as Resolution Professional and 'Indiabulls Housing Finance Ltd.' has wrongly mentioned the number of Application of 'SREI Equipment Finance Ltd.' by filing a Joint Memo giving a picture that the said Joint Memo giving three names has consent of 'SREI Equipment Finance Ltd.' whereas 'SREI Equipment Finance Ltd.' has filed Joint Memo with 'IIRF India Realty XII Ltd.' recommending Mr. Avil Jerome Menezes. It is submitted that when the Adjudicating Authority by passing order dated 05.12.2022 accepted that there was no Joint Memo by 'SREI Equipment Finance Ltd.' and 'Indiabulls Housing Finance Ltd.', the very foundation of the order appointing Mr. Sapan Mohan Garg was knocked out and the order ought to have been set aside. It is submitted that the order appointing Mr. Sapan Mohan Garg deserves to be set aside.

6. Shri Vikram Nankani, Learned Senior Counsel appearing for 'Indiabulls Housing Finance Ltd.' firstly raise objection to the locus of the 'SREI Equipment Finance Ltd.' to file the Appeal. It is submitted that 'SREI Equipment Finance Ltd.' itself is in CIRP and the authorized representative who has filed the Appeal on behalf of 'SREI Equipment Finance Ltd.' is not competent to file an Appeal. He has referred to para 7.1 of the Company

Appeal (AT) (Ins.) No. 1520 of 2022 where 'SREI Equipment Finance Ltd.' itself has been stated that CIRP has commenced against 'SREI Equipment Finance Ltd.' by order dated 08.10.2021 and one Mr. Rajneesh Sharma was appointed as Administrator of the Appellant. It is submitted that Appeal filed by Mr. Pradeep Faujdar, Senior Vice President- Legal is not competent. Shri Vikram Nankani, Learned Senior Counsel further submits that there was no error in the order dated 28.11.2022 passed by the Adjudicating Authority appointing Mr. Sapan Mohan Garg. Mr. Sapan Mohan Garg was the name which although was included in the memo filed by 'Indiabulls Housing Finance Ltd.' that itself does not make Mr. Sapan Mohan Garg ineligible for appointment. It is submitted that there is no error committed by the Adjudicating Authority in appointing Mr. Sapan Mohan Garg which warrant interference in this Appeal.

7. Shri Gaurav Mitra, Learned Counsel appearing for Srigopal Choudhary submitted that he has already filed Appeal against the order dated 28.11.2022 removing Srigopal Choudhary as Resolution Professional being Company Appeal (AT) (Ins.) No. 1443 of 2022 where the order is reserved. It is submitted that this Tribunal may not make any observation in this regard while deciding these Appeals which shall have any prejudicial effect on the rights of Srigopal Choudhary.

8. We have considered the submissions of the parties and perused the record.

9. We may first notice the objection of Shri Vikram Nankani regarding locus of 'SREI Equipment Finance Ltd.' to file the Appeal. It is submitted that 'SREI Equipment Finance Ltd.' itself is in CIRP, hence, the authorized person who has filed the Appeal i.e. Mr. Pradeep Faujdar, Senior Vice President- Legal is not competent to maintain the Appeal.

10. Shri Krishnendu Datta, Learned Senior Counsel appearing for 'SREI Equipment Finance Ltd.' refuting the submission of Counsel appearing for 'Indiabulls Housing Finance Ltd.' submits that Appellant- 'SREI Equipment Finance Ltd.' has disclosed all relevant facts in the Appeals and Appeals have been filed by competent person. He has referred to para 7.1 of the Company Appeal (AT) (Ins.) No. 1520 of 2022. In para 7.1, following averments have been made:-

"7.1. The Appellant is a Non-Banking Financial Institutions. On an application filed by the Reserve Bank of India, the Appellant was directed to undergo Corporate Insolvency Resolution Process ("CIRP") pursuant to an order dated 08.10.2021 passed by the Ld. Adjudicating Authority, the National Company Law Tribunal, Kolkata Bench in Company Petition No. 294/2021. By the aforesaid Order, Mr. Rajneesh Sharma was appointed as the Administrator of the Appellant. The present Appeal has been filed through Mr. Pradeep Faujdar, Senior Vice-President-Legal of the Appellant, who is duly authorized by the Appellant to file this appeal."

11. Shri Krishnendu Datta, Learned Senior Counsel further submits that Shri Pradeep Faujdar has been duly authorized representative of the Appellant which averment has categorically made in the Appeal. It is submitted that 'SREI Equipment Finance Ltd.' has filed IA No. 2621/2021 in C.P. (IB)/ 494(MB)2019 before the Adjudicating Authority where all details regarding filing of the Applications have been mentioned.

12. We have been noticed the pleadings by 'SREI Equipment Finance Ltd.' in Company Appeal (AT) (Ins.) No. 1520 of 2022 where it is categorically pleaded that the administrator Shri Rajneesh Sharma has duly authorized the Appellant. We do not find any substance in the objection raised by 'Indiabulls Housing Finance Ltd.' regarding locus of the Appellant to file the Appeal. We, thus, hold that 'SREI Equipment Finance Ltd.' has locus to file Company Appeal (AT) (Ins.) No. 1520 of 2022 and Company Appeal (AT) (Ins.) No. 1521 of 2022.

13. As noted above, on 28.11.2022, two orders have been passed by the Adjudicating Authority. First order was pronounced on 28.11.2022 in IA 2621 of 2021, IA No.1304 of 2022 and IA No. 3537 of 2022 disposing all the IAs by removing Srigopal Choudhary as Resolution Professional with immediate effect. After pronouncement of the order, another order was passed on 28.11.2022 (in order sheet) by the Adjudicating Authority. It is useful to notice the entire order passed on 28.11.2022:-

“Order pronounced in Open Court and All IA’s are allowed. With regard to the name of the RP, Ld.

Counsel appearing for the Applicants present and are directed to decide the name of RP mutually, and submit the same by way of Affidavit/Memo on record during the course of the day, failing which the Bench shall appoint suitable RP considering the facts of the case.

In compliance to above Order Applicants in IA No. 3537/2022 and IA No. 2621 have jointly mentioned the names of three RPs, which are as follows:

<i>S.No.</i>	<i>Name</i>	<i>Registration Number</i>
<i>1.</i>	<i>Ms. Preeti Gandhi</i>	<i>IBBI/IPA-001/IP-P-02751/2022-2023/14185</i>
<i>2.</i>	<i>Mr. Neehal Mahamulal Pathan</i>	<i>IBBI/IPA-001/IP-P-01561/2018-2019/12406</i>
<i>3.</i>	<i>Mr. Sapan Mohan Garg</i>	<i>IBBI/IPA-002/IP-N00315/2017-2018/10903</i>

Applicant in IA No. 1304/2022 has mentioned name one Mr. Avil Jerome Menezes, having Reg. No. IBBI/IPA-001/IP-P00017/2016-17/10041, in its application itself.

We have noticed that there is no consensus of the applicants on any one name to be appointed as RP. In the circumstances we appoint Mr. Sapan Mohan Garg, having Reg. No. IBBI/IPA-002/IP-N00315/2017-18/10903 as an RP of Shree Ram Urban Infrastructure Limited in place of Mr. Srigopal Choudhary who is directed to be discontinued with immediate effect.”

14. Two significant steps were taken on 28.11.2022 by the Applicants. On 28.11.2022, a Joint Memo was filed by ‘SREI Equipment Finance Ltd.’ and

'IIRF India Realty XII Ltd.'. The Joint Memo is on the record of Company Appeal (AT) (Ins.) No. 1472 of 2022 as Annexure A-4 which is to the following effect:-

“Joint Memorandum on behalf of SREI Equipment Finance Ltd. and IIRF India Realty XII Limited proposing the name of new Resolution Professional

1. *This Hon'ble Tribunal vide order dated 28th November 2022 has allowed Interlocutory Application No. 2621 of 2021 filed by SREI Equipment Finance Limited and Interlocutory Application No. 1304 of 2022 filed by IIRP Realty XII Ltd., thereby removing Mr. Srigopal Choudhary as the Resolution Professional of the Corporate Debtor.*
2. *It has further been directed by this Hon'ble Tribunal on 28th November 2022, that the parties to file a joint memorandum suggesting the name of the new Resolution Professional to replace Mr. Srigopal Choudhary in the present case.*
3. *IIRF Realty XII Limited and SREI Equipment Finance Limited are filing the present memo to jointly propose the name of Mr. Avil Jerome Menezes to be appointed as the new Resolution Professional of the Corporate Debtor in the present case by this Hon'ble Tribunal.*
4. *The name of Mr. Avil Jerome Menezes has already been proposed by IIRF India Realty XII Ltd. in I.A. No. 1304 of 2022.*
5. *Mr. Avil Jerome Menezes on 4th May 2022 has furnished his written consent to IIRF India Realty XII Ltd. to act as the Resolution Professional of the Corporate Debtor. Further, Mr. Avil Jerome Menezes as on 28th November 2022 has also furnished his written consent to SREI Equipment and Finance Limited to act as the Resolution Professional of the Corporate Debtor. Copies of the written consents of Mr. Avil Jerome Menezes are annexed herewith and marked as Annexure A-1 and A-2, respectively.*
6. *Considering the above it is humbly prayed that Mr. Avil Jerome Menezes be appointed by this*

Hon'ble Tribunal as the new Resolution Professional of the Corporate Debtor."

15. Along with the Joint Memo, written consent of Mr. Avil Jerome Menezes was also filed in Form- AA. On the same date, another Memo was filed by 'Indiabulls Housing Finance Ltd.' and 'UV Asset Reconstruction Company Limited' which is Annexure A-6. It is useful to extract the entire Memo as follows:-

"Memo filed by IHFL/ UVARCL with name suggestion for appointment of new Resolution Professional in terms of order dated 28.11.2022

1. IA 3537/2022 & IA 2621/2021 had been filed by the parties for inter, alia, replacement of the Resolution Professional of Shree Ram Urban Infrastructure Ltd. The said IAs were heard at length by this Hon'ble Tribunal on 24.11.2022 and order were reserved in the matter.
2. When the matter was taken up for pronouncement of judgment on 28.11.2022, the Hon'ble Tribunal indicated that it had allowed the applications for replacement of the RP. However, since no RP had been suggested in the applications, it was orally directed that a Memo be filed suggesting a suitable person to be applied as the RP. This Memo is being filed in terms of the aforesaid direction.
3. Whereas there is no consensus between the Financial Creditors on a proposed resolution Professional, we are suggesting three names. It is humbly prayed that this Hon'ble Tribunal may be pleased to appoint either of the three persons mentioned below as the Resolution Professional :
(i) Ms. Preeti Gandhi, (ii) Ms. Neehal Mahamulal Pathan, or (iii) Mr. Sapan Mohan Garg as the RP of the Corporate Debtor and Mr. Sri Gopal Chaudhary be relieved of his duties. The details of Ms. Preeti Gandhi (mobile no. 9582977899) or Mr. Neehal Mahamulal Pathan (mobile no. 9822043344) and Mr. Sapan Mohan Garg (mobile

no. 9810502994), as available from the IBBI website, are as under:

Name of the IP	Preeti Gandhi
Registration no	IBBI/IPA-001/IP-P-02751/2022-2023/14185
Date of Registration	19-Sep-22
Member of IPA	Indian Institute of Insolvency Professionals of ICAI
Member of IPE	
Member of IPA Since	18-Aug-22
Email id	preitygandhi@gmail.com
Address	11A, Gh-1, Gurgaon One Apartments, Old Delhi Gurgaon Road, Sector 22, Opposite Hyatt Place, Gurgaon, Haryana, 122015
Have Valid AFA	Yes

Name of the IP	Ms. Neehal Mahamulal Pathan
Registration no	IBBI/IPA-001/IP-P-01561/2018-2019/12406
Date of Registration	27-Feb-19
Member of IPA	Indian Institute of Insolvency Professionals of ICAI
Member of IPE	
Member of IPA Since	16-Jan-19
Email id	Ca.neehal@gmail.com
Address	RS No. 825, Plot No. 27, Sahjeevan Parisar, Karande Mala, Near TPM CHURCH BEHIND CIRCUIT HOUSE KOLHAPUR Kolhapur, Maharashtra 416003
Have Valid AFA	Yes

Name of the IP	Mr. Sapan Mohan Garg
Registration no	IBBI/IPA-002/IP-N00315/2017-2018/10903
Date of Registration	14-Aug-17
Member of IPA	ICSI Institute of Insolvency Professionals
Member of IPE	
Email id	sapan10@yahoo.com
Address	D-54, First Floor Defence Colony, New Delhi, National Capital Territory of Delhi, 110024
Have Valid AFA	Yes
AFA Certificate No.	AA2/10903/02/060123/201895

4. *It is humbly prayed accordingly.”*

16. Joint Memo was filed by ‘SREI Equipment Finance Ltd.’ and ‘IIRF India Realty XII Ltd.’ praying for appointment of Mr. Avil Jerome Menezes whereas Memo which was filed by ‘Indiabulls Housing Finance Ltd.’ and ‘UV Asset Reconstruction Company Limited’ was not the Joint Memo by the

Applicants— IA No. 2621 of 2021 and IA No. 3537 of 2022 which is apparent from the reading of IA.

17. By subsequent order dated 05.12.2022, the Adjudicating Authority itself has allowed the Application filed by ‘SREI Equipment Finance Ltd.’ where the words “Applicants” and “jointly” with regard to Memo filed by ‘Indiabulls Housing Finance Ltd.’ has been deleted. The order dated 05.12.2022 passed by the Adjudicating Authority, thus, makes it clear that there is no Joint Memo filed by ‘SREI Equipment Finance Ltd.’ and ‘Indiabulls Housing Finance Ltd.’ suggesting three names including the name of Mr. Sapan Mohan Garg. When we look into the order dated 28.11.2022 (in order sheet), it is clear that the Adjudicating Authority has noted that Applicants in IA No. 2621 of 2021 and IA No. 3537 of 2022 has jointly mentioned the names of three Resolution Professional whereas the fact of the matter is that three names were only mentioned in the Memo filed by ‘Indiabulls Housing Finance Ltd.’ i.e. Applicant in IA No. 3537 of 2022. The Adjudicating Authority was also clear that there is no consensus of the Applicants on any one name to be appointed as Resolution Professional. When we look into the order dated 28.11.2022 (in order sheet), the order begins with the words “Order pronounced in Open Court and All IA’s are allowed. With regard to the name of the RP, Ld. Counsel appearing for the Applicants present and are directed to decide the name of **RP mutually**, and submit the same by way of Affidavit/ Memo on record during the course of the day, **failing which the Bench shall appoint suitable RP** considering the facts of the case.”

18. The above order emphasizes two things, firstly Counsel for the Applicants to decide the name of Resolution Professional mutually and further failing which the Bench shall appoint suitable Resolution Professional considering the facts of the case. Facts as noted above makes it clear that there was no consensus in the name of the Resolution Professional and it was open for the Adjudicating Authority to appoint any Resolution Professional. However, there being no consensus between the parties, Memo filed by 'Indiabulls Housing Finance Ltd.' could not have been taken notice or Resolution Professional appointed on the basis of said Memo. Out of three Applicants, two Applicants had filed Joint Memo namely— 'SREI Equipment Finance Ltd.' and 'IIRF India Realty XII Ltd.' recommending the name of Mr. Avil Jerome Menezes. Why the Adjudicating Authority did not choose the name suggested by two Applicants and accepted the name suggested by one Applicant- 'Indiabulls Housing Finance Ltd.' has not been dealt with the order. When the clear intent of the order dated 28.11.2022, as noticed above, is that unless the Applicants mutually agree on any name of the Resolution Professional, Resolution Professional will be appointed by the Adjudicating Authority, and it was clear that there was no consensus with regard to the name of the Resolution Professional between three Applicants, the Adjudicating Authority ought to have appointed Resolution Professional on its own without referring to or relying to any prayer made by the Applicant- 'Indiabulls Housing Finance Ltd.'.

19. Further in the order dated 05.12.2022 which was subsequently passed on IA 3675/2022 filed by 'SREI Equipment Finance Ltd.' it was

accepted by the Adjudicating Authority that Joint Memo was not filed by Applicants- IA No. 3537/2022 and IA No. 2621 of 2021 and the Adjudicating Authority had allowed prayer (a) to the effect that words “Applicants” and “Jointly” referred to para 1 of the order are deleted. In view of the order dated 05.12.2022 the very basis of the order passed on 28.11.2022 by accepting the name of Mr. Sapan Mohan Garg as jointly recommended was knocked out.

20. We, thus, are satisfied that the Adjudicating Authority committed error in appointing Mr. Sapan Mohan Garg as Resolution Professional whose name was submitted by Memo filed by ‘Indiabulls Housing Finance Ltd.’. The order dated 28.11.2022 (in order sheet) insofar as it appoints Mr. Sapan Mohan Garg as Resolution Professional is set aside and the Adjudicating Authority is directed to pass an order appointing any Resolution Professional from the eligible Resolution Professional as it deem fit and proper.

21. We may notice one more aspect of the matter. The order of the Hon’ble Supreme Court passed on 12.12.2022 in Civil Appeal No. 9062/2022 has been perused by us. The Hon’ble Supreme Court has referred to order passed in Civil Appeal No. 7050/2022 which order dated 14.11.2022 is to the following effect:-

“C.A. No. 7050/2022

*Learned senior counsel for the appellant,
on instructions states that the appellant is willing
to bring in the money in terms of the arbitral*

award, approximately Rs. 75.30 crores in the corporate creditors' account and the Resolution Professional will execute the sale deed on the said amount being so deposited. He submits on instructions that the amount will be deposited within 10 days.

On the aforesaid statement taken on record, learned counsel for respondent No.1 who is the appellant before the NCLAT submits that if the amount is brought in, the sale deed can be executed by the Resolution Professional and the appeal filed by the respondent No.1 before the NCLAT would stand withdrawn.

In view of the aforesaid, we direct as under:

- 1) The amount be deposited within a period of 10 days stipulated, as aforesaid;*
- 2) On the amount being deposited, the Company Appeal (AT) (Ins.) No.880/2021 before the NCLAT, filed by respondent No.1 shall stand dismissed as withdrawn;*
- 3) The Resolution Professional shall execute the sale deed in favour of the appellant within a period of 10 days of the deposit of the amount;*
- 4) In view of the aforesaid agreement arrived at, no impediment should be created to the execution of the same. The appeal stands disposed of in terms aforesaid."*

22. The order passed by the Hon'ble Supreme Court dated 14.11.2022 has to be given effect by the Resolution Professional on deposit of the amount, the Resolution Professional to execute the sale deed in favour of 'Kalpataru Properties Pvt. Ltd.' (Appellant therein) within 10 days. The earlier Resolution Professional Srigopal Choudhary having been removed by the Adjudicating Authority on 28.11.2022 against which order there is no interim order continuing Srigopal Choudhary and Mr. Sapan Mohan Garg new Resolution Professional appointed by the Adjudicating Authority, having been set aside by us, a Resolution Professional needs to be in place to carry out the order of the Hon'ble Supreme Court dated 14.11.2022. We, thus, direct the Adjudicating Authority to pass an order appointing a Resolution Professional within one week from the date copy of this order is produced. Learned Counsel for the Appellant is directed to produce copy of this order within three days from today to enable the Adjudicating Authority to fix a date for passing an appropriate order. We may further notice that the order passed by the Hon'ble Supreme Court dated 14.11.2022 passed in Civil Appeal No. 7050/2022 has not been placed by any of the parties to the Appeal in the record of Company Appeal (AT) (Ins.) No. 1472 of 2022 and we have taken out the reference of order from the order of the Hon'ble Supreme Court dated 09.12.2022 passed in Miscellaneous Application No. 2064 of 2022 in CA No. 7050/2022 which was sent by email dated 14.12.2022 by the Branch Officer (Section XVII) of the Supreme Court of India to Registrar NCLAT .

23. In view of the foregoing discussion, the Appeals are decided by following directions:-

- (i) The Appeal No. 1472 of 2022 and Appeal No. 1520 of 2022 are partly allowed. The Order dated 28.11.2022 (in the order sheet) passed in IA No. 2621/2021, IA No. 1304/2022 and IA No. 3537/2022 insofar as it appoints Mr. Sapan Mohan Garg as Resolution Professional is set aside.
- (ii) The Adjudicating Authority is directed to pass an order within one week from the date copy of this order is produced before the Adjudicating Authority appointing Resolution Professional in continuation of the order dated 28.11.2022 (in order sheet) without reference of the names of the Resolution Professional submitted by Applicants.
- (iii) The Appeal Nos. 1519 of 2022 and 1521 of 2022 are disposed of accordingly.
- (iv) This order shall be without any prejudice to rights and contention of Srigopal Choudhary.

The parties shall bear their own cost.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

[Barun Mitra]
Member (Technical)

Anjali/nn