

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-596/2022

In

IB-571(ND)/2020

IN THE MATTER OF IB-571(ND)/2020:

M/s. SREI INFRASTRUCTURE FINANCE LIMITED

..... Financial Creditor

VERSUS

M/s. GUJARAT HYDROCARBONS AND POWER SEZ LIMITED

.....Corporate Debtor

IN THE MATTER OF IA-596/2022:

M/s. Assam Company India Limited

..... Applicant

VERSUS

M/s. Gujarat Hydrocarbons and Power SEZ Limited & Ors.

1. M/s. Gujarat Hydrocarbons and Power SEZ Limited

Being Represented by Mr. Rakesh Kumar Agarwal

Resolution Professional of the Corporate Debtor

2. M/s. SREI Infrastructure Finance Limited

..... Respondents

Order Delivered On: 13.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Abhimanyu Bhandari, Mr. Arav Pandit, Mr. D. Girish
Kumar, Advs.

For the Respondent : Mr. Abhimanyu Bhandari, Mr. Arav Pandit, Mr. D.
Girish Kumar, Advs. For R2 in IA-1764/2021

For the SRA : Mr. Tirth N., Adv.

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For the RP : Mr. P. Nagesh Sr. Adv., Mr. Akshay Sharma, Mr. Abhinav Agrawal, Mr. Kartik Sharma, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Brief Background of the Case

1. An application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e., M/s. SREI Infrastructure Finance Limited against the Corporate Debtor i.e., M/s. Gujarat Hydrocarbons and Power SEZ Limited and the said application was admitted by the order of this Adjudicating Authority, Bench III vide order dated 18.11.2020 and we declared moratorium and Mr. Rakesh Kumar Agarwal was appointed as an Interim Resolution Professional.
2. The Resolution Plan (a revised/Final Resolution Plan dated 5th April 2021 as well as 23rd August 2021) was submitted by Successful Resolution Applicant namely M/s. Zaveri & Co. Pvt. Ltd. which was approved by the CoC in its 11th meeting dated 30.08.2021 under Section 30(4) of the IBC by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability.
3. The present Application has been filed by M/s. Assam Company India Limited on 15.01.2022 under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 before this Adjudicating Authority, for seeking following reliefs:
 - “a. Pass necessary orders directing the Respondent No. 1 to set aside the claim of Rs. 1885.08 Cr submitted by the Respondent No. 2;*
 - b. Pass necessary orders directing the Respondent No. 1 to amend the list of creditors prepared by the Respondent No. 1 during the Corporate Insolvency Resolution Process of the Corporate Debtor in accordance thereto direct the Respondent No. 1 to rectify and/or*

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modify the information memorandum and all the other records by recording the name of the applicant as the Secured Financial Creditor;

c. Pass necessary orders for reassessment and/or recalculation of the claim submitted by the Respondent No. 2 to the Respondent No. 1 in light of the proceedings already completed in the case of the applicant;

d. Pass necessary orders allowing the applicant to submit its fresh claim to the Respondent No. 1;

e. Pass necessary orders for stay of Corporate Insolvency Resolution Process of the Corporate Debtor till the instant application is disposed of;

f. Ad-interim orders in terms of prayers above;

g. Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper;”

4. The Applicant is the holding Company of the Corporate Debtor and is also a Financial Creditor of the Corporate Debtor. The present Application has been filed challenging the stand taken by the Respondent No. 1 in treating the Applicant as an Unsecured Financial Creditor instead of Secured Financial Creditor. The list of Creditors as prepared by Respondent No. 1 and uploaded in the website of the IBBI shows the Applicant is an Unsecured Financial Creditor and the claim is admitted to the extent of Rs.298,35,11,060/-. The Applicant as a Corporate Debtor has paid an amount of Rs.38.87 Crores to Respondent No. 2 in full and final settlement of its claim through the Resolution Plan in the case of M/s. SREI Infrastructure Finance Limited vs. M/s. Assam Company India Limited (“ACIL”) while approving the Resolution Plan submitted by M/s. BRS Ventures Investment Limited in IB-20/(GB)/2017, the Successful Resolution Applicant infused an amount of Rs. 1064 crores in IB-20/(GB)/2017. Thus, upon payment of the said amount the entirety of debt of the Respondent No. 2 was assigned to the Applicant who has stepped into the shoes of the Respondent No. 2 and thus become a Secured

Financial Creditor. The Applicant is further challenging the claim of the Respondent No. 2 filed with the Respondent No. 1 which has been accepted by the Respondent No. 1 to the extent of Rs.1885.08 crores whereas the claim of the Respondent no. 2 was also Rs. 241.27 crores in the year 2018.

5. It is the case of the Applicant that the Resolution Professional accepted a claim of Rs. 1885,08,56,919/- submitted by Respondent No.2, when for the same set of default, the claim of Respondent No.2 had already been admitted for an amount of Rs. 241.27 Crore by the NCLT Guwahati Bench vide order dated 20.09.2018 in the case of M/s. SREI Infrastructure Finance Limited vs. M/s. Assam Company India Limited (“ACIL”) while approving the Resolution Plan submitted by M/s. BRS Ventures Investment Limited in IB-20/(GB)/2017. Against the said claim, Respondent No. 2 has already received an amount of Rs. 38.27 Crore towards full and final settlement of all its dues and accepted the claim of Rs. 241.27 Crore. The Applicant therefore contended that by no stretch of the imagination, it can be said that the claim of Respondent No.2, can now become Rs. 1885.08 Cr. from Rs. 241.27 Crore within a span of three years and more so after having received an amount of Rs. 38.87 Crore.
6. The Respondent No. 2 (M/s. SREI Infrastructure Finance Limited) has submitted in the Reply Affidavit dated 11.03.2022 that the present application has been filed by the Applicant without any locus. The Applicant has stated that it is holding company of the Corporate Debtor but has failed to disclose that the Applicant has been after Corporate Insolvency Resolution Process undertaken under the Insolvency and Bankruptcy Code, 2016, been taken over by M/s. BRS Ventures Investment Limited as approved by the NCLT Guwahati Bench vide order dated 20.09.2018 in the case of M/s. SREI Infrastructure Finance Limited vs. M/s. Assam Company India Limited (“ACIL”), approving the Resolution Plan submitted by M/s. BRS Ventures Investment Limited in IB-20/(GB)/2017.

7. It is pertinent to note that a similar Interim Application on identical grounds and facts has already been filed by the suspended Directors of the Corporate Debtor wherein exactly the same bald and unlawful contentions have been raised in IA-1764/2021.
8. The Applicant failed to apprise that the M/s. BRS Ventures Investment Limited, who have taken over the Applicant Company, had filed an Appeal before the Hon'ble NCLAT against the order dated 18.11.2020 passed by this Adjudicating Authority admitting the present CIRP against the Corporate Debtor. The Appeal filed was disposed of vide judgment dated 11.05.2021 passed by the Hon'ble NCLAT. The Hon'ble NCLAT while disposing of the Appeal specifically noted that the Respondent No. 2 herein, the Answering Respondent was barred from even filing its claims in light of the fact that it had filed two separate CIRP in respect of the same amount and was specifically barred by the judgment of **Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd.**, CA (AT) (Ins.) 346/2018. The Hon'ble NCLAT vide its order dated 11.05.2021 extensively dealt with the contentions and eventually, rejected its contention. The Hon'ble NCLAT also clarified in view of the **State Bank of India Vs. Athena Energy Ventures Private Limited**, Company Appeal (AT) (Ins) No. 633 of 2020, wherein the Answering Respondent was justified in proceedings against the remainder amount received from the CIRP of M/s. Assam Company India Limited i.e., the Guarantor (Applicant herein) to loan availed by Respondent No. 1.
9. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
10. We find that that there is no provision under the IBC which allows the computation of claims done by a Resolution Professional for one Corporate Debtor's Resolution to be binding on a completely different Resolution Process of a different Corporate Debtor. In the present case, the Applicant has wrongly attempted to seek directions from this Adjudicating Authority. It is well within the ambit of IBC for reducing

the claim of the answering Respondent in the CIRP of M/s. Assam Company India Limited and not to exclude penal interest but to remove calculation mistakes and errors committed by the IRP in calculating and compounding the penal interest in the claim submitted by the answering Respondent.

11. Coming to the factual matrix of the present Application, It is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the integrities involved in the CIRP of the Corporate Debtor based on facts which were in existence earlier in the CIRP of different Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is devoid of merits and not sustainable. The Applicant has no locus standi to file the present Application and is attempting to derail or delay the present CIRP proceedings of the Corporate Debtor.

12. In view of the above, the IA-596/2022 filed by M/s. Assam Company India Limited stands **dismissed** with cost of Rs. 50,000/- (Rupees Fifty Thousand Only) payable to Prime Minister's National Relief Fund (PMNRF) within two weeks from the date of this order, failing which the same shall be realised through the due process of law. The compliance affidavit shall be filed by the Applicant within one week after depositing the cost.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**